

Supreme Court's Committee for the Study of Cameras in the Trial Courts

Final Meeting Minutes

Initial Meeting
Friday, June 13, 2008
10:00 a.m. CT

Capitol Lake Visitor Center, Pierre, South Dakota

Committee Members in Attendance: Honorable Glen Severson, Karl Thoennes, John Peterson, Honorable Jack Von Wald, Honorable David Gienapp, Chief Justice (retired) Robert Miller, Chief Justice David Gilbertson, Tim Rensch, Roxanne Giedd, Tena Haraldson, Dave Nelson, Jeff Larson, Richard Travis, Denise Richards, Attorney General Larry Long, Cheryl Hanna, Bob Wilcox, Sheriff David Hunhoff, Sheriff Don Holloway, Mark Roby, Mark Millage, and Judith Roberts.

Excused: Professor Chris Hutton

State Court Administrator's Office Staff: Richard Linius, sound technician; Gloria Guericke, recording secretary.

Call Meeting to Order

Chairman Robert Miller called the meeting to order at 10:01 a.m. He informed the committee that this meeting was being broadcast live over the Internet and that the goal is to have this with all our meetings so that the general public can listen to the proceedings. Individuals wishing to listen to the meeting can access it via the Unified Judicial System's (UJS) website at <http://www.sdjudicial.com>. It will also be archived under UJS's website, plus backup tapes of the meetings will also be made. Chief Justice Miller introduced Richard Linius, the sound technician monitoring today's meeting broadcast.

Welcome - Chief Justice Gilbertson

Chief Justice David Gilbertson welcomed everyone to the meeting and thanked the members on behalf of Supreme Court for agreeing to serve on this committee. He explained that the intent behind this committee was to

get all the players at the table. He said that all the members on this committee were his first choice and he was very pleased that no one had turned him down. He explained that in the past, the standard response when asked about having cameras in a trial courts was that there was a statute making it a criminal offense to have cameras in a trial courtroom. This will change on July 1, when this statute is repealed. This pending repeal is what precipitated creation of this committee. The Court is seeking the committee's input as to how it should address this topic.

The Chief Justice explained that cameras have been allowed in the Supreme Courtroom since 2001. This change occurred under Chief Justice Miller and it has been very successful.

Chief Justice Gilbertson informed committee members that the Supreme Court will not be looking over their shoulders during the process of their work. He thanked members for their participation in this tremendous project.

Introductions

Chief Justice Miller introduced Gloria Guericke, the recording secretary, and asked members to contact her if they had any questions or needs.

Chief Justice Miller asked members to go around the table and introduce themselves and provide any background information they wished to share.

- **Judge Von Wald** stated that he has been on the trial bench for 15 years and, prior to that, was in private practice for 25 years. He also served with the Attorney General's office.
- **Tim Rensch** explained that he is a trial lawyer in Rapid City.
- **Roxanne Giedd** is President Elect of the State Bar and she is with the Attorney General's office. She has been looking forward to serving on this committee because she thinks we will have some interesting issues coming before us. She has no opinion yet regarding cameras in the trial courtrooms.
- **Richard Travis** is finishing his term as President of the State Bar. He practices law in Sioux Falls. He has not formed an opinion yet regarding cameras in the trial courtrooms.

- **Cheryl Hanna** is the Director of the Access to Justice Program and has been with this program since its beginning. She stated that she is excited about this opportunity as she can see advantages to both sides.
- **Mark Millage** stated that he was News Director with KELO TV for 25 years. He recently changed jobs and is now President of Killian College in Sioux Falls.
- **Tena Haraldson** has been with the Associated Press for 31 years. She presently serves as Bureau Chief of the Associated Press for South Dakota, North Dakota and Nebraska. Her interest in serving on this committee is to expand cameras into court coverage responsibly as she understands the sensitivities of the people involved.
- **Bob Wilcox** is celebrating his 20 year anniversary with county government this year. He is the Executive Director of the South Dakota Association of County Commissioners.
- **Don Holloway** has served as Pennington County Sheriff for over 25 years and is a former 7th Circuit Court Administrator.
- **David Hunhoff** has served 36 years with the Sheriff's office. His office is located in Yankton. He thinks the committee will have some interesting dialogues. He can see the cameras situation from both sides. Sheriff Hunhoff has been involved with the development of Yankton's new state-of-the-art courtroom.
- **Attorney General Larry Long** stated he is intrigued by the cameras process and feels that the issues we will discuss will have some significant levels of subtlety.
- **Judge David Gienapp** has been a circuit judge for 5 years. He is also a presiding judge. He had a lengthy legal background prior to becoming a judge.
- **Jeff Larson** is celebrating his 30th anniversary as a criminal defense attorney. He initially started his legal career with Dakota Plains Legal Services and he presently serves as Chief Deputy Public Defender for Minnehaha County.
- **Mark Roby** is the publisher of the *Watertown Opinion*. He is also president of the SD Newspaper Association.
- **John Peterson** has been a broadcast journalist for almost 30 years and is news director for KOTA TV in Rapid City. He is an advocate for cameras in the courtroom, but will do his best to keep an open mind.
- **Judge Glen Severson** has been a circuit judge for 15 years. Prior to that, he practiced law in Huron for 18 years. He has worked with the

