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# Fairbanks Video Arrest Assessment

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May 1999

alaska judicial council

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***Fairbanks Video  
Arraignment Assessment***

**May 1999**

***Alaska Judicial Council***

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# Fairbanks Video Arraignment Assessment

May 1999

## I. Introduction

The Alaska Court System asked the Judicial Council to assess the effectiveness of the Fairbanks televised arraignment procedures and equipment and make recommendations whether the court should continue its current use of video arraignments in Fairbanks and whether it should conduct more types of proceedings (for example, felony arraignments) by video. The court system also asked for discussion of what live video capabilities should be integrated into the design of the new courthouse in Fairbanks. This report examines the practical and legal aspects of those issues, including historical and legal background and procedural considerations. It recommends technical improvements, but does not specify technical requirements for new equipment.

## II. Methodology

This report is based on in-person and telephone interviews with court system personnel and other video users,<sup>1</sup> and personal observation of the Fairbanks interactive video system from both the jail and the courtroom. It also relies on information from other jurisdictions, including interviews with judges, court administrators and public defense attorneys.<sup>2</sup>

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<sup>1</sup> People interviewed for this report included Stephanie Cole (Administrative Director, Alaska Court System), Ron Woods (ACA 4<sup>th</sup> District), Paul Ewers (deputy city attorney), Madeline Kelleyhouse (calendar supervisor), Paul Canarsky (supervising attorney, PDA), Jim Cannon (PDA), Marcia Holland (PDA), Katherine Bachelder (Magistrate), Wm. Ronald Smith (Magistrate), Ron Epperson, (Superintendent FCC), Presiding Judge Ralph Beistline, Judge Niesje Steinkruger, Judge Mary Greene, Judge Charles Pengilly, Sgts. Charles Lovejoy and Barry Ingalls, Trooper Robert Miller, and CSO Ron Richards (Ak. State Troopers).

<sup>2</sup> Other jurisdictions reviewed for this report include California, Georgia, Idaho, Hawaii, Colorado, Maine, Montana, N. Carolina, S. Carolina and New Mexico.

### III. Background

#### A. Historical

Fairbanks first experimented with televised proceedings in 1984, primarily to arraign in-custody misdemeanor defendants. The 1984 televised arraignment project was funded by the Department of Public Safety as an alternate method of meeting its responsibility to transport in-custody defendants to the courthouse for arraignments. The experimental system later was made permanent based at least in part on the results of an assessment conducted in 1986 by the Alaska Judicial Council.

The 1986 Judicial Council assessment evaluated the effectiveness and consequences of the video arraignment pilot program.<sup>3</sup> The assessment found both strengths and weaknesses of the program, but ultimately recommended that televised arraignments be continued in Fairbanks.

Benefits included reduced costs for transporting in-custody defendants to the courtroom, reduced potential liability to the state for mishaps in transporting in-custody defendants, and fewer disruptions of court proceedings.<sup>4</sup> The main weakness concerned the need for a more private and convenient means of communication between the defense attorney in the courtroom and the client at the jail.<sup>5</sup>

The earlier report noted that Assistant Public Defenders in Fairbanks often had not had an adequate opportunity to speak with clients at the jail before the court proceeding.<sup>6</sup> To speak privately with a client during the proceeding, the attorney could use a telephone at counsel table or a phone located in an office just outside the courtroom. The defendant could use a telephone at the jail arraignment room.

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<sup>3</sup> The Council's evaluation was based on interviews with users (attorneys, judges, court personnel, peace officers and jail personnel), observations of televised arraignments and other proceedings (both in the courtroom and at the jail), collection of cost-related data, legal research and collection of data on sentence lengths and pleas in misdemeanor cases. ALASKA JUDICIAL COUNCIL, FAIRBANKS TELEVISED ARRAIGNMENTS: FINAL REPORT 7-8 (March 21, 1986). The report is on the Internet at <http://ajc.state.ak.us/Reports/fbktel86.pdf>.

<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> Defense attorneys interviewed for the earlier assessment concluded that the communication problems seriously reduced their effectiveness as counsel. *Id.* at 27.

