

ARTICLE

THE INTERNET MEETS OBI-WAN KENOBI IN THE COURT OF NEXT RESORT

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I. INTRODUCTION

Point. Click. Scroll. Insert credit card information. Click again, and a sales transaction is completed over the Internet. What an easy way for Peter, who lives in Los Angeles, California, to purchase a beautiful jade necklace and bracelet for his wife. While sitting at his home computer, Peter is able to peruse an Internet advertisement, and ultimately purchase the jewelry from Michelle in China. Michelle’s Internet advertisement indicates that all jewelry includes certificates of appraisal. The advertisement guarantees that the jewelry is produced from the finest quality materials and that the clarity and color of the jade are exquisite. Peter pays \$10,000 for the jewelry. When he receives it, he seeks an independent appraisal only to learn that the stones are poor quality and some have small, hairline cracks. In actuality, the jewelry is worth about \$200. Outraged, Peter contacts Michelle, but she is uncooperative. Feeling helpless, Peter hires an attorney to file a lawsuit in the Los Angeles County Superior Court. A preliminary issue, however, is whether the court in California has jurisdiction over a Chinese national based solely on the Internet transaction.

The above scenario is one example of the many experiences that people may encounter as they surf the Internet, searching for all kinds of products, services, and general information. Indeed, we live in a computer-ready world. The Internet — and technology in general — serves as the focal point of everyday life. Technological advances in computer hardware and software, including Internet capabilities, continually expand and evolve. Yet contemporary computers and the Internet are not, and cannot be, the terminal point upon which we must consider and ponder potential futuristic activities.

The explosion of technological capabilities and the evolution of the Internet enable people to interact with anyone anywhere. These interactions may lead to disputes that are increasingly difficult to manage because they may involve parties distant from each other, whether on opposite sides of the United States, in different countries, in extra-worldly bodies such as the International Space Station, or even on different planets.¹ Multi-lingual, multi-national party lawsuits will add to an otherwise complicated set of courts and other dispute

¹ Advances in space travel trigger a whole host of issues that go beyond considerations of current computer technology and the Internet. The first “space tourist” returned to earth in May of 2001. See John Daniszewski, *Russia Welcomes U.S. ‘Space Tourist’ as a Hero*, L.A. TIMES, May 7, 2001, at A3. The result is that new doors are being opened as space travel continues to advance, enabling disputes to develop in outer space and beyond.

resolution processes.

The United States courts already face contradictory opinions in which judges seek to establish an appropriate jurisdictional forum based on Internet contacts. For decades, judges have adhered to the contemporary basis of jurisdiction set forth in *International Shoe Co. v. Washington*,² which allows a nonresident defendant to be haled into a forum based on “minimum contacts” and “traditional notions of fair play and substantial justice.”³ Despite the borderless context of the Internet, however, judges continue to apply the jurisdictional standard of *International Shoe* to Internet activity.⁴ This practice is the beginning of a jurisdictional quandary. The seemingly simplistic standard of *International Shoe*, which is based on territorial boundaries, is exacerbated by applying the concepts of “minimum contacts” and “traditional notions of fair play and substantial justice,” to disputes that occur in a borderless context such as the Internet.

In their jurisdictional analyses of Internet activity, many courts have adopted the “sliding scale” test of *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*⁵ Applying the sliding scale test to Internet activity, courts have examined the nature and quality of commercial activity that is conducted over passive, active, or interactive Web sites.⁶ In spite of the sliding scale as a so-called

² 326 U.S. 310 (1945).

³ *Id.* at 316. In *International Shoe*, the Supreme Court stated that “due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Id.* (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

⁴ See *infra* notes 5-7 and accompanying text.

⁵ 952 F. Supp. 1119, 1124 (W.D. Pa. 1997) (finding exercise of jurisdiction proper because defendant purposefully availed itself of the forum’s jurisdiction by operating an Internet news service with 3,000 paying subscribers and entering into contracts with seven Internet access providers within the forum state).

⁶ At one end of the sliding scale are situations in which a defendant uses a Web site to post information, making it accessible to all computer users; these are passive Web sites, and generally courts refuse to find jurisdiction based on these Web sites alone. See *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419 (9th Cir. 1997) (finding a lack of jurisdiction based on a passive Web site that allowed customers to sign up and indicate interest in defendant’s service and where defendant did not conduct business in the forum state, consummate sales or contracts with forum residents, or otherwise encourage forum residents to access its Web site); *Haggerty Enters., Inc. v. Lipan Industrial Co.*, No. 00 C 766, 2001 U.S. Dist. LEXIS 13012, at **15-16 (N.D. Ill. Aug. 22, 2001) (finding a lack of jurisdiction based on a passive Web site that provided information about defendant’s products, although no prices were included, and allowed customers to contact defendant for information purposes only). At the other end of the sliding scale are situations involving active Web sites, enabling defendants to conduct business over the Internet. See *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1267 (6th Cir. 1996) (finding jurisdiction proper based on the defendant’s contacts with plaintiffs in the forum state because the contacts contemplated constituted business with the forum state, and the defendant used the

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uniform rule, this author previously has concluded that courts appear to interpret the rule differently, resulting in a series of inconsistent, erratic and sometimes irrational decisions.⁷ These inconsistencies flow from the notion that rules relating to territorial jurisdiction within specified boundaries do not apply equally within a borderless context.⁸

Consequently, this author previously has proposed two alternative solutions:

Internet repeatedly to transmit computer files to plaintiff). The middle of the sliding scale involves situations in which a user can exchange information with the defendant's host computer. Here, courts scrutinize the level of interactivity and commercial exchange of information to determine whether jurisdiction is proper. *See Phat Fashions, L.L.C. v. Phat Game Athletic Apparel, Inc.*, No. 00 Civ. 0201 (JSM), 2001 U.S. Dist. LEXIS 13386, at **14-15 (S.D.N.Y. Aug. 31, 2001) (finding that defendants did not transact business in the forum state for purposes of personal jurisdiction based on an interactive Web site that allowed customers to purchase products on-line and communicate with defendants via e-mail because no evidence existed that any sales were made to New York residents); *Berthold Types Ltd. v. European Mikrograf Corp.*, 102 F. Supp. 2d 928, 933 (N.D. Ill. 2000) (finding personal jurisdiction improper because defendants did not conduct commercial transactions over their Web site or respond to customer e-mails and customers could view product information, e-mail suggestions to defendants, download software, and download a service agreement that needed to be mailed to a national dealer along with a payment); *Citigroup Inc. v. City Holding Co.*, 97 F. Supp. 2d 549, 565 (S.D.N.Y. 2000) (finding jurisdiction proper based on a mortgage lender's interactive Web sites that permitted customers to apply for loans on-line, print application forms to be sent via facsimile, and communicate interactively via e-mails with company representatives).

⁷ *See Susan Nauss Exon, A New Shoe is Needed to Walk Through Cyberspace Jurisdiction*, 11 ALB. L.J. SCI. & TECH. 1, 54 (2000). *Compare Mink v. AAAA Dev. LLC*, 190 F.3d 333, 337 (5th Cir. 1999) (finding a lack of jurisdiction based on a Web site that provided: 1) information about defendant's products and services; 2) contact information such as a toll-free telephone number, a mailing address, and an electronic mail address; and 3) an order form that needed to be printed and mailed directly to defendant), *and Nutrition Physiology Corp. v. Enviros Ltd.*, 87 F. Supp. 2d 648, 654 (N.D. Tex. 2000) (finding a lack of jurisdiction based on a Web site that described defendants as "market leaders" in their field, instructed visitors to contact a local distributor for additional information, and provided a hyperlink to an e-mail address which enabled customers to request additional information), *with Telco Communications Group, Inc. v. An Apple a Day, Inc.*, 977 F. Supp. 404, 406 (E.D. Va. 1997) (finding jurisdiction proper based on a Web site that posted two allegedly defamatory press releases, and rationalizing that the Internet Web site constituted the "purposeful doing of business in the state" because it continually advertised and solicited), *and Inset Sys., Inc. v. Instruction Set, Inc.*, 937 F. Supp. 161, 165 (D. Conn. 1996) (holding that personal jurisdiction was proper over a foreign corporation that advertised consistently over the Internet, and provided a toll-free telephone number). One of the most perplexing cyberjurisdiction decisions did not seem concerned with foreseeability of contact with the forum, and instead focused on the intrinsic characteristics of the forum state by holding that jurisdiction was proper because California is a highly populous state and home of many Internet businesses and high-tech research institutions. *See Stomp, Inc. v. NeatO, LLC*, 61 F. Supp. 2d 1074, 1079 & n.9 (C.D. Cal. 1999).

⁸ *See Exon, supra* note 7, at 22-26, 54-55.

a registration system whereby disputants select an appropriate forum within existing courts,⁹ and the creation of a new tribunal known as a cybercourt.¹⁰ This sequel law review article takes an in-depth look at a proposed futuristic cybercourt as a viable option to resolve disputes concerning acts that occur in a borderless arena such as the Internet. At the same time, such a cybercourt must be expansive enough to handle ever-evolving technological advances.

Part II of this article explains how the Internet meets Obi-wan Kenobi in the court of next resort. It cites examples of present-day “cybercourts” and proposes a futuristic version to be known as the International Cybercourt Central (hereinafter “Cybercourt Central”). Part II explains what Cybercourt Central should look like and how it should operate. It includes a discussion, which explains how courts may use the scientific process of holography to enhance trials and other face-to-face proceedings in Cybercourt Central without the need to leave one’s city, state, country, or planet.

Cybercourt Central may appear to infringe on some of the basic rights that United States citizens enjoy. Therefore, Parts III through V address jurisdictional, constitutional, and evidentiary concerns such as forum selection clauses, choice of law issues, due process rights, the right to confront witnesses, the role of the fact finder during a trial, and the importance of demeanor in determining credibility. As will be seen, Cybercourt Central can preserve each of these important rights.¹¹

II. THE INTERNATIONAL CYBERCOURT CENTRAL WOULD PROMOTE EFFICIENCY IN SETTLING BOTH INTERNET AND NON-INTERNET DISPUTES

A. *Examples of Contemporary Cybercourts*

Cybercourts, also known as virtual courts or cyber tribunals, assume a variety of appearances because they have no established definition. Some cybercourts are designed for educational purposes.¹² Some courts may claim the status of cybercourt because they maintain Web sites for informational

⁹ *Id.* at 49-51.

¹⁰ *Id.* at 51-54.

¹¹ Although this article proposes the creation of an international cybercourt to handle both Internet and non-Internet cases, the legal analysis focuses on the ability to preserve legal standards of the United States.

¹² See *Florida Cybercourt*, at <http://www.flcourts.org/sct/cybercourt/index.html> (last visited Dec. 30, 2001). Florida professes to have a “CyberCourt” designed primarily for educational purposes. See *id.* Upon accessing the Web site, one can scroll through Web pages that provide information regarding the Florida courts, judges, opinions and rules, bar applicants, education, employment, miscellaneous links, etc. See *id.* Similarly, the Chester County Office of the Court Administrator, in West Chester, Pennsylvania, provides an on-line Web site that includes an “educational cyber court for middle and high school students.” *Chester County Pennsylvania, Court Administrator*, at <http://www.chesco.org/ctadmin.html> (last modified Dec. 14, 2000).

purposes¹³ and/or accept electronic filings.¹⁴ Other courts are coined “cybercourts” because the courtrooms are set up with evidence presentation technology.¹⁵

For example, the United States District Court of Puerto Rico has installed a Digital Evidence Presentation System (DEPS™) that includes electronic annotation screens and computers for counsel, the judge and jury.¹⁶ Most importantly, the DEPS™ provides a judge with an override switch to turn off the jury’s monitor if the judge deems certain evidence inadmissible.¹⁷ Abroad, the Kingston Crown Court in the United Kingdom claims to be the first court to use the Internet in a child pornography case.¹⁸ Every two jurors shared a computer to see how photographs of children had been viewed over the Internet and how the pornography had been downloaded.¹⁹

Some courts have advanced beyond the mere maintenance of Web sites or use of technology to present evidence. The Honorable James L. Kimbler, Judge of the Medina County Common Pleas Court in Ohio, claims to have opened the first cybercourt.²⁰ He conducts pre-hearings via an Internet chat-room where a party may post comments that appear on computer screens of all parties and the judge.²¹ Similarly, the “e-Court” is up and running in the Federal Court of Australia.²² If a judge deems a case appropriate for the e-

¹³ For example, the United States Courts have set up the PACER Service Center to provide electronic access to federal court records. *See Administrative Center of the U.S. Courts, PACER Service Center*, at <http://pacer.psc.uscourts.gov> (last modified July 31, 2001). An overview of PACER, or Public Access to Court Electronic Records, is also available at the PACER Web site. *See Public Access to Court Electronic Records Overview*, at <http://pacer.psc.uscourts.gov/pacerdesc.html> (last modified July 31, 2001).

