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# FAIRBANKS TELEVISED ARRAIGNMENTS

## Final Report

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alaska judicial council





# alaska judicial council

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Final Report

March 21, 1986

NCJRS

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## I. FINDINGS AND RECOMMENDATIONS

This is a report of the Alaska Judicial Council's one-year evaluation of the Fairbanks Televised Arraignment Project. It presents the results of 12 months' experience with the use of television for misdemeanor arraignments of in-custody defendants, as well as for a variety of other purposes. The equipment was purchased by the Department of Public Safety and installed at the Fairbanks Courthouse and Fairbanks Correctional Center. The report summarizes the responses of the various users, the general costs and benefits, the associated legal issues, and the possible future uses of such equipment.

The primary findings of the evaluation are:

### Strengths

- \* There is no legal barrier to the use of television for non-evidentiary proceedings, although technological problems may, under some circumstances operate to deprive the defendant of effective assistance of counsel. (p.32)
- \* The use of television had no effect on sentences imposed for misdemeanors. (p. 43)
- \* The use of television saves as much as \$50,000 per year in Fairbanks for city police and state Troopers. It also reduces the risk of liability to the state from accidents or security problems occurring while defendants are being transported. (pp. 18 - 20)

\* The operation of arraignment proceedings has been improved by the use of videotape for presentation of defendants' rights, and by the use of facsimile machines (telecopiers) for transmission of documents between the court and jail. (pp. 13 - 14)

\* Court personnel report fewer disruptions of proceedings. (p. 20)

\* Troopers and police report better ability to provide services such as increased patrol and faster service of bench and arrest warrants. (p.20)

\* The project demonstrates that the technology used has significant potential for expanded uses in other jurisdictions and types of proceedings. (p. 46)

#### Weaknesses

\* The existing system does not make adequate provision for private and convenient communications between attorneys and clients. (p. 30 - 31)

\* The existing system is impractical for use in multi-party hearings such as bail hearings where witnesses for the defendant are present. (pp. 32)

\* Confusion exists regarding the defendant's option, if any, to be present in the courtroom at arraignment. (pp. 25 - 27)

\* Infrequent users of the system are still uncomfortable with its functioning. (pp. 20, 32)

## RECOMMENDATIONS

### Recommendation # 1

THE FAIRBANKS EXPERIMENTAL TELEVISION ARRAIGNMENT PROJECT SHOULD BE MADE PERMANENT.

### Commentary

Evaluations by the Judicial Council and the Court System have shown the project to be largely successful. The use of television does not, with certain possible exceptions, deprive defendants of legal rights. It saves a substantial amount of money for law enforcement agencies without impeding the functioning of the court. Aspects of the project such as the videotaped presentation of defendants' rights and the use of facsimile machines to transmit documents between the court and jail significantly improve the functioning of the arraignment system.

The Fairbanks system has weaknesses which must be addressed. These include:

- \* The need for more private and convenient means of communication between the attorney in the courtroom and client at the jail;
- \* The need for continuing assistance to lawyers, judges, and court and corrections personnel who do not have an opportunity to use the equipment frequently; and
- \* The need for additional equipment if the television system is to be used for multi-party hearings.

## Recommendation #2

THE SUPREME COURT SHOULD ADOPT A PERMANENT RULE TO GOVERN THE USE OF TELEVISION IN COURT PROCEEDINGS. THE RULE SHOULD CLARIFY WHEN AND IF THE DEFENDANT'S CONSENT TO TELEVISED PROCEEDINGS IS REQUIRED.

### Commentary

The use of television for misdemeanor arraignments and other proceedings has been shown to be acceptable in Alaska as a result of the Fairbanks project. Several other states and jurisdictions have adopted permanent court rules allowing the use of television for various proceedings. Based on these experiences, the Supreme Court should adopt a permanent rule to enable all courts in the state to make use of the technology as equipment becomes available to them.

The rule should clarify at which stage of which proceedings the defendant's consent should be required. Consideration should be given to possible conflicts with existing court rules such as Rule 38(a) requiring the physical presence of defendants at felony proceedings.

## Recommendation #3

TELEVISED PROCEEDINGS SHOULD BE IMPLEMENTED IN OTHER JURISDICTIONS THROUGHOUT THE STATE.

### Commentary

Other courts throughout the state should cooperate with law enforcement and corrections officials in establishing the use of television for appropriate proceedings. New programs should place a heavy emphasis on comprehensive planning prior to the purchase and installation of equipment.



Planning should be done only with the participation of all affected users, including court technical personnel, prosecutors and defense attorneys, corrections personnel and other potential agency users such as the Alcohol Screening Action Program (ASAP) and presentence reporters.

Comprehensive planning should include:

- \* Private and convenient communication between attorneys and clients;
- \* Possible changes to other procedures (such as prearrest determination of indigency) to accommodate televised proceedings; and
- \* Other uses of the television equipment outside of court proceedings that could increase the effectiveness of criminal justice system operations and further reduce the costs of proceedings.

Comprehensive planning should also include provision for extensive start-up training of all system users and continuing training for new users coming into the system after it has been established. Finally, planning should include the establishment of means for collecting adequate and accurate data regarding not only the costs of the system, but also regarding the anticipated benefits.

## II. INTRODUCTION

### A. BACKGROUND

The first television arraignment in Alaska was conducted on November 6, 1984 with the judge, clerk and attorneys in a courtroom, and the in-custody defendants participating from the jail. The necessary equipment included cameras, monitors, microphones (with special hookups to the court's electronic transcription recording equipment), a video tape player (for the previously-videotaped defendants' rights presentation), telephones, microwave transmitters, and facsimile machines (to transmit copies of complaints, and judges' orders regarding release or custody provisions). Supreme Court Order 606 (Appendix A) had suspended conflicting court rules for a period of one year to allow the experimental program to operate.

The Fairbanks Televised Arraignment Project was Alaska's first step towards the use of live video technology to conduct court proceedings. Similar technology has been employed by a number of other jurisdictions throughout the country since 1972, when Illinois first used video telephones to conduct bail hearings.<sup>1</sup> Philadelphia, Phoenix, Las Vegas, Boise and Miami have all used live video technology to conduct various types of court proceedings.<sup>2</sup>

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1. Video Technology in the Courts, G.V. Coleman, U.S. Dept. of Justice, 1977, p.9.

2. *ibid*, p.9.

The benefits expected from the Fairbanks project were similar to those experienced in other jurisdictions: reduced costs for transporting in-custody defendants to the courtroom; improved security for defendants, court personnel, and the public; reduced liability to the state; and increased efficiency in releasing bailed defendants from the jail. In addition, successful use of the video technology in Fairbanks would demonstrate its viability for use in other court locations and other types of proceedings.

The Alaska Judicial Council was asked by the Supreme Court to evaluate the effectiveness and consequences of the use of television for arraignments and other proceedings during the first year of operation. The Council began its evaluation in January of 1985, about two months after the beginning of the project. An Interim Report, evaluating how the system was working in Fairbanks, was issued in August (see Appendix E for discussion of the results of recommendations made in the Interim Report). This final report provides greater detail regarding televised arraignments in Fairbanks, as well as assessing the transferability of the technology to other jurisdictions and other types of proceedings.

## B. METHODOLOGY OF THE EVALUATION

### 1) Interviews

The primary method of evaluation was a series of in-depth interviews and interactions with attorneys, judges, court personnel, peace officers, and jail personnel. The first round of interviews was conducted in February, March and April of 1985 by Judicial Council staff. Most of the 33 interviews required from one to two hours to complete. Frequent, brief discussions by phone were conducted as followups, preparatory to writing the Interim Report.

Two meetings with department heads and system users were held in September, 1985. The purpose of these meetings was to discuss the recommendations made by the Council in its Interim Report on the project with the persons responsible for the system. The meetings resulted in some significant changes in the televised arraignment system, and provided an opportunity for personnel involved with the system to discuss shared responsibilities and concerns.

A second round of interviews took place between November 5 and 7, 1985. This was limited to meetings with judges, court personnel, peace officers, defense attorneys, and jail personnel. Telephone interviews were also conducted with prosecutors, additional peace officers, and other court personnel. The results of the interviews and meetings have been summarized in the appropriate sections of the report. A list of interviewees is attached as Appendix D.

Finally, staff interviewed attorneys and evaluators in other jurisdictions that employ television or similar technology such as videophones to conduct arraignments and other proceedings. The purposes of these interviews were to determine satisfaction of the users of the systems, alternate technologies available, legal issues related to the use of television and the resolution of these issues by various jurisdictions, and possible additional uses of television. Interviews were conducted by telephone over the one-year experimental span of the Fairbanks project.

## 2) Arraignment Observations

Council staff observed televised arraignments and other proceedings over a period of ten months (February through November, 1985). The purpose of this procedure was to determine first-hand how the system worked, what improvements

could be suggested, and which aspects were particularly effective. Approximately twenty-five separate proceedings were observed by two Council staff members. Observations took place both in the courtroom and at the jail.

3) Data Collection

Data were collected for two different purposes: analysis of costs related to the use of television for various proceedings and analysis of events occurring at the proceedings. Only very limited cost-related data could be collected. Most of this was obtained through interview, and is reported in Section III.

The primary use of the television equipment during the evaluation period was for arraignment, bail settings, pleas and sentencings in misdemeanor cases. Data collected to analyze the effects of television on some of these proceedings is reported in Section V. Although some felony proceedings (primarily first appearances and some bail settings) were televised, participants did not consider them to be a substantial factor in evaluating the televised proceedings. Thus, the statistical portion of the evaluation focused on misdemeanor cases.

Data were collected for 135 misdemeanor cases arraigned in January/February, 1984 (10 months prior to the first use of television), for 141 misdemeanor cases arraigned in January/February, 1985, and for 262 cases arraigned in June/July, 1985. In addition, data were collected for 743 cases in which the defendant pled guilty and was sentenced at arraignment for both pre- and post-TV arraignment dates. Data for all cases were collected entirely from court case files, since limitations on time and resources prohibited use of other

sources of information. The data were analyzed using SPSS (Statistical Package for the Social Sciences) programs by Policy Analysts, Ltd. of Anchorage.

4) Legal Research

Potential legal issues associated with the use of live television for criminal proceedings were reviewed by Council staff. Since no cases relating to the use of television in Fairbanks proceedings were filed in Alaska during the course of the evaluation, the analysis of possible legal issues was limited to a review of cases in other jurisdictions and Alaska cases that discuss various uses of technology in relation to defendants' rights and court procedures. This analysis is presented in Section IV.

5) Other

Council staff addressed each of the four areas described above in detail. In addition, staff reviewed: evaluations of similar projects in other jurisdictions, articles in legal journals and other publications regarding the use of closed circuit or live television in court proceedings, and technical descriptions of equipment available for use in televised proceedings. Much of the additional research has been incorporated into this report.

