



**FILED**

September 29, 2009

SEP 30 2009

Tracie K Lindeman  
Clerk of the Supreme Court  
201 South Carson Street  
Carson City, NV 89701

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

RE: Use of Telephonic  
and Audiovisual testimony in Nevada  
Courts - Proposed Rules

To Whom It May Concern:

ADKT 424

In 2007, the Nevada legislature provided for expert witness testimony to be given by means of simultaneous audiovisual transmission between the courtroom and another location that depicts the witness in real time (NRS 50.330). The law is specific to testimony rendered on driving under the influence (DUI) cases and would permit such testimony by scientists employed in the Las Vegas Metropolitan Police Department Forensic Lab, Toxicology Detail. The LVMPD Forensic lab provides toxicology services for law enforcement agencies in Clark, Lincoln, Nye, and Esmeralda counties, encompassing the largest population area in Nevada. The lab performs blood alcohol analyses, analyses of blood and urine for drugs of abuse, and maintains the breath alcohol program for all southern Nevada counties. In calendar year 2008, the LVMPD Toxicology unit performed analyses on 8,987 cases, over half of the total 16,797 cases analyzed by the entire lab, and received 6,898 subpoenas, more than 77% of the total subpoenas received by the Forensic Lab that year. As is true of most forensic labs throughout the country, these scientists are faced with a large backlog; currently, there are 3,084 DUI cases awaiting analysis. While the LVMPD scientists don't appear in court on all subpoenas, they do spend hundreds of hours preparing, traveling and testifying in Nevada courts. When the scientists are pulled away from the laboratory, cases are not being analyzed. Video testimony would allow them to dedicate these travel and testimony hours to forensic analysis, helping to reduce our backlog and save the Nevada taxpayer's money while not compromising justice.

A recent Supreme Court ruling makes the utilization of live video testimony even more imperative. On June 24, 2009, in *Melendez-Diaz v. Massachusetts*, the US Supreme Court held that admission of forensic analysts' reports in lieu of live testimony violated the defendant's right to confront witnesses against him under the Sixth Amendment. This decision includes reference to a recent study conducted under the auspices of the National Academy of Sciences (NAS), "*Strengthening Forensic Science in the United States: A Path Forward*" (Feb 2009), which scrutinizes the practices of forensic science in the United States. The Melendez-Diaz decision reiterates, in light of this study, that "confrontation is one means of assuring accurate forensic analysis." The use of real time video testimony could mitigate burdens put upon forensic labs while still satisfying the confrontation and cross-examination constitutional rights of the defendant. The

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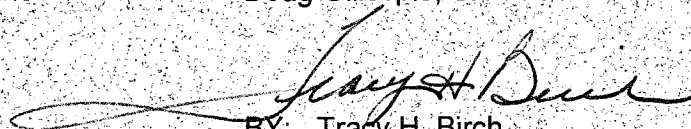
Forensic Laboratory has experienced pressures from several sources including the anticipated demand for live testimony in every case due to the Melendez-Diaz decision, the NAS report, short staffing issues, decreased funding, inflated backlogs, and an increase in DUI arrests (more analyses and subpoenas). The Nevada statute requires a full view of the witness and the LVMPD Forensic Lab plans to utilize high resolution document readers to allow the court to accurately view any pertinent documents required during direct and cross examination, thereby meeting the Defendant's right to confront his accusers.

The benefits of expert witness audiovisual testimony are being realized in other states, such as Michigan and Louisiana. (See attached documents), however, if the amendment to the Supreme Court of Nevada Rules Part IX, Rule 3 is approved requiring stipulation by both parties, the benefits of audiovisual testimony technology in Nevada may go unrealized. It is unlikely that the defense would stipulate to the use of video testimony in lieu of an appearance by LVMPD scientists, thereby requiring the scientists spend significant time traveling to distant court locations and waiting in courtroom hallways expecting to render testimony, only to be advised that the case has been pled or that their testimony is not needed. Requiring the option of video testimony to be decided by the courts versus the attorneys, as provided for in Supreme Court of Nevada Rules Part IX, Rule 4 section 3c, would provide a more fair and productive judicial process.

We respectfully request your support in helping us to fulfill our role in protecting the public safety of Nevada by removing the portion of proposed Rule 3 that requires stipulation between the parties. By providing each court with the authority to allow video testimony, the defendant retains the right to confront witnesses against him, scientists spend less time traveling to and waiting in court to testify, and taxpayer funds are conserved. The added benefit is an increase in the productivity of the Forensic Laboratory. In addition to these written comments, a representative of the LVMPD Forensic Laboratory would like to provide information at the public hearing scheduled for October 6, 2009 at 4:00pm.