¹⁴ *See* Kristina Horton Flaherty, *E-mail: Does It Stress You Out or Simplify Your Practice?*, CAL. B.J., at 1, 34 (May 2001) (noting that a pilot program had begun in Sacramento, California, allowing courts to accept e-filing of certain actions). In 1999, the California state legislature authorized trial courts to adopt local procedures regarding filing and service of documents electronically and “directed the Judicial Council to adopt uniform rules of court for electronic filing by 2003.” *Id.* at 34.

¹⁵ *See, e.g., Harris County Criminal Courts, Civil Courts, and Justice Courts, Information for Attorneys: Digital Evidence Presentation System*, at <http://www.ccl.co.harris.tx.us/attorneys/DEPS.htm> (last modified Mar. 1, 2001); *United States Court, Eastern District of Tennessee, Automation & Courtroom Technology*, at <http://www.tned.uscourts.gov/automation.htm> (last modified Mar. 9, 2001).

¹⁶ *See U.S. District Court – Puerto Rico*, at [http://www.brainshark.com/brainshark/learner/viewpres .asp?PID=21962&company ID=4135Ulc=1](http://www.brainshark.com/brainshark/learner/viewpres.asp?PID=21962&company ID=4135Ulc=1).

¹⁷ *See id.*

¹⁸ *See* Kieren McCarthy, *Porn Case Heralds UK Cyber Court*, THE REGISTER, Jan. 19, 2001, ¶¶ 1-2, available at <http://www.theregister.co.uk/content/6/15929.html>.

¹⁹ *See id.* ¶ 2.

²⁰ *See Judge Kimbler Opens First Cyber-Court*, THE WHOLE TRUTH, April 23, 2001, ¶¶ 1-6, available at <http://www.state.oh.us/ojc/wholetruth4-01.pdf>.

²¹ *See id.* ¶ 1.

²² *See The Virtual Court Room*, at http://www.elawpractice.com.au/downloads/2001_

Court, a clerk notifies all parties and issues them a user ID and password. Parties may complete submissions on-line and the judge may render orders on-line.²³ The State of Delaware already allows public access to electronic briefs and filings and proposes to allow oral arguments over the Internet in the future.²⁴ The Kingston Crown Court of the United Kingdom also anticipates futuristic cases that will be conducted over the Internet, enabling jurors to log on to their home computers to view a trial.²⁵

Progress is being made in the area of case management as well. In 1999, Chief Justice John Harber Phillips of the Supreme Court of Victoria, Australia, launched the use of a "Cyber Court Book" as the backbone of a cybercourt or virtual court; the Cyber Court Book is professed to be the world's first computer system to manage trials.²⁶ The court was able to accomplish this feat by working with Ringtail Solutions, a legal technology company.²⁷ The Cyber Court Book looks like "an electronic filing cabinet of the court case."²⁸

Efforts to create full scale cybercourts also are underway. The "International Cyber Court of Justice" currently is being developed as a result of a February 1998 meeting in Malaysia of the second Multimedia Super Corridor's International Advisory Panel.²⁹ The Panel met to discuss how to establish an international cybercourt that would enforce cyber laws.³⁰ They held the meeting in response to the adoption of the Digital Signature Act.³¹

In February 2001, the Michigan State House of Representatives introduced Bill No. 4140 to create an official cybercourt within the state's existing court system.³² The legislation passed in both houses and was then approved by the

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²³ *See id.*

²⁴ *See* The State of the Delaware Judiciary: Problem-Solving in Judicial Management, 141st General Assembly, 1st Sess. ¶ 10 (May 1, 2001), available at <http://courts.state.de.us/supreme/pdf/2001message.pdf>.

²⁵ *See* McCarthy, *supra* note 18, ¶ 5.

²⁶ NSW Branch, *Technology Issues Report - October 1999*, ¶ 24, at <http://www.rmaa.com.au/branches/nsw/pub/TISreport/1999/199910.html> (last modified Nov. 30, 2000).

²⁷ *See* James Wilson, *Cyber Courts and Justice Information Portals - Reviewing the Core Mission*, available at <http://138.25.65.50/au/other/col/1999/45> (last modified Dec. 18, 2001). The paper explains how a Cyber Court Book, defined as a "Justice Informational Portal" and otherwise known as a Virtual Courtroom, can be used to compile an entire court case, including the law, case file, evidence, depositions, e-filings, etc. *Id.*

²⁸ *Supreme Court of Victoria Media Releases, Restored Supreme Court Uses Latest Court Technology*, Oct. 11, 1999, ¶ 9, available at <http://www.supremecourt.vic.gov.au/media/cybercb.html>.

²⁹ *See Panel to Look into Workings of Cyber Court*, STAR PUBLICATIONS, MALAYSIA, February 9, 1998, ¶¶ 1-5, available at <http://www.hartford-hwp.com/archives/29/041.html>.

³⁰ *See id.*

³¹ *See id.*

³² H.R. 4140, 91st Leg., 1st Spec. Sess. (Mich. 2001).

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Governor on December 31, 2001.³³ The new cybercourt should be operational by October 2002.³⁴ Under the new legislation, the cybercourt has concurrent jurisdiction over commercial litigation in disputes where the amount in controversy exceeds \$25,000.00.³⁵ Judges appointed to sit on the cybercourt should have either commercial litigation experience or an interest in technology.³⁶ Parties who participate in the cybercourt are deemed to have waived their right to a jury trial.³⁷ The defendant, however, has the right to remove the case to a state circuit court.³⁸ The new legislation states that all actions heard in the cybercourt are to be conducted by means of “electronic communications.”³⁹ Under this bill, electronic communications include, but are not limited to, “video and audio conferencing and Internet conferencing among the judge and court personnel, parties, witnesses, and other persons necessary to the proceeding.”⁴⁰ Furthermore, the Michigan Supreme Court is delegated the task of adopting special rules of the court.⁴¹ The legislation anticipates that all papers are to be filed electronically.⁴²

The above examples of cybercourts involve various governments within different countries around the world, but a few proprietary forums are also operating. One such cybercourt is I-courthouse, a forum in which parties submit cases anonymously, and volunteer jurors read the parties’ trial books and render verdicts.⁴³ All interactions between the parties and jurors are electronic, apparently without judicial involvement or any other enforcement mechanism.⁴⁴ I-courthouse seems more akin to online dispute resolution services such as Cybersettle,⁴⁵ eResolution,⁴⁶ and ClaimSettle,⁴⁷ although these latter services use dispute resolution professionals rather than volunteer jurors.

³³ 2001 Mich. Pub. Acts 262, available at <http://www.michiganlegislature.org/mileg.asp?page=getObject&objName=2001-HB-4140&userid=> (last visited Jan. 16, 2002). The legislation adds a new chapter 80 to the Michigan Compiled Laws 600.916. See *id.*

³⁴ See Associated Press, *Mich. Bill Will Create Cybercourt*, Jan. 9, 2002, available at <http://news.findlaw.com/ap/ht/1700/1-9-2002/200201091010607904.html>.

³⁵ 2001 Mich. Pub. Acts 262, § 8005.

³⁶ *Id.* § 8003.

³⁷ *Id.* § 8009.

³⁸ *Id.* § 8007(1).

³⁹ *Id.* § 8011.

⁴⁰ *Id.*

⁴¹ *Id.* § 8007(2).

⁴² See Kathy Prentice, *Michigan Considers Cybercourts*, OFFICE.COM, Apr. 12, 2001, ¶ 3, at <http://www.office.com/global/0,2724,58-23005,FF.html>.

⁴³ See ICOURTHOUSE.COM, at <http://www.i-courthouse.com> (last visited Dec. 30, 2001).

⁴⁴ *Id.*

⁴⁵ See CYBERSETTLE.COM, at <http://www.cybersettle.com> (last visited Dec. 30, 2001).

⁴⁶ See ERESOLUTION.COM, at <http://www.eresolution.com> (last modified Dec. 14, 2001) (noting that it “has folded its operations,” but will continue to settle pending cases).

⁴⁷ See CLAIMSETTLE.COM, at <http://www.claimsettle.com> (last visited Dec. 30, 2001).

The problem with the contemporary cybercourts described above is that each one appears to relate to present-day technology without the foresight to venture into the future.⁴⁸ Simply enhancing the capability to view evidence in a courtroom or via an Internet connection does not ensure that constitutional and other important trial rights remain intact. Each cybercourt fails to preserve the constitutional right to a jury trial or otherwise provide a forum to enable fact finders to determine credibility of evidence. Moreover, each fails to preserve any right of physical confrontation. Indeed, the contemporary cybercourts promote isolation, as individuals participate in court proceedings while sitting at personal computers.

The need to think outside the box has never been greater. A true cybercourt needs to be created that will serve as a virtual reality looking glass. Therefore, a progressive, more futuristic cybercourt, such as Cybercourt Central, needs to include the ability to achieve a physical union in cyberspace. This physical union can be accomplished by adding a new component to contemporary cybercourts: the use of holography for trials and other face-to-face situations when appropriate.⁴⁹

B. *Overview of the International Cybercourt Central*

Cybercourt Central would be established as a separate international court to resolve disputes involving individual parties and nation states; it would not be considered a federal or state court under United States standards. Any number of consenting countries could create Cybercourt Central pursuant to a treaty, convention or other agreement, similar to the creation of the International Court of Justice, the European Court of Justice and the European Court of

⁴⁸ The American Bar Association's Standing Committee on Technology and Information Systems took a progressive stance by preparing a resolution, known officially as Report No. 100, which the ABA House of Delegates adopted by voice vote in August 1998. See ABA Standing Committee on Technology and Information Systems, *Legal Data Interchange Resolution*, available at <http://www.lawtechnology.org/research/ldi/resolution.html> (last visited Dec. 30, 2001) [hereinafter "LDI Resolution"]; E-mail from Catherine H. Sanders, MLIS, Research Specialist, Legal Technology Resource Center, American Bar Association, to Susan Nauss Exon, Assistant Professor of Law, University of La Verne College of Law, July 16, 2001 (on file with author). The Report "[u]rges" governmental entities, such as federal and state courts and administrative agencies, to use the Internet to provide free "public electronic access" to governmental information. LDI Resolution, *supra*. However, the scope of the ABA's recommendation is limited because it encourages the government to use "capabilities of existing technology." *Id.* (emphasis added).

⁴⁹ Fred Lederer, director of Courtroom 21 at the William & Mary Marshall-Wythe School of Law, helps students experiment with all sorts of technology during mock trials. See D. Ian Hopper, *Court of the Future Gets Trial Run*, THE L.A.DAILY J., April 5, 2001, at 5. It is refreshing to see the vision of Professor Lederer and his students as they explore the use of holography during trials. See *Judges in Microsoft Case Get Connected*, SILICONVALLEY.COM, Feb. 28, 2001, at <http://www.siliconvalley.com/docs/hottopics/msantitrust/01177.htm>.

Human Rights.⁵⁰ The countries could also develop the rules and standards to govern Cybercourt Central.

The following proposal for Cybercourt Central concentrates on Internet communications and transactions, even though the intent of the court would be to hear disputes derived from both Internet and non-Internet activities. As shown by Michigan's recent legislation, however, any court system could develop its own version of a cybercourt to handle commercial and other non-Internet types of cases.⁵¹

Cybercourt Central would be tied to a voluntary registration system to handle matters resulting from disputes occurring in a borderless arena such as the Internet. A party, whether company or individual, would register with Cybercourt Central. A separate office within the court could be established to handle the registration system. Once a party registers with Cybercourt Central, a special registration notice would be displayed on his or her Web site or e-mail message, signifying that anyone who interacts with the Web site or e-mail message agrees to be bound by Cybercourt Central in resolving any potential dispute. If a party did not want to register and participate with the cybercourt, he or she would be subject to current jurisdictional analyses in selecting an appropriate court.

