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Résumé/Abstract (300-500 mots/words) :

The following literature review is seeking to re-engineer today's legal procedures, court process and accessibility of the justice system. The scope of this review corresponds to the Cyberjustice's project objectives. It begins first by outlining the literature that helps to historically situate modern court traditions and access to justice issues. Second, articles and books are reviewed in order to resituate court processes and access to justice issues in a contemporary socio-political context. Third, it canvases and identifies technology currently in use, which leads to a presentation and analyses on the impacts, both positive and negative, from the perspective of various parties, of technology.

Literature Review By Vanessa Beaton

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Introduction

The following literature review is part of the Cyberjustice Project seeking to re-engineer today's legal procedures, court process and accessibility of the justice system. The scope of this review corresponds to the Cyberjustice objectives. It begins first by outlining the literature that helps to historically situate modern court traditions and access to justice issues. Second, articles and books are reviewed in order to resituate court processes and access to justice issues in a contemporary socio-political context. Third, it canvases and identifies technology currently in use, which leads to a presentation and analyses on the impacts, both positive and negative, from the perspective of various parties, of technology.

Access to Justice, Technology and Technological Advancement:

Grounding Theory on Cyberjustice Research Themes

The underlying assumption of the project is that information technology can democratize access to justice. In this section, I have outlined grounding theories that aid an exploration of technological change and access to justice. The authors below stress the importance of taking into account historical lessons and context. Building cyberjustice is a complex process within a complex legal system as such, a broad analysis of psychological, social, political and cultural factors should be used to understand where the legal system comes from, where it is and where it should go in the future. Constance Backhouse, focuses on the failure to give historical context to access to justice issues. Mumford and Winner assess the impact history has and argue there is a reluctance to analyze its impact on modern systems. The lack of attention to the role of history has arguably resulted in over-simplified analyses of technology (see Dosi).

Court Processes

Cabrillo, Francisco and Sean Fitzpatrick *The Economics of Courts and Litigation* (United Kingdom: Edward Elgar Publishing, 2008)
Scope: The authors focus on the application of economics as a tool to improve the courts and the administration of justice.
Issue: This book addresses the issue of court delay.
Body:
- The authors discuss judicial delay. Since the Magna Carta Countries have recognized the importance of timely adjudication: "To no one will we sell, to no one deny or delay right or justice" (3).
- The right to timely adjudication is stated in Article 6 of the European Convention on Human Rights (4).
- Economics recognizes that the task of the courts is too important to be let in the hands of any particular group of stakeholders.

- The authors quote Lord Woolf: courts must make important resource allocation decisions, which are "proportionate to the nature of the issues involved". Accuracy comes at a cost and beyond a certain point the marginal gains to accuracy are less than the prevailing costs incurred (6).
- In Chapter two they analyze the court system. They argue courts provide two services: (1) dispute resolution, assessing whether a rule has been violate; and (2) the creation of rules of law as a result of the dispute settlement process (precedent) (15).
- In the concluding chapter the authors present strategies for reform. They argue that poorly functioning courts are contrary to legal principles of justice and economic principles of social welfare maximization (221).

Contribution: Their analysis critiques traditional procedural systems that only aspired towards accuracy and complexity. Costs go up because courts will demand lengthy and drawn out trials to solve complicated legal issue. This system is an injustice to those left waiting for excessively long periods of time. Courts need to focus on the importance of cost and delay (224) and simplifying the law.

Cyberjustice Relation: This article demonstrates that economics play a large role in determining or deterring judicial technological innovation.

Hutchison, Adam C *The Evolution of the Common Law (*New York: Cambridge University Press, 2005*)*

Scope: Hutchison's book challenges existing accounts of the common law's development. It shows that the law is an organic process (changes are the result of functional and localized causes).

Issue: How do we account for changes in the common law, an institution that grounds itself on its stability?

Body:
- Chapter 8, "Making Changes: Progress and Politics", is particularly interesting because Hutchison explores change in the common law.
- He says change is one of the "few indisputable facts of life" (235).
- Traditional normative approach: assumes there is some upward movement to evolution. This can be in gradualist terms (relatively stable and incremental movement) or punctuational terms (large periods of movement followed by periods of stasis) (239).
- Progress is not about greater complexity; it is about organisms changing in ways that better fit the present circumstances of their lives.
- He suggests that Kuhn's ideas and interpretation of Darwinian evolution relate to explaining the common law.
- Law and legal theory depend on political context.
- There is now the possibility of "nurture of nature". This is a Lamarckian idea that some interference in the process of evolution is possible. However, an organism cannot will its on transformation (258).
- The modern capacity to reengineer natural development has implications for the law. The whole notion of design must be revisited. In science and the law it can be said that people make plans and act on them, the law is a rational activity, not a game of chance. However, in reality the whole does not determine its parts it tends to direct the parts in a way that is externally explicable (259).

- Even though common law redesign is a possibility, lawyers are not free to achieve whatever they wish. Technology has loosened constraints – but not done away with them completely (259).

Contribution: Hutchison offers an original approach to the history of the common law and connects legal theory to debates within the humanities and social sciences. His argument that the common law is perpetually changing and improving and that it can only be understood by analyzing the context it arises from.

Cyberjustice Relation: Hutchison says the law is constantly changing and continuous response to the constantly change demands of its environment. Of particular interest to us is his relation of Mary Shelley's tale in Frankenstein; her message was not that people should do nothing for fear of disaster, but that they should do things with caution and awareness that their actions may set off a train of events that they may regret and be unable to halt (262).

Uttal, William R. *Human Factors in the Courtroom: Mythology versus Science* (Tucson, Arizona: Lawyers and Judges Publishing Company Inc, 2006)
Scope*: Uttal highlights myths and pseudo-scientific theories concerning human factors in the courtroom and related situations. Shows how many widely accepted beliefs are flawed despite their admissibility in the courtroom.

Issue: Are the techniques currently used to judge witness testimony effective?
Body*:
- Chapters describe what is admissible "scientific evidence' and what is not, subjectivity and bias, misuse and misunderstanding of psychology and psychiatry and other flawed efforts to 'read the mind'.
- Chapter 6 reviews a portion of the literature on vision and visual perception – he concludes there are misunderstandings concerning what people can see, what they recall later with these visual experiences – he uses the case of traffic accidents.

Contribution*: The book shows that traditional courtroom techniques are flawed efforts to read the mind. One cannot predict what someone was thinking or will be thinking. Stereotyping plays a large role in prejudicial lineups and eyewitness testimony. Memories are fallible. Uttal encourages the reader to evaluate the scientific quality of evidence.

Cyberjustice Relation*: Of particular interest to us is Uttal's critique of classic notions of witness testimony. In particular, he discusses that "confluence" (292) makes even the simplest accident into a complex function of many factors that cannot always be unraveled. Whether a witness is giving testimony in person or remotely there will be fallible aspects of their testimony and unpredictable elements.

Technology and Modernization

Dosi, Giovanni "Technological Paradigms and Technological Trajectories: A Suggested Interpretation of the Determinants and Directions of Technical Change" (1982) 11 Research Policy 157 online:
<http://www.eawag.ch/forschung/cirus/lehre/fruehere_veranstaltungen/hs08/downloads_e wv/Dosi_1982.pdf>
Scope*: Dosi analyzes the role of economic and institutional factors in establishing technological paradigms (procedures, definitions of relevant problems and specific knowledge related to their solution). Dosi says his article is a contribution to a non-neoclassical theory of technological change capable of: (1) accounting for the relationship between economic forces and technical

progress; (2) the role of supply-side factors; (3) the role and effects of technical change in oligopolistic environments; (4) technologies' relationship with company behaviour and organizational structures; and, (5) the relevance of non-market organizations (public institutions).

Issue: The theoretical problem Dosi addresses concerns the direction of causal relationships, the degree of independence of technical change vis-à-vis endogenous market mechanisms both in the short and long run, the role played by institutional factors and determinants of the rate and direction of innovative activity. In brief: why did certain technological development emerge and not others?

Body:
- Dosi discusses and critiques a number of different explanatory theories.
- Demand-pull theories: say market forces drive technological change (149) and are based on the premise that there generally exists a possibility of knowing the direction, which the market is pulling technology. Dosi's critique of this theory is that it conceives of passive technological change; it is incapable of defining the 'why' and 'when' of certain technological changes instead of others; it neglects technological changes over time that don't have a direct connection to market (fails to take into account complexity, relative autonomy and uncertainty of technological change).
- Technology-push theories: technology as an autonomous or quasi-autonomous factor. Dosi's critique is that a general problem is that economic factors are relevant to technological change.
- Dosi defines technology as a set of pieces of knowledge, both practical (related to concrete problems and devices) and theoretical (practically applicable but not necessarily applied), know-how, methods, procedures, experience of successes and failures and also physical devices and equipment (152).
- Technological paradigm: model and pattern of solution of selected technological problems based on selected principles derived from natural sciences and on selected material technologies.
- Technological trajectory: a pattern of 'normal' problem solving activity (progress) on the ground of technological paradigm (153).

Contribution:
- Dosi provides a number of levels to analyze technology in society. For example: the role of economics, institutions and society; why certain technologies are researched and produced; the economic interests of companies involved; institutional variables (is it a public institution pushing for technological innovation?); and, how the emergence of certain technologies further political/social objectives (155).
- The science/technology analogy Dosi poses is useful. Through it he explains continuity versus discontinuity in technological change; highlights procedures through which technical change occurs (not random); and, presents ideas of paradigms and trajectories that can account for observable phenomenon of cumulativeness of technical advances.

Cyberjustice Relevance: The various levels of analysis documented above can inform cyberjustice project. This type of analysis could provide a richer, political economic, understanding of information technology in the judicial system. Furthermore, Dosi interprets the process of technological change and argues the emergence of new technological paradigms is contextual to the explicit emergence of economically defined 'needs' (156).

Eltis, Karen *Courts, Litigants and the Digital Age: Law, Ethics and Practice* **(Toronto, Ontario: Irwin Law Inc, 2012)**

Scope*:* This book looks at the impact of internet usage on judges, litigants and the justice system more broadly. She seeks to alert practitioners to the issues surrounding information technology, particularly, electronic records, internet search engines and social networking.

Issue: Eltis provides an overview of the issues arising from the interplay between technology and judging. She poses the questions: what is the impact of judicial use of the Internet, ethics and social networking, e-filing and records, anonymization techniques, control of courtroom and jurors access to technology and the judicial appointment and diversity?

Body*:*
- There are a number of preoccupations with access to justice and perceptions of justice that existed long before the internet. These concerns include: (1) that justice power and legitimacy are anchored in public trust and faith in the judiciary's impartiality and independence; (2) in systems based on *stare decisis* the precision of information upon which case law is predicated is challenged by a myriad of cyber information of questionable accuracy tendered as evidence or reaped online by the judges themselves (for example, judges using wikipedia in complex cases); (3) court authority and integrity risks being compromised by the loss of control over records and by jurors defying orders with regards to outside information; and, (4) cardinal value of access to the courts is at issue and jeopardized with people fearing exposure of their most intimate details or even threats with off-line ramifications.
- Eltis suggests principles to guide judicial use of online sources (49) and she gives practical tips to judges on protecting themselves.
- The open-court rule has become distorted by the effect of massive search engines. So Eltis recommends steps to prevent harms of electronic documents infringing privacy (63).
- She asks timely questions: how can courts continue to shift towards online records given the dangers; how does technology, internet and social networking particularly, affect the scope and substance of acceptable out of court activities including associational engagements previously sheltered from the public view (74)?
- Online data (like judicial personal affiliations may spark an apprehension of bias. She recommends the protection of judicial personal information – and warns that easily manipulated online data must not be taken at face value (90).
- In Chapter 6 she discusses social networking: there are clear benefits (40% of US judges using it) but also perils (91). The Canadian Judicial Council expressed disproval of social networking practices- this is not binding.
- In Chapter 7 she looks at the impact of social networking and cyber research on juries– in the US a number of jury verdicts were reversed because jurors used social media (109). Declaring mistrials seem a poor and costly remedy for breaches of online jury etiquette. So she suggests precautionary means towards preserving fair trials. On solution is that attorneys could monitor the internet (118).

Contribution*:* Eltis suggests the concept of privacy is an affirmative right to engage in individual self-definition and self-invention and every user has a responsibility not to unnecessarily compromise their information online in the naïve hope it will not be misused. She examines the impact of technology on the judicial system and sets out key issues affecting different parties.

Cyberjustice Relation: Eltis frames information technology issues from a legal ethics perspective in a way that shows they will only become manageable when academics and practitioners through continual examination understand them. She raises a concern that technology is simply adopted as "new and improved" without inquiry. Our research project also recognizes the gap in academic inquiry and can be informed by the legal ethics perspective.

Marx, Karl and Frederich Engels "The German Ideology: Part I (Selections)" (102-156) in *Karl Marx Selected Writings* **ed Lawrence H. Simons (United States of America: Hackett Publishing Company, 1994)**
Scope: In this publication Marx and Engles sketch a framework for understanding history.
Issue: They address the question: how should we understand and analyze human society?
Body:
- Marx discusses food production: he says the tools used for this production are not simply a reproduction of the physical existence of individuals. It is a *mode of life*. As individuals express their life, so they are; "What they are therefore, coincides with what they produce and *how* they produce. The nature of the individuals thus depends on the material conditions which determine their production" (107-108).
- He argues that in order to understand a topic one must take into account its history. He uses the example of the division of labour in a specific nation and analyzes the different forms or stages in the division of labour (108-110).
- The production of ideas, conceptions and consciousness are connected to material activity and the material relationships of men. The intellectual relationships of men result from their material behaviour (111).
- They say any historical analysis must start with the first historical act of producing the means to satisfy basic human needs. Arising from this is the production of new needs from the first historical act. Then it must look at social activity (Marx discusses 3 social relationships). The production of life, of one's own life in labour and in procreation has two aspects; a natural and social aspect (116).
- "History is nothing but the succession of separate generations, each of which exploits the materials, capital and productive forces handed down to it by all preceding generations." (122)

Contribution: Marx says it is fact that people who are productive enter into definite social and political relations – empirical observation must show empirically the connection between the social and political structure with production.
Cyberjustice Relation: In this book Marx and Engels reach a materialist conclusion saying understanding human society will not happen through an analysis of ideas, but through understanding humans and conditions in which they live. This is related to the broader analysis, which our project seeks to provide.

Mumford, Lewis *Technics and Civilization (New York: Harcourt, Brace and Co, 1934)*
Scope: Mumford provides an in-depth study of the origins, advances, triumphs and possibilities of technology (433). He argues the study of morals, economics and politics are equally as important as studying the technology itself.
Issue: Prior to Mumford's book, analyses on industrialization and new technologies focused on the industrial revolution. He takes issue with the narrow analysis.
Body:

- Mumford studies cultural antecedents to the rise of the technological age (capitalism, age of invention).
- He looks at the long development of technology right from the original exploration of the raw environment, using objects shaped by nature for tools and utensils (60).
- He names phases of technological advancement: eotechnic phase – water-and-wood complex; paleotechnic – coal-and-iron complex; neotechnic phase – electricity-and-alloy complex.
- He presents Marx's idea that each period of invention and production had its own value for civilization's "historic mission" (110).

Contribution*:* Mumford is one of first intellectuals to study ethical dilemmas in technology and modern material culture. He sought to understand the influences of new innovations on society He set the stage for debates on technology-centered ways of living, which referred to the fact that in some modern societies the machine cannot be divorced from its larger social pattern.

Cyberjustice Relation*:* Mumford's focus on actors and systems surrounding and preceding modern technology informs the Cyberjustice project because he provides various frameworks to problematize information technology in the judicial system. The following quotes are pertinent:
- "For the instrument only in part determines the character of the symphony or the response of the audience: the composer and the musicians and the audience have also to be considered." (434)
- "For however far modern science and technics have fallen short of their inherent possibilities, they have taught mankind at least one lesson: Nothing is impossible." (435)

Sproull, Lee and John Storck "Through a Glass Darkly: What do People Learn in Videoconferences?" Human Communication Research, Vol 22 No 2 (December 1995) 197
Scope: This is a study on interactive video communication used in conference and on desktop computers. The authors demonstrate that there are positive effects of this technology and that people can achieve a similar output as face-face. However, there are second order disserences in terms of the impressions people form of others.
Issue: The article addresses the technology that has been implemented as organizational tasks and markets become more global. There are disadvantages to flying places for meetings so organizations turn to video conferencing.
Body:
- The authors discuss 'first-order efficiency' and 'second-order efficiency'
- First-order efficiency effects of video conferencing: allows people to communicate in ways that would have previously required face to face communication (198)
- They discuss the theoretical framework they use, which is rooted in the reality that people's behaviour toward others is influenced by their impressions of them
- They define salience: the extent to which particular visual and aural stimuli stand out from others in the environment, is a primary factor in impression.
- There is an increased awareness of the potential role of technology in impression formation (97-99).
- Discusses the loss of non-verbal cues through blurry technology – but even if there was perfect video technology there are characteristics that affect the availability of cues differently from face-to-face communication (ie. Images are 2 dimensional) (200).
- The authors hypothesize that people will form more positive impression of face-to-face colleagues than of video colleagues; that people will use more kinds of information in

forming general impressions of face-to-face colleagues than in forming impressions of video colleagues; people will evaluate the ability of video colleague who are anxious about communicating more negatively than the abilities of anxious face-to-face colleagues.
- They explained the methods they used to investigate information exchange and impression formation in a manufacturing process design course that approximates the kind of interaction structure one might find in a corporate work setting.
- The results of the study on impression formation: peers who came to know one another in a face-to-face setting reported that their impressions of each other became somewhat more positive, as measured by the desire to work with measure. Desire to work with peers decreased through video conferencing.
- After documenting the results of the study the authors discussed video conferencing: it resulted in social efficiencies, you can access courses at a distant. There were also social inefficiencies, peers who interact over video do not come to know each other very well.

Contribution: The results of this study, although dated, show that this is an area that requires further study and detailed examination. The authors provide some guidelines: visual variety and camera etiquette are important; all names should be easily available to all participant; people should be aware that interruption, voice levels, repetition are difficult to deal with in the video environment; provide informal meeting time; consider how participants who normally only interact through the video medium can occasionally also meet in face-to-face setting; video setting may not be suitable for all activities (215-216).

Cyberjustice Relation: An important point made by the authors regarded the directorship factor: the person in control of the camera and the monitors chooses the information made available to remote people. One of the factors we are trying to ascertain is what training is available/ how are standards determined with regards to video conferencing in courts.

Susskind, Richard *Transforming the Law: Essays on Technology, Justice and the Legal Market Place* (New York: Oxford University Press, 2000)
Scope: This book consists of articles written by Susskind in 1980s and 1990s. He is a well-recognized writer on Information Technology (IT)-oriented transformation of legal services.
Issue: There is a lack of understanding of IT in the legal profession.
Body:
- There are three themes throughout the book: (1) internet and information technology will fundamentally and irreversibly change the justice system and professions; (2) new technologies will help people identify and understand legal rights and duties more easily; (3) information technology will be used to capture, preserve and disseminate knowledge and expertise to result in better access to justice.
- He designs an IT matrix like this:

External

Technology ———————————————————— Knowledge
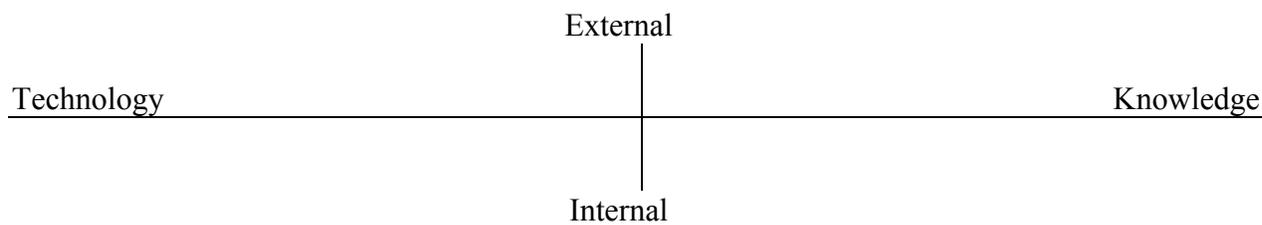
Internal

- The idea is to plot a vertical internal-external axis against a horizontal technology-knowledge axis.
- External axis deals with clients and things outside firms (courts), the internal axis deals with things inside.
- The bottom left holds hardware, software, networking infrastructures.
- Bottom right includes databases, precedent repositories, document assembly, expert systems (used by lawyers, judges).
- Top left includes technologies used to communicate with clients, case management systems (some law firm extranets have this character).
- Top right includes technologies that are high in outward orientation and knowledge content (online advice systems, self-help document assembly, computer-based training).
- In the final part of the book Susskind advocates that information technology and the internet can be used to deliver a more transparent and easily accessed judicial system.

Contribution: Susskind is an experienced advocate for the efficiency and access possibilities that come along with high-technology judicial systems. This book combines a comprehensive collection of essays within which Susskind has explored technological developments in the legal profession.

Cyberjustice Relation: The book is written in an easy-to-read tone and provides important insight for people considering implementing new technologies. Specifically, the Framework Susskind proposes could be a useful way for categorizing information collected about court technologies.

Tredinnick, Luke *Digital Information Culture: the Individual and Society in the Digital Age* (Great Britain: Chados Publishing, 2008)

Scope: Tredinnick broadly writes on the influence of digital information technology on the way we live our lives in the 21st century. He maps theoretical perspectives that can be applied to understanding digital information and technology. He writes from an interpretivist paradigm (phenomena are things given value and meaning through their interpretation within social contexts). He argues the impact of IT is experienced, that technology has a destabilizing impact on material artifacts and that there is a conflict between social narratives and the changing reality of the digital age.

Issue: There are problems with existing theoretical assumptions in the IT profession and their appropriateness in the digital age.

Body:
- Complexity theory (15): embraces a heterogeneous collection of ideas, anti-reductionist (Thrift, 1999). Linked with:
    o Meme theory: Dawkins (1976) memes use human bodies as vehicles for their self-replication and are independent of human cognition and social processes.
- How we experience socio-cultural effects of digital technology and how we describe those experiences are enmeshed and entangled (22).
- Does technology change the way we interact or did technology develop because we desired to interact in new ways?
- Limits of human nature shape how we think of bodies and relationship to social environment – engages with cyborg theory.

- Trebinnik discusses the idea that technology alienates users– perception of negative effects of technological advancement – this represents a normal mode of engagement with anxiety to change (31).
- Ethical dilemma: arises in part from perceived erasure of human values in the automation of human social processes – technology intervenes in processes, replaces decision-making with automated processes.
- In Chapter 5 Tredinnick looks at the authenticity of cultural artifacts through IT – argues digital age authenticity is not rooted in the material cultural artifact or an original creative act. Authenticity is what makes sense in the context of what is known and already present. There is a difference between cultural artifacts/objects and digital artifacts – looks at how objects are ascribed meaning (5 ways) (82) – how digital artifacts gain authenticity – through digital technologies the objectification of culture is undone (94).
- Chapter 6 is focused on how IT affects knowledge and truth – it doesn't undermine traditional notions of trust and authority but reveals them as the constructed processes they always were (97). Discusses the explosion of information ('information saturation) (102). In the digital age it is important to understand the process of knowledge creation, transmission and use and to critically evaluate the competing truth claims to which we are subjected.
- Chapter 7 is about power and how it can be reproduced and reinforced via technology: looks at barriers to participation with technologies (122-123).
- Michel Foucault: argued power in culture manifested in and perpetuated through forms of discourse. It provides a framework overlying social structures that mediates both what comes to be regarded as knowledge and how it is disseminated and controlled. Discourse is regulated by epistemes, which act to legitimize forms of knowledge (117-118).