press both as a private attorney and as a circuit judge. He sees the advantages and disadvantage of cameras in the courtroom.

- **Karl Thoennes** is presently the circuit administrator for the 2nd Judicial Circuit. He previously worked in the courts in Alaska and Minnesota. He has had significant dealings with the media due to involvement in high-profile cases.
- **Denise Richards** has been the Hughes County Victims Assistant for the past 10 years, and she has been working with victims of crime for over 20 years. She plans to work on their behalf regarding the cameras in the courts issue.
- **David Nelson** is Minnehaha County State's Attorney. He stated that he is not an advocate like Tena, but he would like to somewhat expand courtroom coverage to the general public.
- **Judith Roberts** is now Legal Counsel with the Unified Judicial System, but started her legal career with Dakota Plains Legal Services followed by some time in private practice.

Camera Policies in Other States – Judith Roberts

Judith distributed a summary from the Radio-Television News Directors' Association and the Radio and Television News Directors' Foundation, (courtesy of Matthew Gibson for Kathleen Kirby) of what every state in the nation is doing regarding cameras in the courtroom (Handout A). For quick reference, the states are listed by Tier 1 (states that allow the most coverage), Tier 2 (states that have certain restrictions), and Tier 3 (states that allow appellate coverage only).

Chief Justice Miller commented to Tena Haraldson that he was aware that she has done research in the past regarding cameras in the trial courtrooms and inquired if she had anything to present at this time. Tena explained that her job has expanded to include Nebraska which is presently doing a trial camera courtroom project. They did their first courtroom murder trial and she has a DVD available if we're interested in viewing it. Chief Justice Miller felt that it would be very appropriate to share it. He felt that the more information we can gather, the better. He explained that when visiting with Chief Justice Gilbertson, he was made aware that there is adequate money in the budget so that we can do the best research possible before making a recommendation to the Court. We will be able to meet in other sections of the state in order to tour sites and we can bring in the guests or presenters that we need.

Tena referenced a source that would be willing to do a mock courtroom setup for the committee so they could see arrangements such as how and where cameras would be placed.

Mark Millage suggested we see the Supreme Court setup when the cameras are in use. Chief Justice Miller asked Judith to follow up on this with Chief Justice Gilbertson.

Committee Discussion Regarding its Directions and Goals

Chairman Miller noted that the committee members are all busy people who come from different backgrounds and programs and he asked if there were suggestions on how the committee would work. He questioned whether we should continue to work as one large committee or break into sub committees.

Dave Nelson commented that Judith Robert's work was very helpful. He felt that there must be incredible resources in the country and that we need to harvest this information. We could either collect the information or have these folks come in to visit with us. He felt that we need to know what is efficient and inefficient, what has worked and what has been catastrophic. He asked if the Bar or media have contacts we can utilize. He noted that we need to hear from states that have cameras in the courtroom.

Chairman Miller asked Judge Gienapp to visit with the American Bar Association about any information or presenters they could provide for our committee. Tena Haraldson asked if the Judicial College in Reno, Nevada would be a good source for presenters. Chairman Miller asked Judith Roberts to explore this option. Judge Gienapp noted that they offer several courses a year that address this topic.

Jeff Larson felt that the initial meetings should be held with the group as a whole. He said that by looking around the room, he realized that there were different constituencies that would need to be included on each subcommittee. He suggested we have pro and con speakers from different states come in to make presentations and answer our questions. He noted that most of the committee members belong to some kind of national group that they could contact to see if respective materials are available. Chairman Miller suggested that they also ask if programs are available.