Cybercourt Central would allow parties to seek dispute resolution services under two methods, both of which would appear on Cybercourt Central's home page. One would be an Internet Dispute Resolution Center. The other would be a Litigation Track, a more traditional litigation forum.

C. The Look and Appearance of the International Cybercourt Central

From a physical perspective, only one court in one geographic location would be needed. This location could be anywhere in the world. The most appropriate locations might be within or near the United Nations building, or near the Peace Palace in The Hague, Netherlands, the location of the International Court of Justice.

Cybercourt Central would look much like today's courts. It would include a courtroom, judge's chamber, clerk's office, jury assembly room, jury deliberation room, and perhaps separate offices for the registration system and the Internet Dispute Resolution Center. The courtroom itself would be very

⁵⁰ See Henry H. Perritt, Jr., *Will the Judgment-Proof Own Cyberspace?*, 32 INT'L LAW. 1121, 1147 (1998). The International Court of Justice, more commonly known as the world court, "only hears disputes between states." *Id.* "Regional tribunals for private disputes, such as the European Court of Justice, which has jurisdiction over claims by private parties who challenge decisions of European institutions, and the European Court of Human Rights, which has jurisdiction to hear private claims alleging human rights violations by European institutions, both require subsequent enforcement action before national courts." *Id.* The European Court of Human Rights is part of the Council of Europe, which involves 39 nations. See Reuter, *European Court of Human Right Condemns Turkey . . .*, available at <http://www.ozgurluk.org/hrights/eurocourt> (last modified Sept. 29, 1998).

⁵¹ See *supra* notes 32-42 and accompanying text.

similar in appearance to what we have today with a bench for the judge; workstations for the court clerk, bailiff, and court reporter; counsel tables; a public viewing area toward the rear of the courtroom; and a jury box. Alternatively, the need for separate jury accommodations could be eliminated. Rather than travel to the physical location of Cybercourt Central, jurors could participate in a trial the same way attorneys and clients could through holographic processes.⁵² Holography could even be used to enhance juror deliberations.

Cybercourt Central would include all the technology necessary to carry out its functions, including, but not limited to, Internet connections; data transmission lines; computers for counsel, judge and jury; special technological equipment to facilitate the presentation of evidence; facsimile machines; and laser cameras and projectors for use in holographic transmissions. The technology in the courtroom would assist the judge and jury. It could also be used by counsel, whether appearing personally before Cybercourt Central or from a distant location.⁵³

Cybercourt Central would have its own Web site to serve as the central hub of the court. The Web site would post the governing document that created the court, the *Cybercourt Central Rules of Practice and Procedure* (hereinafter “*Cybercourt Central Rules*”),⁵⁴ the *Cybercourt Central Terms of Agreement* (hereinafter “*Cybercourt Central Agreement*”),⁵⁵ and other pleadings and documents used by Cybercourt Central.⁵⁶ The Web site would provide access to the Internet Dispute Resolution Center and the Litigation Track. It would allow parties to file pleadings and documents electronically with the court and pay filing fees. Through the use of special user IDs and passwords, parties could access the cybercase file for a particular case and view all pleadings, documents, evidence, etc. filed with Cybercourt Central.

D. *How the International Cybercourt Central Operates*

1. The Registration Process

To participate in Cybercourt Central, an Internet user would first register with the court. To do so, the user would enter Cybercourt Central’s home page on the Internet and click on “How to Register.” A new page would appear explaining the purpose of Cybercourt Central: to mitigate the potential burden of being sued anywhere in the world by agreeing to be bound by the *Cybercourt Central Agreement* and the *Cybercourt Central Rules*.

⁵² See *infra* Part II.D.5 for a discussion regarding the use of holography.

⁵³ See *infra* Part II.D.5 for a discussion regarding the use of holography.

⁵⁴ See *infra* Part II.D.6 for a discussion regarding the *Cybercourt Central Rules of Practice and Procedure*.

⁵⁵ See *infra* Part II.D.1 for a description of the *Cybercourt Central Terms of Agreement*.

⁵⁶ See *infra* Parts II.D.3, II.D.4 regarding discussions of other pleadings and documents used in the Internet Dispute Resolution Center and the Litigation Track.

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The *Cybercourt Central Agreement* would be posted prominently on the Web site and be easily accessible. The foundation of the *Cybercourt Central Agreement* would be party consent to Cybercourt Central's jurisdiction. The Agreement would provide that all disputants be bound by the *Cybercourt Central Rules*. With regard to controlling substantive law, however, several options could exist. One option would be to include a provision in the *Cybercourt Central Agreement* permitting the initiating user to select the governing choice of forum law.⁵⁷ Under this option, the initiating user would have to show some connection to the chosen forum, such as legal residence, principal place of business, or state of incorporation. Alternatively, Cybercourt Central's governing document could provide that all legal disputes be decided according to international law or provide some other choice of law provision. Under this last alternative, a simple reference to the choice of law provision could be included in the *Cybercourt Central Agreement*.

The *Cybercourt Central Agreement* would include other basic terms and provisions such as: 1) duties and responsibilities of the parties; 2) user conduct whereby the disputing parties would agree not to use Cybercourt Central to harass or defame others or otherwise use Cybercourt Central for any unlawful purpose; 3) privacy provisions whereby Cybercourt Central would maintain the confidentiality of each cybercase file and allow access to it only by those who have a user ID and password; and 4) indemnification to the court for any technological malfunction during an electronic filing or loss of confidential material in the cybercase file. The *Cybercourt Central Agreement* could also include general contract terms such as modifications, governing law and separable provisions.⁵⁸

Next, the user would be required to read and accept the provisions of the *Cybercourt Central Rules*. These too would be posted on Cybercourt Central's Web site.

Once the user agrees to be bound by both the *Cybercourt Central Agreement* and the *Cybercourt Central Rules*, the user could officially register with the court. This registration process would include the following: completing a registration form to provide the user's name, address, and other contact information deemed appropriate; signing and dating the *Cybercourt Central Agreement*; and paying a nominal registration fee to Cybercourt Central. The executed documents and filing fee could be transmitted electronically to the court clerk.

The registration process would be complete once the Cybercourt Central clerk transmits a data packet to the user. The data packet would include a special Cybercourt Central logo to place on a Web site or on an e-mail

⁵⁷ Keep in mind that the *Cybercourt Central Rules of Practice and Procedure* would govern all procedural issues.

⁵⁸ The i-Courthouse uses a similar approach with its User Agreement. See *User Agreement*, ICOURTHOUSE.COM, at <http://www.i-courthouse.com> (last visited Dec. 30, 2001).

message. The logo would contain a notice alerting the user to “read this before continuing.” Any visitor who accesses the Web site or e-mail would have to click on the Cybercourt Central logo before communications could occur with the host user. Once the visitor clicks on the Cybercourt Central logo, he or she would be bound by the *Cybercourt Central Agreement* and the *Cybercourt Central Rules*. The visitor could then transact business or otherwise communicate with the host user.

2. Use of the International Cybercourt Central Once a Dispute Arises

As noted above, when a plaintiff/claimant accesses Cybercourt Central’s Web site, he or she would have the opportunity to select the Internet Dispute Resolution Center Track or the Litigation Track. Unless both parties agree to participate in the Internet Dispute Resolution Center, the matter would be sent to the Litigation Track. In either track, the parties would have a flexible and fair approach to resolve a dispute conveniently without the economic expense and other burdens of traveling long distances to meet an opposing party face-to-face.

3. The Internet Dispute Resolution Center

The Internet Dispute Resolution Center could operate exclusively over the Internet. A potential claimant could enter Cybercourt Central’s Web site and choose the Internet Dispute Resolution Center by clicking on that icon. The next page would allow the claimant to choose the desired method of dispute resolution: mediation,⁵⁹ arbitration⁶⁰ or some variation or combination of either process. Once the claimant chooses the dispute resolution process, he would have to complete two forms: 1) an “Internet Dispute Resolution Center Initiation Form” indicating the type of dispute resolution selected and biographical information such as the parties’ legal names, addresses, and principal places of business, and 2) a “Claimant’s Opening Statement” narrating the facts to show the nature of the dispute and the extent of the claimed damages. The claimant would submit both forms and a filing fee electronically to Cybercourt Central.

Upon receipt of the Internet Dispute Resolution Center Initiation Form, the Claimant’s Opening Statement, and the filing fee, the Cybercourt Central clerk would assign a user ID number and password to the claimant, allowing access to the cybercase file. The claimant would then serve on the respondent, via e-

⁵⁹ Mediation is the process in which a neutral third party assists others during negotiation, although the mediator has no decision-making power. *See* STEPHEN B. GOLDBERG ET AL., *DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES* 123 (3d ed. 1999).

⁶⁰ Arbitration is a dispute resolution process that is similar to court adjudication, although it is less formal. *See id.* at 233-35. Rules of evidence do not necessarily apply and the arbitrator has discretion to control discovery. *See id.* An arbitrator, unlike a mediator, does render a decision. *See id.*

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mail or regular mail, an informational sheet regarding the use of ID numbers and passwords, both of claimant's forms, and a blank form entitled "Respondent's Opening Statement."

The Respondent's Opening Statement would contain two boxes at the top of the form followed by corresponding statements: one indicating that the respondent consents to participate in the dispute resolution and the other indicating lack of consent. If the respondent checks the box indicating lack of consent to the dispute resolution process, the Cybercourt Central clerk would reassign the cybercase to the Litigation Track. If the respondent fails to return the Respondent's Opening Statement, the clerk would reassign the case to the Litigation Track. If the respondent checks the box indicating consent to the dispute resolution process, the respondent would have to complete the remainder of the form in a narrative style, providing the background facts to support her position. The respondent would have ten days to serve the Respondent's Opening Statement on the court and the claimant. This could be accomplished either electronically or by mail. Upon filing the Respondent's Opening Statement, the clerk would issue a user ID and password to the respondent.

Once both parties agree to participate in the Internet Dispute Resolution Center, the Cybercourt Central clerk would notify them of their duty to select a mediator or arbitrator. The court clerk would submit a list of ten available candidates. The parties would then have an opportunity to click on a separate section of the Cybercourt Central Web site to view curricula vitae and select a mutually agreeable person to serve as their mediator or arbitrator. If the parties could not agree within ten days, the clerk would assign the case to a particular mediator or arbitrator. The mediator or arbitrator would conduct the dispute resolution process through a series of e-mails submitted back and forth among all parties. Alternatively, the parties could agree to use holography to hold sessions in which everyone could participate in a virtual reality looking glass.⁶¹

4. The Litigation Track of the International Cybercourt Central

The Litigation Track would operate much the same as a lawsuit winding its way through a present-day court, except the use of technology would relieve parties and their attorneys of the necessity of making personal appearances. Thus, returning to the home page of Cybercourt Central, the plaintiff, whether represented by counsel or pro se, would click on the Litigation Track icon. The next page would have icons that a party could click on to obtain a summons and a basic complaint form. Plaintiff would complete those forms and file them electronically with Cybercourt Central, along with the filing fee. Next, the court clerk would issue a user ID and password to plaintiff. Then, plaintiff would electronically serve the summons and complaint on all defendants. The summons would include a special notice explaining that, upon

⁶¹ See *infra* Part II.D.5 for a discussion regarding the use of holography.

filing an answer or otherwise appearing in the case, the clerk would issue a user ID and password to defendant.

Once the cybercase lawsuit begins, all pleadings and court documents would be filed and served electronically. Hearings and other pretrial matters could be handled through e-mail, telephone, telefax, or mail. Indeed, many courts already employ e-filing as well as teleconferencing and video-conferencing.⁶² The parties could also propound and respond to discovery by using e-mail, telefax, or mail. Depositions could be conducted in person, by video-conferencing, or through the use of holography.

Cybercourt Central would maintain a cybercase file for each lawsuit. The file would essentially mirror the paper court files of present-day courts. By simply using a user ID and password, any party could access the cybercase file at any time.

If the lawsuit could not be settled, it would be assigned out for trial. At this stage of the lawsuit, Cybercourt Central could advance far beyond the confines of the contemporary cybercourts described previously.⁶³ The futuristic nature of the Litigation Track would be achieved through the use of holography to enhance the physical presence of individuals at trials.