<sup>6</sup> *Id.* at 30.

However, this system required that the proceedings be interrupted.<sup>7</sup> The earlier report found that defense attorneys rarely used the communication system during proceedings.<sup>8</sup>

The 1986 assessment made three suggestions for improving attorney/client communications. First, it recommended that attorneys speak personally with defendants prior to the arraignment, either by traveling to the jail or using the television equipment. Second, it suggested that attorneys be equipped with telephone headsets. Finally, it suggested that attorneys consider appearing with their clients in the jail arraignment room.<sup>9</sup>

## **B. Legal**

Televised appearances by the defendant are governed by Criminal Rule 38.2.<sup>10</sup> That rule authorizes the court's Administrative Director, in consultation with the presiding judge, Public Defender Agency and Attorney General's Office, to enter into agreements with the Departments of Public Safety and Corrections for systems that allow judges to provide for a defendant's appearance at certain criminal proceedings by way of television equipment. The rule requires that any such agreements provide for a procedure by which the defendant may confer with the defendant's attorney in private. The video arraignment system in Fairbanks is governed by an interagency agreement signed pursuant to this rule.

Proceedings authorized by Rule 38.2 to be conducted by television include misdemeanor arraignments, pleas<sup>11</sup> and non-evidentiary bail reviews, and felony initial appearance hearings, non-evidentiary bail reviews and not guilty plea arraignments. Once a television system has been approved and installed by the supreme court, defendants must appear by television at these proceedings unless the presiding judge orders otherwise for cause. The rule does not specify whether the defense attorney should appear at the jail or in the courtroom.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 31.

<sup>9</sup> *Id.*

<sup>10</sup> The supreme court adopted that rule in 1986.

<sup>11</sup> Misdemeanor defendants who plead guilty or no contest can consent to be sentenced by television.



### C. Technical

The Fairbanks video arraignment system is a two-way, interactive video and audio link between the Fairbanks Courthouse and the Fairbanks Correctional Center. The Department of Public Safety maintains the system.<sup>12</sup> The system consists of three components: the hardware, the facilities, and the communications.

(1) **Hardware.** The hardware, located at both the court and the jail, includes television monitors and cameras, microphones and speakers, telephones and facsimile machines. Monitors in the courtroom allow the judge to see the defendant at the jail and the attorneys and spectators to see the defendant at the jail. The monitor at the jail allows the defendant to see the judge (and the legal rights videotape). The judge can operate a switch to change the defendant's view so that the defendant can see his or her lawyer in the courtroom.<sup>13</sup> Participants use microphones located on the podium at the jail, on the judge's bench, and on counsel table. The setup also includes a telephone on defense counsel's table and a telephone at the jail for communication between defense counsel and the client.<sup>14</sup> Interviews with public safety personnel responsible for maintaining the hardware suggested that most of the components are old and somewhat unreliable.

(2) **Facilities.** The facilities consist of Courtroom 5 and a secure room at the FCC near the booking office. The room at the jail has an outer area, where all male inmates wait for their cases to be called, and an inner area with a podium into which each inmate goes when his case is called. All female inmates wait in the inner room.

(3) **Communications.** The Fairbanks system uses visual, audio and written communications. The visual communications system uses microwaves to send video images between Courtroom 5 and the Fairbanks Correctional Center. The microwave transmitters are located on the respective roofs of the two facilities. The audio communications rely on phone lines. The document communications system consists of facsimile machines at the court and at the booking office at FCC.

### D. Current Use of Video Arraignment

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<sup>12</sup> Department of Administration maintains the microwave transmitters.

<sup>13</sup> Defendants cannot see the prosecutor or other people in the courtroom.

<sup>14</sup> Another telephone is available for the defense attorney's use in the in-court clerk's office outside of the courtroom. The telephone in the courtroom has privacy equipment that does not permit anyone to tap into the line and listen to the call.

The Fairbanks court currently uses the interactive video/audio link to conduct misdemeanor arraignments, bail settings, entry of misdemeanor pleas and, occasionally, felony first appearances or misdemeanor sentencing for in-custody defendants. The court conducts arraignments seven days a week.