Contribution: This book highlights how we situate ourselves in a digital age, how we cope with shifting culture and how we manage new challenges arising from the use of technology. Tredinnick argues that how we explain things influences how we experience them. He adds insight to dialogue about conflict between value systems and experience and by acknowledging that all stories about information technology have value measured in how well they reflect an experience of culture in the digital age, that truths are merely what we make of them. Thus, this book contributes to the literature on digital technology as an emerging social phenomenon.

Cyberjustice Relation: This book informs cyberjustice research because it tells the researcher to look at technology within the court as social phenomena; as artifacts embedded with meaning. This can provide a richer analysis or new narrative on the impact of using IT in courts.

Winner, Langdon "Upon Opening the Black Box and Finding It Empty: Social Constructivism and the Philosophy of Technology" 18:3 Science, Technology & Human Values (Spring 1993) 362

Scope: This article is about the social construction of technology. Thus it aims to look at inner workings of real technologies and their histories to see what is taking place. Winner argues against technological determinism or technological imperatives, scholars and citizens need to dialogue about dynamics of technological change (364).

Issue: how and where do we go to attain the knowledge we need to answer key questions about the philosophy of technology?

Body:

- Black box: In both technical and social science parlance is a device/system that is described solely in terms of its inputs and outputs – do not need to understand what is going on inside of it.
- The benefit of social constructivist ("SC") analysis is: it offers step-by-step guidance for doing case studies of technological innovation, provides research results that indicate complexity of technology, reveals spectrum of technological choices, calls into question arbitrary distinctions between the social sphere and technical sphere (366-367).
- But there are missing analyses: (1) disregard social consequences of technical choice (SC looks at origins not consequences of choices); (2) labels *relevant* social actors – who determines which social groups are relevant (369); (3) discards the possibility that there may be dynamics evident in technological change beyond those revealed by studying the immediate needs, interests, problems and solutions pf specific groups and actors (370) (4) lack of evaluative stance or any particular moral principles that might help judge the possibilities that technologies present.

Contribution: The black box social constructivists reveal is a hollow one – they do not explore or question basic commitments and projects of modern technological society.

Cyberjustice Relation: explanations of technology are not enough; we need to look at complex social interactions. "The search for a meaningful theory of technology has by no means achieved 'closure' it must begin anew" (376).

Winner, Langdon *The Whale and the Reactor: A Search for Limits in an Age of High Technology* (Chicago: The University of Chicago Press, 1986)

Scope: In this book, Winner focuses on an analysis and of technological somnambulism (a sort of sleep walking forward) whereby people view technology as an object/tool; where there is a separation between those who make and use technology and the way new technologies create separate realities.

Issue: Why isn't technology a field for philosophical inquiry? Is the human relationship with technology too obvious to merit serious reflection? We seldom examine, assess or judge technology – we enter into social contracts, the terms of which are revealed later. <u>As we make things work - what kind of world are we making?</u>

Body:
- Concerns about technology talk about making (the interest of practitioners alone) and use (the occasional non-structuring occurrence. BUT technology is a powerful force that shapes human activity.
- Uses TV as example(12) – most transformations are variations of old patterns (13) – view of technology as forms of life, Marx and Engels wrote about this (14-15)
- Wittgenstein: sought to overcome a narrow view of structure of language popular with philosophers of the time. The view was that language was primarily a matter of naming things and events. He argued language is a 'form of life' (11-12).
- Marx: look at actions and interactions of everyday life within tapestry of historical developments (*The German Ideology)*.
- Two ways in which artifacts can contain political properties (1) are instance in which the invention, design or arrangement of a specific technical device or system becomes a way of settling an issue in the affairs of a particular community. (2) inherently political technologies- man-made systems that appear to require or to be strongly compatible with particular kinds of political relationship (politics- arrangements of power and authority in

human associations as well as the activities that take place within those arrangements (22). Looks at history of architecture and city planning to reveal physical arrangements with political purposes (23).
- The tomato harvester example: ongoing social process in which scientific knowledge, technological invention and corporate profit reinforce each other in deeply entrenched patterns - that have unmistakable stamp of political ad economic power.
- Roots of unavoidable authoritarianism are deeply implanted in the human involvement with science and technology (30-31).
- 2 basic ways of arguing (1) claims that the adoption of a given technical system actually requires the creation and maintenance of a particular set of social conditions as the operating environment of that system (2) a given kind of technology is strongly compatible with, but doesn't require, social and political relationships of a particular stripe.
- There was a practice of renovating human needs to match what modern science and engineering happened to make available (170-171).
- Price for progress paid all along, subtle price, the less productive entity must yield or be restructured; what is excluded may never reach anyone's awareness.
- "In our Society's enthusiasm to rationalize, standardize and modernize it has often thoughtlessly discarded qualities that it might on more careful reflection, have wanted to preserve." (174)

Contribution:
- Sociotechnical order: a way of arranging people and things in manufacturing, communications, transportation and the like. There are certain characteristics: (1) the ability of technologies to facilitate control over other events; (2) tendency for new devices to increase the most efficient size of organized human associations; (3) the way in which rational arrangement of sociotechnical systems has tended to produce its own form of hierarchical authority; (4) tendency of large centralized sociotechnical entities to crowd out other human activity; and, (5) various ways large sociotechnical organiztions exercise power to control the social and political influences that ostensibly control them.
- He suggests a process of technological change disciplined by the political wisdom of democracy. The importance of technological choices would become a matter of debate; the critical evaluation and control of society's technical constitution (56-57).

Cyberjustice Relation: good points:
- Technological change expresses panoply of human motives (desire to have dominion over others even though it may require an occasional sacrifice of cost savings and some violation of the normal standard of trying to get more from less.
- Technologies can be used in ways that enhance the power, authority and privilege of some over others.
- Technological optimism: any technological advance is synonymous with freedom, democracy and social justice.
- Asks whether our society can establish norms and limits for technological change that derives from a positively articulated idea of what society ought to be.

Access to Justice

Backhouse, Constance "What is Access to Justice?" in Julia Bass, W.A Bogart and Frederick H Zemans eds, *Access to Justice for a New Century: The Way Forward* **(Ontario: Law Society of Upper Canada, 2005) 113**

Scope: This chapter focuses on variables such as Aboriginality, racialization, gender, disability, class and sexual identity and how they impact one's ability to obtain justice.

Issue: Backhouse sees there is an issue with academics, practitioners and the justice system failing to address how history shapes current context; a failure to address/recognize structural, systemic problems.

Body:
- Backhouse argues the historical record is rife with evidence of discriminatory practices that privilege white, able-bodied, heterosexual males.
- For example, women were restricted from voting, aboriginals were restricted, gays and lesbians were denied access to employment, housing and public services, poor people were barred from exercising the right to vote.

Contribution: Backhouse argues that access to justice is historically contingent on identity. There were inequities in the past and there are inequities today. "Historical amnesia" (the forgetting of history) has prevented a substantially more balanced justice system from emerging (126). She suggests law school is a key place to address access to justice issues (124-126). Her article is an analysis of *structural* issues in the legal system.

Cyberjustice Connection? Backhouse challenges the reader to recognize that access to justice has been historically contingent on gender, race, disability, class and sexual identity. These inequalities have left enduring legacies that are reflected in current judicial practices. The basic premise transfers into the Cyberjustice context as IT will become part of the judicial *structure.* In order to avoid perpetuating systemic problems scholars and practitioners should critically analyze the structure.

Cole, David *No Equal Justice: Race and Class in the American Criminal Justice System.* **(United States: New Press, 2000)**

Scope: This book is about the US criminal justice system. Cole argues that the criminal justice system is based on equality before the law but the administration of criminal law is predicated on the exploitation of inequality. He argues that the criminal justice system affirmatively depends on inequality. He demonstrates how double standards in the criminal justice system operate and that the system has not lived up to the promise of equality before the law.

Issue: The issues of race and class are present in every criminal case, in the vast majority they do not play out fairly.

Body:
- The prosecution generally outspends and outperforms the defence, the jury is predominantly white and the defendant is poor and a member of a racial minority.
- The system's legitimacy turns on equality before the law, but the system's reality could not be further from that ideal.
- Equality is an elusive goal. Income inequality is reflected in statistics on crime, the vast majority of those behind bars are in a low socioeconomic class and from a marginalized group.
- The rhetoric of the criminal justice system sends the message that our society carefully protects everyone's constitutional rights, but in practice the rules assure that law enforcement prerogatives prevail over the rights of minorities and the poor. (4-8)

- The are two systems of criminal justice: one for the privileged and another for the less privileged.
- He suggests solutions to the problem: (1) recognize the scope of inequality; (2) eliminate double standards, in order to build legitimacy; (3) rebuild communities.
- Chapter 3: "Judgment and Discrimination" looks at the problem of racial discrimination in the criminal justice system.
    o The problem of jury discrimination has been widely accepted.
    o How can we ensure juries treat defendants and victims of different races, genders and classes equally, when we know that race, gender and class distinctions play a significant role in how people view the world? (102)
    o Juries do not need to justify their deliberations or decisions
    o There is a tradition of all-white juries in the supreme court, no black person sat on a jury until 186. (105)
    o Cole provides a history of court actions that reinforced discrimination (105-112)

Contribution: Cole is a leading constitutional scholar in America. His book reveals a double standard in the American judicial system that has great costs on society by compromising the legitimacy of the legal system. Cole offers solutions for the issues and ultimately argues for a a system focused on community-building instead of incarceration.

Cyberjustice Relation: An interesting argument Cole makes is that whether or not we like it group distinctions matter in the courtroom. The US Supreme Court has never come to terms with the fact that race matters, it seems that the first step for any meaningful access to justice project would begin by calling on courts to confront and acknowledge that race matters and racial stereotypes have permeated the judgments of courts and juries throughout North American legal history.

Susskind, Richard *The End of Lawyers? Rethinking the Nature of Legal Services* excerpts from Chapter 7 – "Access to Justice" Part 7.1 and 7.2. (Spring 2009) online: *News and Views on Civil Justice Reform 12* http://cfcj-fcjc.org/docs/2009/newsviews12-en.pdf at 3-6

Scope: This is an excerpt from Susskind's book that looks at the task of defining access to justice.
Issue: A richer analysis on what access to justice needs to be undertaken.
Body:
- Susskind draws an analogy from the world of healthcare. Most people would prefer to avoid legal problems than to have them well resolved.
- Non-lawyers should be able to avoid legal pitfalls too.
- Susskind introduces another form of access to justice in the form of legal health promotion. This involves community legal services that are akin to community medicine programmes. Access to justice in this sense involves offering access to the opportunities the law create; law as empowerment and not only restrictive.
- When Susskind speaks of access to justice he means more than providing access to speedier, cheaper and less combative mechanisms for resolving disputes.
- He presents a Client Service Chain model he developed: recognition (citizen recognizes they could benefit from legal services) ---- Selection (of the type of legal guidance that would help them) ---- Service (process by which legal guidance is received).
- He looks at the elements comprised in these steps to identify

- He says the fundamental social challenge is that solving legal problems and resolving disputes is affordable in practice only to the very rich or those who are eligible for state support.

Contribution: Susskind proposes access to justice can be achieved in the future by a combination of 6 building blocks: citizen empowerment; a streamlined legal profession with law firms that multi-source, embrace technology, progress towards commoditization and offer pro bono services that dovetail sensibly with other sources of legal guidance; recognize many citizens in need of legal assistance want a kind ear with a sprinkling of legal advice; a new wave of market-driven alternative providers of legal service are vital to the mix; creating no-cost (to users) legal information systems; there must be in place and in practice an enlightened set of government policies relating to the availability of public sector information.

Cyberjustice Relation: Susskind presents a broader framework within which one can think about what access to justice means.

Technologies used and Proposed for Use in Courts

The following sections discuss articles/books and government publications that document the use of ICT in the judicial processes. These sources demonstrate there are instances where ICT is easily adaptable for example, cross border transactions, remote witness testimony and in alternative dispute resolution.

American Jurisdiction

Blankley, Kristen M. and Sarah Rudolph Cole "Online Mediation: Where we Have Been, Where we Are Now and Where we Should BE" (2006-2007) 38 U Tol L Rev 193

Scope*:* The authors explore how the mediation process is used to resolve commercial transactions. Than they trace the development of Online Dispute Resolution (ODR).

Issue*:* What are the benefits and limitations of online and traditional alternative dispute resolution (ADR)?

Body*:*
- ODR has actually decreased since 2002.
- Cybersettle– attorneys file an online claim and make 3 offers, the opposing party receives an email, logs in and enters 3 counter offers, the software compares them and if offers are within 20% of each other the program settles the case for the average of the two offers – if the offers are not within range a telephone facilitation process is used.
- Squaretrade: online mediation for disputes that don't settle through direct negotiation. One party files a complaint, includes basic info and possible settlement offers. The company notifies the other side of the complaint with instructions about how to respond. If they respond, SquareTrade automatically refers the dispute to direct negotiation. Once in mediation, a webpage is created to enable the parties to communicate with the mediator – during period the parties don't directly communicate with each other.
- Benefits: may be less expensive and more efficient than traditional mediation – it permits parties to resolve issues raised by the international and borderless nature of the internet
- Limitations: absence of face-face communication and the lack of a clear method for enforcing mediated settlement agreements render online mediation ineffective at least for some kinds of disputes.

Contribution: After analyzing the above examples, the authors make a recommendation to make technology available at low cost. Making technology more accessible and providing information to prospective users are two other small steps towards efficiency. There is a need to increase consumer confidence in the process – adopt standards of conduct for mediators.

Cyberjustice Relation: The authors outline two online processes. It is useful to see an area of the law that is easily adapted to the online environment. Also, agreements made between parties in different countries are difficult to enforce and these ODR programs are an example of how technology can facilitate a certain type of access to justice.

Gertner, Nancy. "Videoconferencing: Learning Through Screens" (2004) William & Mary Bill of Rts J 769.

Scope: Gertner looks at issues surrounding video conferencing and discusses examples of cases from the United States where video conferencing is used.

Issue: Generation X is used to getting information through screens should lawyers and judges use new technology increasingly? Is a screen, particularly video conferencing the functional equivalent of in-person communication? Does it empower jurors to be decision-makers/enable them to evaluate the credibility of witness testimony?

Body:
- Videoconferencing concerns:
  - Offers promise of solving daunting challenges in delivery of legal services.
  - Used: in presentation of bail arguments by remote prisoners, indigent clients in states where courts are located at some distance, in trials with vulnerable victims.
  - Promises cost savings and greater efficiency in scheduling trials and hearings.
  - Grounded in part on Constitutional Confrontation clause.
  - Concerns highlighted in *United States v Nippon* (antitrust case) – witness testified live during trial.
  - *Maryland v Craig:* Confrontation Clause didn't provide an absolute right to a face-to-face meeting of the accused and accuser in front of the jury – had a variety of components ultimate goal to ensure reliability of evidence.
- There is a proposed rule change to the Federal Rules of Criminal Procedure (Rule 26(b)): that would permit live video conferencing under the same terms as video taped depositions it would require the proponent of video conferencing to show 'exceptional circumstances' calling for the use of video conferencing.
- In *Nippon* the jury had a hard time following video conferenced testimony.

Contribution: She urges lawyers to make maximum use of new technology in their jury presentations and for people involved in the court process to ask: what do we gain or lose when trials look like the evening news?

Cyberjustice Relation: Gertner's discussion of the impact of technology on specific cases and the concerns is related to the aspect of our project that explores the impact of technologies on courts.

Gruen, Martin "The World of Courtroom Technology" (2003) online: The Legal Technology Center <http://www.privacy.legaltechcenter.net/media/whitepapers/gruen.pdf**>**

Scope: Gruen overviews key technology available to courts and he identifies issues and considerations to address when forming a court technology plan.

Issue: Gruen addresses the issue that courtroom technology (defined as a system that uses electronic equipment to the benefit of the judicial process) is a double-edged sword. When it is selected carefully and implemented properly it can benefit a courtroom. When it is selected and implemented improperly, technology can increase costs, waste time and confuse parties involved.

Body*:*
- Key courtroom technologies fall under the following categories:
- Communications:
    o Audio systems: basic foundation. It includes, microphones, audio processor, audio amplifier, audio control system – if video conferencing will be a part of a court process than the audio system must include echo-cancellation system.
    o Assistive listening devices: help individuals who have some degree of hearing loss.
    o Foreign language interpretation devices: help those who don't understand English.
    o Teleconferencing: can be as simple as a speakerphone or as complex as an integrated phone unit on the sound re-enforcement, courts can hold docket call and hear motions by telephone.
- Remote appearance systems:
    o Desktop video conferencing systems: cameras and microphones attached to personal computers.
    o Roll-about systems: allow users to move conferencing equipment from one room to another, system consists of a camera mounted on top of a monitor, speakers built onto cart.
    o Installed system: engineered for the particular courtroom.
- Evidence presentation systems: increases juror comprehension, increases the speed at which trial takes place. Systems consist of:
    o The source of the evidence: video sources, computer sources, audio sources.
    o Source location: where to put display devices? (1) use a non-movable central podium with devices mounted in it (2) places devices on a movable cart (3) put a display device island in the courtroom.
    o Courtroom display options: courtroom evidence presentation requires the lawyer's information be displayed to the judge and jury on TVs or computer monitors. TVs are the same that are in most homes – monitors provide higher resolution making them a better option for courtroom display systems. There are 3 types: (1) CRT (Cathode-Ray Tbe), LCD (Liquid-Crystal Display) and Plasma.
    o Annotation devices: allows a person to mark an image being displayed through video evidence presentation.
    o Video printers: high-technology evidence presentation creates electronic images that aren't permanent unless an effort is made to store the image.
- Court records: usually refer to the transcript of the court hearing with related court paper evidence, this includes stenographic reporting and computer-assisted transcription (CAT).
- Courtroom data systems: court-assisted legal research (CALR) provides access to a wide range of information and e-filing is a rapidly growing service.
- Infrastructure: technology the court uses to make it possible to use other types of technology (wires, conduit, raised floorings, plates and control systems). Electrical equipment racks are not complicated but do require planning.

Contribution: Gruen's discussion shows how technology offers practical help in the judicial system. His in-depth explanation of courtroom technologies currently in use is helpful for courts developing a court technology plan while shedding light on specific issues and considerations.
Cyberjustice Relation: This article helps ground our research in knowledge about the 'as is' processes underway in courtrooms.

Lederer, Fredric I "Symposium: International Conference on the Legal and Policy Implications of Courtroom Technology – Introduction: What have we Wrought?" (2003-2004) 12 Wm. & Mary Bill Rts. J. 637
Scope: This article looks at technological change in the courtroom and law school education.
Issue: Courtroom 21 considered the threshold question whether large-scale technology was desirable or hurtful.
Body:
- The first high-technology courtroom was that of US District Judge Carl Rubin who presided in the 1980s over a complex tort trial in which counsel installed computers in the courtroom and then left them in place.
- Current data says ¼ of US district court courtrooms are technology augmented – if not completely high-technology.
- At William and Mary law school students receive mandatory hands-on training in the use of evidence presentation that must then be used in 4th semester trials as party of their compulsory Legal Skills Program.
- Michigan legislatively created a civil 'cybercourt' based on Courtroom 21.
- Courtroom technology is justified by: improved accuracy; faster and cheaper proceedings; enhanced access to witnesses and evidence; use of new forms of evidence; enabling greater participation from those otherwise excluded from the process; enhanced transparency via giving the public and journalists a better understanding of court proceedings.
- Goals above are demonstrably true as can be seen in part from our simulated pretrial conference – achieving these goals is only part of the story.

Contribution: This introductory paper to a conference on courtroom technology, introduced a general goal of assessing how courtroom technology affects dispute resolution specifically and the legal system more generally. Shows that people in legal community are interested in discussion surrounding courtroom technology.
Cyberjustice Relation: This paper provides good context to courtroom technology in the United States.

Mauro, Tony "Let the Camera Roll: Cameras in the Courtroom and the Myth of Supreme Court Exceptionalism (14 November 2011) online:
<http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202532222249&Let_the_cameras_roll&slreturn=1>
Scope: In this article, Tony Mauro looks at the Supreme Court's reluctance to accept technological change. It looks at why Justice Anthony Kenney said: "we operate on a different time line, a different chronology. We speak a different grammar" in response to questions about allowing cameras in (to courtrooms).
Issue: Mauro asks the question should exceptionalism or other reasons offered in resistance to cameras stand in the way of modern demands for access and transparency?

Body:
- US Supreme Court does not allow the media to bring cameras and microphones into the courtroom for coverage, unlike almost every other public institution in the US.
- This stance is a result of fear of change, nostalgia, self-interested desire for anonymity and most of all exceptionalism; the court views itself as a unique institution that can and should *resist* the demands of the information age.
- Oral arguments and deliberations have public importance.
- Court has made incremental progress, 2000 they launched a user-friendly website, allowed audio recordings of certain high-profile arguments to be released to the media.
- It can be argued that the justices' unique independence makes the broadcast of their proceedings more justifiable, not less so, than for other institutions.

Contribution: This article looks at incremental progress of courts – but also highlights that change does happen (ie. Switch from oral to written arguments)

Cyberjustice Relation: One of the barriers to technological advancement in the judicial system is the desire people in the legal profession have to stick to traditional modes of adjudication. Mauro highlights this issue with regards to the US Supreme Court. However, though this resistance is apparent there is evidence of incremental change.

Ponte, Lucille M. "The Michigan Cyber Court: A Bold Experiment in the development of the First Public Virtual Courthouse" (Fall 2002) N C J L & Tec (p 51)

Scope: High technology courtrooms are beginning to develop. Some, like Courtroom 21, are private laboratories for applying and assessing technology. Others are public initiatives aimed at advancing evidence presentation such as Courtroom 23 in Orange County Florida. This article examines objectives and procedures for Michigan's project, a *fully* cyber court, reviews drafted rules of Cyber Court practice and looks at main barriers to cyber courts and gives recommendations

Issue: What processes/ safeguards need to be in place in order to have a full Cybercourt program?

Body:
- Michigan passed legislation to establish the nation's first public and fully virtual court in 2003
- Court operates in cyberspace using e-mail, e-filing, video conferencing and web broadcasts.
- Pilot program offers opportunity to assess value of emerging technologies in a fully virtual court
- Phased-in intro of online technologies in cyber court program: few judges/lawyers employ high-technology courtrooms on a regular basis courts will use only certain information technology tools ie. E-filing
- Michigan court offers the opportunity to study the use of new and emerging technology in a fully virtual public court. But it must engage in serious efforts to attract real world parties to test its virtual services

Contribution: Ponte recommends:
- The Cyber court may need to consider making changes that are more radical to its proposed special practice rules by offering a newer more streamlined process, could start by implementing an ADR/ODR program
- Should balance privacy with the public's right to know - parties and witnesses may

> request that personal information be edited out of online files and excluded from internet broadcast
> - Should provide incentives for parties to adopt and use new technologies in case prep and presentation these could be financial or non-financial in nature (waive filing fees for parties who use e-filing system, could provide training seminars
> - Consider: phased-in technologies, streamlined procedures, strict party privacy policy and rules, and positive incentives

Cyberjustice Relation: Ponte highlights Cyber Court concerns and benefits. For instance, there are concerns this project will drain limited judicial resources for a project that will do little to reduce court back-log as technological glitches are inevitable. However, the benefits include: e-records more accurate, searchable, audio/video conferencing may help save on the lost productivity and travel costs for distant parties and witnesses. This article is relevant to the cyberjustice project as well because she provides recommendations on how to build cyber courts in an effective manner.