5. The Scientific Process of Holography Operates as a Virtual Reality Looking Glass

Holography is the process of using light beams to convey three-dimensional images, known as holograms. It was first developed by Hungarian physicist, Dennis Gabor, in 1947.⁶⁴ In the 1960s, laser lights were incorporated into the process, resulting in holograms that were clearer than those created by Gabor.⁶⁵ Holography can be understood by comparing it to photography, although they are different processes. While photography records the intensity of light waves that reflect off an object, holography records “both the intensity and the direction, or phase, of the light.”⁶⁶

The process of creating holograms begins by using a laser light known as a coherent light source.⁶⁷ To create a hologram, a laser light beam, also known

⁶² See *supra* Part II.A. Presently, the Ronald Reagan Federal Building and United States Courthouse is equipped so that the United States District Court for the Central District of California may use teleconferencing and video-conferencing for lawsuits. See *Stomp, Inc. v. NeatO, LLC*, 61 F. Supp. 2d 1074, 1080 n.10 (C.D. Cal. 1999). While practicing law, this author experienced the convenience of teleconferenced motion hearings in the North Desert District of the San Bernardino County Superior Court, located approximately 125 miles east of Los Angeles, California.

⁶³ See *supra* Part II.A.

⁶⁴ See CHRISTOPHER OUTWATER & VAN HAMERSVELD, PRACTICAL HOLOGRAPHY Ch. 1, ¶¶ 1-2 (on file with author); Stephen A. Benton, *Holograms*, SCIENTIFIC AMERICAN, Jan. 1998, ¶ 1, at <http://www.sciam.com/1998/0198working.html> (last modified Oct. 21, 1999).

⁶⁵ See OUTWATER, *supra* note 64, ¶ 2.

⁶⁶ Benton, *supra* note 64, ¶ 1.

⁶⁷ See OUTWATER, *supra* note 64, ¶ 3.

as a “reference beam[,] passes through a lens” and then through “the nearly clear holographic film”⁶⁸ before being reflected back off an object as an object beam that “exposes the film.”⁶⁹ After passing through the film, the reference and object beams “interfere” with one another to form a holographic visual image.⁷⁰ Finally, the resulting image is transmitted over the Internet to a receiving projection device in a distant location.

The above description of holography is an unscientific distillation of the process. The following demonstrative example uses the previously described dispute between Peter and Michelle to provide a better understanding of how holography works and what is needed for this process to be utilized.

Peter, a resident of Los Angeles, hires an attorney to seek redress from Michelle, owner of a small import-export shop in China. Michelle maintains a host computer and network server that enable her company to conduct business throughout the world via an Internet Web site. Michelle has registered with Cybercourt Central. Therefore, when Peter enters her Web site, he must click on the Cybercourt Central logo, accepting its jurisdiction before consummating his purchase. Peter instructs his attorney to file a case with the Internet Dispute Resolution Center, and the attorney executes the appropriate documents and serves them on Michelle. Michelle, however, decides to withhold her consent to the dispute resolution process, and the Cybercourt Central clerk assigns the case to the Litigation Track. The parties, as previously explained, could manage pretrial matters such as court filings and discovery without ever appearing personally in Cybercourt Central.⁷¹

If the case were tried, holography would help create a sense that all parties were present in the Cybercourt Central courtroom, even though the judge and jury were the only parties actually sitting in the fixed courtroom. Peter and his attorney could sit in the attorney’s office in Los Angeles. Michelle and her attorney could sit in an office in China. Each attorney’s office would be equipped with a laser camera and a laser projector to send and receive the holographic images. The laser camera in each attorney’s office would focus on the attorney and the respective client, producing a hologram comprised of three-dimensional images of each of these persons. The hologram then would be digitally transmitted over the Internet to the courtroom where a laser projector would display the individuals as though they were sitting behind the counsel tables. An image could shift to coincide with the attorney who moves to another part of the courtroom when that attorney stands to question a witness, and an image could shift to coincide with a party who moves to the witness stand to testify. As a result of holography, the judge and jury would perceive that the parties and attorneys were in the courtroom. Using the same technology, the judge and jury images, as well as anyone else in the courtroom,

⁶⁸ Benton, *supra* note 64, ¶ 4.

⁶⁹ *Id.*

⁷⁰ *See id.*

⁷¹ *See supra* Part II.D.4, ¶ 2.

could be projected to each respective attorney's office. Consequently, all parties would be able to see what the other parties were doing, saying, and expressing, notwithstanding the three different geographic locations.

6. Cybercourt Central Rules of Practice and Procedure for the Litigation Track

The *Cybercourt Central Rules* for the Litigation Track should accommodate the needs and constitutional guarantees of all participating countries. Therefore, a uniform set of rules, similar to those enacted by the International Court of Justice, would have to be enacted either through a treaty, convention, or agreement.⁷² From the perspective of a United States citizen, a good starting point in devising these rules would be the Federal Rules of Civil Procedure.

Any modifications to the current Federal Rules of Civil Procedure could be minimal. One important modification, however, would relate to service of process to allow electronic methods of service. For example, e-mail service of a summons and a complaint could be used in addition to the current provisions regarding personal and substitute service.⁷³ A separate requirement would apply to defendants who refuse or otherwise fail to accept service by e-mail; they would be liable for all expenses incurred in serving a summons by alternative means.⁷⁴ E-mail and telefax service could apply to subsequent

⁷² The International Court of Justice (ICJ) has established a statute, which "elaborates certain general principles laid down in Chapter XIV of the [United Nations] Charter" and its own Rules of Court that supplement this statute. INTERNATIONAL COURT OF JUSTICE, A GUIDE TO THE HISTORY, COMPOSITION, JURISDICTION, PROCEDURE AND DECISIONS OF THE COURT ¶¶ 23-24, available at <http://www.icj-cij.org/icjwww/igeneralinformation.htm> (last modified Oct. 30, 2001).

⁷³ Currently, the Federal Rules of Civil Procedure permit service upon a person, or substitute service upon a "person of suitable age" residing at the defendant's abode, or upon an authorized agent. FED. R. CIV. P. 4(e)(2). Special rules of service apply to individual defendants served in a foreign country; however, these provisions do not yet permit electronic service of process. See FED. R. CIV. P. 4(f). The rules also allow service of documents other than a summons if effectuated within the state in which the federal district court sits. See FED. R. CIV. P. 4.1(a). Rules of service regarding pleadings and papers subsequent to the complaint, as well as subpoenas, would have to be modified to permit electronic service. See FED. R. CIV. P. 5(b), 45(b).

⁷⁴ This requirement is similar to the current Federal Rules, which permit a plaintiff to mail a summons and complaint to defendant, who in turn may waive service of summons by signing and returning the waiver form to plaintiff. See FED. R. CIV. P. 4(d). California has a similar provision. See CAL. CIV. PROC. CODE § 415.30 (West 2001). California permits a summons to be served by mail as long as it is accompanied with two copies of a "notice and acknowledgment" and a return envelope with prepaid postage. *Id.* § 415.30(a). The notice and acknowledgement form includes the following language: "Failure to complete this form and return it to the sender within 20 days may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving summons upon you in any other manner permitted by law." *Id.* § 415.30(b).

pleadings and court documents, including subpoenas.⁷⁵ Obviously, no territorial limits for service would apply.⁷⁶

The remaining Federal Rules of Civil Procedure could remain virtually unchanged. In fact, Rule 43, which requires witnesses to testify in open court, already provides a technological component, permitting "testimony in open court by contemporaneous transmission from a different location."⁷⁷ The use of holography to transmit a party's three-dimensional image into the courtroom neatly fits within this provision.

7. Advantages and Disadvantages of the International Cybercourt Central

Proponents of Cybercourt Central have an easy task in persuading others of its convenience and absolute necessity. Although this article concentrates on the use of Cybercourt Central with regard to Internet disputes, Cybercourt Central could function to handle non-Internet disputes as well. The most obvious benefit of Cybercourt Central would be its technological capabilities. Indeed, Cybercourt Central is technology. All parties to legal controversies could enjoy its advantages, including court personnel, jurors, witnesses, attorneys, and disputing parties.

First, the use of technology would bring efficiency to the court system. The management of court pleadings and other documents would be streamlined. With several clicks on a computer mouse, a court clerk could receive, file, and catalog documents into a cybercase file. A judge could then view the court pleadings and documents directly from his or her personal computer, alleviating the necessity for the court staff to manually look for and retrieve paper files. Boxes upon boxes of court files and the need for space to store them could be eliminated almost completely. Cybercase files for concluded cases could be stored on zip disks, CD-ROM, or on the latest electronic storage medium.

Second, the use of technology would assist jurors in performing their duties. Evidence presentation equipment such as the DEPS^{TM78} could enable jurors to experience physical evidence in much the same manner as the disputing parties did at the time of the dispute. Computers and the Internet are being used already. Jurors could, therefore, visualize exactly what a party had seen on the Internet and how information had been downloaded from it.⁷⁹ Through the use of holography, the jurors could perceive the appearances and reactions of all attorneys, parties, and witnesses, enabling them to determine issues of credibility.⁸⁰ The juror benefits would apply equally to judges, attorneys and

⁷⁵ See *supra* note 73 and accompanying text.

⁷⁶ Currently, the Federal Rules of Civil Procedure limit service of process to a place within 100 miles from the place where the summons issues. See FED. R. CIV. P. 4(k)(B).

⁷⁷ FED. R. CIV. P. 43(a).

⁷⁸ See *supra* notes 15-17 and accompanying text.

⁷⁹ See *supra* note 19 and accompanying text.

⁸⁰ See *supra* Part II.D.5, ¶ 5.

parties. Evidence presentation equipment already enables judges to turn off monitors in front of jurors with just the flick of a switch.⁸¹ Attorneys could streamline the time necessary to present evidence by using such equipment. Since time is money, clients would benefit from shortened trials.

Finally, the use of technology would assist attorneys, their respective clients, and witnesses. Cybercourt Central would be accessible twenty-four hours a day, enabling attorneys to review information in the cybercase file at any convenient time. Attorneys would not have to travel long distances to appear at motion hearings and other pretrial matters because the use of holography as a component of a Cybercourt Central trial would enable disputants to have their day in court without physically going to court. Likewise, witnesses could testify without actually going to a physical courtroom. The relief from long-distance travel would eliminate enormous expenses and save valuable time. Parties, especially small companies, would benefit further by the ability to continue business operations without major interruption. When the trial is not in session, a time period that could amount to several hours each day, parties could maintain a presence in the day-to-day operations of their businesses.

Opponents of Cybercourt Central might claim that the actual cost of laser cameras and projectors outweigh any of the realized benefits described above. However, as with technology in general, once holography becomes more commonplace, the expense should become more reasonable.

Opponents also might claim that some judges and attorneys would be unable to function in such a highly technical environment. No one should dispute that judges would need to be proficient in the use of technology since everything about Cybercourt Central *is* technology. Attorneys would be strongly encouraged to use all aspects of the technological court; however, they would only be mandated to file all forms electronically. Consequently, attorneys who wished to appear personally could travel to the physical location of Cybercourt Central and present evidence without the necessity of using high tech equipment.

Additionally, opponents might claim that Cybercourt Central would abrogate certain constitutional rights and other important concerns. These rights and concerns are addressed in Parts III through V of this article and are arranged in the order that an attorney might consider. Thus, preliminary matters of jurisdiction and choice of law are discussed first, followed by important trial rights including due process, confrontation, and evidentiary matters such as ability to determine credibility, including demeanor. The legal analyses in Parts III through V demonstrate that, in actuality, Cybercourt Central would constitute a forum that is just, fair, impartial, convenient, practical, and economical for all parties concerned. Moreover, irrespective of any concerns opponents may have, the parties' agreement to be heard in Cybercourt Central is nothing more than a valid, enforceable contract.

⁸¹ See *supra* notes 16-17 and accompanying text.

III. JURISDICTIONAL CONCERNS REGARDING FORUM SELECTION CLAUSES

The registration process, as a component of Cybercourt Central, is analogous to a forum selection clause. This process is designed specifically for use regarding potential Internet disputes. As previously noted, a user may voluntarily register with Cybercourt Central and include Cybercourt Central's logo on a Web site or e-mail message.⁸² By doing so, the user provides notice to anyone who wants to communicate with him or her, or otherwise enter into some type of business transaction, that clicking through the logo is deemed consent to Cybercourt Central's jurisdiction. This registration process, therefore, is similar to a non-negotiable forum selection clause.