C. PROCEDURES FOR TELEVISED PROCEEDINGS

1) Legal Framework for Alaska Proceedings

The televised arraignment project in Fairbanks 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. Court Rule (5)(a)(3) specifies that the responsibility for transport "shall be borne equally by

- (i) municipal police officers and municipal jail personnel, and by
- (ii) state troopers, state jail personnel, and all other peace officers."

The defendant's right to a first appearance (on felony charges) and speedy arraignment (on misdemeanor charges) is detailed in both AS 12.25.150(a) and in Court Rule 5. This arraignment or first appearance must take place within 24 hours of arrest, including Sundays and holidays. Rule 5 states that "the arrested person shall be taken before the nearest available judge or magistrate without unnecessary delay. This appearance may be accomplished by the use of telephonic or video equipment."

Supreme Court Orders numbers 589, 606 and 660 suspend "the provisions of Rules 5, 10 and 11 of the Rules of Criminal Procedure and the provisions of Rule 1 of the District Court Rules of Criminal Procedure which are inconsistent with the intent" of these orders to allow the use of the television equipment for an experimental period. The court orders allow magistrates and judges in the Fairbanks courts to conduct arraignments and felony first appearances, and to take misdemeanor pleas by television. They may also permit conduct of non-evidentiary bail reviews, and felony arraignments (only if a not guilty plea is entered) and non-evidentiary omnibus hearings. Finally, Orders 606 and 660 specify that sentencing in misdemeanor and traffic cases may be done by TV, with the defendant's consent.

2) Trooper and City Police Role in Televised Arraignments

Prior to televised arraignments, city police took the responsibility of transporting prisoners charged with offenses under municipal ordinances. Troopers transported those defendants charged with offenses against the state. City policy allowed a city police officer to transport as many defendants as the officer thought feasible, while Trooper policy required one Trooper for every three defendants. Since the Troopers' policy was not a written policy, fewer Troopers may have been used for transport when there were not enough available. These policies remained in effect after the beginning of the televised arraignments. Thus, if camera equipment had broken down or a judge had requested that a defendant be brought to the courtroom, defendants would have been transported by the appropriate agency using the personnel available.

For the first eight months of the televised arraignments, Troopers and city police shared the responsibility of guarding defendants at the jail during arraignments. From July 1, 1985 through September 15, 1985, Troopers assumed full responsibility for this task. Since September 15, 1985 the Department of Corrections has guarded defendants during arraignments, as well as providing assistance to the courts in managing paperwork associated with the proceedings. City police and Troopers no longer participate in arraignments in any routine capacity, although they may still be called upon occasionally to transport a defendant at the request of a judge.

3) Equipment and Procedures Used for Televised Arraignments

Televised proceedings in Fairbanks employ equipment located in both the courtroom and at the jail. Both locations



have a television camera, monitors, microphones, facsimile machines, video playback machines, and telephones. Signals between the two locations are broadcast over microwave equipment installed on the roofs of the two buildings. The buildings are approximately one mile apart, with no line-of-sight obstructions such as buildings or mountains.

Prior to the beginning of arraignments and other proceedings, personnel at both locations begin their preparations. The court clerk turns on all of the equipment, checks sound levels and light balances, reviews files to be sure that copies of all complaints have been sent by facsimile machine to the jail, and readies the defendants' rights videotape for playback. At the jail, prisoners are escorted from their cells to the "TV room" by a corrections guard. The guard remains with the in-custody defendants until the conclusion of the televised proceedings. He then notifies the judge by phone that they are ready to begin, and advises the judge of any potential problems.

The proceedings usually begin with an eight-minute videotape of a judge advising defendants of their rights. Defendants view both the videotape and subsequently the judge on a 23" monitor. The judge then appears live on the monitor, calls each prisoner in turn to a podium in the center of the jail room, informs him of the charges against him, and asks him to plead. A camera mounted directly above the monitor at the jail transmits a picture of the head and shoulders of the defendant to the judge's monitor in the courtroom. The defendant speaks into a microphone mounted on the podium. The defendant cannot see anyone else who is speaking from the courtroom (such as the prosecutor, defense attorney or witnesses) but can hear and speak to them through the audio links.

The judge in the courtroom views the defendant on a 23" monitor placed near his bench. Counsel and other participants in the courtroom view the defendant on a 40" screen that is mounted on the front wall of the courtroom. If a defense attorney is participating in the proceedings from the courtroom, he may speak to the defendant privately by going to another room and calling on the telephone.

The televised proceedings include arraignments on misdemeanor offenses, felony first appearances, bail settings and hearings, entry of misdemeanor pleas, and sentencing on misdemeanors. Data collected during the evaluation period indicate that slightly over half of the defendants arraigned by TV enter not guilty pleas (a similar proportion of defendants arraigned in the courtroom also enter not guilty pleas). Of those who plead guilty at their televised arraignments, the vast majority choose to be sentenced by TV as well.

Documents that must be transmitted between the courtroom and the jail giving the judge's orders regarding the release or custody status of each defendant are sent via telecopier (facsimile machine). The two telecopiers are located outside the courtroom and in the booking office at the jail. Without the telecopiers, it would be necessary to hand-carry these documents between the two locations. (See Appendix B for a description of the technical terms.)

### III. COST/BENEFIT ANALYSIS

In analyzing the costs and benefits of the program, it is necessary to consider its effects on both the Department of Public Safety which originally funded the program and on other criminal justice agencies whose cooperation is essential to the

success of the program. Courts, corrections, prosecution and defense must all adapt their activities to the requirements of the new technology. Thus, potential costs and benefits to these agencies were assessed together with the costs and benefits for Troopers and city police.

The primary sources of data for this analysis were interviews with system users; data collected during the first three months of the project by Public Safety personnel; and data collected from court case files by Judicial Council staff. In addition, the Department of Public Safety and the Court System provided information about the costs of purchasing and maintaining the equipment.

Requests for cost data indicated that no specific data were available to show costs for agencies other than the Department of Public Safety, the Fairbanks Police, the Court System and the Department of Corrections.<sup>3</sup>

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3. The Department of Public Safety has advised that the Department of Corrections contributed about \$5,000 of labor and materials to the project. In addition, DOC paid for the electricity needed to run the equipment at the jail.

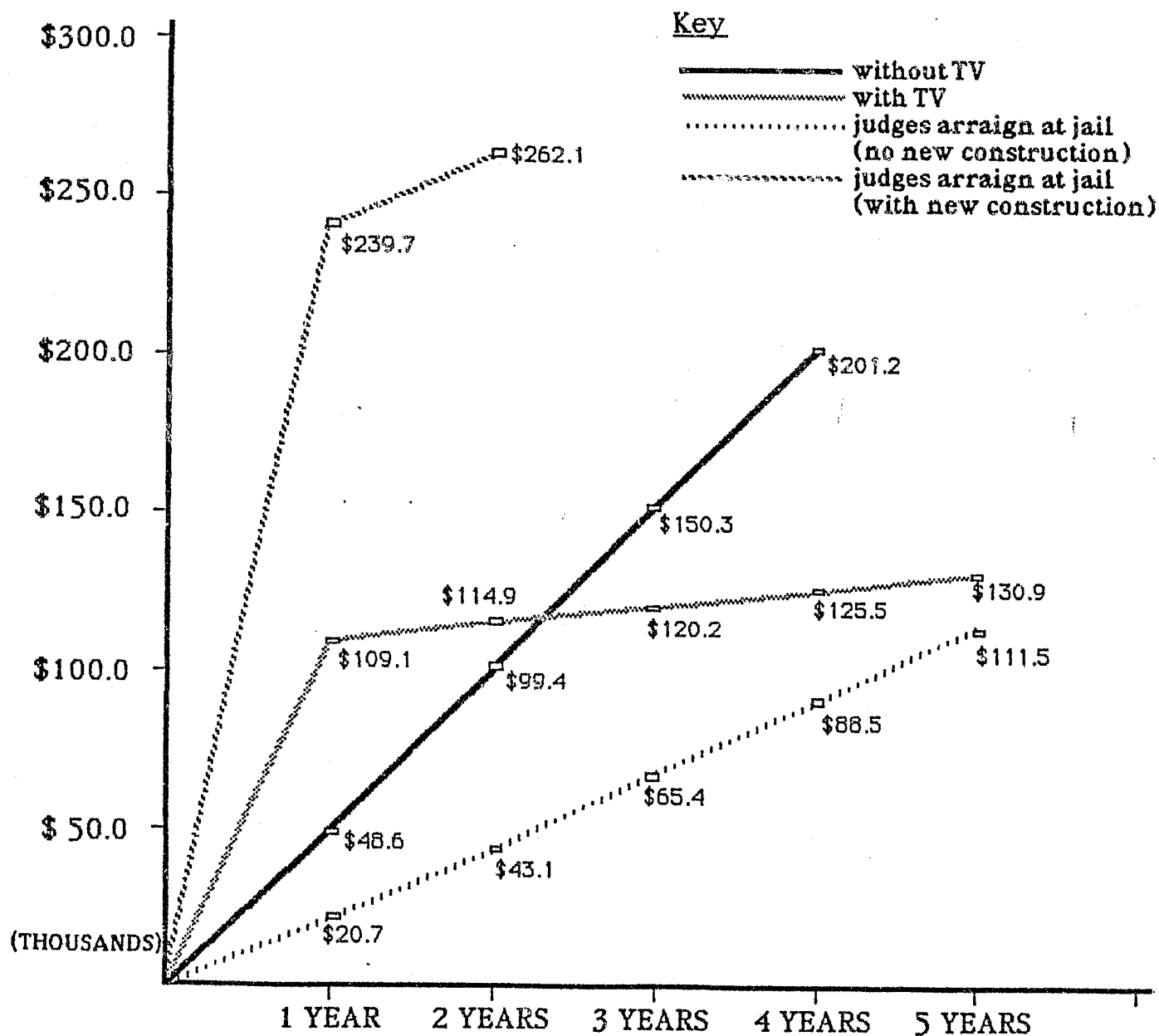
To the best of our knowledge, no agency has experienced a measurable increase or decrease in costs since the introduction of televised arraignments, except for the maintenance costs paid by the Court System. Although the judges, their clerks, and the Department of Corrections have increased the amount of time dedicated to the arraignment process as a direct result of the project, they appear to have handled these increases through the reallocation of existing resources. Since none of these costs could be measured, they have not been included in the calculations of costs and savings for the project. Costs of training personnel to use the equipment and costs of replacing the equipment were not available.

Table 1 shows a comparison of the cumulative costs over a three-year period of conducting arraignments with and without TV, as well as costs of having judges and attorneys travel to the jail to conduct arraignments. The amounts shown include the costs of Trooper and city police time, Trooper and city police mileage, and purchase and maintenance costs of the TV equipment. As can be seen from the chart, the savings from use of TV equipment will begin to be realized shortly after the beginning of the third year of use. By the end of the third year, the savings will be about \$30,119. At the end of the fourth year, cumulative savings will be about \$80,988.

