The Feasibility of a Video Arraignment System for Yellowstone County, Montana

TECHNICAL ASSISTANCE REPORT

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CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
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The Feasibility of a Video Arraignment System for Yellowstone County, Montana

September 1988

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Adjudication Technical Assistance Project
The American University
### ASSIGNMENT DATA SHEET

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<td>Requesting Jurisdiction:</td>
<td>State of Montana</td>
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<td>Requesting Agency:</td>
<td>Board of Crime Control</td>
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<td>Requesting Official:</td>
<td>Michael Lavin, Administrator</td>
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<tr>
<td>Dates of On-Site Study:</td>
<td>September 6,7,8,9, 1988</td>
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<tr>
<td>Consultant Assigned:</td>
<td>Honorable Seymore H. Brown, Presiding Judge Municipal Court of Las Vegas, Nevada Lawrence Siegel, Consultant Court and Criminal Justice Facilities</td>
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<tr>
<td>EMT Group/ATAP Staff:</td>
<td>Michael A. DiMichele, Senior Associate The EMT Group, Inc.</td>
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<tr>
<td>Central Focus of Study:</td>
<td>The analysis of the feasibility of implementing a video arraignment system.</td>
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This report was prepared in conjunction with the EMT Adjudication Technical Assistance Project, under a Cooperative Agreement with the Bureau of Justice Assistance of the U.S. Department of Justice.

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I. INTRODUCTION

A. Technical Assistance Requested

In July 1988, Michael Lavin, Administrator of the Montana Board of Crime Control, requested technical assistance from the EMT Group's BJA-sponsored Adjudication Technical Assistance Project (ATAP) on behalf of Yellowstone County. The Sheriff of Yellowstone County, Michael Schafer, was interested in creating a video arraignment system which would eliminate the security risk and costs of prisoner transport engendered by personal appearance arraignments. Such a system would have the potential status of serving as a model for future regional jails in Montana.

The objective of this technical assistance request was to determine the feasibility of utilizing a video arraignment system in Yellowstone County and, if feasible, what factors should be considered by local officials in order to assist them in their decision of whether to implement a video arraignment system.

The following report is the result of a site visit to Yellowstone County on September 6-9, 1988, by the Honorable Seymore H. Brown, Mr. Lawrence Siegel, and Mr. Michael A. DiMichele. Judge Brown is the Presiding Judge of the Municipal Court of Las Vegas, Nevada, a court which has, through the sponsorship of Judge Brown, pioneered the use of video arraignment. Judge Brown has arraigned thousands of defendants in his court via video for the past ten years; his insights into the actual use of closed circuit television for arraignment were invaluable.

Lawrence Siegel is a nationally-recognized expert in court and criminal justice facilities planning. His knowledge of the physical needs for implementing a video arraignment system was of critical importance.

Michael A. DiMichele is a Senior Associate with the EMT Group's Adjudication Technical Assistance Project who is experienced in trial court administration and has previously been involved with criminal case processing innovations.

B. Background of the Study

Yellowstone County is located in southeastern Montana and covers an area of 2,666 square miles. The county population is estimated at 118,649.

The City of Billings is the county seat as well as the largest city with a population of 79,339. The next largest city is Laurel with a population of 7,222.
Both the City of Billings and the City of Laurel have their own police departments while the balance of the county is served by the Yellowstone County Sheriff's Office.

Although the City of Laurel maintains a small jail, all of its long term inmates are housed in the Yellowstone County Detention Facility. The City of Billings, which does not have a jail of its own, also houses its inmates in the county Detention Facility. In fact, the Detention Facility is considered a regional jail and houses inmates from surrounding counties as well as some federal inmates.

The Detention Facility is a relatively new institution, being opened in September 1987. It has a current total capacity of 174 beds with a current average daily population of 110 inmates. The Facility's construction is after a podular fashion (up to 44 inmates in any single pod) and employs direct supervision management of inmates. It houses pretrial detainees and sentenced misdemeanor and felony inmates. It also contains a nearly complete courtroom; the witness stand is yet to be installed.

The Detention Facility is operated by the Sheriff of Yellowstone County, Michael Schafer. It is administered by Division Commander Lieutenant Rickard A. Ross and his assistant, Sergeant Dennis McCave. The balance of the staff are predominately civilians with responsibilities for booking, control, security, and support services. The total staffing level is 44.

The Detention Facility is located approximately three miles from downtown Billings, where all three courts are located (the City Court of Laurel is located in the City of Laurel, fifteen miles from the Detention Facility); City Court, Justice of the Peace Court, and District Court. The City Court is a court of limited jurisdiction with jurisdiction over all misdemeanors punishable by a fine not exceeding $500.00 or imprisonment not exceeding six months. It has exclusive jurisdiction over municipal ordinances. There are currently two City Court judges; Donald Bjertness of Billings, and Larry Herman of Laurel.

