

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

*Final Report and
Recommendations*

January 2010

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

Final Report and Recommendations

The South Dakota Supreme Court created the Committee for the Study of Cameras in the Trial Courts to study the possibility of expanded media coverage in South Dakota's trial courts. The creation of the Committee was in part a response to the legislative repeal of SDCL 23A-44-16, which prohibited cameras in the trial courts. Despite that repeal current South Dakota Supreme Court rules prohibit the broadcasting, televising, recording or photographing of trial court proceedings. The Committee was charged with the task of making recommendations to the Supreme Court as to whether those Supreme Court rules should be reconsidered after an examination of the issue.

Committee Composition

The Committee included representatives from the diverse groups who directly participate or are impacted by the operation of the trial courts. The broad range of constituents represented by the Committee included trial court judges, counties, the media, Bar Association, prosecutors, defense attorneys, law enforcement, victim's rights advocates, academia and representatives of the Unified Judicial System.

The Committee Members included: former Chief Justice Robert A. Miller (Chairman); Presiding Judge Jack Von Wald (Vice-Chair); Presiding Judge David Gienapp; Presiding Judge Warren Johnson; Bob Wilcox, Executive Director of the South Dakota Association of County Commissioners; Tena Haraldson, Bureau Chief of the Associated Press; Mark Roby, Publisher of the Watertown Public Opinion; Mark Millage, President of Kilian Community College; John Petersen, News Director, KOTA Territory News; Richard Travis, former President of the State Bar Association; Roxanne Giedd, former President of the State Bar Association; Attorney General Marty Jackley; David Nelson, former Minnehaha County States Attorney; Tim Rensch, defense attorney; Jeff Larson, Minnehaha County Public Defenders Office; Sheriff Don Holloway, Pennington County; Sheriff David Hunhoff, Yankton County; Cheryl Hanna, Director of Access to Justice, Inc.; Denise Richards, Hughes County Victims Assistant; Professor Chris Hutton, USD School of Law; Karl Thoennes, Second Circuit Administrator; and Greg Sattizahn, Legal Counsel for the State Court Administrator's Office.

Because the Committee thoroughly considered these issues over an extended period of time there was certain turnover in the Committee

membership for a variety of reasons. The following members also served on the Committee but were not members at the time of this Final Report: former Presiding Judge and now Supreme Court Justice Glen Severson; former Attorney General Larry Long; Judith Roberts, former Legal Counsel for the State Court Administrator's Office, and Lynn Sudbeck, acting Legal Counsel for the State Court Administrator's Office.

The Committee's work was supported by Gloria Guericke and Richard Lenius from the Unified Judicial System, who provided much appreciated secretarial and technical assistance.

Committee Action

A. Overview

The Committee met six times during its nearly eighteen month study of this issue. Those meetings were open to the public, live streamed over the internet where the facilities permitted and are archived on the UJS webpage. During the course of these meetings, the Committee received a wide range of information on the issues associated with expanded media coverage in the trial courts. As part of its task, the Committee reviewed information from other states concerning their handling of cameras in the trial courts and heard presentations from attorneys, judges, and media representatives from other states regarding their experiences with expanded media coverage. *See Appendix to Final Report and Recommendations* (Appendix). The Committee studied the South Dakota Supreme Court's rules of electronic coverage of its proceedings and also considered historical documents concerning the issues of cameras in the courts of this state. Appendix Tab 2. The Committee compiled and had the benefit of reviewing several informational articles and handouts related to the role of media and the courts. *See Appendix*. Because of the volume of these documents and their importance they are appended under separate cover from this Final Report. *See Appendix*.

B. Highlights of Committee Meetings

1. October 6, 2008

During the Committee's October 6, 2008, meeting, the Committee was able to meet with and hear presentations from a range of experts on the issues associated with cameras in the trial courts. That meeting included Alan Peterson, a media attorney from Nebraska, who relayed his experiences with cameras in the courtrooms. Justice Jerry Larson, retired justice of the Iowa Supreme Court, who chaired Iowa's cameras study committee, described Iowa's experience in allowing cameras in the trial courts. Judge Adele Grubbs, a Georgia Superior Court Judge, provided her perspective on

cameras in the courts. Victor Reynolds, a defense attorney from Georgia, provided the Committee his experiences with the media and the handling of high profile cases. In addition to these individual presentations, the guest speakers also engaged in a panel discussion highlighting the various issues and the pros and cons of expanded media coverage. The Committee viewed sample DVD clips of televised trials in order to see first hand how that expanded media coverage was provided.

2. April 3, 2009

During a meeting conducted on April 3, 2009, the Committee heard from Dave Busiek, a television news director in Des Moines, Iowa. Mr. Busiek offered the media's perspective of expanded media coverage in Iowa and also provided information on Iowa's handbook for expanded media coverage. Mr. Busiek presented the Committee with the practical experiences he has faced in covering court trials. John Bradley, a district attorney in Williamson County Texas, offered his perspective on cameras in the trial courts and identified things for the Committee to consider in proposing any specific rules. Gary Hengstler, the Director of the Donald W. Reynolds National Center for the Courts and the Media at the University of Nevada-Reno, provided an overview of the changing role of the media and identified things for the Committee to consider in accommodating that changing role. Jean Casarez, a correspondent for "*In Session TV*," formerly known as "*Court TV*," a live trial coverage television program, who is also an attorney, offered her perspective and experience with expanded media coverage. Ms. Casarez testified about the role of expanded media coverage in bringing court proceedings to the people and the benefits associated with coverage. Todd Epp, a South Dakota attorney and blogger, provided information on technology used by bloggers and recommended that consideration be given to those outside of the scope of traditional media during the Committee's consideration of these issues.

3. June 5, 2009

Following the prior meetings which were largely informational, the Committee began the process of formulating proposals for discussion. During the meeting Judge Gienapp presented a proposal that would allow the judge, the state and the defendant veto power over expanded media coverage. This proposal was based in part on the current procedure in Minnesota. Attorney General Long presented a proposal whereby court proceedings would be broadcast by state-owned cameras in each courtroom and made available to the public over the internet. Tena Haraldson, Mark Millage, John Peterson and Mark Roby also offered a proposal, based in part on the current procedure in Iowa, that would create a presumption of openness in most

proceedings. This was designated as the Media proposal. These three proposals were discussed and it was agreed more formalized draft proposals would be circulated prior to the Committee's next meeting.

4. October 2, 2009

During the meeting conducted on October 2, 2009, the Committee reviewed the three draft proposals submitted during the interim by Judge Gienapp, former Attorney General Larry Long and the Media proposal. After presentations and a discussion of the merits of each proposal, the Committee members ranked each proposal, including maintaining the status quo (where expanded media coverage is not permitted), as to their preference. Based on these rankings the proposal presented by Judge Gienapp was favored, the "Long" proposal was second and the Media proposal and maintaining the status quo were tied in third place. Exhibits to Final Report (Exhibits) 6. After ranking the proposals the Committee discussed the possibility of pilot projects; but ultimately decided such a determination should be made by the Supreme Court. During this meeting, the Committee conducted a roll call vote concerning whether the individual members favored a presumption that courtrooms be closed or a presumption that courtrooms be open to expanded media coverage. There were ten votes in favor of a presumption that courtrooms are closed and eight votes in favor of a presumption that courtrooms are open. Following this vote, the Committee voted to forward all three proposals to the Supreme Court along with the tally sheet, and a recommendation from the Committee for adoption of Judge Gienapp's proposal, as that was the proposal with the most Committee support.

5. Exhibits

The minutes from all of the Committee meetings are included in this Final Report. Exhibit 7.

Majority Recommendation

Judge Gienapp's proposal, which received the most Committee support, is attached as Exhibit 1.

Minority Recommendations

The proposals also receiving support include former Attorney General Long's proposal; the Media proposal; and maintaining the status quo. The "Long" proposal and Media proposal are also attached as Exhibits to this Final Report. Exhibits 3-5.

Conclusion

Although the Committee was unable to reach unanimous agreement concerning expanded media coverage in the trial courts, the Committee was able to gather valuable information from a number of different sources and provide the unique perspectives of the many divergent interests represented by this broad based Committee. The Committee hopes the information it has gathered and these recommendations assist the Supreme Court in determining this issue. We would be pleased to meet with the Court and/or be available to discuss any of the concerns and issues herein.

For the Committee,

Robert A. Miller, Retired Chief Justice
Committee Chair

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

Exhibits to Final Report

Exhibit Number	Document
1.	Judge David Gienapp Proposal
2.	Exhibit Supporting Majority Report- Presumption of Closedness
3.	Attorney General Larry Long Proposal
4.	Media Proposal
5.	Media Minority Report
6.	Committee Ranking Tally Sheet
7.	Minutes of the Committee Meetings

EXHIBIT 1

PROPOSED RULES FOR CAMERAS IN THE COURTROOM

GENERAL RULE

Except as set forth in this rule, no pictures or voice recordings, except the recording made as the official court record, shall be taken in any courtroom, area of a courthouse where courtrooms are located, or any other area designated by order of the presiding judge of the circuit which order is available in the office of the court administrator in the applicable circuit, during a trial or hearing of any case or special proceeding incident to a trial or hearing, or in connection with any grand jury proceedings.

This rule does not apply to the use of cameras in the courtroom for courtroom security purposes, for use of videotaped recording of proceedings to create the official recording in the case, or for interactive video hearings.

EXCEPTIONS

A judge may, however, authorize:

1. The use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration;
2. The broadcasting, televising, recording or photographing of investiture proceedings or ceremonial proceedings;
3. Upon the consent of the trial judge and all parties, in writing or made on the record at least one week prior to the commencement of the trial, the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
 - a. There shall be no audio or video coverage of jurors at any time during the trial, including voir dire.
 - b. Audio or video coverage of judicial proceedings shall be limited to proceedings conducted within the courtroom and shall not extend to activities or events substantially related to judicial proceedings that occur in other areas of the court building.
 - c. There shall be no audio or video coverage within the courtroom, during recesses, or any other time the trial judge is not present or presiding.
 - d. During or preceding a jury trial, without separate consent of the trial judge and all parties, there shall be no audio or video coverage of hearings that take place outside the presence of the jury. Without limiting the generality of the foregoing sentence, such hearings would include those to determine the admissibility of evidence, and those to determine various motions, such as motions to suppress evidence, motions for judgment of acquittal, motions in limine, motions to dismiss, and *Daubert* motions.

- e. There shall be no audio or video coverage in cases involving proceedings that are not accessible to the public.

TECHNICAL STANDARDS

The trial court may regulate any aspect of the proceedings to insure that the means of recording will not distract participants or impair the dignity of the proceedings. In the absence of a specific order imposing additional or different conditions, the following provisions apply to all proceedings:

1. EQUIPMENT AND PERSONNEL

- a. Not more than one portable television or movie camera, operated by not more than one person, shall be permitted in any trial court proceeding.
- b. Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment for print purposes shall be permitted in any proceeding in any trial court.
- c. Not more than one audio system for radio broadcast purposes shall be permitted in any proceeding in any trial court. If the courtroom is so equipped, audio pick up for all media purposes shall be accomplished from existing audio systems present in the court.
- d. Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the trial judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advanced media agreement, media will be prohibited from the photographic or electronic recording and reproduction of the court proceedings.

2. SOUND AND LIGHT

- a. Only television and photographic and audio equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. Excepting modifications and additions made pursuant to Paragraph (5) below, no artificial, mobile lighting device of any kind shall be employed with the television camera.
- b. Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with a still camera.
- c. The media personnel must demonstrate to the trial judge or authorized representative, adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light requirements of this rule. A failure to demonstrate that the applicable criteria have been

met for specific equipment shall preclude the use of the equipment in any proceeding.

3. LOCATION OF EQUIPMENT AND PERSONNEL

- a. Television camera equipment shall be positioned in such location in the court as shall be designated by the trial judge, or his authorized representative. The area designated shall provide reasonable access to coverage. When areas that permit reasonable access to coverage are provided, all television camera and audio equipment must be located in an area remote from the court.
- b. A still camera photographer shall position himself or herself in such a location in the court as shall be designated by the trial judge or his authorized representative. The area designated shall provide reasonable access to coverage. Still camera photographers shall assume a fixed position within the designated area, and once a photographer has established himself or herself in a shooting position, he or she shall act so as not to attract attention by distracting movement. Still camera photographers shall not be permitted to move about in order to obtain photographs of court proceedings.
- c. Broadcast media representatives shall not move about the court facility while proceedings are in session.

4. MOVEMENT OF EQUIPMENT DURING PROCEEDINGS

News media, photographic, or audio equipment shall not be placed in or removed from the court except before commencement or after adjournment of proceedings each day, or during a recess. Microphones or taping equipment, once positioned, may not be moved from their position during the proceedings. Neither television film magazines nor still camera film or lenses may be changed within a court except during a recess in the proceedings.

5. COURTROOM LIGHT SOURCES

When necessary to allow news coverage to proceed, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions do not produce distracting light and are installed and maintained without public expense. Such modifications or additions are to be presented to the trial judge, or his duly authorized representative, for review prior to implementation.

6. CONFERENCES OF COUNSEL

To protect the attorney/client privilege and the effective right to counsel, there shall be no video or audio pick up or broadcast of the conferences which occur in a court between

attorneys and their client, co-counsel of the client, opposing counsel, conference between counsel and witnesses, or between counsel and the trial judge held at the bench. In addition, there shall be no video pick up or broadcast of work papers of the Court, counsel, or witnesses.

7. IMPERMISSIBLE USE OF MEDIA MATERIAL

None of the film, videotape, still photographs or audio reproductions developed during, or by virtue of, coverage of a judicial proceeding, shall be admissible as evidence in the proceeding out of which it arose, any subsequent collateral proceeding, or upon any retrial or appeal of such proceedings.

8. RULES OF DECORUM

All public media-related equipment to be utilized during court proceedings may be set up one hour before court begins. Any equipment not set up 15 minutes before court begins will not be allowed into the courtroom. No microphone wire or camera cable shall obstruct access to or egress from the courtroom or the podium.

EXHIBIT 2

EXHIBIT _____

At the October 2, 2009 meeting of the Committee for the Cameras in the Trial Courts a vote was taken as to whether or not there should be a presumption that courtrooms are closed or a presumption that courtrooms are open to expanded media coverage in connection with any potential rule that is adopted. The majority of the committee voted that the presumption be that courtrooms are closed.

The proponents favoring a presumption that courtrooms be closed feel, as part of the report, that certain reasons for that position should be set forth. Some of the reasons for that proposal are as follows:

1. If there is a presumption that courtrooms are open and media coverage is denied where a defendant or the State wanted media coverage it would necessitate a motion in that regard by defense counsel or the State with a subsequent hearing and the additional potential for a petition for an intermediate appeal.¹
2. The presumption of openness would in all likelihood require specific findings by the trial court relating to the specific reasons why media coverage is denied.
3. When a defendant wants media coverage and it is not allowed it would give rise to additional appellate issues.²
4. A motion to close would likely give rise to media intervention which again would increase defense and/or State costs.
5. A clear presumption that the courtroom is closed, either under the status quo or a system where the parties and the Court must agree to open the proceeding, creates no avenues for potential costly motion or appellate litigation

¹ Since most defense counsel are court-appointed the costs of these additional duties on the defense counsel would be picked up by already overburdened county budgets for court-appointed attorneys.

² Other jurisdictions have referenced such appellate activity. At least at the inception there would be no appellate standards for the trial court to follow, and also no established standard of review.

EXHIBIT 3



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LARRY LONG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

Date: August 18, 2009
To: Supreme Court's Committee for the Study of Cameras in the Trial Courts
From: Larry Long (Assisted by Brooke Swier)
Re: Cameras in the Courtroom Proposal

Section I. Introduction

Assuming that this group chooses to recommend some form of "cameras" in the trial courts of South Dakota, I propose that every citizen be given access to every courtroom in the State via live audio and video webcasting. Access to the courtroom should be treated just as a public record is treated in South Dakota. To the extent that court proceedings are televised, every person should have access to the footage, just as every person has access to public records in the State. In order to allow every person access to South Dakota courtrooms, court proceedings could be webcast. By having court proceedings in every circuit available over the Internet, every person with Internet access would have the ability to view every court proceeding in every courtroom throughout the State.

Much criticism of existing systems in other states centers on the "editing" by the broadcaster of the televised proceeding. The broadcaster, naturally, wishes to emphasize certain portions of the litigation in order to maximize its market share of the viewership. Competing

broadcasters will do likewise, thus allowing critics to conclude that the competition between media outlets is a significant cause of occasionally misplaced public emphasis on narrow portions of the trial.

This proposal, if implemented, should minimize that criticism. Live streaming video accessed through the UJS (or similar) website would give every citizen the same information as if he/she were sitting in the courtroom. The viewer will see and hear the proceedings unedited, just as in the courtroom. The UJS will have operational control of the system, allowing the judge to limit viewer's access to only those portions of the proceeding which are generally available to the courtroom audience. The broadcast media, the bloggers, and others will still likely be able to capture the feed and edit it for the evening news or otherwise, but the identical footage will be equally available to all.

The South Dakota Legislature has offered streaming audio of committee meetings and daily meetings of the Senate and the House of Representatives for several years. The Legislature is considering an expansion from "audio-only" streaming to audio and video streaming of the legislative session.

Other states are experimenting with webcasting court proceedings. The Nebraska Educational Network (NET) operates a live webcast of legislative meetings as well as courtroom proceedings from both the Nebraska Supreme Court and the Court of Appeals.¹ The NET website provides a schedule of the cases that will be heard before both the Supreme Court and the Court of Appeals. The oral arguments are webcast live and are also archived for replay on demand.²

¹ NET, *The 2009 Nebraska Legislature, Judiciary and Governor's Hearing Room Coverage*, <http://www.netnebraska.org/publicmedia/capitol.html> (last visited July 28, 2009).

² NET, *Live Arguments of the Nebraska Supreme Court and Court of Appeals*, <http://www.supremecourt.ne.gov/oral-arguments/livevideo.shtml> (last visited July 28, 2009).

In Delaware, Chancellor William B. Chandler III webcast the trial involving Walt Disney Co.'s severance package to former executive Michael Ovitz. The webcast was offered free to Delaware residents and the first fifty out-of-state users. Other out-of-state users paid ten dollars a day for access.³ Access for business users was \$600 a week for the audio, video, and online access to documents and slides presented in the courtroom.⁴ The proceedings were aired over the internet site *Courtroom Connect*.⁵

The New Jersey Supreme Court has begun a live webcast of all proceedings.⁶ Links for viewers to watch court proceedings are posted online and are available for thirty days. Webcasts older than thirty days are archived on the Rutgers Newark Law School website.⁷

Broadcasting courtroom proceedings over the Internet in every courtroom throughout the State is possible. Live webcasting and archiving court proceedings would provide every citizen the opportunity to see the State's courtrooms first hand.

Section II. Current Technology

Many courthouses in the State use video conferencing to communicate from the courthouse to the jail and for other video conferencing needs. A combined total of forty courthouses and jails across the State have UJS Video Conferencing systems, also known as ITV systems. Additionally, an ITV system is operational at the Bureau of Administration Training Room in Pierre, for a total of forty-one video conferencing systems throughout the State.

In the First Circuit, the following facilities have ITV systems; Brule County Jail,

³ Eddie Florek, Rebecca Dougherty, & Kristen B. Mitchell, *The News Media and the Law, Camera Controversy in Courtrooms Continues* (Feb. 1, 2009), <http://www.rcfp.org/newsitems/index.php?i=6183>.

⁴ Laura M. Holson, *For \$600 a Week, Screen-Side Seats to Lawsuit Involving Disney*, THE NEW YORK TIMES, Oct. 11, 2009, available at http://www.nytimes.com/2004/10/11/business/media/11disney.html?_r=1.

⁵ *Id.* See *Courtroom Connect*, www.courtroomconnect.com (last visited August 11, 2009).

⁶ New Jersey Judiciary, *NJ Supreme Court WebCast*, <http://www.judiciary.state.nj.us/webcast/index.htm> (last visited July 29, 2009).

⁷ The New Jersey Digital Library Network, *Supreme Court of New Jersey Oral Arguments Archive*, <http://njlegallib.rutgers.edu/supct/> (last visited July 29, 2009).

Chamberlain; Brule County Courthouse, Chamberlain; Union County Courthouse, Elk Point; Union County Jail, Elk Point; Charles-Mix County Courthouse, Lake Andes; Davison County Jail, Mitchell; Davison County Courthouse; Mitchell; Turner County Courthouse, Parker; and Yankton County Courthouse, Yankton.

In the Second Circuit, the following facilities have ITV systems: Lincoln County Courthouse, Canton; Minnehaha County Courthouse, Sioux Falls; Minnehaha County Courthouse 5B, Sioux Falls; and Minnehaha County Jail, Sioux Falls.

In the Third Circuit, the following facilities have ITV systems: Brookings County Jail, Brookings; Brookings County Courthouse, Brookings; Grant County Courthouse, Milbank; Codington County Courthouse, Watertown; and Codington County Jail, Watertown.

In the Fourth Circuit, the following facilities have ITV systems: Harding County Courthouse, Buffalo; Meade County Courthouse, Sturgis; Meade County Jail, Sturgis; Lawrence County Courthouse, Deadwood; Lawrence County Jail, Deadwood; Lawrence County Grand Jury, Deadwood; Butte County Courthouse, Belle Fourche; and Perkins County Courthouse, Bison.

In the Fifth Circuit, the following facilities have ITV systems: Brown County Courthouse, Aberdeen; Brown County Jail, Aberdeen; Day County Courthouse, Webster; Roberts County Courthouse, Sisseton; Roberts County Jail, Sisseton; Spink County Courthouse, Redfield; and Walworth County Courthouse, Selby.

In the Sixth Circuit, the following facilities have ITV systems: Bennett County Courthouse, Martin; Gregory County Courthouse, Burke; and Hughes County Courthouse, Pierre.

In the Seventh Circuit, the following facilities have ITV systems: Pennington County

Courthouse, Rapid City; Juvenile Services Center, Rapid City; Custer County Courthouse, Custer; and Fall River County Courthouse, Hot Springs.

In addition to courthouses and jails using video conferencing systems, many other organizations throughout the State are benefiting from the use of audio and video technology. Farber Hall on the University of South Dakota campus has a stationary high definition camera. The camera is linked into a switching system which allows the video to be sent to SDPB Television. Once SDPB receives the video, SDPB is then capable of broadcasting the video and audio footage over the internet, DDN, or to other outlets. The switching system is run by one person. The cost of the system is between \$20,000 to \$35,000. However, the camera is graphics capable and very sophisticated. Such a sophisticated system probably would not be necessary for each courtroom.

On the fourth floor of the South Dakota Capitol, in Conference Room 414, video cameras are used for video conferencing. The cameras are voice activated, meaning the camera videotapes the person who is speaking into the microphone. These cameras work well with the DDN system, but do not produce broadcast quality picture footage. In order to make the footage broadcast quality, higher quality cameras would be needed.

The DDN is a interactive video conferencing system that connects the Executive, Legislative, and Judicial branches, the Board of Regents, private universities, public technical schools, municipal governments, and elementary and secondary schools. "Any business, school, organization, agency or individual may use the DDN system for instruction, training, meetings and presentation purposes."⁸

The City of Pierre also has an audio and video broadcasting system. The City of Pierre

⁸ Digital Dakota Network Video, *Welcome To South Dakota Digital Dakota Network*, <http://ddnvideo.sd.gov/> (last visited July 31, 2009).

has been broadcasting city commission meetings and other events throughout the City for about ten years. Pierre uses one stationary system in the meeting room. The room has six cameras which can cover the entire room. The cameras which broadcast quality are SONY EV 70s. The City did not purchase high definition cameras as the cost would have been greatly increased. The cameras may be turned on with the push of a button. One operator at the back of the room switches back and forth between cameras as necessary. The video and audio can be streamed to the Internet immediately and also broadcast over Oahe TV.⁹ To put the footage on the Internet and television, the City uses a system called NewTek VT5. With a few clicks of a button, the footage is webcast or broadcast on television. The City Commission uses a DVD burner to save a copy of each meeting.¹⁰

Several portable systems are used in Pierre in churches and schools, and can be used at venues around the City to broadcast to Oahe TV and the Internet. The portable systems can be set up in ten minutes. The cameras can be either the Sony EV 70s or a regular personal video camera. The portable system uses a system called Tricaster and the NewTek VT5 to stream the footage to online and television. The system can run off of a car battery in a rural area using a Blackberry as a modem for streaming online. The portable systems are durable. Several of the systems used by other consumers have been running for fifteen years.¹¹

Patrick Callahan from Oahe TV has offered to provide a demonstration of the Pierre City portable system at the next Committee meeting.

Section III. Mechanics

A website would be needed to broadcast court proceedings online, or the current UJS website could be used to host live and archived webcasts. Each courtroom could have its own

⁹ OaheTV, <http://www.oahetv.com/> (last visited July 30, 2009).

¹⁰ Interview with Patrick Callahan, Oahe TV (July 30, 2009).

¹¹ Interview with Patrick Callahan, Oahe TV (July 30, 2009).

icon with live webcasting of court proceedings. The schedules of all court proceedings could be posted on the Internet. People would be able to visit the courtroom's icon and find the corresponding schedule to know which proceedings were being webcast at a particular time. The archived proceedings could also be saved on the website.¹²

The existing court video conferencing systems may possibly be modified for use. For example, with the current video conferencing systems, courtroom A and courtroom B each have a system. The video doesn't go directly from courtroom A to courtroom B, but is diverted to a central location before reaching courtroom B. It may be possible to record, capture, and stream the video from the central location. A centrally located control room could capture and send out all the video via the Internet. This will require further study because we received conflicting opinions whether the court video conferencing systems could be modified for streaming to the Internet.

Several options exist to provide coverage of courtroom proceedings using a single stationary camera if the video conferencing systems currently in many courtrooms would be unable to webcast the audio and video footage. First, a single camera may be purchased and used. The camera would be pointed in a stationary direction and would be capable of capturing only one angle.