It should be noted that about 25% to 30% of the savings accrue to the Fairbanks city police because about that percentage of in-custody defendants have city charges against them. Thus, of the \$80,988 cumulative savings at the end of the fourth year, the state's savings are in the range of \$56,692 to \$60,741. Capital and maintenance expenses of the system are borne, at this point, primarily by the Department of Public Safety and the Court System.

Two additional lines on the graph show the costs of having judges and attorneys go to the jail to arraign defendants there. The costs shown in the first alternative on the graph assume that arraignments would be conducted in the existing visiting room at the Fairbanks jail, with no substantial modifications. While the costs are lower in the short run, by about the sixth year of operation, they begin to exceed the costs for televised arraignments due primarily to the costs of judge time and transportation. A second problem with this alternative is that, while the visiting room would be adequate for occasional hearings, it would not be adequate or appropriate for permanent use as a court facility. Construction of an appropriate room (the second alternative line on the graph) would cost a minimum of \$220,000, according to Dept. of Corrections staff. The cost of transporting judges and other personnel would continue, making this alternative the most costly way to conduct arraignments.

Table 1  
Comparative Cumulative Costs of Arraignments<sup>4</sup>  
(FTVA Final Report, 1986)



4. The figures shown in this graph are based on the following estimates:

a) Average number of defendants arraigned per day = 6 defendants.

- b) Average mileage for transport for police.  
 --without TV = 6.4 miles/day.  
 --with TV (first 11 months) = 3.2 miles/day.  
 --with TV (after 1st 11 months) = 0.0 miles/day.
- c) Average cost per mile:  
 -City police = \$.54/mile.  
 -Troopers = \$.31/mile.  
 -Judges, D.A.s, P.D.s = \$.25/mile.
- d) Average time commitment for police (including travel time):  
 --without TV = 1 1/2 hr./day.  
 --with TV (first 11 months) = 1 hr./day.  
 --with TV (after 1st 11 months) = 0.0 hr./day.
- e) Average cost per hour/police:  
 -1st year = \$28.00/hour.  
 -2nd year (5% inflation) = \$29.40/hour.  
 -3rd year (no change) = \$29.40/hour.
- f) Average cost per year (salaries & benefits) for judges to arraign at jail (includes 1/2 hr. per day travel time for judge, clerk, D.A. and 1/2 hr. per week for P.D.):  
 -1st year = \$19,086.  
 -2nd year (5% inflation) = \$21,746.  
 -3rd year (no change) = \$21,746.  
 -4th year (3% inflation) = \$22,398.  
 -5th year (no change) = \$22,398.
- g) Purchase of Fairbanks television equipment  
 (actual cost for 1st year) = \$85,000.
- h) Annual cost of equipment (includes a) phone lines, telecopier paper;  
 b) court system maintenance costs):
- |            |                                   |          |
|------------|-----------------------------------|----------|
| -1st year: | a) Public Safety =                | \$2,250. |
|            | b) Court System =                 | \$7,351. |
| -2nd Year: | a) Public Safety =                | \$2,250. |
|            | b) Court System =                 | \$3,500. |
| -3rd Year: | a) Public Safety (3% inflation) = | \$2,318. |
|            | b) Court System =                 | \$3,000. |
| -4th Year: | (no change) =                     | \$5,318. |
| -5th Year: | a) Public Safety (3% inflation) = | \$2,388. |
|            | b) Court System =                 | \$3,000. |
- i) Equipment for "Judges-at-Jail" (No new construction):  
 -Each year, includes maintenance = \$1,000/year.
- j) Capital and Equipment costs for "Judges-at-Jail"  
 (1st year, estimated) = \$220,000.

Interviews with the judges, clerks, attorneys and Corrections staff have a common theme: televised arraignments can be an inconvenience and time-consuming. Some interviewees believed that the amount of inconvenience required to process so few defendants (an average of 6 per day) justified the conclusion that the use of televised arraignments was not warranted in Fairbanks. Others thought that if the television equipment was indeed saving money for the state government as a whole, then its use should be continued despite the inconveniences (see Appendix F for a further assessment of the televised proceedings by the court system administration in Fairbanks).

Even interviewees who found the televised proceedings difficult because of equipment malfunctions or lack of familiarity noted that courtroom proceedings were disrupted less frequently. They also agreed that there was less risk of liability to the state from accidents or security problems occurring while defendants were being transported to and from the court. Both of these points were perceived as benefits to the criminal justice system.

A final question might be whether the time saved by Troopers and city police can be shown to have any specific benefits. In interviews, Troopers and police indicated that they were using the time for increased patrol work, reduction in overtime pay, and increased promptness in serving warrants. Troopers indicated that they have been able to meet increased requests for service from the court, government attorneys and others without requesting additional manpower, or drawing manpower away from other Trooper Patrol and Investigative units. Judges, however, believed that they had not experienced any reduction in turnaround time for arrest and bench warrants, or for subpoenas. Data were unavailable to document whether service times had changed, and if so, whether this was related to the use of televised arraignments.



#### IV. LEGAL ISSUES RELATED TO TELEVISED PROCEEDINGS

This chapter discusses possible legal issues related to the use of television in court proceedings in Alaska. The discussion draws on interviews with Alaskan attorneys and judges, legal research, and interviews with attorneys in other states who have participated in televised proceedings. The possible issues include defendants' rights to due process and equal protection such as the right to confront witnesses or effectiveness of representation by attorneys, and possible conflicts with existing statutes or court rules.

The use of television for court proceedings in criminal matters dates from 1972. In 1973, it was used in Missouri to present expert testimony in one city to a court in another city. By 1975, its use was being tested in a variety of jurisdictions<sup>5</sup>.

Relatively few challenges to its use have reached state supreme courts, and no cases have been tested in the U.S. Supreme Court. The most-frequently cited of the state cases is Kansas City v. McCoy (525 S.W. 2d 336 (1975), which approved the use of television to present the testimony of an expert witness during a criminal trial involving violation of a municipal ordinance. Issues raised in McCoy included the defendant's right to confrontation, and other due process rights such as the right to a fair trial and to effective representation by his attorney.

A more recent California case, Hochheiser v. Superior Court (Nov. 9, 1984, 208 Cal. Rptr. 273) disallowed the use of television to present the testimony of child abuse victims during the defendant's trial, on the grounds that the California court did not have the rule-making authority needed to institute such a procedure without prior approval of the legislature.

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5.           Supra, Note 1.

The Hochheiser court stated that "The television order herein raises significant and complex federal and state constitutional issues, potentially affecting petitioner's fundamental rights to a public trial, confrontation of witnesses against him and due process (footnotes omitted)." It also cites Stores v. State (Alaska 1980) 625 P.2d 820, regarding the use of videotaped testimony at trial, at some length. Like Hochheiser, Stores was overturned on grounds (violation of Criminal Rule 15) other than the constitutional issues raised in the appeal.<sup>6</sup> Thus, no court, to the best of our knowledge, has yet addressed the issues arising from Fairbanks' use of television for criminal proceedings.

#### A. Right to Confrontation of Witnesses

The right to confront witnesses is the issue most frequently raised in cases that discuss the use of technology to present evidence or conduct proceedings. In Alaska, the defendant's right to confront witnesses against him is grounded in both the Sixth Amendment to the U.S. Constitution and in Article 1, Section 11 of the Alaska Constitution ( "...the accused is entitled to...be confronted with the witnesses against him"). The court orders (#589, 606, 660) establishing the experimental Fairbanks program envision its use in non-evidentiary proceedings, such as misdemeanor arraignments, felony first appearances and the taking of misdemeanor pleas. Typically, no witnesses against the defendant are present at such proceedings. However, many argue that a parallel right exists in these proceedings as well.

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6. The California legislature enacted legislation (Penal Code Section 1347, effective May, 1985) as a result of the Hochheiser decision which allows closed-circuit television to be used for the testimony of children aged ten and under in any criminal proceeding under specific guidelines.

Arguments regarding the defendant's right to confrontation and the effects of technology on the exercise of this right have focused on the need for the defendant and jury to be able to judge the demeanor of witnesses in criminal trials. Although the court in Stores (cite omitted) decided that the prosecution had not provided substantial enough reason to use videotaped testimony in lieu of live testimony at trial, other Alaska cases (e.g., McBride v. State, 368 P.2d 925) have approved use of previously-recorded testimony. In both Stores and McBride, the court discussed the effects of technology on the critical aspects of witness demeanor. In McBride, a tape recording of the witness' testimony at the defendant's prior trial was replayed for the jury at the second trial because the witness could not be located. The court commented that "[Demeanor] evidence is merely desirable; it is not indispensable ...(p.926)" and later, "To a large extent, then, demeanor evidence is available [through the use of tape recording]...; it is no longer wholly 'elusive and incommunicable' as in the case of manual reporting of former testimony (p. 929)."

Stores differed from McBride in both the technology employed, and the availability of the witness. In Stores, the testimony of a physician who examined the victim in a rape case was videotaped a week before trial because the doctor had planned to leave the state on a vacation during the week of trial. The court ruled that admission of the videotape was error (a violation of Cr. Rule 15), and that because of the possible effects of videotape upon the jury, that the error was not harmless. Specifically, it said: "Videotape may affect the jurors' impressions of the witness' demeanor and credibility (footnote omitted). Such considerations are of particular importance when the demeanor and credibility of the witness are crucial to the state's case. The footnote says, in part, that "...the camera itself is selective of what it relates to the

viewer. Transmission of valuable first impressions may be impossible, and off-camera evidence is necessarily excluded while the focus is on another part of the body."

In McBride, Alaska's Supreme Court recognized the positive uses of technology. In Stores, the court delineated some of the cautions that should apply to its use. Thus, the Court has recognized that while the use of technology to transmit information may alter the information received by the listener/viewer, it has determined that technology does not, under all circumstances, deprive the defendant of his right of confrontation. The technology may allow enough judgment of demeanor to be useful and permissible.

Stores and McBride reflect the major arguments that have been made both for and against the use of television in Fairbanks. Some judges, and most defense attorneys, believe that the judge may be handicapped by the use of television because only the head and shoulders of the defendant are visible. The judge, it is argued, may be deprived of important "body language" which would alter his or her assessment of the defendant's condition or characteristics. Others contend that the television is at least adequate to provide all necessary information about the defendant for the purposes of the types of proceedings for which it is used. In some cases, judges suggest, television may improve communication between the judge and defendant by reducing extraneous distractions.