The Justice of the Peace Court is also a court of limited jurisdiction with concurrent jurisdiction with the City Court over all misdemeanors punishable by a fine not exceeding $500.00 or imprisonment not exceeding six months. The Justice of the Peace Court also has two judges both of whom are located in Billings; Judge Janet Eschler, and Judge Pedro Hernandez.

In addition to the above-outlined jurisdiction, the Justice of the Peace Court has jurisdiction over the dispositions of all arrests made by the Montana Highway Patrol. The Justice Courts have concurrent jurisdiction with the District Court in actions of forcible entry, unlawful detainer, and residential landlord-tenant disputes. Its civil
jurisdiction includes most cases where recovery will not exceed $3,500. Most importantly, it is authorized to conduct initial appearance and preliminary hearings over felony cases.

Appeals from the City Court and from the Justice of the Peace Court are to the District Court, Montana's general jurisdiction courts, and are trials de novo. The District Court exercises original and exclusive jurisdiction over all felonies and original jurisdiction over all cases in law and equity.

There are currently five District Court judges in Judicial District Thirteen, of which Yellowstone County is a part, all of whom reside in Billings where they hold court. One District Court judge periodically rides circuit through the remaining three counties that comprise the District; Big Horn, Carbon, and Stillwater.

The five District Court judges are: Robert Holmstrom, Diane Barz, William Speare, G. Todd Baugh, and Russell K. Fillner.

As noted earlier, all three courts are located in Billings with the exception of the City Court of Laurel. The Justice of the Peace Court and District Court are located in the Yellowstone County Courthouse, while the Billings City Court is located in City Hall, directly across from the County Courthouse. The courts in Billings are approximately three miles from the Detention Facility while the Laurel City Court is approximately fifteen miles from the Detention Facility.

The Detention Facility is responsible for transporting all inmates to the various courts (except to the Laurel City Court which accepts the responsibility of transporting its own inmates when necessary) for all court proceedings requiring personal appearance such as arraignment, trial, and sentencing.

Arraignments are held in Billings City Court at 8:30 AM Monday through Friday. The range of inmates arraigned in Billings City Court for one day is 1-22 inmates. Usually when the number to be arraigned for City Court is 9 or more inmates the judge will travel to the courtroom in the Detention Facility in order to hold arraignments.

Justice of the Peace Court arraignments are held at 3:30 PM Monday through Friday with a range of 0-9 inmates per day. It should be noted that a staff shift change occurs at the Detention Facility between 3:00 PM and 3:15 PM. This is rather disruptive of the Detention Facility routine as inmate preparation for arraignment is occurring at the same time as the afternoon lockdown is occurring and the second shift staff is being briefed.

The District Court holds arraignment at 10:30 AM Tuesday through Friday with a range of 0-17 inmates per day.
The Sheriff's transport van holds a maximum of 9 inmates. Whenever the number of inmates to be transported is beyond 9 or whenever the Sheriff's van is unavailable (such as often occurs between City Court and District Court arraignment times Tuesday through Friday) sheriff patrol cars and deputy sheriffs must be utilized for transporting inmates.

In sum, inmate transport for arraignment purposes occurs three times per day from Tuesdays through Fridays and twice on Mondays. Sheriff Schafer estimates the costs of salaries for transportation officers is $55,000 per year and $23,400 for the van and its maintenance for a total transportation cost of $78,400 per year.

Beyond these transportation costs other factors that must be considered as "costs" in inmate transport are the security risks involved with transport and the work which must go undone until the transport officer is able to resume his regular duties such as law enforcement patrol.

C. Study Methodology

Prior to going on-site Michael DiMichele spoke with Sheriff Schafer to obtain information about the current arrangement for satisfying personal appearance arraignments.

In response, Sheriff Schafer sent Mr. DiMichele a letter outlining the current situation in Yellowstone County. The Sheriff provided information on the Detention Facility's maximum housing capacity and its present average daily population and ratio of misdemeanor to felony inmates.

In addition, the Sheriff provided information on the various courts in Yellowstone County, their location in relation to the Detention Facility and the number of times each day he must transport inmates to the courts. Also, with regard to the transport schedule, he gave estimated costs of salaries for transportation officers as $55,000 per year and the cost of the security van and its maintenance at $23,400.

In addition to this letter of Sheriff Schafer, two other major document collections were reviewed by each consultant prior to arriving on-site. The first such collection was from the Montana Board of Crime Control and provided demographic information on Yellowstone County and related crime trends with a breakdown of the manpower levels in each of the three law enforcement agencies in Yellowstone County: the Billings Police Department, the Laurel Police Department, and the Yellowstone County Sheriff's Department.
The second major collection of documents was obtained from the National Center for State Courts' Information Services and included a wealth of journal articles on various video arraignment systems throughout the country.