Before the arraignments begin, personnel at both locations prepare the audio and visual equipment. Court personnel fax copies of complaints and, later, judges' orders regarding release or custody provisions to the jail. Judicial Services officers ensure that each defendant receives a copy of the complaint.

The inmates at the jail are gathered into a room near the booking office where they watch a videotape advising them of their rights. The judge then appears live on the monitor and calls each defendant's case. When the case is called, the defendant goes to the podium in the inner room at the jail. The inner room is separated from the outer room by a door. On the television monitors in the inner room the inmate can see the judge's head and shoulders (or defense counsel's head and shoulders if the judge switches the view). From the courtroom, the judge can see the inmate's head and shoulders. The inmate speaks into a microphone mounted on the podium.

Because few misdemeanants are represented by counsel at this stage, defense attorneys often do not participate. When they do, they participate from the courthouse. Thus, during court proceedings an inmate at the jail and an attorney at the courtroom cannot communicate except by telephone. Phones are located on counsel table and in the in-court clerk's office. The phone at the jail is kept in a cabinet at the front of the arraignment room. During a visit to the jail for this assessment the phone at the jail was not visible and would have been accessible only with the help of the guard.

People interviewed for this report identified several problems with this attorney-client communication system. First, the conversations are not private, because court personnel are present in the in-court clerk's office from time to time during the day and could overhear a conversation and the guard or other prisoners present in the inner video room at the FCC could overhear a conversation.<sup>15</sup> Second the FPD argues that the communication is not effective, because it is not in person. Third, the FPD reported that correctional officers discourage phone communication between the defense attorney and the client during the proceedings. The PDA also reported one past incident in which an officer at the jail refused to allow inmates to receive calls from a public defender intern before the court proceeding.

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<sup>15</sup> Also, the court is concerned about the confidentiality of materials in the office.

## IV. Analysis

### A. National Perspective

Courts in at least thirty states conduct proceedings by interactive video.<sup>16</sup> Authority for implementation comes from statutes, court rules (either statewide or local) and other court orders. Courts use interactive video for first appearances, bail reviews and arraignments in both felony and misdemeanor cases, although misdemeanors probably are most common. Generally, guilty pleas in felony cases are not allowed by video unless accompanied by a written waiver of appearance.<sup>17</sup> Benefits cited in other jurisdictions include savings of time and increased productivity as a result of reduced travel requirements, savings of direct and indirect costs associated with travel, improved courtroom and jail security, and reduced size requirements for court lockup facilities.<sup>18</sup>

Most users of interactive video systems (including defendants) report high satisfaction with the systems.<sup>19</sup> However, defense attorneys in other jurisdictions contacted for this review reported varying degrees of comfort with the concept and the process. A defense attorney in Hawaii reported that interactive video arraignments created “more work” for his office because attorneys had to go to the jail. A public defender in New Mexico refused participate from the jail unless the prosecutor also was there with him, so as not to be treated as a “second-class citizen.” In Maine the local defense bar objected to a video arraignment pilot project on the grounds that defendants who were not physically present in court with the judge were being deprived of some essence of justice. Still, some defense attorneys (including the attorney from Hawaii) supported interactive video court proceedings because clients

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<sup>16</sup> NATIONAL INSTITUTE OF CORRECTIONS, USE OF INTERACTIVE VIDEO FOR COURT PROCEEDINGS: LEGAL STATUS AND USE NATIONWIDE 2 (January 1995). Courts in Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, South Carolina, Ohio, Oregon, South Carolina, Tennessee, Utah, Virginia, Washington and Wisconsin all report using interactive video.

<sup>17</sup> Ak. Crim. Rule 38.2 does not authorize taking of guilty pleas in felony cases by video.

<sup>18</sup> Arnstein & Goodwin, *The Technology of Video Conferencing*, at 1, Fourth National Court Technology Conference, National Center for State Courts (1994) (available through the National Center for State Court’s web site at [www.ncsc.dni.us](http://www.ncsc.dni.us) or from the Judicial Council).