Some types of telephonic proceedings have been allowed by Alaska's court rules for several years (see especially, Cr. Rule 5). Rule 38.1 (effective June 15, 1985) allows any proceeding which requires the defendant's presence (Cr. Rule 38 (a)) to be conducted by telephone, with the parties' consent. If the defendant's presence is not required, the court may in its discretion order telephonic participation. The allowance of the use of telephonic equipment for criminal hearings

indicates that television which enables the judge and defendant to see each other and to hear additional parties may also be acceptable.

Further, Alaska's Supreme Court has stated (in Padgett v. State, 590 P.2d 432, 1979) that felony first appearances under Rule 5 are not " 'critical stages' requiring the assistance of counsel", and that the "setting of bail is likewise not an adversary confrontation wherein 'potential substantial prejudice' to 'the defendant's basic right to a fair trial' inheres, (cites omitted)." Certain rights, such as the right to confront witnesses are not necessarily inherent in minor proceedings such as bail hearings and felony first appearances.

Padgett suggests that technology that might be objectionable at trial may be acceptable at other types of proceedings where defendants' rights are not in issue. As further support for this argument, Alaska's Cr. Rule 38 (c)(2) allows any misdemeanor arraignment, plea, trial and sentencing to occur in the defendant's absence, with the defendant's prior written consent. This provision allowing for defendants to be entirely absent from misdemeanor proceedings suggests that more flexibility may be available for use of technology in such proceedings. Both Padgett and Cr. Rule 38 (as well as Kansas City v. McCoy (supra) suggest that the types of proceedings for which television is being used in Fairbanks are not proceedings in which the defendant's right to confrontation is jeopardized by the use of technology.

B. Defendant's Option to Be Arraigned at Location of Choice

There may be one significant difference between telephonic proceedings allowed by Cr. Rule 38.1 and the television proceedings as conducted in Fairbanks: the

defendant's consent to the proceedings. Consent is required by Rule 38.1. However, the court orders enabling the Fairbanks program are neutral regarding the defendant's consent, except that consent is required for misdemeanor sentencings. Since some law enforcement officers in Fairbanks have informed defendants who are in custody that they must be arraigned by television, it is the evaluators' recommendation that the language of the Supreme Court orders should be clarified. Judges, on occasion, have ordered that defendants otherwise scheduled for a TV arraignment be transported to court, but there is no clear authority for this action either.

Other jurisdictions have addressed the question of whether the defendant has a right to determine where his arraignment will occur in various ways. Four of five of the jurisdictions surveyed in our research (Maricopa County, Arizona; Clark County, Nevada; Dade County, Florida; Philadelphia, Pennsylvania; and Ada County, Idaho) allow the defendant the choice between a televised arraignment or an in-court arraignment. Only one, Idaho, leaves the choice to the judge (Idaho Cr. Rule 43.2). However, in all jurisdictions surveyed, the status of the defendant's choice is made clear.

Arguments for allowing the defendant a choice as to the site of his arraignment presumably would center on due process and equal protection rights. Unfortunately, none of the jurisdictions listed above could provide information about the grounds for their various decisions regarding the defendant's option. Phone calls to court administrators, judges, and attorneys during the final phase of the evaluation

failed to shed any further light.<sup>7</sup>

### C. Effective Representation of Counsel Related Cases

Alaska's Constitution (Article I, Section 11) guarantees the defendant the right "to have assistance of counsel for his defense." Defense attorneys in Fairbanks contend that the present experimental program seriously reduces their effectiveness as counsel for their clients. They ground their arguments on their inability to communicate privately and conveniently with their clients during the proceedings if they appear in the courtroom while the defendant is at the jail. Although attorneys are allowed to appear with their client from the jail, only one instance of this has occurred during the past year, to the best of anyone's knowledge.

The issue of violation of the attorney-client privilege was raised in Kansas City v. McCoy. There, the defendant alleged that the presence of a microphone within two feet of him inhibited private conversation with his counsel. The court found that the trial judge had observed the defendant talking to his attorney despite the microphone, and that the conversations had not been recorded on the videotaped record of

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7. It should be noted that in most evaluations of the programs in these jurisdictions, as well as in Alaska, defendants appear to prefer the televised arraignments. Also, none of the defense attorneys contacted in other jurisdictions said that they advised their clients to be arraigned at the court rather than by television, even when they had the choice. Thus, specifying that the defendant has the option to appear either in court or by television does not seem to affect the usefulness of the television equipment because most defendants are likely to choose the televised arraignment.

the trial. The court concluded that the attorney-client privilege had not been violated. Since defense attorneys in Fairbanks allege that present or proposed equipment would not allow private conversations with the defendant, the court's ruling in McCoy may suggest that certain minimum standards exist.

A recent report evaluating the use of television for felony first appearances in Miami<sup>8</sup> also suggests that overheard conversations between an attorney and client do not "create a per se violation of the Sixth Amendment." The report cites Weatherford v. Bursey, 97 S. Ct. 837 (1977):

"[W]hen conversations with counsel have been overheard, the constitutionality of the conviction depends upon whether the overheard conversations have produced directly or indirectly, any of the evidence offered at trial."

The Florida report notes that there are no indications that during the three years of television use that prosecutors have made any unconstitutional use of overheard conversations.

#### Interviews with Attorneys

A review of the available equipment in Fairbanks and a survey of defense attorneys in other jurisdictions suggest that attitude, equipment and local legal practices may all play a role in responding to effectiveness-of-counsel arguments against the use of television. Defense attorneys in Fairbanks do not typically represent clients at felony first appearances

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8. Evaluation of the Use of Closed Circuit Television in Felony first Appearances, Silbert, Newman, et al, Office of the Dade-Miami Criminal Justice Council, 1985, p. 76.



or misdemeanor arraignments. The exceptions occur when a Public Defender has already been appointed for the defendant on another case and is aware that the client is scheduled for an in-custody arraignment or first appearance on a different charge; or when the defendant has hired a private attorney to represent him (in our study of sampled misdemeanors, this occurred only once in 538 cases for an in-custody defendant and rarely for bailed-out defendants).

Attorneys may also appear for bail reviews using the television equipment when the defendant remains in custody after the initial appearance. However, the overall estimate for defense attorney use of the equipment in Fairbanks is one defendant per week. (It should be noted and emphasized that it is expected that defense attorneys will make much greater use of the equipment in other jurisdictions, if it is installed.)

In most of the other jurisdictions surveyed, defense attorneys appear at every arraignment. In Boise, the defense attorneys go to the jail prior to arraignments, interview the defendants, and appear with them during the arraignment. The same procedure is used in Miami for misdemeanors, but attorneys for felony defendants appear in the courtroom and communicate with the defendant via a telephone headset which allows whispered, unrecorded conversations (a paralegal is also at the jail with the defendant to provide further assistance). In Las Vegas, the defense attorney uses the television equipment to talk with defendants prior to arraignments from the courtroom; then appears in the court with the judge and prosecutor. No provision is made for private communication between the attorney and client during Las Vegas arraignments. However, only petty misdemeanors are handled by television there, and any sentences to be imposed have been agreed upon or estimated prior to the proceedings.

While defense attorneys in Idaho were very positive about the televised arraignments, defense attorneys in Miami were very negative, even though the Miami equipment is much more sophisticated and the procedures are similar. One difference may be in the numbers of defendants: Miami judges may arraign over 100 in 2 hours, while Idaho judges arraign 12 to 15 defendants in about the same amount of time. Thus, Miami attorneys feel pressured by the lack of time, and believe that the television equipment exacerbates the problem, while Idaho attorneys are very comfortable with it. In addition, one Idaho attorney noted that he is personally acquainted with all of the judges and prosecutors. In contrast, the Miami attorney is not, because of the larger numbers involved. The Las Vegas attorney appeared to be neutral about the use of television equipment.

The range of equipment available for attorney-client communication during arraignment proceedings ranges from only the microphones in open court (Las Vegas) to telephone headsets which allow private, off-record conversations (Miami). However, in most of the jurisdictions, defense attorneys have spoken at least briefly with each of their clients prior to the beginning of proceedings. In Miami, the attorney is either at the jail with his client (misdemeanors) or can see the defendant on a TV screen in the courtroom.

In contrast, Assistant Public Defenders in Fairbanks have often not had an adequate opportunity to speak with clients prior to the proceeding. The equipment available to Fairbanks attorneys who wish to speak with their clients confidentially during televised proceedings includes a telephone at the counsel table, and a phone located in the magistrate's office just outside the courtroom. The defendant has use of a telephone at the jail arraignment room; this phone has a long cord so that it can be taken into the larger visiting room to allow more private conversation. However, use of the phone requires that the proceedings be interrupted.

Even when defense attorneys are present at arraignments or other televised proceedings this equipment is rarely used for communications between attorney and client. Defense attorneys may also speak through the open microphones in the courtroom. Although the attorney can view the defendant on the large TV screen at the front of the courtroom, the defendant cannot see the defense attorney.

The experience of other jurisdictions suggests that there are several methods for improving attorney/client communications in Fairbanks and in other proposed televised arraignment sites. First, whenever possible, attorneys should speak with the defendants prior to the arraignment or other proceedings. This might be done using the television equipment so that attorneys do not need to travel to the jail. This might also require that defendants be screened prior to arraignments to determine whether they will qualify for Public Defender representation, because the Public Defender cannot represent a defendant until the defendant's eligibility for Public Defender services has been determined.

Second, attorneys can be equipped with telephone headsets to allow private communication during the proceedings. Defendants at the jail would need to have assurance of privacy without disrupting the proceedings by leaving the arraignment room and should probably also have the ability to see their attorney during the proceedings. This would require additional equipment.

Finally, attorneys can consider appearing with their clients in the jail arraignment room. Miami attorneys felt that this arrangement left them at a disadvantage in felony first appearances because they believed that the judge paid less attention to them. Idaho attorneys found no disadvantages and believed that it was the only adequate means of representing their clients. This option might require

additional funding for Public Defenders to cover the extra manpower and travel costs that would be required.

An associated problem is the presence of family members or other possible third-party custodians during bail discussions. These discussions usually occur at the arraignments, with the potential custodians in the courtroom. For the discussions to be most effective, the defendant, attorney and custodians must be able to confer privately at certain times and to confer with the judge. The existing equipment in Fairbanks is inadequate to handle these situations and the other jurisdictions surveyed did not attempt to provide equipment capable of allowing several people to confer privately. It may be that bail hearings involving attorneys and potential custodians should be held in the courtroom rather than by television.

From our analysis and discussions with attorneys in other states about the legal issues related to effective representation of counsel, it does not appear that the use of television per se deprives a defendant of the effective assistance of counsel. However, malfunctioning or poorly-chosen equipment could deprive a particular defendant of this right. In addition, attorneys and their clients may perceive significant problems which could be overcome with better training for them or other personnel involved with the system or with better equipment. These are concerns to which Fairbanks and other jurisdictions should be sensitive and that should be confronted at the earliest stages of planning any new systems in Alaska.