Based upon the information obtained from the above actions and materials, an objective for this technical assistance request was developed. The objective developed was the determination of the feasibility of utilizing a video arraignment system in Yellowstone County and, if feasible, what factors should be considered by local officials in order to help them to decide on whether to implement such a system.

Each consultant was selected in keeping with this objective. Judge Seymore Brown was selected because of his vast knowledge of the details of operating a video arraignment system as he was one of the first judges in the country to utilize video arraignments in his courtroom. Lawrence Siegel was selected because of his technical knowledge of criminal justice facilities management and telecommunications.

Before the consultants' arrival on-site, Lieutenant Rickard A. Ross, Division Commander of the Detention Facility, prepared an agenda for them. The agenda is attached as Appendix I. In addition to the meetings outlined in this agenda, two other meetings were held by the consultants. On September 9, the consultants met with Mr. Frank Kuehn of the American Civil Liberties Union in order to obtain the ACLU's views on video arraignment, and Mr. Kenneth G. Watts of Billings Tele-Communications, Inc. in order to discuss the options available to Yellowstone County for the transmission of the visual signal.

Mr. Kuehn stated that the ACLU did not, at the present time, have an official position on video arraignment but that they were interested in the concept and would do more of their own research about the subject. Mr. Kuehn also indicated that the ACLU would cooperate with Yellowstone County on the issue of video arraignment just as they had while the new Detention Facility was being planned.

The discussion with Kenneth Watts revolved around the best option for Yellowstone County with regard to the transmission mode of the visual signal. Although the City of Billings does have a dedicated television cable channel, Mr. Watts explained the technical problems with using a two way television channel, plus the costs of laying underground cable in Billings. It was agreed by the consultants and Mr. Watts that Yellowstone County's best option for the video transmission mode is a microwave system. There is a clear line of sight between the Detention Facility and the courthouses in downtown Billings, thereby providing an unrestricted path for the microwave signal. Also, a microwave system would be relatively easy to expand upon if video transmissions were to
be sent to outlying areas for arraignments, such as the City of Laurel where a City Court is located, fifteen miles from the Detention Facility. Also, with microwaves, a higher quality picture is produced as compared with the lower quality picture produced by a two way cable channel because of the technical problems with that transmission mode.

On Tuesday, September 6, Michael DiMichele met with County Attorney Harold H. Hanser, Sheriff Michael Schafer, and Lieutenant Rickard Ross. Mr. Hanser stated that he is in favor of video arraignments especially if there would be a cost savings for the Sheriff's Department. He did, however, recommend that the Montana Statutes on arraignment be amended to read that arraignment for both misdemeanor and felony charges be permissible by video. A copy of the current Montana Statute on arraignment is attached as Appendix II.

On Wednesday, September 7, the consultants were given a tour of the entire Detention Facility by Sergeant Dennis McCave and Lieutenant Rickard A. Ross. Accompanying them on this tour was Mr. Marvin Dye of the Montana Board of Crime Control. As noted earlier, the Montana Board of Crime Control initiated this technical assistance request and has maintained a keen interest in its progress.

After the tour, the consultants met with Billings City Court Judge Donald Bjertness and Laurel City Court Judge Larry Herman. Both of these judges are in favor of a video arraignment system and would join with Yellowstone County in participating in such a system. They both feel it would be a significant cost savings of both time and money for all parties concerned, as well as eliminate the security risk of prisoner transport.

Contrary to the established agenda, the consultants did not attend the Justice of the Peace Court arraignments on Wednesday afternoon due to the extended meeting with the City Court judges. However, they did attend these arraignments later in the week, on Friday.

On Thursday, September 8, the consultants met with Justice of the Peace Court Judge Janet Eschler. Judge Eschler believes that arraignment by video is too impersonal and prefers personal appearance arraignment, as, she believes, this provides a better opportunity to assess a person's demeanor. She understands the prisoner transport problems of the Sheriff but feels the transport officer staffing problem could be corrected by other means than video arraignment. The consultants pointed out the elimination of the security risk with video arraignment and the much-improved quality of transmission and availability of special effects devices over earlier video arraignment systems which give a clear, full view of the defendant and his surroundings.
Latter, that same day, the consultants met with Yellowstone County Commissioner Grace M. Edwards and the County Commissioner’s Administrative Assistant Jim Kraft. At this meeting the consultants explained the nature of their visit and the nature of video arraignment. The potential cost savings in time and money for the Sheriff’s Department were pointed out as well as the elimination of the security risk inherent in prisoner transport. A brief discussion about the mode of transmission of the visual signal and the City’s dedicated television cable channel was also held.

The last meeting of the day was held with Mr. Alan Beck, a public defender/court-appointed attorney of Yellowstone County. Mr. Beck is in favor of video arraignment and sees no practical or legal problems with representing a person who is being arraigned via video.

The final day of the site visit, Friday, September 9, began with the consultants attending the Billings City Court arraignment at 8:30 AM and, next, the District Court arraignments (Law and Motions) at 10:30 AM.