A second option would be to purchase voice activated cameras. With voice activated cameras, microphones are interconnected to the video. The camera points to whomever is speaking into a microphone. These systems are more expensive and work well except for conversation jumping back and forth between individuals.

A third option is to have a person actually run the system. This person would make sure

¹² See Nebraska Judicial Branch, *Call -- Nebraska Court of Appeals*, <http://www.supremecourt.ne.gov/oral-arguments/livevideo.shtml> (last visited July 30, 2009) for an example of an online court schedule.

the system was running correctly in each courtroom. One possibility would be to have the operator using a joystick to operate the camera. The operator would be able to capture various angles within the courtroom.

Additionally, portable audio and video stations may be used in addition to the stationary cameras. Everything needed to broadcast the courtroom proceedings could be carried in a small box. Acquisition of additional cameras would be necessary. However, it may be possible to purchase regular video cameras to use with the portable system. The portable system would be workable with only one camera in each courtroom.

Section IV. Cost

The costs for the various webcast options range in price. A video conferencing or ITV system as currently used throughout the State can range in price from \$30,000 to \$60,000 per system.

The South Dakota Legislature is currently examining the cost of audio and video streaming in the House and Senate Chambers. The audio and video system would replace the current audio-only system. January 2009 report prepared by Larry Rohrer, Director for Content for SDPB Television, estimates the cost for the Legislature to equip both the House and Senate with audio and video equipment as follows:

Video Streaming:

2 Cameras minimum per room (three recommended for the House and Senate)

\$8,500 Per-Camera with mount for remote control operation

\$17,000 to \$25,500 per room

\$5,000 Manual switching terminal (will require a designated operator)

\$21,000 Automatic/voice activated switching terminal (same as 414)

\$1,500 to \$2,000 –for each room (3 or 4 monitors - one per camera)

\$2,500 Desk-top PC, Video card, software for encoding and video streaming

Installation Costs:

\$ 250 - Wiring and integration to each room's Audio mixer

\$ 25,000 (per bid) – WAN or Wiring, installation from Video cameras to a central monitoring location

\$ 0 – Computing Network infrastructure and distribution

(in kps, one video stream = the 20 audio streams)

\$ 15 per operational hour – Operators for each video webcast (fewer operators will be needed if automatic/voice activated switchers are installed.

Total:

\$30,000 Base Infrastructure -- Developing a larger central monitoring location for audio/video streaming and wiring infrastructure. Plus

Per Room - \$26,250 to \$51,250

Total Project (7 rooms) - \$225,000 to \$400,000

On-going operational – 1 to 5 FTE or season staff during operational hours and technical maintenance.

This system may well be too expensive to duplicate in every courtroom in South Dakota.

Modification of existing systems already in place would seem to be more attractive financially.

Section V. Court Proceedings To Be Webcast

This proposal does not address which proceedings should or should not be webcast.

Section VI. Funding

The dollars necessary to equip and operate the system could be obtained in several ways:

1. The UJS could request an appropriation from the South Dakota Legislature. This option would be most viable if the legislature was asked to fund only the equipment, but not the ongoing costs.
2. The system could be operated through the South Dakota Public Broadcasting. SDPB operates on a combination of state appropriations, contributions, and local membership contributions. Because SDPB is operating a similar system now on behalf of the South Dakota Legislature, they would likely be able to tackle such a project. SDPB could be authorized to charge a small fee for the service, and thus generate income to defray the expense of operating the system.
3. UJS could operate the system and provide the service through their website. Access to the service could be provided for a fee. A fee for access to public records is not a new concept. County offices (Register of Deeds) and state offices (Secretary of State) have been generating money by selling access to public records for years. UJS offers a similar service (criminal record checks through the clerk of courts).
4. Other funding systems could be designed which I have not thought of.

Section VII. Conclusion

The purpose of this proposal is to create a consistent "cameras in the courtroom" policy throughout the State. The cameras would be owned and operated by the UJS. With the live webcasting of court proceedings in each courtroom throughout the State, no distinction would be made as to which persons have access to the courtroom. Every citizen with Internet access would be able to watch what was happening in a particular courtroom. Internet access is available at virtually any library.

EXHIBIT 4

Expanded Media Coverage

South Dakota

06-05-09

Broadcasting, televising, recording and photographing shall be permitted in South Dakota courtrooms and adjacent areas during sessions of court, including recesses between sessions, under the following conditions:

1. Media must give advance notice of the intent to use expanded coverage.
2. The judge shall grant permission unless he or she concludes, for reasons stated on the record, that expanded media coverage would materially interfere with the rights of the parties to a fair trial in the circumstances of the particular proceeding.
3. The judge may prohibit expanded media coverage of an individual witness who objects and shows good cause, if no other remedy will resolve the objection. For instance, the judge could rule that the voice of the witness could be used but the person's face could not be shown.
4. There shall be no expanded coverage of a witness who is a victim of sexual abuse, unless the witness consents.
5. The following types of witnesses may ask the judge to prohibit expanded coverage of their testimony, if they can show it would affect them differently than it would a member of the public in general: victim testifying in a forcible felony prosecution, police informants, undercover agents, and relocated witnesses.
6. Expanded media coverage is prohibited during any court proceeding which is required to be held private under South Dakota law. In addition, expanded media coverage of the following cases is allowed only if all parties consent on the record to allow it: Juvenile, dissolution, adoption, child custody, trade secrets.
7. When expanded media coverage is approved there shall be no coverage of jury selection and jurors, attorney-client conferences, discussions among co-counsel, discussions between court and counsel.
8. In all other cases, expanded media coverage of a witness or proceeding shall be permitted, unless the judge states the reasons why such coverage would interfere with the right to a fair trial in the particular situation at hand.

How to Request Permission for Expanded Media Coverage

Requests for permission to use cameras or recording equipment in court proceedings must be submitted to the media coordinator at least 14 days in advance of the time the proceeding is scheduled to occur. Or if the proceeding is not scheduled at least 14 days in advance, the request must be made as soon as practicable.

The media coordinator will notify the clerk of court that expanded coverage is being requested. If there are any objections the judge shall rule on written objections or hold a hearing.

If more than one media outlet requests permission for expanded coverage, the media coordinator shall arrange a media pool.

Rules on equipment: All equipment must be unobtrusive and silent. Equipment must be in place 15 minutes before the scheduled start of the proceeding. Equipment must be operated from a fixed position. Equipment shall be removed only when court is not in session.

Maximum equipment allowed: No more than two still photographers, each with two cameras. No more than two video cameras, each with one operator. No more than one audio system. No flash bulbs or artificial light. Where possible related equipment shall be located outside the courtroom.

Decorum: Media personnel shall be properly attired and shall maintain proper decorum at all times. Media personnel shall not move about the courtroom and shall not move in a way that distracts from the proceeding. Cell phones and pagers must be turned off when in court.

EXHIBIT 5

Media Minority Report

To the
Supreme Court's Committee
For the Study of Cameras
In SD Trial Courts

December 4, 2009

Tena Haraldson
Mark Millage
John Petersen
Mark Roby
Dave Nelson

Media Minority Report

To the Supreme Court's Committee For the Study of Cameras in SD Trial Courts

The South Dakota Supreme Court and Chief Justice David Gilbertson are to be congratulated for creating the committee, funding its operation and compiling such a detailed report on the question of media access to South Dakota courts.

Because there is currently no camera access in court trials in South Dakota, there was a vacuum of experience for all concerned, with the sole exception being those journalists, judges and lawyers who have participated in media coverage in other states or in South Dakota Supreme Court arguments.

However, for citizens of at least two-thirds of the states in the nation, there would be no learning curve on how media cameras operate in trial court. Many other states have had camera coverage for decades. None of them are moving to retract that access. We can learn from the experience in these states that electronic coverage can be integrated into trial courts without sacrificing the rights of other parties or the decorum of the courts.

Yes, there will be a learning curve, although we argue it will not be steep. We are confident the electronic coverage can be done professionally and with minimal intrusion into the trial process. We are equally confident that within a short time, electronic media coverage won't be any more disruptive than the security cameras that already exist in many courtrooms.

For the record, and to make our position crystal clear – the media representatives DO NOT support the so-called Gienapp proposal, based on the Minnesota camera rules. None of us voted for the Gienapp proposal, and here's why:

1. With perhaps one or two exceptions, Minnesota has NEVER HAD electronic coverage of its trial courts, under the existing rules. The only occasion that could be pointed out to the committee was very limited electronic coverage toward the end of the court action in the recent Coleman-Franken election dispute.
2. In fact, the Minnesota Supreme Court has started a process to review the Minnesota rules, with an eye toward modernizing them and making them less restrictive.
3. The Gienapp plan does not reverse the current presumption that electronic coverage is banned in South Dakota. It merely sets an impossibly high requirement to overcome the prohibition, namely that there be no objection by anyone involved in the trial.
4. Judge Gienapp said there was willingness among some trial judges to allow electronic coverage, but he said the majority of judges did not want to be asked to rule on another pre-trial issue. The rules proposed by media would presume that electronic coverage is

allowed, unless the judge sets more restrictive rules on particular testimony or finds that cameras would interfere with a fair trial. Media believes the judge should control the courtroom and not abdicate the coverage question to any other party.

5. At least one court administrator said he didn't have the time or money to set up and manage media coverage. However, under our proposal media takes on most of that burden. We would provide a coordinator and pay the costs of cameras, cabling, transmission and staffing, as we do now for Supreme Court coverage. Media also would be responsible for pooling resources and enforcing decorum of the media participants.

We respectfully ask the court to look again at the media proposal based on the Iowa rules for electronic coverage in trial courts.

Finally, we ask the high court to reverse the presumption that cameras are banned and create a rule that assumes electronic coverage will be permitted unless the judge finds a good reason to preclude it. Without electronic coverage a growing segment of the public—those that get their news online--simply won't see or hear much about South Dakota courts. More and more news consumers pay attention to video and audio reporting on the Web for nearly all of their information.

South Dakota's legislative and executive branches have made significant progress in opening their doors to public scrutiny. Hours of legislative debate are televised and streamed online. Public documents are now presumed to be open for inspection. South Dakota has created a process to evaluate the conduct of public meetings to ensure openness. The judicial branch can rightfully be proud of electronic coverage of the Supreme Court, but that concept should be extended to trial courts.

Media understands the reluctance to make a change that could affect any person's right to a fair trial. And we agree any new rules should be crafted after deliberation and study. That is why media proposes a pilot project that would allow camera coverage in a limited number of courtrooms for a limited time—the same procedure the Supreme Court followed before making camera coverage permanent. After the pilot project the experience can be evaluated before final rules are entered.

As we saw in the committee, it may not be possible to reach unanimous support for any proposal. But that shouldn't stop the court from approving electronic coverage under conditions already found to be successful in other states.

EXHIBIT 6

Tally Sheet – 1st Vote

Status Quo

#1, #1, #2, #4, #3, #2, #3, #2, #1, #4, #4, #4, #1, #4, #4, #2, #4, #4, #2,

4 as 1st choice

5 as 2nd choice

2 as 3rd choice

8 as 4th choice

Media

#2, #4, #4, #2, #2, #4, #1, #4, #4, #2, #3, #2, #3, #3, #1, #4, #2, #1, #4

3 as 1st choice

6 as 2nd choice

3 as 3rd choice

7 as 4th choice

Long

#3, #3, #3, #1, #4, #3, #2, #3, #3, #1, #2, #1, #4, #1, #3, #3, #1, #2, #3

5 as 1st choice

3 as 2nd choice

9 as 3rd choice

2 as 4th choice

Gienapp

#4, #2, #1, #3, #1, #1, #4, #1, #2, #3, #1, #3, #2, #2, #2, #1, #3, #3, #1

7 as 1st choice

5 as 2nd choice

5 as 3rd choice

2 as 4th choice

EXHIBIT 7

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.

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

Meeting Minutes

**Monday, October 6, 2008
8:30 a.m. CT**

**Embassy 2 & 3
Holiday Inn City Centre
100 W. 8th St.
Sioux Falls, South Dakota**

Attendance

Committee Members: Mark Roby, Jeff Larson, Tim Rensch, Karl Thoennes, David Hunhoff, Honorable Jack Von Wald, Chief Justice (Ret.) Robert Miller, Judith Roberts, Mark Millage, Professor Chris Hutton, Dick Travis, Honorable Glen Severson, Attorney General Larry Long, Bob Wilcox, Don Holloway, Denise Richards, Tena Haraldson, John Petersen, Dave Nelson, Honorable David Gienapp. Gloria Guericke was the Recording Secretary.

Excused: Roxanne Giedd and Cheryl Hanna

Presenters: Alan Peterson, Attorney from Nebraska; Justice Jerry Larson, Senior Judge Retired from Iowa Supreme Court; Judge Adele Grubbs, Superior Court, Georgia; Victor Reynolds, Defense Attorney, Georgia

Guests: Matt Johnson, KDLT; Josh Verges, Argus Leader; Tara Okeson, SDNA; Ben Dunsmoer, KELO; Dexter Gronseth, KELO

Call Meeting to Order

Chairperson Chief Justice Miller called the meeting to order at 8:35 a.m. He asked committee members to introduce themselves for the benefit of our guests. He explained that each guest speaker will be introduced before they present to the committee. Members and guests were provided biographies, which provided additional details about each presenter.

Pro:

- **Alan Peterson, Attorney, Nebraska**

Mr. Peterson is a media attorney who has been in practice for over 40 years. He has also been involved in numerous cases dealing with children, nuclear waste, and other high interest areas. He explained that for many years, he tried to keep the courts open

in regard to records, reporters, the public, etc., and that motions to close the courtrooms were very common in the 1980s and into the '90s. Cases where a confession was challenged have been closed to protect those involved, whereas, appellate arguments were open to the public, if they were interested.

Several developments occurred to move Nebraska to the televising of trials. One development occurred in 2006, when the regent of the University of Nebraska was impeached by the legislature for campaign impropriety. Allegedly he had failed to report campaign contributions early enough so that his opponent would get matching campaign funds. The legislature became involved and the regent ended up being tried in front of the Nebraska Supreme Court. Since the Court had a rule to allow cameras in the courtroom, they allowed it for this trial. The trial lasted 1-2 weeks and the regent was impeached and successfully kicked out of office. There were no problems with the televised trial. Mr. Peterson stated that they have been televising trials in the courtrooms for over 2 decades.

Mr. Peterson discussed the cameras pilot project in Nebraska and explained that he is aware there can be abuses by the media and lawyers in regard to open access. He stated that it's a love-hate relationship. Nebraska's Judicial Districts 1 & 3 have been televising since July of this year.

Mr. Peterson discussed the DVD clips he brought to show to the committee. One was of a trial in Beatrice, NE regarding a drug-induced killing. The question was whether or not the killing was premeditated. The judge in this case said there was to be no grandstanding and the jurors did not complain about the cameras. In Nebraska, they do not allow the jurors to be shown. There was concern there would be emotions shown by the victim's family and the others involved but the judge felt this case needed to be shown because of the way the case came out – not premeditated, due to the many drugs taken prior to the murder.

Mr. Peterson discussed a side benefit of the taped trials. Excerpts from the taped trials are being used as a teaching tool by a professor at the School of Journalism.

Mr. Peterson explained that in Districts 1 & 3, two of the courtrooms have two permanent cameras each, with one camera focused on the judge and the other on the lawyers. The only problem they've experienced with cameras was that one camera "dozed off" one time and pointed down at the #1 juror.

Disruptive noises, intimidation of witnesses, grandstanding, and other anticipated concerns have not been seen by the judges who have cameras in their courtrooms. The cameras have been providing open access to the cases.

Mr. Peterson told a story about his dad and his creative way of fishing. He noted that glitches may come up, such as a "snapping turtle," if you institute cameras in your courtrooms but, so far, there have been no "water moccasins."

Mr. Roby asked if trial judges would say things are slower or faster than in Nebraska's pre-camera days. Mr. Peterson stated that he hadn't asked anyone this question but he has heard that people tend to forget about the cameras. He compared it to being in a department store or casino where you know you're being filmed, but you tend to forget about it.

Mr. Nelson asked if witnesses have talked to judges about their reticence. Mr. Peterson replied that their rules ask victims to tell judges of their concerns. Sexual trials or informants are not televised in order to protect individuals and their privacy. Nebraska's District One's rules are copied from another state and contain the types of cases that will not be televised. Mr. Peterson explained that their judge wanted to be able to cut off anything that might be a surprise item. The other district was more comfortable with the televising and didn't have exceptions. Mr. Peterson offered to share the rules with the committee.

Ms. Richards asked if juveniles were televised. Mr. Peterson stated that juveniles were mentioned in both sets of rules as being a special exception. Before filming could occur, agreement of all involved would need to be obtained, stating it would not be harmful to the juvenile. Otherwise, both districts start with the assumption that all cases will be televised.

Judith asked about exceptions for domestic abuse cases that are not sexual assault. Mr. Peterson replied that he'd need to check on this category.

Professor Hutton asked if specific policies will be set once Nebraska passes its pilot process stage. Mr. Peterson noted that 3 more districts are working on getting cameras installed. He felt that most districts will feel more comfortable once specific rules are in place, rather than relying on the feelings of certain judges.

John Petersen asked about robotic cameras and Alan Peterson replied that they are only used in Lincoln. He explained that these cameras are very expensive and they were paid for by an outside source, not through the judicial system.

John Petersen asked if sidebars were filmed. Mr. Peterson noted that these are not fair game for the cameras. Normally a white noise device is used during the sidebars as it knocks out the feeds in the courtroom.

Attorney General Long asked who has access to the feed. Mr. Peterson noted that these are all digitals and are kept in a side room in the courtroom. The news media has access to the information but the general public does not.

Mr. Larson asked about transfer cases where a juvenile is tried as an adult. Mr. Peterson replied that these would not be deemed as a juvenile case.

Mr. Roby asked if a judge could request no camera coverage. Mr. Peterson explained that this option was available. In addition, if a judge finds that circumstances are changing, he can shut down the case.

Prof. Hutton questioned if a shut-down case could be subject to any kind of appeal. Mr. Peterson noted that the news media could raise concern and it could end up with the case going to appeal.

Judge Severson asked at what point they not show jurors and Mr. Peterson replied that they generally don't show jurors except during the verdict.

- **Justice Jerry Larson, Senior Judge. Retired from Iowa Supreme Court in May 2008**

Retired Justice Larson was chair of Iowa's cameras study committee, which included studying recording devices in addition to cameras. He said he first became aware of cameras in the courtroom during a trial in Sidney when a reporter come up to him and said she wanted to take photos but the rules didn't allow it. He then contacted a Supreme Court member who told him why. The ABA adopted Canon 387 after a case where there were media all over the courtroom and people were tripping over people and wires. He thinks this judgment has now changed.

Later, after he became a Supreme Court member and the Supreme Court decided to investigate recording trials, there was concern that people would grandstand. Time proved that grandstanding was not a concern and they also found that they got better action from the judges. He felt that verbatim coverage of a trial is more accurate than that run through the sieve of a newspaper editor. If you limit it to appellate cases, cameras in the courtroom do not mean much.

Justice Larson strongly suggested we have Media Coordinators appointed to handle the expense and the leg work of the cameras and to take it out of the realm of judicial involvement. In Iowa they have broad discretion for the judges. He stated that you head off the resistance of the trial courts if you have a general discretionary base for the rules. This relieves a lot of the responsibility on the trial judges. He's not heard from any judges or lawyers who oppose cameras in the courtrooms.

Initially, Iowa suspended their rule and tried cameras for one year. They heard no concerns so suspended the rule for another year. Again, no concerns were voiced so they adopted the rules. Iowa's rules are the second most liberal in the country, second to Florida.

He noted that trial judges have broad discretion. This helped with the buy-in and they have heard no concerns.

Justice Larson noted that the (first) O.J. Simpson case was an example of a televised trial that got away. He felt that the judge should have suspended coverage or reigned-in on the participants.

Justice Larson said that he hoped we would do cameras on a trial basis. He suggested that we allow trial judges broad discretion and have Media Coordinators bear the expenses and leg work.

He felt that cameras in the courtroom allow a window for the general public and that their courts are better accepted now since cameras have been allowed.

Chief Justice Miller commented that Iowa's camera coverage is statewide but noted that there are some rural areas in South Dakota that would be hard to cover. Justice Larson stated that their rural areas are not covered much because it is too expensive.

Mr. Millage asked about the Media Coordinator position. Justice Larson replied that there is one for each district and one for the state appellate, and that they are usually media people.

Professor Hutton asked if it is disruptive in rural areas when they have a notorious case since they aren't used to all the coverage. Justice Larson referenced such a case where woman shot her husband and kept him in the house for one year. He noted that a TV camera won't make much difference on such a sensational case as the highly gruesome cases are the ones that print media often cover.

Ms. Roberts referenced the polling done by Iowa after the one year of cameras and then the second round of polling. She asked if clerks, circuit administrators and other court staff were included in the polling. Justice Larson replied that they were not included, but the lawyers, judges, and witnesses were polled by a professional pollster.

Alan Peterson noted that Nebraska allowed the judges who wanted to try the cameras in their courtroom to step up and put together their rules.

Ms. Roberts asked about the cameras location in the courtrooms. Justice Larson replied that they are permanent and that people are not walking in and out to take care of the cameras. In addition, no flash bulbs or noisy recording equipment is allowed. Iowa requires "hush covers" on the cameras.

Ms. Roberts asked if the media outlets contact the Media Coordinator for the footage they want and Justice Larson replied affirmatively.

Alan Peterson noted that Janet Bancroft (in Nebraska) has assumed the position comparable to Judith's and he felt she would be a good contact for additional information on this subject.

Mr. Millage asked how Iowa courts deal with juvenile cases. Justice Larson stated that cameras are not allowed in custody or juvenile cases but it is fair game if a juvenile is tried in adult court.

10:00 a.m. Break

The DVD equipment was set up during the break and Mr. Peterson showed the DVDs he had brought from Nebraska.

Mr. Peterson informed the group that the DVD shows Judges Burns, Flowers, and Corsland. This news coverage is from the start of news cameras in the courtroom.

On the DVD, Judge Paul Corsland explained that the coverage has given the public more insight into courtroom proceedings, yet allows fair coverage to all the people involved in the trial. In the U.S. today, we have public courtrooms and need to make them more open to the public. People are used to getting their news in their living rooms through different types of media such as radio, newspaper and TV, so not to do cameras in the courtrooms deprives people of access to their courts.

On the next DVD were shown Judges Steven Burns and Karen Flowers. The newscast shows 2 cameras in the courtrooms during the pilot project. The interviewed judges felt the cameras shouldn't change things because the cameras were so unobtrusive and that people will forget they are there. They noted that the juries and the juvenile and domestic abuse cases were exempted from televising.

Con:

- **Judge Adele Grubbs, Superior Court, Georgia**

Judge Grubbs informed the group that the federal courts do not allow cameras. It is not unconstitutional since they do not allow it. She referenced the two handouts regarding Georgia's Uniform Superior Court Rule 22 (Electronic and Photographic News Coverage of Judicial Proceedings) and Code 15-1-10.1 (Standards in determining grant of requests for televising, videotaping, or motion picture filming of judicial proceedings).

In Georgia, the media must make an application for trial coverage. The respective judge then has a meeting between the state and the defense regarding the application. The state must show evidence, not just say they do not want the media coverage. An acceptable reason would be if it would have an effect on the defendant's due process rights. She noted that you're looking at the rights of the defendant vs. the rights of the press.

Judge Grubbs stated that when she is in trial, she is in charge. She needs to be able to tell the media what they can and cannot do. She noted that juveniles can be photographed from the waist down, but what they say can still be heard. She felt that you need to be able to protect people. You need to be able to guarantee a fair trial. She

can't guarantee this with the pre-trial media coverage. Once the case is open, it might be a bit different.

She informed the committee that you should never allow the photographing of the jury as we're talking about the integrity of the courtroom. If filming is underway, everyone knows this is a newsworthy case. Jurors, even though not filmed, are aware their decision will be questioned and you will find that some jurors cannot make a decision.

Judge Grubb said she understands the press's position on the matter. It would be one thing if the filming was for educational purposes, but that's not the case. They want to cover stories that have excitement. When you go home at the end of the day and see the coverage on TV, it's not what you've seen in the courtroom. The media can only put so many sound bytes in a section and people can only absorb so much information, so they need to condense things. She did not feel this was fair coverage.

Judge Grubbs stated that when establishing the rules, to look closely at the pre-trial issues as you have to set rules to protect the victims and the rights of the state. You need to make sure that people get a fair trial. She noted that the public has a right to know, but this can be done through court files or they can attend the trial.

Judge Severson asked how she dealt with pre-trial publicity as they get this even without a camera. Judge Grubbs replied that it is even worse with a camera. She has found that if she does not allow cameras in the pre-trial issues, then the media does not want to cover the court case.

Judge Grubbs referenced a case where the defendant confessed to raping and burying a girl. The judge suppressed the confession but the media released the information. This resulted in them having trouble getting a jury.

Ms. Haraldson asked if the details of this statement were in the court record. Judge Grubbs replied that once the trial is over and the verdict released, then the information can be open record as the defendant's rights are no longer an issue.

- **Vic Reynolds, Defense Attorney, Georgia**

Mr. Reynolds stated that his mother worked in the print media field for 4 years, plus he has friends in the media and has worked with them, so he has much respect for the media. He has found the media to mostly be very professional. He stated that once a case has started, he hasn't found any concerns. His concern is for his client.

Mr. Reynolds referenced Georgia's Rule 22, which outlines what it takes to get the media into a Georgia courtroom. It is what they have used to keep media out of pre-trials.

He explained that the media will be attracted to the high-profile cases, not the everyday ones, and that you need to realize what this will do to these types of cases.

Mr. Reynolds was a police officer for 6 years before going to law school. He always remembers cameras being in the courtrooms. He does not remember Georgia going through what we are currently going through regarding cameras.