Sincerely,

Doug Gillespie, SHERIFF



BY: Tracy H. Birch  
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## State Highway Safety Showcase

### Video Testimony Pilot Project Michigan Office of Highway Safety Planning

[www.michigan.gov/ohsp](http://www.michigan.gov/ohsp)

This project was conceived in response to a large backlog of blood and drug analyses that developed due to the passage of the Michigan .08 BAC legislation in October, 2003.

The passage of the Michigan .08 BAC legislation allowed for all Schedule 1 drugs detectable in the blood to be considered under an impaired driving offense. Law enforcement was encouraged to ask for drug screening as well as blood screening for alcohol on all blood draws of suspected impaired driving offenders. As a result, there was a dramatic spike in the caseload for blood/alcohol analysis at the Michigan State Police (MSP) Forensic Science Division's Toxicology Laboratory.

The State Police realized that there was limited space at the lab and limited resources to address the backlog. The lab scientists were forced to spend a significant portion of their workday traveling and testifying in courts across the state. The MSP realized that addressing this issue through video technology could potentially save time and money, and address the BAC testing backlog issue at the same time. Furthermore, video technology would allow scientists to schedule multiple testimonies with various courts across the state on the same day. This was impossible to do when appearing in person at court.

The project, a partnership between the State Police, State Court Administrative Office, and the Office of Highway Safety Planning, has garnered much support from the State's judicial court system. After multiple video testimonies utilized by courts across the state, overall savings are estimated at approximately \$1,100 per testimony. This technology has also saved the state many staff hours (typically wasted in travel time), utilizing the technology to reduce the time scientists are out of the lab to 30 minutes instead of 14 hours. Savings will increase significantly as more courts utilize it on a regular basis and the state will quickly recoup the costs of the initial investment in equipment.

After one full year of operation, the Toxicology backlog status at the State Police Forensic Science Laboratory is as follows:

- The alcohol backlog had decreased to approximately 150 - 200 cases from a high of 300 cases. The turnaround time was approximately 5 days, from a high of 14 days.
- The toxicology (drug) backlog had decreased to approximately 600 cases from a high of 1,000 cases. The turnaround time was at 60 days, from a high of 120 days.

#### For More Information

To learn more about this program, contact:

Jason Hamblen  
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Office of Highway Safety Planning

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## Virtual testimony to save time, taxpayer money

Posted: Sep 16, 2009 4:07 PM PDT

Updated: Sep 23, 2009 10:06 AM PDT

By Carolyn Roy - [bio](#)|[email](#)

SHREVEPORT, LA (KSLA) - Video conferencing technology is being rolled out in Bossier Parish courtrooms, in a move to save taxpayer's time and money. Louisiana lawmakers approved legislation earlier this year, allowing forensic scientists to spend more time in the lab instead of in court, using virtual testimony.



From identifying drugs to DNA, the crime lab plays a key role in prosecuting thousands of cases every year in North Louisiana. "Of course, what we do in the lab forensically-wise is very important, then the reports we make are important." Forensic scientists in the system's Shreveport lab alone process more than 4,000 drug cases in this lab each year, and all their findings have to be entered into the court record.

That used to mean lots of trips to court, and since the lab serves 29 parishes in the region, that's a lot of time away from the lab. It's time that could be spent working on other cases, especially considering the backlog the Crime Lab has battled for years.

Now, thanks to a wireless broadband link, they'll be able to testify in court without leaving the lab. It's in real time, which means no delays.

"The technology is here and we're fools to ignore it," says Bossier Parish District Attorney, Schuyler Marvin, who championed the idea. "It should speed up our cases. Yesterday, we had three crime lab technicians testify live at trial, the all came together and there were recesses between each, your essentially tying three people up for half a day for no reason, when you can do it by video."

Crime Lab Forensic Chemistry Supervisor Randall Robillard can testify to that. "From an analyst standpoint, nobody likes a call from the DA's office somewhere far away that I'm gonna have to come over there and testify, you know, especially for a drug case, we're only on the stand for ten minutes, so it's just really a time consuming deal."