For the City Court arraignment, a Billings police officer had transported two handcuffed defendants from the Detention Facility to the City Court in his squad car. For the District Court arraignment, one Sheriff’s Department deputy transported three handcuffed defendants from the Detention Facility to the District Court in the Sheriff’s security van.

The consultants then met with four of the five District Court judges over lunch; Judge Diane Barz, Judge William Speare, Judge G. Todd Baugh, and Judge Russell K. Fillner. All of these District Court judges are in favor of video arraignment and see no legal problems with such a system in their jurisdiction. One practical point, however, was mentioned. At present, an indigent defendant acquires a court-appointed attorney at the time of his arraignment in District Court. This practice would have to be changed so that the indigent defendant would have acquired a court-appointed attorney well in advance of his or her arraignment and have had sufficient time to consult with the attorney.

A brief meeting was held with Judge Pedro Hernandez of the Justice of the Peace Court. Judge Hernandez stated his support for video arraignment and his willingness to participate in such a system for his court.

As previously noted, the consultants then met with Frank Kuehn of the American Civil Liberties Union and Kenneth G. Watts of Billings TeleCommunications, Inc.
Finally, an exit meeting was held with Lieutenant Rickard Ross in which the mostly positive environment for video arraignment in Yellowstone County was noted. Preliminary findings and recommendations were also discussed.
II. FINDINGS

1. Yellowstone County is expending a considerable amount of time and money in order to fulfill the requirements of personal appearance arraignments. Sheriff Schafer estimates that a total of $78,400 per year is expended for prisoner transport costs for personal appearance arraignments; $55,000 of that total is for transport officers' salaries. In addition, any time devoted to prisoner transport is time taken away from other important duties, such as law enforcement patrol. The use of City police officers, as well as Sheriff's deputies, for prisoner transport is a common practice occurring two to three times each day.

2. The security risk engendered by the present system of prisoner transport is of serious concern. Whenever a prisoner is outside of a secure facility there is a security risk. In the case of Yellowstone County, however, this risk is multiplied by several factors. First, prisoners are transported from the Detention Facility and back again two or three times each day, increasing the opportunity for a breach in security. Second, the ratio of transport officers to prisoners transported is too low; it is not uncommon for only one officer to transport three to five or six prisoners from the Detention Facility and escort them into the courthouse. Third, there is very little security once inside the courtroom. The only court security officer noticed at the arraignment was the transporting officer, who was also often out of the courtroom (where the prisoners were seated in the jury box), until the arraignment proceedings began. Fourth, it was observed that several prisoners were arraigned in the judge's chambers. As these chambers are essentially offices along a hallway connected with other clerical and public offices, there is virtually no security in this situation. Although the prisoners are secured by handcuffs and belly chains, they have complete freedom of movement of their legs and limited range of movement with their hands and arms, enough to grasp a weapon.

3. Nearly every judicial, law enforcement, and executive branch official with whom the consultants met are in favor of establishing a video arraignment system in Yellowstone County. This type of across-the-board support is critical to such a system-wide innovation as video arraignment. The judiciary is nearly unanimous in their support; they believe video arraignment will be a great aide in facilitating the arraignment process and in reducing the security risks and related costs of prisoner
transport. Only one Justice of the Peace Court judge expressed some reservations about a video arraignment system on the basis of its impersonal nature. However, this is a perception which could possibly change after the judge has interviewed a number of prisoners who have been arraigned by video and after the quality of the audio/visual transmission has been observed in a court employing a good quality system. Also, talking with judges who routinely arraign defendants via video would provide information about the judges' satisfaction with the interaction between the judge and defendant which is achieved through the video system. In any event, video arraignment would remain non-mandatory with the defendant reserving the right to be arraigned by personal appearance in the courtroom.

4. The Detention Facility has a room, the Multipurpose Room, which could serve as the video arraignment room. The Detention Facility is already set-up for video arraignments, at least in terms of space. No new construction or extensive remodeling is needed; the present Multipurpose Room could easily serve as the video arraignment room.

5. There are no major legal problems in establishing a video arraignment system. All of the judicial and legal officials with whom the consultants met with felt that there would be no legal problems with arraigning a defendant via video, as long as the Montana Statutes and Rules of Criminal Procedure were amended to include the provision of arraignment by means of video technology.

6. The Detention Facility has a highly trained, professional staff who could easily adapt to the procedural requirements of video arraignment. The existence of such highly professional correctional officials and staff at the Detention Facility will make the change to a video arraignment system quite an easy affair as these people have a well demonstrated high degree of organization.