Canadian Jurisdiction

Benetton, Luigi. "E-Trials in Canada" *National* **(September 2011) online:** <**http://www.cba.org/CBA/practicelink/leadership_technology/etrials.aspx**>
Scope: This article looks at Canadian attempts to use technology in courts.
Issue: Luigi Benetton asks the questions: what courts use technology, what are the benefits, why are they the exception?
Body:
- Fully equipped e-trials, however, continue to be the exception rather than the rule in Canada, which are under funded and under-equipped to handle e-trials.
- In the words of Ontario Superior Court Justice Arthur Gans: "Because many of my colleagues are reticent or do not fully appreciate the benefits of using a document management system in a trial, and because the (Ontario) Ministry of the Attorney General has yet to get behind the initiative, the notion of an e-trial has to be counsel-driven."
- The British Columbia(BC) Ministry of Attorney General's incoming correspondence gets scanned into a file management system, that lawyers can then view.
- The Supreme Court of Canada (SCC) has led the way by undertaking a major courtroom modernization initiative. It is now equipped with an electronic document and records management system as well as audiovisual and information technology.
- BC introduced electronic filing in 2004.
- Laboratoire sur la Cyberjustice at the l'Université de Montréal is working on software that would allow litigants to negotiate online for small claims cases.
- Few courts in Ontario are electronically equipped; the Court of Appeal does require factums to be filed electronically
- Benefits: cost savings through in-court teleconferences and clearer arguments from lawyers.

Contribution: Benetton highlights barriers to implementing e-trials in a few provinces. This article demonstrates provincial differences in courtroom technology use.
Cyberjustice Relation: This article highlights the need for Canadian scholarship on the benefits and concerns with courtroom technology. As it is, people embrace technology without critical analysis or dismiss technology because it does not mesh with traditional legal practice.

Benetton, Luigi. "E-Trials in Canada" (16 November 2011), online: <http://luigibenetton.com/2011/11/e-trials-in-canada-bringing-the-courtroom-into-the-future/#more-2590> (extended version on the author's personal website, apart from what was published by the CBA)

Scope: In this article Luigi Beentton looks at case law and the BC experience with technology to suggest what an e-trial broadly needs.

Issue: What is the practical impact of e-trials? What do they entail?

Body:
-   *Mishkeegogamang v. Canada et al.* and *Slate Falls v. Canada et al.:* parties agreed to use digital documents and view the documents at trial by using monitors on their desk. (There were over 4000 documents)
    ○   The parties used a joint document database - Summation database was 11 GB (and counting).
    ○   All parties agreed to a protocol for adding documents ahead of time.
-   Graham Underwood, on the other hand, attorney with the BC Ministry of the Attorney General, worked on *William v. HMTQ,* a hybrid trial - parties used electronic documents in **court** while a separate room housed hundreds of bankers boxes containing the documents in print.
-   BENEFITS of technology in trials:
    ○   Cuts down costs of legal services (cites *Electronic Evidence in Canada):* e-trial expert William Platt, said it's $1495 for a e-courtroom in a box v $10,000.
    ○   Avoid expensive and time-consuming travel arrangements for witnesses that live far away from the courthouse, or in a different country.
    ○   Expert witnesses who might refuse to take time away from work obligations to schedule a **court** appearance might be persuaded to use video conference.
    ○   Technology can improve clarity of a closing - by bringing together a seamless presentation.
-   E-court room in a box should include these essentials: laptops with litigation software, the joint brief and any software and other documents they need; document camera to show any print documents not yet entered in the joint brief; Cabling for LCD projectors and screens.
-   "Real-time court reporting technology": court reporter types, words are transferred to the reporter's computer where software translates and formats them as they arrive. The software holds the translation for several seconds before automatically sending it to every computer with a USB stick that wirelessly bring sections of the **court** transcript to each laptop's litigation support software

Contribution:
-   Benetton offers tips to effectively use technology in courts, such as: discussing technology choices with the Judge and opposing counsel and back up litigation database.
-   Recounts anecdotes for video conferencing in a trial - eg. BC crown counsel Nils Jensen recalls one lawyer's insistence on flying a witness from Toronto to Vancouver to testify. "After this witness was dismissed and sent back to Toronto, another issue arose with that same witness, which then required that lawyer to call the witness on short notice by video conference," Jensen recounts. The lawyer later said he couldn't believe the little

difference between having the person in person and having them testify by video conference.

Cyberjustice Relation: It is useful to see how specific Canadian trials used technology in the courtroom.

Benetton, Luigi "E-Trials seen as "essential" for justice in the future" (April 22, 2011) online:

Scope*:* In this article, Benetton looks at courtroom 807 in Toronto, and at the cost of an e-trial.

Issue*:* It is essential for things to change – how do we do it? How much will it cost?

Body*:*

- Courtroom 807 in Toronto is outfitted for "electronic" trials. It has been wired since 1997, costing $250,000. Operation costs are the same as a regular courtroom.
- Flat-panel monitors at each desk, judge's bench and witness box. Documents appear on them via hard disks, USB sticks, scanner.
- Wireless Internet isn't available and court doesn't allow use of its servers to store documents.
- Court-administered e-filing system doesn't yet exist.
- E-trials cut time by at least 25%.
- Could set up an e-courtroom for $1,500 (laptop and two monitors).
- People have testified in Courtroom 807 from China, Australia and Pakistan.
    - Witness' voice comes through 8 speakers; room has 4 cameras through which the witness can see the courtroom.
- One lawyer comments that it's harder to develop rapport. Supports video conferencing if it's the only way to obtain testimony.
- Few cases go to trial. Of the ones that do, they normally have senior lawyers. Senior lawyers want to do things the way they've always done them.
- Most Canadian trials go without common technologies such as video conferencing, document management systems and document displays
- Gordon Kelly, a senior lawyer for Blois, Nickerson & Bryson says, "anything that reduces costs increases access to the justice system. If we don't promote it, we're doing a disservice to our clients."
- The e-Courtroom in Toronto allows "two judges seeing each other in parallel courtrooms and coordinating the filing of documents and making an order in both jurisdictions at the same time" says Glenn Smith, a partner at Lenczner Slaght Royce Griffin LLP
    - The courtroom handles documents allowing witnesses to testify from overseas

Contribution*:*

- Lists courtroom technology insights and tips: collaboration with lawyers and judges; paperless lawyer office
    - Dan Tanel, Chief Technology Officer for managed video services provider BCS Global, says when courts video conference with police stations, prisons and probationary services, they can **streamline** the arraignment process, **improve** public safety by keeping prisoners inside prisons and **meet "virtually"** with probation officers in the field.
    - video depositions reveal non verbal cues
- Barriers: unfamiliarity, urban, expensive to create, not all judges favour e-trials

- Factors: nature of the jurisdiction and size of the judiciary for example, British Columbia and Nova Scotia have e-protocols for filing documents. Do complex trials make the need for technology impossible to dismiss? (BC =Air India trial and NS = Westray mine explosion trial)
- Future?
    - Justice Kiteley attended the the (US) National Centre for State Courts' 2009 Court Technology Conference to participate on a panel titled "Judging in 2020: in the Courthouse or in Cyberspace?"
    - Kiteley also wondered "Will we have access to digital recording to do spontaneous playbacks, to push a button and get transcripts that allow us to do word searches, so we can find everything a witness said on a specific topic?"

Cyberjustice Relation: This article is useful because it looks at specific costs and highlights the cost efficiency of a trial.

Benetton, Luigi, "iPad apps for lawyers" (date unknown), online:
<**http://www.cba.org/CBA/practicelink/careerbuilders_technology/iPad.aspx** >
Scope: This article looks at the use of Apps in the legal system.
Issue: What is the usefulness of iPads for the legal profession?
Body:
- Applications define the iPad's value to lawyers and proponents say it is a serious work tool.
- Practice management systems are not available as iPad apps, but those that work via web browsers are more useable on the iPad's screen.
- Safari web browser: legal research systems more accessible on the go. Add PDF readers and lawyers can do all readings on an iPad (Goodreader, apple's free iBooks will soon accommodate PDFs).
- It is early days for apps developed with a Canadian audience in mind but US lawyers can download dozens of state and federal legal resources, legal industry news can come through the ABA journal iPad/iPhone app.
- An IP lawyer can research patents using the "Patent Finder" and other apps in area
- "Documents To Go" handles Office Docs
- "Mail" handles attachment viewing
- "Google Voice" search feature
- There is a VGA connector sold for meetings – handy for whiteboard usage with apps like PaperDesk and Penultimate
- Technology-savvy lawyers have tried cases relying on iPads for electronic support. They say it is less awkward to handle than reams of paper.
- Trial lawyers currently read, highlight and email deposition transcripts on their iPhones using "Mobile Transcript".
- Cash flow can be managed with Billings Touch and American express apps.

Contribution: highlights the technology lag in Canada – at least in terms of iPad applications and having instant access to legal resources.
Cyberjustice Relation: Benetton highlights the different apps that help streamline legal research, document formation and the trial process.

Benyekhlef, Karim and Fabien Gelinas "Online Dispute Resolution (Summer 2005) 10:2 Lex Electronica online: <http://www.lex-electronica.org/articles/v10-2/Benyekhlef_Gelinas.pdf>

Scope: In this article, Karim Benyekhlef and Fabien Gelinas look at the use of specific ODR programs, they make observations on trends surrounding consumer recourse in the US (57), and in Europe (60), and they make suggestions on technology that can promote communication between parties.

Issue: Is using the Internet to settle or to assist in settling disputes a natural path? Are there questions? Hesitations?

Body:
- In January 2000, domain name disputes were arbitrated under the aegis of the dispute resolution policy and rules1 of the Internet Corporation for Assigned Names and Numbers (ICANN), and administered by eResolution.
- First experiments in this area, the CyberTribunal project by the *Centre de recherche en droit public* (CRDP) at the University of Montréal, initially generated a great deal of skepticism in the international legal community. The project was launched in 1996
- Work on information technology law, Electronic Data Interchange (EDI) to electronic commerce, rapidly led to the idea of computer-assisted dispute resolution mechanisms. Also raised the issue that the Internet gives rise to profound questions concerning jurisdiction, applicable law and means for enforcing obligations.
- Legal framework for relationships established over the internet raises major problems exacerbated by distance, uncertainty and present obstacles to development of trans-border electronic commerce.
- In cyberspace law, competent forum and applicable law are most controversial issues – when copyright is infringed or contracts broken must ask where a valid recourse can be sought and ID the applicable law if a foreign element is involved (54-55)
- Two types of technology that can promote and facilitate communication between the parties throughout the dispute resolution process.
- Asynchronous communication (message systems internal to the ODR system) ensures that the content does not travel and that the parties always have to use the platform to access it.

Contribution: Videoconferencing, teleconferencing and discussion environments are synchronous tools that can increase the effectiveness and user-friendliness of the dispute resolution process, but they are not necessary. They make it possible to bring some human aspects back to the process while reinforcing the feeling that physical travel is not required

Cyberjustice Relation: This article highlights new legal issues in high-technology society. It shows how cyber-world can drastically change relationships between parties, the way the law is interpreted and how disputes can be handled.

Borkowski, Julian, "Court Technology in Canada" 12 Wm. & Mary Bill of Rts. J. 681 (2004) online: <http://scholarship.law.wm.edu/wmborj/vol12/iss3/5 >

Scope: This article looks at video conferencing, specific Canadian initiatives, and the benefits and challenges video conferencing poses.

Issue: How do we overcome the obstacles to video conferencing that is used in civil and criminal matters? When the beneficial results are: reduced prisoner miles and searches, less

documentation associated with out-of-jail escorts; reducing the need to transport high-risk prisoners; what are the obstacles?

Body:

- Early proponents targeted remands and bail hearings for video conferencing.
- Technology occasionally used for employee interviews, but top priority to court applications for example to bridge distances.
- Challenging technology obstacles must be overcome before methods can be generally adopted.
- Case-management systems: designed to promote smooth and accurate flow of information during a legal proceeding.
- June 2001 BC implemented JUSTIN:
  o Data captured by 911 call, dispatched to police car, appended at the crime scene, forwarded to investigations group, transferred to prosecutors who then push it up to court services. E-file follows the trial through all levels, each make a unique contribution. At a disposition, if convicted, the file goes to correctional institution or probation deposition.
  o BC also developed a civil case-management system (CEIS – Civil e-information systems) – lawyers can file, search and follow the progress of their cases without sending representatives to the courthouse.
- Evidence presentation: Court services providers want presentation technology to increase efficiency of the presentation of evidence while reducing costs and improving service delivery.
- Court Recording: analogue recording systems in most courts, criminal courts keep files for 20 years. Digital recording provides ability to store data optically in CD or DVD formats. This merges computer and audio technology.
- Challenges for Court Service Providers: costs, upkeep.
- Challenges to court – judges concerned with: credibility, cross-examinations, jury reaction.

Contribution: The article gives a good overview of JUSTIN

Cyberjustice Relation: The overview of JUSTIN is a good example of technological possibilities in other provinces.

Cambell, K K. "E-Inquiring: an Electronic Discovery Checklist" *National* **(November 2004) 13, online: National Magazine <http://www.cba.org/CBA/National/pdf/ttnov04.pdf>.**
Scope: defines e-discovery as requisitioning and review of the other side's information contained on disks, CD-Roms, emails, harddrives and servers.
Contribution: the article provides tips for undertaking e-discovery for example, ensure your client preserves potentially relevant data and advises not to overwrite backup tapes.

Canadian Bar Association, Cameras in the Courts and Access to Court Records (June 2011), online: http://www.cba.org/CBA/Advocacy/pdf/cameras.pdf>
Scope: recounts history of cameras in the courts policies, gives the CBA position
Body:

- In 1987, the Canadian Bar Association (CBA) council passed resolutions supporting cameras in appellate courts and a 2 year trial programs for cameras in trial courts.

- In 2005, the Canadian Judicial Council (CJC) Technology Advisory committee released a Model Policy for electronic access to court records - affirms the public's right to access court records, while suggesting some limits to safeguard privacy, such as the deletion of personal identifiers for certain purposes, and restrictions on off-site access to court records.
- In 2007 MAG announced appellate courts would be open to the media.
- CJC had a policy against cameras in courts.

Contribution:
- This article outlines the CBA position (to cameras in court):
    ○ Supports cameras in appellate courts
    ○ Cameras can be advantageous when
        ■ it enhances the open courts principle
        ■ it has a public education value;
        ■ it can improve public confidence in the justice system
    ○ Cameras in trial courts present several risks including hinder the judicial process, inhibit witnesses, invade personal privacy, and compromise the personal security of those who are part of or interacting with the justice system
    ○ Opposes access of all electronic and photographic media in non-appellate court proceedings involving family law issues -this is affirmed in its 2002 resolution - Exclusion of Cameras from Family Courts, 02-01-M.

Cyberjustice Relation: This article outlines the CBA position on cameras in courts.

Faguy, Yves. "Yet to be Discovered: vaguely familiar with the term e-discovery?" *National* **(April -May 2007) 25 online: National Magazine** <**http://www.cbanational.rogers.dgtlpub.com/data/issuePDF/NATIONAL-E/9000000499-NATIONAL-E.pdf**>
Body:
- Quebec's discovery rules are narrower than other jurisdictions in Canada. Courts are concerned with casting too wide a net.
- US enacted Federal Rules for discovery of electronically stored information. Ontario also. US litigants used e discovery as a way of forcing settlements

Justice Granger, Thomas B "Using Litigation Support Software in the Courtroom:
 Better Lawyer, Better Judge, Better Justice - The Need For Judicial Leadership" (2003) online:
<**http://www.practicepro.ca/practice/PDF/UsingLitigationSupportSoftwareinCourtroom.pdf**>
Scope: A judge discusses his own use of technology in the courtroom; it's limitations and benefits.
Body:
- Many counsel in Ontario are using a litigation support program such as Summation in their office to organize the evidence, transcripts and documents they intend to use at trial but very few, if any, use their litigation support program in the courtroom to present their evidence, preferring to employ a traditional approach, which is based on the use of hard copy documents.
- Summation can be used not only to ensure a complete presentation of the evidence, but also

to display electronic documents in the courtroom in a more timely and organized manner than hard copy exhibits.
- Summation elements: real-time transcript where the judge or counsel records comments in a note attached to the real-time transcript received from the court reporter; searching is allowed for single words or combinations of words – the text of scanned exhibits can be searched if the Optical Character Recognition program has read the exhibits; issues list a judge can create a note which incorporates a selection of the transcript and assign the note to a pre-determined issue; the case organizer contains tools that assist the judge in organizing the evidence in prep for writing their judgment.
- Counsel use an electronic litigation support program in order to have a better command of the evidence they wish to adduce at trial. The use of an electronic litigation support program such as Summation in the courtroom to display documents will make the courtroom more efficient which will reduce litigation costs. If the judge uses a similar electronic litigation support program, it will provide him or her with a greater command of the evidence. In addition, the tools in a program such as Summation will assist counsel in making their evidence more memorable for the judge when the evidence is adduced and when the judge crafts his or her decision.

Contribution: The article outlines the use of Summation a practical program used by judges and counsel.
Cyberjustice Relation: This article provides a specific example of technology used in Ontario.

Jones, Allison "No Internet, no Blackberrys: Are Ontario Courts the Place Technology Forgot?" (March 15, 2011) The Canadian Press <http://www.thecanadianpress.com>
- Ontario courts fail to adopt otherwise widely-used technologies

Ministry of the Attorney General, "Videoconference Pilot Project for Solicitor-Client Assessments" (16 February 2012)
Scope: Outlines amendments to the rules of civil procedure.
Issue: Rules of Civil Procedure do not cover the use of information technology.
Body:
- Recent amendments to the Rules of Civil Procedure provide for an 18 month pilot project permitting parties in Sudbury, Sault Ste. Marie, Thunder Bay, Fort Frances, Dryden, Kenora and Cochrane to have solicitor-client assessments heard by video conference.
- A party to the proceedings may request these videoconferences. If approved, parties will be notified of the hearing date.
- They do so by serving a completed "Videoconference Request" under Rule 1.08.1 to the other party and file it with the court within two days of filing the notice for an assessment hearing. An assessment officer must approve the request before a video conference assessment hearing can be scheduled.
    - The requesting party must provide information on the proceeding (e.g. estimate of hearing length, how many exhibits and witnesses are anticipated, why proceedings should be via video conference).
    - Consent of other party not required.
- Objections:

- ○ You may object to a video conference in writing within two days of being served with the notice. To do so the party must complete an "Objection to Videoconference under Rule 1.08.1".
- Copies of exhibits and documents intended for the hearing must be served on the other party and filed with the court at least five days prior to the hearing date.
  - ○ Must still bring original documents and exhibits to the hearing.
- Benefits for parties:
  - ○ Assessments can be scheduled more frequently; and
  - ○ Parties won't have to wait for the assessment officer to travel to their court location.
- Brief questionnaires will be provided at each video conference hearing. This will assist in the evaluation of the pilot.

Contribution: highlights the lag between traditional legal rules and improvements in technology
Cyberjustice Relation: This is a good example of regulating the use of technology.

Neale, Robert. "How to Create Video that will Win Cases" (2005), online:
<**http://www.cba.org/CBA/PracticeLink/tayp/video.aspx**>
Scope: This article gives tips to lawyers about using video evidence.
Issue: When non-legal professionals make videos for use in trials they may not make the video portray the message the lawyer wants it to portray.
Body:
- Professionals handle attorneys technology – but there are a few things they should know about the video that can help or hurt. For example, what the purpose of the video is.
- Evidence: video conveys 'something' about your case to you, the opposing counsel, the judge and the jury
- Properties of video differ greatly between say a video deposition and a surveillance video. In a surveillance video, the jury looks for a specific act. In deposition video, the jury listens to the testimony of the witnesses and looks at their demeanor as a secondary means of communication.
- What if your entire jury were blind?
- At some point you may have to use that video in court. A lawyer must consider how to use it? Will it be via TV, with a VHS tape or maybe a DVD? Or maybe ... if you're a TechnoLawyer you'll want to watch that video via your computer and incorporate it into your electronic case at trial.
- Raw uncompressed video takes up an enormous amount of space on our hard drive and it takes a huge amount of processing power and memory just to play it. Furthermore, there are media and accessibility issues that complicate video playing on your computer to the nth degree.
- We can compress our video to make smaller files, which makes it easier to access, store, and view. But when we compress video, we take out some of the information contained in the video to make it smaller. Sacrifice the picture not the sound - they are video professionals not lawyers or psychologists.

Contribution: This article outlines some of the practicalities to think about when planning to use videos in court.
Cyberjustice Relation: This highlights the subjective nature of video evidence due to editing.

Walker, Janet and Garry D Watson "New Technologies and Civil Litigation Process: Common Law General Report" (2007) online: http://research.osgoode.yorku.ca/iapl2007
Scope: This article outlines new technologies that currently impact civil litigation (e-filing, e-delivery, high-technology courtrooms, high-technology court administration); looks at future advancements and also looks at the impacts these technologies can have on efficiency, effectiveness and accessibility in a comparative context.
Issue: Many common law courts have slow progress and it is not clear why progress is slow.
Body:
- Gave the questionnaire sent to reporters in different countries: first part examined the way in which new technologies are changing the way we resolve disputes through civil litigation. The second part examined the way in which new technologies are changing our understanding of the core values underlying the civil litigation process. (2-4)
- Court systems haven't met Woolf's predictions; no court system reported had reached the degree of computerization that is common place today in both the private and public sectors; think of mundane things such as drivers licence systems or more complex ones such as the health care administration or online shopping. All are now fully or largely computerized. (4)
- E-filing: in Singapore it is universally available and mandatory and in Israel and US federal courts it is universally available but voluntary, in England an Canada it is available in some courts, in Australia it is still an emerging development. (4-6)
- E-delivery: there is an explosion of activity in this area (e-delivery between parties) relative to other areas covered in this report because delivery is party driven, it does not require court initiative. (11)
- High-technology courtrooms: changes new technologies could bring are likely to have the greatest impact on civil litigation process. There are differences between trials and other hearings (15), technology is easily adapted in some venues and not others.
- Emerging technologies: particular developments in the countries surveyed, that have been slow to emerge or to be accepted are a reflection of civil litigation culture in the country. For example, in the US trials often involve convincing juries so the presentation of evidence is significant.
- New technologies have the capacity to change the core values of civil litigation by making litigation more efficient and effective, by making the civil justice system more accessible, and by changing the way we determine the facts and decide the case.

