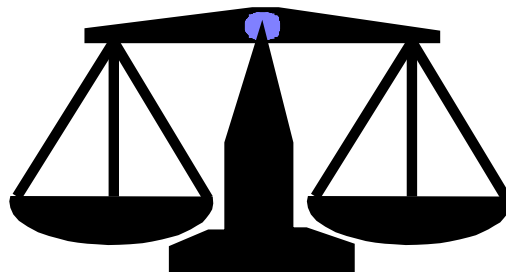




Reporter's Handbook on Crime Coverage April 2008



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Legal Glossary

A

abet _ To incite, sanction or help.

accomplice _ A person who knowingly and voluntarily unites with the principal offender in a criminal act through aiding, abetting, advising or encouraging the offender. Mere presence, acquiescence or silence, in the absence of a duty to act, does not make a person an accomplice.

acknowledgment _ A formal declaration before an authorized official, by a person who has executed (signed) an instrument (document), that the execution of the instrument was his own voluntary act.

acquittal _ The legal certification setting the person free by a finding of not guilty. An acquittal means a criminal charge wasn't proven to a jury.

administrator _ An individual appointed by the court to manage the estate (property) of a person who died without leaving a valid will. An administrator d.b.n. (*de bonis non*) is a person appointed to complete the administration of an estate if the original administrator did not finish it. If the deceased left a will but no executor qualified to administer the estate, an administrator c.t.a. (*cum testamento annexo*) is appointed.

adversary system _ A judicial system involving opposing parties, each having the right to be represented by qualified counsel, in which the party prosecuting or seeking relief has the burden of establishing his case and giving legal warning to his adversary, who is afforded an opportunity to contest the case presented.

affiant _ A person who makes and signs an affidavit.

affidavit _ A written declaration or statement of facts made voluntarily under oath, acknowledged and signed before an official with authority to administer oaths.

affirmative defense _ A defense that does not necessarily refute an allegation but offers new information that may defeat the right to recovery as a matter of law; an attack on the legal right of the plaintiff to bring the action as distinguished from an attack on the truth of the facts alleged.

allegation _ The statement of what is expected to be proved.

amicus curiae (uh-MIH-kus KYOO'-ree-ay) _ Means "a friend of the court." A lawyer, other person or organization who is not a party to the action, but who, with the court's permission, volunteers information and opinion upon some matter of law. Amicus curiae briefs are often filed in appellate cases.

answer _ The pleading in a civil suit by which the defendant admits, denies or otherwise responds to the allegations of facts set forth in the plaintiff's complaint. It also contains defenses the defendant may have to plaintiff's allegations.

appeal _ A procedure by which a party seeks a high court review of the action taken by a lower court.

appearance _ The formal act by which a defendant submits to the jurisdiction of the court. It may be in person, by an attorney, by pleadings or a combination of these.

appellant _ The party appealing to the higher court. Often, but not always, the losing party in the lower court.

appellate court _ A court having jurisdiction to review the action taken by the lower court.

appellee _ The party against whom an appeal is taken. Often, but not always, the winning party in the lower court.

arbitration _ The referral of a dispute to an impartial third person or panel. In some instances the parties agree in advance to abide by the arbitrator's decision following a hearing at which both sides can be heard.

arraignment _ A proceeding in which a defendant is brought before the court to answer to a criminal charge. The charge is read to the defendant who is asked how he or she pleads.

arrest _ To deprive a person of his liberty by legal authority. An officer must indicate his intention to take the person under actual control. No formal declaration of arrest is required.

arrest of judgment _ The act of staying (delaying) the effect of a judgment that has already been entered.

arson _ The burning of the property of another or the malicious burning of one's own property with the intent to defraud.

Article I courts _ Courts created by Congress under Article I of the Constitution. The jurisdiction can be limited and the judges do not have lifetime appointments.

Article III courts _ Courts created by Congress under Article III of the Constitution. The judges have lifetime appointments. U.S. District Courts are Article III Courts.

assault _ A willful attack or threat to inflict injury upon another person with an apparent present ability to do so. Also any intentional display of force that would give the victim reason to fear or expect immediate bodily harm.

attachment _ An ancillary or auxiliary remedy by which the plaintiff acquires a lien upon property of the defendant to ensure the payment of a civil judgment that he expects to obtain against the defendant in the future.

B

bail _ The release of an arrested or imprisoned person when security (cash or property) is given or pledged to ensure his appearance at a specified date and place. In South Dakota all persons except those charged with a capital crime have a right to be released before trial on bail. The amount of bail must be reasonable and appropriate to the particular case.

bail bond _ The obligation signed by the accused or his sureties to secure his presence at trial. The bond is subject to forfeiture if the accused does not properly appear for trial.

bailiff _ Court employee whose duty is to keep order in the courtroom. Also the person(s) in charge of the jury.

bench warrant _ Order issued by a judge for the arrest of a person.

beyond a reasonable doubt _ The state must prove a criminal defendant's guilt beyond a reasonable doubt. This means that the court or the jury must be fully satisfied, or satisfied to a moral certainty, that the defendant committed the acts alleged.

bind over _ To hold a person for trial on bond (bail) or in jail. If the judicial official conducting a preliminary hearing finds probable cause to believe the accused committed a crime he will "bind over" the accused, normally by setting bail for his appearance at trial.

brief _ A written document prepared by counsel as the basis for argument in a case before a court. It contains a summary of the facts of the case, the pertinent laws and an argument of how the law applies to the facts supporting the attorney's position.

burden of proof _ The duty to prove a fact in dispute. It is normally said that one of the parties has the burden of proof in establishing a particular fact. This means it is the duty of that party to introduce evidence to establish the disputed fact.

burglary _ Entering another's house or other building with the intent to commit a crime.

C

capital crime _ A crime punishable by death. South Dakota law allows the death penalty for first-degree murder if a jury finds certain aggravating circumstances exist.

caveat _ Objection to the probate of a will. The challenging party is contending that the instrument in question is not the true will. It may be filed within three years after a will is offered for probate and is tried as a civil issue of fact.

certiorari (*SER'-shee-eh-REHR-ee*) _ A legal order by which a higher court commands a lower court to certify or to send up a record of a trial or other proceedings in the lower court for the purpose of judicial review. The reviewing court has the discretion to issue or deny a petition for a writ of certiorari. But in South Dakota, the state Supreme Court reviews all cases appealed from the circuit court.

challenge for cause _ An objection to a prospective juror based on bias or prejudice that may prevent him from being fair and impartial in a particular case. If the judge agrees that there is reason to believe that the person will not be a satisfactory juror, he will remove that person from consideration. Each side has an unlimited number of challenges for cause.

challenge to the array _ Questioning the qualifications of an entire jury panel, usually on the grounds of some legal fault in the composition of the panel, for instance racial discrimination.

chambers _ Any place where a judge hears motions, signs papers or conducts other business pertaining to his office when he is not presiding over a session of court. This is usually a private room or office of the judge in the courthouse.

change of venue _ Change in the location of a trial, granted by the court, usually to ensure a fair trial. It is generally requested and granted where there is some indication that the parties in a case cannot receive a fair trial in the county of origin. For example, if a certain case has gotten a lot of media coverage, the parties involved may want a change of venue.

character evidence _ Testimony of witnesses who know the general character and reputation of a person in the community in which he lives. It may be considered by the jury: 1) as substantive evidence upon the theory that a person of good character and reputation is less likely to commit a crime, and 2) as corroborative evidence in support of a witness's testimony as bearing upon his credibility.

circumstantial evidence _ All evidence of an indirect nature. A court or jury may from circumstances (known or proved) infer a principal fact. *See direct evidence.*

citation _ An order to appear in court at a certain time and place. A citation is not a warrant, and failure to comply with it is not a crime. Citations are issued for most minor traffic offenses. They become warrants after a magistrate takes the law enforcement officer's oath to the offense listed in the citation. *See warrant.*

civil action _ An action between two or more private parties.

class action _ An action where a large group of persons is interested in a matter. One or more may sue or be sued as representatives of the class without the need to join every member of the group.

clerk of court _ An officer of a court who supervises the court's clerical functions, keeps records, issues process and enters judgments and orders.

codicil _ A supplement, addition or postscript to a will.

common law _ The body of legal principles that derives its authority from usages and customs of ancient times or from the judgments and decrees of courts recognizing, affirming and enforcing such usages and customs. It is to be distinguished from statutory law, which is enacted by a legislative body.

commutation _ The change of a sentence from a greater to a lesser one, as from death to life in prison. In South Dakota, only the governor has the power to commute a sentence.

competency _ Legal capacity to testify in court. *See incompetent.*

complaint _ The pleading that when filed commences the litigation in a civil case. It contains the allegations and request for relief and/or recovery of money by the plaintiff.

complainant _ Synonymous with "plaintiff." The party bringing the action. It applies to civil actions only, although in criminal actions the chief prosecuting witness may sometimes be referred to loosely as the complainant.

concurrent jurisdiction _ The power of more than one court to exercise jurisdiction over the same subject matter. The first court that takes the case obtains jurisdiction to the exclusion of the other courts.

concurrent sentences _ Sentences for two or more crimes ordered by the judge to be served at the same time rather than one after the other.

condemnation _ The legal process by which private property is taken for public use without the owner's consent upon payment of just compensation. Also called eminent domain.

consecutive sentences _ Successive sentences imposed against a person convicted of two or more crimes. One sentence begins at the end of another.

contempt of court _ Any act calculated to embarrass, hinder or obstruct a court in the administration of justice or calculated to lessen its authority or dignity. Contempts are of two kinds: direct and indirect. Direct contempts are committed in the immediate presence of the court and may be punished summarily by the court without a jury trial. Indirect contempt usually embraces a failure or refusal to obey lawful order of the court.