Cheryl Hanna and Denise Richards informed the committee that their national groups have information available.

Cheryl Hanna asked approximately how many meetings need to be scheduled. Chief Justice Miller replied that we will plan the next meeting or next couple meeting dates before we leave today. All the meetings will be broadcast live over the UJS Internet website as long as the meeting site has the arrangements available.

Tim Rensch stated that it seems like it would be easy to do Internet and legal searches regarding problems that have occurred because of cameras in the trial courtrooms. He raised questions such as how many cameras are needed, where should they be located in a courtroom, could the cameras be there for only a certain snippet of time and then be allowed to leave.

Mark Millage suggested the committee members have a copy of the South Dakota Supreme Court rules regarding cameras in the courtroom.

Judith Roberts stated that she approaches these kinds of projects in a structured manner and that she has about a dozen questions that need answered. She suggested that committee members take some time to write down the questions they want answered and then we can divide out the questions in order to obtain the answers.

David Hunhoff felt that Judith's comment was a good one. He stated that it would be good to know the parameters. He noted that it seems like juvenile court will remain private. Chairman Miller commented that he was not sure there were parameters. We may want to look at juvenile courts and determine what our recommendation will be regarding cameras.

Tena Haraldson commented that we are here because of the statutory repeal of the prohibition against cameras in the trial courts. The repeal occurred because she and Mark Millage talked to some of the legislative leaders and requested the repeal. Tena felt that since they (the media) are responsible for initiating the repeal, thus it is somewhat dependant on them to provide a draft proposal to the committee.

Chairman Miller stated that everything Tena said was true. He commented that the media coming forth with a proposal would be a structured start. Tena stated that there are well-accepted standards in states where this is

done that would answer Judith Roberts' questions. She realized that the media was not the only player, but their proposal would provide a framework that the committee could add to or modify.

Judith Roberts questioned if we should notify the Bar that a proposal was coming from the media and allow them the opportunity to make recommendations. Richard Travis felt that it was too early; we should first massage the media's proposal. Roxanne Giedd noted that this would then end up on the Bar floor for input.

Dave Nelson stated that we presently do not have a starting point and that Tena's suggestion would provide one. He felt it may be a good idea to have a subcommittee of media for the start of the proposals.

Chief Justice Miller asked Tena Haraldson if her (the media's) proposal would include participants from other states. Tena stated that the way she saw this, we could bring a proposal that includes information from other states. She asked the committee to consider how we want to handle bloggers (not official media) who show up with a camera to do their own coverage.

Judith Roberts stated that she is representing groups such as judges, witnesses, jurors, and she is uncomfortable going through a proposal when she does not know the concerns yet from the people she is representing.

Chairman Miller reminded Tena Haraldson that the media's proposal would be aired and the general public could then come in and express their concerns.

Jeff Larson expressed concern about one subgroup defining the discussion for the whole group. He felt that there was some danger in this process. He liked the idea of getting as much information as possible from other sources.

Chief Justice Miller asked Jeff how he sees the committee proceeding. Jeff suggested obtaining information from constituent groups, especially in regard to their concerns. Jeff sees a difference between adult and juvenile court, and murky line between juveniles transferred to adult court. He felt that structure is good for discussion but it can also be limiting.

Judge Severson stated that technology and how things can be done is one issue, but we have not discussed the “philosophy” behind the cameras in the trial courtrooms. He questioned what do we want to accomplish with cameras in a courtroom? Why do we want them? What is the problem and what is the purpose?

Roxanne Giedd explained that there is an opinion that cameras affect the behavior of people involved in a court case. She felt that we need to do some fact finding on this issue.

Chairman Miller asked if this is information that could be obtained from the National Judicial College and it was believed that this could be a source for presenters. Roxanne noted that cameras may affect older adults but the younger generation may be unphased by this technology.

Attorney General Long felt that Jeff Larson’s point was well made regarding a proposal, but he suggested we keep this offer on hand because we’ll need to put something together later on.

Chairman Miller explained that he had a similar concern and had visited with the Chief Justice about it. He found out that the Supreme Court would not object to a majority and a minority report. Attorney General Long suggested we all try to reach as much of a consensus as possible.