7. There are no major technical problems in establishing a video arraignment system in Yellowstone County. Although the specific technical requirements will have to be worked out depending upon which configuration of equipment and procedures are decided upon, the consultants see no major technical problems with establishing a video arraignment system. (See Recommendation 1 for a detailed account of the technical requirements for a video arraignment system in Yellowstone County).
III. RECOMMENDATIONS

1. It is recommended that Yellowstone County implement a video arraignment system. Based upon the anticipated savings in time and money and the reduced security risk, it is believed Yellowstone County would greatly benefit from such a system. In addition, as has been pointed out, the facilities and trained staff are already in place. The only things remaining are decisions on the configuration of equipment which will depend upon the decisions on procedures for video arraignment. Finally, there is widespread support among County and City officials for video arraignment - a critical element for its success.

District Court (four courtrooms, five judges) and Justice of the Peace Court (one courtroom, two JPs) are in the County Administration Building while City Court (one courtroom and one judge) is in Billings City Hall across the street. Additionally, one city courtroom and one judge in Laurel, about 15 miles from Billings, could be a participant. These are the court locations where one end of the video arraignment process would take place. The other end is the Yellowstone County Detention Facility, about three miles from the Billings court locations.

A video arraignment uses closed circuit television (cctv) technology to provide the seeing and hearing that can allow persons at remote locations to participate in the same judicial proceedings. For simplicity, visualize a video arraignment as involving two cctv studios, so to speak, connected by a private radio or wired transmission system; one studio in the Detention Facility and one in a courthouse. Each studio would include one or more cctv cameras and microphones and one or more video monitors and audio speakers. The transmission system would be capable of transmitting the cctv signals (in both directions simultaneously) over the required distances without interference and could be based on microwave (or other radio) relays or hard wired transmission lines.

Video arraignments have been carried out in several ways, differing primarily on which studio the defense counsel occupy during proceedings. Probably one operating method should be standardized, with the defense counsel located either with the defendant in the Detention Facility studio or with the court in the court studio. In either configuration, means must be provided to assure private conversations between defendants and their counsel. This capability should be available during, before, and probably after the proceedings. (For the latter two, the full audio/video capability
should be available for public defenders' and private defense counsels' use to interview their clients more expeditiously.) If the system is in place, the more it is used, the more effective it will be.

If all counsel are in the court studio, monitors and microphones should be located near each station: judge and clerk, prosecutor, and defense; and monitors should be provided for the public. Camera coverage will be needed of the judge, the prosecutor, and the defense.

The cost of a video arraignment system will depend essentially on the amount of equipment that is to be purchased and the type of transmission system that is to be used. At a minimum, two studios are needed, one in the Detention Facility and another in a court facility. Probably at least two, possibly three, court studios will be needed; one or two in the County Courthouse and one in City Hall. The transmission system possibilities seem to center on microwave links because of their privacy and overall availability; it does not appear that the local cable television distribution company could supply a transmission link through its existing system.

The locations chosen for the court studios bear some analysis. If space can be found, they could, in fact, be small rooms used principally for the purpose, to which the judges and other participants would repair at designated times. This option has been adopted in such places as the Las Vegas Municipal Court in Nevada. Equally feasible would be the installation of CCTV equipment in one or more courtrooms, either permanently in each or moved from room to room according to the schedule of proceedings.

In any event, the room(s) chosen as studios would be wired to the transmit/receive equipment in that building, using video bandwidth (coaxial) cabling. Either cable ducts or cabling itself already is installed in the Detention Facility, connecting the Multipurpose Room to a central point; but there is no reason to believe similar provisions exist in any of the court locations. If more than one studio is used at the court end of the system, switching capabilities would be required there to connect a desired studio to the transmit/receive equipment at each time the studio is to be used. A detailed design of the cabling/switching system and its connection to the transmit/receive equipment would have to be developed for all locations by the vendor of the equipment or by a system design consultant.
If installations are made both in the county building and in the city building, the installations in each will have to be connected to the transmit/receive system which, itself, should be located in the county building with its microwave antenna either there or the highest nearby permanent location with a line of sight to the Detention Facility's microwave antenna. At the Detention Facility, studio equipment will be wired with coaxial cable to the transmit/receive equipment in the Detention Facility and thence to the antenna location. The latter should be located where it has a clear line of sight to the other microwave terminal. For best security, the transmit/receive equipment should be within the confines of county property, although the possibility should be investigated of mounting the Detention Facility's antenna on the nearby commercial radio transmitting antenna tower.

The need is for high-quality video and audio transmission, comparable to color broadcast standards. Suitable cameras should be available in the $1,500 to $2,000 cost range. Monitors can be chosen from home entertainment or studio quality inventory, but should have no less than 19 inch diameter displays. A large projection type screen could replace several monitors in certain applications, as shown in the list of equipment below. Audio power levels should be adequate for large room sizes, at least 50 watts output per speaker, which probably will require audio power amplifiers and speakers separate from the monitors. Microphones could be PZM types (Pressure Zone Microphones are unobtrusive and have high, non-directional, sensitivity) or more directional units on appropriate stands.

Each studio will require similar equipment, but quantities may differ depending on the type and use of the room. Considering the alternatives at the court end, where equipment can be installed in one or more courtrooms or a separate studio, the items listed below should be provided.