Contribution: The analysis highlights changes in a few different countries, so it provides a good overview.
Cyberjustice Relation: the final part of this report asks if these changes are for the better. The authors discuss positive outcomes in US, Australia, Israel, Singapore, England and Wales and Canada. However, the authors were generally discussing how people viewed technological advancement, the responses follow the idea that "any technological advancement is positive". There is also a substantial amount of resources we can use for our report listed in this article.

International

Casanovas, Pompeu, Núria Casellas, Marta Poblet and Joan-Josep Vallbe "Judges as IT Users: The Iuriservice Example" (38 – 56) in Agusti Cerrilo I Martinez and Pere Fabra I Abat eds *E-Justice: Information and Communication Technologies in the Court System* (IGI Global Publishing, United States: 2009)

Scope: The article describes the steps followed to develop Iuriservice, a Spanish Web-based system that allows the judiciary to facilitate knowledge management. It retrieves answers to questions raised by incoming judges – newly recruited judges have access to frequently asked questions (FAQs)

Issue: How can technology facilitate managing judicial knowledge? Iuriservice poses practical methodological issues, such as: which institutional arrangements are required to develop the whole project, which ICT competences have developed Spanish Judges and how to assess their needs/ create a feedback cycle between researchers, developers and potential users.

**Body*:*

- The authors overview the process of judicial selection (similar to other EU countries) (p 40).
- They discuss that IT skills have increased in past 8 years (40).
- They Discuss Iuriservice as an IT project, it's development within the context of SEKT (2004-2006), the Observatory of Judicial Culture (OJC) (2001) (41).
- The authors discuss the development of an ontology for the purpose of analyzing data from a study done on new judges – resulted in an initial Ontology of Professional Legal Knowledge.
- The researchers manually modeled from nearly one hundred competency questions a set of terms and relations and classes (43-44) – needed that in order to develop Iuriservice.

Contribution: The authors provide insight on an interesting model that is part of recent trends of judicial reform. Iuriservice itself is an interesting example of a cooperative effort between legal and IT disciplines. They also provide guidance for future directions in e-justice (51). Specifically, they say Semantic Web Technologies are the future.[1]

Cyberjustice Relation: In our Montreal meeting we decided there is a need to develop an ontology in order to understand and organize the data collected throughout the process. It is worth looking into the Ontology of Professional Legal Knowledge that is discussed in the article. The authors summarize their approach with the term: "cognitive technology" meaning that contemporary law can be analyzed as knowledge coded in rules, values, images. It can also be coded in different natural and artificial languages and contained in multiple formats (text, audio, video, graphics etc).

Cortés, Pablo *Online Dispute Resolution for Consumers in the European Union* **(New York: Routledge Publishers, 2011)**

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[1] Dr Brian Matthews, a Computer Scientist at the University of Glasgow and a software engineer with the World-Wide Web Consortium (W3C), defined "Semantic Web Technologies" in terms of three main views: (1) Vision: the Semantic Web will bring structure an meaningful content to web pages because it will describe the resources available on the web and why there are links connecting them together. Semantics capture the reason things are there. This allows for the automatic processing of the web by software agents. (2) Programme: the Semantic Web Roadmap appeared making this a programme. It provides a common framework that allows data to be shared and reused across applications and community boundaries. (3) Technology: finally, it is used to identify a set of technologies, tools and standards, which form the building blocks of a system that could support a world wide web imbued with meaning. See: "Semantic Web Technologies" *JISC Technologies and Standards Watch* (2005) online: https://docs.google.com/viewer?a=v&q=cache:MgZTvJ8lFe0J:www.jisc.ac.uk/uploaded_documents/jisctsw_05_02 bpdf.pdf+semantic+web+technologies&hl=en&gl=ca&pid=bl&srcid=ADGEESjWxB6raHfn5hZ64jsJfnrIFT7BBgm JXLe5yVeVltfmzW_PhD7IGVGlum3mfjR61TpD2j2mlxXeJJct6BYwo54GKHhao-aRTWAhZxOKVi_TceF9me7ogImg-PfR_xh54HOP4Bxj&sig=AHIEtbQsiyMU3Vt24WAsT_OQo421wBWJ6w (3-5)

Scope: This article is about disputes arising from e-commerce, the largest growing market in the world – online consumers offered products and business online. It is most common form of cross-border shopping in the EU.

Issue: How can the legal system resolve disputes in borderless online marketplace?

Body:

- Resolution disputes enhanced when assisted by ICTs because when distance communications utilized there's no need to trace, which reduces costs and increases access to justice.
  - Most significant European initiatives aiming to promote the use of consumer ODR, ie. Consumer Complaint Form, ECODIR and ECC-NET. (52)
  - ODR Advantages include: convenient, cost saving, better than litigation, parties have more control over outcomes, appropriate in circumstance. (p 56-57)
  - ODR Difficulties include: lack of face-to-face contact, technological problems, language barriers, absence of clear legal standards, loss of public access and pressure (57-59)
  - Case Study: Cybersettle (Blind bidding), SquareTrade (eBay).
  - Online arbitration is successful but less popular.
  - Online Small Claims Courts: provide middle ground between litigation and ODR, for claims under 2000 E.
  - CCForm (72).
  - Dispute resolution providers: Electronic Consumer Dispute Resolution – ECODIR
  - European Consumer Centres Network (ECC_NET) U-wide network informs consumers of rights and remedies in cross-border transactions.

Contribution: book discusses an effective use of online environment. An example of how internet justice is well suited to our High-technology, complex economic transactions.

Cyberjustice Relation: Provides a good overview of technologies used in Europe to increase efficiency.

District Court of Western Australia, "Practice Direction Gen 1 of 2010: Taking of Evidence by Video Link" (2010) online:
http://www.districtcourt.wa.gov.au/_files/Practice%20Direction%20GEN%201%20of%20 2010%20Video%20Links%2015.3.10.pdf

Scope: Explains a high-technology court practices in Australia. Specifically, video-linking.

Issue: There is a need to have procedures in place for video-linking.

Body:

- Applies where the court makes a direction for evidence to be taken, or a submission received, by video link or audio link; unless the court makes a contrary direction.
- Party wanting to call the witness is the Applicant – must send a "Video Line Booking Request" form to the District Court Listings Coordinator or Managing Registrar of the court at which trial is to take place.
  - Must be received at least 14 days before the date of the hearing (unless there are exceptional circumstances).
- Applicant must use reasonable endeavours to ensure that the video link facility is one set out in the Court's list of "Preferred Video Link Facilities" (available on website).
- Applicant must use reasonable endeavours to ensure that:

- ○ Broadcasting room is able to be closed off so only the witness and other people permitted by the court are present;
- ○ Quality of the video link can provide continuous uninterrupted video images and clear/audible audio feed;
- ○ Witness is dressed appropriately for court, as if they were in the courtroom; and
- ○ Arrangements made with the facility maintain the dignity and solemnity of the court – venue treated as part of the court for this purpose.

Contribution: provides details on steps applicants must take in order to use the convenience of video link.

Cyberjustice Relation: The video link requirements for dress and deportment are examples of keeping court proceedings professional even though the trial is not happening in real time. This also shows how regulations can help make the process streamlined and fair.

Fragale Filho, Roberto and Alexandre Veronese "Electronic Justice in Brazil" in Agusti Cerrilo I Martinez and Pere Fabra I Abat eds *E-Justice: Information and Communication Technologies in the Court System* edited by (United States: IGI Global Publishing, 2009) 135

Scope: This article is about the Brazilian judicial system. It specifically looks at ICT in the courts; the early experiences, the debate over the national PKI system and electronic process statutes. The authors then outline ICR initiatives with a specific focus on labour courts.

Issue: How is ICT shaping the future of the Brazilian Judiciary?

Body:
- 'Silent revolution' of Brazilian judiciary: the merging of new technologies with managerial arrangements consolidated with law-based standards.
- Overviews the Brazilian justice system: a judicial branch composed of federal and states' courts form a national system (136-137). Both systems submit to federal law empire granted by a possible review of decision by a federal established high court (Superior Tribunal de Justica). The Supremo Tribunal Federal is the high court for constitutional judicial review. Judicial branch is guided by a Justice National Council. Judges in the Supreme court hear 10,000 case per year – in the lower courts this averages 2,000
- Acknowledges prevalence of ICT in world as solution to old problems and bearer of new ones.
- Traces use of ICT in Brazil – first system used by courts was 'electronic ballot box', which was implemented in the commune with more than 200,000 voters in 1996 communal elections. In 2008 they will test a digital fingertip reader
- Notes the investments of Brazilian courts on ICT. Such efforts have raised two important issues: (a) accessibility to the external users, mostly lawyers and parties, and (b) data com-municality among the different courts in the country. The latter has been confronted by two different although related actions: (a) the establishment of a compulsory and centralized planning by the *Conselho Nacional de Justiça* (b) the adoption of standards defined by electronic patterns of governmental interoperability (e-ping) (139).
- Examples: Web services for public use called acompanhamento processual, which corresponds to an online lawsuit follow-up (139). Solved Cases database (140)
- National PKI System (141), Federal Legal Procedures Informatization Act

- Recent Practices: in the last 10 years courtroom automation, distrainment online, electronic petition (E-Doc), one workstation per user in the different courts (147)
- Issues: digital convergence, system is unequal in terms of ICT diffusion, databank systems are not integrated.

Contribution: The authors ask how ICT makes faster sentencing and more effective jurisdiction possible; these are useful points of analyses. Furthermore, they sketch an agenda for future research and further reference.

Cyberjustice Relation: In Brazil the idea of virtual procedure is not inconceivable so free access, speediness and information availability becomes important expressions of an agenda that must face a big digital divide. ICT must be linked with democratization.

Widdison, Robin "Beyond Woolf: The Virtual Court House" Web Journal of Current Legal Issues (1997) online: http://webjcli.ncl.ac.uk/1997/issue2/widdison2.html

Scope: The purpose of this article is to look at how technology will change judicial administration. It focuses on three areas: (1) trial preparation; (2) the trial itself; (3) and, juries.

Issue: How will technology alter the courts and what will this alteration look like?

Body:

- Lord Woolf's groundbreaking "Access to Justice: Final Report" (1996) contains important and detailed recommendations to modernize and streamline the justice system.
- Predicts: "there will probably be no solid, tangible court building that we can physically visit".
- Dematerialization ("de-papering") advantages: judges can access up-to-date information about the status of each case.
    - Will also assist with logistical planning and management to achieve the fairest, cheapest and most efficient allocation of time and resources.
- Appeal hearings and Expert witnesses should be examined via VIDEOCONFERENCE
- Videoconferencing: allows subtitles, replays, opportunity to view from different angles = may give a far better impression of whether the witness is being truthful or not.
    - More possibilities of electronic confirmation of finger prints, DNA prints, computer analysis of witness' voice patterns, remote sensing of skin moisture, pulse rate and heart beat = could be too much intrusion rather than too little.
- Real evidence (e.g. blood stains, clothing) will always need to be seen in person.
- Concerns of virtual juries:
    - How the judge can control the quantity and quality of evidence and argument that is received by each juror
        - Same problem as today – how to control what the jury is exposed to when they're not in the courtroom
        - Concerns about jurors not paying attention – could have them monitored via VIDEOCONFERENCE as they watch the proceedings
    - How can the jury be protected from intimidation and bribery
        - Jurors today aren't protected outside of the courtroom either (except in rare circumstances).
    - How the juries will be able to deliberate on their verdict together and in private

■Technology capable of getting groups together with high security. Would need to be sure nobody else could access deliberations.

- Dematerialization of information has been ongoing for a while – dematerialization of physical places is coming more slowly.

Contribution: Wiggins provides an interesting discussion about the 'dematerialization process' whereby, information migrates from physical to electronic interfaces.

Cyberjustice Relation: ICT in the judicial system increases the dematerialization of information and physical place. In 1997 Wiggins predicted this process would dissolve the courtroom – to an extent it has been (in some jurisdictions).

Trochev, Alexei "Courts on the Web in Russia" in Agusti Cerrilo I Martinez and Pere Fabra I Abat *E-Justice: Information and Communication Technologies in the Court System* (United States: IGI Global Publishing, 2009) 196

Scope: Alexei Trochev looks at Russian court websites as virtual gateways into judicial administration and discusses challenges of adapting Russian court websites to the users of the judicial system. His starting point is from studies that show how ICT can speed administration of justice and strengthen public trust in justice system.

Issue: There is chronic under financing, need for respected rule of law and effectiveness in Russian courts post-communism.

Body:
- Trochev discusses Russian courts on the web. Many courts now publish decisions on the web like the Russian Supreme court, Karelia Regional Court, military courts.
- Moscow District court in the city of Tver' offers the most informative and up-to-date homepage, www.mossud. tver.ru, with all court decisions since 2000 and templates of complaints, claims and civil actions of various categories.
- This is the only local court that publishes its own decisions thanks to the generous funding by the Open Society Institute.
- The court websites could improve administration of justice and the image of the judiciary in the eyes of the public because they facilitate improved interaction between the judiciary and the press, increases judicial accountability and increase accessibility for the public.
- Predicts future trend that ICT and use of internet will continue in order to ease the burden of an overloaded judiciary and improve it's reputation
- Challenges: landmass, public perception of judicial dependence and corruption

Contribution: Trochev provides an interesting discussion on current projects and challenges facing court modernization projects in Russia. This is an interesting and timely article, as there are many other post-communist countries that are working to build more accountable, transparent and trustworthy judiciaries. Understanding the possibilities of ICT in those contexts is important.

Cyberjustice Relation: In terms of our project, this is an interesting article because it is outside our geographical area of research so it provides an interesting and problematic context for realizing ICT judicial projects.

Government and Agency Reports on Technology

For the following entries the 'Issue' category has been left out unless the report was written in order to address a certain issue in the judicial system. The 'Cyberjustice Relation' category has been left out because all sources serve the same relation; to enhance our understanding of actual

technologies in courts. Most of the reports were written in order to report on technological advances underway, pilot projects, proposed projects and recommendations for future projects. This section of the review focuses on quantitative and evaluative reasearch reports on modernization projects.

ACCA Technology Committee Update – British Columbia (Dec 20, 2010)
Scope: This report is an update on eCourt umbrella project, eFiling, eSearch (court lists online, Filing Assistant, Purchase Documents Online) and ICED. It highlights the key areas of these projects.
Body:
- Integrated Courts Electronic Documents (ICED):
    - Provides automated functionality to support the production, internal workflow routing, electronic signing, storage and electronic distribution/notification of internally produced court documents (through our criminal and civil case management systems). Intended to create easier access, increase security and reduce effort and workload. Pilot site went live June 2, 2008 - all sites are now live for criminal courts.
- Court Services Online:
    - Services include: eSearch: allows online searches of the court file; Purchase Documents Online: can order copies of documents found in eSearch that are not available electronically - $10/doc; Filing Assistant: online wizard to complete Small claims forms; eFile: enables Civil court documents to be filed electronically. – supported by local desktop scanners at all sites; Daily Court Lists online; e-registry allows the court to electronically process the eFiled documents including stamping, signing and completing the documents, and uploading to our case management system.
- Technologies include: JAVA web applications; XML tagged PDF or Smart forms; Online payment system that used BC's Provincial Treasury Internet Payment system; Interactive online wizard.
- Sheriff Custody Management System (SCMS)
    - On top of ICED enhancements to this system, additional sheriff escort functionality is being built into the system. Trip sheets and logs to manage prisoner escorts via sheriff transport will increase system functionality to cover both lockup management and escort management.
Contribution: The report gives a good overview and roadmap of programming in BC that other provinces could follow.

MAG Annual Report (2009-10) online:
<**http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/mag_annual/annual-rpt_2009_10.asp**>
Scope: the report looks broadly at developments in the justice system in order to improve and continue to build a strong criminal justice system in Ontario.
Body:
- Under the section, 'Deliver a Modern and Efficient Court System', the report mentioned that constructing the new Durham Region Courthouse finished in fall 2009.

- The new facility features 33 courtrooms, with six outfitted for video remand and additional courtrooms with video conferencing capabilities.
- Durham's new courthouse also includes two remote video testimony rooms to accommodate vulnerable and child witnesses, three motions rooms, three conference/settlement rooms, related justice services and up-to-date technology and security systems.
- The report stated: "In December 2008, Ontario announced new civil justice reforms based on former Associate Chief Justice Coulter Osborne's report on the civil justice system. A total of 25 changes were aimed at making the civil justice system less expensive and more effective." The report does not list all 25 changes. *There may be a technology committee that was established to meet Osborne J.'s recommendation.*

Contribution: This report shows the justice system responds to recommendations to change.

"Civil Justice Reform Project" (2008-2010) online:
<http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp/180_technology.asp>
Scope: This report contains Coulter A. Osborn's recommendations to make the civil justice system more accessible and affordable, with access to justice an overarching issue.
Body:
- One recommendation title was 'Technology in the Civil Justice System', which discusses 3 aspects of use of technology in civil litigation: (a) between lawyers/parties; (b) by the court; and (c) by courts administration.
- The report also makes 4 recommendations including a call for a committee of 9 members to make recommendations, jointly to the AG, Chief Justice of the Superior Court, and Chief Justice of Ontario, on technological improvements that may be made at each of the three court locations. These recommendations should consider policy, legal cost and operational impacts.

Contribution: Osborn also recognizes that more study needs to be done on whether technological improvement will enhance or impede access to justice.

"Provincial Court of British Columbia Annual Report" (2009)
http://www.provincialcourt.bc.ca/downloads/pdf/annualreport2009-2010.pdf
Scope: This report provides a summary overview of IT Strategic Plan 2008-2011 [45].
Body:
- Details the overall goal, stages of the plan (early focus infrastructure and resources, now technology education and maximizing the Court's services.
- The plan is monitored by Executive and Management Committees; Criminal Justice Reform: new initiatives to permit lawyers to appear electronically; Office of the Chief Judge (OCJ) – responsible for engaging with government agencies, individuals and organizations wishing to access the court – the OCJ staff provide Information technology planning and services, management information analysis, reporting and planning).

"Report of the Review of Large and Complex Criminal Case Procedures" (Nov 2008) online:
<http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code/lesage_code_report_en.pdf>
Scope: This report discusses an electronic disclosure model/standard between the prosecution and police in Criminal Cases.

Body*:*
- The 'Major Case Management Brief' has 52 comprehensive file folders and the same standard Adobe 8 search software for use by all parties, whether police, Crown or defence. The brief can include police occurrence reports, witnesses' criminal records, photographs, 911 calls, radio transmissions, wiretaps and tape-recorded interviews, which complies with the "quite low" Stinchcombe standard of relevance."
- This brief doesn't have to be electronic, but the report states it is a practical tool.

Contribution*:* This report highlights the need to develop standards for technological advances that increase efficiencies in the justice system.

"Court Services Division (CSD) Annual Reports" (2009-2010) online:
http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_09/default.asp
Scope*:* Report provides an update on the various courts in different regions of Ontario. It describes the various roles and responsibilities for different branches of Court Services and has a section dedicated to IT Initiatives and Accomplishments.
Body*:*
- The Business Solutions Branch of the Court oversees IT processes of the courts. Contains potential interview candidates. Each of the CSD's Annual Reports also include a 5-year plan organized by Legislative Goals and further organized by Business Goals for each Legislative Goal. One Legislative Goals is to 'further the provision of the high quality services to the public.'
- In late 2009, the CSD received approval to proceed with the development and implementation of a Court Information Management System
- (CIMS), which will modernize technological support for court operations and enhance electronic court services for the public.
- CIMS will consolidate information in the division's foundational court case tracking systems — ICON, FRANK and Estates — and provide enhanced electronic document management, court scheduling and financial and automated workflow capabilities. The application will enable the introduction of online court services, benefiting the public and others served by the Superior Court of Justice, the Ontario Court of Justice and the municipal courts.
- CSD initiated discussions on incorporating electronic access to court services and information into the planning and development of CIMS, with an aim to:
  - Provide electronic access to all court counter services; e.g., filing of documents, payment of fines and fees and access to court files and schedules
  - Create an Internet-based service allowing small claims court litigants to originate and respond to claims (as part of the CIMS)
- In 2009-2010 the project received funding and approval; high level research and assessment for project planning and development was completed; high level business analysis and technical recommendations were developed; Formed CIMS Working group to develop business processes and business requirement documentation, and to provide ongoing business and technical expertise and analysis governance committees were put in place; CSD "completed feasibility phase of strategic planning for the single case management system (merging FRANK, ICON and Estates)"
- FRANK was developed as an operational system for Ontario Courts. The system collects data and facilitates tracking activity in the following
- practice areas: civil, small claims court and criminal proceedings in the Superior Court of

Justice, and family proceedings in both the Superior Court of Justice and the Ontario Court of Justice.

- On March 31st, 2008, all court locations, with the exception of Toronto, changed to FRANK to track their court activities. Toronto continued to use SUSTAIN the older operational system until it transitioned to FRANK in mid-2008.
- Uses ICON, integrated court offences network
- In 2009-10, the division completed the development of ICON v2.2 and undertook user acceptance testing with municipal partners. ICON v2.2 streamlines workflow processes and enhances usability through web-based technology. A phased implementation is underway. ICON v.2.2 is an interim step to the implementation of CIMS.

Contribution: provides a good overview on different Ontario software programs.

The Impact Of Technologies on the Justice System

The section above highlighted different types of technologies used in court processes and procedures. The following section differs, as it will move further than descriptive accounts and review sources that explore the impact of technology on different parties in the justice system. This focuses on areas of the justice system where technologies have been heavily implemented like the criminal justice system and also looks at Immigration and refugee board tribunals.

American Jurisdiction

Ashdown, Gerald G. and Menzel, Michael A., "The Convenience of the Guillotine? Video Proceedings in Federal Prosecutions" (2002) 80 Denv. U. L. Rev. 63 (retrieved from LN)
Scope: This article looks at the benefits and concerns regarding video conferencing.
Issue: Do the benefits of video conferencing outweigh the costs?
Body:
- For each advantage to Video conferencing there is a disadvantage.
- Benefits: Increases in Institutional economy and convenience (Prisoner civil rights cases also use video teleconferencing, reduces transportation costs)
- Concerns: accurateness of credibility assessments; interrupting solemn proceedings; Forcing a defence attorney to decide between being in court or in jail with the defendant during a video proceeding.
  - o Producing the image of the defendant digitally is qualitatively different from requiring their presence in the courtroom – attending via video – is better than not attending at all.
- Looks at the role of 'presence' in rule 43 of the Federal Rules of Criminal Procedure: defines when a defendant is required to be present in the federal court and when they can waive their right
- Looks at use of technology in State courts: it has been used with varied success. Compares video procedure programs in:
  - o Florida Juvenile Rules of Procedure: proposed amendment to hold procedures using video failed –"youth must never take a second position to institutional convenience and economy"
    - ▪ Problems: hampered communication between juveniles and parents and guardians/ their public defender, difficult to portray the decorum and maintain the dignity befitting a courtroom?