continuance _ Postponing a pending court action to a later time.

contract _ A legally binding agreement between two or more parties. A contract may be written or spoken.

contributory negligence _ Negligence on the part of the plaintiff who is seeking to recover for injuries sustained as a result of the defendant's negligence. If alleged and proved by the defendant, contributory negligence bars recovery by the plaintiff. This type of negligence is in contrast to comparative negligence, wherein the negligence of the parties is compared and recovery permitted when the negligence of plaintiff is slight and the negligence of defendant is gross.

corpus delicti (*KOR-pus deh-LIK-ti*) _ The body (material substance) upon which a crime has been committed, such as the corpse of a murdered man or the charred remains of a house burned by an arsonist.

corroborating evidence _ Evidence supplementary to that already given and tending to strengthen or confirm it.

costs _ Charges required by law to be paid to the court for the expenses of the litigation. Costs in a criminal case do not constitute part of the sentence or punishment but are in addition to it.

court of record _ A court in which the proceedings are recorded and maintained as permanent records. Such records are absolute proof of what occurred in that court. In South Dakota every court is a court of record, except those with a magistrate presiding who is not law-trained.

crime _ An act that a legislative body declares contrary to law. Usually a punishment is provided, upon conviction. *See felony and misdemeanor.*

criminal action _ An action taken by the government against a private party when the government claims a law has been violated.

criminal insanity _ The mental condition that makes a person not legally responsible for his acts. In South Dakota the test used to determine criminal insanity is whether the person can distinguish right from wrong.

criminal summons _ An order commanding an accused to appear in court. It may be issued in lieu of an arrest warrant for misdemeanors when the issuing official believes the accused will appear in court without being placed under arrest.

cross-examination _ The questioning of a witness in a trial or other adversary proceeding by the party opposing the one who first called the witness.

D

damages _ Money that may be recovered by the plaintiff for injury to his person or loss or damage to his property or rights as a result of the unlawful act or negligence of the defendant.

de novo _ Anew, afresh. A "trial de novo" is the retrial of a case, usually when a higher court overturns the first court decision on appeal. The result of the first trial is immaterial.

declaratory judgment _ A judicial decision that declares the rights of the parties. Such judgments have the force and effect of a final judgment or decree. It is distinguished from the usual form of judgment in that it does not seek execution or performance from anyone.

decree _ A decision or order of the court. A final decree fully and finally disposes of the litigation, subject only to appeal to an appellate court. An interlocutory decree is provisional or temporary.

default _ A default occurs when a party fails to plead or to take other required steps within the time allowed or fails to appear at the trial.

defendant _ The party who is sued or charged.

deposition _ The recorded testimony of a person taken under oath before trial for the purpose of discovering facts and information to be used at trial to impeach the testimony of a witness or to be introduced in lieu of a witness's testimony if such witness is absent for an acceptable reason.

direct evidence _ Evidence that tends directly to prove or disprove a disputed fact, as distinguished from circumstantial evidence from which an inference can be drawn.

direct examination _ The interrogation of a witness by the party who called him to testify.

directed verdict _ Result decided by the judge when he or she withdraws disputed issues from the jury's consideration. Judgment is entered for the prevailing party.

discovery _ A process in which a party will be informed of any facts known by the other parties or witnesses.

dismissal _ An action that disposes of a case without a trial taking place.

dismissal with leave _ Dismissal of a criminal action by prosecutor for failure of defendant to appear. The case may be reopened at any time.

dismissal without prejudice _ A dismissal of a case that permits the complainant to sue again on the same cause of action. In a criminal case, the action can be reinitiated any time before the statute of limitations runs out.

dissent _ Disagreement by one or more judges of an appellate court with the decision of the majority of the court. Dissenting judges often file dissenting opinions in which they explain why they disagree with the majority.

docket _ A book containing entries of all the important acts done in court in the conduct of each case from its inception to its conclusion. The term “docket” or “trial docket” also refers to the list or calendar of cases to be tried at a specified term. The docket is prepared by the court clerks for use by judges and attorneys.

double jeopardy _ The rule stating that a party cannot be prosecuted for the same crime twice.

due process _ The guarantee that each person has the benefit of a fair trial.

E

embezzlement _ The fraudulent taking by a person for personal use or benefit the property or money entrusted by another.

eminent domain _ Power of the government to take private property for public use upon payment of just compensation. *See condemnation.*

enjoin _ To order a person to perform or to abstain and desist from performing a specified act or course of conduct. *See injunction.*

entrapment _ The act of government officers or agents inducing a person to commit a crime with the intent of charging that person with the crime.

evidence _ Testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

escheat (ehs-CHEET) _ In American law, the right of the state to an estate to which no one is able to make a valid claim.

estoppel _ A person’s own act or acceptance of facts that precludes his later asserting a contrary circumstance that would be detrimental to another party who relied on the act of acceptance.

ex contractu _ Arising from a contract.

ex delicto (ex deh-LIK-toh) _ Arising from a wrong.

ex parte (ex PAR-tay) _ By or for a single party; done for, in behalf of or on the application of one party only, as distinguished from an adversary (contested) proceeding. An *ex parte* order is an order that is issued without notice to an adversary.

ex post facto _ After the fact; an act or fact occurring after some previous act or fact and relating to it. The Constitution prohibits the enactment of *ex post facto* laws, that is laws that permit conviction and punishment for an act performed before the law was passed.

execute (a judgment or decree) _ To put the final judgment of the court into effect.

executor (executrix, female) _ A person named in a will to administer the estate of the deceased person.

exhibit _ A paper or document or other physical object introduced into evidence during a trial or hearing.

expert witness _ Testimony given by somebody who is not personally involved with the trial, but is qualified to speak about scientific, technical or professional information.

extradition _ Surrender by one state of an individual accused or convicted of an offense to another (the receiving) state. When a defendant charged with a felony flees to another state, the prosecuting attorney may apply to the governor to “requisition” the accused from the foreign jurisdiction so he may be tried in South Dakota.

F

felony _ A more serious crime than a misdemeanor, generally punishable by death or more than a year in prison.

fiduciary _ A person having a legal relationship of trust and confidence to another and having a duty to act primarily for the other’s benefit, such as a guardian, trustee or executor.

fine _ A monetary penalty imposed in a criminal or civil action.

forgery _ The false making or material altering, with intent to defraud, of any writing which, if genuine, might be the foundation of a legal liability.

G

gag order _ South Dakota law gives judges the power to suppress certain information in cases involving sex crimes or juveniles. Judges also have discretionary power to command attorneys and others involved in a court case not to give interviews or discuss the case publicly.

garnishment _ The taking of wages or property by the courts to pay a person’s debtors.

grand jury _ The group of people who hears evidence and decides whether there is enough evidence to try an accused for a crime. This process, called “indictment” is a prerequisite to trial in circuit court unless waived. All federal grand juries and some special state grand juries also have investigative powers.

guardian ad litem (ad LY-tehm) _ A court-appointed fiduciary charged with representing the interests of a child or incompetent person in a court proceeding. The guardian relationship terminates when the litigation is finally resolved.

guilty but mentally ill _ A plea allowed under South Dakota law in which the defendant admits the crime but seeks special consideration during sentencing on grounds he was mentally ill when the crime was committed. NOT the same as innocent by reason of insanity.

H

habeas corpus (HAY-bee-uhs KOR-puhs) _ A writ (order) to bring a person before the court. In most common usage, the writ is directed to a warden or jailer commanding him to produce a prisoner or person detained to that the court may determine whether such person is lawfully confined.

harmless error _ An error committed by a lower court but determined by an appellate court not to be prejudicial to the rights of the party affected and therefore furnishing no basis for reversal of the lower court’s judgment.

hearsay _ Evidence that is not within the personal knowledge of the witness but was related to the witness by a third party.

holographic will _ A will written in a person’s own handwriting. Valid in South Dakota if the document and the signature are in the person’s handwriting. It does not have to be signed by witnesses.

homicide _ A legal term for a killing or slaying. Not a criminal charge.

hostile witness _ A witness who manifests hostility or prejudice against the party who called him. On direct examination the calling party may be permitted to question such a witness as if he had been called by the opposing party.

hung jury _ A divided jury that cannot agree upon any verdict. Also known as a mistrial.