Lighting in the courtrooms (District, Justice, and City) and the Detention Facility's Multipurpose Room is adequate for use with video cameras, but the possibility of supplementing lighting facilities in the Multipurpose Room or in a court studio should be examined prior to going on the air with a system.

The equipment list shows that a tradeoff will be encountered between equipment costs and the determination of where in the courthouses to install equipment. Specifically, if the space can be found to locate a studio in the county courthouse, the capital expense to purchase equipment should be less than if a courtroom is used, but this probably will not be a determining factor in the complete installation cost. On the
other hand, only one studio should need to be outfitted, whereas each courtroom to be used for video arraignments would have to be outfitted. In two of the three courts we observed where video arraignment might be used, the judges conducted such proceedings in their chambers, rather than in their courtroom, from which we concluded that a non-courtroom setting might be appropriate and acceptable for video arraignments. We recommend the use of a courthouse studio as the first choice for video arraignments because it would be the most economical choice and could be designed to best suit the intended use. That should make it more cost-effective than several courtrooms.
### Equipment List

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<td></td>
<td>1 on Attorneys</td>
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<td></td>
<td>Monitor</td>
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<tr>
<td></td>
<td>Monitor</td>
<td>1 large for participants (1 for public and press)</td>
<td>1 to 2</td>
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<tr>
<td></td>
<td>Microphone</td>
<td>1 for Judge</td>
<td>3</td>
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<td></td>
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<td>1 for each Attorney</td>
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<td></td>
<td>Speaker</td>
<td>1 for all participants</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Private Telephone</td>
<td>1 between Defense Counsel and Defendant</td>
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</table>
A further advantage of a separate courthouse studio is that it could be used by defense counsel to interview their detained clients before and after arraignments. Such use could make initial appearances more efficient by speeding up the actual proceedings, trading the reduced travel time of defense counsel for more detailed discussions and briefings with clients.

The Billings City Court could participate by linking its studio to the transmission center in the county courthouse, as mentioned previously. The judge's office is a possible studio location, if the equipment can be mounted in a unitary assembly, such as a cabinet on rollers containing camera, monitor, microphones, speaker, and telephone. The cabinet could be locked and moved for storage, if desired. The Laurel City Court could be connected to the system by adding a microwave link between it and the Detention Facility. The line-of-sight distance of approximately fifteen miles is not excessive but would require antenna heights of 60 feet to 120 feet.

To apply video arraignment procedures effectively, scheduling must be coordinated. Each court user and the Detention Facility staff must know which detainees are required and at what time. The transmission equipment will have to be scheduled for each user in advance. The court studio or studio equipment also will have to be scheduled in advance if a single set of equipment is used, whether installed in a studio or one courtroom. We view the scheduling requirement as an advantage, in any event, because it should bring increasing order and effectiveness to the entire process of first appearances.

2. It is recommended that Yellowstone County give serious consideration to the establishment of a pretrial services unit. The present Detention Facility was built in response to jail crowding in the old jail and a federal court order to address the issues of jail crowding. Although the present Facility is not now crowded and is designed for growth, the history of such institutions has been that they soon outgrow their capacities. In light of this fact, it is simply a wise policy to have a pretrial services unit which can help to control the jail population by assuring that only those defendants who genuinely need to be incarcerated during the pretrial stage are incarcerated and those that do not need to be incarcerated are released by some means. In addition, such a unit could also serve to administer the video arraignment schedule. (See Appendix III, which describes the operations of the Intake Services Unit of the Las Vegas, Nevada Municipal Court).
3. It is recommended that written rules of procedure be established for the video arraignment process. Once the authority for video arraignment is established, such as by amendment to the Montana Statutes, local court rules of procedure should be written which describe the video arraignment protocol and roles of all those who are responsible for the arraignment process. This is especially important as video arraignment is a substantially new procedure for all actors and each person's role and responsibilities will have to be clarified.

4. It is recommended that Yellowstone County officials visit a jurisdiction that is using a video arraignment system. By visiting a jurisdiction which is currently using a video arraignment system, such as Washoe County (Reno), Nevada, a much better sense of how such a system operates can be secured. By actually watching someone being arraigned by video and speaking with the participants in the process, much can be learned about procedures and techniques which would otherwise take much time to learn on your own through trial and error.
IV. SUMMARY

The consultants believe the implementation of a video arraignment system in Yellowstone County is feasible. Furthermore, they believe such a system will prove itself to be of great benefit to the County.

Yellowstone County is currently spending too much of its time and money in prisoner transport for personal appearance arraignment. Much of this time and money could be saved by utilizing a video arraignment system; especially since, as the jail population increases, more pretrial defendants will have to be transported to the courthouses, requiring an increase in security staff. In addition, the security risk created under the present transport system is intolerable. Beyond the fact that defendants are outside of the secure Detention Facility two to three times each day, the ratio of security officers to defendants is much too low for a reasonable security level.