- o Missouri Criminal justice Program: 1987, *State v Kinder* this was the first trial by video conference.
- If a court conducts a proceeding by video teleconference, a judge may have a difficult time insuring that a defendant understands the importance of a criminal proceeding or the gravity of the charge against him; the lines of communication between defence attorneys and their clients may be impaired; video teleconferencing may limit public access to federal criminal proceedings; and, proceedings conducted by video may not reflect the solemnity and decorum befitting a proceeding in federal court.
- These costs and benefits associated with conducting criminal proceedings by video teleconferencing should be carefully considered by the federal courts in their discretion to use of video teleconferencing under the newly amended Federal Rules of Criminal Procedure.
- The due process clause, the confrontation clause and Federal Rules of Criminal Procedure each require a defendants presence during certain stages of trial
- The Advisory committee sought to amend the Rules – debate centered around consent requirements.
- The authors suggest the rule should be: "Whenever due to the exceptional circumstance of the case it is in the interest of justice" and that it should not view the definition of 'presence' as a dichotomy between physically present or absent.

Contribution: The article argues for an analytical framework that prepares the federal courts for technological advancements that will blur the line between physical and virtual presence.

Cyberjustice Relation: The authors give insight on implications for defendants using video conferencing. It shows that negative implications of this technology generally speak to the experience of defendants. It is a reminder that the experiences of courtroom technology is very different between different parties.

Bowen Poulin, Anne "Criminal Justice and Videoconferencing Technology: the Remote Defendant" (March, 2004) 78 Tul. L.Rev. 1089

Scope: The author looks at implications of video conferencing on the defendant and argues against the practice. She argues we should worry about the subtle effects. This article looks at video conferencing and its implications for the criminal justice system.

Issue: Videoconferencing alters the way the defendant is perceived by the court. The design of video conferencing and the training of those who run the equipment is inadequate and the so the push to replace in-person appearances with video conferencing is concerning. The author asks how do we avoid the unintended consequences introduced with the use of video conferencing in criminal case? It is the subtle effects of technology that we need to be worried about. The gap between what the criminal justice system should be and what it is.

Body:
- The author asks: how is the cumulative impression of the defendant altered? What is the impact of the defendant's subjective experience and the actual quality of representation?
- Part 2: overviews technology in criminal cases and the arguments that have been advance for and against
- Part 3: identifies several limitations inherent to video conferencing.
- Part 4: specific ways video conferencing impacts the defendant
- Part 5: looks at the ways the impact is felt at non-trial stages

- Part 6: proposes: (1) subjecting the use of video conferencing to careful study (2) taking steps to ameliorate the threatened negative impact of video conferencing technology available to improve communications between incarcerated defendants and their attorneys.
- In many jurisdictions, video conferencing applications in the criminal justice system are being explored. It is used to avoid bringing witnesses or defendants to court for certain proceedings.
- The use of technology calls into question the dynamics of the jury's perception and evaluation of a witness at trial and raises serious constitutional issues.
- Gains of video conferencing for the government side, benefiting judges, court personnel and prosecutors. Defendants are often in detention center far from courts – don't need to transport them, there is overall efficiency – proponents argue it doesn't cause demonstrable harm. Even if defence counsel objects to video conferencing the administrative gains may justify its use.
- Areas of concern that flow from the use of video technology: the quality of the equipment; technological constraints, such as limited transmission of nonverbal cues and the inability to replicate eye contact; the intractable problem of where to locate counsel for the remote defendant; the handling of exhibits, forms, and documents; and the role of viewer expectations; altered jury perceptions

Contribution: The author recommends:
1. Subjecting the use of video conferencing in the criminal justice system to careful study: research and evaluation
2. Taking steps to ameliorate the threatened negative impact of VIDEOCONFERENCING
3. Making the technology available to improve communication between an incarcerated defendant and their attorneys (positive use)
- The criminal justice system shouldn't continue to rely on and expand reliance on video conferencing without recognizing negative effects – address: (1) government should commission studies on the subtle impact of this technology on the quality of justice (2) government should take steps to ameliorate the negative impact of video conferencing through design of systems and training those who participate in video conferencing proceedings.
- Government should employ video conferencing to benefit defendant – to enhance interactions between them and their attorney's.

Cyberjustice Relation: The author notes that lawyers have rarely ever looked to other disciplines concerning technology to gain insight on the impact of it. When these disciplines are consulted she says that quality of justice should not be sacrificed for efficiency. The author argues the criminal justice system is the wrong place to experiment with video conferencing because the defendant bears brunt of consequences when they only appear on video. It can cause both the perception of the defendant and their participation to be negatively effected. As advocates for increasing the use of technology, this article reminds researchers that the justice system is not monolithic and technology will impact some areas like criminal justice more negatively than the civil courts or alternative dispute resolution.

Diamond, Shari Seidman, Locke E. Bowman, Manyee Wong and Matthew M. Patton "Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions" 100:3 Journal of Criminal Law and Criminology (Summer 2010)

Scope: This article looks at the impact of video conferencing in bail hearings in Cook County, Illinois.

Issue: There has been an increased use of video conferencing in Cook County since the late 1970s, has it's use negatively impacted bail hearings?

Body:

- 1999, Cook County Illinois instituted the practice of holding bail hearings for most felony cases using a closed circuit TV procedure (CCTP) that allowed the defendant to remain at a remote location during the bail hearing.
- Questions remain about potential uses of video technology by criminal courts in bail hearings and other proceedings – article looks at prospect and questions that should be addressed as the criminal courts deal with the 21st C and beyond.
- Discusses the origin of bail procedure in 13th C English law (870).
- Discusses increased use of video conferencing, specifically the development of video technology in Illinois (first used in 1972) (877).
- Arguments against: in criminal cases it impairs fairness and integrity of criminal proceedings because of confrontation clause, lawyer/client communication, immediate response times (878-879).
- Confrontation clause arguments do not apply for bail hearings because they're not the time when witnesses testify against defendants (881).
- In 2006 a class action lawsuit began alleging bail hearings in a Cook County court violated due process and denied bail applicants effective assistance of counsel. Made an empirical test to determine whether bail outcomes were affected by video conferencing system.
- Examined changes in bail level for all cases involving offenses that were subject to CCTO; graphed values of bond decisions from 1991-2007 (204 months); interrupted time series analysis used to examine whether the change from in-person hearings to closed circuit television hearings cause a rise in felony bond amounts. Analyzed whether the change in average bond mean and growth rate differ significantly from what one would expect if the policy had not been in place. The null hypotheses for all models are that the mean and growth rate in bond amount do not differ significantly from before to after the implementation of CCTP (888-889)

Contribution: The graphing system revealed the there was a change in bond amount after CCTP policy started in 1999, felony bond went way up. The average bond levels for sexual assault and homicide cases, which continued to have live hearings, changed an insignificant amount (897). Raises questions about harmful effects of video conferencing.

Cyberjustice Relation: We talk about how to measure the effectiveness of technology and access to justice – this highlights one way of measuring the impact of a specific ICT. This study shows a negative affect on Defendants who are forced to use video conferencing instead of in person trials (898).

Feigenson, Neal. "Too Real? The Future of Virtual Reality Evidence" 28:2 Law & Policy (April 2006) 271

Scope: This article discusses Immersive Virtual Environment (IVE) technology and the concerns surrounding it.

Issue: Do IVE technologies risk confusing and prejudicing juries and courts, which could lead to the exclusion of IVE evidence?

Body:

- Feigenson's main arguments are:
    - He argues that there is little danger that audiences will confuse IVE with reality.
    - However, they may enhance and impair legal decision-making. It will be more engaging, so audience may process data uncritically. But the vividness may also improve understanding of events.
    - The vividness and interactivity of IVEs may make audiences believe "this is what happened" and "this is what it was like to be there" BUT it is unclear whether this sense of participation will radically transform jurors fact-finding role from relatively passive and objective fact finders into investigators and even 'active participants in the facts of the case.
- IVEs are digitally constructed worlds in which users may see, hear, move about and interact with simulated objects and persons, creating heightened and compelling sense of being in a real place, among real things.
- IVEs in Court:
    - Courtroom applications: (1) to facilitate virtual proceedings, parties won't all have to be in the same location. Similar technology already: digital visual displays, screen-based, interactive "virtual-reality views" (360-degree representations of a scene composited from digital or digitized photographs (p. 276). It was used in Courtroom 21 lab.
        - Benefits: can determine what a witness could have observed at crime, allow fact-finders to explore a scene or object, multiplying the possible points of view beyond those offered by a non-interactive simulation and allow them to move through the representation at their own pace. Could place jurors in the place of a driver in an automobile accident.
    - Evidentiary Issues: distinction between virtuals as 'pure' demonstrative evidence (illustrative aids) and those as substantive evidence. IVEs can be 'illustrative', for example, they can depict an expert's verbal description (this illustration would be shown during trial, but not admitted as full evidentiary exhibit and generally not allowed to be reviewed by the jury during deliberations); or, IVEs can simulate a specific accident or other event (this illustration is admitted as a full evidentiary exhibit and allowed to go to the jury room).
        - Likely governed by basic evidentiary rules.
- Concerns with IVEs: too realistic, jurors unable to distinguish IVEs from reality.

Contribution: This article provides information on an interesting new technology. The discussion on courtroom applications and evidentiary issues is particularly illuminating on the types of situations IVEs can be used in and the implications of their use.

Cyberjustice Relation: The article is about a new technology, IVEs, that if allowed in courts could change the way evidence and courts work. This technology is not used in Canada (as per my research thus far) however, it could be used in the future and could be discussed in our report under "future directions".

Goodman, Gail S., Ann E Tobey, Jennifer M Batterman-Faunce, Holly Orcutt, Sherry Thomas, Charyl Shapiro and Toby Sachsenmaier "Face-to-Face Confrontation: Effects of Closed-Circuit Technology on Children's Eyewitness Testimony and Jurors' Decisions" Law and Huan Behavior vol. 22, no 2 (1998)

Scope: The study examines the effects of closed-circuit technology on children's testimony and jurors' perceptions of child witnesses. The study used mock trials to address a number of claims that arise when a child testifies with aid of CCTV.

Issue: There have been increases in the reporting and prosecution of child sexual abuse over the past decade have resulted in many children testifying in criminal court, accompanied by attempts to protect them from the stress face-to-face confrontation. And children are particularly vulnerable in open court. Little research exists on the possible advantages and disadvantages of the use of CCTV when children testify (166).

Body:
- The authors prevent evidence on courtroom stress on children in open-court situations. Children display higher stress and impaired memory performance. The studies together, show it may be difficult for children to recount events fully and accurately when the perpetrator is physically present and the physical space causes them stress (168).
- The jurors' abilities to reach the truth is important from a legal perspective so the authors explore what characteristics of children and their testimony affect jurors perceptions (169).
- The study predicted: children who testified on CCTV would make fewer omission errors and be less suggestible than younger children and children who testified in open court; predicted children would experience greater pretrial stress at the thought of testifying in court than CCTV; more children would refuse to testify in the former than the latter condition; individual differences related to cognitive and socioemotional factors were expected to affect children's willingness to testify; if jurors are biased to believe older than younger children, jurors should rate older children as more accurate and believable, even when actual accuracy is statistically controlled; predicted jurors would have difficulty assessing the accuracy of young compared to older children; finally, women and people with more experience with children would view child witnesses more favourably than men and people with less experience.
- The authors went over methods used in the study (174-176)

Contribution: The study revealed that compared to live testimony iin open court, use of closed circuit technology led to decreased suggestibility for younger children. Testing in open court also led children to experience pretrial anxiety. CCTV did not diminish the factfinders ability to discriminate accurate from inaccurate child testimony, nor did it directly bias jurors against the defendant.

Cyberjustice Relation: This shows a potential benefit of video conferencing in protecting vulnerable users of the justice system.

Lederer, Fredric. "The Legality and Practicality of Remote Witness Testimony" in *The Practical Litigator (September 2009)* 19

Scope: Fredric Lederer wrote this article as an introduction to the remote technology in order to allow the reader to decide whether or not to use remote appearance technology.

Issue: A critical legal issues with video conferencing technology in the US is whether remote appearance violates the Confrontation Clause.

Body:
- Greatly improved technology, decreasing cost and increasing travel costs now make video conferencing especially appealing.

- Modern video conferencing operates either on Integrated Services Digital Network (ISDN) or Internet Protocol (IP) data connections; it has high-quality image, fully synchronized with the audio and equipment is portable. However, it is not quite possible to permit one to feel in the same room as the remote party.
- Video conferencing customarily works well from a technological perspective.
- Experiment at William and Mary:
    - In civil personal injury jury trials in which damage verdicts relied upon the testimony of medical experts, there was no statistically significant difference in verdict whether experts were physically there or elsewhere as long as images were displayed **life-size behind the witness stand** and the **witness was subject to cross-examination under oath**.
    - Non-controlled experiments suggest the same result for merits witnesses in criminal cases.
- Technology should be as invisible as possible and shouldn't alter traditional trial practice if possible.
- Most civil and criminal trial courtroom use of video conferencing involves remote witnesses or judges/counsel.
- Interesting cases:
    - *United States v Linsor* (2001): Prosecutor appeared remotely from Leeds. VIDEOCONFERENCING nature of the examination seemed to have no adverse affect.
    - *In re Blosson & Blossom* (2005): Counsel, witnesses and judges used VIDEOCONFERENCING to connect to each others' courtroom.
    - *United States v Stanhope* (2003): Held the first known three-court concurrent hearing. Domestic laws applied to each courtroom in their respective jurisdictions.
    - *Commonwealth v Malvo*: \ VIDEOCONFERENCING for 25 or more witnesses (primarily from Antigua, Jamaica, Louisiana, Washington state).
    - *State v Harrell*: Supreme Court of California developed guidelines to aid courts in determining whether remote testimony should be allowed. Involves requiring the party bringing the motion to verify that the witness lives beyond the jurisdiction or may be unable to attend court and that their testimony is material and necessary to prevent a failure of justice.
        - Must establish that there exists an extradition treaty between the witness' country and US and that the treaty permits extradition for the crime of perjury.
- The most widespread and accepted use of video conferencing in the courtroom is remote witness testimony. The usual intended use of remote testimony in a criminal case is to supply the prosecution evidence.
- The International Criminal Tribunal for the Former Yugoslavia (ICTFY) has used video conferencing for remote witnesses.

- Concerns with video conferencing include: technological; logistical; financial; legal – whether foreign testimony can be obtained (sometimes a diplomatic matter).

Contribution: This article contributes to the literature of technology and the law through a discussion on US constitutional issues and video conferencing. It also provides examples of cases where parties used video conferencing.

Cyberjustice Relation: The examples of American cases and the ICTFY using video conferencing will be useful to mention in an article about what role technology can play in a trial, how it plays out in actual court cases and how it can usher in the courtroom of the future.

Mulcahy, Linda "The Unbearable Lightness of Being? Shifts towards the Virtual Trial" 35:4 JL & Soc'y (2008) 464

Scope: This article looks at implications of allowing witnesses to give evidence in trials from other locations through 'live link' and the way technology in courtroom has potential to disrupt traditional notions of the trial.

Issue: What is the implication of technical changes like live-link on legal geography and court architecture?

Body:
- Mulcahy lists concerns with virtual trials: the adversarial courtroom drama where parties face each other n person will become a thing of the past
- She accepts technology can democratize the legal process and she does not idealize the trial process; participating in it can be degrading, brutal with traumatic effects.
- Virtual developments do not alter HOW things are done but WHAT is done for example, lawyers using smart screens or interactive whiteboards to enhance presentation of an argument.
- However, what is being impacted is the law's aesthetic. Since the Magna Carta there was specific importance of commitment to a specific place. Justice was dispensed where people gathered (Bible). Courts were built as symbols, temples of law and civic pride (475).
- Conceptions of role of law in society may change over time, but the argument that buildings are an appropriate medium through which to represent prevailing ideals of justice remains intact: "court buildings need to be seen to be there and seen to be public, authoritative and important in society" (477).
- What impact does the removal of the material trappings of the courtroom and courthouse have on the experience of preparing for and giving evidence? Is there something special about a face-to-face trial?
- A 'day in court' represents a basic human need to have one's say in the presence of those who have failed to listen – it speaks to our political morality.
- Do we need live link to address issues? OR should we rethink the adversarial manner? Maybe recognize MOST victims could be labeled as vulnerable.
- Studies show witnesses are more distressed by cross-examination than anything else in the investigation and trial points to a systemic failing in the adjudicatory model

Contribution: This article highlights that it is the *experience* not the environment that is the unresolved problem with virtual trials.

Cyberjustice Relation: This article raises the issue about the importance of space in the judicial system.

Rappaport, Michael "The end of Lawyers as we Know it" (Feb 27, 2009) The Lawyers Weekly online: http://www.lawyersweekly.ca/index.php?section=article&articleid=863>
Scope: This article is a review of Richard Susskind's book *The End of Lawyers.*
Issue: Susskind poses the question will lawyers fade from society like once venerable craftsmen and traders?
Body:
- *The End of Lawyers* is the sequel book to *The Future of Law* (1996) (on how IT would transform the legal profession.
- When Susskind predicted a decade ago in *The Future of Law* that e-mail would become the dominant means of communication, he was scoffed at by the legal community.
- Susskind argues the legal profession is on the brink of fundamental transformation: the role of traditional lawyers in some legal fields will be eroded and eliminated
- This revolution is driven by: (1) commoditization of legal services; and, (2) rapid invention of new innovations and technology.
- Commoditized services are those designed to fit a range of services
- Standard legal tasks can be handled by improved IT software because it is routine and repetitive.
- There will be less demand for high price lawyers because even complex issues can be broken down into constituent tasks, processes and activities – once these are identified they can be sourced in a variety of low cost ways. Many duties can be given to paralegals and clerks, subcontracted, out-sourced to specialist companies abroad.
- Four new breeds of lawyers will displace traditional lawyers: (1) enhanced practitioners, who will support standardized, systemized and packaged legal services; (2) legal knowledge engineers, the dominant type, who will organize the vast quantities of complex legal content and processes that will be needed to be analyzed, distilled and then embodied; (3) legal risk managers, who will develop services anticipating legal problems and reduce reliance on in-house counsel; and, (4) legal hybrids, who will be multi-disciplinary practitioners, schooled in more than one discipline required to provide sophisticated advice across specialties.
- Most of the innovations and technologies required to transform it into a reality already exist. In legal marketplace there are several gamechangers: automated document assembly (enable laymen to draft legal docs without lawyers), electronic marketplace (allows clients to learn reputation of lawyers or law firms), online legal communities (users share legal info and facilitate collaboration b/w clients and counsel.

Contribution: This article is helpful because it summarizes Susskind's major arguments.
Cyberjustice Relation: Suskind says argues lawyers must "adapt or die". Technology has come to stay and so it is time to design the terms of a technological revolution.

Roth, Michael D. "Laissez-Faire Videoconferencing: Remote Witness Testimony and Adversarial Truth" 48 UCLA L Rev 185. 613 413 3082
Scope: This article looks at the broader question of whether implementing this technology is a good idea or not.
Issue: Remote witness testimony raises questions of law and policy.
Body:
- Part I of this Comment gives a background of video conferencing technology and an overview of its current uses in the judicial system.

- Part II looks at the concept of demeanor testimony and examines how media theorists suggest technology can affect perceptions of a witness's demeanor. This part specifically examines how production techniques used in video conferencing might affect demeanor testimony and describes suggestions that have been made to neutralize those effects.
- Part III argues that in light of empirical studies from social sciences addressing nonverbal communication and current trial practices, remote witness testimony should not be separately regulated.

Contribution: Roth concludes that video conferencing should either be considered an additional tool in the advocate's repertoire of trial tactics, or it should invite a reevaluation of the advocate's role in our adversarial system.

Cyberjustice Relation: Roth has a similar opinion to others included in this literature regarding the need to increase the scholarship on video conferencing.

Walsh, Edward M and Frank M Walsh "Effective Processing or Assembly-Line Justice? The Teleconferencing in Asylum Removal Hearings" 22 Geo Immigr LJ 259 (Winter, 2008)
Scope: The article examines the use of video teleconferencing (VTC) in asylum removal hearings as codified under U.S.C. ss 1229a. It uses removal hearings in immigration courts as a narrow example of some of the issues surround VTC.
Issue: No article has tried to assess the effect of VTC on asylum removal hearings.
Body:
- The authors argue that as a matter of policy, the use of VTC does not result in "fair and efficient immigration hearings because VTC alters the way that a judge perceives an asylum applicant's testimony and influences the outcome of a hearing. As a matter of law, VTC does not have a coherent rationale and it tests the limits of the Due Process Clause.
- The authors describe the history of VTC regulation evolution. It arose in the immigration setting because the removal system was shortened from 180 to 90 days, so they needed to process people faster and because detained aliens were generally held in detention centers far from cities (264).
- The authors describe inconsistencies in US law's treatment of in-person determinations.
- They analyze policy dimension of VTC by focusing on psychological effects and they analyze the legal dimension of VTC use by focusing on whether VTC satisfies an asylum applicant's rights under the Due Process Clause by recommending that its use only be in Master Calendar Hearings.
- The core of EOIR's argument that VTC is a good policy is the assertion that "[VTC] does not change the adjudicative quality or decisional out-comes." The authors refute both aspects of this statement by: (1) explaining how VTC changes the "adjudicative quality" of the Immigration Judge's decision by fundamentally altering the perception of the testimony (VTC fails to capture non-verbal communication, build an emotional connection with the judge, judges equate skew testimony delivered via VTC with reality)(269-271); (2) showing that VTC constitutes a statistically significant factor in the "decisional outcome" of an asylum case, in 2006 21.86% were granted asylum via VTC and 44.87% were in in-person hearings.
- The authors discuss the Due process clause, which is relevant in the States

Contribution: The authors reject the use of VTC at asylum hearings and argue for a more selective use of VTC that would better protect the integrity of United States Immigration Courts.

Cyberjustice Relation: The authors acknowledge the argument that integration of new information technologies to allow for greater video teleconferencing ("VTC") in modern courtrooms is a way to expand access to justice and efficiently process potentially costly cases. But there are serious unanswered questions to the practice and policy implications.

Wiggins, Elizabeth C. "What We Know and What We Need to Know About the Effects of Courtroom Technology" (2004) 12 Wm & Mary Bill of Rts J
Scope: This article looks at the extent to which technology is available in the US federal court system, and reviews some of the major claims and concerns raised in response to the use of certain technologies.
Issue: There is a knowledge gap when it comes to technology in the courts.
Body:
- In 2002 the Federal Judicial Center surveyed all federal district courts about the use of technology in their courtrooms.
    ○ Sent an e-mail to all court clerks requesting that they complete an online questionnaire.
    ○ 90/94 districts responded.
    ○ 94% of courts have access to an evidence camera, 66% to a digital projector and screen, 93% to wiring to connect laptop computers, 57% to monitors built in jury box, 77% to monitors outside jury box, 89% to a monitor at bench, 88% to monitor at witness stand, at counsel table or at the lectern, 77% to monitors or screens targeted at audience, 80% to a colour video printer, 92% to a telephone interpreting system, 93% to audio-conferencing equipment, 85% to video conferencing equipment, 81% to real-time software for use by court reporters, 66% to digital audio recording.
  - Issues with video conferencing in criminal cases:
    ○ Does the VIDEO CONFERENCING interfere with the right to due process and adequate representation by counsel?
      ■ Defence counsel wants to be with both client and judge at the same time.
    ○ Does VIDEO CONFERENCING interfere with the right to due process and a fair trial?
      ■ Possible de-humanizing effect of having defendants appear via VIDEO CONFERENCE and the resulting effect on fairness of the proceedings and trials.
      ■ Empirical study could determine whether judges and attorneys evaluate a Defendant's culpability and credibility differently when the Defendant appears remotely. If so, whether the difference is prejudicial.
      ■ Research by Daniel Lassiter found that evaluations of videotaped confessions can be significantly altered by seemingly inconsequential changes in the camera perspective taken when the confessions are initially recorded.