I

immunity _ A grant by the court against prosecution in return for providing criminal evidence against another.

impeach _ To attack the credibility of a witness by the testimony of other witnesses or by other evidence.

implied contract _ A contract in which the agreement is understood without being spelled out.

in camera _ The judge examines evidence in his or her chambers to determine its admissibility in the trial.

inadmissible _ Evidence that cannot be brought into court because it would violate established rules.

incompetent evidence _ Evidence that is not admissible under the rules of evidence.

incompetent _ A person lacking the capacity, legal qualification, or fitness to manage his own affairs or to discharge a required duty. A person may be found incompetent to stand trial if he or she lacks mental capacity or fitness to understand and participate in the proceeding. A guardian may be appointed to conduct the affairs or protect the interests of an incompetent.

indemnify _ To make good or compensate or reimburse one for a loss already incurred by him or her.

indeterminate sentence _ A sentence of imprisonment to a specified minimum and maximum period of time.

indictment _ A written accusation made by the grand jury charging that a person named therein has committed a crime.

indigent _ A person who is without funds or ability to hire a lawyer to defend himself.

information _ An accusation of a criminal offense drawn by the state's attorney and similar to an indictment except that it is not presented to the grand jury. It can be filed only after a finding of probable cause. It may not be used in a capital case. In a noncapital felony case, when indictment is waived, trial is based on an information.

infraction _ A noncriminal violation of law not punishable by imprisonment and carrying a penalty of not more than \$100. Minor traffic offenses are generally considered infractions.

injunction _ A court order directing a person to refrain from doing some act or (occasionally) affirmatively to do an act. *See enjoin.*

instruction _ A direction given by the judge to the jury concerning the law of the case that the jury is hearing. Also designated a "charge."

intent, criminal _ Intent in law is the exercise of intelligent will in which the mind is fully aware of the nature and consequences of the act that is about to be done and, with such knowledge and with full liberty of action, the person willingly elects to do the act. A criminal intent must be accompanied by an overt act or an intentional attempt to constitute a crime.

interlocutory (in-ter-LAHK-yoo-tory) _ Provisional; temporary. Often used in reference to a court order that is not final. Something dealing with a point or matter during the course of an action, but which does not make a final determination of the whole controversy.

intermediate _ Imposed during the progress of a suit or action, between the beginning and end. Intermediate orders of the circuit court may be appealed to the State Supreme Court.

interrogatories _ Written questions prepared by one party and served on an adversary who must provide written answers under oath.

intervention _ Procedure in a suit or action by which the court permits a third person to intervene and become a party.

intestate (in-TESt-ate) _ Person who dies without leaving a will.

irrelevant _ Evidence that does not pertain to the case.

J

jeopardy _ The peril in which an accused is placed when he is properly charged with a crime before a court. Jeopardy normally attaches when the petit jury is impaneled. After such time the accused may not ordinarily be released and tried at a later date for the same offense. *See double jeopardy.*

judge's charge _ Explanation of the applicable law given by the judge to the jury after the evidence is concluded and the lawyers have finished their arguments. The judge also explains the permissible verdicts that the jury may return. *See instruction.*

judgment _ In a civil case, the official decision of a court determining the rights of the parties involved. In a criminal case it includes the pronouncement of acquittal or conviction. If guilty, also includes the sentence.

judgment nisi _ A temporary judgment. Unless the defendant appears within a designated period and shows why the judgment should not be made permanent, the judgment will be made absolute.

jurisdiction _ The authority or power of a court to affect the legal interests of persons or things. Jurisdiction over the person involves the geographical relationship of the court to the person and requires proper notice and appearance of the person before the court. Jurisdiction over the subject matter relates to the authority of the court, as derived from the Constitution and laws, to determine the type of offense being tried or civil matter being litigated and to determine guilt, innocence or other rights of the parties involved.

jury _ Group of citizens called to hear a trial in a criminal prosecution or civil lawsuit. Charged with deciding the factual questions of guilt or innocence in a criminal case, and the winner and amount to be paid, if any, by the loser in a civil case. *See grand jury and petit jury.*

jury instructions _ After evidence is concluded and the lawyers have finished their arguments in a trial, the judge explains the laws that apply to the case. The judge also explains the permissible verdicts that the jury may return. *See judge's charge.*

jury nullification _ A decision by a jury that is contrary to the outcome provided by law. Usually a jury's acquittal of a person despite substantial evidence to prove the charge against him, based on the jury's disagreement with the law.

L

leading question _ A question so worded that the desired answer is suggested to the witness, particularly when it may be answered by "yes" or "no." Leading questions are proper on cross-examination but normally are prohibited on direct examination unless the witness is hostile.

lesser included offense _ An offense composed of some, but not all, of the elements of the greater crime, and which does not have any element not included in the greater offense.

levy _ A seizure; the act of appropriating certain property of the debtor for the satisfaction of a judgment for the payment of money.

libel _ Any material that damages the reputation of a person.

lien _ A claim that a person has upon the property of another as security for a debt owed to the lienholder.

lis pendens (lis PEN-denz) _ A pending suit. A legal notice to all the world that a dispute exists that may affect the title to a certain tract of land.

locus delicti (LOH-kuhs deh-LIK-ti) _ The place of the offense.

M

magistrate _ Have power to conduct court and jury trials in misdemeanor crimes. Magistrates also issue warrants, set initial bonds and order initial commitments to jail. Magistrates' powers also include various civil functions, such as marriage ceremonies.

malfeasance _ Evil doing. Ill conduct. The commission of some act which is positively prohibited by law.

malicious prosecution _ An action instituted with intention of injuring the defendant and without probable cause and which terminates in favor of the person prosecuted.

mandamus _ A writ issued by the court that commands a public or quasi-public official to perform an act or enforce legal rights that the law imposes on the official. Mandamus is generally not available to compel the performance of discretionary acts as distinguished from ministerial acts.

mandate _ An official command to enforce a judgment.

manslaughter _ The unlawful killing of another person without premeditation.

material evidence _ Evidence that is relevant and pertains to the issues in dispute.

mens rea _ Literally "guilty mind." The criminal intent to commit an act that is morally wrong, such as murder or larceny. It is a prerequisite to conviction for a crime involving a moral wrong, but it is not a prerequisite to conviction for an act that is a crime only because a statute designates it to be a crime, such as overtime parking.

Miranda Rule _ Prior to any questioning initiated by law enforcement officers after a person is taken into custody or otherwise deprived of his freedom, the person must be warned: 1) that he has a right to remain silent; 2) that any statement he does make may be used as evidence against him; 3) that he has a right to the presence of an attorney; 4) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

misdemeanor _ Any crime less serious than a felony. It is punishable by not more than one year in jail.

mistrial _ An invalid trial, so declared by the trial judge when the trial cannot stand due to an incurable error or omission of some fundamental aspect of due process. A mistrial is followed by a completely new trial. *See hung jury.*

mitigating circumstance _ One that does not constitute a justification or excuse of an offense but that may be considered as reducing the degree of moral culpability.

moot _ Undecided. An issue that no longer has significance.

motion in limine _ A written motion that is usually made before or after the beginning of a jury trial for a protective order against unduly prejudicial evidence.

motion to dismiss _ A motion by the defendant that the court dismiss the plaintiff's lawsuit for failure of the complaint to state a claim upon which relief can be granted. The motion is used in other contexts of litigation as well; for example, for failure of the plaintiff to comply with rules of pleading required by statute or orders of court, a defendant may move for dismissal of an action or claim against him.

motion to quash _ A motion by the defendant who contends that a warrant or indictment must be dismissed for a fatal defect, such as failing to charge a crime or naming the wrong person. If the motion is allowed, the indictment is "quashed" or voided. The accused may be required to post bond for a later session of court when a new grand jury can correct the defect in the first paper or when a new bill of indictment may be submitted to the grand jury.

multiplicity of actions _ Two or more separate (and unnecessary) attempts to litigate the same cause of action.

murder _ The intentional killing of another person. *See homicide.*

N

negligence _ Failure to do something that would ordinarily be done, or the doing of something that is not ordinarily done. To be actionable such omission or commission must result in harm to another.

nolo contendere (NOH-loh kuhn-TEN-deh-ray) _ A plea of "I will not contest." It is comparable to a plea of guilty in authorizing the court to punish the defendant, but it does not establish guilt for any other purpose. In a civil case, the plea of nolo contendere to an earlier criminal action based on the same facts cannot be admitted in evidence to prove that the defendant committed the act alleged in the warrant or indictment.

non obstante veredicto (nahn uhb-STAN-tay ver-uh-DIK-toh) (notwithstanding the verdict) _ A judgment entered by the judge contrary to a jury's verdict. The judge considers that the pleadings and evidence indicate that a party was entitled to have his motion for a directed verdict granted. The issue should have never been submitted to the jury. The judge therefore enters a judgment that is required as a matter of law, even though contrary to the jury's verdict.

not a true bill _ A finding by a grand jury on an indictment that, in the jury's opinion, the evidence is insufficient to justify trying the defendant for the crime set out in the indictment.

nuncupative will _ A will made by a person who is in his last sickness or in imminent peril of death and does not survive such sickness or peril; and declared to be his will before two competent witnesses simultaneously present and requested by him to bear witness.

O

objection _ A formal disapproval or exception to some statement or procedure during the trial. An attorney objects to call the court's attention to what he believes is improper evidence or procedure.

opinion evidence _ What the witness thinks, believes or infers with respect to certain facts, as distinguished from his personal knowledge of the facts.

overt act _ An act essential to establishing an intent to commit a crime and done to carry out or in furtherance of the intention. It must be an act that would naturally result in the commission of the crime unless prevented by some extraneous circumstances.

