

**Supreme Court's Committee to Study the Use of  
Interpreters and Translators in the  
South Dakota Court System**

**Initial Meeting  
Friday, April 23, 2010  
10:00 a.m. CT**

**Room 414, Capitol Building, Pierre, South Dakota**

**Meeting Minutes**

**Attendance:**

Committee Members: Judge Bradley Zell, Committee Chair, Circuit Judge in the 2<sup>nd</sup> Judicial Circuit; Judge Shawn Pahlke, Magistrate Judge in the 7<sup>th</sup> Judicial Circuit; Lisa Fowler, Interpreter, Director of Workforce Development; Lisa Carlson, Court Reporter in 2<sup>nd</sup> Judicial Circuit; Karl Thoennes, Circuit Administrator in the 2<sup>nd</sup> Judicial Circuit; Judd Thompson, Chief Court Services Officer in the 7<sup>th</sup> Judicial Circuit; Rosa Iverson, Interpreter; Phil Peterson, Peterson and Stuart Law Office; Bob Wilcox, Executive Director of the Association of County Commissioners; Kerry Cameron, Roberts County State's Attorney; Ken Tschetter, Tschetter and Adams Law Office.

Excused: Aaron McGowan, Minnehaha County State's Attorney; and Judge Jon Erickson, Circuit Judge in the 3<sup>rd</sup> Judicial Circuit.

Unified Judicial System (UJS): Chief Justice David Gilbertson; Greg Sattizahn, Legal and Legislative Counsel; Gloria Guericke, Administrative Assistant.

Guests: Charles McGuigan, representing Attorney General Marty Jackley

Media: Chet Brokaw, Associated Press

**Call Meeting to Order – Judge Zell**

Judge Zell called the meeting to order at 10:00 a.m.

**Welcome - Chief Justice Gilbertson**

Chief Justice David Gilbertson welcomed the committee. He discussed the history behind the formation of this committee in that the Equal Justice Commission has recommended that interpreters be a priority for the state, for individuals involved in

court cases who are not fluent in English. The Commission's recommendation highlighted the fact that we needed to look at this topic. He noted that one South Dakota judge has had up to 26 languages in his courtroom through his years as a judge.

### **General Committee Goals - Chief Justice Gilbertson**

Chief Justice Gilbertson stated that the committee's format came about from success in the makeup of the recent Cameras committee (Supreme Court's Committee for the Study of Cameras in the Trial Courts). He explained that this committee has a broad-based charge to look at the problems in South Dakota and to suggest solutions. There is no time limit on this as we do not know how broad based your committee will go. Any recommendations will go before the Supreme Court for consideration. He assured the group that the Court does not take reports and store them on the shelf.

The Committee has a number of options to explore such as considering statutes with statewide ramification or leaving it to the local circuits as one size may not fit all.

Chief Justice Gilbertson said he aimed for geographical diversity plus rural vs. urban diversity in the composition of this committee. He was pleased that no one turned him down when he asked them to participate. He noted that the Court is very pleased you are addressing this topic. The Unified Judicial System staffing for this committee is Mr. Greg Sattizahn, UJS's Legal and Legislative Counsel, and Gloria Guericke, Administrative Assistant. Other staff are available if needed. The Chief Justice explained that he is excluded from the committee as his participation would create a conflict of interest.

Chief Justice Gilbertson noted that the Interpreter/Translator standards issue is not unique to South Dakota. An individual's translator needs begin prior to the courtroom setting as other issues need addressed beforehand.

The Chief Justice asked if there were questions, but there were none.

Chair Zell felt that our ultimate goal is for anyone stepping inside the legal system to have the ability to have the same playing field as those fluent in English. He noted that some folks have limited English but not enough to understand what is going on.

## **Introductions - Chief Justice Gilbertson, Judge Zell, committee members, and guests**

Judge Zell asked that committee members introduce themselves and share a bit of background with the rest of the group. Judge Zell started the introductions and the committee members followed suit.

## **Interpreter Policies in Other States – Greg Sattizahn**

Mr. Sattizahn provided the group with a Power Point presentation overview of Interpreter Policies. He cautioned the committee that whatever goals or recommendations they determine will affect almost everyone in the judicial branch, from judges to clerks of court (paperwork, etc.), to court services officers (who need to collect certain information from these individuals), to circuit administrators (need to find the interpreters), to court reporters.