<sup>19</sup> See, e.g., JUDICIAL COUNCIL OF CALIFORNIA, REPORT TO THE LEGISLATURE ON VIDEO ARRAIGNMENT PROJECTS 6-8 (December 1991).

could avoid being searched and transported to court in shackles, because clients could be released earlier than if they had to wait for transport, and because video conferencing facilities at the court sometimes allowed defense attorneys to interview in-custody clients without a trip to the jail.

## **B. Local Perspective**

While most of the people interviewed for this report liked the current misdemeanor video arraignments and favored expanding video arraignments to felonies, the Fairbanks Public Defender's office criticized the current system and strongly objected to conducting felony arraignments by videoconference. The Fairbanks Public Defender's office raised two main objections to the existing video arraignment system.<sup>20</sup> First, the FPD argued that an attorney in the courtroom during the arraignment proceedings cannot communicate effectively or privately with a client at the jail. This inability to communicate impairs the attorney's ability to represent the client and impedes the building of the attorney-client relationship. Second, they argued that video arraignments unacceptably diminish the formality and seriousness of a court appearance. Both these objections have been made and overcome in other jurisdictions.

**(1) Attorney-client communication objection.** The attorney-client communication problem is resolved in most jurisdictions in one of two ways: the defense attorney either meets with the client at the jail before arraignment and then participates from the courtroom, or the defense attorney participates with the client from the jail. Public defender offices typically send one attorney to the jail to meet with all clients to be arraigned that day.<sup>21</sup> In some jurisdictions, the designated attorney gathers individual information about each case to pass on to the assigned attorney, while in other jurisdictions the attorney gives each client a card with the name of the assigned attorney. Defense attorneys in fourteen pilot projects in California who meet privately with clients beforehand and participate in the court proceeding from the jail "do not

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<sup>20</sup> These are essentially the same objections the FPD made at the inception of the video arraignment pilot project in 1985.

<sup>21</sup> Typical examples come from the Glendale Municipal Court (in Los Angeles County) and the Los Angeles Municipal Court, both of which arraign felony defendants. Before the calling of the calendar, defendants meet with a deputy public defender at the jail and sign a written waiver of personal appearance. JUDICIAL COUNCIL OF CALIFORNIA, REPORT TO THE LEGISLATURE ON VIDEO ARRAIGNMENT PROJECTS 4 (December 1991). The LA County jail provides two separate attorney conference rooms for the attorney to meet with the defendants. *Id.* In many courts, additional public defender personnel are available in court to monitor the proceedings from that end and assist out-of-custody clients. *Id.*

feel their ability to provide adequate representation is impaired under the video arraignment procedure.”<sup>22</sup>

The Fairbanks public defenders argued that meeting clients at the jail before arraignment is impractical, because individual attorneys usually do not receive the notice of appointment early enough to go to the jail before the arraignment. While this objection holds true for some cases (for example, a person is arrested on Tuesday, indicted on Wednesday and arraigned on Thursday), in many or most instances the court system’s pretrial services office issues notices of public defender appointment four working days before arraignment (for example, a person is arrested on the weekend, appointed a public defender on Monday, indicted either on Wednesday or Thursday and arraigned either on Friday or the following Monday).<sup>23</sup>

The FPD also objected to participating from the jail. From a staffing standpoint, the FPD argued that going to the jail is time consuming compared to meeting with clients in the courtroom. Also, if attorneys participated from the jail they all would be out of the office at the same time and would not be available to quickly run into hearings in other courtrooms. Having one attorney go to the jail to handle all arraignments would violate the FPD office’s policy of having the assigned attorney personally handle all proceedings.<sup>24</sup>

Finally, the FPD objected to participating from the jail because it would create the impression that the defendant and his attorney are “outcasts.” The FPD believed that this arrangement would disenfranchise the client and his lawyer. The FPD suggested that one way to avoid the impression of being “outcast” is to have either the district attorney and/or the judge participate from the jail with the public defender and the client. While not common, similar arrangements have been successful in other jurisdictions. This option would require construction of an arraignment courtroom at the jail.

A second option would be for the FPD attorneys to continue to participate from the courtroom with the client at the jail. The court’s Rule 38.2 requires that interactive

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<sup>22</sup> *Id.* at 7.