(D) Summary

At the present, it does not appear that the use of television to conduct the types of proceedings outlined in court orders establishing the experimental Fairbanks program violates any of the defendant's rights under the U.S. or Alaska Constitutions. Nor does it appear that the program conflicts with any existing Alaska statutes, rules or case law. Thus, there do not appear to be any substantial legal barriers to establishing use of the equipment on a permanent basis in Fairbanks, or extending its use to other jurisdictions.

However, to avoid possible legal issues in the future, two aspects of the Fairbanks program should be improved. First, whether the defendant has an option to appear in person in the courtroom for any proceeding (other than sentencing) or whether that is a matter of judicial discretion should be clearly spelled out in the Court Rules. Second, every effort should be made to provide convenient, reliable and private communication for attorneys and their clients during the proceedings. Although defendants may not have a right to representation by counsel during some of the proceedings, they do have a right to effective representation if their attorney is present. Such communication is not a "frill", but an essential ingredient of a successful program.

Our analysis does not suggest substantial legal barriers to other possible uses of television, such as parole hearings, testimony by expert witnesses, or testimony of witnesses at grand jury proceedings. However, recent cases across the country have cautioned against substituting technological means of communication for in-person courtroom testimony. In Chandler v. Florida, 449 U.S.560 (1981), a case related to television coverage of a burglary trial, the U.S. Supreme Court stated:

"Dangers lurk in this [experiment], as in most experiments, but unless we were to conclude that television coverage under all conditions is prohibited by the Constitution, the states must be free to experiment. We are not empowered by the Constitution to oversee or harness state procedural experimentation; only when the state action infringes fundamental guarantees are we authorized to intervene. We must assume state courts will be alert to any factors that impair the fundamental rights of the accused."

The U.S Supreme Court's comments suggest that television is a legitimate state court experiment, but that preservation of constitutional rights should be a primary consideration in any expansion of televised proceedings.

#### V. DATA ANALYSIS

##### A. Background and Methodology

During the first round of interviews conducted with Fairbanks court personnel involved with televised arraignment proceedings, one judge suggested that there might be a possibility that defendants were receiving longer sentences if they were sentenced during televised proceedings. As a result, evaluators designed a limited data collection to test this hypothesis. In addition, it was decided to determine whether the use of television had any effect on the rates at which guilty pleas were being entered by defendants at arraignment. This section of our report discusses the methodology and results of that data collection and analysis.

The original data set consisted of 276 misdemeanor cases, divided into samples of cases arraigned before and after Nov. 6, 1984 (the beginning date of the television project). Felony first appearances were excluded from the analysis because no plea is entered at this proceeding. The cases were selected

by pulling every case file starting with January 1, 1984 (for the pre-TV sample) and every case file starting with January 1, 1985 (for the post-TV sample). Cases were pulled in sequence until about 100 cases had been selected for each period.

After review of the data, it was determined that additional sentenced-at-TV-arraignment cases should be selected to supplement the data base. These cases were also pulled in numerical sequence, following the first sample of cases. A total of 276 cases were obtained and analyzed in the first data analysis.

A coding form is attached as Appendix C. Due to limited resources, all data were collected from the court case files alone. The data were coded by Judicial Council staff under the supervision of the Project Director. All cases in which a defendant had been charged with a misdemeanor and arraigned were coded. Cases in which the prosecutor had dismissed all charges against the defendant prior to or at the arraignment were not used. Sentencing information was collected only for those defendants who entered a guilty plea at their arraignment.

Data were analyzed by Policy Analysts, Ltd., under contract to the Judicial Council. SPSS/PC programs were used for the analysis. The two groups of 15 pre-TV sentenced defendants and 20 post-TV sentenced defendants that had been collected as supplements to the original sample were either analyzed separately or excluded from analysis, as appropriate.

The results of this analysis were inconclusive. Too few sentenced cases were available to make an adequate comparison of pre- and post-TV groups, especially of those defendants who were in custody. Thus, a second round of data collection was undertaken in September of 1985, following the same procedures and using the same coding forms as had been used for the first sample. The second sample included 262 cases arraigned between

June 1 and mid-July of 1985. These cases were combined with the earlier sample, and the entire data set of 538 cases was re-analyzed by Policy Analysts, Ltd.

The results of the analysis of the 538 cases is discussed in the following section. It should be kept in mind that most of the analysis excludes the 35 sentenced cases that were collected separately; thus, the total number of cases may be shown as 503.

#### B. Results of Analysis

Table 2 shows the frequencies of the most important variables. Data on factors such as the defendant's prior record of convictions, race, and economic status were unavailable in the court files for nearly half of the defendants. The variables chosen for analysis were those that were consistently available for most defendants.

Most defendants were male (86.1%), charged with an offense against the state (64.3%) rather than the Municipality of Fairbanks, and were not represented by an attorney at the arraignment proceeding (94.8% appeared without an attorney). The two magistrates heard all but 19.5% of the cases reviewed. Driving offenses, primarily DWI (Driving While Intoxicated) and Driving with a Suspended or Revoked License, constituted 43.9% of the cases arraigned during the period studied. Offenses against Property, such as Shoplifting and Theft were the second most numerous group, with 26.4% of the cases.



### Type of Pleas Entered at Arraignment

Table 3 shows that a slightly higher percentage of defendants entered not guilty pleas at arraignment (56.9%) than guilty or nolo contendere (no contest) pleas (42.0%). Only 1.1% of the arraignment proceedings were continued by the judge to another date. Table 3 continues the analysis of guilty and not-guilty pleas entered at arraignment. In both the pre-TV and post-TV sample, defendants who were in custody were more likely to plead guilty at the time of arraignment than were defendants who had been released on bail or who had received a summons. In neither year were the differences statistically significant. After the introduction of television, the percentage of in-custody defendants pleading not guilty at arraignment rose by 10 percentage points.

TABLE 2  
SUMMARY OF FREQUENCIES OF IMPORTANT VARIABLES  
 (1986 FTVA STUDY)  
 (N = 538 Defendants)

1. <u>Defendant's Sex:</u>	Male	Female			
	463 (86.1%)	75 (13.9%)			
2. <u>Date of Arraignment:</u>	Pre-TV	Post-TV			
	141 (26.2%)	397 (73.8%)			
3. <u>Location of Arraignment:</u>	Court*	Jail			
	329 (61.2%)	209 (38.8%)			
	*Includes pre-TV in-custodies.				
4. <u>Custody Status at Beginning of Arraign.:</u>	Summons	Bailed-Out	Custody-Bail	Custody-No Bail Set	
	101 (18.8%)	146 (27.1%)	15 (2.8%)	276 (51.3%)	
5. <u>Judge at Arraignment:</u>	Hessin	Slater	District Court Judge		
	318 (59.1%)	115 (21.4%)	105 (19.5%)		
6. <u>Type of Attorney for Defendant:</u>	Private	Public Defender	None		
	24 (4.5%)	4 (.7%)	510 (94.8%)		
7. <u>Ordinance or Law Violated:</u>	Municipal Offense	State Offense			
	192 (35.7%)	346 (64.3%)			
8. <u>Type of Offense:</u>	Violent	Property	Driving	Alcohol	Disorderly
	35 (6.5%)	142 (26.4%)	236 (43.9%)	45 (8.4%)	80 (14.9%)
9. <u>Type of Plea Entered:</u>	Not Guilty	Guilty	No Plea-Arrgn. Cont.		
	306 (56.9%)	226 (42.0%)	6 (1.1%)		

TABLE 3

DISPOSITION AT ARRAIGNMENT BY CUSTODY STATUS, CONTROLLING FOR TVA  
(1986 FTVA Study)

	<u>PRE-TVA</u>				<u>POST-TVA</u>			
	<u>No Custody</u>		<u>Custody</u>		<u>No Custody</u>		<u>Custody</u>	
Not Guilty	37	(71.2%)	29	(46.0%)	131	(67.2%)	109	(56.5%)
Guilty	15	(28.8%)	34	(54.0%)	63	(32.3%)	79	(40.9%)
No Plea	---	----	---	----	1	(.5%)	5	(2.6%)
Totals:	52	(100.0%)	63	(100.0%)	195	(100.0%)	193	(100.0%)

Table 4 indicates that the type of offense also influences the likelihood of entering a guilty plea at arraignment. Those defendants charged with a violent offense (primarily misdemeanor assault and domestic violence) were least likely to plead guilty at arraignment. Defendants charged with a driving offense (primarily driving while intoxicated and driving with a suspended or revoked license) were also unlikely to plead guilty at arraignment. Table 4 also shows that exactly half of the defendants charged with offenses against property (primarily shoplifting, theft, and trespass) pled guilty at arraignment. The group of defendants most likely to plead guilty were those charged with "disorderly" offenses (primarily violations of municipal ordinances including open container, drinking in public, and disorderly conduct).

TABLE 4

DISPOSITION AT ARRAIGNMENT BY TYPE OF OFFENSE  
(1986 FTVA Study)

	<u>Not Guilty</u>		<u>Guilty</u>	
Violent:	29	(82.9%)	6	(17.1%)
Driving:	172	(72.9%)	63	(27.1%)
Property:	71	(50.0%)	71	(50.0%)
Alcohol:	19	(42.2%)	26	(57.8%)
Disorderly:	<u>21</u>	(26.3%)	<u>59</u>	(73.7%)
Totals:	312		225	

## Sentencing Patterns

The analysis first considered whether there were any differences in sentencing patterns that could be attributed to the particular year in which the case was filed (pre-TV, 1984 or post-TV, 1985). In general, the same two magistrates handled about 80% of the cases in each year, with the remainder of the cases sentenced by district court judges (see Table 2 above for the distribution of cases by judge at arraignments). The types of cases sentenced during the two years were similar (see Table 5), with a slight increase in violent and alcohol offenses in the post-TV group.

Table 5 shows some trend towards increasing likelihood of receiving a sentence that included some jail time as compared to the likelihood of receiving a sentence that did not require the defendant to serve any time in jail (i.e., either a fine alone, or a sentence in which all of the time to serve was suspended, or a combination of fine and suspended time). This trend was seen in both property and disorderly offenses, but the changes were not statistically significant.