Karl Thoennes liked Judith Roberts’ suggestion that we first find out the initial issues. He raised the question about possible confusion on the public’s part between the amount of information found in a court reporter’s transcript versus what is broadcast of the court trial. He explained that he is unfamiliar with how and what the media covers a court trial.

Tim Rensch questioned why the media’s participation had to be in the form of a proposal.

Tena Haraldson withdrew the suggestion that the media propose anything at this point. She stated that they first want to know where everyone is coming from.

Chairman Miller asked committee members to collect information from their national groups. He asked if having pro and con presenters from other states sounded workable to the group. Jeff Larson liked the idea of getting

the conflicting opinions. Mark Millage noted that this also gives us the chance to ask them questions.

Chief Justice Miller commented on our broad-based committee and asked if we are missing anyone whose voice needs to be heard. Judge Gienapp noted that jurors and victims (he recognized the victims rights' representatives) come to mind, but it would be difficult to include representatives from these groups on this committee. Chairman Miller asked the committee members to let him know if there is someone they feel needs brought on board. Cheryl Hanna, stated that she and Denise Richards, as victims rights' representatives, would make sure the word gets out so that interested parties could give testimony.

Mark Roby asked if there were minutes available from when the SD Supreme Court had discussion and public hearings regarding their cameras in the courtroom rules. Mark Millage stated that he had the minutes with him from these meetings. Chairman Miller asked if he would mind sharing the information with Gloria Guericke so that she could send out copies to the rest of the committee. *(Update: Mark's copies of the minutes and the S.D. Supreme Court's rules of electronic coverage were scanned and emailed to committee members on June 14, 2008.)*

Committee Direction Determined

Chairman Miller explained that he, like Dave Nelson, had wondered how this meeting would go. He summarized recommendations made today in that everyone who can, will obtain information from their national organizations and forward this information to Gloria Guericke so that she can get it out to the rest of the committee. Chairman Miller and Judith Roberts will work together on lining up presenters for future meetings.

Deadline for Committee Members to Submit Their Concerns

Judge Gienapp felt it would be helpful if committee members conveyed to Judith Roberts and Gloria Guericke the philosophical areas they would like addressed when we visit with the presenters. Attorney General Long felt that this information would be helpful to have on hand when searching for presenters. Richard Travis stated that he would prefer to receive only one email of concerns rather than many emails. Judith Roberts offered to collect the concerns, put them into categories, and then send out one email

to the committee. She noted that this information would be helpful in finding meeting speakers. **The committee decided that members would send their concerns to Judith Roberts by Thursday, July 3.**

Next Meeting Date

It was determined that the next meeting of the Supreme Court's Committee for the Study of Cameras in the Trial Courts would be held in Sioux Falls on Monday, October 6, beginning at 9:00 a.m. The meeting location and agenda will be determined closer to the meeting date.

Sharing Information with Other Committee Members

Tena Haraldson questioned whether information to be shared will be sent via U.S. Mail or by email. Chairman Miller asked the committee if it would work for them if the information was scanned and then emailed to them. Members indicated that email was their preference.

Tena commented that she had assumed our starting point was the ban on cameras and she did not realize it would go past standing prohibitions such as juveniles. Chief Justice Miller felt that Chief Justice Gilbertson wants our recommendations on what we feel is appropriate in the courts. We are free to look at and accept or reject whatever we want. If it requires changing statutes, this can be addressed as needed if our opinion is accepted. Tena Haraldson noted that it is the media's perception that if juveniles' cases are closed to the public, then they are closed to cameras. Chairman Miller referenced the "murky" area mentioned earlier by Jeff Larson where juveniles are transferred to adult court.

Jeff Larson noted that those who will be the most exposed by the cameras in the trial courts are the ones who will be the most uncomfortable coming before us to testify. He explained that you will be able to get people from every area that favors the process, but it is those who have more difficulties with personal space that will be less likely to come forward and testify about their concerns with having cameras present.

Denise Richards felt that she or Cheryl could probably come up with the mother of a victim or someone like that if the committee wants a representative from that area.

Adjourning the Meeting

Chairman Miller apologized for not having developed a more meaningful, lengthy meeting for today, but this was not possible until committee direction was determined.

Dave Nelson asked if any thought had been given to holding the meetings over the DDN, or locating them in Chamberlain rather than Pierre. Richard Linius stated that the audio capabilities can travel anywhere.

Chairman Miller thanked everyone for attending today's meeting.

The meeting was adjourned at 11:35 a.m.