The climate is right in Yellowstone County for a video arraignment system. Nearly all of the necessary participants are in favor of the video system and all are professionals with a strong sense of responsibility and commitment toward improvement of the justice system.

The physical requirements for a video arraignment system are also in place. The Multipurpose Room in the Detention Facility could serve as the arraignment center at the jail end while, at the court, a decision must be made as to which courtrooms or other room will serve as the arraignment center.

Yellowstone County officials should approach the implementation of a video arraignment system with the same thoughtfulness and attention to detail as they did in the opening of the new Detention Facility. The consultants are convinced that with careful planning and by following the recommendations contained in this report, Yellowstone County can enjoy a model video arraignment system as it does its model Detention Facility.
V. APPENDICES

I. Schedule of Meetings.

II. Montana Statute on Arraignment of Defendant.

III. Memorandum on the Operations of the Intake Services Unit in the Las Vegas, Nevada Municipal Court.
# I. SCHEDULE OF MEETINGS

| Yellowstone County Sheriff's Detention Facility | General Court Improvement, TA 161 |
| Schedule of Meetings (tentative) and related activities |

<table>
<thead>
<tr>
<th>Sept MONDAY 5</th>
<th>TUESDAY 6</th>
<th>WEDNESDAY 7</th>
<th>THURSDAY 8</th>
<th>FRIDAY 9</th>
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<td>Billings City</td>
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<td>Arraignments</td>
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<td>10:00</td>
<td>1002 DiMichele arrival with Sheriff and D/F Admin. (H)</td>
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<td>Judge Eschler</td>
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<td>10:30</td>
<td>Evaluation</td>
<td>Justice of Peace Court</td>
<td>Judge Hernandez</td>
<td>District Court</td>
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<td>11:00 Down</td>
<td>LUNCH</td>
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<td>District Court Judges</td>
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<td>City Courts (T) Judge Herman, Judge Bjertness (T)</td>
<td>Commissioners</td>
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<td>Meeting</td>
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<td></td>
<td>Yellowstone Co. Defenders</td>
<td>Detention</td>
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<td>Justice of Peace (H) Facility</td>
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<td>Staff</td>
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</table>
II. MONTANA STATUTE ON ARRAINMENT OF DEFENDANT

CHAPTER 12
ARRAIGNMENT OF DEFENDANT

Part 1 — General Provisions

46-12-101. Arraignment defined. “Arraignment” is the formal act of calling the defendant into open court to answer the charge against him.

History: En. 95-1601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1601.

46-12-102. Place of arraignment. The defendant shall be arraigned in the court in which the indictment, information, or complaint is filed unless before arraignment the cause has been removed to another court, in which case he shall be arraigned in that court.

History: En. 95-1602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1602.

46-12-103. Presence of defendant. If the offense charged is a felony, the defendant must be personally present for arraignment. If the offense charged is a misdemeanor, he may appear by counsel.

History: En. 95-1603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1603.
46-12-104. Bringing defendant into court. The court may direct any official who has custody of the defendant to bring him before the court to be arraigned.

History: En. 95-1604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1604.

46-12-105. Joint defendants. Defendants who are jointly charged may be arraigned separately or together in the discretion of the court.

History: En. 95-1605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1605.

Part 2

Procedure on Arraignment

46-12-201. General rules of procedure for arraignment. The arraignment in any court in this state must be conducted in the following manner:

1. The arraignment must be in open court.
2. The court must inquire of the defendant or his counsel the defendant's true name, and if the defendant's true name be given as any other than that used in the charge, the court must order the defendant's name to be substituted for the name under which he is charged. The subsequent proceedings must be conducted with the defendant charged under that name, but in the discretion of the court, the defendant may also be referred to by the name by which he was first charged.
3. The court must determine whether the defendant is under any disability which would prevent the court in its discretion from proceeding with the arraignment. The arraignment may be continued until such time as the court determines the defendant is able to proceed.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(a), (b), (c).

46-12-202. Court to advise defendant of his rights and the charges. (1) The defendant shall be advised by the court as follows:

a. of the nature of the crime charged against him;
b. of the punishment as set forth by statute for the crime charged;
c. if the defendant intends to enter into a plea bargain agreement;
   i. that under 46-12-204, the court is not bound by such agreements;
   ii. that under 46-12-204, if the court does not impose the sentence recommended by the prosecution pursuant to a plea agreement, the court is not required to allow the defendant to withdraw a plea of guilty;
   iii. that criminal sentencing is governed by Title 46, chapter 18; and
   iv. that the defendant and his counsel should carefully review Title 46, chapter 18, and consider the most severe sentence that can be imposed for a particular crime;
d. if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding;
e. of the time prescribed by statute to enter a plea;
f. of his right to secure bail to release him from custody.
2. The court, or the clerk or county attorney under its direction, must:
(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;
(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and
(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint.