TABLE 5

LIKELIHOOD OF JAIL/NO JAIL BY PRE-/POST-TV  
(1986 FTVA Study)

		<u>Pre-TV</u>		<u>Post-TV</u>	
Violent:	No Jail	---	(100.0%)	2	(40.0%)
	Jail	1	(100.0%)	3	(60.0%)
	Sub-Total	<u>1</u>	<u>(100.0%)</u>	<u>5</u>	<u>(100.0%)</u>
Driving:	No Jail	---	---	5	(12.5%)
	Jail	13	(100.0%)	35	(87.5%)
	Sub-Total	<u>13</u>	<u>(100.0%)</u>	<u>40</u>	<u>(100.0%)</u>
Property:	No Jail	7	(58.3%)	20	(46.5%)
	Jail	5	(41.7%)	23	(53.5%)
	Sub-Total	<u>12</u>	<u>(100.0%)</u>	<u>43</u>	<u>(100.0%)</u>
Alcohol:	No Jail	3	(60.0%)	15	(83.3%)
	Jail	2	(40.0%)	3	(16.7%)
	Sub-Total	<u>5</u>	<u>(100.0%)</u>	<u>18</u>	<u>(100.0%)</u>
Disorderly:	No Jail	14	(77.8%)	19	(55.9%)
	Jail	4	(22.2%)	15	(44.1%)
	Sub-Total	<u>18</u>	<u>(100.0%)</u>	<u>34</u>	<u>(100.0%)</u>
Total		49 Sentenced		140 Sentenced	

### Additional Data Related to Sentencing Patterns

Analysis of sentencing patterns for defendants in court and defendants at the jail (i.e., sentenced by TV) showed a statistically significant difference in the likelihood of receiving a sentence that included jail time for some types of defendants sentenced by TV. The original data set of 538 cases contained too few sentenced cases for pre-TV defendants to determine whether this difference was due to the use of TV or to some other factor. Thus, an additional 743 cases were collected in January, 1986 for both pre- and post-TV periods. All of the additional cases were defendants who had pled guilty at arraignment and had been sentenced.

A total of 967 sentenced defendants were analyzed to see whether the sentencing differential persisted when other factors were taken into account. Of these, 594 defendants had been in custody at the time of arraignment. The initial analysis indicated that the sentencing differences persisted. However, it was noted that 45% of the pre-TV in-custody defendants had been arrested for non-jailable offenses<sup>9</sup>, while only 10% of the post-TV defendants had been arrested for these same offenses. When defendants arraigned for non-jailable offenses were excluded from the analysis, no

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9. Non-jailable offenses are defined as those for which a jail term cannot be imposed after conviction. The only permissible penalty is a fine. Arguably, such defendants should not be held in custody pending arraignment (AS 12.25.180 provides that such defendants should be given a citation except under very limited circumstances). The four offenses included in this category and the Fairbanks municipal ordinances establishing their penalties are: Littering, Drinking in Public, and Urinating in Public [Sec. 6.103 (c)]; and Open Container of Liquor Prohibited in Downtown Areas (Sec. 4.407).

significant differences were found in the likelihood of a sentence that included jail time between pre- and post-TV in-custody defendants. (See Table 6).

TABLE 6  
LIKELIHOOD OF JAIL/NO-JAIL SENTENCE FOR IN-CUSTODY DEFENDANTS  
(1986 FTVA STUDY)

	<u>Defendant in Court</u>	<u>Defendant at Jail</u>
No jail time	19 (10.1%)	32 (14.5%)
Sentenced to some jail	<u>169</u> (89.9%)	<u>189</u> (85.5%)
Totals:	185(100.0%)	221(100.0%)

Table 6 indicates that defendants sentenced by TV (excluding those in custody for non-jailable offenses) were actually slightly more likely to receive a sentence that did not include jail time than were the defendants who had been sentenced in-court during 1984. However, the differences are not significant, and may be due either to random variation or to changes in other factors unrelated to the use of TV. Such factors may include changes in sentencing policy related to the availability of new or increasingly accessible alternatives such as the Shoplifters Prevention Program and community work service in 1985, or changes in the types of defendants sentenced in 1985 as compared to 1984.

#### VI. POSSIBLE FUTURE USES OF TELEVISION

Alaska has experimented with the use of television for several types of criminal proceedings. This evaluation of television use suggests that, despite potentially serious problems (especially in the area of attorney/client

communication) and some limitations, use of the technology has measurable benefits. The benefits include reduced risk of liability to the state and others from security violations, accidents, etc.; reduced costs for some agencies; and increased efficiency in handling defendants who have been arrested, arraigned, and then released from custody. The benefits of this technology would be especially great if the equipment were used to handle proceedings that involve parties in different communities. Thus, uses that encourage long-distance participation should be carefully considered.

Other states (see Note 1, p. 6) have used television, or the comparable technology of videophones (Maricopa County, Arizona and Philadelphia, Pennsylvania) for a wider variety of purposes. Many of these uses are appropriate for consideration by Alaska justice system agencies. Some uses, such as attorney communication with clients via the TV equipment prior to televised court proceedings could potentially overcome some of the present problems with the Fairbanks system.

Others, such as use of television for grand jury or expert witness testimony, have the potential for significantly reducing the costs of prosecuting and defending criminal cases. Television may also find uses in both appellate proceedings and in civil court cases. Greater use of the equipment reduces the cost per proceeding, and would result in increased savings for the agencies or individuals involved.

Several factors seem to contribute substantially to effective use of television equipment. These include careful planning; attention to quality of the equipment as well as to ease of use by non-technical personnel; commitment to use of the equipment by the frequent users; flexibility to change established procedures to accommodate the use of television (such as the change in arraignment schedules in Fairbanks); and



consideration of subsidiary uses of equipment related to televised proceedings (such as other uses of the facsimile machines).

Reasonable expectations of what the equipment can accomplish and the length of time required for all parties to adjust to its presence (at least a year, in Fairbanks) are necessary. Finally, due care must always be taken to protect the rights of parties affected by the use of this technology. Such protection may necessitate special training for parties, limitations on the types of proceedings for which it is used, and/or written waivers or permission for use.

Table 8, on the following page summarizes possible uses of television that should be considered during the planning phases of new projects in Alaska. Long-distance transmissions may result in the most substantial cost savings to the state, and should be carefully planned even when the initial use of the equipment is expected to be primarily local. Again, subsidiary equipment such as facsimile machines may also have significant benefits beyond its use for televised proceedings; such uses should be considered during the planning stages as well.

TABLE 7  
SUGGESTED USES OF TELEVISION  
(1986 FTVA STUDY)

PURPOSE	USER	BENEFITS TO
To communicate with in-custody defend.		
	defense attorneys	Public defender, OPA, private attorneys
	pretrial services	Court System
	presentence reporters and probation officers	Dept. of Corrections
	parole board	Dept. of Corrections Public saves funds; reduced risk of escape and injury.
To communicate between court sites.		
	witnesses, civil & crim. cases	PD, OPA, Dept. of Law, private bar
	grand jury witnesses	Dept. of Law
	appellate court oral arg.	Attorneys, court (to the extent that court travel is reduced.) Public saves funds.
To communicate be- court & jail sites		
	probation revocations	Court, Dept. of Corrections, transporting agencies (such as Troopers)
	hearings resulting from arrest warrants	Court, transporting agencies, DOC, attorneys may also benefit from use of television in the above situations. Public saves funds; reduced risk of escape and injury.

## APPENDICES

APPENDIX A	Supreme Court Order 589; Supreme Court Order 606; and Supreme Court Order 660
APPENDIX B	Description of Technical Terms
APPENDIX C	Coding Forms for Data Analysis
APPENDIX D	List of Interviewees
APPENDIX E	Followthrough on Interim Report Recommendations
APPENDIX F	Memo from Fairbanks Court Administrator

IN THE SUPREME COURT FOR THE STATE OF ALASKA

Order No. 589

Temporarily Suspending for the  
Fourth Judicial District  
Superior and District Courts  
in Fairbanks Provisions of  
Criminal Rules 5, 10, 11 and  
District Court Criminal Rule 1  
Relating to Television  
Arraignments

IT IS ORDERED:

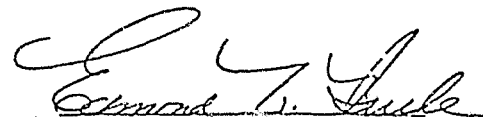
The provisions of Rules 5, 10, and 11 of the Rules of Criminal Procedure, and the provisions of Rule 1 of the District Court Rules of Criminal Procedure which are inconsistent with the intent of this Order are hereby suspended for the Fourth Judicial District Superior and District Courts in Fairbanks for a period of one (1) year from the date of actual commencement of televised arrangements. This suspension will allow magistrates and judges in those courts to do arraignments, pleas, and non-evidentiary bail reviews in traffic and misdemeanor cases, and initial appearance hearings, non-evidentiary bail reviews, not guilty plea/arraignments, and non-evidentiary omnibus hearings in felony cases, by way of television equipment not requiring the physical appearance of the defendant in the courtroom. Facsimile teletype orders sent by the Fairbanks Court regarding these hearings shall be as acceptable as the originals for purposes of release or detention by correctional officers.

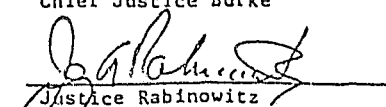
Statistics on the number of hearings completed using televised procedure shall be kept by the Fairbanks officers now in charge of prisoner transfer. A report on this project shall be prepared by the Administrative Director and presented to this Court at the end of the suspension period.


Nothing in this order diminishes any other previously existing right of a criminal defendant.

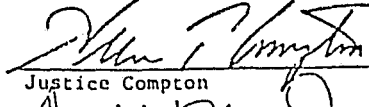
DATED: December 16, 1983

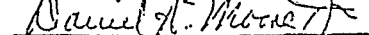
EFFECTIVE DATE: January 1, 1984

  
Chief Justice Burke

  
Justice Rabinowitz

  
Justice Matthews

  
Justice Compton

  
Daniel H. Moore

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 606

Amending Order No. 589, Temporarily Suspending for the Fourth Judicial District Superior and District Courts in Fairbanks, Provisions of Criminal Rules 5, 10, 11 and District Court Criminal Rule 1 Relating to Television Arraignments to Allow Sentencings with the Defendant's Consent in Traffic and Misdemeanor Cases.

IT IS ORDERED:

The provisions of Rules 5, 10, and 11 of the Rules of Criminal Procedure, and the provisions of Rule 1 of the District Court Rules of Criminal Procedure which are inconsistent with the intent of this Order are hereby suspended for the Fourth Judicial District Superior and District Courts in Fairbanks for a period of one (1) year from the date of actual commencement of televised arraignments. This suspension will allow magistrates and judges in those courts to do arraignments, pleas, and non-evidentiary bail reviews in traffic and misdemeanor cases, and initial appearance hearings, non-evidentiary bail reviews, not guilty plea/arraignments, and non-evidentiary omnibus hearings in felony cases, by way of television equipment not requiring the physical appearance of the defendant in the courtroom. With the defendant's consent, sentencings may be done in traffic and misdemeanor cases. Facsimile telecopy orders sent by the Fairbanks Court regarding these hearings shall be as acceptable as the originals for purposes of release or detention by correctional officers.