P

panel _ A list of potential jurors.

parole _ The conditional release from prison of a convict before the expiration of his sentence. If he observes the stipulated conditions the parolee (the released person) need not serve the remainder of his sentence. The parolee is under the supervision of a state parole officer during the period of parole.

parties _ People actively involved in a legal proceeding.

peremptory challenge _ A party is privileged to reject a prospective juror without assigning any cause for the rejection. The number of peremptory challenges is fixed by law according to the nature of the case.

perjury _ The criminal offense of making a false statement under oath.

personal recognizance _ A type of bail consisting of a written promise to appear in court when required. A bond secured only by the personal obligation of the person giving the bond.

petit jury _ A jury of 12 persons for the trial of a civil or criminal case. *See grand jury.*

plaintiff _ The party bringing action or suing.

plea _ Pleas possible in criminal cases 1) not guilty; 2) not guilty by reason of insanity; 3) no contest; 4) guilty; 5) guilty but mentally ill.

pleadings _ Formal written allegations by the parties containing their respective claims and defenses.

polling the jury _ The procedure of asking the jurors individually whether they concur in the verdict announced by the foreman.

power of attorney _ An instrument authorizing another to act as one's agent or attorney.

preliminary hearing _ The hearing available to a person charged with a crime to determine whether there is enough evidence (probable cause) to hold him for trial.

presumption of innocence _ Every criminal defendant enters trial presumed in fact to be innocent. This presumption remains with him unless the state overcomes the presumption by competent and sufficient evidence of guilt.

prima facie case (PRY-muh FAY-sheh) _ The amount of evidence in a civil case sufficient to avoid dismissal of the plaintiff's suit. A prima facie case will support a jury decision for the plaintiff but does not compel it because credibility of the witnesses is a matter for the jury's determination.

probable cause _ The existence of circumstances and facts sufficiently strong to excite a reasonable belief that the person charged with a crime is guilty. Probable cause does not indicate proof of guilt beyond a reasonable doubt but only that sufficient grounds exist to compel the accused to stand trial. If the grand jury or preliminary hearing official does not find probable cause, the accused must be released immediately.

probate _ The act or process of proving the validity of a will and the judicial supervision of administration pursuant to the will. *See caveat.*

probation _ A method of suspending a sentence. Rather than imposing an active sentence the court may hold the sentence in abeyance subject to the good conduct of the defendant. A person on probation is either supervised by a court services officer or is unsupervised as the judgment may specify.

prosecutor _ A trial lawyer representing the state in a criminal case. In South Dakota the local prosecutors are elected in each county every four years and are called state's attorneys.

public defender _ A trial lawyer employed by the county to represent indigent defendants in criminal cases.

punitive damages _ Damages awarded to the plaintiff over and above what will compensate him for ordinary loss in an effort to punish the defendant or set an example for wrongdoers.

Q

quid pro quo _ “What for what” — a fair trade or return.

R

reasonable doubt _ *See beyond a reasonable doubt.*

retainer _ The initial fee paid to an attorney for services.

rebuttal _ The introduction of evidence that may show statements of witnesses are not true.

recognizance _ The practice that enables an accused awaiting trial to be released without posting any security other than his promise to appear before the court at a proper time. Failure to appear in court at the proper time is a felony.

redirect examination _ Re-examination of a witness by the calling party after cross-examination by the opposing party.

remand _ The procedure by which a case on appeal is, on decision of the appellate court, sent back to the trial court with instructions as to the proper disposition that the trial court should make.

remittitur _ Procedure by which money damages awarded by a judge are diminished. Also the process by which a file on appeal is returned from the appellate court to the trial court.

removal _ Transfer of a case to another court. *See change of venue.*

reply _ A written pleading containing the plaintiff's allegations in response to a new matter alleged in the defendant's answer.

respondent superior _ “Let the master answer.” An employer may be liable for the wrongful acts of his employee provided the employer owes a duty of care and the failure of the employee to use such care occurred in the course of his employment.

rest _ A party “rests” or “rests his case” when he indicates that he has produced all the evidence he intends to offer at that stage of the trial, subject to the right to offer rebuttal evidence later.

reverse _ An appellate court's revoking of a decision made in a lower court.

robbery _ Felonious taking of another's property from his person or immediate presence and against his will by means of force or fear.

rule nisi, or rule to show cause _ A court order commanding a party to show cause why he should not be compelled to do the act required or why the object of the order should not be enforced.

S

search and seizure _ Examination of a person's residence, business or vehicle by law enforcement officers looking for evidence of the commission of a crime, and the taking of articles of evidence.

search warrant _ A document from a judge ordering the search of a property for evidence.

self defense _ Protection of yourself or your property against the act of another person.

separation (sequestration) of witnesses _ A discretionary action by the court excluding future witnesses from the courtroom while earlier witnesses are testifying. This prevents a witness from being influenced by testimony of a prior witness.

sequestration of a jury _ Members of the jury are kept separate from their families and the public during a trial. The court provides room and board and transports jury members to and from the courtroom for trial sessions.

show cause _ This is a notice to show why a certain action should not be taken on an existing record or judgment. If a defendant released on bail fails to appear in court at the proper time, a judgment *nisi* is rendered provisionally forfeiting the bond, and a show cause order is issued to the defendant and his sureties to show cause why the judgment should not be made final.

slander _ Spoken words that damage the reputation of another person.

special venire (veh-NY-reh) _ A panel of prospective jurors who are summoned when the lawyers in a case cannot agree on 12 jurors from the regular panel or when the regular panel is insufficient for the court's business. The judge fixes the number of jurors to be summoned for a special venire.

specific performance _ Court-compelled performance of a contract according to the precise terms agreed upon. Specific performance is usually granted only when damages would be an inadequate remedy.

statute _ A law enacted by the legislative branch of government as distinguished from case law made by the courts.

statute of limitations _ A certain time allowed by statute after an act giving rise to liability in which litigation or prosecution must be started. In civil cases, the allowable period varies, depending on the action or subject involved. In felony and misdemeanor cases, the limit is seven years for all crimes, except bad checks (shorter) and murder, which has no limit.

stay _ An individual order stopping or arresting a judicial proceeding or execution of a judgment.

stipulation _ An agreement by opposing attorneys on any matter pertaining to the proceedings or trial. It is not binding unless assented to by the parties. Most stipulations must be in writing.

strict liability _ A concept applied by courts in product liability cases in which a seller is liable for any and all defective or hazardous products that unduly threaten a consumer's personal safety.

subpoena (suh-PEE-nuh) _ An order to a witness to appear and testify at a specified time and place.

subpoena duces tecum (DOO-keh's TAY-kuhm) _ A court order commanding a witness to bring certain documents or records to court.

substantive law _ Law that creates, defines and regulates rights as opposed to "procedural" law that prescribes the method of enforcing the rights or of obtaining redress for their invasion.

summary judgment _ Final decision or judgment by the court prior to the trial of a civil case. This occurs when the judge determines that the prevailing party is entitled to judgment as a matter of law either on the pleadings alone or after reviewing the pleadings and other evidence. It is proper only if the court determines that there is no dispute to the material facts of the case.

summons _ An order signed by the clerk of court in the name of the state informing a person named as a defendant in a civil action that such an action has been commenced in a specified court in a specified county against him and directing the defendant to answer the complaint within 30 days.

supersedeas (soo-per-SEE-dee-uhs) _ An order issued by an appellate court to preserve the status quo pending review of a judgment or pending other exercise of its jurisdiction.

suspended imposition of sentence _ After a verdict or plea of guilty, no judgment is entered pending a period of probation, which could include jail time, restitution, or other conditions. If probation is completed successfully, the record of arrest and adjudication is sealed from public access. This is distinguished from a “suspended sentence” in which sentence is entered but its execution is suspended for a period upon payment of a fine or upon the good behavior of the defendant or both.

T

temporary restraining order _ An emergency remedy of brief duration that may be issued by the court only in exceptional circumstances and only until the trial court can hear arguments or evidence and determine what relief is appropriate.

testator _ One who disposes of his property by will. A person who dies without a will is said to die intestate.

testimony _ Evidence given by a witness under oath.

third-party plaintiff _ A defendant who causes a summons and complaint to be served upon a person not a party to the action who is, or may be, liable for all or part of the original plaintiff’s claim against him. Also when a counterclaim is asserted against the plaintiff by the defendant, the plaintiff may likewise cause a third party to be brought into the action.

tort _ A private wrong. An infringement of the rights of an individual not founded on a contract. The most common tort action is a suit for damages sustained in an automobile accident.

transcript _ The official verbatim record of the testimony in a trial or hearing.

trial de novo _ A new trial. A retrial in a higher court rather than review of a lower court action on appeal.

true bill _ The endorsement made by a grand jury on a bill of indictment when it finds sufficient evidence for trial on the charge alleged in the indictment.

U

U.C.C. _ Uniform Commercial Code. Set of statutes that regulates sales and other commercial transactions.

U.J.S. _ Unified Judicial System. South Dakota’s state court system: Supreme Court, Circuit Court, Magistrate Court.

undue influence _ Whatever destroys free will and causes a person to do an act he would not do if left to himself. It is most frequently alleged in will contests.

unjust enrichment _ The principle that one person should not be permitted to enrich himself unjustly at the expense of another but should be required to make restitution for the property or benefit received.

V

venue (ven-YOO) _ The proper geographical area — county, city or district — in which a court with jurisdiction over the subject may hear a case.

verdict _ The official decision of a petit (12-person) jury as reported to and accepted by the court. In South Dakota all criminal verdicts must be unanimous. However in civil cases the parties may agree to a jury of fewer than 12 members and also to a verdict stated by the majority of the jurors. If the parties in a civil case do not make such an agreement a unanimous verdict is required.

voir dire (vwor deer) _ To speak the truth. Examination of prospective jurors to determine whether they are qualified to sit on the jury in the case being tried. It is also used when the judge excuses the jury and examines a witness outside the jury's hearing. Such an examination is frequently undertaken to determine whether a confession made by a defendant was voluntary.

W

waiver _ The intentional and voluntary relinquishment of a legal right.

wanton _ An act is wanton when it is without any adequate legal provocation and manifests a reckless indifference to the rights and interests of others.

warrant of arrest _ An order issued by a judicial official requiring a sheriff or other officer to arrest a person named in the warrant and to bring that person before the court to answer a specific charge set out in the warrant. Warrants should be issued only upon showing of existence of probable cause. *See probable cause.*

willfully _ Intentionally, as distinguished from accidentally, carelessly or inadvertently.

witness _ A person who testifies about what he or she has observed.

work-release _ A sentence under which the defendant is imprisoned but is released during the daytime to work at a job approved by the county.

writ _ A court order requiring the performance of a specified act or giving authority to have the act done.