Historically, forum selection clauses were disfavored.⁸³ However, the United States Supreme Court has upheld the validity of such clauses, recognizing the importance of international trade and comity.⁸⁴ This rationale applies to both the selection of a court and the selection of an arbitration forum.⁸⁵ It applies also to a non-negotiated form contract as long as the aggrieved party has received adequate notice and the provision is deemed "fundamentally fair"⁸⁶ and reasonably communicated.⁸⁷ The Supreme Court has upheld forum selection clauses as a matter of federal law.⁸⁸

⁸² See *supra* Part II.D.1.

⁸³ See *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 9 (1972) (upholding validity of forum selection clause in an admiralty contract).

⁸⁴ See *id.* at 10-11 (finding that "other courts are tending to adopt a more hospitable attitude toward forum selection clauses" and that this approach "accords with ancient concepts of freedom of contract and reflects an appreciation of the expanding horizons of American contractors who seek business in all parts of the world"); see also *Vimar Seguros Y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528, 537-38 (1995) ("[T]he historical judicial resistance to foreign forum selection clauses 'has little place in an era when . . . businesses once essentially local now operate in world markets.'" (quoting *Bremen*, 407 U.S. at 12)).

⁸⁵ See *Vimar Seguros Y Reaseguros, S.A.*, 515 U.S. at 538; *Bremen*, 407 U.S. at 9-11.

⁸⁶ See *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593-95 (1991) (upholding validity of cruise line ticket that included a provision that any lawsuits filed against Carnival Cruise Lines, Inc. must be filed in a Florida court). A court must consider several factors to determine whether a forum selection clause is fundamentally fair. These include whether the plaintiff had notice of the forum selection clause, whether the defendant chose its corporate location to avoid litigation, whether the forum selection clause designates a "remote alien forum," and whether the defendant acted in bad faith in obtaining the plaintiffs' consent to the forum selection clause. *Id.* at 594-95 (quoting *Bremen*, 407 U.S. at 17).

⁸⁷ See *Lousararian v. Royal Caribbean Corp.*, 951 F.2d 7, 8-9 (1st Cir. 1991). The First Circuit explained the two prongs of the "reasonable communicative" test as follows: 1) whether the language and appearance of the ticket contract made the relevant provisions "sufficiently obvious and understandable," and 2) whether extrinsic factors show that the passenger was "meaningfully informed of the contractual terms." *Id.* (quoting *Shankles v. Costa Armatori, S.P.A.*, 722 F.2d 861, 865-66 (1st Cir. 1983)).

⁸⁸ See *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 32 (1988) (enforcing forum selection

Examples of valid forum selection clauses range from simple commercial transactions involving a cruise line ticket⁸⁹ or an alleged breach of an employment contract⁹⁰ to more complicated international transactions involving negotiated contracts between sophisticated businessmen.⁹¹ One such international transaction took place in *Bremen v. Zapata Off-Shore Co.*,⁹² a case that involved an admiralty contract to tow an expensive piece of equipment half way around the world.⁹³ The Supreme Court held that a forum selection clause in a freely negotiated contract was valid unless it was found to be unreasonable under the circumstances.⁹⁴ *Vimar Seguros Y Reaseguros, S.A. v. M/V Sky Reefer*,⁹⁵ involved a maritime shipping transaction in which fruit was shipped from Morocco to a United States purchaser via a Japanese carrier.⁹⁶ The United States Supreme Court upheld the foreign forum selection clause in the bill of lading, which required any dispute to be heard in binding arbitration in Tokyo, Japan.⁹⁷ Similarly, federal statutes include provisions indicating that, in certain circumstances, arbitration is appropriate.⁹⁸

Whether a forum selection clause is involved in a national or international contract, or a negotiable or non-negotiable contract, the trend is toward enforceability. This trend makes sense in light of contemporary business transactions that involve individuals and companies all over the world. Cybercourt Central's registration system is reasonable under the circumstances

clause in a dealership agreement between an Alabama business and a New York corporation as a matter of federal law).

⁸⁹ See *Shute*, 499 U.S. at 593-95; *Carron v. Holland Am. Line-Westours Inc.*, 51 F. Supp. 2d 322, 324-25 (E.D.N.Y. 1999); *Perez v. Carnival Cruise Lines*, 993 F. Supp. 39, 40-41 (D.C.P.R. 1998); *Gomez v. Royal Caribbean Cruise Lines*, 964 F. Supp. 47, 49-52 (D.C.P.R. 1997).

⁹⁰ See *Silva v. Encyclopedia Britannica, Inc.*, 239 F.3d 385, 388-89 (1st Cir. 2001) (enforcing a forum selection clause in a contract between an employer and an independent contractor does not depend on whether the contract provision was negotiable, but rather whether the clause is reasonable and just).

⁹¹ See *Vimar Seguros Y Reaseguros, S.A.*, 515 U.S. at 532; *Bremen*, 407 U.S. at 12-14.

⁹² 407 U.S. 1 (1972).

⁹³ See *id.* at 17.

⁹⁴ *Id.* at 10-17 (rationalizing that the forum selection clause was part of a specifically negotiated commercial contract between sophisticated parties from different countries). Since the equipment was being towed from Louisiana across the Gulf of Mexico, the Atlantic Ocean and the Mediterranean Sea to a final location in the Adriatic Sea, damage could occur in many different jurisdictions, making it reasonable for the parties to select a neutral jurisdiction to hear possible disputes arising out of the contract. See *id.* at 12-14.

⁹⁵ 515 U.S. 528 (1995).

⁹⁶ See *id.*

⁹⁷ *Id.* at 539, 541.

⁹⁸ See, e.g., Federal Arbitration Act, 9 U.S.C. § 2 (2000); Labor Management Relations (Taft-Hartley) Act, 29 U.S.C. § 185 (2000).

because it comports with the contemporary notion that parties are capable of selecting an appropriate forum to hear future disputes.

IV. CHOICE OF LAW CONCERNS

As a universally-accepted rule, courts follow the procedures set forth by the jurisdiction in which they are located.⁹⁹ Cybercourt Central would be no exception. Consequently, the procedures of the *Cybercourt Central Rules* would govern all actions filed in the court.

Substantive rules and laws, however, are another matter.¹⁰⁰ Generally, when a federal court sits in diversity jurisdiction, it applies relevant provisions of the U.S. Constitution or acts of the U.S. Congress.¹⁰¹ Federal courts also have created federal common law to fill in gaps created by federal legislative acts.¹⁰² If the federal constitution or laws do not apply, then a federal court sitting in diversity jurisdiction applies the choice of law rules of the state in which it sits.¹⁰³ Likewise, state courts apply the choice of law rules of their respective states.¹⁰⁴

Cybercourt Central, however, would not be limited by territorial boundaries; it would cut across traditional lines that separate state and federal courts. Neither digital nor radio transmissions honor these traditional lines, or for that matter, international borders. Therefore, Cybercourt Central is proposed as a

⁹⁹ See *Sun Oil Co. v. Wortman*, 486 U.S. 717, 722-23 (1988) (determining that a statute of limitations constitutes a procedural matter subject to the Full Faith and Credit Clause and allowing the state to follow “its own procedural rules . . . [for] actions litigated in its courts.”).

¹⁰⁰ Courts recognize the distinction between substantive and procedural law. See *id.* at 726-28 (differentiating between substantive and procedural law with respect to a statute of limitation); *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 495-96 (1941) (acknowledging the Third Circuit’s analysis that a determination of the measure of damages is a substantive matter rather than a procedural one).

¹⁰¹ *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938); see also *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 27 (1988) (holding that a federal district court hearing a case based on diversity of citizenship jurisdiction must apply a federal statute as compared to a state law when the federal statute “controls the issue . . . [and] represents a valid exercise of Congress’ constitutional powers”); *Hanna v. Plumer*, 380 U.S. 460, 473 (1965) (recognizing that the Federal Rules of Civil Procedure should apply to a case based on diversity of citizenship jurisdiction because there are “affirmative countervailing [federal] considerations” and . . . a Congressional mandate . . . supported by constitutional authority” (quoting *Lumbermen’s Mutual Casualty Co. v. Wright*, 322 F.2d 759, 764 (5th Cir. 1963))).

¹⁰² See *Clearfield Trust Co. v. United States*, 318 U.S. 363, 367 (1943) (recognizing that “[i]n absence of an applicable Act of Congress it is for the federal courts to fashion the governing rule of law according to their own standards.”).

¹⁰³ See *Erie R.R. Co.*, 304 U.S. at 78; *Klaxon Co.*, 313 U.S. at 496 (deferring to uniformity of decisions rendered within the same state rather than within a federal court system).

¹⁰⁴ See *Klaxon Co.*, 313 U.S. at 496-98.

separate international court, whereby participating countries could agree to its governance by way of a treaty or similar agreement. Even if a country did not want to participate in Cybercourt Central, its citizens could do so by the simple act of executing the *Cybercourt Central Agreement*. Consequently, the governing treaty could include a provision allowing the parties to select an appropriate choice of law, including the selection of international law. Alternatively, the choice of law selected in the *Cybercourt Central Agreement* could be decisive. In either situation, the choice of law selection would be nothing more than a contractual agreement.

Existing law allows parties to agree contractually that certain law will govern any subsequent controversy arising out of a contract.¹⁰⁵ Section 187 of the Restatement (Second) of Conflict of Laws specifically allows such contractual choice of law provisions.¹⁰⁶ Moreover, Section 201 provides that “[t]he effect of misrepresentation, duress, undue influence and mistake upon a contract is determined by the law selected by application of the rules of sections 187-188.”¹⁰⁷

¹⁰⁵ See, e.g., *Banek, Inc. v. Yogurt Ventures U.S.A., Inc.*, 6 F.3d 357, 361-63 (6th Cir. 1993) (emphasizing the validity of a choice of law clause in a franchise agreement in which both parties freely negotiated various terms, and finding that the choice of law provision in favor of Georgia law did not violate the public policy of Michigan law); *Interfirst Bank Clifton v. Fernandez*, 853 F.2d 292, 294-95 (5th Cir. 1988) (recognizing the validity of a choice of law clause specifically set forth in only one of a series of related agreements).

¹⁰⁶ Restatement (Second) of Conflict of Laws § 187 (1971). That Section provides:

(1) The law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.

(2) The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either

(a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or

(b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.

(3) In the absence of a contrary indication of intention, the reference is to the local law of the state of the chosen law.

Id.; see also *Kronovet v. Lipchin*, 415 A.2d 1096, 1105-06 (Md. 1980) (giving effect to a choice-of-law provision in a contract calling for application of Maryland laws despite the contract negotiation and execution in New York, but recognizing that a “‘substantial’ or ‘vital’ relationship” is necessary “between the chosen situs and issue to be decided,” and the provision must not violate “the fundamental policy of the forum . . . [that has] a materially greater interest in determining the issue”).

¹⁰⁷ Restatement (Second) of Conflict of Laws § 201 (1971). See generally *General Engineering Corp. v. Martin Marietta Alumina, Inc.*, 783 F.2d 352, 356-59 (3d. Cir. 1986) (deferring to state law rather than federal common law in upholding a contractual provision

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The ability to select choice of law rules as part of Cybercourt Central's registration system is reasonable. Like the validity of selecting Cybercourt Central as an appropriate forum, parties are capable as well as authorized to rely on contractual agreements to select appropriate choice of law rules. Consequently, a governing treaty or the *Cybercourt Central Agreement* could include a provision specifying an appropriate choice of law.

V. IMPORTANT TRIAL RIGHTS IN THE FEDERAL COURTS

A. *Due Process Considerations*

The United States Constitution provides guarantees of both substantive and procedural due process. "No person shall be . . . deprived of life, liberty, or property, without due process of law . . ." ¹⁰⁸ No state "shall . . . deprive any person of life, liberty, or property, without due process of law . . ." ¹⁰⁹ Substantive due process under the Fifth Amendment involves the ability to review the substance of legislation or government action and determine whether it is compatible with the Constitution. ¹¹⁰ Procedural due process differs from substantive due process. It "imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." ¹¹¹

Procedural due process is limited in scope and seeks to assure that parties have a fair decision making process. ¹¹² The opportunity to be heard is fundamental to the procedural due process guarantee. ¹¹³ In this regard, a court considers whether a hearing has been provided "at a meaningful time and in a meaningful manner." ¹¹⁴

Cases involving procedural due process issues are fact-driven. ¹¹⁵ Courts look at whether fundamental rights or liberties are at stake, and consider the

in which two sophisticated businesses agreed to a specific forum and chose the governing law); *Trent Partners & Assocs. v. Digital Equip. Corp.*, 120 F. Supp. 2d 84, 95-97 & n.12 (D. Mass. 1999) (distinguishing between tort and contract causes of action and noting that Maryland courts uphold choice of law provisions in contracts; however, such deference is limited to "issues relating to contractual rights and duties," and does not apply to choice of law issues regarding torts).