In Georgia, the Rule 22 forms are completed and filed by media personnel. The judge will contact him that a Rule 22 has been filed and he then gets to state his opinion as to whether or not he wants the cameras present. In preliminary matters such as bond issues or pre-trial, a prosecutor will state their standing. They usually object. Most judges at any level will let the camera in due to Georgia's openness standing. The media in Georgia start their coverage immediately, often at the jail.

Mr. Reynolds recommended that we think about where we want to set the camera. He stated that he hasn't found the cameras to be obtrusive.

Georgia's Rule 22 states that no one but court personnel can affect the lights or the audio system, and that the cameras need to be quiet and the proceedings must not be disruptive. He recommended covering all the details. He noted that a judge can step in when needed.

He agreed with Judge Grubbs' concerns and noted that Georgia's rules give more authority to keep the media out than what is exercised by the judges.

Mr. Reynolds said that from a personal aspect, the media coverage has helped his practice due to the televising, but his concern is regarding his client. He has to ask what is the practical effect televising will have on the cases he is handling and how will it affect the jury selection.

In a death penalty case, Mr. Reynolds will file 100-150 motions to ban the media, realizing that in the framework they are working in in Georgia, the motion will not be granted. They file for closure of the hearing because of sensitive information. They have an evidentiary hearing as to why the media should be banned for this particular case. They show why a potential jury might be tainted if certain information comes out and might affect his client from receiving a fair trial. As a general rule, most of the time Georgia rules toward an open court due to the groundwork set out.

Mr. Reynolds discussed certain precedents where the need for closure should exist, which should be used if needed. There is legal argument where the court can come in and close a case.

From a lawyer's perspective, you need to consider what effect it has on cases if the media is there from front to end. You will find that the media only wants to cover high profile cases - all the pre trial issues, bonds, etc. He noted that it will be difficult to try your case without changing your venue if the media is there from start to end. The general public gets all the information and it will be hard for you to select your jury.

Mr. Reynolds discussed a high-profile death penalty case where a woman was accused of killing her husband with antifreeze. It was later found she killed her second husband the same way. In the preliminary jury they questioned 135 people. 133 had heard of the case and 109 had an opinion. They had to move the trial to another location. He noted that you then end up with other problems such as money for the relocation expenses. In this particular case, it took a little over 2 weeks to get a jury. He's had to move a number of cases to other locations because of media attention that the cases have received. This really extends the jury selection time period. He stated that once the case begins, the cameras are not a problem. He has not seen grandstanding by lawyers and he's not had trouble with media overstepping boundaries. His problem is potential problems with jury selection because of media coverage.

Mr. Reynolds stated that, bottom line; the media has never benefitted his clients. His primary obligation is to his client. He noted that there are legal arguments to keep media out.

Dave Nelson referenced Mr. Reynolds' statement about questioning 135 jurors, 133 with knowledge of the case. He asked what Mr. Reynolds thought would be his number if the media hadn't been involved. Mr. Reynolds explained that they subpoena every piece of film and make it part of the court record. When questioning jurors, they ask where they heard the information. Approximately 90% of the jurors heard it on TV. Mr. Nelson asked if cameras were a variable versus a news reporter in the courtroom, and noted that if a judge is not specific in what cannot be reported, then this has a potential effect on the jury pool.

Mr. Rensch stated that as a defense lawyer, he has found that witnesses are hesitant to talk to him and they are hesitant to take the stand and provide information, and he felt they would be even more hesitant to talk if cameras were in the courtroom. Mr. Reynolds explained that he always visits with witnesses and tells them there will be a camera present. He explained that you really need to work with these people. Mr. Rensch noted that since you have always had cameras in your situation, it's difficult to determine the difference(s) cameras would make.

Jeff Larson, as a defense practitioner, questioned going from a rule where we do not have cameras and entering a situation where we may end up adopting a Rule 22. He questioned if the bottom line is that in any high-profile case, we're just introducing another layer of litigation. Mr. Reynolds agreed and stated that you'll be litigating more on the front end, whereas we live it. You'll be filing more motions of that nature.

Ms. Haraldson noted Mr. Reynolds comment where he said he didn't think cameras have ever helped him. She stated that we now go through perp walks (defendants in chains and jumpsuits) and questioned if he felt it would help if the client was shown cleaned up. Mr. Reynolds replied he would prefer they be seen in this manner.

Mr. Larson asked Ms. Haraldson if this meant they would no longer show the jumpsuit scenes. Ms. Haraldson replied that we may still show them until other scenes are available.

Judge Larson stated that there is nothing in the Constitution that prevents a state from opening their courtrooms to camera coverage. Initially, there was some uneasiness on the part of the participants 30 years ago in Iowa when cameras first started, but the uneasiness was eased after the case started.

Mr. Rensch questioned who is in the best position in a courtroom to see the affects of the cameras. Mr. Reynolds replied that it is the judge since they are running the case.

Ms. Roberts referenced high-profile cases and needing to move out of your normal area. She asked how this affects the county, court personnel, and other involved when you descend on them. Mr. Reynolds stated that he has been given the option of 3 counties where he could relocate and that the judges work together to make the move available. He has had some counties say they couldn't handle the high-profile case due to the expenses involved.

Judge Grubbs noted that the world has become a more visual world. Newsprint readership has decreased. Everything is seen in small snippets on TV. She explained that the cameras make a difference in the pre-trial publicity. In England, they don't allow the media in pre-trial and in some areas names cannot be provided.

Recess for Lunch

Panel Discussion

The meeting was called back to order by Justice Miller at 12:50 p.m. He asked if the presenters had any closing statements.

Mr. Peterson commented that he felt there was a big distinction to be made between a fair trial versus cameras in the court. He felt that cameras are a smaller issue. He noted that news coverage will still remain clips due to time constraints. You need to separate fair trial and free press. This is a more narrow issue. You can still have many restrictions and rules. You can determine who the cameras will cover. He agreed with many of the concerns regarding pre-trial publicity. He did not feel cameras made this worse for them.

Mr. Reynolds agreed with the statement that a camera in a courtroom would not have that much effect in a courtroom, but noted that it would if you turn it on. He cautioned that you need to look to see what would happen if you allow cameras. The cameras do not bother him, but you are not being honest and candid with yourself if you do not look ahead. It will more than likely mean that cases will need to be moved. He asked if, as a state, we were willing to accept this as part of the deal.

Judge Grubbs noted that the media does not want cameras in her run-of-the-mill cases. She explained that you need to realize you are looking at high-profile cases that will draw a lot of media. The camera makes a huge difference. People are used to watching news on TV. They have a shorter attention span. They are used to watching court case TV shows that end in an hour.

Alan Larson stated that we need to look at what has actually happened rather than what might happen. They have had good experiences in Nebraska. He noted that it is true that the higher profile case will get additional attention, but it now gets that in the press. The media puts their spin on it and puts it in the paper.

He questioned if the expanded media rules impinge on fair trial rights and stated that the Constitution does not say it does. He explained that the media coordinators can take a lot of heat off of the trial judge in that you do not want to have to deal with media problems. He suggested we have good tight rules and media coordinators.

Jeff Larson stated that he is hearing from presenters that there are no 'horror stories,' but noted that most around the table today, excepting the press, are part of the judicial system. He asked the presenters if they could state any experiences where they had better results because the cameras were there. He asked if the fair trial right was more protected because the camera was present. Judge Grubbs and Mr. Reynolds could not think of a case. Alan Peterson referenced the murder trial in Beatrice and the state public defender who said that he had to be particularly careful not to be flip or inattentive because the public was there through the proxy of the camera.

Alan Peterson stated that the U.S. Constitution says that everyone has a right to a fair and open trial. Later, the right to media was granted to most pre-trials. After closed courts went out of fad, they began to be overridden because the damage feared was speculative. People couldn't attend so they decided to make trials available through media coverage. He explained that this is his philosophical argument. He noted that the defendant has a right, but so does the public.

Judge Grubbs stated that the public has a right to see what the jury will see, but you are ruining the right to the defendant if you allow the media to cover pre-trial proceedings.

Mr. Reynolds agreed with Judge Grubbs regarding pre-trial proceedings. He had no problem with the media providing gavel-to-gavel coverage but noted that the pre-trial coverage causes jury selection and other case-related problems. Once the case starts, he doesn't have a problem with cameras in the courts.

Judge Larson reminded the group that judges have a right to suppress on pre-trial matters.

Ms. Roberts asked what justification the federal courts use for not allowing cameras. Judge Larson replied that it was tradition. The U.S. Supreme Court says no cameras coverage. He felt the lower federal courts would allow coverage.

Alan Peterson noted that Congress had introduced a bill several years ago to introduce cameras, but the bill had not gone anywhere.

Mr. Nelson explained that, over the last 15-20 years, the trend in courts has been more liberal toward cameras in the courtroom. He asked if they were aware of any contra movements to remove cameras in the courtrooms. Alan Peterson replied that at least 30 states have cameras in the courtroom. The trend is more toward open courts. The "bugaboos," such as grandstanding, intimidating, etc., have not appeared, so the push of first amendment lawyers has been to push toward cameras.

Judge Grubbs stated that when she started practicing law 39 years ago, they had 3 TV stations. Now 24-hour news exists. The way life and culture has developed has brought along this issue. She noted that you can see almost anything on TV, so why not court cases.

Judge Larson was not aware of any states that have withdrawn cameras. He thought that 30 was a conservative number and felt that the number of states with cameras was higher. He noted that there was a legislative attempt in Iowa to do away with cameras in the courtrooms, but they found out that one branch of government (legislative) could not tell another branch (judicial) what to do.

Judge Severson commented that the sense he gets from the presenters' comments, except from Judge Grubbs, is that this has little effect on witnesses. He questioned if it was true that witnesses were not affected. Mr. Reynolds discussed a case where one witness locked down; they could not state a word. Mr. Reynolds was not sure if this was due to the cameras.

Judge Grubbs discussed a case where a child locked down because of the camera. She noted that you have 2 options, you can tell the witnesses that the camera is there or you decide not to mention the camera and hope they do not see it. She's seen witnesses see the camera and freeze for a moment, but then they get going and forget about the camera.

Attorney General Long asked Alan Peterson how much of the earlier-viewed clips was actual feed from the courtroom camera. Mr. Peterson replied that the actual feed was when the news reporter was standing in the courtroom and when they stepped away to show you the view from the courtroom. It also included the snippet of the cop testifying with the gun.

Attorney General Long asked about the mechanics of the cameras setup in Georgia. Judge Grubbs explained that Rule 22 has the application form on the back. Whoever gets to the courtroom first sets up after the rules are discussed.

Alan Peterson stated that the cameras are innocuous in the 3rd district in Nebraska. The media paid for upgraded cameras so they could get better photos. He noted that a single pool camera is used elsewhere.

Mr. Reynolds explained that when a Rule 22 is done in Georgia, a cameraman is set up in the courtroom. A person is physically in the courtroom and will be moving around with the camera.

Attorney General Long asked Judge Larson to give the committee the mechanics of how the cameras work in the Iowa courts. Judge Larson replied that the media coordinator decides how it will work and the participants. He explained that the cameras are high up in the ceiling. They are high quality and unobtrusive. When they have TV coverage, they bring in their own equipment and you do not realize they are there. He felt that Georgia's problems could be solved by tougher rules and better cameras. He noted that in Iowa's rural areas, the cameras are brought in. The equipment quality is the media's problem, not courts, and they deal with it.

Ms. Haraldson asked about digital still photography. Judge Grubbs replied that they need to use the Rule 22 form and a hearing is held on the request. The photographers are not allowed to use flash. Judge Grubbs informs them where they need to stand in her courtroom. Ms. Haraldson noted that you could have a camera and a still photographer in the courtroom. Judge Grubbs stated that the still photographers usually come and go. Justice Miller noted that the SD Supreme Court requires that you stay in the courtroom once the proceedings have started.

Mr. Rensch discussed a murder case where there was prior restraint on the press, which didn't hold. The press was gagged about printing information about the murder and murderer. The order kept getting modified. They came down with the decision that gag orders about things they hear about in open court was against the 1st amendment. The reaction was not to let the media in to the open court.

Professor Hutton asked the presenters if they have a sense of the percentage of cases that have gone up to appellate court to deal with these kinds of issues. Judge Larson replied that he was aware of 2 cases in Iowa. They were throw-away issues. Mr. Reynolds stated that there have been a number of cases taken up. They still lean toward the push to open court. Judge Grubbs agreed with Mr. Reynolds' response.

Mr. Hunhoff asked if you need to tell witness they are being recorded. Judge Grubbs stated that she always tells them, but noted that this is a decision you need to make. Mr. Reynolds replied that he was not aware of any legal requirement to tell them. Alan Peterson stated that they need to tell everyone in Nebraska.

Mr. Millage asked if this is based on the camera or the coverage issue. He noted that the press still covers pre-trial hearings in South Dakota even though we do not have cameras.

Mr. Thoennes hypothetically put himself in the position of a participant (witness, family member, or juror) in a case and questioned why the camera would be desirable for them. Judge Larson commented that a lot of people do not want to testify in court, whether or not cameras are there. Mr. Reynolds replied that he was not aware of anyone who has expressed thanks for having the cameras present. Alan Larson noted that they have officers videotape interrogations as it is felt it makes everyone more honest. The participants know they will be judged by the people who see them, so they may be more candid and honest. He stated that the cameras have made judges and lawyers more prepared. He felt that you get a higher-quality trial in some cases.

Alan Peterson noted that it matters to the media about the different kinds of coverage they can obtain. Not everyone can sketch, so every option is helpful.

Mr. Hunhoff clarified that we keep saying cameras but we mean videotape. Judge Grubbs commented that the pre-trial appearances of the defendants in jumpsuit and chains are very negative.

Alan Larson commended the committee on how they are studying the cameras option and he recommended they study all the angles.

Judge Grubbs thanked the committee for letting her speak to them. She commented that it has been enlightening for her to look at the way we do things. Mr. Reynolds also thanked the committee.

Committee Discussion

Justice Miller addressed the committee by noting that they have heard the pros and cons regarding cameras in the courtroom. He asked where we want go next and noted that, geographically, we could go to Rapid City.

Judge Gienapp stated that there are a number entities within the legal profession, for example, the South Dakota Trial Lawyers, that should give some input, whether at a meeting or in writing. Justice Miller asked if it would be more meaningful for them to provide input to a proposal or prior to a proposal. Judge Gienapp replied the third option - before and after a proposal.

Justice Miller informed the committee that we need your guidance in what you want brought before us for next meeting.

Professor Hutton noted that some of the committee members are not as aware of the nuisances of the issue.

Justice Miller requested that today's handouts be archived on the Unified Judicial System's website (www.sdjudicial.com), in addition to the minutes and the recordings. Professor Hutton suggested including the survey of the states.

Justice Miller asked the committee's reaction to today's program.

Mr. Millage found that the information provided gave us good perspective from those directly involved. Now we need to determine who to hear from next.

Professor Hutton felt that today's program was very worthwhile. She didn't know if she'd be interested in introducing cameras, but might be interested in a pilot project. She felt we need to know in advance the outcome and how we'd evaluate.

Mr. Travis hadn't decided yet what direction we should take. He felt it incumbent that we get more input from clerks, bailiffs, circuit administrators, and those who would work with this program. He felt that today's program was outstanding.

Judge Severson thought that the panel was very helpful, especially in focusing on the right to a fair trial and how they deal with it, especially how it is handled in Georgia. He was not sure we could close it prior to a trial.

Attorney General Long stated that his sense from listening to the presenters from Georgia is that there are fair trial issues that will be magnified, especially during pre-trial, whereas Nebraska and Iowa indicated this is overblown. He questioned how we resolve this kind of issue. He noted that we do not have a statutory option to limit open pre-trials, so this may be part of the mix.

Mr. Wilcox stated that after the first 2 presenters, he thought we had a "slam dunk" and wondered why we do not do this, but changed his mind after the next set of presenters. He felt that we need to tread carefully because what we decide will hold major ramifications for the state. Whatever comes about, we need to take small steps and we need to be cautious.

Mr. Holloway said that the major question he came away with today was if this doesn't improve the criminal justice system, should we be doing it? He sees our court system today overextended by some of the cases we are having, especially in certain circuits. Where we're at today, he was not seeing that cameras in the courtroom would be beneficial.

Ms. Richards appreciated the presenters and the different perspectives, especially in regard to issues she had not even realized yet, such as an unobtrusive camera in a ceiling versus a cameraman. She was not sure of our next step.

Mr. Petersen pointed out that 3 media cameras visited our meeting today and you were either intimidated or you were not. He felt that the cameras were unobtrusive. He noted that no journalist would want to cause harm with a camera in a courtroom. He stated that he heard 3 different approaches today as to how the cameras have been handled.

Mr. Nelson stated that the presenters dispelled some myths and apprehensions, such as intimidation and grandstanding. He noted that once a trial starts, the camera does

not appear to have a downside. He was not sure where the committee should go from here.

Judge Gienapp was not sure of the next direction the committee should take. He felt that the presenters gave good perspective and mentioned areas that needed additional consideration. He noted that no real objections were heard regarding cameras in the courtroom during the trial, just the pre-trial proceedings. He felt that we may need to close off some pre-trials as a compromise if we decide to allow cameras in the courtroom. He noted that there is additional Motion practice for the high-profile cases. If we opt for a trial cameras program, he would like it to be in Aberdeen.

Mr. Roby was encouraged by the testimony he heard today. He thought we should find the common areas where we agree, such as pre-trial and juvenile cases, as this may help us in our next steps. He felt we could do a test program like Iowa did, then back off for a year, then do another test program.

Jeff Larsen felt that a messy divorce might be something the public would be interested in, especially if it involved a high profile person, whereas today's presenters would assume that was improper use of cameras. Due to his position, he's not interested in the cameras due to the extra problems it would bring in a murder case. He noted that the press would not be getting access to anything that they do not already have access to; they would just be getting expanded access.

Mr. Rensch felt that the trial bench should give input to the committee. He thought there should be some hard numbers out there from other states that have been through this that we could review. He would like to know the impact of a camera on a witness or jury. He explained that sometimes it is hard to get a witness to give testimony and he didn't feel a camera would help the situation.

Ms. Haraldson stated that when she was a young reporter, one of the cases she worked on was in Rosebud. She talked to the locals about justice and jurisdiction, but all they ever saw were federal officials showing up and then disappearing. Since they didn't have a daily paper or a TV station, they never got the word that anyone was convicted or acquitted. She felt that the public needs to know that the courts are fair and that innocent people are being acquitted. She stated that she learned a lot today about pre-trial issues and she would be willing to work on these issues.

Mr. Thoennes said that the fact that we may be able to stipulate some things made sense to him. This would include things like cameras in the ceiling, or intense public interest in sensational trials. He questioned how the cameras benefit the participants in a trial. He suggested that we could do a random sampling of litigants.

Judge Von Wald felt that the 4 speakers were excellent. He was not sure how much more information we need or where we go next. He noted that there is a general thought among the Trial Law Bar that there is an anti-cameras feeling. He felt that we need to find some commonalities to work from as a starting point.

Mr. Hunhoff felt that the presenters were excellent and that he has less concern now about camera proceedings. His concern is cost and pre-trial. He noted a positive in that improved decorum and performance were mentioned by several presenters. He stated that Yankton County just had a couple high-profile cases and they were bombarded by media trying to get photos. He agrees with the public's right to know. The audio aspect is a big concern to him. He also has some concern about who the media is as there is an entertainment media out there and they might be interested in certain cases such as divorce proceedings.

Ms. Roberts agreed with Ms. Haraldson in that the courts are for the citizens of South Dakota, and the citizens need to benefit. She referenced the non-scientific poll by the Rapid City Journal, which said there should be no cameras and stated that she would like to see a scientific poll. She questioned if we are serving the people if we put cameras in the courtroom when they have not asked for cameras and do not want to see themselves on the evening news. She felt that a professional poll would be another source of information for us.

Justice Miller expressed concern about polls as some people may vote more than once. He felt that whatever action we take has to be from an informed group like ourselves, and that a poll may be an action that could be taken later. He felt that we should give some consideration to expanding our educational database. He suggested we identify some jury members, trial judges, witnesses, and defense lawyers from surrounding states to come in and educate us.

Mr. Larson cautioned that you can invite those stakeholders, but you will get people who are not adverse to talking in a public setting, which will skew your results. He suggested we solicit written commentaries from people who are hesitant to come in to testify before our group. Justice Miller pointed out that this does not allow us to do follow-up questions.

Ms. Richard noted that we are an intimidating group and that these kinds of people would be hesitant to come in to visit with us. She felt that the National Victim Center may have people who could provide presenters.

Ms. Haraldson noted that it is easy to check news websites for the hits on stories. You can check interest easily this way without doing a survey.

Mr. Nelsen suggested that 3-4 members from this group could spend a couple days in Des Moines to meet with the judges and trial lawyers and to tour a courtroom and see the courtroom camera arrangements.

Mr. Millage suggested timing Mr. Nelson's Iowa option with a trial that is taking place. This way we could see how cameras affect happenings in the courtroom and see what takes place behind the scenes.

Mr. Larson noted that these people will not want to be interviewed while the case is going on, but maybe we could go there later on to hear the facts.

Professor Hutton stated that she knows she needs to do more reading on the subject. She felt that the practical discussion today was helpful, but she feels she needs more information before making a decision. She would like to see where cameras are not working. She is also interested in the opinion of a public defender from Iowa or Nebraska. She would also like to hear from the Native American community.

Justice Miller felt that a group traveling would constitute a sub-committee and was hesitant about this option since most members were indicating they still needed more information. He noted that we could do a sub-committee later on if the committee felt this was needed.

Mr. Rensch felt that the committee could submit names of people involved in the court system from other states that have cameras. He stated that some federal judges have made their decision known, so we could have them come in to visit with us.

Mr. Nelson felt he could find prosecutors who could give us their perspective.

Justice Miller asked if Ms. Richards and Ms. Hanna could provide names for Judith to contact. Ms. Richards replied affirmatively.

Justice Miller asked the members to send names of possible presenters to Judith within the month.

Ms. Roberts asked that committee members identify the possible presenters as pro, con or neutral.

Justice Miller noted that we are also interested in hearing from the media, county commissioners, the Sheriff's Association and any other groups that would like to testify.

Ms. Roberts suggested that we may also want to hear from circuit administrators. A Florida circuit administrator was referenced who could provide information about the media crush during a high-profile case.

Justice Miller asked the committee's media representatives if they felt that coverage of juveniles was an issue. Ms. Haraldson and Mr. Petersen stated that they could live with this exception. Ms. Haraldson noted that in the bar-media guidelines, it is standard procedure that you do not report about the existence and contents of a confession. Justice Miller stated he assumed the same would apply with cameras. Mr. Millage replied this would be the case as long as the juvenile is not moved into adult court.

Justice Miller asked the media's guidelines regarding sexual assault. Ms. Haraldson replied that they do not identify them by name or photographically show them. Mr. Petersen stated that this is the general practice in South Dakota. Ms. Haraldson added

that the only time you show them is if the victim comes out and wants to talk, but we still do not give out the name.

Jeff Larson noted that if you show a whole proceeding, but excerpt the testimony of the person whose privacy the system respects, we have corrupted the content of the proceeding as a whole.

Ms. Haraldson stated that when there is a juvenile witness, no name or photo will be provided, but they can quote them outside of the courtroom.

Next Meeting

Justice Miller informed the committee that the next meeting date will be after the legislative session. We will contact you with the meeting date.

(Update: The next meeting is scheduled for Friday, April 3, 2009, at the Radisson in Rapid City.)

The meeting adjourned at 2:50 p.m.

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

Friday, April 3, 2009
8:30 a.m. MT
Radisson Hotel
445 Mt. Rushmore Road
Rapid City, South Dakota

Meeting Minutes

Present: Tena Haraldson, Associated Press; Mark Millage, President of Kilian Community College; John Petersen, KOTA News Director; Mark Roby, Publisher of Watertown Public Opinion; Cheryl Hanna, Access to Justice; Denise Richards, Hughes County Victims' Assistant; Dave Nelson, Attorney; Judge Gienapp, Presiding Judge of 3rd Judicial Circuit; Larry Long, Attorney General; Chief Justice (ret.) Robert Miller; Judith Roberts, Legislative and Legal Counsel at S. D. Unified Judicial System; Judge Warren Johnson, Presiding Judge of 4th Judicial Circuit; Tim Rensch, Attorney; David Hunhoff, Sheriff in Yankton, SD; Don Holloway, Sheriff in Rapid City, SD; Roxanne Giedd, President, South Dakota State Bar. Professor Chris Hutton participated via conference call.

Excused: Karl Thoennes, Jeff Larson, Judge Von Wald, and Bob Wilcox

Presenters: Dave Busiek, News Director at KCCI-TV in Des Moines, IA; John Bradley, District Attorney in Williamson Co., TX; Gary Hengstler, Director of the Donald W. Reynolds National Center for the Courts and Media at the University of Nevada-Reno; Jean Casarez, Correspondent for *In Session*, and also a licensed attorney; Todd Epp, attorney and also editor/reporter/publisher of the *SD Watch*, a blog about South Dakota politics, law and culture.

Guests/Media: Andrea Cook, Rapid City Journal; Katy Eisenbraun, KOTA-TV; Vicky Wicks, free-lance journalist.

CALL MEETING TO ORDER

Chairman Miller called the meeting to order at 8:30 a.m. He introduced new member Judge Warren Johnson. Former member Judge Severson is being sworn in today as a South Dakota Supreme Court Justice. The committee and presenters introduced themselves.

Dave Busiek, News Director at KCCI-TV in Des Moines, IA

Mr. Busiek said that speaking from a journalist's perspective, this is a simple matter of fairness. He felt that journalists are denied the opportunity to tell the story via photos and stories. He quoted statistics which sited TV as most people's main source of news at 70%. He explained that few people have the time to attend court sessions, so they rely on the news for the information.