Covering Courts

By Linda Deutsch, Associated Press national courts reporter

THE ARREST

Some crimes may linger as police investigate and seek a suspect. If you're assigned to the case, keep in touch with the investigating officers who may tip you when an arrest is imminent. Police may pick up a suspect and tell no one. Once you find out that someone is in custody, be sure to clarify whether the person is just being detained for questioning or booked "on suspicion of" committing a crime. Later, when a case is filed, you can say they were charged.

PRETRIAL PROCEEDINGS

Once someone is charged with a crime a series of steps follow:

INITIAL APPEARANCE– In South Dakota, within 48 hours of being arrested the defendant appears in court with a lawyer, and a judge formally informs the accused of the charges. Bail may be set or denied and a further hearing is scheduled. The first judge is not always the trial judge. Felony defendants cannot enter a plea at this hearing.

GRAND JURY INDICTMENT – In state or federal court, a grand jury may be convened to examine the evidence in a case. Such hearings are secret, although leaks can occur. If an indictment is issued, an arraignment will be held. Many indictments include an affidavit stating the facts of the case; they can provide news breaks.

PRELIMINARY HEARING – In many state courts, the grand jury is not used and a preliminary hearing is held to determine whether there is sufficient evidence to proceed to trial. The hearing is a mini-trial, although it is quite one-sided. The prosecution presents a very brief overview of its evidence, perhaps a few key witnesses. The defense may cross-examine, rarely presents evidence and argues to dismiss the case before trial. The prosecutor argues there is probable cause to send the case to trial. Be aware that many criminal cases are disposed of at this level. Don't skip the prelim. Legal precedents allow reporters to be present at preliminary hearings.

ARRAIGNMENT – Once probable cause has been established by indictment or preliminary hearing, someone charged with a felony or serious misdemeanor is arraigned on the charges and is asked to enter a plea of guilty or not guilty. The judge often schedules other hearings and possibly a trial date and may reconsider bail.

PLEA – Once a defendant is "held to answer" a plea will be entered, usually not guilty. But a defendant also may choose to plead guilty or no contest, thus aborting the trial.

PRETRIAL HEARINGS AND RULINGS – A panoply of issues must be decided before a trial starts. Lawyers will make motions to dismiss the charges. They will challenge the admissibility of certain evidence and question the legality of police behavior. Was a Miranda warning given? Was physical evidence contaminated? A change-of-venue motion may seek to relocate the trial on a claim that publicity has poisoned the atmosphere against a defendant. In a high-profile trial, there may be a move to sequester the jury. And there is always a demand for "discovery" of evidence being held by the opposing side.

EFFORTS TO EXCLUDE THE PRESS – It is in pretrial that one side or the other – or the court on its own motion – may get the idea that the case would be easier to conduct without the news media present. Such efforts have led to a long list of legal decisions ensuring openness in the courts. Specific rulings have addressed preliminary hearings, pretrial hearings and jury selection. Know your rights and protest if a judge tries to close the courtroom! Ask for time to call a lawyer, and inform your supervisor.

THE TRIAL

Although we are more familiar with jury trials, be aware that a defendant can request a bench trial in which the judge serves as the finder of fact, and decides guilt or innocence. These proceedings are rare.

JURY SELECTION—The beginning of jury selection, also known as voir dire, is the official start of the trial. Prospective jurors are questioned either by lawyers, the judge or both about their backgrounds and any preconceived biases about the case. Lawyers may exercise “challenges for cause” if they can prove a juror unqualified to serve or “peremptory challenges” in which they remove a juror without stating a cause. Ultimately, a panel of 12 jurors and a number of alternate jurors (determined by the judge) are selected and sworn.

OPENING STATEMENTS – A prosecutor must deliver opening statements to the jury. The defense may make a statement after the prosecution is done, after the prosecution rests or not at all. They are not allowed to argue their cases at this point so do not refer to them as opening “arguments,” a common mistake. The opening statement is a road map of the case, laying out the evidence they expect to present.

TESTIMONY – When the first witness is sworn in, “jeopardy attaches” and any effort to stop the trial after that requires a mistrial motion. The prosecution goes first because it bears “the burden of proof.” All defendants are presumed innocent unless proven guilty. If, after the prosecution case, the defense believes guilt has not been proven beyond a reasonable doubt, a defense attorney may choose to rest without presenting any evidence. Sometime the entire defense case is made during cross-examination of prosecution witnesses. More often, the defense calls its own witnesses – possibly including the defendant. The prosecution answers with rebuttal witnesses and both sides rest.

FINAL ARGUMENTS – With all the evidence in, lawyers now have the option to argue their cases. They will seek to interpret the evidence for jurors in a way that will support their respective cases. The prosecutor gets to speak twice – opening and closing – again, because of the burden of proof.

INSTRUCTIONS AND DELIBERATIONS – Lawyers submit to the judge list of proposed legal instructions and a final set is agreed upon. The instructions may seem dry and boring to an outsider but they can be extremely important in determining the outcome. Jurors pay close attention to them, and you should too. Doors to the courtroom are often locked while instructions are read and jurors are then sent to deliberate.

It may seem like simple common sense, but it must be noted that a reporter should NEVER TRY TO CONTACT A JUROR during deliberations or at any time during the trial. That can be interpreted as jury tampering and could lead to a mistrial, not to mention dire consequences for the reporter. Don’t ever speak to a juror during the trial and avoid being overheard by them when making phone calls.

THE VERDICT – Once a unanimous verdict is reached, jurors notify the court bailiff. You may have arranged for the bailiff to call you or you may be staking out the verdict if it’s a big trial. The judge announces when the verdict will be returned; the defendant is brought to court and the jury returns with its decision. The verdict is handed to the judge who studies it and usually hands it to the clerk to be read. It’s a moment of high drama and a reporter needs to watch every player – defendant lawyers, families, and friends. Reaction can be muted or emotional. If the verdict is guilty, a sentencing date is scheduled and the defendant may be taken to jail. If not guilty, the defendant is free.

DEADLOCK – if the jury cannot agree on a verdict and reports itself hopelessly deadlocked, a mistrial is declared. The prosecution must then decide if it wants to retry the case. The whole process may begin again.

PENALTY – In many courts, a guilty finding in a first-degree murder trial may be followed by a “penalty phase” of the trial. In jurisdictions with capital punishment, the same jury is asked to decide whether the defendant should live or die. Penalty phase trials are often emotional affairs. The defense offers “evidence in mitigation,” seeking to show psychological and other reasons why a defendant should not receive the death penalty. The defendant’s family often testifies in a bid for mercy. The jury’s verdict on penalty is a recommendation; the judge must actually

impose sentence. Judges rarely overturn the jury's decision. But in the case of a death penalty, the judge has the option of reducing it to life.

POST-TRIAL INTERVIEWS

Once the trial is over and verdicts are rendered, everyone is free to talk – even the jurors. Now you can ask all those questions. In a high-profile trial, it is advisable to ask the judge to allow a jury press conference. This prevents a stampede in the hallways with reporters attempting to stop fleeing jurors. In smaller trials, the jurors may be eager to talk. They may also recognize you if you've been covering regularly, and will respond to a friendly face. In some cases, jurors just refuse to comment; it's a reflex action. If you can reach them later, they may change their minds.

SENTENCING

Sometimes after a guilty verdict, the defendant returns to court at a set time for formal imposition of sentence. It can be a powerful scene. In some states, victims or their survivors are permitted to make statements that can be heart rending. The defendant also has the opportunity to speak. The judge imposes sentence and often delivers a speech explaining the reasons for the sentence.

This may seem like the grand finale, but in many cases it is just the beginning. The appeals court is the next stop on the long road to justice.

AFTER SENTENCING

In South Dakota, occasionally the sentence given someone convicted of a crime is not the sentence he or she will serve. The law includes a section called "relief from judgment," which allows a judge to change a sentence for up to two years after final judgment. Under some circumstances, he or she may also wipe out the judgment, order a new trial or take additional testimony and enter a new judgment. A judge can change the sentence without a request from either side, but the victim needs to be notified if the defendant's sentence is going to be reduced.

APPEALS

In South Dakota, all judgments in a lower court can be appealed to the state Supreme Court, and then to the federal court system.

Gag Orders

The court has statutory authority to suppress certain information during the prosecution of criminal cases. Such suppression is known as a gag order. Here are the South Dakota laws that apply:

23A-6-22 Suppression of names and details in rape, incest, or sexual contact prosecution. Upon the request of the victim or the accused in a prosecution for rape, incest, or sexual contact, the court shall order that the names of the victim and the accused and details of the alleged offense be suppressed until the accused is arraigned, the charge is dismissed or the case is otherwise concluded, whichever occurs first.

23A-24-6 Minor's testimony as to sexual offense involving child—Open only to certain persons—Exception for grand jury proceedings. Any portion of criminal proceedings, with the exception of grand jury proceedings, at which a minor is required to testify concerning rape of a child, sexual contact with a child, child abuse involving sexual abuse or any other sexual offense involving a child may be closed to all persons except the parties' attorneys, the victim or witness assistant, the victim's parents or guardian and officers of the court and authorized representatives of the news media, unless the court, after proper hearing, determines that the minor's testimony should be closed to the news media or the victim's parents or guardian in the best interest of the minor.