In 2008, the UJS Planning and Advisory Council (which consists of individuals such as judges, circuit administrators, clerks of court, court services officers, court reporters, and a Supreme Court Justice) conducted a survey of the top issues facing the judiciary. The issue of Interpreters was in the top 5 determined by both the UJS staff and SD State Bar members. It was noted that a barrier is immediately formed if services are not available for English-deficient individuals.

Mr. Sattizahn stated that dealing with a foreign language can be intimidating for all parties. Individuals may have some English but would be intimidated in a courtroom setting.

According to the 2000 census, 93.64% of the South Dakota population speaks English. This number will be changing over time as more people from other countries settle in our state.

Mr. Sattizahn noted that State v. Selalla is the South Dakota court case that prompted the interpreter/translator concern. He explained that a person's inability to understand a proceeding against them implicates the constitutional rights of due process, effective assistance of counsel, and can result in confrontation clause issues as well. He noted that Justice Koenkamp recognized that South Dakota has no uniform standards for regulation, qualification and appointment of interpreters.

Currently, our 3<sup>rd</sup> Judicial Circuit has a formal Interpreters/Translators policy and the 2<sup>nd</sup> Judicial Circuit has a "loose" policy. The process is informally handled in a number of circuits. For example, the Rapid City courts contact Ellsworth Air Force Base when they need an interpreter or translator fluent in a certain language.

Interpreters are needed approximately 4 times a day, 1200 times per year, for Minnehaha and Lincoln counties.

Mr. Peterson said he's had cases involving people deficient in English because they come in from across the state border. Sioux City has quite a few Sudanese and Hispanic people.

Mr. Sattizahn presented statistics showing that back in 2006, the 2<sup>nd</sup> Judicial Circuit averaged on a regular basis 30% of its cases in Spanish, 20% in Persian, and 50% for everything else.

The Language Line is not useful in a court setting, but it works for a clerks office's needs.

Mr. Thoennes noted that Language Line is fairly expensive as it costs about \$3.50 to \$4.00 a minute.

Judge Pahlke said that Rapid City uses Language Line for interpreting needs almost every day.

Judge Zell noted that Language Line is used for arraignments but wouldn't work well in a courtroom.

Mr. Sattizahn stated that some circuits have gone out of state to get interpreter assistance.

The Equal Justice Commission's recommendations are for comprehensive guidelines for all people in need for training, costs, certification, and testing. Forms and documents should be translated into common languages, and policies and programs developed to orient and sensitize all court personnel. Mr. Sattizahn commented that we have done some of this through the State Court Administrators Office and the training we provide, but more work remains.

Mr. Thompson explained that many of the individuals on probation that they work with do not read or write in English. Their clientele's education level is often varied.

Ms. Iverson said that she has much empathy for the clients she assists. She can see the confusion of her clients when they look at the paperwork and their unwillingness to work with counsel. Establishing communication between clients and counsel is Ms. Iverson's #1 goal. She stresses to them that they do have rights. She pointed out that people from outside the US may have a lower

education level in comparison to what is available in the States and are unfamiliar with our court system.

Mr. Sattizahn stated that he wasn't aware of any documents translated into common languages. Mr. Thoennes noted that the Visitation Guidelines are translated into Spanish. Judge Zell said that North Dakota did an extensive project like this for their Spanish population and we had planned to do the same. Judge Pahlke noted that the DUI rights are in Spanish and in English in Rapid City.

Ms. Iverson stated that she is seeing more forms available. In fact, law enforcement officers carry some of these forms. Judge Zell noted that Sioux Falls has Spanish speaking officers but he wasn't aware of any standardized translated forms.

Ms. Fowler pointed out that the preferred form for her deaf or hard-of-hearing clients would be visual, as ASL is a visual language all of its own and so Deaf/Hard of Hearing individuals do not always have a good grasp of the English language.

Mr. Peterson felt that Ms. Fowler made a good point about sign language. He told about a deaf woman who was walking down the street and a police officer arrested her for not stopping after he had called to her to stop. He couldn't understand why a hearing impaired person wouldn't stop. He explained that situations like this are why he got involved with this committee. He didn't feel it was right that an impairment or handicap should result in an individual unintentionally getting into trouble.