The 5th Edition of the *Iowa Expanded Media Coverage (EMC) Handbook* (Handout A) was distributed. The EMC booklet contains the rules the media must follow when covering court cases. Iowa started cameras in the courts 30 years ago and they have found that cameras do not deny fairness to a hearing. The Iowa Freedom of Information Council monitors the system. They have found that the system works well with few problems. Thirteen regional counselors monitor the system. The few problems they've had are usually because of problems between 2 people – for example, a lawyer and a judge. Some rural judges rarely see an EMC request. They now have a presumption and tradition of openness in Iowa.

Mr. Busiek told the story about a worker at a bar who was assaulted by police officials. The woman didn't report the case for several days, which led to the assumption of consent. During the 2-week long trial viewers were able to hear both sides of the story because of the camera in the courtroom. The victim's face was not shown but viewers heard her voice because she gave consent as she wanted her words to be heard. Wide shots were done when the victim spoke. There was little physical evidence with this case. Mr. Busiek said he had never seen a jury work so long in deliberation. Viewers were able to see the verdict come in live during their news show and were able to see the police officials handcuffed and led off to jail. Women viewers got to hear a woman stand up for herself and saw the results. Men also saw what could result from these kinds of actions.

He discussed another case where a quasi-public agency designed to help retrain unemployed Iowans, and entirely funded by tax dollars, had executives that were giving themselves monthly bonuses and travel junkets. A state audit uncovered these actions which involved multi-million dollars. The board that ran this agency was all public officials. A Des Moines City councilman was one of those indicted. Unfortunately, the courtroom testimony could only be heard by the reporter as cameras weren't allowed in the courtroom. Reporters could only interview when people entered and left the courthouse and the response they received was "no comment." He stated that if ever a case needed coverage in the courtroom, this was it.

He then told the story about a not-clear case where simple traffic stop involving an African American couple got out of control. The police asked the woman to exit car. The man also started to get out of the car. The police viewed this large man as a threat and the routine traffic stop escalated into violence. The case resulted in a 1-hour deliberation by jury with a "not guilty" verdict.

Mr. Busiek noted that one of the most vexing issues to come up lately is who is considered a journalist according to EMC. Sometimes people want to use the cameras

for intimidation. He recommended we consider how we define a journalist if South Dakota decides to go with cameras.

Without cameras, a reporter has to do more paraphrasing. With cameras, the reporter knows he'll get the information right as the words are from the actual people if there are cameras inside the courtroom getting the real story.

He discussed the objections to cameras coverage that have been heard over the years. He noted that lawyers do not grandstand and that sexual assault victims, undercover officers and children are protected in Iowa's camera coverage.

Mr. Busiek closed by noting that cameras have removed the aura of secrecy and that the people have a right to see what is going on in the courts since they pay for them.

Questions from Committee

Mr. Nelson asked Mr. Busiek how he recommended we define a journalist. Mr. Busiek explained that, in Iowa, they had trouble with a person who had his own show on cable TV. It was like a "Wayne's World," only worse. This person had a personal vendetta against someone who had something going on in court and the media person didn't want to adhere to the EMC rules. He said that we need to word it in regard to the coverage being used to disseminate information to the public. He noted that this opens it up to bloggers and other forms of media coverage.

Chief Justice (ret.) Miller commented that before the media can attend court in several states, they first need to attend a mandatory media training session. Mr. Busiek felt that certification for working in our courts would be a good idea but wasn't sure what organization would oversee this process. He cautioned that we may also need to do certification update training.

Mr. Nelson felt that a single pool camera is a logical way to go. He asked how you would restrict who gets this information. Mr. Busiek replied that it is tough to draw this line. Camera should be unobtrusive. He would be hesitant to limit distribution of the information if the request was legitimate.

Ms. Haraldson noted that a media coordinator wants high broadcast, not someone with a handcam, to be the camera where others get the pooled information. She stated that, ultimately, the judge controls what goes in the courtroom.

Ms. Casarez referenced Iowa's 14-day rule to request access to a courtroom. Due to this rule they couldn't cover a case there. She felt that something of note is this time factor. Mr. Busiek explained that the 14-day rule can be waived by the judge. The rule is there to prevent last-minute surprises.

Ms. Roberts asked if things like camera cell phones are included in the 14-day rule. Mr. Busiek replied that a judge should have folks turn off these cameras. He noted that some judges allow laptops to send trial coverage.

Ms. Richards questioned if he said earlier that a victim could waive their right to be on camera. Mr. Busiek stated that this happened in the rape case. The victim waived her right so that her story could be told, but her face could not be shown. Normally, victims are not heard or shown.

Mr. Millage asked about restrictions on live coverage. Mr. Busiek stated there are none. One can be a video camera and one can be a still camera. A person is designated as the pool photographer for distribution of the coverage. He then discussed a double murder in the community and how the live coverage helped the community get over the shock of the event.

Mr. Long asked if he could have the feed from a testimony for legal purposes. Mr. Busiek replied that this is not allowed. Mr. Long questioned if a right or left-wing media person could receive this information if they requested it. Mr. Busiek stated that the Freedom of Information (FOI) Council would determine whether the requester gets the information. The FOI was in effect before cameras started and they were absorbed into the cameras process.

Ms. Giedd asked how it is handled with cameras coverage when it is known that sensitive information is coming up. Mr. Busiek stated that they are alerted in advance so they can do white noise to block out the information. The judge will make a request to them to not to cover the sensitive information and the media determines whether this should occur. The media usually goes with judges wishes. The judge has the final authority.

Judge Gienapp asked about coverage of jurors and Mr. Busiek replied that this only occurs after the case, not before or during.

Judge Johnson asked about Mr. Busiek's reference to a long sound bite. Mr. Busiek explained that in the case of the police trial there was some compelling testimony and they strung together some long sound bites of 20 to 25 seconds. He stated that a viewer would be able to get a good sense of what a person had to say.

Judge Johnson asked how you know cameras benefit the public. Mr. Busiek said that they haven't done research to show benefits, but it is felt it is important that the workings of the court be as visible as possible to as many people as possible.

Mr. Bradley noted that the cameras allow you to sell advertising and get funding, which is a benefit to media organizations. Mr. Busiek replied that he's been a journalist for 30 years and wants to tell good stories and tell them well. They've covered juicy trials and dull trials and he feels it is important to tell all the stories.

Ms. Roberts noted that it's not just cameras and journalists anymore; we're now seeing different forms of media such as bloggers and twitterers. She asked how often they need to go back and address all these new technologies. Mr. Busiek explained that the rules have not been addressed in this way but he realizes that one of these days this will need to be done. He noted that the judge has the ability to say "yes" and "no."

Ms. Haraldson noted that there are some costs involved in setting this up, such as cameras, wiring, a satellite truck, and a media person purposefully covering the trial. Mr. Busiek explained that you are committed to covering the trial once it starts but noted that there wouldn't be much expense to blogger or tweeter. Some judges are fine with this, others are not

Judge Gienapp asked if they cover the Offer of Proof which is given when the jury is not in the courtroom. Mr. Busiek replied that they do not. Ms. Casarez stated that they shoot open court but not sidebars.

Ms. Hanna asked if there was a cost to the courts. Mr. Busiek replied that it would mainly be the judge's time in considering the request since there are no staff assigned to the cameras coverage. The EMC in Iowa do this as their job. The burden and expense to make this work is on the media, not the courts. Iowa's rules state that you have to be physically there in order to get the coverage. For example, if a media wasn't present in the courtroom when a witness left the stand and took a swing at the lawyer, they wouldn't be able to get access to this coverage.

Mr. Roby asked what was the worst problem he had seen after 30 years of cameras in the Iowa courts. Mr. Busiek replied that a few years ago we accidentally aired a female sexual assault victim for about 15 seconds, and we certainly heard about it. He explained that there was a lag time between the testimony and verdict, during which time the woman came up to the witness stand and nothing was said about not recording it. The brief clip was on the noon news.

Judge Gienapp asked about other equipment in the courtroom and was informed that the coverage requires microphones at the counsel's table and witness stand. Most of the equipment is outside of the courtroom. They work with the circuit administrator and the judge to set up the equipment the way they want it placed.

Mr. Nelson asked if Iowa initially started with pilot sites. Mr. Busiek stated that for about a year they did cameras statewide on a trial basis. During that time there was a murder trial in Waterloo and everyone felt the coverage of it went well. At the end of the pilot period the media coverage rules were then permanently implemented.

Ms. Giedd asked if the feed you get is gavel to gavel. Mr. Busiek stated that this is usually the case. The exception is if you are the only one wanting coverage. In that case, the cameras may be turned off for awhile if someone is coming up to testify whose information is not needed. They never allow field tapes to be released.

Judge Johnson referenced the earlier question about turning off the cameras for the Offer of Proof. He stated he would want the cameras turned off because he wouldn't want a juror to turn on the evening news and find out something they were not allowed to hear while at court.

Mr. Hunhoff asked if media personnel walk around during the court proceedings. Mr. Busiek replied that this is not allowed. They need to be as unobtrusive as possible. In addition, the photographers must dress appropriately to fit in with the decorum of the courtroom.

Mr. Millage pointed out that still cameras are what we are presently doing in the South Dakota Supreme Court.

John Bradley, District Attorney in Williamson County, Texas.

Mr. Bradley introduced himself by informing the group that he lives just north of Austin, TX, and he began his work in Houston 15-20 years ago. He has worked in both large and small jurisdictions, which has given him an opportunity to examine the presence of media under both media markets. He's also done some national media. This background has given him one important belief about images in connection with trials in that TV promotes some sort of celebrityhood. With a court reporter you get a different perspective of the event.

Mr. Bradley discussed the various scopes of media. With local media you are more likely to engage with that person and he with you as you probably know each other personally. At the statewide level there is a high level of coverage, but a bit more impersonal, of the person being covered. With national coverage there is no real personal coverage.

The Internet has nationalized media. He noted that this is something you will need to ponder when you consider media coverage in courtrooms.

Mr. Bradley explained that Texas is a large, diverse community, both urban and rural - a lot like South Dakota. In 1989, Texas had to look at the option of media in the courtroom. There was no written rule at the time as to how media would be handled in the courtroom. The most substantive rule adopted was Rule 14 (permissible) in the Appellate Courts.

Mr. Bradley noted that Appellate cases are not dramatic stories and he felt that cameras would not be in the courtroom unless there was a dramatic story to be told.

He referenced Civil - Rule 18c (consent of parties), where you need the consent of those involved. The court could also adopt a consent policy for the case. He felt that civil trials are not especially dramatic and these wouldn't pull in viewers and raise ratings.

Texas does not have a rule in their Criminal cases. He finds this amazing, but also found it hasn't caused chaos. In 2003 he found out what happens without this rule. A judge was approached by PBS to put cameras in the jury deliberation room. There was a strong reaction by the prosecutors and others. The DA filed to not allow the judge to allow the cameras. This resulted in a case (Rosenthal v. Poe (TEX. Crim. App.)) that was quickly determined as it was felt it was comparable to allowing an outside person into the jury room. The legislature was in session at the time and they created SB164 (jury deliberations protected) which does not allow cameras in the jury room. The bill passed and became Texas Code Crim, Pro., Article 36.215.

This bill did not cover what was happening in courtrooms across Texas. Without an official rule, it is left to the judges to determine local policies/rules. For example, in Williamson County, TX, each judge decides for that court. There are some written standards which are as followed. For example, there is one stationary TV camera with pooled video. By threatening to cut off the media feed is one way to keep the media in line. Another standard is that there be no flashes or audible distractions. There is also to be no recording during Voir Dire due to several reasons. One reason is that prospective jurors are asked personal questions which are not necessary for the general public to hear. In addition, the jury cannot be filmed, plus you would need consent from all the witnesses.

Mr. Bradley referenced the Wright case, where a wife used a sex play lure to tie her husband to the bed and stab him 200 times. Prosecutors had the bed reassembled and did a courtroom demonstration. The jury found Susan Wright guilty of murder despite her plea of self defense. The significant issue on the appeal was whether the demonstration was so overpowering that jury wrongfully convicted her.

When writing your rules, Mr. Bradley suggested keeping the national media in mind. He has found Court TV's coverage from gavel to gavel to be very professional. In fact, they ultimately presented 6 hours on Court TV, which is a large period of time. Consider this in regard to your local TV station, which will likely provide shorter segments.

Mr. Bradley showed advertising clips from "Crime Stories" about a woman who killed her landlord. The teaser questioned whether the woman was mentally ill or thought the landlord was a secret agent.

He then discussed the Andrea Yates case where she drowned her kids and then he showed a website where jurors or potential jurors could obtain information about the case. There was so much pre-trial sensationalism that the judge had to do a gag order against all the parties and witnesses in the case. This put the judge in a difficult situation because the media was upset with the judge for trying to protect Ms. Yates.

Mr. Bradley suggested we consider the following when writing our rules:

- no confessions,
- reputation,

- criminal history,
- plea negotiations,
- no opinions about credibility, and not just the prosecutor.

Mr. Bradley showed a clip from an interview where the interviewed person talked about the case, the history of the person on trial, and gave out information that could cause the case to be impeached.

Mr. Bradley discussed the different types of media such as newspaper, TV, radio, internet and blogs. He noted that the media is headed toward the Internet, so be sure to consider it and to also consider twittering. He questioned how educational twittering can be to the general public. He referenced a situation where a juror twittered during a case and told his contacts not to buy certain stocks because of what he was hearing.

Texas had a high-level murder which was unsolved for awhile. When the suspect was caught, they did a press conference and announced that the person had been caught and information would be made available at the trial. Mr. Bradley explained that they thought they had all the bases covered. Unfortunately, the suspect made a phone call and disseminated the information from the jail.

Mr. Bradley asked why not say nothing, and then noted that you'll also get in trouble with this angle.

Mr. Bradley referenced the movie "Alpha Dog," about a case in California. The movie came out before the case was finished. The problem is that now the whole world has seen the movie.

Mr. Bradley's recommendations to us were a) to read the editorial (the Hawthorne effect) in the information he provided, 2) to adopt a consistent statewide media policy, but leave flexibility at local level, and 3) to make sure to require consent of those involved.

Gary A. Hengstler, Director of the Donald W. Reynolds National Center for the Courts and Media at the University of Nevada-Reno

Mr. Hengstler stated that he has a foot in both camps because of his job. He is both a director for the courts and media at the university and is also a journalist.

He explained that we have a comfort level with TV and newspapers, but asked us to keep our kids and grandkids in mind since we are in the midst of a large-scale change in how life operates. For example, when the plane went into Hudson River earlier this year, how did we hear about it? We became informed because someone twittered when they saw it go down.

He noted that newspapers are having problems and they may not be around long for your kids. In addition, TV stations are sliding. He felt that we've lost the journalistic religion. Decisions about the news aren't being made by Walter Cronkite and similar news figures anymore. Instead, we're being informed of every nuance of Britney Spears and her problems. Decisions are being made by what is considered entertaining. He referenced the recent excellent journalism done by Jon Stewart of Jim Cramer, the stock market analyst, and questioned why this wasn't this done by a news reporter rather than a comedian.

Mr. Hengstler felt that we had partisan, shrill, bad journalism along with good journalism up until WWII. After WWII and up until now, journalism hit an equilibrium of integrity. Journalists and reporters did their best to be straight. We got used to a reasonable amount of honest, concise journalism.

He felt that MSNBC shows judges who favor civil liberties and that you will get news from an "oil slick" of information passed on from people who have news. Mr. Hengstler referenced the emails that circulated about Obama being a Muslim. He noted that ten years from now your choice will be Internet or TV. You may still have a small town paper which carries honor rolls, etc., but this will be gone in the larger localities. He questioned where you will get your information, and replied that it will be from those with a vested interest in courtroom coverage - Internet and TV. The problem for the courts is trying to keep the public's respect and integrity against sensationalism coverage. Mr. Hengstler referenced Steve Job's supposed heart attack. CNN posted the article on their website without first confirming the story. Apple's stock immediately went down. It turned out that the story was a hoax.

Courts across the country need to rethink what they can do for information. They can mount a camera in the back of the courtroom and allow the public to see the proceedings for transparency's sake, but don't allow it for sensationalism. He feels we're moving to a niche market and it will be television locally.

Mr. Hengstler played video of the Anna Nicole Smith case which displayed the sensationalism concern. Individuals involved in the case were laughing, crying and playing to the cameras. It was entertainment, not educational. The Scott Peterson case, another high-level case, was decided to be camera free.

Mr. Hengstler felt that the courts should take control and provide the information in its entirety. What a judge would put on TV is different from what the news media would put on TV. The courts could have control with video streaming on their own website. We could provide our own newscasts of what is happening.

If the rest of the country is moving to cameras, the courts will need to take action on how they want the information out there. The medias have an interest in the sensational, entertainment aspect and they won't provide the information you want known. He referenced the first O.J. Simpson case where a cottage industry developed of people discussing on evening talk shows what had happened and what they felt

would happen in the case. It was soon realized that this was very popular with the general public. These shows did not protect the integrity of the trial. He explained that reporters can pull in people who do not know in-depth information about the case but are willing to speculate on it. This could affect the jury.

Mr. Hengstler referenced the Warren Jeffs' case and the note Mr. Jeffs allegedly wrote stating he wasn't a prophet. Due to circumstances, the judge wouldn't accept the note and told him to give the information to his lawyer. A pool photographer got a photo of the note and they had the photo enlarged and the handwriting analyzed so they knew the content of the note. It was then announced on the news stations.

Nowadays, everyone has cell phones, web cameras, handycams, so everyone can be a journalist. Mr. Hengstler stated that business may someday be conducted on technology that hasn't yet been invented. It's not like newspapers and TV are the only games anymore.

Mr. Hengstler felt that part of the reason the federal courts aren't embracing cameras yet is because the justices will lose their anonymity.

Mr. Hengstler referenced a case where the video recording was instrumental in determining the outcome of the determination. This was the recent case about the football player going to the hospital to see his dying mother-in-law. The video showed that the police actions were in error. The coverage was important in proving the player's case.

Mr. Hengstler discussed a swinger's divorce case where the husband switched around his finances so that he wouldn't have to pay out what he originally had indicated for his finances. The husband ends up killing the wife and the judge. The husband calls a friend and the friend tapes the conversation where the husband confesses to killing his wife. He pleads guilty but later changes his mind after the jury was dismissed. The coverage came from bloggers, the Internet, etc. It was a local case that became national because of the sensationalism involved. Ms. Casarez stated that *48 Hours* was there first. *Court TV* plugged in and covered it live. Mr. Hengstler noted that coverage can be streamed to the Internet for folks to view and that this can be your bully pulpit to do your educating on a judicial website. The courts could archive these things that tell the story in an ethical way.

Jean Casarez, correspondent for In Session's live daytime trial coverage. She is also a licensed attorney in the U.S. Southern District Court of Texas.

Ms. Casarez stated that she was honored to be here today. She is an attorney in Nevada and Texas in addition to being a correspondent for *In Session TV*, formerly known as *Court TV*. *Court TV* was purchased by the Turner Corporation a year ago and they want to develop the evening hours. The daytime trial coverage stands as originally established. She explained that this is her 7th year with *Court TV* and they are the legal network for the country. *Court TV* started broadcasting in 1991 and they've

covered almost 1,000 trials gavel to gavel during that time period and have broadcasted all types of court proceedings.

They feel it is important for the public to see the proceedings of the courts. The beauty of the camera is that it can extend the courtroom so that the public can watch it from the comfort of their home. The camera can assure fairness of the proceedings and it provides examination of details. She stated that studies have found that no compromise of fair trial rights has been found. Many times, cases she's covered are high profile nationally or of local interest. The viewers may have waited years to see the trial coverage. She felt that modern TV coverage should therefore be embraced unless a judge determines cameras shouldn't be allowed. A closure order should be no broader than necessary. She felt that the protection of witnesses is very important, also of a plain-clothes person, or sexual assault victim. The showing of minors is up to the judges. Ms. Casarez explained that in their filming, they do not obscure faces; instead, they turn to the attorney. She felt there is a misconception that cameras are obtrusive. She explained that the camera is mounted at the back of the courtroom. Sometimes they mount 2 cameras in the courtroom. The camera operator is in the back corner with the equipment board. She explained that everything is unobtrusive.

Ms. Casarez referenced the Bernie Madoff trial being held in federal court, where cameras are not allowed. She noted that the sketch artists were using binoculars to get details of the folks being sketched. She then discussed the triple murder case in Albuquerque that she just covered. The defendant was acquitted of all 3 murders. Her cameras allowed the public to see the weaknesses and strengths of the case.

In the Robert Blake, Scott Peterson, and Michael Jackson cases, their cameras were not allowed in the courtroom. She felt that the public had a right to see these trials as they cannot really feel whether the verdict was best without viewing the details themselves.

Ms. Casarez stated that studies have not shown witnesses to be hesitant to tell their story or to come forward. She agreed that sensationalism has come about because of cameras, but feels it good that the story is being provided to the general public rather than through the subjective notes of a reporter. She felt that the public at large should not be denied their opportunity to view cases in the courtroom, and that it is the judge's discretion as to whether cameras should be present in the courtroom.

Questions:

Mr. Nelson asked Mr. Bradley how the logistics for approval are handled. Mr. Bradley replied that sometimes they record it and then get the consent of a witness after the fact.

Mr. Roby asked if the judges in Texas are elected and if cameras in the courtroom have been a campaign issue. Mr. Bradley was not aware of this being done.

Mr. Holloway asked Mr. Bradley if a judge may limit if not deny access. Ms. Casarez noted that in Mississippi, camera access is now an appellate issue. Mr. Bradley stated that he doesn't need another issue such as cameras to deal with in his cases.

Ms. Roberts stated that she understands *In Session* has a wonderful reputation and asked if Ms. Casarez was aware of any show that went across the line and violated something and, if so, what was the recourse. Ms. Casarez replied that she was not aware of any violations. She explained that cameras in the courtroom is their business, so they follow the rules of the court. They respect the judiciary and go with it.

Mr. Bradley discussed a case where the judge had ruled out cameras, so a media person went across the street and filmed through the windows. He noted that there need to be rules in place.

Todd D. Epp, is the editor/reporter/publisher of the South Dakota Watch (<http://www.southdakotawatch.net>), a blog about South Dakota politics, law, and culture. He is also an attorney with Galland Law Firm, P.C. in Sioux Falls, South Dakota.

Mr. Epp explained that he is a lawyer and blogger and feels "behind the 8 ball" since most people don't like either. As a journalist he has covered some of you, and some of you have covered him as a lawyer. Primarily, Mr. Epp practices in the 2nd circuit. He's also in federal court fairly regularly.

During our meeting today Mr. Epp stated that he did live blogging, twittered, was on Facebook and took photos. He asked if any of this disrupted us. He showed us some of our photos and his blogging messages on his blog site. He explained that "twittering" is sending messages to many people at one time and they can be sent via a cell phone or blackberry.

Mr. Epp discussed his background, starting with a TV station in Kansas, then SD Public TV, and then Sioux Falls' KDLT news station. He has been in private practice since 1997. January 1, 2005, is when he started his blog site. He had 209,000 page views last month on KELOLAND.com for his website. He explained that bloggers are like the pamphleteers that Mr. Hengstler mentioned during his presentation, in that bloggers provide their side of the story.

Mr. Epp stated that he is sympathetic of what he needs to do to protect his client and to protect the canons of the judicial system. He felt that the judges are in charge of the courtroom and it is their responsibility to tell what can and cannot be done in order to keep the courtroom fair and impartial and keep its dignity. In the O.J. case, Mr. Epp felt that Judge Ito gave up control of the courtroom.

Mr. Epp noted that technology is almost pocket-sized now. He explained that trial lawyers are taught to tell a story to the jury and that this is understood by the media. He felt that it is up to the judges to keep control. Any abuses by lawyers and judges who

play to the cameras and bloggers could be handled by the Code of Professional Responsibility.

Mr. Epp stated that it all comes down to Trust. When you've been burned it's hard to trust again. He questioned if we trust everyone to do the right thing and he asked what rules do we need to ensure that trust.

Mr. Epp said that at a Bench-Bar meeting, he asked the judges how they felt about blogging in their courtroom. The judges replied they didn't mind if it wasn't disruptive.

Mr. Epp noted that newspapers are dying daily. In addition, cable and broadcast TV are losing viewers. Blogging has exploded but is dying off. The social media such as twittering and Face Book are exploding.

Mr. Epp stated that the Daphne Wright murder case was blogged by the Sioux Falls Argus Leader and that they lived blogged the appeal last week to the South Dakota Supreme Court, only this time with new technology. Mr. Nelson commented that the blogging was not distracting. Ms. Casarez noted that if things are too gruesome, sometimes they don't cover it.

Mr. Hengstler discussed a case where the judge only allowed so many seats for bloggers. The media did any needed discipline and kicked out those that didn't follow rules. Other bloggers then took the vacant seats.

Mr. Epp stated that current medias include streaming video on a laptop or separate computer and also include cell phones and smart phones. He noted that bloggers should be considered as another form of the media. When media cannot cover a proceeding, bloggers should be included in this directive. He felt that people should be allowed to take photos, but not allowed to walk around, use flash or be disruptive. His recommendations for bloggers were to have no restrictions on the type of technology platform a blogger uses because this will continually be changing. Bloggers should be allowed into the courtroom just like the public – first come, first served. They do not need a special media area like the mainstream media may get. In big court cases you may want to consider rotation of bloggers.

Mr. Epp felt the default should be openness as most people want to see government be more open. Also, don't limit the technology. Bloggers are the general public. Judges control the courtroom as they do now.

He discussed how court cases used to be a form of entertainment and how many of the old courthouses have balconies for the public to sit and view the proceedings.

Todd distributed a handout of his presentation (Handout B).

Questions and Comments

Mr. Hunhoff felt that cameras look much better to him than the bloggers as you can't be sure who is doing the writing. A blogger can say anything and there doesn't have to be any truth to it.

Mr. Hengstler cautioned that once you start exercising control over writing, you can be sued for it. Ms. Haraldson compared it to leaving the court and going to the bar for a beer, where you can say whatever you want. The blogging is comparable as it is someone's free speech. Mr. Epp said that if he knows that a certain person wrote a story, he would believe the newspaper before the person in the bar.