History: En. 95-1636 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part); amd. Sec. 1, Ch. 606, L. 1985.

Cross-References
Duty of court to advise at initial appearance, 46-12-203.
Court to advise defendant of rights — extradition proceedings, 46-29-217.

46-12-203. Time allowed to answer. If on the arraignment the defendant requires it, he must be allowed a reasonable time, not less than 1 day, to answer or otherwise plead to the indictment, information, or complaint. The answer may include appropriate pretrial motions.

History: En. 95-1647 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1607.

Cross-References
Defendant’s right to reasonable time for preparation of trial after plea, 46-16-106.

46-12-204. The plea — plea bargains. (1) The defendant shall enter a plea of guilty or not guilty to the indictment, information, or complaint. If the defendant refuses to plead to the indictment, information, or complaint, a plea of not guilty must be entered.
(2) The court may refuse to accept a plea of guilty and shall not accept the plea of guilty without first determining that the plea is voluntary with an understanding of the charge.
(3) (a) A plea bargain agreement is an agreement between a defendant and a prosecutor that in exchange for a particular plea the prosecutor will recommend to the court a particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge does not impose a sentence recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.
(b) Before a judge accepts a plea of guilty, he must advise the defendant:
(i) of all the provisions of subsection (3)(a);
(ii) of the punishment as set forth by statute for the crime charged;
(iii) that prior to entering a plea of guilty, the defendant and his counsel should have carefully reviewed Title 46, chapter 18, and considered the most severe sentence that can be imposed for a particular crime; and
(iv) that the judge may impose any sentence allowed by law.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(parr); amd. Sec. 2, Ch. 606, L. 1985.

46-12-205. Record of arraignment. The court must prepare and keep a written record of all arraignment proceedings. In district courts a verbatim record of all arraignment proceedings must be made, preserved, and filed with the court.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(f).
46-12-206. Irregularity of arraignment. No irregularity in the arraignment which does not affect the substantial rights of the defendant shall affect the validity of any proceeding in the cause if the defendant pleads to the charge or proceeds to trial without objecting to such irregularity.

History: En. 95-1608 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1608.
The Municipal Court's Intake Services Unit handles all in-custody court-related matters. This includes release of defendants on their recognizance, where the defendant is so qualified; screening and establishing each day's Video Arraignment calendar for in-custody defendants; handling of all defendants' and probation/parole requests coming to the court (these are known as "Kites"); monitoring the Weekender Program, in which a defendant is sentenced by the court to serve time in increments (24 to 48 hours at a time) rather than continuously; and Walked In Not Booked Program (WINA), in which a defendant with an active warrant for arrest may satisfy the warrant by posting a reduced bail amount. In addition to these programs, the Intake Services Unit is responsible for the taking of all bails and or bonds posted by defendants during the hours the courts are closed.

In the City of Las Vegas, defendants arrested and charged with a misdemeanor may be eligible for release on their own recognizance. When notified by the City's jails shortly after a misdemeanor arrest, an Intake Services Officer interviews these defendants to collect information on their community contacts, length of time at their current residence, employment history, family ties, and runs computer checks on prior criminal records. This information is verified by checking official records and by contacting family members and employers. To receive positive recommendations for an O.R. release, defendants must have a verified Clark County, Nevada address and employment or phone number with independent verification of the information taken during the interview. Certain factors such as prior failure to appear in court, current active warrants for arrest result in automatic disqualification. Defendants who are not released O.R. at the City's jails are held and scheduled for the next Video Court session, which is usually the following day.

Intake Services Officers explain the conditions of release to defendants released on O.R. The Unit monitors released defendants, keeps records of all contacts, and notifies them of upcoming court appearances. Typically defendants must check in with the Unit, by telephone, before each court appearance. At the time of the check-in, information on the defendant, the case, and the next scheduled court appearance is reviewed with the defendant and updated if necessary.

If the defendant fails to appear in court as scheduled, the Intake Services Unit will try to contact him/her and persuade him/her to return to court the next day. Daily court calendars are cross-referenced against the City and County jails' defendant rosters to locate defendants that missed their appearances due to incarceration for another offense.
REQUEST FOR INTAKE SERVICES OPERATIONS SUMMARY

The Intake Services Unit, which is part of the Court's Criminal Division, is presently staffed by a Sr. Intake Services Officer and six Intake Services Officers. Covering the court and jails twenty-four hours a day, Intake Services activities include (in addition to numerous miscellaneous in-custody matters):

- Screening of 2300 persons booked each month into City jails;
- O.R. release of roughly 245 persons each month;
- Video Arraignment setup for roughly 1560 persons each month from the City jail facilities;
- Video Arraignment setup for roughly 365 persons each month from the County jail facilities;
- Bail or Reduced Bail collections for roughly 245 persons each month from the City jail facilities.

RAB:kg