<sup>23</sup> Arrestees requesting a public defender complete the necessary paperwork at or after their initial appearance. That same afternoon, Judicial Services delivers the paperwork to the court system’s pretrial services office. The next workday, pretrial services staff issue the notices of public defender appointments.

<sup>24</sup> The policy is designed to promote trust and enhance attorney-client communication.

video systems provide for a procedure by which the defendant may confer with the defendant's attorney "in private." The FPD argues that the current phone arrangement is not "private" within the meaning of the rule, because both ends of the conversation could be overheard (by the prosecutor or spectators in the courtroom, by court personnel in the in-court clerk's office and by the guard and female inmates at the jail).

Interceptions of attorney-client communications potentially violate due process of law, the sixth amendment right to effective assistance of counsel and the fifth amendment privilege against self-incrimination.<sup>25</sup> Presumably, these rights are the ones that the privacy requirement of Rule 38.2 is crafted to protect. It is not clear that the "telephone in court" arrangement is much less private than the alternative of the defense attorney whispering to his client in open court. The conversation could be overheard under either scenario. In addition, other jurisdictions (including Anchorage) use court-jail phone communications systems for defense attorneys in court to communicate with their clients in custody.<sup>26</sup>

**(2) Formality and seriousness objection.** The Fairbanks public defenders' second objection to felony video arraignments is that video arraignments significantly diminish the formality and seriousness of a court appearance. Video arraignments thus would diminish the deterrent effect on the defendant. In addition, appearing on television instead of in person may send the message that the individual defendant does not matter. None of the other jurisdictions contacted for this report said that this problem had occurred in practice. One judge in Colorado who is concerned about this as a possible problem directs the corrections officer to tell the defendants that even though they are on video, they are functionally in court, subject to all the rules just as if they were sitting in the same room as the judge. The judge handles any unruly behavior as if the defendant were in court, by explaining how a person can be held in contempt of court. In addition, he makes extra efforts to ensure that the defendants understand their conditions of release.

**(3) Other users like the video system.** All other Fairbanks users interviewed for this report liked the current system and most favored expanding its use to felonies. Judicial Services officers praised the system for its security and because it saved JS

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<sup>25</sup> *Fajeriak v. State*, 520 P.2d 795, 799-800 (Alaska 1974).

<sup>26</sup> For example, the Anchorage system has a phone on defense counsel's table connected to a phone near the podium in the jail's video room. When defense counsel picks up the receiver, all audio from the jail is cut off except that the attorney and client can hear each other. Another phone is installed on the wall near defense counsel's table. Anchorage currently does not arraign felony defendants by video.

resources. Using the video arraignment system allowed them to use fewer officers for transportation, freeing them for other duties. Judges who were in favor of the system cited decreased security risks (to defendants as well as the public and court personnel) presented by transporting defendants to the courthouse.<sup>27</sup> Those judges also believed arraignment by video was more humane than in-court appearances that required transport in handcuffs and shackles and strip-searches re-entering the prison.<sup>28</sup> Some judges and court administrators thought that expanding use of the video system now as an experiment would help the court system design closed-circuit television systems for the new courthouse.

## **V. Conclusions and Recommendations**

The first part of these conclusions and recommendations concerns the current Fairbanks system. The second part discusses whether the Fairbanks court should use its video communication system for procedures other than misdemeanor arraignments. The conclusions and recommendations discuss both technical issues (related to the audio and video equipment, the facility and the communications system) and procedural issues (dealing primarily with the attorney-client communication problem identified in the analysis).

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<sup>27</sup> Not all of the Fairbanks judges interviewed for this report supported the system. One who did not was concerned primarily about the attorney-client communication problem but also expressed concern about diminishing the formality of the experience for people charged with felonies.

<sup>28</sup> FCC policy requires prisoners who appear in court and make bail to return to FCC to be checked back in and then released.

## A. The Current System

The Fairbanks court currently uses the video communication link between Courtroom 5 and the Fairbanks Correctional Center during misdemeanor arraignments (these typically include bail issues, some felony first appearances and misdemeanor sentencings).