26-7A-36. Juvenile hearings closed unless court compelled otherwise - Exceptions. All hearings in actions under this chapter and chapters 26-8A, 26-8B and 26-8C are closed unless the court finds compelling reasons to require otherwise. However, all pleadings and hearings shall be open and a matter of public record if a juvenile is summoned into court for an offense which if committed by an adult would constitute a crime of violence as defined in 22-1-2(9) or a crime involving a drug offense in violation of 22-42-2 or 22-42-3, and at the time of the offense the juvenile was sixteen years of age or older.

26-7A-38 Protection of identity of witnesses - Violation creates cause of action for civil damages - Contempt. The name, picture, place of residence, or identity of any child, parent, guardian, custodian, or any person appearing as a witness in proceedings under this chapter or chapter 26-8A, 26-8B and 26-8C may not be published or broadcast in any news media, nor given any other publicity, unless for good cause it is specifically permitted by order of the court. Violation of this section creates a cause of action for civil damages on behalf of the child and is subject to the same punishment as contempt of court.

State officials can now release the results of government investigations that clear private individuals or businesses of any wrongdoing. The only things that cannot be disclosed are trade secrets and proprietary business information.

Reporter's Statement on Closed Court

The Associated Press has drafted the following statement to be used by reporters when confronted with an attempt to close a criminal proceeding. It outlines the position of the press in seeking an open session, and it requests time to consult an attorney before the courtroom is closed. It may be read in full, or parts can be left out if they don't apply.

May it please the court, I am (name) of (media outlet). I respectfully request the opportunity to register on the record an objection to the motion to close this proceeding to the public and to representatives of the news media. The Associated Press (or other media outlet) requests a hearing at which its counsel may present to the court legal authority and arguments that closure in this case is improper.

The United States Supreme Court has firmly held that the press and the public have a constitutional right to attend criminal trials and pretrial proceedings and may not be excluded unless the court makes findings on the record that closure is required to preserve higher values and is narrowly tailored to serve that interest. There is, therefore, a presumption of openness which is firmly rooted in the Constitution and essential to proper functioning of the criminal justice system.

The Associated Press (or other media outlet) takes the position that the defendant should be required to make the following showing in order to prevail on a motion to close this proceeding:

- First, the defendant must demonstrate that by conducting the proceeding in public the defendant's right to a fair trial will be prejudiced by publicity which closure would prevent. The defendant must demonstrate therefore that disclosures made in this hearing will prejudice the case and that these disclosures would not otherwise be brought to the attention of potential jurors.
- Second, the defendant must demonstrate that none of the alternatives to an order closing this proceeding would effectively protect the right to a fair trial. Among the alternatives available to protect the defendant's rights are a careful and searching voir dire, continuance, severance, change of venue, peremptory challenges, sequestration and admonition of the jury.
- Third, the defendant must demonstrate that closure will be effective in protecting the right to a fair trial. In the present case there has already been substantial publicity concerning the facts. The defendant must demonstrate that any prejudice to the right of a fair trial would result from publicity given to disclosures made in this proceeding, and not to previously published facts or allegations.
- Finally, the defendant must establish that reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights.

The Associated Press (or media outlet) believes that there has been substantial public interest generated by this case. The public has a right to be informed of future developments, and the court should avoid any impression that justice is being carried on in secrecy. The public has a right to know how the court system is handling criminal matters, what kind of evidence may be kept from the jury, and what sort of police or prosecutorial acts or omissions have occurred. For these reasons, The Associated Press (or media outlet) objects to the motion for closure and respectfully requests a hearing in which it can present full legal arguments and authority.

The Supreme Court has never addressed the question of whether there is a First Amendment right of access to civil trials and pretrial proceedings. Several federal appeals courts have ruled that both civil trials and pretrial proceedings are presumptively open to the press and public.

Press-Bar Guidelines

Here are the guidelines for disclosure and reporting of information relating to criminal litigation that were drawn up by a press-bar committee. The guidelines have not been updated for many years, but many of them still apply.

Information Generally Appropriate For Disclosure and Reporting

1. The arrested person's name, age, residence, employment, marital status, and similar biographical information.
2. The charge, its text, any amendments thereto, and if applicable, the identity of the complainant.
3. The amount and conditions of bail.
4. The identity of and biographical information concerning the complaining party and victim, and, if a death is involved, the apparent cause of death unless it appears that the cause of death may be a contested issue.
5. The identity of the investigating and arresting agencies and the length of the investigation.
6. The circumstances of arrest, including time, place, resistance, pursuit, possession of and all weapons used, and a description of the items seized at the time of arrest.
7. Information disclosed by the public records, including all testimony and other evidence adduced at the trial.

Information Generally Not Appropriate For Disclosure And Reporting

1. The existence or contents of any confession, admission or statement given by the accused, except that it may be stated that the accused denies the charges made against him. This paragraph is not intended to apply to statements made by the accused to representatives of the news media or to the public.
2. Opinions concerning the guilt, the innocence or the character of the accused.
3. Statements predicting or influencing the outcome of the trial.
4. Results of any examination or tests or the accused's refusal or failure to submit to an examination or test.
5. Statements or opinions concerning the credibility or anticipated testimony of prospective witnesses.
6. Statements made in the judicial proceedings outside the presence of the jury relating to confessions or other matters which, if reported, would likely interfere with a fair trial.

Prior Criminal Records

Lawyers and law enforcement personnel should not volunteer the prior criminal records of an accused except to aid in his apprehension or to warn the public of any dangers he presents. The news media can obtain prior criminal records from the public records of the courts, governmental agencies and from their own files. The news media acknowledge however that publication or broadcast of an individual's criminal record can be prejudicial, and its publication or broadcast should be considered very carefully, particularly after the filing of formal charges and as the time of the trial approaches, and such publication or broadcast should generally be avoided because readers, viewers and listeners are potential jurors and an accused is presumed innocent until proven guilty.

Photographs

1. Generally is is not appropriate for law enforcement personnel to deliberately pose a person in custody for photographing or televising by representatives of the news media.
2. Unposed photographing and televising of an accused outside the courtroom is generally appropriate, and law enforcement personnel should not interfere with such photographing or televising except in compliance with an order of the court or unless such photographing or televising would interfere with their official duties.
3. In South Dakota, law enforcement offers may not release to representatives of the news media photographs of a suspect or an accused unless he or she is a fugitive.

South Dakota Open Meetings Law

A guide to South Dakota's Open Meetings Law (Revised July 2005)

Prepared by representatives of the: S.D. Office of the Attorney General, S.D. Municipal League, Associated School Boards of S.D., S.D. Association of County Commissioners, S.D. Association of County Officials, S.D. Newspaper Association, S.D. Broadcasters Association

Q: WHAT IS SOUTH DAKOTA'S OPEN MEETINGS LAW?

A: South Dakota's open meetings law was written in 1965 and has been amended several times since then. The law -- which is intended to encourage public participation in government -- now is contained in three relevant statutes.

The first, SDCL 1-25-1, requires that official meetings of cities, counties, school boards and all related boards and commissions be open to the public.

The meetings of boards and commissions which are created by law OR which are entitled to receive revenue directly from public tax funds are also subject to the open meetings law.

It is a Class 2 misdemeanor to break this law. A Class 2 misdemeanor is punishable by a penalty of 30 days in jail, a \$200 fine or both. (SDCL 22-6-2) Alternatively, violation of this law could result in a public reprimand by a state board.

While the open meetings law does not define "official meeting," specific statutes relating to cities, counties, and school districts define what constitutes an official meeting. The attorney general has taken the position that a meeting, that must be open to the public, occurs when the following conditions exist:

1. A legal quorum of the entity is present at the same place at the same time; and
2. Public business, meaning any matter relating to the activities of the entity, is discussed.

Openness in government is encouraged.

Q: HOW ARE THE PUBLIC AND MEDIA NOTIFIED WHEN PUBLIC BUSINESS IS BEING DISCUSSED?

A: SDCL 1-25-1.1 requires that all public bodies prominently post a notice and copy of the proposed agenda at the organization's principal office at least 24 hours PRIOR to the meeting. In the case of special or rescheduled meetings, public bodies are asked to comply with the regular meeting notice requirements as much as circumstances will permit. The notice must be delivered in person, by mail or over the telephone to all local news media who have asked to be notified. While the law is silent on the issue, it is recommended that local media renew requests for notification annually as a means of reminding the entity of ongoing media interest.

Q: WHO ARE LOCAL MEDIA?

A: Because there is no definition set out in state law, the attorney general is of the opinion that local media is all media -- broadcast and print -- that regularly carries news to the community.

Q: WHAT HAPPENS WHEN A PUBLIC BODY FAILS TO COMPLY BY PROPERLY NOTIFYING LOCAL MEDIA OR POSTING NOTICE?

A: No South Dakota court has ruled on this question. The attorney general believes that any action taken during any meeting that has not been properly noticed could, if challenged, be declared null and void. It could even result in personal liability for members of the governing body involved, depending upon the action taken.

Q: WHEN CAN A MEETING BE CLOSED TO THE PUBLIC AND MEDIA?

A: SDCL 1-25-2 allows a majority of the body present to vote to close a meeting when discussion revolves around employee or student performance, legal matters, employee contract negotiations or pricing strategies by publicly-owned competitive businesses. Meetings may also be closed for certain economic development matters. Refer to SDCL 9-34-19.

Note that the statute does not require meetings be closed in any of these circumstances. Federal legislation regarding student records and medical records often requires school districts and cities or counties to conduct executive sessions or conduct meetings so as to refrain from releasing data regarding student records or medical records.

Any official action based on these discussions must be made at an open meeting. Violating this section of the law is a Class 2 misdemeanor or may result in a public reprimand by a state board.

Q: DOES THIS LAW REQUIRE THAT THE PUBLIC BODY MAKE REFERENCE TO A SPECIFIC LEGAL OR PERSONNEL MATTER?