        ■Emotional state of the speaker may be partly excluded through audio – may be critical to judgments of remorse or credibility.

- Issues with counsel video conferencing in appeals:
  - Delays, missing words (can be Minimized with warning)
- Presenting evidence digitally with animations and simulations:
  - Can make difficult concepts or mechanical events easier to understand.
  - Research suggests that the persuasiveness of animations depends on the factual issues it is used to illustrate.
  - Animations more influential if they are outside the experience of jurors.
    - ■If an animation depicts an unfamiliar scenario, it may affect their decision-making.

Contribution*:*   The article highlights the responses of people who work in the Federal courts to the use of technology in those courts.

Cyberjustice Relation: We will also be conducting interviews, so the types of questions asked within these questionnaires are a helpful starting point. It is also interesting to note that defendants and/or plaintiffs were not part of the interview group.

Canadian Jurisdiction

Benyekhlef, Karim and Francois Senecal "Groundwork for Assessing the Legal Risks of Cyberjustice" (2009) online:
<https://papyrus.bib.umontreal.ca/jspui/bitstream/1866/2933/1/Groundwork_for_Assessing _the_Legal_Risks_of_Cyberjustice.pdf>

Scope*:* This article reflects on implications of IT. It sketches a method for assessing the legal and judicial risks of implementing cyberjustice systems.

Issue*:* "How can the risks and hazards systematically produced as part of modernization be prevented, minimized[,] limited and distributed in a way so that they neither hamper the modernization process nor exceed the limits of that which is 'tolerable'?"

Body*:*
- The definition of cyberjustice used in this article is: the conjunction of different modules designed to achieve global purpose ie. E-filing, case management systems that concern the computerization of court procedures. It is an informational environment, composed of various modules and functions, where the information lifecycle is revealed by the basic components of the environment.
- Artifacts convey and have normative consequences
- The crucial issue is whether cyberjustice is "merely a new method for handling [an] age-old task" or, in fact, something that changes the social fabric and adds new facets to human activity
- The purpose of this text is to suggest avenues for developing a method of assessing the legal risks of cyberjustice systems so as to better identify the effects of introducing information technology into justice systems. As necessary as such a study may be, it remains limited by its premises. On one hand, cyberjustice is not restricted to the simple transposition of paper-based procedures onto electronic media. On the other hand, and in a more fundamental way, the identified risks will have ramifications far beyond the field of law.

Contribution: The authors recognize a need for a comprehensive theory for assessing legal risks – in order to propose avenue for developing a theory the authors suggested a definition of cyberjustice that could function across systems. The notion of risk must also be studied. By matching technological features of cyberjustice systems with basic values of justice systems – it is possible to perform a methodical, systematic analysis of the legal risks and thereby have the capacity to manage them. Could find a new balance among basic values. This would be a complex study.

Cyberjustice Relation: The recommendation in this article is clearly linked to the long-term result of the Cyberjustice project, which would result in a complex, systemic analysis of technology within the judicial system.

Blanchefield, Mike "Technology in Court: Chief Justice muses about the impact of Twitter, Facebook on Canadian Justice" (2004) online: <http://www.theglobeandmail.com/news/national/chief-justice-muses-about-the-impact-of-twitter-facebook-on-canadian-justice/article2322046/>

Scope: The article discusses a speech Chief Justice McLachlin gave at Carleton and said the justice system must learn to deal with social media like Twitter and facebook because a free press and independent judiciary have an 'indispensable' role to play in democracy. Newspapers, radio and television are 'old technology' at a time when anyone with a keyboard can create a blog and call themselves a journalist. There is a cultural shift in how people communicate.

Issue: Will accuracy and fairness be casualties of the social media era? What will the consequences be for public understanding of the administration of justice and confidence in the judiciary? How can 140 characters of twitter inform the public accurately of the real gist of a complex constitutional decision?

Body:
- These comments were made after Justice Robert Maranger – TJ in 'honour-killing" trial in Kingston banned tweeting, allowed electronic devices for note-taking only.
- The Russell Williams murder case in Oct 2010 did feature live tweeting.
- The issue raises serious questions about whether online publicity can prejudice the fair trial of the accused.
- She concluded the interests of the media and courts are intertwined.
- Must look forward, not back "this is our only choice, for what is at stake is nothing less than the rule of law".

Contribution: This article reflects another angle of access to justice that involves public access to judicial information. It also presents the view of the Chief Justice of Canada's highest court who feels intertwining the courts and media is the way forward.

Cyberjustice Relation: The author raises good questions about the use of social media and public access to information. The tone of the article suggests he acknowledges this media technology may be the way forward but questions need to be discussed at least, if not answered.

"Blueprint for the Security of Judicial Information (Third Edition)" (2009) *Canadian Justicial Council* online: <http://www.cjc-ccm.gc.ca/cmslib/general/JTAC-ssc-Blueprint-Third-edition-finalE.pdf>

Scope: The objectives of the Blueprint are: to provide guidelines to improve the security, accessibility and integrity of computer systems containing judicial information; to define the roles and responsibilities of judges and administrators in terms of technology security and

enhance the relationship between groups; and, finally, to provide judges with a model for developing effective IT policies that take judicial needs into account (p. 4). The Blueprint applies to any computer system in which judicial information is created, accessed, tored or transmitted. The Council itself, has a limited mandate regarding federally appointed judges, but those judges often share resources with provincially appointed judges – for that reason collaboration on development of security policies is encouraged (p. 11).

Issue: Different jurisdictions and courts in Canada have different IT management programs already in place. Judges are not always involved in IT decisions or in policy-making roles but new technologies impact judicial independence and privacy concerns.

Body:
- The Blueprint lays out policies regarding: the management of IT; operational safeguards including backup, physical security and a proposed classification scheme for judicial information; and, finally, technical safeguards such as control systems for local and , encryption, firewalls, intrusion and virus detection systems.
- It discusses polices with a focus on the judiciary, not an IT department. It does not cover: compliance with copyright laws or software licensing; policy relating to IT support and operations; security of information that is not in digital form, security of telephone and fax communications and the physical security of the courthouse.
- It is designed to enhance existing policies and programs within the government and supercede them only if they conflict with or are less stringent than those proposed within the guide. Thus it recognizes the 2004 renewal by the Government of Canada on its Standard for the Management of Information Technology Security (MITS). MITS follows these principles:
  - Service delivery requires IT security
  - IT security practices need to reflect the changing environment
  - The government of Canada is a single entity
  - Working together to support IT security
  - Decision-making requires continuous risk management.
- Each section of the Blueprint lists a policy statement, discusses the policy and then sets out model guidelines for each court to follow.
- For example, Policy 1: "Every jurisdiction must ensure that a Judicial IT Security Officer who is accountable to the judiciary be appointed to oversee the management of court information technology security operations" (p. 18). The discussion provides reasons for the position, duties, roles and responsibilities of the person filling the position (p. 19-20).

Contribution: The Blueprint gives guidelines for the judiciary to follow as they deal with increasing use of IT in the profession.

Cyberjustice Relation: The Blueprint is an example of policymaking regarding IT. It is also an example of retroactive policy in that the technologies were introduced into the justice system and the policies regarding it came afterwards.

Careless, James. "Video Evidence" *Canadian Bar Association*, **online:** <**http://www.cba.org/CBA/practicelink/leadership_technology/video_evidence.aspx**>
Scope: In this article the author looks at the technical aspects of recorded video as evidence in trials.

Issue: Recorded video can be edited to rearrange the chronology of events depicted, distort the passage of time and show events out of sequence and context. The article asks: what is the impact of a "CSI" effect?

Body:
- Before videos recorded on tapes, the original tape was played in court – now most video recorded on hard disk drives, which are routinely wiped – to download onto a DVD need a witness and documentation to prove the exact duplicate copy of the original is being shown.
- Video must be explained by expert witnesses to interpret the images and assist the judge/jury understand he impact of such technical and practical issues as multiple camera views, frame rates, aspect ratios, compression, tracking of people, objects and alignment of audio to video.
- The Supreme Court of Canada in *R v Nikolovski*, recognized and endorsed the analysis of video evidence at the image by image level.

Contribution: The author urges caution when using video evidence. He shows that the use of video evidence does not necessarily create a fairer trial because it is also open for interpretation and manipulation.

Cyberjustice Relation: This article highlights concerns with the change in perspective video can have on the trier(s) of fact.

Nelson, Sharon D & John W Simek, "Ethics in the Electronic Era: Avoiding the Icebergs" (2007), online: <http://www.cba.org/CBA/PracticeLink/tayp/ethicaltech.aspx>.
Scope: lists 50 ways technology can cause trouble

Eltis Karen "The Impact of Technology on Courts and Judicial Ethics: An Overview (2008) in *Judicial Independence in Canada and the World* L. Sossin, A Dodek, eds (University of Toronto Press 2009)
Scope: This paper endeavors to highlight issues of the interplay between technology and judges: the networked environment's ramifications for out-of-court judicial expression and judicial use of online resources (for example search engines and wikipedia) as it relates to competence and diligence inter alia.
Issue: The question of technology ramifications for the judiciary has evaded scholarship – leaves courts with little choice accept to fit new technology into outdated regimes and practices.
Body:
- Technology plays a central role in modern judicial work and lives on and off the bench – it has benefits and challenges that will impact courts and ethics.
- Courts need to revisit conventional construction of fundamental concepts including disclosure, competence – even impartiality – and the balance to be struck between foundational values like transparency and privacy in the internet age

Contribution: The article provides some relevant insight on the impact technology can have on judges.
Cyberjustice relation: Eltis writes a lot about the role of ethics, technology and courts – she raises the general issue with technology and the law; the lack of scholarship on implications.

Eltis, Karen "The Judicial System in the Digital Age: Revisiting the Relationship between Privacy and Accessibility in the Cyber Context" (2011) 56:2 McGill LJ 289

Scope: This article alerts courts to up-and-coming matters deriving from the use of technology. Eltis identifies emerging issues arising from technological change generally, addresses the challenges electronic court records raise particularly the inadvertent disclosure of personal info in ways unanticipated by existing rules, and the resulting affront to the very access to justice that digital files were meant to promote.

Issue: In this article Eltis suggests we need to rethink privacy within the cyber context, it can be considered an ally of openness in the court system.

Body:

- Technology allows Individuals to gain access to sensitive, personal information—oftentimes anonymously—in an unprecedented fashion.
- As such guidelines have been developed to protect people from abuses of technology: See Canadian Judicial Council, *Computer Monitoring Guidelines,* (Ottawa: Canadian Judicial Council, 2002) at paras 3-4, online: Canadian Judicial Council <http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_techissues_GuidelinesCM_2002_en.pdi> *[Monitoring Guidelines]:* and see the guidelines set out by the Canadian Judicial Council: Canadian Judicial Councü, *Model Judicial Acceptable Use Policy for Computer Technology,* (Ottawa: Canadian Judicial Council, 2003) in Canadian Judicial Council, *Blueprint for the Security of Judicial Information,* 2d ed (Ottawa: Canadian Judicial Councu, 2006) at 66, online: Canadian Judicial Councü <http://www.cjc-ccm.gc.ca/cmslib/general/news_ pub_techissues_SecurityBlueprint_2006_en.pdf>. and See Canadian' Judicial Council, *Model Policy for Access to Court Records in Canada,* (Ottawa: Judges Technology Advisory Committee, 2005), online: Canadian Judicial Council <http://ciaj-icaj.ca/english/publications/ModelPolicyAccess_CJC_Septe.pdfi> *[Model Policy for Access*
- She alludes to the *Moussäoui* case at the outset, and references to the distortions and potential ill effects of unfettered access to mass Internet postings of court documents. These range from extreme threats of violence and harassment by both parties and "non-parties", to more "routine" incidents of employee cyberscreening, identity theft, fraud, and spam.
- The Internet begs a sober rethinking of how we define access to court information in the Internet age, and of the current balance struck between this important value and privacy.
- Lyria Bennet Moses explains in her paper on the merits of revisiting norms in light of technological change, generally: "Existing rules were not formulated with new technologies in mind. Thus, some rules in their current form inappropriately include or exclude new forms of conduct.'"
- Unrestrained access can have a chilling effect.
- Technical and clerical errors cause magnified harm on internet as more people have access – 'access is misleading because internet doesn't have quality control – only a quality-centered approach can serve goals of transparency and accountability. How does an audience select what information they need?
- A misguided insistence on unbridled access to court information and intransigence in its regard, not only fails to promote transparency in respect of quality, but also can paradoxically undermine many of the very objectives publication serves.
- Distortions of court-generated information, floating around cyberspace and masquerading as "official" records can eventually risk bringing justice into disrepute.

- The objective is not to dispute the paramountcy of "transparent justice", open court or accessibility, but rather, to take issue with a decontextualized construction of these concepts in the cyber context; particularly vis-à-vis the court's duty to main- tain control over its documents, and to protect the rights (including the right to privacy) of participants in the justice process.

Contribution: Privacy is no longer about the right to be left alone. Instead, in this web-dependent age, privacy in the electronic court records context might ultimately be *about* the very access to justice we seek to protect. The very access to justice paperless records were meant to enhance, is undermined.

Cyberjustice Relation: Along with Mike Blanchefield's article, Eltis looks at the publics' over access of judicial information. Eltis's focus is more on how decontextualized access to information will infringe people's rights and desire to seek justice. This article is related to our project because she is documenting a clear consequence of the technology on litigants.

Felsky, Martin. "Unplugging the Courtroom" *Canadian Bar Association* **(September 2009) online:**
<**http://www.cba.org/CBA/PracticeLink/solosmall_technology/unplug_courtroom.aspx**>.
Scope: Felsky, a member of the Judges Technology Advisory Committee of the Canadian Judicial Council, says that public attention has focused on the use of mobile technology in the courtroom.
Issue: There is a number of wireless networking security concerns. For example, information sent over a public wireless connection is accessible to people with devices that intercept digital signals.
Body:
- In August 2008, the Canadian Judicial Council released a "Model Wireless Networking Policy for Canadian Courts."
- The policy supports the use of wireless networking in the courtroom by anyone participating in legal proceedings, subject to "acceptable" use only, and to the discretion of the judge. "Unacceptable use" is something that causes a disturbance, interferes with court operations or is offensive.
- The policy provides guidelines for sanctions: forfeiture of equipment or ejection from the courthouse
- Martin Felsky, the author, is a consultant, lawyer and legal technology consultant who's been advising the Canadian Judicial Council on technology issues for over 20 years

Contribution: This article highlights a policy of 'best practices' for mobile use – this is extremely relevant.
Cyberjustice Relation: Wireless capabilities in courtrooms is

Hughes, Patricia. "Technological Means to Access Justice?" (Sept. 15 2009)
<**http://www.slaw.ca/2009/09/15/technological-means-to-access-to-justice/**>
Scope: Hughes looks at how technology impacts people with less access to the legal system.
Issue: How do we improve access to clinic services to members of racialized communities?
Body:
- At a legal aid meeting a participant used technology to provide information to people using the legal system (or wanting access to the legal system), ostensibly to increase their capacity for 'self-help'.

- She argues that those lacking access to legal resources in other forms (for example, lawyers) receive the least benefit from technology
- This is because technology requires basic knowledge that allows the recipient of information to interpret and apply it.
- She says internet resources may be useful as a complement but they should not substitute for direct human resources.

Contribution: This article provides insight on implications for poor, racialized communities who already have little access to the legal system.

Cyberjustice Relation: Hughes is discussing a particular aspect of access to justice, or legal information over the internet.

Katya Hodge, "Video Conferencing: Deportment and Delivery Still Count on Screen" *National* **(September 2011) 11, online:**
<**http://www.cba.org/CBA/practicelink/leadership_technology/videoconf.aspx**>
Scope: This article discusses benefits of video conferencing and how to prepare clients.
Issue: The author is addressing the issue witness preparation. The process is different than an in-person witness testimony.
Body:
- Benefits:
    ○ Cost saving,
    ○ Facilitates testimony of children,
    ○ Protects individuals involved in sensitive cases,
    ○ Helps access to justice in remote areas and
    ○ Reduces the cost of security.
- Most view it as a positive tool that offers efficiencies and opportunities that result in justice better served.
- Tips to get your client ready for video conference:
    ○ Dress appropriately
    ○ Look directly at the questioner or into the camera
    ○ Project positive body language because the camera will be focused on the client at all times
    ○ Answers should be open and too the point (pause between question and answer can have a negative impact)
    ○ Have a cooperative attitude towards the questioner - don't argue with them
    ○ Practice being on camera

Contribution: As remote-witness testimony becomes more common lawyers need to know how to prepare their clients in order to best serve their case.

McCallum, Conrad. "How the Electronic Era is Changing the Practice of Real Estate Law" **(December 2008), online:**
http://www.cba.org/CBA/PracticeLink/solosmall_technology/realestatetech.aspx >
Scope: The focus of this article is on web-based title searching and registration and online title insurance ordering (two forms of technology that are influencing how real estate law is practiced)
Issue: How are web-based title searching and registration and online title insurance ordering changing real estate law?

Body:
- Conveyancing software platforms have a lot of revolutionary potential
  - Conveyancing platforms – examples are Do Process's The Conveyancer® software (now owned by Teranet Enterprises Inc.), LawyerDoneDeal Corp.'s RealtiPLUSWeb®, and Stewart Title's LegalSTEPS™ – are designed to increase efficiency, ensure consistency in documentation and allow for ever increasing volumes of transactions to flow through a law firm.
- Current lender platforms enable a lawyer or Quebec notary to receive mortgage instructions and to report electronically to the lender.
- Integration between conveyancing platforms and various third parties, such as title insurers and online registration systems.

Contribution: This article provides another example of an area of law where technology is changing the way lawyers practice.

Cyberjustice Relation: Technology use in real estate law is a good example of beneficial uses of technology.

Ryan, Patti. "Bloggers in the Courtroom" *Canadian Bar Association* **(September 2009), online:**
<http://www.cba.org/CBA/PracticeLink/solosmall_technology/bloggers_courts.aspx>.
Scope: This article looks at a few examples of courtrooms that allowed live reporting.
Issue: What is the impact of real-time reporting?
Body:
- Judges in 2 cases in 2009 allowed journalists to use wireless devices like laptops and smart phones to report live from courtrooms.
  - Ontario Superior Court Associate Chief Justice Douglas Cunningham permitted Twittering and blogging.
  - Justice in London Ontario allowed it in a Bandidos first-degree murder trial.
- There are a number of concerns and benefits for allowing live reporting from the courtroom based on anecdotes from lawyers:
  - One concern: subsequent witnesses gaining access to information about testimony that's been given previously, which could affect their own testimony,
  - Another concern: its leads to inaccuracy.
  - Benefit: Twitter and blogging can facilitate keeping people up to date on proceedings
- Judge's overall concern, according to Martin Felsky, decorum in the courtroom, accuracy of the reporting, and about the potential prejudice to parties or witnesses if information that ought to remain private is published.

Contribution: Like Eltis and Blanchefield, Patti Ryan raises important concerns about how the public right to access information can interfere with the parties' and witnesses' right to privacy.

Cyberjustice Relation: This article provides information based off the opinion of judges and lawyers. It is useful to read how practitioners respond to the use of social media within the courtroom. It is interesting to note the responses that real-time reporting leads to 'inaccuracy' and 'potential prejudice' are based in evidence that this is actually what occurs.

Sciadas, George. "The Digital Divide in Canada: Research Paper" (2001)

Scope: In this article, Sciadas looks at the digital divide in Canada, which includes looking at infrastructure and access to ICTs, use and impediments to use, and the crucial role of ICT literacy and skills to function in an information society. He looks at income and internet usage to quantify how big it is.

Issue: There is a gap between ICT 'haves' and 'have nots'.

Body:
- He refers both to internal country divides, as well as divides across countries.
- Today, governments, business, international and non-governmental organizations are in the midst of numerous initiatives to address ICT-related inequities and reap 'digital dividends'.
- Using mainly the Internet and income, this study places the Digital Divide in perspective, quantifies how big it is and examines how it is evolving.
- Some divides for the internet are: income, age, access opportunities, skills and education, the presence of children, urban areas, attitudes and overall lifestyles (2).

Contribution: He uses the Lorenz curve, used in income inequality studies, to gain insights into whether the divide is growing or closing. This concluded that digital evolution is mixed. However, in results that suggested the digital divide was increasing, it increased less over time. Thus, the digital divide is generally closing (6).

Cyberjustice Relation: More people will have access to technology and that could make the court system more efficient. However, this quantitative analysis raises the questions about how income disparity and different socioeconomic class plays into the digital divide.

Sossin, Lorne and Zimra Yetnikoff, "I Can See Clearly Now: Videoconference Hearings and the Legal Limit on how Tribunals Allocate Resources (2007) 25 Windsor Y B Access Just 247

Scope: The authors explore the implications of video conferencing with a case study: Ontario Landlord and Tenant Tribunal, which is one of the busiest adjudicative bodies in Canada. Analysis highlights concerns: video conferencing in principle and in practice. Authors argue that a tribunal's allocation of resources and the sufficiency of its budget are also core concerns of administrative law. Administrative law reaches beyond conventional doctrines of procedural fairness on the one hand and substantive rationality on the other.

Issue: Video conferencing has generated ambivalence in the legal community. How do we navigate tension between the promise of access to justice, especially for geographically remote communities and questioning if it undermines fairness?

Body:
- How the legislature structures and funds decision-making bodies is not just a matter of political preference but also of legal sufficiency.
- The common law and the Charter of Rights and Freedoms, and unwritten constitutional principles such as the rule of law and access to justice all provide potential constraints both on governments and tribunals as to the organization and conduct of adjudicative hearings, especially in settings like the Landlord and Tenant Tribunal, where the rights of vulnerable people are at stake.
- A challenge to the video conferencing practices of the Landlord and Tenant Tribunal has yet to be brought, eventually the intersection of tribunal resources with the fairness and reasonableness of that tribunal's decision- making will reach the courts.

Contribution: This article provides another context for the use of technology; the Landlord and

Tenant Tribunal.

Cyberjustice Relation: This article raises the issue of substantive rationality and how the judicial process may be less fair (and have political preference) while also being legally insufficient. The focus on procedural fairness in conflict with actually increasing access to justice for remote communities is interesting to problematize and furthers our idea that technology can have a dual impact.

International

Brooke, Henry. "The Legal and Policy Implications of Courtroom Technology: the Emerging English Experience" 12 Wm. & Mary Bill Rts. J. 699 (2003-2004)

Scope*:* This article looks at modern IT infrastructures.

Issue*:* Does justice become injustice if it is too slow and expensive to achieve? The land (England) whose industrial revolution changed the world was slow to embrace Information and communications technology (ICT) in 1985.