**1. The current audio and video equipment should be upgraded.** While the current microwave transmission system produces a high-quality video image, the old video monitors and cameras used in Fairbanks suffer from several weaknesses. First, the defendant can see only the judge unless the judge uses a switch to show the defense attorney. Second, the current configuration does not permit a witness to appear on camera. The audio equipment also is old and suffers from feedback and static.<sup>29</sup> DPS should consider purchasing split-screen video monitors (also known as “quad” monitors because they show up to four views at once) for both the court and the jail. DPS also should upgrade the audio equipment to decrease static and feedback. DPS also should consider converting the current dial-out phone system to a “hot line” that would connect directly to the courtroom when the receiver is lifted.<sup>30</sup> The court and DPS should discuss whether it makes sense to update the court audio now or to wait until the new building is ready.<sup>31</sup>

**2. While the current attorney-client communication system is awkward, this assessment revealed no flaws serious enough to recommend against continuing the use for misdemeanor arraignments.** The attorney-client communication issue identified in the 1986 assessment remains a sticking point for some system users. The current court-jail telephone communication system (phones on counsel table and in the in-court clerk’s office and a phone in the FCC video room) was installed during the pilot project to respond to defense attorney complaints that they had no way to communicate with their clients during court proceedings. The system was largely accepted (over the FPD’s protest) in the context of misdemeanor arraignments, primarily because defense

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<sup>29</sup> While it is not entirely clear whether the static comes from the equipment or the audio communication connection, the most likely source is the equipment.

<sup>30</sup> Anchorage uses phones with a direct link between the courtroom and the holding facility.

<sup>31</sup> Department of Public Safety and the court system also must decide whether to continue using the microwave transmitters or to try another method of transmission. The Anchorage court uses fiber optic cable. Other jurisdictions have used closed networks (i.e., LAN), public networks (phone lines) or ISDNs (Integrated Services Digital Network). Whatever communications system is chosen for the new building, it should support the current high-quality video image.



attorneys often had not been assigned and therefore rarely participated in those proceedings, and many who did met personally with their clients before the proceeding.

The current use of interactive video for misdemeanor arraignments works fairly well, primarily because defense counsel do not routinely participate. The magistrates and judges who use the system are comfortable with it, the system saves time and transportation costs for DPS, corrections officers are comfortable with the system, and it saves in-custody defendants the complications of being transported to the court.

**3. Officers at the FCC should not discourage telephone communication between inmates and counsel in the courtroom.** An attorney at the Fairbanks Public Defender's office reported that officers at the FCC discouraged FPD attorneys from communicating with their clients at the jail. To the extent that this may be a problem, Judicial Services (or the appropriate division) should train officers about the importance of attorney-client communication during video proceedings, and strategies for permitting that communication without undue disruption. Additionally, officers at the FCC should ensure that inmates being arraigned can see the phone or otherwise know they can use it.

## **B. Expansion of Video System**

Expanding the use of the interactive, two-way video system to arraign felony defendants raises resource allocation issues for the court system, FPD, DPS and DOC. It offers significant potential benefits (reduced transport, improved security) to some of those agencies while imposing indirect costs (staff time, procedural changes) on the FPD. Expanding to felony arraignments might also involve direct costs to DPS (or DOC) to improve the video room at FCC.

Using video conferencing systems or video phones for purposes other than misdemeanor arraignments has a well-established history in other jurisdictions. Defense attorneys use the video equipment to meet privately with their in-custody clients before arraignments or other hearings. This use might help resolve the communication problems that have arisen in Fairbanks.

**1. Expanding the use of the video system to arraigning felons should await upgrading the video equipment.** Arraigning felony defendants by video in Fairbanks would require a better video camera and monitor system, because counsel would be participating regularly. The current video system lacks the capacity to show the key players in the courtroom.

**2. The court system should begin arraigning felony defendants on a trial basis with updated video equipment. Provisions should be made for the public defenders to meet with their clients.** The main objection to arraigning felons by video centers around the inadequacy of the current court-jail telephone system and the difficulty for FPD attorneys to meet with in-custody clients before arraignment. However, potential benefits include direct and indirect savings associated with reduced transport and improved security for defendants, Judicial Services officers and court employees. Given the potential benefits to the system, the FPD, DOC, DPS and the court system should continue to explore solutions to the attorney-client communication problem. Several possible solutions are outlined below.