Mr. Bradley expressed concern that the newspapers are now starting to quote the blogs. Mr. Hengstler stated that we're in a shaken up "snow globe" right now and we don't know which blogs have credibility, but will know it sometime down the road.

Mr. Epp explained that we are going to areas we're comfortable with for our information. He goes to Keith Olbermann rather than the O'Reilly Factor show for news. He agreed that you should have concern if someone says something in a blog but won't put their name with it. He puts his name on his information. He suggested that maybe the South Dakota Unified Judicial System should consider putting the high-profile cases on their website as Mr. Hengstler suggested and then the media could use it as they needed.

Mr. Hengstler felt that the courts need to think themselves how to get the message we want out there.

Ms. Casarez informed the group that she needs to learn a trial inside and out before she can go on TV and discuss it. She used newspapers for the information but found lots of inaccuracies, so she now works from the legal documents. She felt that accuracy is needed so that rumor and innuendo do not spread. Mr. Hengstler discussed the *Slammer* newspaper in Florida that is quite popular as they publish all the charges and mug shots so that readers can see what is happening in their area.

The group broke for lunch at 12:20 p.m. and reconvened at 1:30 p.m.

Panel Discussion

Judith asked panel members to do a 5-minute statement about items they didn't mention earlier or provide responses to what they heard earlier.

Ms. Casarez informed the committee that Court TV believes camera access should be determined by the judge, whether or not there should be one in the courtroom for the case. They do not fight the judge's ruling. They do not give their satellite coordinates to anyone except CNN and they only give it to credentialed journalists. They send out a layout team before the trial to determine where the equipment goes. Any wires are taped down and out of sight. She referenced the DVDs which are of a courtroom setup. (Handout C).

Mr. Bradley discussed how an interview for a pending trial allows the decision to be made by the media/public before the body that is to officially make the decision gets to make it. Likewise, bloggers are presently beating the media by being in the courtroom. All of this works against what the prosecutors and lawyers are trying to do in the courtroom to provide a fair trial. He hoped we will write the rules with these things in mind.

Mr. Hengstler referenced the 6th amendment, which allows for a fair trial. He stated that we don't someone tried and jailed without the public being able to view the proceedings. On the other hand, he now senses a shifting of transparency vs. privacy. For example, if you're called for jury duty, how much of your personal life will enter into the public record. The public is worried about their privacy and what cameras/media will mean for them.

He stated that TV is here and we now have to reconcile how we want it utilized in our courts. Transparency and the shifting to privacy need to be considered.

Mr. Epp stated that the fact that the trial is public insures justice. He referenced the problems with Guantanamo and the trouble with the trials for the detainees. He felt that the public became skeptical because they couldn't see the process and they didn't know if things were being done properly and fairly. He felt that if access had been available, the Bush administration would probably have had more support in this matter.

He noted that this is an opportunity for South Dakota. He is aware of several bloggers who could be a problem for the courts, but there is always someone with a personal agenda that will cause problems. He also noted that there will be some headaches. In the long run, people will be impressed with the professionalism of the judges and lawyers and the civility of the proceedings.

Mr. Epp referenced his slide about Trust and said that we want to protect the criminal litigants. The public will ultimately be better informed.

Questions

Ms. Roberts pointed out that our committee name is a bit misleading because it only references cameras, but it is about broadcasting in general.

Mr. Nelson stated that the committee's responsibility is to make a recommendation to the Supreme Court and that we've been gathering information until now. He asked our guests what they suggested we do next.

Ms. Casarez suggested putting together a specific list of rules. The more particular the better, and she offered the example of taping wires down on the floor. She suggested that we look at other states and their specific rules.

Mr. Bradley cautioned against adopting something rigid like a statute as you need to remain nimble because of changing technology. He suggested adopting a judicial rule which adopts a policy and guidelines, which would allow local jurisdictions to adopt from a menu of things. He again noted that we need to stay nimble to adapt to changes that come along.

Ms. Casarez suggested that a courtroom decorum may be a way to do things. She referenced the recent Albuquerque case and discussed a situation where the court was adjourned but the judge was still on bench when a reporter got out her cell phone and started making calls.

Mr. Hengstler suggested that if a judge feels that it's in the best interest that a case not be covered, they should do a hearing and tell why. If cameras are permitted, make it a requirement of the pool to set up a bench-bar-press committee of people interested in this area so they can handle problems that arise. The bloggers that want in would need to go through this group and adhere to the rules. Also, we should look at comparative costs. He felt it is in the court's advantage to do the cameras. The judge could have a button on the bench and block out coverage when needed. The courts would then have control over the information to the media outlets.

Mr. Petersen asked the process for an application for coverage in Texas. Mr. Bradley said that there is a presumption of cameras in practicality, but not in papers. They need to formally ask the judge for coverage. The judge provides the rules they need to follow. The media accepts that a camera in the courtroom is not a constitutional right. He cautioned that if you create a rule, you create litigation.

Ms. Roberts asked if the media is automatically a party to the opening and closing. She also asked, in reality, how often does a judge shut off coverage. Mr. Bradley replied that they've received motions and briefs where the media has asked access. If the media is upset about it, they'd have to file an appellate case. Cases are closed for reasons such as protecting sexual assault victims and juveniles. If cameras were allowed, the judge may need to change venue; for example, move the trial out of town.

Ms. Casarez noted that Texas is notoriously difficult for them to have access to a hearing. They do live and taped trials. Ms. Haraldson asked about Texas's rules. Mr. Bradley replied that Texas law is silent about restrictions regarding cameras in criminal trials. It never became any form of rule or statute, so we just have local policies. This allows the judges absolute control over the decision. There are some counties that never have seen or will see a camera in the courtroom. He noted that there is no uniformity across the state. The majority of his experiences with the media have been very positive.

Ms. Haraldson commented that this would end up with some unequal treatment. Mr. Bradley replied affirmatively, but felt it was not unfair treatment. He pointed out that what we're talking about is having visual access to a story.

Mr. Epp noted that he used to be the guy who drove to a courthouse with the truck, cable, and satellite. Some South Dakotans, such as Karl Thoennes, are used to the media and working with them. Whereas, smaller communities have older courthouses and have problems with high-profile cases like the Janklow trial. They do not have the resources for media descending on them. The newer courthouses are more set up to handle media and the logistics for getting the story out aren't as challenging to determine.

Mr. Hengstler stated that Minnesota is using closed coverage of the courts. It is used for the courts' benefit, not the public's.

Roundtable

Ms. Roberts reminded the group that the last time we met, Chief Justice Miller did a round of the table and she'd like to do this today to see where members stand or to get their feedback about what we heard today, or suggestions of what you'd like to do from here on out.

Ms. Haraldson stated that she's reviewed quite a bit of information on this because it's in front of her all the time. She is ready to start taking action. She has a list of rules that work well in the South Dakota Supreme Court and feels this is a good start.

Mr. Millage piggy-backed on what Ms. Haraldson said in that the Supreme Court rules are in place and work well. He suggested establishing an ongoing review group. In addition, we should go beyond the traditional media of newspaper and TV in our considerations. We need to make the rules clear but don't overburden with too strict of restrictions.

Mr. Petersen noted that he has an anchor who is also an attorney. She gets scolded by judges for briefs that are too long. He felt that Iowa's book (Handout A) is very specific. He commented that he hasn't heard if we will proceed with the cameras.

Mr. Roby stated he has heard that we need to be careful at what level we proceed.

Ms. Hanna agreed with Mr. Petersen that we need to decide if this is something we're going to continue with or if there is no consensus to continue. We need to determine if it will be allowed and, if so, how will it be allowed.

Ms. Richards thanked the presenters for the wealth of information they provided. She commented that we're not sure what direction we're taking yet and that we need to make this decision.

Mr. Nelson thanked the presenters for traveling to South Dakota. He said he sees 2 levels of direction coming out of this group. One direction is to keep it as is and the other is to expand coverage. He noted that people feel strongly both ways. He felt that it's incumbent upon us that for the body whose direction we take, that we need to work

out our direction for the Supreme Court to review. He felt it would be good for 4-5 of us to go to a site where cameras are in use and to interview the different people involved, review their rules, see how the rules are applied in real life, and see the equipment setup.

Judge Gienapp thanked the panel and noted that they have given us insight. We now need to determine our route and then we need to get something on the table to discuss. He noted that there are 2 conflicting theories in the committee. He stated that he was kind of intrigued by Texas's rule where coverage is determined locally since we don't have the resources in the smaller communities that are available in the larger communities.

Judge Johnson noted that he is the "new guy." He commented that if you allow a change allowing cameras in the courts, it needs to be statewide, be comprehensive, and be totally different from the Supreme Court's rules. The Supreme Court is different in that you know months in advance where they will be, and there are no witnesses or jurors. We need to have a comprehensive rule that takes into account how unexpectedly things arise; we need to be able to account for it. He wondered why the federal courts haven't embraced cameras if they are as beneficial as we've been hearing. He did not think the county-by-county option is the best solution. He discussed how he had the Presiding Judges poll their judges and it was found that most of them were against cameras. Several had mixed feelings about it.

Mr. Rensch found the media clips today to be very beneficial. He commented on how you could see the rage on the face of the man on trial as the judge was giving the jury's decision. Mr. Rensch expressed concern about the zooming in of cameras and what this might do to court proceedings. He also didn't like how the media went to drastic measures to find out what was in the Jeff's letter that wasn't heard by the judge. He was concerned that cameras might zoom in to a counsel table.

Ms. Casarez noted that they do not allow zooming in at counsel table since people can read lips.

Mr. Rensch was worried about the effect that putting a camera on someone's face would have on the witnesses. He noted that just having a courtroom of people will have an affect on witnesses. He was worried it will affect the truth-finding process since the little minutiae, such as a lawyer looking at a client, could be misconstrued or expanded.

Ms. Casarez stated that the gallery cannot be shot in their rules. In Albuquerque, the defendant was nervous about the camera so the judge asked that it be changed so that it didn't look like it was aimed only on him.

Mr. Rensch referenced a case where the defendant was large and needed 2 chairs since the chairs were small. He was concerned as he could see something like this ending up on U-Tube.

Mr. Travis liked Mr. Nelson's suggestion that we could gather more facts by visiting a site where cameras are being used. He also appreciated hearing Mr. Petersen, Ms. Hanna and Ms. Richards' comment that we need to determine our direction. Up until now he felt it was assumed that we were on a train ride to adopt cameras. He is concerned that those involved in a trial will have a fair one.

Mr. Hunhoff stated that he wants to hear more from the judges about how they feel about having to make all the decisions. He also wants to know how the technical side will be handled. He felt that we need more information in these areas. He stated that the panelists this time and last were wonderful, but he feels it is now time to sit down and start talking amongst ourselves.

Mr. Holloway felt that the presenters were wonderful. He has the information he needs. He felt that we need to make a decision; the rest of it then is just details such as whether to put the camera on ceiling or wall. We need to decide whether we want to maintain the same course or allow broadcast media.

Mr. Hengstler gave Ms. Roberts several case studies for the committee's review. This information will be forwarded to the committee.

Professor Hutton felt that visiting some courthouses might make sense. She is inclined to vote in favor of allowing the cameras to go in the courtrooms.

Ms. Haraldson explained that the legislature in 2008 repealed the statute that banned cameras in court. This was done at the bequest of the media. The media in South Dakota want to see this happen.

Ms. Roberts stated that there are several things we need to address before we leave today. She noted that there's interest in the federal system. This could be investigated and sent to everyone. The other is for several members to view a court in action that has cameras. She realized that everyone is ready to get down to "nuts and bolts," which could be dicey since she's hearing different opinions within the committee. She noted that the Chief Justice has made it very clear that there is no foregone conclusion. The Supreme Court wants the committee to make a recommendation. The recommendation could include a majority and minority report.

Judge Gienapp commented that when we get to the nuts and bolts, there's no surprise that there will be a minority and majority report.

Ms. Roberts asked if there was anyone who could check out a cameras courthouse within the next month or two and get a report to us. She asked if this is something the committee feels is important in view of the time and financial factors. Ms. Casarez noted that Las Vegas has one of the best court systems for dealing with the media. They have fine tuned their system.

Mr. Hengstler said that Las Vegas and Florida are the best in the nation for coming to grips with cameras in courtrooms.

Judge Johnson asked about the small communities that occasionally become newsworthy. He is convinced it works in larger communities but wonders how it would be in the smaller courtrooms.

Ms. Haraldson volunteered to see if KELO's media coordinator for the Supreme Court could bring in cameras and set up the smallest court room you would want so you could see the arrangements. Mr. Hengstler noted the up side in that the media will do the wiring and setup for you if you are a judge and suddenly have lots of media showing up.

Mr. Petersen stated that we could express our feelings by vote via email.

Ms. Roberts suggested we set a date for the next meeting. She noted that we have different groups with opinions and asked members or groups to be prepared to come to the next meeting with proposals or outlines of what you would like to see and be prepared to present it. Plan to address all the issues we've heard, such as small town vs. large town courthouse, access, etc.

Judge Johnson suggested that everyone could email their views to Judith. Ms. Roberts asked if this would work for the committee or if they want the opportunity to pitch their proposal. We could meet during State Bar in Sioux Falls. Mr. Travis felt that we've had enough presentations.

Ms. Haraldson proposed that Ms. Roberts and Chairman Miller do a ballot or option sheet, send it out to get input from members, then come back at State Bar and discuss the findings. The forms should give people 3-4 choices and an area where they can comment. This will give you an idea of where people want to head.

Judge Gienapp noted that the Supreme Court wants the committee to come up with some guidelines. Mr. Holloway recommended having another meeting and giving everyone the opportunity to do their argument and then vote on our direction(s).

Ms. Hanna asked if the public will be allowed to come and voice their concerns. Ms. Roberts explained that we always send out press releases prior to the meetings stating the location and that it is open to the public. She thought that public input may be something we want to consider.

Mr. Millage stated that we could invite the public in to do public comments. Ms. Roberts noted that the public has never been invited to speak and that this could be an option.

Ms. Hanna felt that the State Bar meeting date would be good as the Bar could give their opinion. Mr. Petersen noted that there's nothing right now for public to comment on. Ms. Hanna stated that she wants to hear public input before she makes her decision.

Judge Johnson pointed out that this committee needs a result before they can invite the public. Right now, all you'll get are a lot of anecdotes and you'll get lawyers on both sides of the issue. He advised that there will be opportunities later. First, you need something concrete for them to comment on. Judge Gienapp agreed with Judge Johnson.

Ms. Roberts explained that for this meeting she tried to get victims who had been in cases that had cameras. Two presenters backed out when they learned that media cover our meetings as they didn't want to be identified. Ms. Roberts asked if there was any consensus as to public opinion. The committee decided to wait until a later time for public opinion.

Ms. Roberts outlined that each person or group gets 15 minutes at the next meeting to voice their proposal.

Ms. Haraldson explained that her request was a short recommendation such as - cameras all the time, cameras periodically, cameras rarely, cameras never.

Mr. Rensch agreed that we need to know direction and how much. He recommended that everyone email in either a *Yes*, *No*, or *Undecided* vote.

Mr. Holloway suggested we meet in a central location on **Friday, June 5**. The location of Pierre was selected because it is more economical since we don't have meeting room rent.

Ms. Roberts reminded the group to work on a 15-minute presentation as to what you would like to see as our vote will likely be split.

Next Meeting

The next meeting will be held Friday, June 5, 2009, in the Executive Board Room in the Becker-Hansen building. The address is 700 East Broadway Avenue, Pierre.

Adjourn

The meeting adjourned at 3:20 p.m. M.T.



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

Meeting Minutes

Fourth Meeting
Friday, June 5, 2009
8:30 a.m. CT

Executive Board Room
Becker-Hansen Building
Pierre, South Dakota

The fourth meeting of the Supreme Court's Committee for the Study of Cameras in the Trial Courts was called to order by Chairperson Chief Justice (Ret.) Robert Miller at 8:28 a.m.

A quorum was determined with the following members present: John Petersen, Tena Haraldson, Judith Roberts, Judge Jack Von Wald, Sheriff David Hunhoff, Judge David Gienapp, Denise Richards, Professor Chris Hutton, Lynn Sudbeck, Judge Warren Johnson, David Nelson, Jeff Larson, Mark Millage, Chief Justice Robert Miller, Mark Roby, Tim Rensch, Larry Long, Sheriff Don Holloway and Bob Wilcox

SCAO Support: Richard Lenius. Gloria Guericke was the Recording Secretary.

Excused: Roxanne Giedd, Karl Thoennes, Cheryl Hanna

Guests: Dexter Gronseth, KELO-TV; Ben Dunsmoor, KELO-TV; Mike Simundson, KELO-TV; Abby Van Den Berg, UJS intern; James Berreth, UJS Intern.

Committee Membership Update

Chief Justice Miller announced that today is Judith Robert's final day with the Unified Judicial System (UJS). Judith explained that her new job will be a dual position with the Attorney General's office and the Federal District Attorney's office and will mostly deal with drug cases.

Chairperson Miller stated that Chief Justice Gilbertson asked Lynn Sudbeck, UJS's Human Resources Director and acting Legal Counsel, to sit on this committee in Judith's place. Committee members should feel free to contact her for any assistance they may need.

He informed the committee and guests that today's meeting is being streamed live over the Internet, plus will be available on UJS's website for future reference.

Committee Member Presentations (approximately 15 minutes per presentation)

Chief Justice Miller asked that the presentations take place at the speaker's table so that they are picked up by the microphone. He drew everyone's attention to the memo

from Roxanne Giedd (Handout A) and noted that her position has been made very clear regarding the filming and broadcasting of courtroom proceedings.

The Honorable David Gienapp, Presiding Judge, Third Judicial Circuit, Brookings

Judge Gienapp stated that he had considered all the factors and the information we had received from the presenters and he felt that some information was applicable to South Dakota and some was not. He said that he came into this study without preconceived opinions. Judge Gienapp felt that the judge, prosecutor and defense should be allowed to decide media coverage. He explained that the job of a judge is to ensure that both sides are provided a fair trial. Recognizing that other states have taken action and in looking at all possibilities, he suggested that South Dakota adopt a rule similar to Minnesota's. The Minnesota statutory scheme permits photographic and electronic transmission with the permission of all the parties involved in a case. Juvenile proceedings, voir dire, and hearings outside the presence of a jury are excluded. Marriage dissolution is excluded, especially if kids are involved, but could be considered if it only involves property.

It is the judge's job to make sure there is a fair trial. Judge Gienapp felt that the judge should have the opportunity to deny photographic and other kinds of media coverage if juveniles might need to be protected in a case. He stated that the judge should be involved since South Dakota (excluding the cities of Rapid City and Sioux Falls) is quite different than a lot of other states. If those involved in a case in Wessington Springs agreed there should be media coverage, it would be quite different than media coverage provided in larger cities such as Brookings. In criminal cases, the prosecutors should have veto power since they are speaking for the victim. Media exclusion should also occur if the person is in the witness protection program.

Judge Gienapp stated that he wants the defendant to have a fair trial. If the defendant does not have veto power, he feels we would see a lot of litigation and appeals. Cases getting wide media attention would probably be those with court-appointed counsel and the counties would be paying the expenses.

He felt that there has to be a timeframe in advance of the trial where the media must make the request to cover a particular trial. This provides the necessary time to hold hearings regarding the request or to provide consent or a veto.

Chairman Miller asked if this is in the Minnesota statute. Judge Gienapp replied that he was not sure if this was in it and he also was not sure if Minnesota had enacted any court rules in addition to the Minnesota statute. He also was not sure if there would be a veto vote if the voting results were not kept confidential as you wouldn't want the vetoer to be "blasted" because of it. He felt that the timeframe was a necessary consideration. He concluded by stating that this is his position based on his personal experiences and from what he has researched.

Mr. Roby asked about a veto vote and Judge Gienapp replied that if one witness was against it but everyone else was for the cameras, he felt that something could be worked out.

Attorney General Long asked if this was an opt in or an opt out and Judge Gienapp replied that cameras would not come in to a courtroom until there had been a consent by all involved. He suggested a 60-day advance notice and felt that a shorter notice would probably be needed for situations such as suppression hearings, arraignment and hearings outside the jury.

Ms. Haraldson noted that she googled the Minnesota statute and discovered that they did a pilot project and they have a media group to decide the rules. They have a cameras program but filming and broadcasting rarely happen.

Mr. Petersen stated that the only case of note in Minnesota in recent times is the dispute over the senate seat and that cameras were allowed for this case.

Professor Chris Hutton, Professor of Law, USD School of Law, Vermillion

Professor Hutton informed the group that when she was first appointed to this committee, she told the Chief Justice that she did not know how she would vote, but that she was concerned about how filming would affect juries and others involved in cases. She stated that there is nothing in our court system that needs fixed, and she felt that we could improve the court system by opening it up with cameras, which would also give the public a better understanding of the courts. She felt that maybe it would be worthwhile for people to see how the system is working and to expose any flaws that may be in the system so that they can be corrected.

Professor Hutton recognized that communications are changing; newspapers are fading and people now get their news from TV and other electronic media. She questioned how do young people obtain and absorb information about the court system. Professor Hutton felt that bloggers in the courtroom are okay. She was concerned about dignity and accuracy in the courtroom and asked that we request that the quality be increased in providing information to the public if we move toward media coverage.

Professor Hutton felt that the default position should be that everything is open unless it is closed. She felt that it is important that the veto be available to parties since some cases will require it. She also felt that this should be a statewide rule, not a court-by-court rule, and that the people doing the media coverage should be certified. There should be no inappropriate actions by the media such as zooming to the tables or to notes being passed. She noted that may end up with only a few open cases, but we should at least start with it open. Professor Hutton felt that we could do coverage in a way that's beneficial to the community. She felt that we could do this well and that we need to shape the rules so that all benefit. She concluding by noting that she felt we'll probably end up with a minority and majority report.

Mr. Roby asked Professor Hutton's opinion on the veto process. Professor Hutton replied that the veto request would go from the attorney to the judge to have a case closed.

Ms. Roberts asked if she was envisioning a motion from a party and then a hearing regarding it. She also asked if the media would be brought into the hearing about the coverage. Professor Hutton replied that the meeting would include those involved in the case, not the media.

Mr. Roby asked Judge Gienapp if he would support an open presumption unless closed. Judge Gienapp questioned when is it considered open. He explained that he gets to court and sees 8 Pro Se protection orders, and asked the group if these are considered open. He stated that presumption isn't a big thing in his mind, but he wants the advance notice. Professor Hutton replied that the notice would be covered in the rules we draft.

Mr. Nelson asked Professor Hutton who would have the authority to exercise the veto. He explained that you're saying the party has to convince the court that it needs to be closed to filming. Professor Hutton replied that this authority is given to the judge. The judge and parties should presume they will have an open trial. Mr. Nelson stated that if any party has the power to veto, then the presumption of openness did not bother him.

Sheriff Holloway questioned if the party doing the vetoing needs to say why they want it closed. Professor Hutton stated that she would be more comfortable with an informal process. Sheriff Holloway expressed concern that we'd be tying up more court time if a party expresses a veto and arguments result from the other parties.

Jeff Larson, Minnehaha County Public Defenders Office, Sioux Falls

Mr. Larson stated that he had pragmatic concerns about what had been discussed. His overall general view in reading and digesting the information received, and the apparent gist of the presentations of the people proposing cameras in courtroom is that it is not as bad as it might be perceived. He asked the committee if they had heard anything that by bringing cameras into the courtroom we would improve the judicial product or process. He felt that if it is not broken, do not fix it. He noted that we cannot demonstrate that camera coverage would fix the product. From a practical standpoint, he couldn't think of any way a camera would help a jury make a better decision, but that it could make it worse. For example, if a juror's neighbors only see snippets of the trial, they won't understand the decision.

He explained that whenever you create a right or presumption, you create litigation. He felt that the cases the media are most interested in are the cases where you have a lot going on and the last thing you need is to decide whether media coverage needs to be included or excluded. It would divert his attention and could hurt his client.

Mr. Larson referenced Judge Gienapp's presentation and agreed with him in that the lawyers and judge know a case better than anyone else involved.

He noted that he realizes he's not 25 anymore and that the instructors in the Continuing Legal Education (CLE) sessions he attends are now teaching that coverage could be beneficial for some defendants, so he is not opposed to coverage if both sides feel coverage would be appropriate.

Mr. Larson felt that the process should be set up where someone needs to give notice for media coverage and that those involved have the option to veto it. He noted that he handled numerous cases, most of which would be of no interest to the media, but without knowing in advance which cases they were interested in, he would have to do the time-consuming task of filing objections in hundreds of cases where the press did not ever intend to get involved, just in case they were interested in one he would not have suspected. He stated that from a practical standpoint, this does not make sense.

Mr. Larson said he does not think the system is broken and that we do not need to add cost and litigation steps. He felt that the judges and lawyers are the best to determine direction. He closed by agreeing with Judge Gienapp's recommendation for the Minnesota option.

Tim Rensch, Rensch Law Office, Rapid City

Mr. Rensch informed the group that when he originally came on the committee, he felt that a camera was comparable to a tablet or notepad. Through the meetings he kept hearing how cameras are good and that they do not hurt people. By talking to lawyers and others, he has heard and now feels that being in front of a camera tends to make people be concerned about how something looks and sounds rather than talking from the heart. They may not do what is perfectly right in the circumstance. He felt that you may have judges and lawyers saying or not saying things that they should or shouldn't in front of a camera. He stated that we do not have "dark things" going on in courtrooms that need to be kept secret, but he is concerned that cameras will have an effect on jurors, witnesses, and others involved with a case.

Mr. Rensch discussed his observations from a mock trial with a camera and noted that when the cameras are there, it charges you up a bit. He's worried that if you have a camera in a courtroom, you may have someone playing to the camera rather than helping their client to the utmost extent. He also does not want to see snippets used by the media to provide a desired effect. Mr. Rensch noted that South Dakota is a different "ballgame" than California or New York in that we are a small state and we know people statewide. He said that he does not want things "hidden" but he also does not want improper behavior.