Statistics on the number of hearings completed using televised procedure shall be kept by the Fairbanks officers now in charge of prisoner transfer. A report on this project shall be prepared by the Administrative Director and presented to this Court at the end of the suspension period.

Supreme Court Order No. 606  
page 2

Nothing in this order diminishes any other previously existing right  
of a criminal defendant.

DATED: October 4, 1984

EFFECTIVE DATE: October 4, 1984

Joel A. Rabinowitz  
CHIEF JUSTICE RABINOWITZ

JUSTICE BURKE

Wincent White  
JUSTICE MATTHEWS

Allen P. Compton  
JUSTICE COMPTON

Daniel A. Moore Jr.  
JUSTICE MOORE

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 660

Extending for 90 Days Authority Previously Established in Supreme Court Order No. 606, Temporarily Suspending for the Fourth Judicial District Superior and District Courts in Fairbanks, Provisions of Criminal Rules 5, 10, 11 and District Court Criminal Rule 1 Relating to Television Arraignments.

IT IS ORDERED:

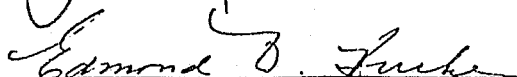
The provisions of Rules 5, 10 and 11 of the Rules of Criminal Procedure and the provisions of Rule 1 of the District Court Rules of Criminal Procedure which are inconsistent with the intent of this order are hereby suspended for the Fourth Judicial District Superior and District Courts in Fairbanks for a period of 90 days from the effective date below. This suspension will allow magistrates and judges in those courts to do arraignments, pleas, and non-evidentiary bail reviews in traffic and misdemeanor cases, and initial appearance hearings, non-evidentiary bail reviews, not guilty plea/arraignments, and non-evidentiary omnibus hearings in felony cases, by way of television equipment not requiring the physical appearance of the defendant in the courtroom. With the defendant's consent, sentencings may be done in traffic and misdemeanor cases. Facsimile telecopy orders sent by the Fairbanks court regarding these hearings shall be acceptable as the originals for purposes of release or detention by correctional officers.


Nothing in this order diminishes any other previously existing right of a criminal defendant.

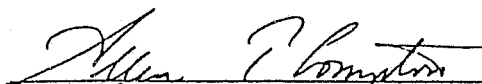
DATED: November 7, 1985

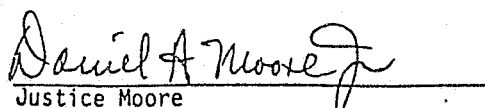
EFFECTIVE DATE: November 7, 1985

  
Chief Justice Rabinowitz

  
Justice Burke

  
Justice Matthews

  
Justice Compton

  
Justice Moore

## Description of Technical Terms

CLOSED CIRCUIT TRANSMISSION: Live audio-visual communications between two or more locations. The equipment needed for closed-circuit transmission includes television cameras and television monitors with audio capabilities at each location. Transmission of the sound and picture is by hard cable (similar to a telephone line) or microwave, depending largely on the distance between the locations and the permanency of the transmission sites.

In Fairbanks, closed circuit transmissions are established between the jail and the courthouse, allowing defendants, attorneys and judges to interact with one another without transporting prisoners to and from the jail.

These live transmissions can be recorded simultaneously on video-tape for future use. This is not done in Fairbanks because the audio portion of the closed-circuit transmission is linked with the court system's existing electronic transcription equipment (see below).

ELECTRONIC TRANSCRIPTION: An electronic tape recorder is wired directly through the audio-visual closed circuit television equipment in the arraignment courtroom, producing a taped record (audio only) of the proceedings. The taped record is the official court record of the proceeding.

TELECOPIER: A set of machines which convert written information into telephone signals, send the information over telephone wires to the receiving machine at the other end, and convert the telephone signals back into printed information. Two telephone-transmission facsimile machines are used in the CCTV project, one outside the arraignment courtroom and one in the booking office at the jail. Their presence allows facsimile copies of complaints, warrants, citations and orders to be transported quickly and inexpensively between the two buildings.

VIDEOTAPE: An electronic recording of both sound and image from a television screen. A videotape recorder receives the video and audio signals from the cameras and microphones as an event is occurring and records them on videotape. Video-tape can be replayed instantly, and can be electronically edited, stored and played back at will. (By comparison, movie film must be developed in a laboratory before replay.)

The Fairbanks closed-circuit arraignment project uses a videotaped presentation of the defendants' rights. This videotape can be played using the same equipment that is used to transmit the live signals of the court proceedings.



FTVA CODING FORM  
DEFENDANT FORM

PAGE 1  
DEFENDANT

Defendant:

Last Name	First	M.I.
-----------	-------	------

<u>01</u> <u>02</u> / <u>03</u> <u>04</u> / <u>05</u> <u>06</u>	1. Date of Birth	BMONTH BDAY BYEAR
<u>07</u>	2. Sex: 1=Male 2=Female	SEX
<u>08</u>	3. Race: 1=Caucasian 4=Asian 2=Black 8=Other 3=Ak Native/ 9=Unknown Am. Indian	RACE
<u>09</u>	4. Residence: 1=Fairbanks (NSB) 4=Other state 2=Anchorage/Matsu 5=Other country 3=Other Alaska 9=Unknown	RESID
<u>10</u> <u>11</u>	5. Prior felony convictions	PRIORF
<u>12</u> <u>13</u>	6. Prior misdemeanor convictions	PRIORM
<u>14</u>	7. Is defendant presently on probation, parole, bail, or in custody for another offense? 1=Yes 2=No 9=Unknown	PRESTAT
<u>15</u> <u>16</u> / <u>17</u> <u>18</u> / <u>19</u> <u>20</u>	8. Arraignment Date	ARMONTH ARDAY ARYEAR
<u>21</u>	9. Defendant location 1=Court 2=Jail 3=Other 9=Unknown	DEFLOC
<u>22</u>	10. Bail status at beginning of arraignment 1=Summons 4=Custody-No Bail 2=Bailed Out 5=Other 3=Custody-Bail 9=Unknown	BSSTART
<u>23</u> <u>24</u> <u>25</u> <u>26</u>	11. Bail Amount (Actual amount to \$9998. \$9999=Unknown) (0000=summons or none set)	BSMONEY

FTVA CODING FORM  
DEFENDANT FORM

- |           |  |        |
|-----------|--|--------|
| <u>27</u> | 12. Bail status at end of arraignment<br>1=Not guilty, in custody<br>2=Not guilty, released on bail<br>3=Nolo or guilty, in custody<br>4=Nolo or guilty, released<br>5=Other | BSEND  |
| <u>28</u> | 13. Arraignment Judge<br>1=Hessin            5=Connelly<br>2=Slater            6=Cline<br>3=Crutchfield    7=Other<br>4=Kauvar   | JUDGE  |
| <u>29</u> | 14. Arraignment Representation<br>1=Pro per<br>2=PD<br>3=Private   | ARRREP |

CUMULATIVE SENTENCE INFORMATION

- |   |  |                      |
|---|--|----------------------|
| <u>30</u>   | 15. Other Sentences<br>1=Only Sentence    3=Consecutive<br>2=Concurrent       4=Both conc. & consec. | SOTHER               |
| <u>31</u>   | 16. Number of charges convicted  | NUMCON               |
| <u>32</u>   | 17. Number of charges dismissed  | NUMDIS               |
| <u>33</u> <u>34</u> / <u>35</u> <u>36</u>           | 18. Net active time, all charges   | NETACT 1<br>NETACT 2 |
| <u>37</u> <u>38</u> ' <u>39</u> <u>40</u> <u>41</u> | 19. Net fine   | NETFINE              |
| <u>42</u> <u>43</u> ' <u>44</u> <u>45</u> <u>46</u> | 20. Net restitution  | NETREST              |
| <u>47</u> <u>48</u> <u>49</u>                       | 21. Total hours, community service   | COM HOUR             |
| <u>76</u> <u>77</u> <u>78</u>                       | 22. Defendant ID   | DEFID                |
| <u>Ø</u> <u>1</u> <u>79</u> <u>80</u>               | 23. Card ID  | CARDID               |

FTVA CODING FORM  
CHARGE FORM

PAGE 1  
CHARGE

Defendant:

                      
Last Name

                      
First

                      
M.I.

01 02 - 03 04 05 06

1. Case Number

CASENUM

07 08 09 10 11

2. Offense Code

OFFCODE

12

3. Disposition of charge at arraignment

DISPOL

1=Not guilty

2=Guilty/Nolo

3=No Plea or arraignment continued

13

4. When sentenced: 1=At proceeding  
2=Sentence continued

WHENSEN

14 15 / 16 17

5. Time imposed

S1MONTH  
S2DAY

18 19 / 20 21

6. Time suspended

S2MONTH  
S2DAY

22 23 / 24 25

7. Net active time

S3MONTH  
S3DAY

26 27 / 28 29

8. Length of probation

S4MONTH  
S4DAY

30 31 ' 32 33 34

9. Net fine amount

NFADOL

35

10. Restitution amount

RADOL

0=None

4=\$500-999

1=\$1-\$99

5=\$1,000-\$1,999

2=\$100-\$199

6=Over \$2,000

3=\$200-\$499

FTVA CODING FORM  
CHARGE FORM

PAGE 2  
CHARGE

<u>36</u>	11. Community service 1=Yes 2=No	COMSER
<u>37</u> <u>38</u> <u>39</u>	12. Community service hours	HOURS
<u>40</u>	13. FASAP 1=Yes 2=No	FASAP
<u>41</u>	14. Other counseling 1=Yes 2=No	OTHCON
<u>42</u>	15. License suspended or revoked 1=Yes 2=No	LICACT
<u>43</u>	16. Restrictions, movement 1=Yes 2=No	RESMOV
<u>44</u>	17. Restrictions, activity 1=Yes 2=No	RESACT
<u>45</u>	18. Other conditions	OTCOND
<u>76</u> <u>77</u> <u>78</u>	19. Defendant ID	DEFID
<u>79</u> <u>80</u>	20. Card ID	CARDID

INTERVIEWEES:

Charles M. Gibson  
Trooper Norris  
Hon. Christopher Zimmerman  
Nelson Traverso  
Hon. Jay Hodges  
Gail Frank  
John Hagey  
Anita Holloway  
Hon. Jane Kauvar  
Magistrate John C. Hessin  
Don Wagner  
ISG Drew S. Rotermund  
Dick Madson  
Captain Cummings  
Dona McGowan  
Hon. Hugh H. Connelly  
Chief Gene Mahler  
Herbert P. Kuss  
Norman L. Brake  
Trooper Charles Goldsmith  
Kathleen Bond  
Bob Downes  
Jean Vincent  
Douglas G. Woolley  
Hon. Gerald Van Hoomissen  
Frank W. Coletta  
Magistrate Earl Slater  
Harry Davis  
Hon. Meg Greene  
James Mullen  
Patrick Cole  
William Ron Smith  
Hon. Herschel Crutchfield  
Larry Zervos  
Bill Devalcourt  
Dwayne Berlin  
John Stechman

## APPENDIX E

### Followthrough on Interim Report Recommendations

The Interim Evaluation Report for the Fairbanks Televised Arraignment Program contained several recommendations for improvements. The purpose of this appendix is to describe the followup to those recommendations by the various agencies involved in the project. Each recommendation is summarized briefly, followed by a short discussion of the changes made to equipment or procedures.