Body*:*
- April 2006 – 150 leading court centers in England and Whales will possess a modern IT infrastructure- will embrace criminal law.
- April 2006, UK installed a communications network based on Microsoft outlook.
- Department created an e-delivery division- responsible for providing for the ICT needs of all the different organization that look to the Department for admin support
- Commercial Court, battles conducted between equals, parties accustomed to IT applications in their businesses. No allowances needed for the fact that one part has significantly smaller resources than the other.
- Technology has been featured in Criminal cases, for example, LiveNote transcript and electronic presentation of evidence has reduced the length of these trials and made tasks of judges, lawyers, witnesses and juries correspondingly easier.
- But there are storm clouds in the horizon: is it fair for prosecution to use attractive graphs, high-technology systems when the defence in these cases is almost always supported by public funds, and public funds for this purpose are being increasingly squeezed as a result of projected expenditure greatly exceeding available budgeted resources.
- Disparity of IT resources between the very rich and the very poor.
- XHIBIT: system being developed for use in Crown Courts – a clerk records different stages of case – info immediately appears on a web site to which interested parties have access – a witness for example can be provided with a text-messaging system that will tell him/her when to arrive at court with a good chance of not having to wait too long to give evidence.
- Lawyers need to learn new skills for conducting video link hearings.
- In UK significant funding now only available for criminal justice system.
- How do we take this revolution forward in an orderly way?
- We need to learn from experiments in Courtroom 21 in Williamsburg, Virginia, Singapore, Australia – thinks that we need to experiment with public-private partnerships.

Contribution*:* This article brings the economics of technology into the discussion. For instance, corporations will have more funds to improve evidence display over public lawyers, legal aid lawyers. This discrepancy could build much more injustice.

Cyberjustice Relation: Henry Brooke brings up the importance of public-private partnerships as a necessity in funding cyber-projects.

Davies, Martin "Bypassing the Hague Evidence Convention: Private International Law Implications of the Use of Video and Audio Technology in Transnational Litigation"
Scope: The article considers the private international law issues that arise when a witness in one country gives evidence directly via conferencing technology to a court in another. The article provides comparative analysis of the relevant law in several common law countries and stresses the need for a uniform international solution.
Issue: How do we deal with cases in different jurisdictions?
Body:
-   The probative force of evidence given remotely from another country is affected if there is no effective sanction for perjury or contempt by the witness – or if the witness claims a privilege that wouldn't be available in the jurisdiction where the court sits.
-   Hague Evidence Convention does not have a provision for such situations, which must be resolved by national law.
-   Technology developments are changing the way litigation is conducted – high-technology courtrooms are increasingly common, with e-filing and case management systems, electronic access to legal authorities and case records, laptop ports and wireless internet routers and virtual presentation of evidence are all common place in courts.

Contribution: Davies discusses the need to change the Hague Evidence Convention to account for technological advancements.
Cyberjustice Relation: This article discusses issues that are reflective of the fact that regulations are not keeping pace with adoption of new technologies.

Wallace, Anne "E-Justice: An Australian Perspective (204-228) in *E-Justice Using Information Communication Technologies in the Court System* edited by Agusti Cerrillo I Martinez and Pere Fabra I Abat (Open University of Catalonia, Spain: 2009)
Scope: This chapter discusses the experience of e-justice in Australia as a whole (not of ech jurisdiction) and argues it has some way to go to achieve the goals set out in the 1999 report Australian report on the prospective impact of ICT on the justice system presented a vision of technology resulting in a new paradigm of 'e-justice' (205). Wallace argues the e-justice project has been unsuccessful because the emphasis I on using ICT to support existing court practices and procedures. In order to succeed it must embrace innovative potential and new ways technology could be used to deliver justice.
Issue: Australia has not met technological predictions.
Body:
-   Wallace uses a definition of technology from the Australian Law Reform Commission as applications of scientific knowledge.
-   She details the emergence of ICT in Australia: starts with the *desktop computer*; *case management* used software to record cases filed, draw up court hearing lists, track and manage progress and outcomes; decisions started to be freely available in *electronic form*; *court websites*; *software packages* designed to manage information about scenarios with complex relationships between parties; *evidence storage*; electronic mail and *internet* technology can be used to allow the creation of secure networks within which, parties exchange information; *electronic courtrooms* started being built during the 1990s

to accommodate new technology; independent secure networks for the judiciary; video-conferencing (particularly useful because of Australian geography); *transcripts* in electronic form; most courts are in the process of initiating *e-filing*; *electronic search facilities* enable members of the public to search a database of selected information on cases initiated in the federal Court of Australia and in the federal law jurisdiction of the Federal Magistrates Court of Australia; *e-courts* are used to handle pretrial hearings; integrated justice systems can be used to increase efficiency (a system where information is entered into a database once then shared across relevant agencies)(206-210).

- Only one court, the Victorian Parliamentary Law Reform Committee in its 1999 report, has articulate Goals for the use of technology: "An accessible, inexpensive, transparent and efficient system, which is responsive to the needs of the community".
- Most of published literature in Australia on court technology is conceptual and descriptive and provides very little empirical, results-focused research.
- She discusses different justifications for ICT: accessibility, cost-effectiveness, transparency and enhanced performance (215-218).
- Wallace links technology with rule of law: the key criteria of rule of law is that the law should be accessible and citizens should be able to know and understand what the law is (211).
- Publishing hard legal knowledge can meet the needs of members of the public to navigate the court process. ICT can also help courts publish new kinds of information. A more sophisticated approach requires a better focus on users' needs (213).
- The last part of her article focuses on the transformative possibilities of technology. She uses Richard Suskind's grid to situate where Australia's IT projects lie. She says Australian projects are primarily in the bottom section of the grid, that is, infrastructure and internal knowledge management systems with some attempts to extend use into the top left quadrant by using IT to enhance traditional methods of delivering justice. For example, case-management is an example of an internal service and e-filing of an outward focused service.
- She also discusses that technological advances make a virtual courtroom a real possibility in the future.

Contribution: Wallace's research draws lessons and predictions for future technological trends. It is clear there is scope for further research and she identifies what that research should focus on.
Cyberjustice Relation: Wallace identifies a gap in Australian court technology literature: there is little empirical, results-focused research. This is a similar gap in Canada.

Wallace, Anne "Sentencing by Videolink Remote Sentencing: Possibilities and Pitfalls (National Judicial College of Australia, Sentencing Conference February 6-7 2010
Scope: Wallace gives a brief overview of the legislative framework in Australia around the use of either video- or audiovisual link, as it is termed for sentencing purposes and she gives some insights from the interview data that she gained in the course of the project. She also reflects back information that was given to her by over 90 justice system professionals in the course of the project, including judges, magistrates, court officers, court officials, court support workers, defence counsel and prosecutors.
Issue: Is video-conferencing or audio-visual link being used to deliver sentence and what were some of the factors influencing the exercise of that discretion?
Body:

- There is specific legislation in some Australian states that allows for sentencing of accused by video-link and in some states that applies to all accused, in some it only applies to accused in custody.
- She talks about furthest extreme: New South Wales, there is a presumption in favour of remote appearances by defendants.
- In South Australia, the use of remote appearance is restricted to pre-trial motions.
- The laws in and around the mid-nineties were removed by most Australian jurisdictions to enable their courts to take evidence, hear submissions and, in some cases, enable appearances by the use of either video- or audio-visual link. You can add to that some specific powers that are given to individual courts in their enabling legislation. The position overall is a bit of a mish-mash and there is certainly not a consistent approach, but a court could fall back on the use of one of these general powers to enable, for example, an accused-in-person to make a submission on behalf of an unrepresented accused or in jurisdictions like the Northern Territory, where the legislation includes enabling appearances, to actually use this legislation to enable an accused to appear by video-link at their sentencing.
- In a number of courts the court rules are not consistent.
- The tests generally come down to factors like convenience, fairness, the interests of justice, interests of the administration of justice and reasonable availability. In our interview data Wallace looked at how those provisions were being interpreted in practice.
- Some concerns were: quality and availability of technology; lesser impact; loss of some aspects of non-verbal communication; less opportunity to clarify the accused persons understanding of the sentence; and, less ability to involve others (family/community) in sentencing process.

Contribution: The research revealed video conferencing is being used to impose sentences not. It has been used both for accused persons in custody and for accused persons who are not in custody, perhaps not surprisingly more often for summary offences than for serious charges. Also, the research team was surprised about this technology being used frequently to provide access to the sentencing process for victims and families.

Cyberjustice Relation: This is related to our own exploratory research. Wallace researched video-link by interviewing those involved in the court in order to identify advantages and disadvantages of using this technology. This article provides guidance on examples of justice system employees we should ask to interview and the type of legislative, regulatory frameworks we should be identifying.

New Technologies and Access to Justice: Small Parts Within a Much Bigger Purpose

This section outlines information on access to justice and the use/possible uses of technology increasing and/or decreasing access to justice. The literature here brings out a number of perspectives on what 'access to justice means'. On the one hand, there is the opening of the justice system to the public. In this category, facebook, free databases, and efficiency increasing measures help citizens access the judicial system. On the other hand, there is access to justice as a component of democracy and rule of law. This involves eliminating obstacles to individuals and communities to access the legal system. Of particular interest, within the latter category of

access to justice is if indigenous communities can use these technologies to increase access to justice. Indigenous populations in North America, Latin America, South America, Australia and New Zealand have been marginalized and socially discriminated for centuries to benefit colonial powers. Can the technologies, designed within that power system be used to serve those communities? Can this work in communities that distrust legal institutions that traditionally perpetuated injustice? Ultimately, barriers to justice are a serious social problem as the Canadian Bar association points out in Canada. As various barriers are identified below it is easier to envision how technology can facilitate removing or perpetuating them.

American Jurisdiction

Blanck, Peter, Ann Wilichowski and James Schmeling " Disability Civil Rights Law and Policy: Accessible Courtroom Technology" Wm. & Mary Bill Rt
Scope: This article examines courtroom access for individuals with disabilities, particularly as enhanced by the use of technology. The authors describe technology available to enhance access to courts for persons with disabilities.
Issue: Courts traditionally designed in a way that marginalized persons with disabilities.
Body:
-   Fred Galves notes courtrooms in US today should have: monitors, whiteboard display system, attorney podium equipped with CD-ROM drive and VCR, LCD projector, real time court reporting and transcription display, rear projection, touch sensitive, pen-writeable TV, flatbed scanner, bench and counsel table access to statutory and case law via West and LEXIS CD-ROMs and a video taping system synchronized to the real-time transcript (835).
-   Assistive technology has potential to benefit not only individuals with disabilities but also others in the courtroom.
-   California Court Rules imply that courtroom technology is required to make proceedings accessible to people with disabilities.
-   Universally-designed court technology enhances access.
-   There are two accepted standards: (1) the web content accessibility guidelines (WCAG) of the World Wide Web Consortium (W3C); and, (2) in the US, section 508 standards mandate the accessibility of Web sites and electronic and info technology used by the federal government. These standards enhance uniformity and accessible technology design across judicial systems.
-   An investigation of technology issues is needed – because, the impact will expand to all underrepresented individuals in society.

Contribution: Concludes with thoughts about the growing use of accessible courtroom technology for individuals with disabilities. *Will courtroom technology help people with disabilities and other underrepresented persons to participate equally in the legal process, or will technology further distance them from the courtroom?*
Cyberjustice Relation: This is another dimension of access to justice to add to our discussion, which is *physical* access for people who traditionally are not able to participate in court processes.

Burke Robertson, Cassandra "The Facebook Disruption: How Social Media may Transform Civil Litigation and Facilitate Access to Justice" Arkansas Law Review, Forthcoming, Case Legal Studies Research Paper No. 2012-5

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2002999>

Scope: This article looks at the disruptive effect that facebook and other social media are likely to have on civil litigation. It predicts middle-class litigants will embrace legal support offered online, including easier access to relevant evidence, crowd sourcing of legal information and advice, automated and semi-automated legal services and assistance from offshore legal service providers.

Issue: How will social media impact legal support and information?

Body:
- The US middle class has a great deal of economic pressure and cannot pay for legal representation. Thus, there is a market for self-representation and information gathering.
- There are two emerging trends in the US: (1) ubiquity of online social media in US; and, (2) the growth of self-representation in civil litigation. These trends may combine in a way that transforms traditional legal practice.
- Burke discusses Professor Clayton Christensen's theory of disruptive innovation, which Richard Susskind applied to the legal field.
- For people who have access to internet, social media enables: (1) informal discovery, enables pro se litigants to obtain relevant info outside the formal mechanisms of discovery practice; (2) harnesses the wisdom of crowds to furnish legal advice also known as crowd sourced legal advice; (3) helps litigants access automated and semi-automated services to help prepare legal documents; (4) by connecting litigants to overseas legal service providers who may provide limited services at substantially lower rates also known as globalized outsourcing and ghostwriting (p 7).
- There are systemic changes in the Market for Legal Services: social networking and online communities may expand access to justice for the middle class by enabling them to take the lead in their own legal matters.
- Burke offers some predictions on changes in legal profession.

Contribution: Burke identifies emerging trends (social media and increased self representation) that could change the face of the legal profession. This is also related to changes that Susskind predicted about how technology would internally transform the way people within the legal profession would work. Burke is focusing on members of the public who use the legal system.

Cyberjustice Relation: This article is related to the middle-class access to justice crisis that Chief Justice McLachlin identified.

Center for Access to Justice and Technology: <http://www.kentlaw.iit.edu/institutes-centers/center-for-access-to-justice-and-technology >

Scope: This is a website on the center for Access to Justice and Technology. The website provides links to software used to helps make justice more accessible.

Issue: The software advertised on the site and technologies in use by the Center were implemented in response to the issue of lack of public access to the legal system.

Body:
- Illinois Institute of Technology Chicago-Kent College of Law established the Center for Access to Justice & Technology (CAJT) to make justice more accessible to the public by promoting the use of the Internet in the teaching, practice of, and public access to the law.
- The Center conducts research, builds software tools, teaches classes and supports faculty, staff and student projects on access to justice and technology.
- Currently, CAJT manages and promotes the Access to Justice (A2J) Author®, leads

the A2J Student Editorial Board (A2J-SEB), and directs the Self-Help Web Center (SHWC). In addition to these activities and initiatives, CAJT also administers the Certificate in Public Interest Law.

Contribution: The website has a wealth of information on the access to justice issue.
Cyberjustice Relation: The CAJT has a clearly articulated goal by implementing these technological advancement; increasing the public's access to justice.

Lederer, Fredric I. " High-Tech Trial Lawyers and the Court: Responsibilities, Problems and Opportunities, An Introduction" (2003) online:
http://www.privacy.legaltechcenter.net/media/articles/hightech.pdf >
Scope: In this article Lederer looks at the implications of when technology fails to work. The essay sets the stage for a discussion of the interdependent responsibilities of court and counsel in the context of technology-augmented trials, especially when technology fails, appears to fail or works inadequately.
Issue: Lederer identifies that a primary concern has involved questions of courtroom design, comparative technology use, and, occasionally, issues of law relating to that use. There is also a need to deal with practical implications of the use of technology in terms of the relationship between high-technology trial lawyers and the courts.
Body:
   - The article looks at current goals of the court and counsel.
   - He overviews technology and the courtrooms, in order to identify who should do what. When technology fails it is helpful to know who has responsibility for what
        o He looks at the difference between permissive courts and mandatory courts?
   - He looks at people and resources in the court – looks at all the people involved in day-to-day functioning
        o Lawyers aren't trained with technology
Contribution: This article asks a relevant question: what should the court do if a lawyer has a technical problem?
Cyberjustice Relation: This article highlights a number of issues that could arise within a high-technology courtroom. There can be technological problems that prevent or delay a trial from occurring. Technology is also advancing very quick so high-technology systems may be outdated and require system upgrades very quickly. That makes implementing technology very expensive and it is something to keep in mind.

Rhode, Deborah L. *Access to Justice* (Oxford Publishing: 2004)
Scope: The book itself looks at gaps in the US justice system. Rhodes argues that there is too much law for those who can afford it and too little for everyone else.
Issue: How do we bridge the access to justice gap in an over-litigious society?
Body:
   - She defines the goal of access to justice and asks: access for whom? For what? How much? And who should decide?
   - She looks at the historical perspective:
   - 1215 Magna Carta: "to no one will we sell, to no one will we refuse or delay, right or justice" (47)
   - For most of US history, access to the law was considered a basic right; access to lawyers

was not.
- Early state constitutions did not encompass access to legal assistance for those who could not afford it.
- English law: 1495 Statute of Henry VII authorized appointments of counsel at courts' discretion for the poor. Cases from 15th C. on made references to judges' authority to assign counsel.

Contribution: This book is motivated by a desire to reform the US justice system from the status quo where an average lawyer spends less than a half hour a week doing pro bono to a system where people have more access to justice. She outlines what could and should be done to fix the access to justice problem

Cyberjustice Relation: This book has an important historical dimension. The history driving access to justice is important to keep in mind and ground our research in.

Resnick, Judith and Dennis Curtis *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms* **(2011, Yale University Press)**
Scope: In this article Resnick discusses the public importance of courtrooms.
Issue: Is non-public adjudication undemocratic?
Body:
- Diminution of public adjudication can be seen as a loss for democracy because adjudication itself is a kind of democratic process.
- Thus normative implications of video conferencing is that it prevents the 'public processes of courts from contributing to the functioning of democracies and giving meaning to democratic aspirations."
- "Public adjudication as democratic process".

Contribution: This is an interesting take on the adjudicative process – the adversarial system as one that benefit democratic societies. Many other articles simply focus on individuals within the judicial system. But this article looks at the impact on the public.

Cyberjustice Relation: Resnick's argument provides a useful analytical lens to ask how technology will facilitate or detract from public adjudication as a democratic process.

Staudt, Ronald W. "All the Wild Possibilities: Technology the Attacks Barriers to Access to Justice"(Summer 2009) 42 Loy LA L Rev 101.
<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1543329>
Scope: This article describes A2J Author software.
Issue: This is an article addressing the access to justice issue. It asks if A2J Author can solve this issue.
Body:
- A2J Author, a modest software tool that allows lawyers to build guided Internet interviews for prospective clients, has been adopted across the US and in several foreign countries as an interface for public access to legal processes.
- Can A2J Author begin to transform the delivery of legal aid and government service to low-income people?
- There is a national document assembly project: HotDocs chosen as standard software for all of its grants for document assembly and form preparation – provided to legal aid programs free of charge.

- A2J: software solution to the interface problem aided by the task force that chose HotDocs – it has proved to be a tool capable of attacking a wider range of access to justice barriers.
    o It has been a success – in 2008 1201 A2J Guided Interviews were active.
    o Illinois has another example of a coordinated state-wide legal aid web site functioning as a service platform to deliver A2J Guided Interviews and automated docs to low income people. Illinois Legal Aid Online was built with support of the Chicago Bar Foundation and the lawyers Trust Fund of Illinois; it hosts dozens of guided interviews created with A2J Author.
- Online Legal Service Intake: legal aid organizations used computerized case management systems to track existing clients and prospective clients, manage docs, organize info connected to their cases and prepare annual reports to LSC on the work done with the Federal grants. They tried to use XNL standards to facilitate the movement of client data over the Web between case management systems.
- E-Filing: court system is the least automated part of US government. E-filing was not built to serve the public but lawyers. Self-represented litigants are relegated to paper filing onsite at the courthouse.
- Imagine: a single web page with A2J Guided Interviews linking people to information about their legal rights and a wide variety of options for services and problem solving – technology could assemble documents that trigger or effectuate those rights.

Contribution: This article provides an in-depth description of a technology used in the US that has proved to be tackling access to justice issues. It is another technology, like those used by the CAJT that started with the goal of increasing access and allowing people to effectuate their legal rights. "By starting with the customer, A2J Author helps managers of legal services imagine new methods to deliver access to justice over the Internet to low income people facing the barriers of complexity and cost. A2J Author helps us imagine all the wild possibilities"(129).

Cyberjustice Relation: This article describes a technology, A2J Author that has a goal of providing more effective and less expensive legal services to people. This is inline with our goals.

"Videoconferencing in Removal Proceedings: A Case study of the Chicago Immigration Court" the Legal Assistance Foundation of Metropolitan Chicago and the Chicage Appleseed Fund for Justice (2 August 2005)

Scope: This a report from a study commissioned and undertaken in Chicago immigration courts. The Executive Office for Immigration Review (EOIR) believes video conferencing enhances efficiency.

Issue: The consequences of immigrant removal are serious and there has been no study prior to this on its fairness or efficiency.

Body:
- Videoconferencing in Chicago is marked by problems – in the aggregate nearly 45% had problems. There were many technical problems (6).
- The impact was more severe on detained immigrants who were unrepresented.
- Nearly 30% of those who had an interpreter appeared to misunderstand what was going on during the hearing due to misinterpretation or inadequate interpretation.
- Language played a role in removal – 76% of Latinos who did not speak English were removed while 46% of Latinos who spoke English were removed.

Contribution: This study presented serious problems with video conferencing and ultimately recommends that video conferencing not be used.

Cyberjustice Relation: This is related to our projects discussion on the impact of technology. However, it seems like the underlying current is the problem with racism in the justice system – that may be exacerbated by video conferencing – but is something that won't go away simply by running trials in-person.

Canadian Jurisdiction

Canadian Bar Association "Canada's Crisis in Access to Justice" (April 2006)

Scope: This paper was submitted to the United Nations Committee on Economic , Social Cultural Right on the occasion of the consideration of its reiview of Canada's Fourth and Fifth Reports on the Implementation of *the International Covenant on Economic, Social and Cultural Rights.* The focus of the submission is on Canada's crisis in access to justice because of governments' failure to ensure that adequate civil legal aid is available to all people when fundamental interests are at stake.

Issue: How do we improve our system of publicly funded legal services?

Body:
- The poor people who are denied access to justice are the same people who already experience disadvantages of many other kinds, including women, children, people living with disabilities, Aboriginal people, members of racialized minorities, the elderly and refugees.
- Deficiencies in legal aid result in a high proportion of unrepresented litigants trying to make their own way through complex legal proceedings. This reality bogs down the court system, using much more court time than would be required with lawyers involved.
- We incarcerate already disadvantaged people at significant social and economic cost, and those people may not have faced incarceration if they had legal counsel and access to adequate social programs. Failing to facilitate legitimate claims for family child support and division of matrimonial property, as well as access to social programs increases poverty.   It also denies poor people.
- To domestic remedies when they are denied benefits and services to which they are entitled under Canadian law.
- Legal aid is administered by distinct legal aid plans in each province and territory, and coverage and eligibility vary dramatically.   Generally though, eligibility requirements are so low that they exclude many poor people from access to civil legal aid. There is a dire need for national standards for civil legal aid to ensure compliance with Canada's *ICESCR* and constitutional obligations.
- Canada's federal Department of Justice funds criminal legal aid through cost sharing agreements with each province and territory.
- Too many poor people are forced to represent themselves, even on serious charges, resulting in unnecessary criminal records and even wrongful convictions. However, the systemic picture with respect to lack of civil legal aid is even more abysmal.
- The decline of civil legal aid started in 1995, when there was a change in the structure of funding for civil legal aid.
- The CBA filed suit in June 2005 in British Columbia Supreme Court, naming the provincial government of BC, the BC Legal Services Society and the federal government

of Canada for failing to provide access to justice in compliance with the *Constitution* and Canada's obligations under international law, including the *ICESCR*.

- o Viewed as a test case that will draw attention to the inequities in access to justice in Canada, and the devastating impact that the absence of an adequate legal aid system has on poor people.

