

Confrontation of Witnesses in US Criminal Actions: Limits on Technology Enabled Interaction

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Abstract

As technology allows new and enhanced ways of interaction and communication, its application in a legal context presents complex issues for evaluating established principles of rights guaranteed to individuals accused of crimes. In the global reach of internet based interaction, crimes are often committed by and against the interests of people and organizations with domiciles or situs in different countries. The availability of witnesses to prosecute such crimes may not be guaranteed, because often those witnesses are beyond the jurisdictional ability of a national court's subpoena power. Utilizing technology that is pervasive in business and private legal actions, such as two way video and conferencing, would seem to provide a valuable tool for furthering the interests of national governments in prosecuting crimes. In the United States, under the federal constitution, a person accused of a crime has the right to confront witnesses against them. The sixth amendment to the United States constitution provides a variety of rights to those accused on criminal conduct, including the rights, "to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense." When the confrontation of witnesses utilizes the technology of two-way video, a recent case in the United States holds that the accused person's rights of confrontation have been violated. Analysis of this and other cases provides a framework for understanding the conflict between technology enabled interaction and established principles of individual rights. As national jurisdictions try to find ways to fight crimes committed utilizing technology and the internet, conflicts between traditional concepts of individual rights and new technologies must be reconciled.