¹⁰⁸ U.S. CONST. amend. V.

¹⁰⁹ U.S. CONST. amend. XIV, § 1.

¹¹⁰ See JOHN E. NOWAK & RONALD D. ROTUNDA, *CONSTITUTIONAL LAW* 375 (6th ed. 2000).

¹¹¹ *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

¹¹² See NOWAK, *supra* note 110, at 375.

¹¹³ *Grannis v. Ordean*, 234 U.S. 385, 394 (1914).

¹¹⁴ *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

¹¹⁵ See *Mathews*, 424 U.S. at 349.

facts with regard to “time, place and circumstances.”¹¹⁶ Courts analyze procedural due process issues using a tripartite test. First, courts examine “the private interest that will be affected by the official action.”¹¹⁷ Second, courts look at whether there is a risk that a deprivation may be “erroneous . . . and the probable value, if any, of additional or substitute procedural safeguards.”¹¹⁸ Finally, courts consider “the Government’s interest, including the function involved and the fiscal and administrative burdens” of any substitute procedural requirements.¹¹⁹

In *Mathews v. Eldridge*,¹²⁰ the Court held that an oral evidentiary hearing was not required before the state could terminate Social Security disability benefits, distinguishing between the objective evidence attendant to such an adjudication and the subjective evidence considered in other matters, such as welfare.¹²¹ The Court found that while eligibility for welfare assistance is dependent on subjective evidence such as the welfare recipient’s credibility and veracity, eligibility for Social Security disability is determined by objective evidence such as X-rays, laboratory tests, and other medical reports.¹²²

In procedural due process analyses, courts also scrutinize various factors regarding the scope of a hearing. For example, courts may consider a party’s right to present evidence, cross-examine witnesses, have an attorney present, and receive a written decision.¹²³ In *Califano v. Yamasaki*,¹²⁴ the Supreme Court considered whether Social Security beneficiaries were entitled to a hearing before the recoupment of overpaid benefits.¹²⁵ In its analysis, the *Califano* Court focused on whether credibility was a factor to consider.¹²⁶ The Court found that neither Section 404(a) of the Social Security Act¹²⁷ nor the

¹¹⁶ *Id.* at 334 (quoting *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961)).

¹¹⁷ *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also* *Goldberg v. Kelly*, 397 U.S. 254, 263-64 (1970) (finding that the extent that procedural due process is afforded to a recipient is influenced by the chance that the recipient might suffer grievous loss).

¹¹⁸ *Mathews*, 424 U.S. at 335; *see also* *Goldberg*, 397 U.S. at 266-67 (examining the requirement of a pre-termination hearing).

¹¹⁹ *Mathews*, 424 U.S. at 335; *see also* *Goldberg*, 397 U.S. at 262-71 (finding important government interests in affording a welfare recipient a pre-termination hearing).

¹²⁰ 424 U.S. 319 (1976).

¹²¹ *Id.* at 343-45, 349.

¹²² *Id.* at 343-45.

¹²³ *See* *Califano v. Yamasaki*, 442 U.S. 682, 692 (1979).

¹²⁴ 442 U.S. 682 (1979).

¹²⁵ *Id.* at 684.

¹²⁶ *Id.* at 691 (referring to *Mathews v. Eldridge*, 424 U.S. 319 (1976)).

¹²⁷ 42 U.S.C. § 404(a) (2000). The Social Security Act provides in relevant part: “Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, under regulations prescribed by the Commissioner of Social Security” *Id.* Note that the current version of section 404(a) has substituted

Constitution mandated an opportunity for an oral hearing.¹²⁸ Rather, that section set forth “relatively straightforward matters of computation” which could be handled adequately through a written review.¹²⁹ The Court, however, found that Section 404(b)¹³⁰ specifically required the Secretary to make a determination of “fault” and determine whether the recoupment would be ‘against equity and good conscience.’¹³¹ These determinations, the Court noted, must be made in person by evaluating all the “pertinent circumstances,” including the beneficiary’s intelligence, mental and physical condition, and good faith belief.¹³² Therefore, the Court held that an opportunity for a pre-recoupment oral hearing was required under section 404(b).¹³³

Mathews and *Califano* are just two examples that illustrate the intensity with which the Supreme Court analyzes procedural due process issues. Nevertheless, the concern about rights of procedural due process, especially the right to an oral hearing and the scope of that hearing, is not critical to Cybercourt Central’s success. Through the use of holography, Cybercourt Central could hold hearings and trials in which all parties could participate. More importantly, holography would enable fact finders to view all witnesses in person and make reliable assessments of credibility based on both perceived mental and physical conditions. Therefore, if the Cybercourt Central judge determined that an oral hearing or other face-to-face confrontation was necessary, such a proceeding would comply with procedural due process rights.

B. *The Right of Confrontation*

Confrontation is paramount to an ability to examine and cross-examine witnesses effectively. It involves the ability to scrutinize blinking eyelids or grimacing facial gestures and hear the uneasy movement of a body in a swiveling chair. Yet, confrontation is incompatible with the isolation-

“Commissioner of Social Security” in place of “Secretary of the Department of Health, Education and Welfare,” which was in effect at the time that *Califano* was decided. See Foster Care Independence Act of 1999, § 201, Pub. Law 106-196, 113 Stat. 1822, 1831 (1999) (amending 42 U.S.C. § 404(a)). At the time *Califano* was decided, the Secretary’s general practice was to make an *ex parte* determination under section 404(a) that an overpayment had been made and then notify the Social Security beneficiary. See *Califano*, 442 U.S. at 686.

¹²⁸ *Califano*, 442 U.S. at 693.

¹²⁹ *Id.* at 696.

¹³⁰ 42 U.S.C. § 404(b) (2000). The Social Security Act provides in relevant part: “In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is *without fault* if such adjustment or recovery would defeat the purpose of this subchapter or would be against *equity and good conscience.*” *Id.* (emphasis added).

¹³¹ *Califano*, 442 U.S. at 697 (citing 42 U.S.C. § 404(b)).

¹³² *Id.*

¹³³ *Id.*

provoking aspects of computers, and is wholly lacking in the contemporary cybercourts previously described.¹³⁴ Those so-called “cybercourts” foster isolation as parties sit at computers and view written words on a monitor. However, the key aspect that distinguishes Cybercourt Central from the contemporary “cybercourts” is the use of holography.

Holography can achieve a virtual physical union in cyberspace. Through the use of holographic images, this technology allows people to virtually confront one another as though the individuals are in the same room. Consequently, holography is the key to fostering open, candid discussions among all parties and witnesses. Holography is particularly critical to effective cross-examination in Cybercourt Central, as “[c]ross-examination is the highest and most sensitive art form; it is a ballet of voice, expression and movement whereby one person controls the speech of another.”¹³⁵

The right to confront witnesses is a constitutional right mandated only for criminal prosecutions.¹³⁶ Courts deem such right to be “fundamental and essential to a fair trial”¹³⁷ Although the Confrontation Clause is limited to criminal proceedings, it is instructive for civil proceedings.¹³⁸ Therefore, it is helpful to examine the purpose behind the Confrontation Clause to understand the legal implications of confrontation within the civil context.

1. The Right of Confrontation in Criminal Proceedings

The primary purpose of the Confrontation Clause is to allow cross-examination of a witness “to test ‘the believability of a witness and the truth of his testimony.’”¹³⁹ Cross-examination is also important to show the “witness’ motivation” for testifying.¹⁴⁰ The right to confrontation is not limited,

¹³⁴ See *supra* Part II.A.

¹³⁵ Interview with Ashley S. Lipson, Assistant Professor of Law, University of La Verne College of Law, in Ontario, Cal. (Aug. 1, 2001).

¹³⁶ U.S. CONST. amend. VI. “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him” *Id.*; see also *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986) (upholding this constitutional principle).

¹³⁷ *Pointer v. Texas*, 380 U.S. 400, 403 (1965) (citing *Gideon v. Wainwright*, 372 U.S. 335, 342 (1963)).

¹³⁸ See *Austin v. United States*, 509 U.S. 602, 608 n.4 (1993) (stating that the protection provided by the Sixth Amendment is limited to criminal cases). *But see Ex Parte Beckham*, 643 So. 2d 1373, 1374 (Ala. 1994) (referring to FED. R. CIV. P. 43(a) in conjunction with a state statute that “provides a right to a ‘thorough and sifting’ cross-examination” in civil proceedings and holding that this state statute was not limited to criminal cases).

¹³⁹ *U. S. v. Gonzalez-Vazquez*, 219 F.3d 37, 45 (1st Cir. 2000) (citing *United States v. Carty*, 993 F.2d 1005, 1009 (1st Cir. 1993)). In *Gonzalez-Vazquez*, the court found that a trial judge had properly prohibited a defendant from cross-examining a police officer about allegations that other officers were corrupt because any dishonesty of other officers would not relate to the testifying officer’s “veracity, bias, and motivation.” *Gonzalez-Vazquez*, 219 F.3d at 44-45.

¹⁴⁰ *Van Arsdall*, 475 U.S. at 678.

however, to a physical confrontation with a witness;¹⁴¹ it does not guarantee an “absolute right to a face-to-face meeting with witnesses”¹⁴²

The Confrontation Clause does not prevent a trial judge from imposing limits on the right to cross-examine witnesses.¹⁴³ Courts designate limitations regarding the right to confront witnesses to prevent “harassment, prejudice, confusion of issues, the witness’ safety, interrogation that is repetitive or only marginally relevant,”¹⁴⁴ and to provide a “complete picture of the witness’ veracity, bias, and motivation.”¹⁴⁵ The Supreme Court has stated that “the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.”¹⁴⁶ Therefore, when the right to cross-examine involves witnesses who testify at trial, the courts’ analyses are extremely fact-oriented.

In *Delaware v. Van Arsdall*,¹⁴⁷ a Delaware trial judge had prohibited any cross-examination of a prosecution witness’s agreement to testify in return for the dismissal of a criminal charge for drunk driving because such evidence was more prejudicial than probative.¹⁴⁸ Stating that evidence of a witness’s bias is central to a witness’s credibility, the Delaware Supreme Court reversed defendant’s criminal conviction based on the Confrontation Clause and held that the trial judge’s ruling denied the defendant his right to cross-examine.¹⁴⁹ The United States Supreme Court vacated and remanded the decision, recognizing that the Constitution seeks to ensure a fair trial not a perfect one.¹⁵⁰

¹⁴¹ *Id.*

¹⁴² *Maryland v. Craig*, 497 U.S. 836, 844 (1990) (emphasis added). In *Craig*, the Court permitted a child witness in a child abuse case to testify in a separate room; the testimony was sent to the courtroom by a “one-way closed circuit television.” *Id.* at 840.

¹⁴³ *See Van Arsdall*, 475 U.S. at 679.

¹⁴⁴ *Id.* (noting that the trial judge had wide discretion to impose limits on the ability to cross-examine when the testimony was likely to be more prejudicial than probative); *see also* *United States v. Twomey*, 806 F.2d 1136, 1139 (1st Cir. 1986) (restricting cross-examination of a witness whose testimony was “likely to be more prejudicial than probative”).

¹⁴⁵ *United States v. Gonzalez-Vazquez*, 219 F.3d 37, 45 (1st Cir. 2000); *see also Craig*, 497 U.S. at 849-50 (noting that the limitations placed on the face-to-face preference embodied in the Confrontation Clause are twofold: to demonstrate paramount interests of “public policy” and consider “the necessities of the case”).

¹⁴⁶ *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985).

¹⁴⁷ 475 U.S. 673 (1986).

¹⁴⁸ *Id.* at 676.

¹⁴⁹ *See id.* at 677-78.

¹⁵⁰ *Id.* at 681 (relying on the harmless error doctrine, which focuses on the “underlying fairness of the trial”).