A: The public body must refer to the general purpose in the motion calling for an executive session. Discussion in the executive session must be strictly limited to the announced subject. The attorney general encourages public bodies to cite the specific reason when calling for an executive session, for example to “discuss student discipline” or “pursuant to SDCL 1-25-2(3).”

No official votes may be taken on any matter during an executive session. The governing body must adjourn the executive session and return to open session before any official action can be taken. Board members could be held personally liable for the results of an official vote taken illegally during an executive session.

For example, a contract approved only during an executive session could be found void and the board members could be required to repay any public funds spent under the contract.

Q: WHAT HAPPENS IF THE MEDIA OR PUBLIC ARE IMPROPERLY EXCLUDED FROM AN OFFICIAL MEETING?

A: Excluding the media or public from a meeting that has not been properly closed subjects the officers to (a) prosecution as a Class 2 misdemeanor punishable by a maximum sentence of 30 days in jail, a \$200 fine or both or (b) a public determination that an open meeting should have been held and explaining the reasons therefore.

The first level of enforcement is the local state’s attorney. If an allegation is made regarding an open meeting violation, the local state’s attorney may elect to prosecute the case, may determine the matter has no merit, or may refer the issue to the Open Meetings Commission, a special five-member commission comprised of state’s

attorneys, which was created in 2004. The commission is to examine whether a violation has occurred and make written public findings. If the commission finds that a violation has occurred, the public officer cannot also be prosecuted for the same event.

Q: HOW ARE ISSUES REFERRED TO THE OPEN MEETINGS COMMISSION?

A: Persons alleging violations of the open meetings laws must file their complaints with law enforcement officials in the county where the offense occurred. After a signed notarized complaint is filed and any necessary investigation is conducted, the state's attorney may elect to prosecute the case as a misdemeanor. In the alternative, if the complaint has no merit, the state's attorney is to report the complaint to the attorney general for statistical purposes. As another alternative, the state's attorney may forward the complaint to the Open Meetings Commission for a determination.

Q: WHAT ARE THE PROCEDURES FOR THE OPEN MEETING COMMISSION?

A: Procedures for the Open Meeting Commission are posted on the Web site for the Office of Attorney General at <http://www.state.sd.us/attorney/>

If you have questions on the procedures or status of a pending case, you may contact the Attorney General's Office at 605-773-3215 and you will be directed to an assistant for the Open Meetings Commission.

Q: WHO DOES THE OPEN MEETINGS LAW APPLY TO?

A: The open meetings law applies to all public bodies that are not specifically exempted by the law. That means that all units of local government -- including school boards, city and county commissions -- and state government boards and commissions are bound by the open meetings law. Generally speaking, any unit of government that receives public funds as revenue is subject to the open meetings law.

The meetings of boards and commissions which are created by law or which are entitled to receive revenue directly from public tax funds are subject to the open meetings law.

The law's applicability becomes less clear when it comes to the Legislature, the governor, the constitutional officers and special committees appointed by local governments.

For instance, if the attorney general refuses to issue a polygraph examiner's permit, he is acting as an agency, and not as attorney general, putting the open meetings law into play.

The open meetings law is not, however, applicable to the attorney general's staff meetings or to meetings with constituents, since these are executive functions of the office holder and not agency actions. The constitution allows the Legislature to create rules regarding its activities.

Q: WILL ALL TELECONFERENCES BE CONSIDERED PUBLIC MEETINGS?

A: Yes. The open meetings law allows meetings, including executive or closed meetings, to be conducted by teleconference -- an information exchange by audio or video medium -- if a place is provided for the public to participate by speaker phone. State agencies must provide two places for the public to participate.

The media and public must be notified of telephone conference call meetings under the same notice requirements as any other meeting.

All votes shall be taken by roll call during a teleconference. A teleconference cannot be used for hearings or final action for state administrative rules.

Q: MAY AGENDA ITEMS BE CONSIDERED IF THEY ARE ADDED LESS THAN 24 HOURS BEFORE A MEETING?

A: Agendas for public meetings must be posted at least 24 hours in advance. The rationale is that the public and media should have some time to determine whether to come to the meeting.

Adding agenda items right before meetings (or during the meetings) frustrates that purpose. In one court case, a personnel issue was not posted as part of the agenda and the local circuit court held that the personnel decision was void. *McElhaney v. City of Edgemont* (Fall River County Civ. 98-44).

For special or rescheduled meetings, public bodies are to comply to the extent that circumstances permit. In other words, posting less than 24 hours in advance may be permissible in emergencies.

Q: ARE EMAIL DISCUSSIONS “MEETINGS” FOR PURPOSES OF THIS LAW?

A: In some states courts have held that contemporaneous email communications conducted among a quorum of the governing members of a public body constitute a “meeting” of the public body when the members discuss the merits of pending issues.

Email participation in scheduling or similar activity would not, under this analysis, constitute a public meeting. For additional reference see *Wood v. Battle Ground School District* 27 P.3d 1208 (Wash. 2001); 1998 N.D. Op. Atty. Gen. 0-5.

1-25-1. Open Meetings.

Except as otherwise provided by law, the official meetings of the state and the political subdivisions thereof, including all related boards, commissions and other agencies, and the official meetings of boards, commissions and other agencies created by statute or which are nontaxpaying and derive a source of revenue directly from public funds, shall be open to the public, except as provided in this chapter.

Meetings, including executive or closed meetings may be conducted by teleconference. Members shall be deemed present if they answer present to the roll call taken by teleconference. Any vote at a meeting held by teleconference shall be taken by roll call.

Except for executive or closed meetings held by teleconference, there shall be provided one or more places at which the public may listen to and participate in the proceeding. Except for executive or closed meetings held by teleconference of related boards and commissions of the state, there shall be provided two or more places at which the public may listen to and participate in the proceeding. Except for the Dakota Digital Network, no teleconference may be used in conducting hearings or taking final disposition pursuant to 1-26-4. Teleconference meetings are subject to the notice provisions of chapter 1-25.

A violation of this section is a Class 2 misdemeanor.

1-25-1.1. Public notice provided.

All public bodies shall provide public notice, with proposed agenda, at least 24 hours prior to any meeting, by posting a copy of the notice, visible to the public, at the principal office of the public body holding the meeting, and, for special or rescheduled meetings, delivering, in person, by mail or by telephone, the information in the notice to members of the local news media who have requested notice. For special or rescheduled meetings, all

public bodies shall also comply with the public notice provisions of this section for regular meetings to the extent that circumstances permit.

A violation of this section is a Class 2 misdemeanor.

1-25-1.2. Teleconference defined.

For the purposes of this chapter, a teleconference is information exchanged by audio or video medium.

1-25-2. Executive or closed meetings.

Executive or closed meetings may be held for the sole purpose of:

- 1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term "employee" does not include any independent contractors;
- 2) Discussing the expulsion, suspension, discipline, assignment of or the educational program of a student;
- 3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;
- 4) Preparing for contract negotiations or negotiating with employees or employee representatives;
- 5) Discussing marketing or pricing strategies by a board or commission of a business owned by the state or any of its political subdivisions, when public discussions may be harmful to the competitive position of the business.

However, any official action concerning such matters shall be made at an open official meeting. An executive or closed meeting shall be held only upon a majority vote of the members of such body present and voting, and discussion during the closed meeting is restricted to the purpose specified in the closure motion. Nothing in 1-25-1 or this section may be construed to prevent an executive or closed meeting if the federal or state Constitution or the federal or state statutes require or permit it. A violation of this section is a Class 2 misdemeanor.

SDCL 9-34-19. Executive Sessions (Municipal and Counties).

Any documentary material or data compiled or received by a municipal corporation, county, or an economic development corporation receiving municipal or county funds, for the purpose of furnishing assistance to a business, to the extent that such material or data consists of trade secrets or commercial or financial information regarding the operation of such business, is not a public record. Any discussion or consideration of such trade secrets or commercial or financial information by a municipal corporation or county may be done in executive session closed to the public.

1-25-6. Duty of state's attorney.

If a complaint alleging a violation of chapter 1-25 is made pursuant to § 23A-2-1, the state's attorney shall take one of the following actions:

- (1) Prosecute the case pursuant to Title 23A;
- (2) Determine that there is no merit to prosecuting the case. Upon doing so, the state's attorney shall send a copy of the complaint and any investigation file to the attorney general. The attorney general shall use the

information for statistical purposes and may publish abstracts of such information, including the name of the government body involved for purposes of public education; or

(3) Send the complaint and any investigation file to the South Dakota Open Meetings Commission for further action.

1-25-7. Open Meeting Commission.

Upon receiving a referral from a state's attorney, the South Dakota Open Meetings Commission shall examine the complaint and investigatory file submitted by the state's attorney and shall also consider signed written submissions by the persons or entities that are directly involved. Based on the investigatory file submitted by the state's attorney and any written responses, the commission shall issue a written determination on whether the conduct violates this chapter, including a statement of the reasons therefore and findings of fact on each issue and conclusions of law necessary for the proposed decision. The final decision shall be made by a majority of the commission members, with each member's vote set forth in the written decision. The final decision shall be filed with the attorney general and shall be provided to the public entity and or public officer involved, the state's attorney, and any person that has made a written request for such determinations. If the commission finds a violation of this chapter, the commission shall issue a public reprimand to the offending official or governmental entity. However, no violation found by the commission may be subsequently prosecuted by the state's attorney or the attorney general. All findings and public censures of the commission shall be public records pursuant to § 1-27-1. Sections 1-25-6 to 1-25-9, inclusive, are not subject to the provisions of chapter 1-26.