First, the FPD should decide whether it prefers to participate from the jail, the courtroom, or to have staff at both locations. If the FPD decided to participate with its clients from the FCC, the video room at the FCC would need re-configuration. DPS should ensure at a minimum that the camera can encompass both the defense attorney and the defendant, and that the attorney has a mike.<sup>32</sup> Defense counsel should discuss with DPS what other equipment might be needed. In addition, DOC officers would have to provide for privacy while the attorney speaks to the client. Even with these changes, FPD may conclude that sending attorneys to the FCC is less efficient than meeting with the client in the courtroom.

If the FPD wished to continue participating from court, one solution might be for the court to make the video equipment available for defense attorneys to video conference with their clients before arraignments. The court system should consider how it could secure the courtroom to ensure privacy for defense attorneys to meet with their clients. This solution also would require coordination from correctional center staff, who would need to take inmates to the video room for their interview.

Another solution is for counsel to meet clients at the jail or by telephone before the hearing. Instituting pre-arraignment meetings at the jail would require the FPD substantially to reorganize the processing of notices of assignment so that attorneys would have time to meet the client at the jail before the arraignment. This reorganization and the resulting increase in jail trips would cost FPD staff significant time. If the FPD decided against sending one attorney to represent all clients, this solution also would significantly increase the FPD attorneys' workload.

The FPD attorneys could decide to participate from court without benefit of a prior personal meeting with their clients. This scenario presents the biggest challenge

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<sup>32</sup> Some equipment allows the attorney to control the client's mike.

to the adequacy of the court-jail telephone communication system. No other jurisdictions contacted for this report relied on a system in which defense counsel participated from court *and* had not previously met or spoken with the client. This scenario could raise questions of effective representation and due process in certain cases. One solution might be for the FPD to send a paralegal or an attorney to the jail in the event that questions arise.

**3. When ordering equipment for the new courthouse, the Fairbanks court should consider other uses for interactive video, including video conferencing or non-evidentiary hearings.** Aside from arraigning felony defendants, the court should consider using the video system for other types of non-evidentiary hearings. Even more complex proceedings, including evidentiary hearings, could be held using interactive video if the defendant gave his or her informed consent to the arrangement.<sup>33</sup> The FPD suggested using interactive video for omnibus hearings and calendar calls, because they typically are short and seem not to merit the time and expense of transporting in-custody defendants.<sup>34</sup> One judge suggested that bail reviews could be done by video as well.

A second use with great potential for interactive video is video conferencing between the court house and the correctional facility. Defense attorneys could meet with their clients by video before felony arraignments, or at other times. Probation officers, presentence reporters, pretrial investigators and others who might have to travel to the jail to meet with in-custody offenders also could use video equipment.

Tying the state together with electronic, telephone and video linkages could improve access to the courts for much of the state's population, reduce travel costs and provide additional benefits to many agencies and individuals. For example, appellate courts could use the video equipment for conferences and oral arguments with attorneys appearing from different communities. Even if the initial uses for the equipment are expected to be limited to the court and the local correctional facility, the

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<sup>33</sup> To the extent that the court is interested in using interactive video for evidentiary hearings, the court should evaluate whether Criminal Rule 38.2 should be amended, install extra video cameras to focus on the witness box, and consider how defense attorneys could examine witnesses in the courtroom and communicate with their client at the jail, if necessary.

<sup>34</sup> The court's rule on televised proceedings specifies the types of proceedings for which in-custody defendants "shall" appear by way of television. While it does not explicitly prohibit other uses, the rule could be interpreted as limiting authorized uses to those specifically listed. The criminal rules committee should consider whether the rule as currently written would prohibit uses other than the ones specifically listed, and if so, should recommend that it be changed to permit experimentation.

court system should plan and build for a wider range of foreseeable uses. Greater use of the equipment reduces the cost per proceeding.