Mr. Rensch discussed a New York study that he had printed off the Internet. He noted a concern it addressed in that a camera in the courtroom would often make a timid or reluctant witness become even more so when found they would appear before a camera. Jurors interviewed in this study said there was not a problem, but one juror later said they were uncomfortable, that they felt there was more drama than warranted. One person felt that the presence of cameras would magnify the significance of a case.

Mr. Rensch stated that cameras can make it more difficult to get information out of a witness, especially if they are subpoenaed and did not want to testify in the first place. It has been noted that juries can tend to be more conservative when cameras are present, which can affect the fairness of a trial. The study also found that cameras, especially with sexual assault cases, can provide prejudice if seen on TV. For example, viewers will feel that the spouse is a real "dirt ball."

Mr. Rensch continued discussing the New York study and noted that it stated that an average of over half of those surveyed indicated they'd be more interested in press coverage than in having a camera available. The article referenced the use of a "blue dot" to cover face of a witness, but this option was not considered helpful by them.

Mr. Rensch felt that cameras should bring light to a courtroom and make people more truthful, but the study did not find this to be true. He noted that Barry Scheck, from the O.J. Simpson case, said that one juror received death threats because his address had been made known.

Another concern was with grandstanding. Mr. Rensch felt that judges and lawyers may not say what needs said because of cameras. Cameras make it more difficult for witnesses to talk. He asked that we not have cameras.

Mr. Peterson asked the date of the New York study and Mr. Rensch replied that it was from 1997.

Mr. Roby questioned the earlier expressed concern regarding parceling and snipping of video by the media. Mr. Rensch replied that he did not know how anyone would watch the whole proceeding and that most would not have the time. Mr. Roby noted that we presently do not use cameras in the courtrooms and then asked if lawyers still play up to a judge. Mr. Rensch replied affirmatively but noted that you take a risk in doing it.

Mr. Millage asked about Mr. Rensch's presentation before the cameras in the Supreme Court. Mr. Rensch replied that he did not know about them in advance and that he immediately changed his introduction when he found out about the cameras.

Judge Warren Johnson, Fourth Judicial Circuit, Deadwood

Judge Johnson noted that he was a late arrival to this committee's membership in that he was appointed to replace Judge Severson when he was appointed a Supreme Court Justice.

Judge Johnson stated that he totally agrees with all that Roxanne Giedd stated in her memo. This is his first choice for the committee's direction. His second choice is with the Presiding Judges who have agreed to support a rule based on the Minnesota concept.

He noted that one of the things lost in this whole process is the concept of "breaking news." Judge Johnson stated that he has a lot of rural counties and sometimes there'll be a case that is newsworthy, but this is not realized in advance. He discussed a case

in a rural county in his circuit where he picked the jury in a high school cafeteria and court was held in a jail cell because there was no courthouse in the county and then questioned how this would be televised and the possible difficulties with the broadcasting setup. He said he would consider carefully any media requests regarding cases in these rural areas or in the magistrate court in Deadwood where there may be a newsworthy case.

He stated that, from past minutes, it was noted that we need to consider who we are serving. We need to keep this in mind in our decision.

Judge Johnson reminded the committee that the court schedules change frequently, which could cause problems for those scheduled to film a case.

He stated that he would be very wary of any media requests under sudden breaking-news situations. He said that he's done criminal cases where it was initially big news, but by trial time there was barely anyone in the courtroom. He noted that it is the pre-trial proceedings that are the big news, not the actual trial, and that the defendant has a right to a trial in the county where the crime occurred. He noted that we have a difficult time getting a jury when a trial isn't news, so he would carefully view any requests.

Ms. Roberts asked if drug court was open to media proceedings. Judge Johnson did not think they have media coverage, but the media can attend the drug court graduation. Ms. Roberts questioned if it is possible this proceeding could be opened up, where these people lay open the most intimate details of their personal lives. Judge Johnson replied that these sessions are how these people make it through the difficult, life-changing 18 months of their lives.

Judge Johnson closed by again stating that the Presiding Judges are willing to consider the Minnesota process.

Denise Richards, Hughes County Victims Assistant, Pierre

Ms. Richards informed the group that when she was first approached about being on the committee, she couldn't imagine she'd be interested in seeing cameras in the courtroom and the intimidation they would bring to witnesses and victims. Over time, as speakers came in to visit with the group and as she read the research provided, she started to become more open to it and how they could educate the public. As an example, she stated that her kids do not know much about her job; they only see the "walk to the courtroom" on TV.

Ms. Richards felt that camera coverage couldn't be more disruptive than current situations, such as the elderly couple who attends the higher-profile cases and the distractions they cause while in the courtroom. She said that she agrees with Professor Hutton and Judge Gienapp that consent of all parties needs to be obtained regarding cameras coverage. She was not sure the prosecutor should be the one speaking for the victim as she felt that the victim should also have this option. For example, a prosecutor may feel that a domestic abuse victim can testify but the victim may not feel this way.

Ms. Richards relayed the case of an abused woman from Minnesota who was afraid of her abuser and would lie when in the Minnesota courts. The woman escaped to South Dakota and her abuser followed her and abused her child, causing the woman to finally tell the truth while in the South Dakota court, but Denise was not sure this would have occurred if cameras had been in the courtroom.

Ms. Richards felt that exceptions to cameras coverage should include jurors or prospective jurors, juvenile proceedings, and domestic abuse. She felt that cameras could be allowed if the parties involved are agreeable to it.

Mr. Nelson asked if Ms. Richards ever had a victim ask if they would be on TV. Ms. Richards replied that this has occurred many times as they see it on TV. She noted that it is so difficult to get these people to come to court to testify. The fact that they may not come because of a camera is a huge deal to her.

Judge Johnson asked if it heightens anxiety for the victims if they won't know until the eve of a trial that a camera will be there. Ms. Richards replied that mainly they have anxiety over having to face their attacker and that cameras would just add to their anxiety.

Dave Nelson, Nelson Law Office, Sioux Falls

Mr. Nelson said he had been struck by the comments of a lot of our guest speakers and that he felt that they did not have anything highly critical about cameras coverage. He noted that the lawyer from Georgia did not say it was really a problem once the trial was underway. He felt that the presenters mainly expressed esoteric concerns, but jurisdictions weren't really affected by expanded media coverage, which is an expanding trend. He never heard that a state had tried it, found that it did not work, and then backed away from it.

Mr. Nelson agreed with those who say we have an obligation as officers of the court to the public and to litigants. We should give the public immediate and less-filtered court coverage. He agreed with Professor Hutton that we should be proud of our courts, and that he thought that much of the criticism and questions about cameras are more about media in general and that all any media does is provide snippets of coverage. He felt that nothing makes a defendant look worse than the perp walk. If media can broadcast what is going on in court, the coverage of the defendant would be in a suit coat and necktie rather than an orange jumpsuit and covering their face with a legal pad.

Mr. Nelson noted that we already have cameras in this environment, which is exploitive of the defendant. His concern was the increased burden on judges and on litigants, which is the most legitimate argument against cameras, but he felt that this could be resolved by rule. We would need to define things such as who has veto power and who would be exempted (juvenile cases, etc.) He felt that the Minnesota rule sounds good but does not allow for cameras in the courtroom as a practical matter. One of the obligations of the court system is to the public. Anything we can do to make things

accessible to the public is worth doing. He closed by noting that, yes, there will be headaches.

Attorney General Larry Long, Attorney General, Pierre

Attorney General Long said that he was struck by a couple things as he served on this committee. The first was at the meeting in Rapid City when Iowa newscaster Dave Busiek discussed how camera coverage worked in Iowa and the media group that decides coverage, access, etc. He explained that he had asked Mr. Busiek if he could get access to the coverage if he requested it and Mr. Busiek's told him it was only available for the media.

Attorney General Long stated that cameras in the courtroom will be inevitable in South Dakota. His vision is of some version of Dakota Digital Network (DDN) where court proceedings will be done in this fashion in the future for the rural areas. He noted that there will be resistance to cameras, but some form of interactive cameras is inevitable. Whatever solution we craft should be with this in mind. He stated that there will be government-owned, installed and operated cameras in South Dakota someday, and that they could record the court proceedings. Anyone wanting access to the court coverage could tune in to a designated channel to watch the proceedings. We would need to decide when cameras would be turned on and off and which proceedings should or should not be televised. We could use the same rule as used when determining what records are public or private. He cautioned that cameras are coming.

Attorney General Long said that he was troubled by the Iowa approach. He felt that this discussion should not be about media cameras, it should be about public approach. Like Judge Johnson said, the 14th person in an arraignment may be newsworthy, but he shouldn't be treated differently and the other 13 shouldn't be filmed. We need to determine which proceedings are televised and which are not. He noted that the facilities situation in the northwestern part of the state that Judge Johnson had referenced will only get worse. It is a strain on the judicial system to cover these areas.

Attorney General Long felt that the debate should be over what proceedings should not be televised. This could be determined by deciding what proceedings can be viewed by the general public walking into a courtroom.

Judge Gienapp questioned how many decades might it take to get state-owned cameras in all the courtrooms. Attorney General Long said he was not that familiar with the financial aspect, but noted that we do have DDNs around the state. If we are setting up cameras in rural areas, we might as well do it permanently and have the judiciary handle the coverage.

Ms. Haraldson stated that she has had trouble getting access to court tapes. Ms. Roberts noted that these are the ones used from setting bonds, etc, and that every circuit has 1 or 2 sites. Ms. Haraldson asked about live streaming and Attorney General Long replied he thought it would be like tuning in to the local channel to view the city commission meetings. He thought the beginning point of discussion should be similar to

a request for government contracts; your access should be no greater or less than the general public's. Once the information is public, we cannot ask how it will be used. He realized the budget concerns and that this won't be accomplished overnight, but feels we are halfway there. This proposal allows us to decide in advance what proceedings would be televised. These will be proceedings where the general public is allowed. He stated that the standard has to be consistent across the board in that we cannot allow a still camera in and not someone else.

Mr. Millage noted that the presenter from Reno had a similar stand and suggested that there could be electronic coverage over the Internet. Attorney General Long stated that the standard should be that it is or is not allowed, and that situations such as protection orders, and that individuals such as witnesses, victims, and juveniles should be protected.

Richard Travis, Past-President, S.D. State Bar; May and Johnson, P.C., Sioux Falls

Mr. Travis stated that the presentations so far have been eloquent and insightful, and that he is intrigued about Attorney General Long's proposal of the direction we could take. He noted that we need to ensure that those involved get a fair and impartial trial. At the Rapid City meeting he had wondered if cameras would enhance or deter, but then he thought about presenters at earlier meetings who hadn't stated that cameras had negatively affected the proceedings. He personally did not see negative consequences with cameras.

Right now, we get a minimal shot of a perp walk as the news coverage. Mr. Travis stated that he supports a rule, whether it is the Minnesota rule suggested by Judge Gienapp, or Professor Hutton's presumption of openness. He noted that we are in the era of transparency and he felt that this is the direction we need to take. He feels it is the public's right to see what is going on in the system and he felt that we could create something that works while still protecting a person's right to a fair trial.

Ms. Roberts referenced the Georgia defense attorney's discussion about having to change venue and a whole new layer of litigation because of cameras. Mr. Travis stated that this will have to be an issue. This would be a negative aspect of a rule and that we need to balance this with a positive (transparency) aspect. Mr. Rensch pointed out that the Georgia attorney said he had never done a trial that was not in front of a camera.

Mr. Larson asked what the down side to what we presently have was and Mr. Travis replied that the public can come to a courtroom and listen anytime, and that there is no down side to the presentation arrangements. Mr. Nelson felt that the downside is that there is a tool available that the public could utilize and it isn't being made available. We have a public institution being administered by public employees and we have the opportunity to make it available to the public and we are not doing it.

Mr. Millage pointed out that the perp walk is presently the only means to make an image available to the public. Mr. Larson questioned if judges would have us dress up our clients in suits because they would be on TV at arraignment, and that this could be a logistical nightmare.

Professor Hutton said that she finds the perp walk offensive and hopes the media can find another option. Mr. Larson commented that he's been defending people for 30 years and no one has ever asked him for a photo of a client not in stripes. Ms. Haraldson noted that we want the image and that it is a hassle for us to be there for a perp walk.

David Hunhoff, Yankton County Sheriff, Yankton

Sheriff Hunhoff said he holds a strong position on the public's right to know, especially where the public's dollars are concerned, but feels we need to be sensitive in matters such as child visitation and divorce hearings,

He noted that previous meeting presenters did not seem to have strong feelings against media coverage. He felt that media coverage could be done without disrupting court proceedings, and he could see the judges having some fights if proceedings were not handled properly. He stated that rules need to be written to minimize abuses and that judges need have the final say. He pointed out that this seems to be a standard in other states that have coverage.

Sheriff Hunhoff noted that the Olivet courtroom is tiny like the McIntosh courtroom Judge Johnson referenced earlier, but with common sense we should still be able to provide camera coverage. He felt that audio causes the problem, not video, and that Roxanne Giedd's concerns would not exist if we did not have audio. He stated that Arizona allows audio but only for note taking for the judiciary.

Sheriff Hunhoff felt that Texas's definition of the media could include anything such as Hells Angels, Banditos, etc, and that we do not need these kinds of folks taking photos so they can then put out a hit list.

He felt that if we are allowing full media coverage, we need to decide if it is at the trial basis. We should consider the arraignment as this provides media with the image they want. We should also consider no audio.

He stated that he has been visiting with defense attorneys since he came on this committee and, so far, they want nothing to do with cameras. If they have veto power, we won't have cameras in the courtroom.

Don Holloway, Pennington County Sheriff, Rapid City

Sheriff Holloway stated that when he came into this study, his original thought was that the system had worked great for long time, so why make a change. Then he heard testimony from states with camera coverage and started to waiver on his decision. He has since returned to his original thought as he cannot see how it enhances things for

the public. If the committee wants cameras, he feels that Attorney General Long's suggestion is the way to go. He felt that the whole case should be recorded from beginning to end on all cases open to the public. He stated that we are not educating the public as we'd like to see done if we are only allowing cameras so the media can record and pull out the information they feel will be of interest to the public.

Sheriff Holloway said he has asked citizens their opinion about cameras in courtroom and, so far, no one has found it to be a good thing.

He stated that his concern with Attorney General Long's suggestion is with the costs associated with cameras. There is no money available at the county level for cameras in his jails, so he is not sure how to implement this option.

Mr. Peterson asked if the cameras were installed in the jails as an efficiency item and to save money. Sheriff Holloway replied affirmatively and explained that the defendant can communicate with the judges and lawyers, but the session is not recorded. The cameras have cut down on the transportation time and expenses. The cameras are on a direct line and there are no phone or internet costs involved.

Judge Johnson referenced Attorney General Long's suggestion in regard to his especially busy past couple months. He had been thinking about which cases might be of interest to the public. He noted that he had one with sex and drugs, but it was a divorce case and you'd first have to sit through the dividing up of the pots and pans and the rest of the property, and he did not think folks would be this patient in their viewing.

John Petersen, News Director, KOTA Territory News, Rapid City

Mr. Petersen opened by explaining that we live in an age where everything is digital. He felt that Attorney General Long's idea of interactive TV was intriguing and may be a way to solve the problem.

He explained that their customers are people who consume news, and they expect to see video and photos and hear the sound clips. He noted that we are a society of 24-hour information. The newspaper industry has a strong presence on the Internet. He felt that if the people were alive who wrote the Constitution, it would be included that the news media be allowed to use cameras in the courts, and not just have a reporter in the courtroom taking notes. The equipment involved in televising has gotten smaller and is less intrusive. For example, a wireless microphone is used and there are no lights involved.

Mr. Petersen said that he does not like the perp walks but that's all they're allowed to film. A lot of defendants are in custody, so they need to chase them across parking lots, etc., in order to get their story. They aren't proud of this technique and in the process; they've been pushed, shoved and spit on.

He stated that we already have camera coverage in the Supreme Court. In addition, the courts are already using video equipment for security purposes, as mentioned earlier.

Cameras wouldn't necessarily eliminate the perp walk, but we would prefer not to use the perp walk as there is an association of guilt with it.

As Attorney General Long said, cameras are probably inevitable. Mr. Petersen felt that as courts are built or remodeled, this may be the time to work in the cameras. Cameras are in all parts of our lives. They are on the ATMs, traffic lights, and even at Wal-Mart. He sees the cameras as another spectator in the gallery. They should be treated like you would any other spectator and the cameras should be turned on and off as needed. Witnesses may be more intimidated by the brother of the victim in the front row of the courtroom than they are the camera.

Mr. Petersen noted the earlier comment that we are not like California or New York, but we are a lot like Iowa, which has camera coverage. He was not sure how a camera would affect a juror's decision, especially since cameras would not be in the jury room. He felt that any abuses of EMC rules could be handled by the judge. The judge is in charge.

He questioned if the committee would prefer that the public's perception of a courtroom came from TV shows such as *Boston Legal* or *Perry Mason*. He felt that more public access is always good if you treat it like public records.

Ms. Roberts asked if he would vote for a system like Attorney General Long had suggested if our aim was to assist the public and provide greater access, but one where the media couldn't edit the feed. Mr. Peterson replied that he was not sure he could support this option.

Mark Millage, President, Kilian Community College, Sioux Falls

Mr. Millage stated that when Chief Justice Gilbertson first approached him to be on this committee, it was the day before he was leaving the news field for his present job position. He informed the Chief Justice of this and the Chief Justice thought this might be even better.

Mr. Millage stated that both Florida and Iowa have working models of camera coverage and that KELO has covered court proceedings in these areas. Iowa's media coordinator position is handled similarly to that of Dexter Gronseth's, the Court Media Coordinator for the SD Supreme Court. He noted that questions arose at the last meeting regarding whether the media coordinator would be a paid position.

He stated that in Iowa, the media provides the cameras and coverage at no expense to the government and this is similar to what we do in the South Dakota Supreme Court. Mr. Millage explained that electronic coverage is able to be done in any courtroom of any size. The media is responsible for the equipment and arrangements, and the judge has the final say.

He felt that South Dakota has pretty much provided open courtrooms over the years. Electronic coverage would provide accuracy compared to a reporter doing note-taking

coverage. In addition, it enhances the storytelling to the public and provides a better understanding of how decisions were rendered.

Mr. Millage noted that the legislature has been pro active in addressing government records during this past legislative session. He also referenced the quasi-judicial hearing - the Dan Sutton case - which had broadcasters and bloggers come in to cover it.

Mr. Millage would like the Supreme Court to adopt the presumption of openness. He stated that having dealt with cases in both Iowa and Minnesota, it is a night-and-day situation in terms of openness.

Mr. Larson felt that if it is just a matter of openness, and if it is open to the public, it could be streamed to the public. He questioned why the committee was discussing creating exceptions such as juveniles and rape victims because people can now come in and watch these cases. He questioned why we are considering closing the courts for these exceptions. Mr. Millage and Ms. Haraldson explained that the media exercises editorial control and that they (media) would not mention certain things such as the rape victim's name. If they were to use Attorney General Long's video, they still wouldn't name the rape victim.

Mr. Larson noted that no one is trying to edit what anyone walking through the courtroom door can presently see, so questioned why we are discussing editorial control by the media, or we would not be discussing excerpting parts of a trial or types of trials from media coverage that are allowed to be viewed by members of the public who attend trials in person. Mr. Millage explained that it is because of community standards – what the public would object to hearing or seeing.

Mr. Larson replied that community standards recognize the difference between an open courtroom vs. having a camera in the courtroom. He felt that this seemed fundamentally contradictory. Mr. Millage replied that, frankly, they do not want to be fined by the Federal Communications Commission (FCC). As you develop a set of standards per se, you want to make it as easy as possible for the judge.

Mr. Roby asked the committee to allow us (media) to make the rules. Sheriff Holloway noted that there is a difference between public access cameras vs. media cameras and that we are only seeing a small portion of what went on in the courtroom through the media's cameras.

Ms. Roberts asked if we want "media" defined. She questioned if the media would anticipate participating in a hearing if the judge finds cause to close the courtroom to coverage. Mr. Millage replied that we do not want it too strictly defined. We do not want to get into the business of licensing the media. If you're in a pool situation and dealing with a media coordinator, you're just giving access to someone out there.

Ms Roberts noted that nowadays you do not need to be media to access a courtroom, as evidenced by bloggers and tweeters. Mr. Millage added that you currently have folks taking their laptops into courtrooms. Ms. Roberts asked what he personally envisioned.

Mr. Millage stated that we need to look at the large metropolitan areas as things there trickle down to us about a year later. He noted that if we had established a set of rules a year ago, we wouldn't have discussed topics such as twittering.

Ms. Roberts asked Mr. Millage if he wanted only the media to broadcast or to allow everyone to be able to broadcast. Mr. Millage replied that he felt it comes down to the judge to determine if an individual would need to get the "boot" if they became offensive.

Ms. Roberts asked if he felt that the media should participate in a hearing regarding closing a case to coverage. Mr. Millage felt that they should be allowed to participate.

Chief Justice Miller recognized Dexter Gronseth, who is the media coordinator to the Supreme Court, and asked him to describe his role as a media coordinator.

Dexter Gronseth, KELO-TV, Sioux Falls

Mr. Gronseth opened by noting that this July will mark the 8-year anniversary of cameras in the South Dakota Supreme Court.

Mr. Gronseth discussed the placement of cameras in the courtroom and noted that there are no flashing lights. Two individuals operate the cameras in the courtroom and there may be another individual if there is an interest in still shots. The media's attire must be unobtrusive, no logos. They have had very few problems.

He noted that we had our first blogger in March while Court was being held at USD. The blogger was moved to the media room.

Mr. Gronseth explained that two weeks before the hearings, he sends an email to the Associated Press and requests that they let him know by the indicated deadline if they are interested in coverage of these cases. In addition to cases, they pooled Justice Severson's swearing in ceremony.

Judge Gienapp asked what is done if a media room is not available. Mr. Gronseth replied that the media could set up in a corner or a hallway. The equipment is so small anymore that this is possible.

Mr. Nelson noted that cameras are set up when there is sufficient interest from the media and questioned what happens if only one person wants the coverage. Mr. Gronseth replied that they would probably just set up their camera.

Mr. Peterson distributed a copy of the media's proposal regarding expanded media coverage in South Dakota (Handout B). Ms. Haraldson announced that the media rests their case; no more testimony.

Professor Hutton brought up a topic that no one had yet broached. She noted that a few years ago Chief Justice Gilbertson had put together the Equal Justice Commission to study access for and treatment to Native Americans, and she wondered how cameras might affect these kinds of cases. She felt that if there's a perception that Native

Americans aren't treated fairly, maybe the streaming would confirm or deny this perception of that alleged fact by a court or jury. She would also like the committee to think about witnesses coming in to provide testimony in context of any proposal the group determines.

Quick Tally of Committee Members' Stances

Chief Justice Miller stated that he had kept a tally during the presentations and he showed the following:

- Objects to cameras in the courtroom: Mr. Larson, Mr. Rensch, and Ms. Giedd
- Interested in the hybrid suggestion by Attorney General Long: Sheriff Holloway, Attorney General Long
- He noted that all the rest spoke in favor of the concept with various controls that would need to be in place, whether it be the Minnesota or Iowa system or something in between.

Chairman Miller asked if this was correct. Mr. Larson clarified his position by stating that he was not opposed to the Minnesota concept proposed by Judge Gienapp if the committee consents to this proposal. He felt there was a big difference between how courtroom camera coverage is handled in Iowa vs. Minnesota. Judge Gienapp agreed that there is a big difference between it being open unless it is closed versus opening it if all agree.

Media Proposal Overview and Committee Discussion

Chief Justice Miller asked Mr. Petersen to discuss his handout (Handout B). Mr. Petersen deferred to Ms. Haraldson, who explained that she had created it using a combination of existing Supreme Court rules and Iowa's trial rules. She noted that this comes from an assumption that broadcasting will be permitted under the following conditions of advance notice and that the judge's permission is under the assumption of openness. She would like the judge to provide a reason why if a case is closed so that there would be a learning experience from it for future cases.

Ms. Haraldson referenced Professor Hutton's concern about Native Americans and stated it could extend to situations such as people with speech impediments, who might want their portion closed to cameras before they would testify. She is open to cameras being off during these time periods if that would help with the court's decision.

Judge Johnson questioned #6 on Handout B and noted that child custody cases aren't closed. Ms. Haraldson explained that when children are involved, the media already has a policy in place that they not provide the name or sex of a child.

Ms. Haraldson referenced Handout B and noted that the criteria about requests being received at least 14 days in advance is what Iowa uses, but we could use a different timeframe.

Ms. Haraldson explained that when Dexter forms a pool, he is concerned about who mans the cameras. He wants trained camera operators, not amateurs. In Handout B, the Maximum Equipment Allowed section is from our Supreme Court rules. The Proper Decorum section of Handout B rules out the possibility of attire such as tank tops and shorts showing up in the courtroom.

Mr. Larson stated that he has concern and mistrust when he reads these guidelines. He questioned how you can decide someone is a victim without a determination. Some proponents are willing to concede that the alleged victim should have veto power, but why would the system provide them with more protection than the person defending him/herself against what may be a false accusation. He noted that most sex abuse cases aren't a "whodunit;" it is a determination if it occurred. It's felt that the victim should have veto power, but questioned why a system would provide them with more protection than the person trying to respond. He felt that if you truly believe in the presumption of innocence, you need to provide veto protection both ways.

Ms. Haraldson noted that we do not need to be under Iowa or Minnesota's rules, we need our own rules. Mr. Larson felt that the person accused of a crime and also the victim should both have the same consideration. This has bothered him throughout the study.