Judge Zell pointed out that situations have occurred where children have had to interpret for their parents, which is not a good situation.

Judge Pahlke noted that Committee Chair Judge Zell handled a case with a deaf defendant, which was one of most challenging cases in the state. It was a murder case and he handled it well.

Mr. Sattizahn informed the committee that he had looked at state policies and pulled out the following common themes:

- Registration with the court-creation of rosters
- Qualification requirements – formal certification versus qualifying background
- Code of Conduct
- Training on courtroom process/terminology
- Oath
- Disciplinary/Complaint process

Mr. Sattizahn explained that some states have you fill out an application and take a test before becoming an interpreter. Individuals with formal certification would have a star by their name on the available listing to differentiate them from those without.

He noted that the interpreter plays a very valuable role in the courtroom, whereas with Language Line, you aren't quite sure about the background of the individual providing the interpreting.

A Disciplinary/Complaint process is important as there can be bad interpreters. When complaints are received, others speaking the same language have been brought in to determine if the interpretation is correct. He noted that a disciplinary oversight process should be considered.

Mr. Sattizahn informed the group that, on the federal side (Dept. of Justice), the Civil Rights Act of 1964 clarifies in some of the constitutional cases it is our responsibility to ensure "meaningful access" to those with limited English proficiency (LEP).

Meaningful access is based on:

- The number of LEP persons eligible to be served or likely encountered;
- Frequency of contact with LEP persons;
- Nature and importance of the program, courts are viewed as essential (as they protect your property and liberty);
- The resources available to the entity.

Mr. Thompson noted that arraignments and trials are small time periods in comparison to be out of contact if the person is placed on probation. The Court Services Officer may see these people 5 days a week for a number of years. Mr. Thompson's office sees a number of limited English proficient people and that seeing them daily often becomes a real struggle.

Mr. Thompson stated that they can handle the daily questions, but a violation of rights or something else new is what provides the challenge.

Judge Pahlke noted that many prosecutors indicate they won't do certain cases if someone comes in who will require a lot of interpreter use, as it will bring in a number of challenges. She is aware of a case that was dismissed as the language issue was too challenging.

Judge Zell felt that 2 good sources for the committee were Access in the Courts and the Consortium for Language, so that we wouldn't need to "reinvent the wheel." He felt that we need some training or a standard policy in place.

Mr. Sattizahn reminded the group that the Department of Justice has indicated they will to ensure compliance. They have taken the position that interpreters should not be charged to the parties, but the Department of Justice has not imposed blanket requirements.

Mr. Sattizahn had reviewed some Department of Justice documents and noted recommendations that the committee could look at in order to help guide our direction.

Things to consider:

- Qualifications-training, ethical standards, oath
- Types of proceedings – civil v. criminal
- Who receives interpreters – parties/witnesses/victims/audience members
- Monetary issues – who pays, how paid (do we need a state standard, or left to counties as they may be able to negotiate a better rate)
- Translation of documents – identifying vital documents
- Statewide v Local. For example, currently its mostly a local situation
- Train attorneys/Court staff on use
- Notices/signage. Example: videos to provide rights.
- Use of technology. Example: Webcams so interpreters from far away can assist without the expense of travel.

Ms. Carlson noted that sometimes a limited English proficient individual will say they don't need an interpreter. You proceed and soon realize their language is very weak. She questioned how do you decide who needs an interpreter.

Judge Zell felt that the judge would need to gauge this situation. He suggested that by posting available services in the entry to a courthouse, we can make available to individuals the services they can seek.

Judge Zell thanked Mr. Sattizahn for his overview of what states have done and what the federal government is expecting.

### **Committee Work Strategy (How the committee plans to accomplish its goals.)**

Judge Zell felt that this process is comparable to "herding cats" as it is a broad topic and is difficult to get your arms around. He noted that sometimes it is easier to start on the outside and work your way in. The committee may need to make recommendations as to laws or statutes, or we may need to do some rule work. We may even want to adopt policies for the Circuits to adopt. We need to provide opportunity and services for people when they show up, and we could also have a

resource book for the courts and others involved to reference when working with LEP/hearing impaired/deaf individuals.