Other cases involve restrictions on cross-examination when witnesses are not available for trial. In *Pointer v. Texas*,¹⁵¹ the Supreme Court reversed a trial court ruling that allowed the prosecution to offer the transcript of the victim's testimony from the preliminary hearing.¹⁵² The Court noted that at the preliminary hearing, the defendant was not given a full and fair opportunity to cross-examine because he lacked representation.¹⁵³ However, the issue would have been decided differently if counsel had been present to represent the defendant at the preliminary hearing.¹⁵⁴

In *United States v. Muhammad*,¹⁵⁵ the Seventh Circuit noted that the Sixth Amendment does not guarantee "limitless cross-examination."¹⁵⁶ Therefore, the defendant was not denied a right of confrontation. His counsel knew that an agent for the prosecution was under time restrictions and was about to leave the country, yet during the available time, questioned the agent about routine preliminary matters rather than about potential exculpatory evidence.¹⁵⁷

2. The Right of Confrontation in Civil Proceedings

The Confrontation Clause does not mandate a right of confrontation in civil proceedings.¹⁵⁸ However, the right to be heard and to confront witnesses is considered fundamental to a fair trial, and may be required under Rule 43 of the Federal Rules of Civil Procedure or under considerations of procedural due process.

Rule 43(a) of the Federal Rules of Civil Procedure provides that "[i]n every trial the testimony of witnesses shall be taken in open court, unless [federal law or rules provide otherwise.]"¹⁵⁹ A 1996 amendment to the rule now permits testimony to be presented "by contemporaneous transmission from a different location" upon a showing of "good cause . . . in compelling circumstances and upon appropriate safeguards . . ."¹⁶⁰ Rule 43(a) was promulgated as a result of "abuses under the old equity practice of taking testimony entirely by

¹⁵¹ 380 U.S. 400 (1965).

¹⁵² *Id.* at 401, 406.

¹⁵³ *Id.* at 406-07.

¹⁵⁴ *Id.* at 407; *see also* *United States v. Mueller*, 74 F.3d 1152, 1156-57 (11th Cir. 1996) (admitting a foreign witness's deposition because the witness was not available to testify at trial); *United States v. Kelly*, 892 F.2d 255, 260, 263 (3d Cir. 1989), *cert. denied*, 497 U.S. 1006 (1990) (admitting a videotaped deposition of a foreign witness into evidence did not violate defendant's right of confrontation because the defense counsel was present at the deposition taken in Brussels and the defendant participated by listening to the deposition via telephone and conferring with counsel on a separate telephone line).

¹⁵⁵ 928 F.2d 1461 (7th Cir. 1991).

¹⁵⁶ *Id.* at 1466.

¹⁵⁷ *See id.* at 1467.

¹⁵⁸ *See supra* Part V.B.1.

¹⁵⁹ FED. R. CIV. P. 43(a).

¹⁶⁰ FED. R. CIV. P. 43(a); *see also* STEVEN BAICKER-MCKEE ET AL., A STUDENT'S GUIDE TO THE FEDERAL RULES OF CIVIL PROCEDURE 597 (4th ed. 2001).

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deposition.”¹⁶¹ Consequently, the primary purpose of Rule 43(a) is to ensure that witness statements are accurate.¹⁶² This can be accomplished through cross-examination and the observance of witnesses’ demeanor.¹⁶³

Rule 43(a) generally presupposes that witnesses must be “physically present in the courtroom to give testimony orally.”¹⁶⁴ The rule, however, provides that “federal law . . . or other rules” may qualify the requirement that the testimony of witnesses be in open court.¹⁶⁵ For example, Rule 611 of the Federal Rules of Evidence qualifies as “other rules” specified within Rule 43(a).¹⁶⁶ Rule 611(a) permits a court to “exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence.”¹⁶⁷ As a result, the United States District Court for the District of Hawaii has developed a “Declarations Procedure,” which requires direct evidence by affidavit or declaration in a nonjury civil trial.¹⁶⁸ Witnesses are permitted to testify orally on cross-examination and on redirect.¹⁶⁹ The court held that a declaration in lieu of direct testimony does not violate Rule 43(a).¹⁷⁰

Courts are split on whether telephonic testimony complies with Rule 43(a). In a civil action based on claims of negligence and strict liability, the Eighth Circuit was the first federal appellate court to rule that telephone testimony violated Rule 43(a).¹⁷¹ Nevertheless, other courts allow telephonic testimony.¹⁷²

¹⁶¹ *In re Adair*, 965 F.2d 777, 780 n.4 (9th Cir. 1992) (referring to FED. R. CIV. P. 43(a) advisory committee’s note to 1937 adoption and C. WRIGHT & A. MILLER, FEDERAL PRACTICE & PROCEDURE § 2407 (1971)).

¹⁶² *In re Adair*, 965 F.2d at 780.

¹⁶³ *See id.* *In re Adair* involved a bankruptcy proceeding in which the debtors claimed their due process rights were violated because direct testimony was presented via written declarations. *See id.* at 779. The court held that no due process violation occurred; the written declarations were used pursuant to a local bankruptcy court rule and the witnesses could testify orally both on cross-examination and on redirect. *Id.* Therefore, a judge still had an opportunity to evaluate demeanor and credibility. *Id.* at 779-80.

¹⁶⁴ *Murphy v. Tivoli Enters.*, 953 F.2d 354, 359 (8th Cir. 1992).

¹⁶⁵ FED. R. CIV. P. 43(a).

¹⁶⁶ *Kuntz v. Sea Eagle Diving Adventures Corp.*, 199 F.R.D. 665 (D. Haw. 2001).

¹⁶⁷ FED. R. EVID. 611.

¹⁶⁸ *See Kuntz*, 199 F.R.D. at 666.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 667-68. The court acknowledged that it permits exemptions to the Declarations Procedure if the movant can specify why a certain situation warrants exceptional status. *Id.* at 667. Simply requesting a “blanket exemption” was not sufficient. *Id.* The *Kuntz* court also cited to *In re Adair*, which involved a similar declaration procedure, and held that the procedure in *In re Adair* was not limited to bankruptcy proceedings. *Kuntz*, 199 F.R.D. at 667.

¹⁷¹ *Murphy v. Tivoli Enters.*, 953 F.2d 354, 358-59 (8th Cir. 1992). The court noted, however, that even though telephone testimony violated Rule 43(a), such error was harmless rather than prejudicial because the telephone testimony related only to the strict liability

Courts have held that testimony “via two-way closed-circuit television” meets the requirements of Rule 43(a),¹⁷³ and that videotape testimony is admissible under certain circumstances.¹⁷⁴ However, courts are reluctant to permit the introduction of an expert witness’s deposition in lieu of live testimony, due to the distinction between fact witnesses and expert witnesses.¹⁷⁵

Courts find the subject matter of a case instructive as to whether live testimony is required pursuant to Rule 43(a). For example, in an ERISA records case, a district court reviews an administrative decision for an abuse of discretion, and thus, is limited to a review of the evidence that was available to the plan administrator.¹⁷⁶ Consequently, the court is bound by the written administrative record and may not hear new oral testimony.¹⁷⁷ In contrast, a civil contempt proceeding is analogous to a trial on the merits requiring a factual analysis; therefore, Rule 43(a) governs and requires an oral hearing.¹⁷⁸

cause of action and the jury’s determination of liability was based on another cause of action in negligence. *Id.* at 359; *see also* *United States v. Jacobs*, 97 F.3d 275, 283 (8th Cir. 1996) (noting that “cross-examination via telephone [was not permissible] either generally or in this particular criminal case” in which the prosecution’s main witness was hospitalized due to her pregnancy).

¹⁷² *See* *Beltran-Tirado v. INS*, 213 F.3d 1179, 1185 (9th Cir. 2000) (allowing telephonic testimony at an INS deportation hearing from a sworn out-of-state witness who was subject to cross-examination); *Elson v. State*, 633 P.2d 292, 302 (Alaska Ct. App. 1981), *aff’d* 659 P.2d 1195 (Alaska 1983) (permitting a chemist to testify in a sentencing hearing via telephone because the testimony related to a laboratory report which counsel had in the courtroom and defense counsel had an opportunity to rebut the testimony through cross-examination of the chemist); *State v. Aldape*, 307 N.W.2d 32, 43 (Iowa 1981) (permitting magistrate and peace officer to testify via telephone where both prosecution and defense counsel consented).

¹⁷³ *Carron v. Holland Am. Line-Westours Inc.*, 51 F. Supp. 2d 322, 327 (E.D.N.Y. 1999) (recognizing that if two-way closed circuit television is an acceptable method of presenting testimony in a criminal case, it must be acceptable in a civil case).

¹⁷⁴ *See* *FTC v. Swedish Match N. Am., Inc.*, 197 F.R.D. 1, 2 (D.D.C. 2000) (equating live testimony to contemporaneous video transmitted testimony); *Ferrante v. Ferrante*, 485 N.Y.S.2d 960, 962 (Sup. Ct. 1985) (allowing an elderly plaintiff who was unable to travel, to testify via a telephone conference call in which she was also videotaped).

¹⁷⁵ *See* *Aubrey Rogers Agency, Inc. v. AIG Life Ins. Co.*, No. 97-529 MMS, 2000 U.S. Dist. LEXIS 997, ** 10-13 (D. Del. Jan. 13, 2000) (rationalizing that parties have the option of hiring experts as they so choose; experts generally have no knowledge of facts so any qualified expert is capable of rendering an opinion).

¹⁷⁶ *Bellaire Gen. Hospital v. Blue Cross Blue Shield of Michigan*, 97 F.3d 822, 827 (5th Cir. 1996). The plan administrator determines whether insurance coverage applies to a particular situation. *See id.*

¹⁷⁷ *See id.* at 827-28.

¹⁷⁸ *Sanders v. Monsanto Co.*, 574 F.2d 198, 199 (5th Cir. 1978); *cf.* *United States v. Ayres*, 166 F.3d 991, 995-96 (9th Cir. 1999) (noting the general preference for an oral evidentiary hearing regarding civil contempt; however, differentiating the situation where

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The right to confront witnesses in a civil proceeding may be required under considerations of procedural due process.¹⁷⁹ This due process right to be heard in a civil proceeding is not absolute and cannot be equated to a rigid concept.¹⁸⁰ The Supreme Court has noted that “[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation”¹⁸¹

Like the analysis under Rule 43(a), courts look at the underlying factual nature of a dispute to determine what is required for a procedural due process analysis. Without referring to Rule 43(a), the Ninth Circuit has held that an oral evidentiary hearing is not mandated for every civil contempt proceeding.¹⁸² The court noted the general preference for an oral hearing.¹⁸³ However, where the defendant attempts to explain why he did not comply with a summons enforcement order instead of assert he could not comply, no facts were in dispute regarding the contempt. Consequently, due process did not require an oral hearing.¹⁸⁴

The right to confront witnesses, whether in the criminal or civil context, would benefit specifically from the holographic component of trials conducted in Cybercourt Central. No longer could witnesses claim that they are beyond

the underlying contempt is uncontroverted such that an oral hearing is not required where the defendant conceded the contempt by explaining why he did not comply rather than assert he could not comply).

¹⁷⁹ See *Jenkins v. McKeithen*, 395 U.S. 411, 428 (1969) (finding that a 1967 Louisiana statute that created the “Labor-Management Commission of Inquiry” violated the Due Process Clause of the Fourteenth Amendment because it limited a person’s right to call witnesses and cross-examine witnesses against him); *Willner v. Committee on Character & Fitness*, 373 U.S. 96, 103-04 (1963) (holding that procedural due process was violated when the Committee on Character and Fitness denied an applicant’s admission to the state bar without first holding a hearing and allowing the applicant to confront and cross-examine witnesses); see also *supra* Part V.A.

¹⁸⁰ *Stanley v. Illinois*, 405 U.S. 645, 650 (1972) (involving rights of an unwed father to be heard before losing custody of his children under a state statute that presumed all unwed fathers to be unfit parents). In *Stanley*, the court recognized that an unwed father’s interest in retaining custody of his children is “cognizable and substantial.” *Id.* at 652. The Court held that a hearing must be provided the father to weigh his substantial rights against the State’s interest to protect “the moral, emotional, mental, and physical welfare of the minor and the best interests of the community” and to maintain strong family ties. *Id.* (quoting the then-existing Illinois Juvenile Court Act, Ill. Rev. Stat., c. 37, § 701-2).