Ms. Roberts pointed out that the Unified Judicial System would be troubled by the term "shall" in #2 and #8 on Handout B. She explained that we do not want our judges mandated and that we would be in opposition because of this term. Chairman Miller reminded the group that Ms. Roberts was speaking on behalf of the Chief Justice and the Court and that her point was well taken regarding the shall vs. may terms.

Ms. Haraldson reminded the group that the media was not wedded to this document; it is just a starting point for the group.

Direction for Next Meeting

Chairman Miller noted that the Presiding Judges, through Lynn Sudbeck, could conceptually replicate Minnesota's statute, and that Attorney General Long has the proposal of a "hybrid" interactive system. He questioned how we could incorporate these options into a minority report.

Judge Gienapp referenced the Minnesota statutes and felt that we could put something together more simplistic than these and could leave out the technical aspect. Under this plan or the Minnesota plan, he sees the advance notice to be very critical. He felt that 14 days was totally unworkable and that 60 days would be more viable.

Mr. Larson said that he appreciated having a proposal in front of him to work from and that he would also like drafts of Judge Gienapp and Attorney General Long's proposals to work from. He noted that it is easier to vote on something that's in front of you.

Professor Hutton agreed with Mr. Larson. She suggested putting together all 3 drafts plus a cover sheet to present to the Supreme Court. The committee could identify the

problems the Court needs to think about, such as what cases should be open or closed and what attendees should attend the meeting when a case is closed to coverage.

Chief Justice Miller asked Attorney General Long if he would be willing to work with his staff and the Court's staff regarding his proposal. Attorney General Long replied affirmatively and stated that he would put his contact staff person in touch with Lynn. Chairman Miller then asked Ms. Haraldson and Judge Gienapp to do the same and be in touch with Lynn.

Judge Gienapp suggested doing an outline with bullets so that we could easily switch things out.

Chairman Miller asked Ms. Richards if she was comfortable with doing it this way in regard to her constituency, and Ms. Richards replied affirmatively. Chief Justice Miller then asked Mr. Nelson, who replied by expressing his comfort with the direction being taken, and that he especially liked the listing of policies that could be debated. For example, juvenile proceedings would be closed. Chairman Miller then asked the sheriffs, bar members, county commissioners, academia and media about their comfort level with the direction being taken. They all expressed comfort. Ms. Haraldson apologized for coming to the first meeting with a set of rules. She noted that she has since learned a lot. She strongly feels we need a draft set of rules as it will speed up the process.

Chief Justice Miller asked what would be a reasonable time in which to get this process done. Judge Johnson stated that the Presiding Judges meet in September and that he could not come before this group with a proposal until he first presents it to the Presiding Judges and gets their input.

Next Meeting

Chairman Miller suggested the meeting date of Friday, October 2, which met with approval by the group. Pierre was selected because of its central location. Attorney General Long offered their conference room. It was suggested that we have a 10:00 a.m. starting time and that the group could have lunch at the Mickelson building and then continue the meeting into the afternoon.

Adjourn

The meeting adjourned 1:50 p.m.

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

Meeting Minutes

Friday, October 2, 2009
10:00 a.m. CT

Commission Room
Mickelson Building
1303 E. Highway 14, Pierre, SD

Attendance: Tim Rensch, Esq., Rensch Law Office, Rapid City; Honorable Jack Von Wald, Presiding Judge of Fifth Judicial Circuit; John Petersen, News Director of KOTA Territory News, Rapid City; Dave Hunhoff, Yankton County Sheriff; Professor Chris Hutton, Professor of Law at USD School of Law; Honorable David Gienapp, Presiding Judge of the Third Judicial Circuit; Roxanne Giedd, Esq., Attorney General's Office and Past President of S.D. State Bar; Bob Wilcox, Executive Director of the S.D. Association of County Commissioners; Jeff Larson, Esq., Minnehaha County Public Defenders Office; Mark Roby, Publisher of the "Watertown Public Opinion;" Denise Richards, Hughes Co. Victim's Assistant, State's Attorneys Office; Charlie McGuigan, Chief Deputy Attorney General; Mark Millage, President of Kilian Community College; Chief Justice (Ret.) Robert Miller, Dave Nelson, Esq., Nelson Law Office, Sioux Falls; Richard Travis, Esq., May & Johnson Law Office, Sioux Falls and Past President of the S.D. State Bar; Tena Haraldson, Chief of Bureau, Associated Press; Karl Thoennes, Circuit Administrator, Second Judicial Circuit; and Greg Sattizahn, Legal Counsel for the Unified Judicial System

Excused: Don Holloway, Cheryl Hanna, and Judge Warren Johnson

Guests: Ben Dunsmoor, Mike Simundson, and Bruce (Dexter) Gronseth from KELO-TV, Bob Mercer, Chet Brokaw,

Unified Judicial Staff: Richard Lenius and Gloria Guericke

Call Meeting to Order, Introductions

Chairperson Chief Justice (ret) Miller called the meeting to order at 10:03 a.m. He reminded committee members to speak up clearly as the meeting was being streamed live over the Internet.

He introduced Greg Sattizahn, who is the new legal counsel for the Unified Judicial System. Before that, Greg had been with the Supreme Court legal staff and had served earlier as a law clerk. Chairperson Miller also introduced Chief Deputy Attorney General Charlie McGuigan, who was filling in for new committee member Attorney General Marty Jackley, who had replaced former Attorney General Larry Long.

The guests, who were all members of the media, introduced themselves. Chief Justice Miller noted that Dexter Gronseth is also the Media Coordinator for the South Dakota Supreme Court.

Review Drafts of 3 Proposals

- **“Minnesota Proposal”**

Judge Gienapp drafted a South Dakota version (Handout A) based in part on the policy used in Minnesota regarding cameras in the courtrooms. He explained that when he referenced this Minnesota rules-based plan at the last meeting, this South Dakota version wasn't yet in writing, so he was speaking in generalities at that time.

All the Presiding Judges have reviewed this proposal. It was discussed at last week's Presiding Judges' meeting and they voted to endorse this recommendation. The two Presiding Judges who were absent from the meeting were later polled and they also endorsed the recommendation, making it a unanimous endorsement.

This proposal allows the usage of cameras if there is agreement by the judge and all the counsel. The courtrooms per se are not open; they are closed, except for the exceptions when all agree. This cuts down on the expenses of extra actions and paperwork since there isn't the presumption of openness. It also cuts down on the avenues of appeal and habeas proceedings, especially since most of these cases would be court-appointed counsel.

The proposal in front of the committee is his second draft. Judge Gienapp explained that he sent the first draft to Jeff Larson, who made a number of grammatical changes and some suggestions. The first draft listed certain classes of cases, such as sex crimes, where there would automatically be no cameras. He later removed these because he determined that if you need the consent of all parties, why have these cases listed. He noted that he did not have victims listed as having input as he felt the State's Attorney would converse with the victim.

Judge Gienapp said that he did not spend a lot of time on technical aspects of the proposal, such as the placement of cameras, as he did not feel this was necessary since he sees our committee as recommending a general philosophy to the Supreme Court. He stated that the timeframes in the draft are arbitrary.

Chairperson Miller asked if this proposal is patterned in great part to what exists in Minnesota. Judge Gienapp replied that the philosophy is the same but the Minnesota plan has more restrictions. He pointed out that suppression hearings need a separate consent because you never know what will come up in out-of-court proceedings, and that you don't want certain things, such as the results of polygraph tests, to be made known. But the philosophy regarding the general rule is similar to Minnesota's.

Chief Justice Miller asked if anyone had questions regarding this proposal.

Mr. Nelson asked if all involved agree that the proceedings will be televised, but someone requests that a certain point not be televised, would this occur. Judge Gienapp replied affirmatively and explained that if the media indicated an interest and counsel were brought in, they could agree and then note the areas they do not want televised.

Mr. Roby asked about situations where the judge may be in favor and the 2 attorneys were opposed, or where the 2 counsels may be in favor and the judge does not want the coverage. Procedurally, there are examples where the judge's wishes are overruled. Judge Gienapp noted that it is not wanted that the victim's experience be exposed.

Mr. Sattizahn discussed how this proposal handles cameras versus how the Supreme Court handles cameras in the courtroom. He then asked if a media coordinator would be needed.

Mr. Roby asked if there were examples of cases that might be televised. Judge Gienapp stated that the rule envisions that any type of case could be televised. Mr. Roby asked for some examples and Judge Gienapp replied that it depends upon all the parties. He explained that our primary concern is that they get a fair and impartial trial. He could historically think of places in S.D. where some judges may never have a televised case due to various circumstances, but he himself would be open to televising in certain courts, but not in others, because of the staffing situations in various courthouses.

Mr. Larson explained that he's had clients ask him to contact "60 Minutes" and major news stations because they wanted the media attention for the case. He would support a client's right for the publicity, but would advise them if he felt it was not in their best interest.

Judge Gienapp stated that serial killers commit their crimes for the publicity it brings them. He noted that the defendant may want a televised trial and this is one concern against the presumption. The closure philosophy also cuts off the possibility of appeal.

Mr. Nelson asked if there were any states that vest the veto power in the attorneys. Mr. Petersen replied that Minnesota is an example where cameras are allowed if all parties agree. Their recent race for the Senate seat was televised; otherwise, cases are rarely televised in Minnesota. Mr. Roby noted that in the last 10-15 years, the media has not bothered to ask because approval is not given. Basically less than a handful of Minnesota cases were televised in the last 20 years.

Mr. Hunhoff asked if the Presiding Judges had discussed any particular topics in this proposal. Judge Gienapp informed him that they discussed it generally and were unanimously in favor of it. He added that Judge Johnson asked each Presiding Judge to do a poll of the judges in their circuit and it was found that several judges in the circuits did not have a problem if there were to be cameras in their courtroom.

- **"Media Proposal"**

Mr. Millage informed the group that this proposal presumes openness at the front end of the process. It is patterned similar to what's practiced in states like Iowa, and is what we currently do with the S.D. Supreme Court,

especially in regard to working through a media coordinator. He noted that one thing not spelled out in this document is an ongoing practice of continuing education, which he feels is essential. Unlike the Bar, there is no sanctioning body for broadcasters. He feels the continuing education should be offered on an annual basis to make sure the broadcasters understand the rules.

He explained that the Notice of Intent could be as short as 2 weeks or as long as 60 days, or whatever other time period might be determined depending upon the case. He noted that no specific timeline is included in the proposal.

Mr. Petersen stated that the main difference between Judge Gienapp's proposal and the Media's is the difference in the presumption of closed or openness. He wondered if the media should have the opportunity to be heard before a case is closed.

Mr. Roby pointed out that the procedural ruling of the judge is preserved in their proposal.

Ms. Haraldson said that they are offering to use the state-of-the-art tools of their trade to cover court proceedings. They presently cover the legislature and Supreme Court proceedings, etc. in order to make available openness for the general public.

Mr. Millage referenced the handouts he provided at an earlier meeting which were dated 1983 and 2001, and were in regard to the study of cameras in the Supreme Courtroom. He pointed out that here we are now discussing this issue for the courtrooms. He noted that technology is much better now than it was then.

- **"Former Attorney General Long's Proposal"**

Mr. McGuigan informed the committee that he did not have time to visit with Mr. Long about this proposal before he left office. Attorney General Jackley has read it and supports it. Mr. McGuigan's best explanation of what Mr. Long was proposing, and he apologized if his interpretation was different from Mr. Long's, was a process similar to the Supreme Court's. Any proceeding open to the general public would be broadcast over the Internet. The judge would press a button to start the session streaming. He pointed

out that the LRC has meetings broadcast via audio over the Internet and that this would differ in that anyone could watch and hear it over the Internet. Approximately 40 of our courthouses have the ability to do this right now but some of this technology would need to be updated. Courthouses without this technology would need to have it installed and \$25,000-50,000 would be needed per courthouse to get this system up and running.

Mr. McGuigan noted that courthouses without this technology are those not used on a regular basis. Mr. Roby asked if portable equipment might be an option and Mr. McGuigan replied that he had visited with Pat Callahan, who films events shown on the local access channel, and Pat felt that this could be possible.

Ms. Giedd expressed concern that we are creating another public record with these recorded trials. Mr. McGuigan felt that this would be the same as the recorded legislative proceedings, which are accessible to everyone.

Mr. Peterson noted that there are presently 40 courthouses which have some ability to do this now, and he asked who paid for this equipment. No response was provided to this question.

Ms. Hutton stated that she favors this proposal and that it has some attributes we should consider. The proposal provides openness but control by the courts and it does not allow the media to "cherry pick" the more sensational items from the cases. She was open to the idea of trying the 3 proposals as pilot projects in different circuits to see how they would work.

Chairperson Miller stated that we need to discuss a pilot. He explained that he has heard people question how we know an option will work until we pilot it. Judge Gienapp commented that he doesn't disagree with Mr. Long's concept but, realistically, he doesn't see the legislature funding an unnecessary project like this when the funds are needed more elsewhere.

Mr. Sattizahn noted that this proposal would require a lot from the Unified Judicial System. He explained that he ran the proposal by UJS technical staff and they informed him that you can't just capture current feeds on the DDN and put it on the Internet. Another concern is that the UJS would also need the personnel to run the equipment.

Ms. Haraldson stated that, after reading Mr. Long's proposal, she felt this was the "Cadillac" proposal as it was the way to truly open the courtrooms. She noted that the media may feel that a certain case is newsworthy, but an individual, family or county may have interest in another case. She asked if the media would be able to tap into these cameras if they wanted to do a news story. Ms. Haraldson referenced the legislative broadcastings and how this has educated the public. She felt that if this proposal is selected, during the implementation stage the media should be able to step in and help provide cameras in the courtrooms where cameras aren't available yet.

Mr. Rensch expressed concern about the effect of cameras on witnesses. He noted there is a big difference between having cameras in courtrooms versus the Supreme Court. Witnesses are sequestered so that they do not hear the testimony of other witnesses and possibly modify their own testimony. Mr. Long's proposal provides the danger that the witnesses could become aware of what earlier witnesses have said.

Chairperson Miller reminded the group that the Supreme Court is expecting us to provide them with a proposal or proposals.

Ms. Hutton proposed that we do a written poll where members rank their recommendations. Mr. Larson endorsed the poll idea but suggested that in addition to the Media proposal, the Long proposal, and the Gienapp proposal, there be added the Status Quo proposal.

Committee members did the written poll and members were provided printed copies (Handout D) of the rankings and totals compiled by Mr. Sattizahn and Ms. Guericke. Mr. Larson reported the vote as Gienapp: 55; Long: 49; Status Quo 43; and Media: 43.

Ms. Hutton noted that we need to include these poll results with the information that we give to the Supreme Court. She didn't see how we could run Mr. Long's proposal as a pilot since the start-up is so expensive. Ms. Haraldson asked if there were some courtrooms in Sioux Falls that could implement the Long proposal. Mr. Nelson replied that there were some but he wasn't sure they could put the information on the Internet. Karl replied that this could be possible.

Mr. Larson questioned how you determine how long of a time period is needed for a pilot project in order to get your data. He felt that all pilot

projects do is result in having a group meet in another couple years to re-address the same issue. Mr. Larson felt that we need to make our decision now, and that we are shirking our responsibility if we do not make our decision.

Ms. Haraldson pointed out that with the vote split 4 ways, we have the option of eliminating some choices. She asked about blending some things from the different options. Since we don't have unanimity for Status Quo, we're looking at proposing some kind of a change.

Mr. Larson stated that 2 proposals are presumptions of openness and 2 are for closeness. Mainly it narrows down to the Gienapp vs. Long proposals.

Ms. Hutton felt that if we adopt the Gienapp proposal, this is a change from the Status Quo. She sees the Supreme Court reviewing the pilot project after a year and then making their decision.

Ms. Haraldson followed up on an earlier comment that there were some judges open to the idea of cameras in courtrooms in Sioux Falls. Judge Gienapp replied that his recollection of the poll of the circuit judges was that some were open to the idea. Mr. Thoennes agreed there were some open to the possibility.

Ms. Haraldson felt that the Supreme Court may be hesitant to adopt a proposal until they see it in action via a pilot project. She asked how the committee felt about doing a "Gienapp pilot" in the Third Judicial Circuit and a Media pilot in the Sioux Falls area.

Mr. Larson felt that the committee needed to make a recommendation. He had a problem with a pilot project being done in Sioux Falls as his office isn't staffed to litigate these things right now. He questioned why we're considering doing a pilot on something that isn't even close to a consensus.

Mr. Roby stated that he came to today's meeting to consider the 3 proposals, and that Status Quo was added at the last minute.

Mr. Thoennes pointed out that Mr. Long's proposal isn't technically feasible. Right now, his offices know when the Supreme Court is in session because their computers run slow. He noted that the other proposals are technically feasible immediately and he didn't understand why we're even considering it.

Ms. Hutton commented that if we feel Mr. Long's proposal is the direction that should be taken; we should propose it to the Supreme Court, even if it would take a long time to implement. The Supreme Court has the option to run a pilot in an area.

Judge Gienapp felt that the committee's recommendation should be one of the plans and that he didn't feel it is up to us to determine pilot projects. The problem with pilot projects is they need to be long-term, especially since many areas of South Dakota don't have cases that would be considered interesting by the media. He pointed out that any rule the Supreme Court passes is part of a public process because you can come in and request changes to the rule.

Mr. Larson suggested the committee not "step on the Supreme Court's toes" and let them make the final decision.

Mr. Larson moved that the committee submit all 3 proposals to the Supreme Court along with the tally sheet and a recommendation from the committee for Judge Gienapp's proposal since that's the one with the most committee support. The motion was seconded by Judge Gienapp.

Ms. Giedd asked if this could include a minority recommendation and Mr. Larson replied that this could be included. Chairperson Miller noted that the tally sheet shows the minority. Ms. Giedd pointed out that we never discussed today why Status Quo is a way to go.

Judge Gienapp stated that he didn't have a problem with a minority report but noted that we're not filing a majority report.

Mr. Hunhoff commented that he hoped the committee didn't vote on Mr. Long's proposal based on the implementation costs. He hoped we got a fair reading on the issue. Ms. Haraldson referenced an earlier discussion where it was noted that 2 proposals are presumed open and 2 presumed closed. She said she would like a vote to determine the committee's feelings regarding openness and closed. Chairperson Miller stated that we could do this motion after we finish the Larson motion.

Mr. Nelson stated that he also liked the idea of a vote regarding open versus closed. He felt it would be good for the committee to have this information. Mr. Nelson's statement was endorsed by Mr. Roby.

Ms. Hutton didn't understand why the committee would want this vote; why would her personal decision override the committee vote. Mr. Nelson pointed out that we're not to submit to the will of the majority and that not all will agree. He said he always understood there would be a majority and at least one minority position.

Mr. Nelson made a substitute motion of a vote to see how committee members felt about closed versus open courtrooms in regard to camera coverage. Ms. Haraldson seconded the motion. Mr. Larson said that he agreed with Mr. Nelson and Ms. Haraldson. The committee agreed by voice vote to approve Mr. Nelson's substitute motion. A roll call vote by Chairperson Miller showed that there were 10 votes for closed and 8 for open.

Mr. Larson remade his earlier motion that the committee submit all 3 proposals to the Supreme Court along with the tally sheet and a recommendation from the committee for Judge Giennapp's proposal since that's the one with the most committee support. The presumption of openness vs. closed votes should be included. He noted that none of the proposals included arguments. He felt that it would be simplest to address the recommendation process by submitting the proposals. Ms. Hutton seconded the motion. The motion passed by voice vote with Ms. Haraldson and Mr. Millage casting dissenting votes.

Next Meeting

Chairperson Miller informed the group that Mr. Sattizahn will put together the committee's report and disseminate the draft for review. He could see the group getting together one more time and we could consider adding a minority report and determining what goes in it at that time. After the draft report is disseminated for review, Ms. Guericke will poll the committee for a meeting date. The committee could then provide counter-proposals for the meeting.

Ms. Hutton pointed out that the Status Quo is on our survey sheet so they will know the standing. Mr. Rensch stated that if the meeting minutes are

attached, these will provide the arguments heard throughout our meetings. Chairperson Miller added that a lot of the minutes were of presentations made to us, which is also important information for the Supreme Court.

Mr. Nelson noted that the report will be for support of the Gienapp proposal and will contain a summary of the Media's proposal, and then questioned if the committee could subscribe to whichever report they prefer. Chairperson Miller replied affirmatively.

Adjourn

The meeting adjourned at 12:01 p.m.

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

Meeting Minutes

Friday, December 4, 2009

10:00 a.m. CT

Capitol Building

Room 414

500 E Capitol, Pierre, SD

Attendance: Tim Rensch, Esq., Rensch Law Office, Rapid City; Honorable Jack Von Wald, Presiding Judge of Fifth Judicial Circuit, Professor Chris Hutton, Professor of Law at USD School of Law; Honorable David Gienapp, Presiding Judge of the Third Judicial Circuit; Bob Wilcox, Executive Director of the S.D. Association of County Commissioners; Jeff Larson, Esq., Minnehaha County Public Defenders Office; Mark Roby, Publisher of the "Watertown Public Opinion;" Denise Richards, Hughes Co. Victim's Assistant, Marty Jackley, Attorney General; Mark Millage, President of Kilian Community College; Chief Justice (Ret.) Robert Miller, Dave Nelson, Esq., Nelson Law Office, Sioux Falls; Richard Travis, Esq., May & Johnson Law Office, Sioux Falls and Past President of the S.D. State Bar; Tena Haraldson, Chief of Bureau, Associated Press; Karl Thoennes, Circuit Administrator, Second Judicial Circuit; Honorable Warren Johnson, Presiding Judge of Fourth Judicial Circuit; Cheryl Hanna, Access to Justice; and Greg Sattizahn, Legal Counsel for the Unified Judicial System

Excused: Dave Hunhoff and John Peterson

Unified Judicial Staff: Richard Lenius and Joy Irving

Call Meeting to Order, Introductions

Chairperson Chief Justice (ret) Miller called the meeting to order at 10:04 a.m. He thanked everyone for participating in the final committee meeting. Chairperson Miller welcomed new committee member Attorney General Marty Jackley.

Chief Justice Gilbertson - Comments

Chairperson Miller welcomed Chief Justice Gilbertson and thanked him for participating in the final meeting. Chief Justice Gilbertson expressed his appreciation to the committee for taking the time to be here and attending all the previous meetings.

Chief Justice Gilbertson stated that South Dakota has a long history of direct citizen involvement in state government. He indicated that the Supreme Court determined that cameras in the trial courts was not an appropriate issue for an in-house type of study and this committee was formed to bring together the numerous stakeholders involved in this issue.

Chief Justice Gilbertson explained the primary reason for his attendance was because this is the final committee meeting. He stated the committee will be submitting a report to the Supreme Court. He noted the Supreme Court will read and study the report and its recommendations. The procedure, if a proposed rule or rules change is recommended, is advertising the proposals in the State Bar Newsletter, other public outlets, on the UJS web page and publicly noticing the proposals presented to the Supreme Court. He explained then the Court would hold a public hearing. He mentioned that anyone from the public can speak, they can submit comments in writing, and the court may ask questions from the bench at that hearing. He stated it's a very informal process that allows the court to determine the facts prior to acting on a proposed rule change. He stated there are no deadlines for Court action but anticipated the Court would act promptly.

Overview of Last Meeting and Resulting Report

Chairperson Miller asked for any comments and suggestions concerning adoption of the final report. Mr. Sattizahn stated that all comments and suggestions received prior to the meeting were drafted into the final report. Chairperson Miller asked the committee if there were any suggestions on

how the committee should proceed next. **Mr. Larson made a motion to continue on as a whole and approve all the preliminary summaries of the prior meetings which would include pages 1-5 of the draft report and then to proceed with the recommendations from the committee. Professor Chris Hutton seconded the motion. The motion carried unanimously.**

Chairperson Miller suggested talking about the majority recommendation and asked Judge Gienapp if he had any comments on this motion. He stated he did not. Chairperson Miller asked what the other members thought of this report and what should be tied into it. Judge Gienapp felt what should be tied into the report is a statement about the presumption of openness or closedness. Judge Gienapp offered an exhibit to be attached to the report reflecting the prior committee vote favoring a presumption of closedness. He stated that the exhibit partially ties into the majority recommendation but it was a separate vote.

Mr. Rensch suggested attaching the exhibit to the committee minutes. Judge Gienapp made a motion to incorporate the exhibit as part of the report. Ms. Hutton seconded the motion.

The motion was to attach the exhibit that Judge Gienapp previously sent to the committee concerning the presumption of openness or closedness. Judge Gienapp stated the exhibit was important for the Supreme Court to understanding the committee's deliberation.

Mr. Roby asked for a clear definition as to what type of situations would a camera be allowed in the courtrooms under the Gienapp proposal or the presumption of closedness as referenced in the exhibit. Judge Gienapp stated the exhibit was different than the proposal because the exhibit sets forth the basic reasoning behind the presumption. Judge Gienapp noted all the presumption does is streamline the process so the courts aren't tied down with intermediate appeals and to eliminate additional cost to the defense counsel and to the counties for court appointed counsel. Chairperson Miller clarified that the committee was not voting on the Majority Report; they are voting on whether the Gienapp exhibit should be attached to the report.

Mr. Nelson characterized Judge Gienapp's attachment as the rational in favor of the position and questioned if there are other places in the report expressing the other points of view in the material going to the Supreme

Court. He commented if there isn't; it is not appropriate to have one in favor and not the others.

Judge Gienapp indicated he had no problem with a similar exhibit being submitted by the minority as far as the presumption is concerned. Mr. Larson added that the exhibit provided a back drop so there's not any confusion that only 25-30% of the people were in favor of a particular concept and the discussion of 3 proposals and the status quo was not included based on the prior committee vote on the issue. He explained it would look like there were more for the combined proposal that would want more openness than closedness. Which is why the committee voted in the first place. Mr. Larson indicated the exhibit provides an accurate back drop on how the vote on the four different options came down to one particular majority report, but there was still a close vote but a slight majority for the fact that the presumption be closed so that the parties would have to agree to open it.