Judge Zell noted that we also have blind individuals come in who need resources. He relayed the experience of an individual who had been blind since age 4 and had been selected for jury duty. Her dad always told her she could accomplish anything she attempted and she sent the court a thank-you afterward for letting her serve her county as a juror.

Mr. Sattizahn informed the group that after the committee was announced, he received numerous contacts from national organizations that want to assist us by providing information. We could consider contacting these groups, if they are reasonably priced, to come and provide their issues and perspectives. He noted that the Brennan Center seemed particularly receptive to our issue. Mr. Sattizahn explained that the Cameras Committee initially started their study by bringing in presenters, and he was open to exploring this option.

Judge Zell reported that he, too, received lots of information from these national groups. Several of the areas he sees us exploring are Language and Interpretation, Hearing/Visually Impaired, and Costs. He suggested that the committee could break into subcommittees to study the various areas.

Mr. Thoennes stated that having served on Cameras Committee, he was apprehensive about outside contributions as we'll drown in the information. He wasn't sure where we're at right now in the State's Interpreter-Translator needs and that maybe our first step should be data collection from the counties. We could collect information such as interpreter use, language frequency, etc., to find out where we are and what needs addressed.

Judge Zell felt that we should start with assumption that we have no standards.

Mr. Thompson expressed concern about collecting data on what we spend as it will give us a skewed picture since there are some services we're not providing. It doesn't show us our real need or the potential cost.

Mr. Tschetter agreed with Judge Zell and stated that the statistics from 2006 indicate that we need to implement something, but we need to know what we are looking at and what can we expect cost wise.

Judge Zell noted that Mr. Sattizahn had provided data regarding the use of services in our state and asked if this was enough information.

Mr. Sattizahn stated that the data he showed was from Mr. Thoennes from 2006. He explained that some of this information is tough to collect. For example, do we have a clerk check a box every time they feel someone needs an interpreter? He felt that we do need to collect more information as to when an interpreter is needed, how often interpreters are needed, and the costs incurred.

Ms. Fowler pointed out that there are also the logistics of getting an interpreter there, and then there is the training of how to use an interpreter. She felt this could be a sub issue.

Judge Zell noted that there are certain languages, such as Lakota, and questioned how you find an interpreter when fewer young people are learning this language.

Mr. Thompson and Judge Pahlke felt we should work as a large group. Judge Pahlke noted that by working in smaller groups, you end up missing out on valuable input from committee members not in the subgroup.

Mr. Cameron felt we should work together as a large group while determining direction.

Ms. Iverson wants to bring her experiences from being an interpreter in courtroom to this committee. She felt that we need to share our experiences in order to help determine our needs.

Judge Zell noted that what he was hearing was that the committee wanted to stay together to create the vision of where we are going. For another project, he had checked out other states with similar issues to see what they were doing, and maybe we could take this direction. He felt that we will need some laws, administrative rules, and possibly even some local policies developed. Judge Zell noted that the Daphne Wright case was a huge issues and very expensive.

Judge Zell noted that for starters, we will gather information regarding language, vision and hearing from other states, and also obtain a copy of the 3<sup>rd</sup> Circuit's interpreters policy. We may also need to take testimony as there are people lined up who want to talk to us. Many have thanked us for addressing this topic and have offered to help in any way possible.

**Future Meeting Planning (How often, when and where the committee will meet.)**

Judge Zell estimated that the group could meet 2-3 times a year. We would need to be conscious of the timeframe if we want to get our legislation in on time.

Mr. Peterson suggested we meet quarterly. He felt that if we met less frequently, it would take half the time to get caught up.

Mr. Wilcox noted that the Cameras committee originally planned to meet quarterly, but we ended up meeting about 2 to 3 times a year due to weather challenges, and other unexpected complications.

Mr. Sattizahn stated that he preferred meeting every couple months.

Mr. Tschetter suggested sending out a couple dates to determine the next meeting date.

### **Next Meeting**

The group decided upon an early to mid August meeting date. *Update: The date of Friday, July 23, was selected. The meeting will be held in Sioux Falls in order to accommodate the presenters.)*

Ms. Fowler asked if there was a preferred way to disseminate information if someone wanted to share it with the committee. Judge Zell requested that any information be sent to Mr. Sattizahn and Gloria for distribution.

### **Adjourn**

The committee adjourned at 12:00 noon.