¹⁸¹ *Stanley*, 405 U.S. at 650-51 (citing *Cafeteria & Rest. Workers Union v. McElroy*, 367 U.S. 886, 895 (1961)); see also *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 162 (1951) (Frankfurter, J., concurring) (“[Due process] is not a technical conception with a fixed content unrelated to time, place and circumstances.”).

¹⁸² *United States v. Ayres*, 166 F.3d 991, 995-96 (9th Cir. 1999).

¹⁸³ *Id.* at 995.

¹⁸⁴ *Id.* at 995-96; see also *Sec. Life Ins. Co. of Am. v. Duncanson & Holt*, No. 99-56811, 2001 U.S. App. LEXIS 10935, **2-4 (9th Cir. May 23, 2001) (noting that a court may not “review the legal or factual basis of the underlying subpoena”).

the subpoena power of the court. Witnesses would not be inconvenienced by long distance travel to testify because they could testify from home. In exchange, the party calling the witnesses could be required to furnish the laser cameras and projectors to be installed in the witnesses' homes.

Holography is consistent with the Federal Rules of Civil Procedure and even eliminates some of the problems that exist with questioning witnesses. The use of holography complies fully with the exception of Rule 43(a), which allows testimony to be presented "by contemporaneous transmission from a different location."¹⁸⁵ The availability of holography for trials and other face-to-face proceedings eliminates the quandary of whether to accept written declarations, deposition transcripts, videotaped testimony, or telephonic testimony in lieu of live testimony. Furthermore, the problem that developed in *United States v. Muhammad*,¹⁸⁶ in which a witness was available to testify during a limited time period, would not arise.¹⁸⁷

C. The Importance of Fact Finders at Trial

1. Determinations of Credibility

Credibility is defined as the "capacity for being believed or credited."¹⁸⁸ Fact finders may consider numerous factors when determining whether evidence is credible, including: demeanor, bias, opportunity and capacity to observe and narrate the event, character, prior inconsistent statements, contradiction, corroboration, and plausibility.¹⁸⁹ All of these credibility factors may or may not be considered, and the weight to be given each factor varies.¹⁹⁰ Fact finders are in the best position to resolve issues of credibility and determine how much weight to give evidence because they see and hear the witnesses.¹⁹¹ This general rule applies not only in traditional court settings, but is equally important in military courts¹⁹² and other administrative proceedings.¹⁹³

¹⁸⁵ FED. R. CIV. P. 43(a).

¹⁸⁶ 928 F.2d 1461 (7th Cir. 1991).

¹⁸⁷ See *id.* at 1466-67; see also *supra* text accompanying notes 155-57.

¹⁸⁸ Marvin E. Nieberg Real Estate Co. v. Taylor-Morley-Simon, Inc., 867 S.W.2d 618, 626 (Mo. Ct. App. 1993).

¹⁸⁹ See Hon. James P. Timony, *Demeanor Credibility*, 49 CATH. U. L. REV. 903, 907-11 (2000).

¹⁹⁰ See *id.* at 912.

¹⁹¹ *People v. Cutten*, 703 N.Y.S.2d 655, 658 (1999).

¹⁹² See *U. S. v. Corbett*, No. ACM 26667, 1988 CMR LEXIS 549, **1-2 (C.M.R. July 15, 1988) (relying on members' ability to assess the truthfulness of witnesses by observing their demeanor).

¹⁹³ See *Penasquitos Village, Inc. v. N.L.R.B.*, 565 F.2d 1074, 1078 (9th Cir. 1977) (stating that "[w]eight is given the administrative law judge's determinations of credibility for the obvious reason that he or she 'sees the witnesses and hears them testify, while the

No exact standard or rule exists to guide fact finders who attempt to determine the credibility of evidence.¹⁹⁴ The Second Circuit has noted that “[t]he most acute observer would never be able to catalogue the tones of voice, the passing shades of expression or the unconscious gestures which he had learnt to associate with falsehood; and if he did his observations would probably be of little use to others.”¹⁹⁵ The mere act of a criminal defendant in dropping his head cannot be said to indicate guilt or innocence.¹⁹⁶ In determining the credibility of evidence, fact finders should consider “the whole nexus of sense impressions which they get from a witness.”¹⁹⁷ No one credibility factor is absolutely essential when determining testimonial credibility of a witness. Nevertheless, demeanor has been ranked high in importance.¹⁹⁸

2. Demeanor as an Element of Credibility

Demeanor can be defined in a variety of ways. It relates to a person’s “manner, . . . intonations, . . . grimaces, . . . features, . . . and the like . . .”¹⁹⁹ It is “the carriage, behavior, bearing, manner and appearance of a witness . . .”²⁰⁰ A witness’s demeanor includes the “expressions of his countenance, how he sits or stands, whether he is inordinately nervous, his coloration during critical examination, the modulation or pace of his speech and other non-verbal communication . . .”²⁰¹ It has been explained as the ability of a victim to express feelings.²⁰² Demeanor can be described best as a “wordless language.”²⁰³

Board and the reviewing court look only at cold records.”) (quoting *N.L.R.B. v. Walton Manuf. Co.*, 369 U.S. 404, 408 (1962)); *Monroig v. Sec’y of Health and Human Servs.*, 538 F. Supp. 710, 711 (D.P.R. 1982) (noting that the administrative law judge who heard the case and observed the demeanor of witnesses was in the best position to determine credibility of the evidence).

¹⁹⁴ See *N.L.R.B. v. Dinion Coil Co.*, 201 F.2d 484, 489-90 (2d Cir. 1952) (noting that no specific rules exist to guide the trier of fact in drawing inferences); *State v. Greiner*, 212 N.W. 465, 465 (Iowa 1927) (“There is no standard of demeanor by which the act of the defendant on this occasion may be judged.”).

¹⁹⁵ *Dinion Coil Co.*, 201 F.2d at 489.

¹⁹⁶ See *Greiner*, 212 N.W. at 465.

¹⁹⁷ *Dyer v. MacDougall*, 201 F.2d 265, 269 (2d Cir. 1952) (noting that the fact finder may consider the spoken word as well as the manner in which it is spoken because “The words used are by no means all that we rely on in making up our minds about the truth of a question that arises in our ordinary affairs, and it is abundantly settled that a jury is as little confined to them as we are.”).

¹⁹⁸ See *Timony*, *supra* note 189, at n.42.

¹⁹⁹ *Broadcast Music, Inc. v. Havana Madrid Rest. Corp.*, 175 F.2d 77, 80 (2d Cir. 1949).

²⁰⁰ *Dyer*, 201 F.2d at 268; see also *Hillen v. Dept. of the Army*, 35 M.S.P.R. 453, 462 (Merit Systems Protection Board 1987).

²⁰¹ *Penasquitos Village, Inc. v. N.L.R.B.*, 565 F.2d 1074, 1078-79 (9th Cir. 1977).

²⁰² See *Keller v. State*, 473 S.E.2d 194, 195 (Ga. App. 1996) (noting that in a case

The need for fact finders to discern demeanor is not limited to any particular type of case.²⁰⁴ Demeanor evidence is particularly important in cases in which witness credibility is at issue. This is true in child custody cases, in which “the delicate question of child custody” must be evaluated based on many intangibles that “cannot be discerned” from a written record.²⁰⁵

Determining credibility of evidence, however, does not ensure its reliability. Indeed, demeanor should not be the exclusive means of determining witnesses’ credibility because demeanor evidence cannot be reflected in a written transcript.²⁰⁶ Although demeanor is one of the “best guides,”²⁰⁷ live testimony is the best assessment tool regarding credibility.²⁰⁸ Appellate courts are reluctant to disregard fact finders’ determinations of testimonial credibility since appellate courts are unable to observe witnesses.²⁰⁹ Consequently,

involving a charge of cruelty to children, a state statute authorized demeanor as one factor to consider in determining the reliability of a child’s statement).

²⁰³ *Broadcast Music, Inc.*, 175 F.2d at 80.

²⁰⁴ See generally *Califano v. Yamasaki*, 442 U.S. 682 (1979) (referring to credibility determinations in an underlying administrative action involving Social Security benefits); *United States v. Smallwood*, 188 F.3d 905 (7th Cir. 1999) (involving credibility determinations in a criminal action); *In re Adair*, 965 F.2d 777 (9th Cir. 1992) (involving credibility determinations in a bankruptcy court proceeding); *Murphy v. Tivoli Enters.*, 953 F.2d 354 (8th Cir. 1992) (involving credibility determinations in a civil action for negligence and strict liability); *Penasquitos Village, Inc.*, 565 F.2d 1074 (9th Cir. 1977) (involving credibility determinations in an underlying administrative action before an administrative law judge for alleged violations of the National Labor Relations Act); *Broadcast Music, Inc.*, 175 F.2d 77 (2d Cir. 1949) (involving credibility determinations in a civil action for copyright infringement); *Marvin E. Nieberg Real Estate Co. v. Taylor-Morley-Simon, Inc.*, 867 S.W.2d 618 (Mo. Ct. App. 1993) (involving credibility determinations in a civil action in which complaint sought damages for obstruction of an easement and trespass and counterclaim sought equitable relief); *Hillen*, 35 M.S.P.R. 453 (Merit Systems Protection Board 1987) (involving credibility determinations in an underlying administrative action before an administrative law judge for alleged sexual harassment by a member of the military).

²⁰⁵ *Dries v. Dries*, 508 So.2d 521, 522 (Fla. App. 1987).

²⁰⁶ *Johnson v. Johnson*, 308 P.2d 967, 968 (Wash. 1957) (noting that medical testimony is useful regarding a medical question of nervousness).

²⁰⁷ *Broadcast Music, Inc.*, 175 F.2d at 80; see also *Murphy*, 953 F.2d at 359 (noting the general rule that live testimony is favored because it allows a jury to observe the demeanor, and thus, veracity of a witness).

²⁰⁸ See *Smallwood*, 188 F.3d at 911 (stating that credibility determinations should be left to the district court which had the opportunity to hear live testimony and observe demeanor); *Sanders v. Monsanto Co.*, 574 F.2d 198, 200 (5th Cir. 1978) (“[T]estimonial evidence has the highest reliability because the credibility of the witnesses can be evaluated . . .”).

²⁰⁹ *Marvin E. Nieberg Real Estate Co.*, 867 S.W.2d at 626; *Bigbee v. Bigbee*, 15 N.W. 553, 554 (Mich. 1883) (explaining that the appellate court should show deference to a judge’s conclusions involving demeanor).

appellate courts generally defer to fact finders' abilities to determine demeanor when weighing the credibility of evidence.²¹⁰

Cybercourt Central would not hinder credibility determinations, especially credibility based on demeanor. Holography plays a key role in allowing fact finders to observe all mannerisms, gestures, tones of voice, and general body language. Consequently, Cybercourt Central's technology would enhance, rather than encroach on, the importance of fact finders' roles during a trial.

VI. CONCLUSION

Contemporary cybercourts illustrate the importance that technology plays in legal proceedings.²¹¹ Nonetheless, the technological foundation upon which those cybercourts rely will probably become obsolete within our lifetime. A true cybercourt needs to consider futuristic possibilities and developments to enable parties to take advantage of a virtual reality looking glass.

This article provides ample evidence that all parties involved in a dispute resolution process benefit from technology, in terms of time, money, space, and convenience. Most of the components of Cybercourt Central are being incorporated into existing court systems. These include electronic filings (whether by e-mail or telefax), teleconferences, videoconferences, evidence presentation equipment, and, to a minimal extent, technologically enhanced hearings and trials operated solely by Internet connections such as e-mail chat rooms.²¹²

However, the use of holography illustrates how the Internet meets Obi-wan Kenobi in the court of next resort. This article demonstrates that holography is not only plausible, but ensures constitutional and other important trial rights of United States citizens. The result is that Cybercourt Central creates a dispute resolution forum that is just, fair, impartial, convenient, practical, and economical for all parties concerned.

²¹⁰ See *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 496-97 (1951) (assessing the weight to be given to a trial examiner under the Administrative Procedure Act); *Weaver v. Dept. of the Navy*, 2 M.S.P.B. 297, 299 (1980).

²¹¹ See *supra* Part II.A.

²¹² See *supra* text accompanying notes 12-24.