"I don't wanna see an employee on any taxpayers sitting doing nothing when they're supposed to be working, and waiting in the hallway, driving to testify," says Marvin. "It has to be done - or did have to be done - there was no other way around it. Now, they can actually work right up until the instant they are required to testify, on another case. They're actually doing other work, so that's a huge benefit to me."

Each unit costs about \$5,500 and about \$25 a month to maintain. Bossier is the only district to have the set-up so far, but Marvin court districts in at least two other parishes are working on getting connected right now, and he believes others will quickly come to realize the benefits in saving time and money.

"It's a great day when you can be a part of a bill that actually will save money," says LA Rep. Henry Burns, (R) Dist. 9, who sponsored [LA House Bill 119](#).

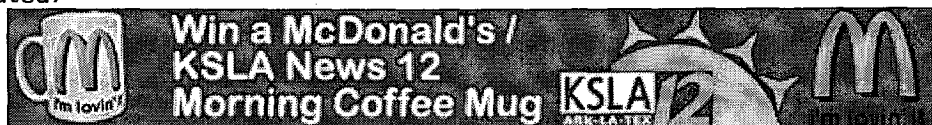
A recent Supreme Court ruling might make the availability of live video testimony option even more timely. In a U.S. Supreme Court ruling handed down on June 24 in the case of *Melendez-Diaz v. Massachusetts*, the Court held that "certificates" of forensic findings

submitted as prima facie evidence were admitted in error. In a controversial 5 to 4 vote that reversed the judgment of the Massachusetts Appeals Court, the Supreme Court held that admission of notarized forensic analysts' reports violated the defendant's 6th Amendment right to confront witnesses against him under the Amendment's Confrontation Clause. The Court determined that, in the absence of live testimony by forensic analysts who could then be cross-examined by the defendant's counsel, such evidence was precluded.

The ruling may well mean much more testimony will be required of analysts such as the Crime Lab's forensic scientists, and even more time away from the lab for those called to testify in courtrooms that don't offer the video option. As for a Constitutional challenge to the use of the technology for testimony, both Marvin and Caddo DA Charles Scott say they're confident it will hold up. "The confrontation and cross-examination Constitutional rights are met in this bill. This is real time, so that defense attorney is able to cross-examine the expert," says Scott.

"I wouldn't use this in a murder trial, probably, because a live witness is usually better," explains Marvin. "But all your dope cases where you're merely confirming your signature, you've got a chain of custody receipt, this is the way to go."

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September 17, 2009

## Wireless video system links courtrooms with crime lab

Officials say technology will save them time and money

By *Bobbie J. Clark*  
*bobbieclark@gannett.com*

North Louisiana district attorneys now have the opportunity to save time and money prosecuting criminals.

Wireless video communication between North Louisiana Criminalistics Laboratory in Shreveport and all eight courtrooms in the Bossier Courthouse was demonstrated Wednesday by Bossier-Webster District Attorney J. Schuyler Marvin, Caddo District Attorney Charles Scott, crime lab system director Jimmy Barnhill, state Rep. Henry Burns and state Sen. Buddy Shaw.

The communication system will allow crime lab technicians to testify from their facility in Shreveport, eliminating the need for them to travel to the courthouse in Benton.

The Polycom video equipment VSX 3000 was purchased for the crime lab side of the link and configured to connect to the courthouse VSX 7000e. The necessary broadband communication is being provided by Bluebird Wireless Broadband Services. The system was purchased through the Bossier Police Jury for about \$5,500.

The system will pay for itself within the first month, Marvin said. "This is neat stuff. This was a bill that makes absolute sense."

The crime lab services 19 judicial districts in north Louisiana. Technicians can be called to testify in any one of those districts, requiring them to drive hours at a time. District attorneys waste a lot of money paying for travel, Marvin said.

While the system probably would not be used in murder trials, he said, it will especially come in handy in drug cases, in which technicians are "merely confirming a signature in the chain-of-custody receipt.

"We should've done this a long time ago," he added.

Bossier is the first courthouse in Louisiana to implement the system. Other parishes, including Lincoln and Ouachita, are looking into implementing the system.

Use of the system was made possible by the passage of House Bill 119, authored by Burns, during the 2009 legislative session.

The legislation made it legal for crime lab employees, coroners, forensic pathologists and any other person practicing in the field of knowledge and expertise in the gathering, examination and analysis of evidence by scientific means to testify in court via audiovisual equipment.

Burns said he was especially proud to author this legislation. "This was a bill that really had more positive potential than I had even imagined in the initial presentation."