#### 1. Improve Communications

##### Recommendation

It was recommended that all parties involved with the televised proceedings in Fairbanks should participate in one or more meetings to discuss the recommendations in the Interim Report.

##### Followup

The Judicial Council scheduled two meetings. The first, on September 9, 1985, was attended by policy-making staff from each agency and some support staff. The second, on September 13, 1985, was attended by users of the television equipment from each agency. In each meeting, participants discussed the Council's recommendations and agreed to make changes as described below.

#### 2. Improved Equipment

##### Recommendation 2(a): Better Audio Equipment

It was recommended that the audio equipment be improved, and that the agencies develop a system for notification of the judge in case of audio malfunction.

##### Followup

A new microphone had been installed shortly before publication of the Interim Report. Following the September meetings, the existing equipment was re-tuned, providing better sound.

The only continuing problem noticed during an evaluation visit in November, 1985, was difficulty hearing the prosecutor from the jail arraignment room. According to court personnel, this problem can be resolved by having the prosecutor move the microphone on his table in the courtroom closer to him/her when the televised proceedings begin. Occasionally, the prosecutor forgets to do this. Generally, the Corrections guard in the jail arraignment room then notifies the judge, and the situation is corrected.

#### Recommendation 2(b): Improved Video

It was recommended that the existing equipment configuration be re-examined to determine whether it was possible to 1) provide the judge with a better view of the defendant; 2) provide the defendant with a view of the prosecutor and defense attorney; and 3) have a larger screen for the judge than the 13" monitor that was used in the earlier months of the project.

#### Followup

Shortly after the publication of the Interim Report, the 13" TV screen was replaced with a 25" screen. The other two recommendations are still under consideration by the Department of Public Safety.

#### Recommendation 2(c): Telecopier (Facsimile Machine)

It was recommended that the existing equipment be replaced with more reliable models as soon as possible.

#### Followup

The Department of Public Safety obtained a new telecopier in late October on a one-month trial basis. The new model provided proof of transmission of documents, as well as operating faster and more reliably. Following the month-long trial of the new equipment, Court, Corrections and Public Safety personnel evaluated the equipment and determined that it was superior to that previously used. As a result, new telecopiers have been purchased and installed.

#### Recommendation 2(e): Attorney/Client Communication System

It was recommended that provision be made for private and convenient communication between the defense attorney in the courtroom and the client at the jail.

#### Followup

The Department of Public Safety installed a regular telephone at the defense attorney table in the courtroom. However, attorneys have not used it since there is no provision for privacy.

#### Recommendation 2(f): Soundproof Jail Arraignment Room

It was recommended that the jail arraignment room be soundproofed as soon as possible.

### Followup

The Department of Public Safety has purchased soundproofing material which meets the requirements of the Fairbanks fire code and the Department of Corrections. The material will be installed in the jail arraignment room in April of 1986.

### 3. Procedural Changes

#### Recommendation 2(d): Videotaped Defendants' Rights

It was recommended that the videotaped rights presentation continue to be used, and that it be reviewed by a committee of judges and attorneys if changes were believed to be necessary or desirable.

### Followup

Judges have continued to use the videotaped rights without further revision.

#### Recommendation 2(g): Arraignment Schedules

It was recommended that the television system users should meet to work out a new arraignment schedule that would accommodate the needs of all agencies.

### Followup

The arraignment schedule has been revised twice since the September meetings. The first change scheduled all in-custody arraignments at 1:30 p.m., seven days a week. Defendants who were not in custody appeared at 2:30 p.m., Monday through Friday.

This schedule was awkward for judges if few in-custody defendants appeared. Thus, the current schedule calls for all arraignments to begin at 1:30 p.m. on weekdays and 2:30 p.m. on weekends. During the week, defendants who have appeared with attorneys are arraigned first, followed by in-custody defendants and finishing with out-of-custody defendants who have appeared without an attorney.

#### Recommendation 2(h): Printed "Rights" Handout

It was recommended that all defendants receive a printed handout describing the defendant's various rights prior to arraignment.



### Followup

At the present, all defendants are receiving this handout. Defendants appearing for arraignment at the jail are given a copy by the Corrections guard assigned to the arraignment room. Defendants in court are handed their copies by the bailiff.

### Recommendation 2(i): Determination of Defendant's Option to be Arraigned in Person

It was recommended that the Supreme Court clarify whether the defendant has an option to appear in person in the courtroom for arraignment so that law enforcement and/or Corrections officers would not be required to interpret the intent of the court order on a case-by-case basis.

### Followup

The court determined that it would not be appropriate to revise the court order during the course of the experimental program.

### 4. Procedures for Defendants Charged with Non-jailable Violations

### Recommendation 2(j): Custody Status of Defendants Charged with Non-jailable Violations

No specific recommendation was made in the Interim Report; however, it was noted that additional data would be collected.

### Followup

Data collected in January of 1986 indicated that few defendants were arrested and held in custody for non-jailable offenses after March of 1985. Most of the those arrested had refused to sign the citation or had otherwise indicated that they would refuse to appear in court. Under such circumstances, Alaska law (AS 12.25.180) allows an arrest. However, between April and September of 1985, several defendants were found to have been arrested without an appropriate reason given on the citation.

Penalties for defendants who pled guilty to non-jailable offenses at arraignment continued to be small fines, usually satisfied by credit for time served. It still is not clear whether this is an allowable practice under AS 12.55.035 and AS 12.55.051.

MEMORANDUM

TO: Stephanie J. Cole  
Deputy Director

INFO: Presiding Judge Hodges,  
Chief Justice Rabinowitz  
Arthur H. Snowden, II, Admin. Director

FROM: Mac Gibson/ACA *Mac Gibson*

DATE: March 5, 1986

SUBJECT: Video Arraignment Project

In response to your memoranda of February 19, and February 27, 1986, the former concerning our estimate (and its basis) of any additional time expended by court personnel due to the requirements of the video arraignment system, and the latter soliciting our comments about the Judicial Council's report, as well as any other concerns about the project which we may want brought to the attention of the supreme court in considering whether or not to continue this project, I submit the following:

As far as any additional time expended by court personnel due to the requirements of the video arraignment system, I have enclosed two memoranda from our committing magistrates, Jack Hessin and Skip Slater, who handle at least ninety percent (90%) of our video arraignments, and as you will note, Skip Slater's memo is jointly submitted by him and his in-court clerk, Dale Neslund, who is in charge of the video equipment in the arraignment courtroom when Magistrate Slater is conducting these proceedings. I believe both of these memos are self-explanatory, and their responses lead me to the conclusion that if there is any additional time involved attributable to video arraignments, it is so negligible that I do not believe it should be a factor in considering whether or not to continue the video arraignment project. While some additional time may have been required when we had separate times for the arraignment of in-custody defendants and out-of-custody defendants, since with this schedule we were required to run the video tape twice which, in itself, required an additional eight minutes, on November 18, 1985, we promulgated a schedule change so that all arraignments, whether by video for in-custody defendants or in the courtroom for out-of-custody defendants, were scheduled for 1:30p.m. (see letter from Susan Paterson, Clerk of Trial Courts, to Sergeant Harper, Judicial Services, attached), and in this way we were able to run the "rights" video tape only once, at the beginning of the arraignment process, and also reduced any

waiting time for those defendants in custody at the jail as well as those present in the courtroom. This result was possible because we did not know in advance how many in-custody arraignments there would be from day-to-day, and if the video arraignments ended at 1:45p.m., and out-of-custody defendants were to report to the courtroom at 2:30p.m., we necessarily had to wait until the appointed time to begin out-of-custody arraignments which obviously involved wasted time for the arraignment judge and other court personnel involved in the process. This same problem occurred if we started with the out-of-custody defendants first and then in-custody defendants at 2:30p.m.

With this in mind, I would invite your attention to the last paragraph of the Draft Final Report of the Judicial Council beginning at the bottom of page 14 and ending at the top of page 15. This portion of the Report is incorrect, at least the last sentence is since the one thing we found that was an inefficient use of time and resources was having a different appointed time to arraign the two groups. The third paragraph of Magistrate Hessin's memo of March 2 specifically addresses this change in schedule, and we believe this format has proven to be effective for all involved in the process, and have had no complaints about this scheduling. In addition to the letter from Susan Paterson to Sergeant Harper of November 18, I have also attached a copy of a memo from First Sergeant Rotermund to Ms. Paterson, dated November 19, 1985, which also discusses the change in format, and goes into the efficient use of time from the standpoint of personnel from the Department of Public Safety and the Department of Corrections.

As far as any other concerns that I may wish to bring to the attention of the supreme court, you may recall that I wrote a fairly extensive evaluation of the project in a memorandum to Art dated September 17, 1985, a copy of which I have attached for your ready reference. Many of the items in this earlier evaluation, particularly where equipment is concerned, have been addressed and corrected. For example, I have enclosed copies of correspondence between Sergeant Rotermund and myself covering the period of time from late October through the end of January addressing the facsimile machines as well as the acoustical problems existing in the arraignment area at FCC.

In my evaluation memorandum of September 17, 1985, I concluded by stating that I was not (at that time) sold on the feasibility of this project, mainly on the basis of numbers - of people served versus costs.

As you can see by the correspondence with Sergeant Rotermund, the level of cooperation and commitment from Public Safety and DOC to the success of this project has been and continues to be outstanding.

The judges who use the system the most, Magistrates Hessin and Slater, have no problem with it, practically or philosophically.

Any additional time required for court system personnel, as well as others involved in the process at FCC, is negligible and, in fact, for some, especially at FCC, there may be less time required - checking prisoners in and out, etc. So from a strictly time standpoint, there seems to be trade-offs that balance out - and I would think the same result occurs when translating all this into terms of dollars and cents.

This project has been a learning experience, not only for us here in Fairbanks, but for our counterparts and colleagues throughout the state.

While some may differ, philosophically, on the positive aspects of the system, and there are those who do, I believe in the long-run, if the supreme court should see fit to let there be a long-run, the video arraignment process can evolve into a system that will have far-reaching effects in Alaska - where climate, geography, and our existing satellite network are the ingredients that call for innovation, imagination, and new concepts in the practical day-to-day administration of justice. This is a beginning . . .

MG/mjc  
Encl.

cc: Teri Carns, Project Director, Judicial Council