Motion made that Gienapp information be attached to the majority report. All in favor; opposed was Ms. Haraldson & Mr. Roby. Motion carried.

Chairperson Miller indicated the next item before the committee was the adoption of the majority report and asked for any motions or specific items anyone wanted to present at this time.

Mr. Larson made a motion to adopt the Gienapp proposal as the majority report and Mr. Rensch seconded the motion. All in favor except Ms. Haraldson, Mr. Roby, Mr. Millage, Mr. Nelson and Ms. Hutton. Motion carried

Further Discussion Regarding Report and Possible Minority Report(s)

Ms. Haraldson stated she prepared a minority report that clarified the media's position on the Gienapp proposal. She noted there was public reaction after the last committee meeting and questions came out regarding the court adopting something to allow cameras in court. She included a letter of support from the SD Newspaper Association Board of Directors, SD Newspaper Association First Amendment Committee and publisher Ross Ulrich from Mitchell (he chairs the First Amendment Committee and formally worked in MN under those rules). Also included were attachments on the recent activity in Minnesota and a statement from the lawyer who handles the MN Newspapers Associations open courts activity.

Chairperson Miller asked the committee if they have any questions or comments on the report. Judge Geinapp stated he doesn't have a problem with this report being attached. He did object to having anything after page 3 being attached as those materials were more political in nature. He suggested pages 2 & 3 be the submissions and not the attachments. Mr. Roby suggested those attachments were similar to what has previously been offered. He indicated the Supreme Courts need to hear and understand that sometimes it is even difficult for a newspaper to get photos of a litigant. He indicated he was hoping to set aside the majority report. Mr. Larson disagreed with submitting arguments to the reports and indicated the place for that would be at a rules hearing before the Supreme Court.

Chairperson Miller asked whether the Supreme Court would get the entire committee file. Mr. Sattizahn said that was correct and the report as drafted would contain the committee information in addition to any majority or minority report. In addition, any information collected by the committee will be archived and made available to the Supreme Court.

Ms. Haraldson said she would be willing to submit the first two pages to include in the attachments in the minutes and it was agreed the attachment would be included in the meeting minutes.

Chairperson Miller stated the media report names: Tena Haraldson, Mark Millage, John Peterson and Mark Roby. He asked if it would be appropriate for other committee members to add their names to the Media Minority Report if in agreement to this report. The names added were: Dave Nelson.

Chairperson Miller stated they have a report, minority report, other reports and materials for submission to the Supreme Court. Ms. Haraldson suggested a plan to make the committee report available online. Mr. Sattizahn indicated it seemed appropriate to post the material online on the UJS webpage.

Ms. Haraldson asked to make a motion to compile the committee information and make it available online. Chairperson Miller noted that all the meetings have also been recorded and archived on the UJS website. **Mr. Roby seconded the motion.**

Ms. Hanna asked if the videos the Committee previously viewed would be included as there may be sensitive material from witnesses in those materials. Mr. Sattizahn noted he doesn't have possession of any of the videos. Chairperson Miller asked the committee if they could recall any sensitive material. Ms. Richards explained if there were excerpts from actual trials, that testimony was public. Mr. Roby stated it was court TV. Mr. Sattizahn stated he would have to request those materials because he doesn't have them as of right now. Judge Johnson suggested that instead reference be made to those materials in the bibliography to the final report.

All voted Aye

Motion carried.

Chairperson Miller said the report will be submitted to the Supreme Court. He asked that when the Supreme Courts conducts a public hearing that some of the committee members consider attending to state their own personal position or respond to any questions there may be.

Judge Geinapp asked if the final report submitted to the Supreme Court will be made available to all of the committee members. Chairperson Miller stated that the committee members will receive those materials as well.

The Committee also thanked Gloria for all the hard work she has done over the term of this Committee and Mr. Sattizahn for preparing the draft report.

Adjourn

The meeting was adjourned at 10:58 a.m.

Attachments to Media Minority Report

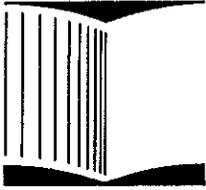
- 1. Letter of support from the South Dakota Newspaper Association Board of Directors and the SDNA First Amendment Committee. Page 5.**

- 2. Letter of support from Ross Ulrich, president of the SDNA First Amendment Committee and a former Minnesota newspaper journalist. Page 6.**

- 3. Column from the Watertown Public Opinion. Page 7.**

- 4. Page from the Nov. 4, 2009, edition of the Watertown Public Opinion showing the artist sketch used to illustrate a story on the trial of Minnesota businessman Tom Petters, who was convicted of bilking investors of \$3.65 billion. Despite the high public interest in this trial, which did not involve a sex crime or juvenile witnesses, the current Minnesota rules did not allow electronic coverage. Page 8.**

- 5. Column from attorney Mark Anfinson summarizing the attempt to revise the restrictive Minnesota rules. He notes that a psychological study proposed in addition to a 2010 pilot project would cost an estimated \$200,000. Media respectfully suggests that the South Dakota Supreme Court has sufficient experience to evaluate a pilot project without a university study. Page. 9.**



South Dakota Newspaper Association

South Dakota Newspaper Services, Inc.

1125 32nd Ave., Brookings, SD 57006-4707 ♦ www.sdna.com
605/692-4300 ♦ 1/800/658-3697 ♦ Fax: 605/692-6388

Tuesday, Nov. 17, 2009

To whom it may concern:

The South Dakota Newspaper Association Board of Directors and the SDNA First Amendment Committee endorse the Media Minority Report to the Supreme Court's Committee for the Study of Cameras in South Dakota Trial Courts. As Tena Haraldson wrote in the Minority Report: "As we saw in the committee, it may not be possible to reach unanimous support for any proposal. But that shouldn't stop the court from approving electronic coverage under conditions already found to be successful in other states."

We applaud the South Dakota Supreme Court and Chief Justice David Gilbertson for organizing and supporting this committee's work.

South Dakota Newspaper Association represents the state's 130 weekly and daily newspapers.

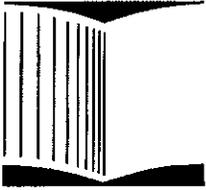
Sincerely,

SDNA Board of Directors

President Hollie Stalder, Spearfish
First Vice President Doug Card, Britton
Second Vice President Lucy Halverson, Presho
Third Vice President Charley Najacht, Custer
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Director Paul Buum, Alcester
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SDNA First Amendment Committee

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Tim Waltner, Freeman
Tena Haraldson, Sioux Falls
Chuck Baldwin, Vermillion



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Wednesday, Nov. 18, 2009

To whom it may concern:

The SDNA First Amendment Committee endorses the Media Minority Report to the Supreme Court's Committee for the Study of Cameras in South Dakota Trial Courts. As Tena Haraldson wrote in the Minority Report: "As we saw in the committee, it may not be possible to reach unanimous support for any proposal. But that shouldn't stop the court from approving electronic coverage under conditions already found to be successful in other states."

Having spent 15 years at a newspaper in Minnesota I can confirm that anytime a change of this magnitude takes place people have reservations, yet we can not allow those reservations to become an obstacle that impedes the progress toward the freedoms we all believe in. As was found in Minnesota, a system that allows too many different entities to challenge the use of cameras in the courtroom can and will in the end stall the progress we are all trying to make. It was found that allowing the judge to make the decision whether or not cameras are allowed in the court room still protects the integrity of the court yet also allows the process to progress fairly.

We applaud the South Dakota Supreme Court and Chief Justice David Gilbertson for organizing and supporting this committee's work.

Sincerely,

Ross Ulrich
Publisher, The Daily Republic, Mitchell
Chairman, SDNA First Amendment Committee

Openness, not tax break

Editor's note: Wisconsin State Rep. Marlin Schneider has offered a proposal to make any building in Wisconsin associated with a newspaper exempt from state taxes. He was quoted as saying "As much as I, as a public figure, dislike some of the things the press does, that has nothing to do with the loss of what newspapers mean to society." In an opinion page reply, the Wisconsin State Journal has published the following, which we are reprinting in full here as part of our work during National Newspaper Week.

Thanks, but no thanks. Newspapers don't need a property tax exemption from Rep. Marlin Schneider. The Wisconsin State Journal and other newspapers should pay taxes on their buildings just as other private businesses do.

If Schneider and the Legislature are concerned about preserving newspapers, they should refrain from slapping new taxes on advertising and the sale of newspapers.

Our state leaders also should respect the long-standing practice of publishing government meeting and other legal notices in newspapers. These notices make it easy for the public to find out what its government is up to. Legal notices in newspapers also serve as independent and indisputable verification of proper government notification of the people's business.

Schneider D-Wisconsin Rapids, told the Associated Press last Tuesday he's proposing a property tax break for newspapers even though "some days I hate your guts" and "you guys jerk me around all the time."

Maybe if Schneider, a privacy buff, better respected the public's right to know, he'd feel more comfortable around reporters.

The Wisconsin Freedom of Information Council, a statewide group that includes major media organizations, last year dishonored Schneider with its "No Friend of Openness Award." Schneider wanted to stop ordinary citizens from viewing Wisconsin court records online.

This summer, Schneider defended keeping the public out of a tour his legislative committee wanted to take of a private company and university lab. Even though it appeared the committee would have a quorum (enough members to vote on legislation) the public was not invited.

"It's not open to every Tom, Dick and Harry on the planet," Schneider grumbled at the time.

Schneider didn't consult with any newspapers or industry groups before pitching his property tax break for newspapers. So even though he didn't ask, here's our friendly advice:

Drop your proposal.

Today in History

The Associated Press

Today's Highlight in History:

On Oct. 6, 1939, during World War II, as remaining military resistance in Poland crumbled, Adolf Hitler delivered a speech to the Reichstag in which he blamed the Poles for the Nazi-Soviet invasion of their country and denied having any intention of war against France and Britain.

On this date:

In 1683, 13 families from Krefeld, Germany, arrived in Philadelphia to begin Germantown, one of America's oldest settlements.

In 1884, the Naval War College was established in Newport, R.I.

In 1927, the era of talking pictures ended with the opening of "The Jazz Singer," starring Al Jolson.

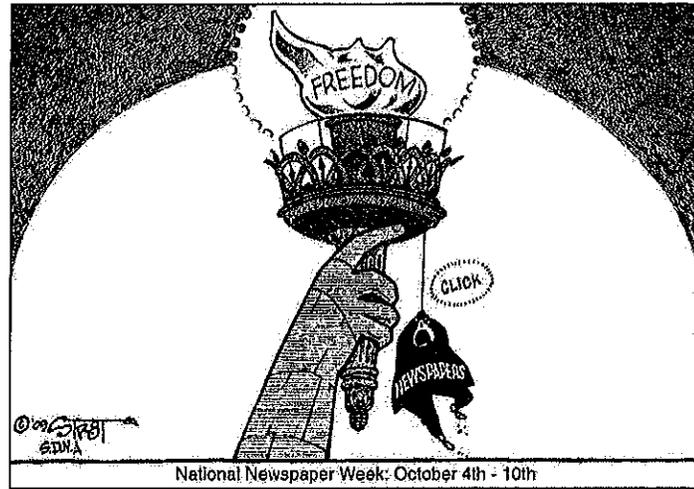
In 1949, President Harry S. Truman signed the Mutual Defense Assistance Act, providing \$1.3 billion in military aid to NATO countries. U.S.-born Iva Toguti D'Aquino, convicted of treason for being Japanese wartime broadcaster "Tokyo Rose," was sentenced in San Francisco to 10 years in prison. (She ended up serving more than six.) In 1969, the New York Mets won the first-ever National League Championship Series, defeating the Atlanta Braves, 7-4. In Game 3, the Baltimore Orioles won the first-ever American League Championship Series, defeating the Minnesota Twins 11-2 in Game 3.

In 1973, war erupted in the Middle East as Egypt and Syria attacked Israel during the Yom Kippur holiday. In 1976, in his second debate with Jimmy Carter, President Gerald R. Ford asserted there was "no Soviet domination of eastern Europe." (Ford later conceded he'd misspoken.) In 1978, Pope John Paul II, on a working U.S. tour, became the first pontiff to visit the White House, where he was received by President Jimmy Carter.

In 1981, Egyptian President Anwar Sadat was shot to death by extremists while reviewing a military parade. In 1989, actress Bette Davis died in Neuilly-sur-Seine, France, at age 81.

Ten years ago, in Mexico, torrential rains sent swollen rivers raging through the streets of the Gulf Coast city of Villahermosa and caused mudslides; dozens of deaths were reported in eastern Mexico's coastal mountain ranges. The NFL awarded its newest franchise to Houston instead of Los Angeles, leaving the second-largest TV market in the nation without a football team.

Five years ago, The top U.S. arms inspector in Iraq, Charles Duelfer, reported finding no evidence Saddam Hussein's regime had produced weapons of mass destruction after 1991. The Senate approved an intelligence reorganization bill endorsed by the Sept. 11th Commission. Israelis Aaron Ciechanover and Avram Hershko and American Irwin Rose won the Nobel Prize in chemistry.



Closed or open?

I am a member of the Cameras in the Courts task force, established by Sisseton native and South Dakota Supreme Court Chief Justice David Gilbertson in late 2008. The task force started after the Legislature passed a bill repealing a prohibition on cameras in our courts, leaving that decision to the courts. This newspaper and others applauded the bill's passage, due in part to further clarify the separation of powers among our three branches of state government: executive, legislative and judicial.

Mark S. Roby



Public Opinion Publisher

The committee's work is about done. Friday we decided upon a recommended solution that offers the hope of having cameras in our courtrooms. The only task left is to finalize the document and then present it to the SD Supreme Court.

After Friday's task force meeting, I left quite disappointed in our recommendation and believe the task force fumbled, giving away any hope for scoring on openness. Unlike our legislative and executive branches, which took giant steps this past year, the course struck at the meeting is toward closed courts and less access. It is an amazing departure from the leadership position in public access that South Dakota courts have traditionally maintained. Instead, SD courts are close to falling far behind the other two branches.

The committee's preferred solution is based on the Minnesota courts' use of cameras. The task force proponents clearly know this solution uses a presumption courts should be closed to cameras. I.e., the courts are closed unless all parties—the judge and both attorneys—agree to open the courts to cameras. They also know the Minnesota system has resulted

in few court cases allowing cameras, with one notable exception being the recent Franken-Coleman Senate vote case. But talk to a judge or a practicing attorney in Minnesota, or a member of the Minnesota media, and you will find the system is a joke—the fact is, with veto power over cameras coming from any party involved, there have been only a few cases where cameras were allowed. And that's why the Minnesota Supreme Court is on a path to conduct a trial use of cameras under a different set of guidelines—the system in place doesn't work. So why adopt it here?

Of most interest to me, through, from this recommended solution is the issue of courtroom control by our state's judges when it comes to cameras. The recommended solution, for the first time to my knowledge, allows an attorney to veto a sitting judge in his/her courtroom. A judge giving up the traditional role and responsibility in the courtroom is odd and disconcerting. I can only guess as to the reason the state's judges don't want cameras, so this abdication of control allows them to gain the end, regardless of the consequences of that decision.

Those committee members who favor openness of our courtrooms, for the purposes of educating the citizens as well as more awareness of the goings-on in our

court system, can only hope the SD Supreme Court will take this proposed solution for what it is—an attempt to keep our courts closed. Our state Supreme Court has used cameras quite successfully for years. We can only hope they will pick—or at least conduct a trial use—of the other two solutions presented to the committee, both founded on a presumption of openness. One leaves intact the judge's control of the courtroom—only the judge can veto the use of cameras, but must publicly state his/her reason for doing so.

Dakotas' AP Bureau Chief, Tena Harbison, after the meeting also was disappointed with the outcome. She mentioned the current PBS TV series on the history of our National Park System as analogous to what our Supreme Court should do with cameras in the courts. Just as our presidents (e.g., Teddy Roosevelt) had to reject the cries from landowners, timber interests, etc., to make the tough decisions to dedicate federal lands to form our National Park System, so too must our Supreme Court reject the "way it is without cameras" that our sitting judges and attorneys want. Instead, accept the fundamental notion our courts should be presumed open and allow cameras and the latest technology inside so all might see and understand without having to miss a day of work or travel across the state to see the court in person.

Will we see the Supreme Court join the other two branches of our government and embrace openness out of respect for the people? Or will they instead turn to a closed system, and continue keeping the citizenry in the dark? Only time will tell.

Letters to the Editor

Citizens first

FUC Chairman Dusty Johnson was recently quoted as saying that explosions on a TransCanada pipeline in Canada can't be equated to what might happen if the company's two crude oil pipelines being built through South Dakota were to fail. Johnson also stated the volume of the average oil pipeline leak is three barrels, or 126 gallons.

Why would a PUC commissioner defend TransCanada when the Public Utilities Commission is currently holding hearings on TransCanada's Keystone XL permit application. By law, commissioners are supposed to remain impartial.

As to the volume of the average oil spill, a report prepared by the federal Pipeline Hazardous Materials Safety Administration for 1989 through 2007 shows that the average oil spill in the U.S. was 902 barrels, or 37,689 gallons of oil. PER SPILL, not 126 gallons as claimed by Johnson. This federal report was filed as an exhibit with the PUC more than a year ago. So why would an elected official understate the risk and volume of an oil pipeline leak when the facts show it's 300 times higher?

Many who have attended hearings feel the SDFUC has become too close, if not the hand maiden, of this foreign oil company. When asked by the PUC's chief legal counsel, TransCanada refused to post a

bond to cover damages that may result in the event of a pipeline failure or explosion. Like the two explosions that just happened in Canada. The commission refused to require a bond to protect South Dakota.

Public Utilities commissioners are elected by the voters of South Dakota. Their first concern should be the safety and well-being of South Dakota citizens, not a foreign oil company with foreign investors.

Curt Mohr
Aberdeen

City helps Realtors

On behalf of the Northeast South Dakota Board of Realtors, I would like to send out a big "thank you" to everyone who made our North Dakota/South Dakota Realtors Convention a huge success.

The annual convention was held Sept. 16-18 and we had approximately 460 Realtors from North and South Dakota in attendance.

The Watertown Convention and Visitors Bureau did an excellent job of coordinating hotels, shuttles, tours and receptions. They went above and beyond by hosting our guests with a private reception at the Redlin Art Center. The guest tour they set up included the Redlin Art Center, Goss Opera House and uptown

district. The Realtors felt they were treated with great hospitality everywhere they went.

The Watertown Event Center, Minervas and Rankota Hotel did a tremendous job making sure everything went smoothly. The management and staff is so efficient. We received many comments regarding how impressed they were with the facility and the staff. A lot of work and effort went into this convention and it showed. Everything went perfectly.

We had 95 Realtors golf in a tournament at the Watertown Municipal Golf Course. They were all impressed with what our golf course had to offer. I'm sure the 90-degree weather helped. Thank you to our golf course staff for working with our committee to make the golf outing a success.

Thank you to those businesses who put a "Welcome Realtors" on your signs. It was noticed by many of our guests and they made comments of how welcomed they felt here.

During the Northeast South Dakota Board of Realtors' first opportunity to host this event, we had many members excited to help make it a great success. Thank you to all of the members and sponsors who pulled together for a successful convention.

Melissa Terronez
Convention Chairperson



Minnesota Digest

Mayors earn re-election

MINNEAPOLIS (AP) — Minnesota's big-city mayors breezed to easy victories Tuesday in an off-year election notable for Minneapolis' launch of instant-runoff voting and St. Paul voters' decision to follow suit in future polls.

R.T. Rybak won his third term in Minneapolis, outdistancing 10 other candidates even as he contemplated a possible gubernatorial bid next year. Across the river, fellow Democrat Chris Coleman — who decided last month against a run for governor — had a similarly easy time in pursuit of his second term. Coleman trounced GOP businesswoman Eva Ng with 69 percent of the vote. Ng had 30 percent.

Ng had criticized Coleman for raising property taxes. Coleman said his successes in business development and approach to balancing the city budget were reasons he should secure another term. It was the first time Minneapolis used an instant-runoff voting system, which allows voters to choose more than one candidate through a ranking system. Final results for all the city races could take weeks because the system requires a hand recount of the ballots. Rybak's margin, though, was large enough to easily withstand the vote reallocation that comes with instant runoff.

In St. Paul, voters were also asked whether they wanted to approve instant-runoff voting in future municipal races, and they did by a margin of 52 percent to 48 percent.

Off-duty officer involved in fatal shooting

ST. LOUIS PARK, Minn. (AP) — The mother of an Iraq war veteran says it was her son who was shot and killed by a St. Louis Park police officer during a traffic stop early Tuesday.

Dawn Martin says a police officer shot and killed Jason Martin. She says her son never carried a weapon and was the father of a 6-year-old girl.

Authorities say the officer had just gotten off duty at about 2:30 a.m. when he saw a truck being driven erratically on Minnesota Boulevard. City officials say the officer pulled the vehicle over and got into an altercation with one of its occupants. The officer then shot and killed Martin.

Authorities would not say whether Martin was armed, or what led to the altercation. Hennepin County sheriff's deputies are investigating.

Police investigate apparent homicide

ST. PAUL, Minn. (AP) — St. Paul police say the husband of a woman found dead in her home is a suspect in her death.

Police and paramedics were called to the home about 9:30 p.m. Monday. Officers found a man outside who said he was locked out. Officers spotted the woman on the floor inside the home and after entering, the 67-year-old was pronounced dead.

The man told officers the woman was his wife. Police say he is a suspect in her death. He was taken to Regions Hospital for evaluation.

An autopsy Tuesday is expected to determine the cause of death.

Wintthrop man dies in grain bin

GAYLORD, Minn. (AP) — A 75-year-old rural Wintthrop man was found dead in a grain bin Monday afternoon at a residence in Alsburg Township, about seven miles southwest of Gaylord.

Sibley County authorities say they were called about 3:30 p.m. Monday and told that Jerry Wannarka was found in corn.

The body was recovered and the Sibley County medical examiner's Office is investigating the cause of death.

Gaylord is about 29 miles north of Marquette.

Star witness admits stealing from Petters

By Steve KASHOWSKI Associated Press Writer

ST. PAUL, Minn. (AP) — The prosecution's star witness in the fraud trial of Minnesota businessman Tom Petters admitted she stole money from Petters and most of her work for him involved lying.

Deanna Coleman testified that by the middle of 2008, she no longer believed Petters' promises to fund them a way out of what prosecutors say was massive Ponzi scheme, which by then was on the verge of collapse. Investors in Ponzi schemes are paid with others' investments instead of real profits. Coleman said pressure from investors was building as Petters Co. Inc. ran behind on payments and scrambled to find new money to pay them.

When Coleman and her lawyer went to authorities on Sept. 8, 2008, she brought a list showing that PCI owed investors more than \$3.6 billion. The list showed that most of the money was owed to hedge funds, but some prominent Twin Cities businessmen had invested money. Ted DeLek, the former chief executive of catalog and online retailer Fingerhut, was owed \$10 million, and Twin Cities restaurateur Dean Vlahos and his wife, Michelle, were due \$16.6 million.

Checking with emotion and fighting back tears, Coleman said she decided to go to federal investigators rather than quit or flee because she was too deeply involved in the quickly unraveling plot.

"I just wanted it to end," she said. Coleman, 45, of Plymouth, who had been PCI's vice president of operations since Petters founded the company in 1984, also said she and Petters had an intimate relationship in 2005 and 2006. She cried as she recalled his repeated but unkept promises over the



Associated Press Photo

In this artist rendering, Deanna Coleman appears on the witness stand during the trial of Tom Petters, Monday, in St. Paul, Minn. Petters, a Minnesota businessman, is accused of operating a Ponzi scheme. Coleman is one of the prosecution's star witnesses in the fraud trial of Petters, who maintains his innocence.

years to get them out of the scheme. Petters, 52, of Wayzata, is charged with 20 fraud-related counts. His attorney, Jon Hopeman, told the jury last week that Petters is innocent and Coleman and others carried out the scheme without Petters' knowledge.

Defense attorney Paul Engh got Coleman to acknowledge Petters had conducted legitimate merchandise resale deals over the years with companies like Dayton's, Marshall Field's, Polaroid and Best Buy. He also got her to admit in front of the jury that she had lied to investors and others or creating false documents almost every day she worked for PCI. She also admitted writing two checks totaling \$380,000 to herself in 2005 on the account of a shell company she said Petters had her to set up a few years earlier. She admitted she stole that money. Engh suggested Coleman's testimony

was also suspect because she might have faked 24 to 30 years in prison if she hadn't reached a plea deal that required her cooperation in prosecuting Petters. Instead, she faces no more than five years in prison, although she had to forfeit all her money and property. By the defense's count, she was paid \$19 million from 2001 to 2008.

When Coleman returned to Petters headquarters after her first meeting with investigators, she carried two covert recording devices. Jurors heard a recording of one of her conversations with Petters in which he said he was still working on a plea to let them exit the scheme.

"I may not be able to get us out of this but I think I can," Petters told her Sept. 22, 2008, just two days before federal agents raided Petters Group Worldwide headquarters and his home. At one point in the conversation, Petters himself began to cry.

"Sorry God. You're the only one here I sit and cry in front of," he told Coleman.

In another indication of his state of mind, Petters also expressed fear that two investors who stood to lose up to \$19 million, and who he claimed had mob connections, would try to kill him. He identified them as Bob and Jon Sabes, who ran a Minneapolis financing company, Opportunity Finance LLC.

Coleman testified she was not afraid of the Sabes. Bob Sabes declined to comment on Petters' claims when the Star Tribune of Minneapolis reached him on his cell phone in Las Vegas, where he now lives.

"I think he's been watching 'The Sopranos' too much," Sabes told the newspaper. "I'm not going to say any more."

Sanford Watertown advertisement with logo and text: "As a parent, you always want the absolute best for your children. It's so comforting to know we have this level of care available to us right here in Watertown."

Kid Scoop News NEWS PAGE advertisement featuring a doctor and text: "Super simple secrets to avoid the flu. More Healthy Habits. Avoid crowded places... Wash your hands... Please don't share the germs with others."