Contribution: The federal government of Canada should provide targeted funds to support civil legal aid. In co-ordination with provincial and territorial governments, the federal government of Canada should guarantee effective national standards pertaining to coverage, eligibility and adequacy of civil legal aid.

Cyberjustice Relation: This article highlights the legal aid situation in Canada; an issue that cyberjustice could help.

Canadian Forum on Civil Justice "The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems" (2010) SSHRC Proposal online:

Scope: This is a SSHRC research proposal that is focused on access to civil justice.

Issue: There is an access to justice crisis. Members of the public cannot afford to resolve legal disputes and problems through formal processes. to justice is critical because it is a failure if a country with one of the must advanced justice system fails to meet the needs of the people it is meant to serve. Little is known about how well the civil justice system works: what it costs, who bears those costs, who is well served by it, whether it is meeting the needs of users, or the price for failing to do so.

Body:

- The proposal identifies the importance of to civil justice: a social purpose as a source of (1) information about the rights and responsibilities of individuals, businesses and governments and (2) as a dispute resolution function connected to addressing and resolving legal problems.
- They present research that 45-48% of the Canadian population has a legal problem every day; just a small percentage of these are addressed by the courts (4).
- Evidence that costs are too high are demonstrated by the large number of self-represented parties in courts, this is as high as 50% in family courts.

Contribution: This project proposal identifies a gap in the literature.

Cyberjustice Relation: This research project, like our own, is interdisciplinary in its analysis. They also list research questions, research phases, methodologies and strategies and how they will communicate the results of their action research. It is informative to see how this research project was designed and identify aspects that could be relevant to our study.

Canadian Forum on Civil Justice "What does it cost to Justice in Canada? How much is "too much"? And how do we know?" (February 2010)

Scope: This literature review investigates how issues related to the costs of civil justice are reported.

Issue: There is a need to increase our understanding of the costs associated with making civil justice our top research priority.

Body:

- They propose research questions that demonstrate there are also varying paths to justice, which may or may not include litigation.
- The review focuses on the costs associated with litigation. They identify three broad search

terms to identify sources of information: "the cost of litigation"; "litigation cost"; "legal cost".

Contribution: This project focuses the issue on civil courts and particular family court issues.

Cyberjustice Relation: The Canadian Forum on Civil Justice project focuses on litigation cost as a major deterrent to access to justice. It will be interesting to see if there are technological solutions to that issue.

Federman, Mark "On the Media Effects of Immigration and Refugee Board Hearings via Videoconference" *Journal of Refugee Studies Vol 19, No 4 (2006)*

Scope: This article is based on a study that reviews the fairness of conducting refugee hearings via video conferencing. The study found it reduces trust and understanding, exacerbates cultural differences in non-verbal communication and increases the propensity to lie while decreasing the ability to detect falsehoods. The author draws on basic precepts of media theory in his analysis.

Issue: Are there cognitive and sensory differences when using video conferencing technology? Does the process of conveying meaning become more difficult – introducing the possibility of inconsistency, inaccuracy and altered judgment?

Body:
- Federman highlights the context of refugee hearings that necessitates video conferencing: the volume in certain cities is too high so files are transferred to other less busy cities across Canada and the claimants are heard via video conference.
- The US and Australia also use video conferencing.
- Federman discusses 'emergent meeting': where the various elements under consideration (the story, applicant's believability, political situation in the applicant's homeland, degree of specific risk to the applicant's life if the application iss denied, creates a mélange of understanding) (435)
- When adjudicators hear testimony via video conference, elements that contribute to the 'total field' of effects are: relative cultural conditioning of television itself, participants' conditioning relative to video camera use in surveillance; the effects of distortions in experiencing non-verbal communication; the effects of a video-mediated environment may have on encouraging or detecting deception; the effects of the participants' relative imbalance in experience with video-conferencing, among other secondary and tertiary *Ground* influences.
- Federman presents McLuhan's argument that analysis shouldn't focus on content but the medium and the cultural matrix within which the particular media operates'.
- He presents various studies comparing face-to-face interaction with interactions through video that had the following conclusions: despite providing visual information, video conferencing may be less efficient in 'task completion' relative to telephone that provides an audio-only channel' (O'Donnell, 1997); as regular adjudicators become more accustomed to conducting hearings via video conferencing the power balance between adjudicators and applicants will become even greater that that which normally exists in traditional face-to-face hearings (Straus et al)(440); participants used more cords to complete the task under conditions of video-mediation compared to face-to-face presence (Doherty-Sneddon et al., 1997); mediated communication may distort feedback of how one is being received, thereby impairing communication flow (Sellen, 1995) (441); there are learned rules of emotional judgments that differ from culture to culture (Biehl et al, 1997) (445).

- The research shows that participants experience more difficulty in achieving mutual understanding in video-mediated environments than face-to-face encounters (442).
- The Ellis review of video conferencing: Ellis observed video conference hearings, completed interviews and surveys. There were large differences between the opinions of counsel and board members (447). The results demonstrate cognitive differences on with
- Does video hearings distance members and RPOs from the humanity/personhood of the claimants and counsel on the 'other side'?

Contribution: Federman's synthesis of research studies, media theory and the Ellis review provide insight into the consequences of using video conferencing. Ultimately Federman says video conferencing introduces more inconsistency, inaccuracy and altered judgment – this calls into question its fairness.

Cyberjustice Relation: Federman asks if the content of a medium blinds the observer to the character of the medium, is it possible that a medium's intrinsic effects change the observer's perception of the content? The reaction of IRB lawyers, consultants and advocacy organizations to the use of video conferencing were similar to the reactions of equivalent players in the criminal justice system; there was much criticism. Whereas, IRB management and staff greeted it's implementation positively.

"From Potential to Practice: Telecommunications & Development in Nishnawbe-Aski Nation – A Report on K-Net activities to improve regional telecommunications infrastructure and diffuse information & communication technologies and capacities between October 1998 and October 2000" *K-Net (*prepared for Industry Canada/Fed Nor) (31 March 2001) online: K-Net <http://knet.ca/NAN-wide.pdf>.**

Scope: This report details the activities of K-Net's efforts to improve telecommunications in Northern Ontario and remote aboriginal communities.

Issue: The early 1990s saw an increase in advanced networking capacities, diffusion of internet protocol and the introduction of new media services and promised new opportunities for First Nations to participate with information technology. But the major issue was/is the gaps in the coverage and the capacity for the regional telecommunications system. Some communities did not have telephones, were 'off the grid', there was an aging telecommunications infrastructure that prevented affordable access to data services. Hybrid analog technologies could not reliably accommodate new subscribers, new services or new types of users. In the face of all these issues, the projects detailed in this report emerged.

Body:
- Project Background: K-Net is the ICT branch of Keewaytinook Okimakanak (Northern Chiefs Council). In 1998 K-Net agreed to run a NAN-wide initiative to accelerate the regional use and adoption of ICTs. The strategy was to improve access to affordable telecommunications services by implementing, testing and refining community-based applications and delivery models. By Fall 2000, projects and animated significant positive change within the NAN telecommunications environment.
- There is a section that relates to justice and policing. It discusses the Ontario Court system pilot video conference applications that demonstrate video conferencing is an effective medium for remands of accused persons in custody.
- K-Net started installing area networks in its communities in 1998, this included a connection to local Nishnawbe-Aski Police Service (NAPS) offices. NAPS commissioned a study of video conferencing options in 1999 and recentaly, at the time of

- the report began work with the Attorney-General and Solicitor-General for Canada to examine Justice and Policing applications in NAN.
- In September 1999, video conferencing use was extended to bail hearings on the weekends (a first for Ontario), the appeared in the courtroom in London Police facilities via video conference.
- Advanced applications such as on-line learning, telehealth and e-court are less stable initiatives in the project. They are uses designed to emulate standards established in face-to-face contexts and to improve the level, quality and accessibility of existing services. So they require specialized knowledge and training to operate and maintain, consumer significant network resources and blend open and proprietary standards (p 89).
- Another barrier is that these applications have high demands on the telecommunications infrastructure and require a significant capital investment. Institutional and user value are tied directly to the reach of the broadband network and the scalability of the application. Successful advanced applications constitute a major source of on-going revenue and a primary indicator of long-term network growth and sustainability.

Contribution: The report is dated, and it will be important to follow-up with K-Net to see if these projects are still running. It details a community-based and community-focused approach to implementing ICTs.

Cyberjustice Relation: There is a discussion on ICTs and the barriers to implementation of ICTs in justice and policing that is relevant to our project. This report provides a different perspective on how ICT can build access to justice in remote areas.

Lachance, Colin "Twitter, Facebook and the Rule of Law" (April 16, 2012) Online: SLaw <http://www.slaw.ca/2012/04/16/twitter-facebook-and-the-rule-of-law/>

Scope: This article is about social media networks that serve the purpose of rule of law.

Issue: In order to have rule of law, the law must be known.

Body:
- Twitter and Facebook should not supplant the government's responsibility to make the law known, but even the government is increasingly using social media.
- Twitter, Facebook and other networks can effectively serve the objective of upholding the rule of law.
- CanLII's statistics show people follow links to their site (more hits from Twitter)
- Tweet buttons make sharing information easier.
- Last year CanLII added Tweet buttons to all decisions.
- Do this as *a small part of a bigger purpose* (making law known).

Contribution: This article contributes to the idea that it is fundamentally important to a democratic society that its law is widely known and that its citizens have unimpeded access to that law.

Cyberjustice Relation: This is looking at a specific type of access, access to legal information as an aspect of democratizing the legal system. This highlights another are

Expanding Horizons: Rethinking to Justice in Canada, Proceedings of a National Symposium (March 31, 2000) Department of Justice Canada.

Scope: This article looks at access to justice in Canada, the scope of which, has widened in recent years to look at underlying social, economic and psychological factors.

Issue: Many programs take for granted a traditional form of justice that is formal and technical. Although access is being improved is still generally defined in narrow legal terms. There is a need to make justice citizen centered.

Body:
- Department of Justice had a formal and technical approach to access to justice.
- Justice means more than simply applying the law without regard to the underlying social, economic, and psychological factors, as we have become increasingly aware in recent years. New ideas have entered the discourse, widening the scope of the concept and affecting the way we think of justice – and of access to justice. It is not enough to treat access as solely a matter of courts and formal legal proceedings.
- Justice is complex and multidimensional – so must the methods used to achieve it.
- Access to courts isn't the same as access to justice.
- Resources are key issue in providing access – need them for new and innovative community-based programs.
- The concept of justice means different things to different people – there is a difference between access to the justice system and access to social justice.

Contribution: The conclusion arising from this conference was: there needs to be a community response to justice issues. However, this also raised the question: in an urban society is a community response possible?

Cyberjustice Relation: The report drew an important distinction between access to justice and access to social justice. This is related to the different definitions of access to justice that exist. The symposium was in 2000 and was seen to be evidence of a willingness to experiment with change and give new ideas a chance on the part of the Department of Justice. That same spirit need to embrace technology.

Kingswell, Mark "Citizen Access to Justice: Issues and Trends for 2000 and After" in
Expanding Horizons: Rethinking Access to Justice in Canada, Proceedings of a National Symposium
Scope: This article identifies key issues and trends for access to justice as Canadians enter the 21st Century. Attempts to characterize matters that already concern the legal system. Kingswell writes as a political philosopher and social critic.
Issue: access to justice must be a part of any just society. Canada does not have as good a reputation as many politicians think.
Body:
- The paper focuses on 5 main trends and issues in the justice system:
- 5 trends and issues for access to justice: (1) growing diversity of Canada; (2) globalization and citizenship; (3) the complex isomorphic relationship between culture and political experience; (4) the role of technology; (5) the possibility of new forms of citizen action.

Contribution: He says that we need to open up spaces for thoughts about access to justice and justice that are not first and foremost driven by the imperatives of policy-making or problem-solving.
Cyberjustice Relation: Technology is part of the solution to the access to justice issue but it may prove problematic if it remains driven by the imperatives of policy-making or problem-solving.

Kritzer, Herbert M. "Access to Justice for the Middle Class" (257- 268) in *Access to Justice*

for a New Century: the Way Forward **edited by Julia Bass, W.A Bogart and Frederick H. Zemans (Toronto: The Law Society of Upper Canada, 2005)**

Scope: This article emphasizes the dilemma of access to justice for the middle class.

Issue: The issue is the 'J' curve; Because of legal aid those at very bottom of the economic hierarchy often have better access to the institutions of justice than do those somewhat above them who are more middle class (258).

Body:
- People in different socio-economic groups face different situations the question here is how to provide access for the middle class (259)?
- The article looks at different systems to alleviate burden on legal fees.
- Two costs hinder accessing justice system and impact access to justice j-curve: (1) the cost of one's own legal counsel; and (2) the cost of what happens if you lose and have to pay the other side.
- The combination of the cost of getting counsel and the downside risk of losing the case has served a rationing effect.

Contribution: The article examined issues of access to justice by middle class and explained ways to improve access (265). Kritzer suggests the ability to access justice is not a linear function of economic well-being, there is a 'J-curve'.

Cyberjustice Relation: The increasing use of cyberjustice could be the address some of the issues Kritzer identifies in his article. The middle class has ample access to technology needed to obtain information and access justice.

MacDonald, Roderick A. "Access to Justice in Canada Today: Scope, Scale and Ambitions" (19-112) in *Access to Justice for a New Century: the Way Forward* edited by Julia Bass, W.A Bogart and Frederick H. Zemans (Toronto: The Law Society of Upper Canada, 2005)

Scope: This article explains the aims and aspirations of an access to justice strategy.

Body:
- Assesses who are excluded, the barriers that exclude (27) and who access to justice strategies will benefit (people who have economic disadvantage, socio-demographic factors, stigmatized groups and people with mental disabilities and health problems)(30)
- Provides analysis of legal aid system (34).
- Suggests that some of foundations of legal system should be reassessed.
- Looks at 5 waves in access to justice thinking: (1) access to lawyers and courts (2) institutional design (3) demystification of the law (4) preventative law (5) proactive access to justice (20-21).
- Identifies an access to justice strategy: (1) just results (2) fair treatment (3) reasonable cost (4) reasonable speed (5) understandable to users (6) responsive to needs (7) certain (8) effective, adequately resourced and well organized (23-24).
- Broadens inquiry of debate: until access to membership in law faculties, the legal professions, parliament, the judiciary, public service are available, access to justice will be unattainable (100).

Contribution: This article sums up themes within access to justice debate (101)

Cyberjustice Relation? The article shows that lack of access to justice is a multi-faceted problem (24) – that's why we can't just infuse technology as the end all solution. It reminds us to ask what type of justice/who's justice are we increasing access to (87)?

Maloney, Maureen "New Partnerships and New Delivery Mechanisms" (2000) online: Department of Justice <http://www.justice.gc.ca/eng/pi/rs/rep-rap/2000/op00_2-po00_2/p7.html>

Scope: This article was based on a session of the Expanding Horizons conference, Maloney summarized a discussion on changing conceptualization of justice and what justice will look like in the new information age.

Issue: How will the conceptualization of justice change with globalization and the new information age?

Body:
- "Our society is so diverse, so the answers to justice-related issues will be diverse. We may need a philosophical shift from a new liberal based system to one grounded in the community and aware of cultural issues" (17).
- There is a risk involved with emphasizing IT as a means of reaching out to non-traditional communities – but it is important.
- Concerns with growing commercialization of the internet – must ensure there is necessary public space (danger of corporate sponsorship – for discussing justice issues.

Contribution: This article also addresses the importance of 'public space' and raises the concern that technology has a way of minimizing the public space. She worries people will just stay at home and not have public discussions – we need to find a way for people to still meet face-to-face.

Cyberjustice Relation: This article also raises the idea that the court is an arbitor of democracy. This is an issue that technology enthusiasts need to address. If we switch to cyber systems, how do we maintain the therapeutic effect parties feel when they have their concerns heard?

Roach, Kent and Lorne Sossin "Access to Justice and Beyond" (2010) 60 UTLJ

Scope: The article provides intellectual history of Michael Trebilcock's access to justice scholarship from his work on consumer protection in the 1970s- Legal Aid Review 2008. The authors' suggest that more emphasis needs to be given to Trebilcock's earlier insights that access to justice must be situated in the broader context of political regulation and social and economic redistribution and justice.

Issue: How can the access to justice crisis be solved?

Body:
- There are a number of themes in Trebilcock's work: consumer welfare perspective (including middle class in justice initiatives), dangers that consumer welfare reforms will be thwarted by well-organized producer interests, search for evidence based policies; need to deploy a wide range of regulatory instruments to improve effectiveness and efficiency of legal service delivery. It wasn't just about access to courts – about access to markets and regulatory regimes that would lessen the need for access to the courts.
- Trebilcock was concerned with increasing access to justice for consumers (376).
- He made frequent references to the need for economic redistribution, better education, and proactive regulation from the legislative and administrative branches of government; including, criminal and quasi-criminal sanctions (377).
- They go over work from 1970s, 80s and 90s: many recommendations implemented in Canadian jurisdictions.

- Public choice analysis: suggests that diffuse, unorganized groups will be at a permanent disadvantage in relation to concentrated, well-organized groups in political markets (380).

Contribution: The authors' argue the increased resources that would be required to add the middle class to legal aid is better directed at the replacement of a costly court-based system in areas like family law, with a more efficient and holistic tribunal structure and be a return to the political process to produce regulation to limit and simplify disputes.

Cyberjustice Relation: This article suggests that people who have power are largely driving the debates.

"Technology and Access to Justice" online: The Telejustice project
<**http://www.nanlegal.on.ca/article/technology--access-to-justice-228.asp**>
Scope: Looks at: Pro Bono Law Ontario (PBLO) in partnership with Nishnawbe-Aski Legal Services Corporation (NALSC) in Thunder Bay: The Telejustice Project enables pro bono lawyers throughout Ontario to improve access to justice for the Nishnawbe-Aski Nations communities (NAN communities) in northwestern Ontario.

Issue: How do we deliver legal information to people in remote communities who do not speak English as a first language?

Body:
- The first phase of the project: a web-based interface called *Ask-a-Lawyer*, on the NALSC website. It uses an interactive question-and-answer format that enables Community Legal Workers (CLW's) at NALSC to submit legal queries on behalf of NAN community members. These questions get dispatched to lawyers on the volunteer roster, who respond anonymously with their answers. The knowledge of these pro bono lawyers leverages the Community Legal Workers' ability to serve their very large and remote client base.
- A shift in the way PBLO delivers pro bono services to remote, rural communities in Ontario. An "urban-to-rural initiative", this project model, capitalizes on the concentration of legal resources available in urban centers. By using technology to bridge distances, PBLO can complement the local pro bono services provided by small firms and sole practitioners in rural Ontario.
- The goal of the Telejustice Project is to help lessen these geographical barriers to justice by adding technology into the mix of the clinic's service delivery methods
- In 2006, the second phase began: expanded legal support for Nishnawbe Aski Nations at large via the *Wawatay* – a bi-weekly, bilingual Native-language newspaper that reports on events, issues and news affecting First Nations people across the province. The "Ask-a-Lawyer" website will also be expanded and made available to NAN community members. These initiatives will be implemented in direct response to the CLWs' assessment of the greatest legal need in the communities they serve. Phase two will once again tap into the resources of a pro bono lawyer.

Contribution: This website provides legal information for Aboriginal people.

Cyberjustice Relation: Relates to our concerns about access to justice for aboriginal people and how technology can assist people in remote locations.

International

"Access to Justice" An Australian Government Initiative.
http://www.accesstojustice.gov.au/
- website has a search function where you type in postcode/location and the issue and then information realated to your query pops up

Australian News and Business Reports. "Improving Access to Justice" (17 May 2010) online: Telegraph. Net. AU Media
<http://australia.to/index.php?option=com_content&view=article&id=2789:improving-access-to-justice&catid=101:australian-news&Itemid=167>
Scope: Attorney General Robert McClelland out lined measures to improve the effectiveness and accessibility of the justice system.
Issue: How can the government provide access and information to people?
Body:
- Access to justice is not just about access to a court or a lawyer, it is about providing practical, affordable and easily understood information and options to help people to prevent or resolve their disputes".
- The government's Access to Justice measures include: a website to provide seamless access to local information.

Contribution: The article provides information on the Australian governments perspective on access to justice.
Cyberjustice Relation: Australia and Canada have a few similar access to justice issues. Thus it is informative to understand some of their issues and how they address them.

"Access to Justice for Marginalized People" *United Nation's Development Program* **(May 2012) online: UNDP**
<http://www.undp.org/content/dam/india/docs/strengthened_acess_to_justice_in_india_factsheet_project.pdf>
Scope: This UNDP Factsheet provides an update on a joint pilot project with the Government of India aiming to increase access to justice.
Issue: Access to justice is a major issue in India.
Body:
- Lists the objective of the project, which is to strengthen access to justice for the poor, particularly women, scheduled castes, tribal communities and minorities. This is to be achieved through developing strategies and initiatives that address the barriers they face in accessing justice in legal, social, economic and political domains.
- It presents some preliminary results from 2008-2012. A few results related to the cyberjustice project:
    o Synergy has been established between key actors to support legal needs of marginalized communities
    o 150,000 people have greater legal awareness and legal aid programs in 65 districts use innovative strategies like technology, formation of networks, community radio and helplines to build awareness.
    o Over 12,000 people are receiving free legal aid and justice services in three districts of Jharkhand.

- o District-level forums were created to help facilitate the access of the community to the justice system and providers

Contribution: This fact sheet provides an introduction to an interesting pilot in India that is using technology and human capital to increase access to justice.

Cyberjustice Relation: This is related to our project because it is demonstrative of a different approach to technology and access to justice. This model starts with the premise of building access to justice and actually addressing barriers to that access. Technology is used, for example, radio, helplines and internet, but those developments are small pieces of the larger project.

United Nations Development Program, Press Release "Consultation by Department of Justice and UNDP Examines Approaches to Ensuring Access to the Law by the Poor and Marginalized" (18 Nov 2011) online: UNDP <http://www.undp.org/content/india/en/home/presscenter/pressreleases/2011/11/18/consultation-by-department-of-justice-and-undp-examines-approaches-to-ensuring-access-to-the-law-by-the-poor-and-marginalised/>

Scope: This press release goes over the objectives of the project launched in India in conjunction with the UNDP "National Mission for Justice Delivery and Legal Reform" (the pilot project of this is mentioned in the above entry).

Issue: Lack of access to justice for the poor and marginalized.

Body:
- - "The objective should be to build courtrooms without walls to enable people to access justice without barriers" Salman Kurshid
- - "We need to build a culture of resolution within society where justice emerges from a process that is comprehensive, collaborative and through dialogue."
- - "The barriers that the poor and marginalized face in accessing justice are not limited to the legal domain but are socio-economic and psychological in nature as well."
- - There is a call for a tripartite agreement between the Information Communication Technology Department, the Justice Department and the HRD Ministry that could effectively meet the challenge of ensuring greater access to justice by marginalized communities across different contexts.

Contribution: This press release provides insight on objectives driving access to justice projects that use technology from another country. It also highlights the inclusive practices embraced in the project, for example, linking grassroots development processes with legal services.

Cyberjustice Relation: This is a joint project with the Indian Government and the UNDP involving many stake holders, whose voices