1-25-8. Open Meetings Commission Members.

The South Dakota Open Meeting Commission shall be comprised of five state's attorneys appointed by the attorney general. Each commissioner shall serve at the pleasure of the attorney general. A chair of the commission shall be chosen annually from the membership of the commission by a majority of its members.

1-25-9. Open Meetings Commission Members Conflicts.

No member of the commission may participate as part of the commission or vote on any action regarding a violation of this chapter if that member reported or was involved in the initial investigation, is an attorney for anyone who reported or was involved in the initial investigation, or represents or serves as a member of the governmental entity about whom the referral is made. The provisions of this section do not preclude a commission member from otherwise serving on the commission for other matters referred to the commission.

Agencies and Contacts

Most reporters should have a relationship with their local sheriff and police chief. But finding the right person to talk to at a different agency is sometimes more difficult. The best consolidated resource for those times is the South Dakota Criminal Justice Directory. It's published by the attorney general's office and is available online and in pdf at <http://dci.sd.gov/administration/cjdonline/index.asp>.

Here are the agencies and contact information included in the directory:

State Law Enforcement

State's Attorneys

Department of Public Safety

Highway Patrol

County Sheriffs

Chiefs of Police

Department of Game, Fish and Parks

Other State Regulatory Agencies

County Coroners

Federal Law Enforcement

Federal Court Systems

State Court Systems

Clerks of Court

Court Services Officers

Legal Services

State Corrections

Federal Courts

Federal courts are organized into districts across the country. All of South Dakota is in the same district, divided into four divisions based on geography. The chief judge currently is Judge Lawrence Piersol of Sioux Falls. He is joined by Judge Charles Kornmann of Aberdeen and Judge Karen Schreier of Rapid City.

A federal judge is a judge for life. Older judges can take senior status and a reduced workload. Judges on senior status are Judge John B. Jones of Sioux Falls, Judge Angrew Bogue and Richard Battey of Rapid City.

Federal magistrate judges are located in each of the divisions: the southern division in Sioux Falls, the northern division in Aberdeen, the central division in Pierre and the western division in Rapid City.

Appeals from the U.S. district courts in South Dakota go to the 8th U.S. Circuit Court of Appeals, with its main office in St. Louis, Mo., <http://www.ca8.uscourts.gov/index.html>.

One South Dakota native sits on the 8th Circuit Court, Judge Roger Wollman of Sioux Falls. He is a former chief justice of the state Supreme Court. Judge Wollman travels to sessions of the 8th Circuit Court, usually in St. Paul, Minn., or in St. Louis.

Appeals from the federal circuit court go to the top court in the land, the U.S. Supreme Court, which decides which cases it will hear and passes on the others.

Federal court documents and schedules may be accessed by signing up for an account through PACER (Public Access to Court Electronic Records) at 800-261-3167. There is a charge for pages access online but it's far cheaper than the charge for going to the clerk's office. For more information contact the Sioux Falls clerk's office 605-330-4544 or go to <https://www.sdd.uscourts.gov/>.

U.S. Bankruptcy Court

The entire state of South Dakota is in a single federal bankruptcy district. Chief Bankruptcy Judge is Irvin N. Hoyt of Pierre. The chief bankruptcy court clerk is Charles L. Nail, Jr. of Sioux Falls.

The judge can hear cases in four locations, Pierre, Sioux Falls, Aberdeen or Rapid City. However only two locations have full-time clerk's offices, Pierre and Sioux Falls. The Sioux Falls clerk's office is over the southern division, while the Pierre clerk's office handles the northern, central and western bankruptcy divisions.

Northern Division (Aberdeen) — Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmunds, Grant, Hamlin, McPherson, Marshall, Roberts, Spink, Walworth.

Central Division (Pierre) — Buffalo, Faulk, Hand, Hughes, Hyde, Gregory, Jerauld, Potter, Sully, Dewey, Haakon, Jackson, Jones, Lyman, Mellette, Stanley, Tripp, Todd, Ziebach.

Southern Division (Sioux Falls)— Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, Yankton.

Western Division (Rapid City) — Bennett, Butte, Custer, Fall River, Harding, Lawrence, Meade, Pennington, Perkins, Shannon.

Information on pending bankruptcy cases may be obtained by telephone or by computer.

VCIS is the Voice Case Information System at 800-768-6218. Using a touch-tone telephone you can call and check the status of a bankruptcy case. For help using the system you can call the Sioux Falls clerk's office, 605-330-4544. U.S. Bankruptcy Court for South Dakota: <http://www.sdb.uscourts.gov/>

Tribal Courts

Indian tribes in the United States have their own tribal court systems, more than 250 of them nationwide. Tribal laws set the standards in tribal court, occasionally supplemented by state and federal case law. Most tribal courts provide for an appeals process. The selection of judges varies among tribes, but generally consists of a chief judge and as many associate or trial judges as necessary.

The nine Sioux tribes in South Dakota all have tribal courts: Cheyenne River Sioux Tribal Court in Eagle Butte; Crow Creek Tribal Court in Fort Thompson; Flandreau Santee Sioux Tribal Court in Flandreau; Lower Brule Sioux Tribal Court in Lower Brule; Oglala Sioux Tribal Court in Pine Ridge and Kyle; Rosebud Sioux Tribal Court in Rosebud; Standing Rock Sioux Tribal Court in Fort Yates, N.D.; Sisseton-Wahpeton Sioux Tribal Court in Sisseton; and the Yankton Sioux Tribal Court in Marty.

Federal law defines both the geographic area covered by tribal courts and who is subject to tribal court jurisdiction. Tribal courts have jurisdiction in "Indian country," which is legally defined as all land within the reservations, all dependent Indian communities and all Indian allotments. In some cases that means the tribes have jurisdiction on land lying outside the boundaries of today's reservations.

Which crimes will be prosecuted in tribal courts has been a developing area of law since the 1800s, and it is not unusual to find cases where jurisdiction is still being debated today. In general, tribal courts do not have criminal jurisdiction to prosecute non-Indians, even if the crime happens in Indian country. (Traffic offenses appear to be an exception.) The General Crimes Act says federal, not state, courts will prosecute non-Indians who commit crimes against Indians in Indian country. If there is no appropriate federal law to cover the crime then state law will be applied, but the case still goes before a federal judge. The state has jurisdiction when a non-Indian commits a crime against another non-Indian on the reservation. The state also has jurisdiction over Indians and others who commit crimes outside of Indian country.

In addition, Congress has listed some major crimes that are handled in federal rather than tribal courts -- even when the perpetrator is Indian and the crime happens in Indian country. Seven major crimes were listed in the 1885 law, but it has been amended over the years to include many more crimes today. Among them are: murder, manslaughter, kidnapping, maiming, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and other felonies.

This leaves tribal courts to prosecute Indian offenders for non-major crimes that happen in Indian country. Tribal courts must protect the same civil rights as those guaranteed by the U.S. Constitution, including the right to a speedy trial, a trial by jury, protection against unreasonable search and seizure, and the right of a defendant to refuse to testify against himself. One major difference is that tribal courts are not required to pay for a lawyer when the defendant can't afford to hire his own attorney. Most tribal courts allow individuals without legal training to act as tribal advocates, providing they meet certain requirements of age and character.

The maximum criminal sanction that can be imposed by a tribal court is one year in jail and a \$5,000 fine.

All tribal courts in South Dakota have juvenile or children's courts to deal with minors. Jurisdiction in the area of civil lawsuits is less clear. Federal law does not spell out civil jurisdiction the way it does for criminal cases. However, the U.S. Supreme Court has said that tribal authority over civil matters involving non-Indians on reservations is considered an important part of tribal sovereignty. Questions remain about when the tribes themselves can be sued. In many cases the dispute over tribal jurisdiction in a civil matter can create as much argument as the original lawsuit.

All tribal courts in South Dakota offer an appeals process, whether it is through the local tribal court system or through the Northern Plains Intertribal Court of Appeals in Aberdeen.

Tribal court decisions may be found in a publication called the Indian Law Reporter, which is produced by the American Indian Lawyer Training Program in Oakland, California. South Dakota tribal courts are described in more detail in the South Dakota Tribal Court Handbook by Frank Pommersheim, a professor at the University of South Dakota Law School. The handbook is on file in the USD Law Library and copies may be obtained for a fee by calling 605-677-5363.

South Dakota Tribal Courts:

Rosebud Sioux Tribal Court & Court of Appeals, Rosebud, 605-747-2278 or 605-747-2279

Oglala Sioux Tribal Court, Pine Ridge, 605-867-5151 & Kyle, 605-455-2316

Oglala Sioux Nation Supreme Court, Pine Ridge, 605-867-5266

Crow Creek Sioux Tribal Court, Fort Thompson, 605-245-2325 or 605-245-2326

Cheyenne River Sioux Tribal Court & Court of Appeals, Eagle Butte, 605-964-6602

Standing Rock Sioux Tribal Court & Court of Appeals, Fort Yates, N.D., 701-854-7244

Lower Brule Sioux Tribal Court, Lower Brule, 605-473-5528

Yankton Sioux Tribe, Court of Indian Offenses, Wagner, 605-384-5578

Sisseton-Wahpeton Sioux Tribe, Court of Indian Offenses, Agency Village, 605-698-7629 or 605-698-7641

Flandreau Santee Sioux Tribal Court, Flandreau, 605-997-3593

Northern Plains Inter-Tribal Court of Appeals, Aberdeen, 605-226-3165
(Appeals court for: Crow Creek Tribe, Three Affiliated Tribes & the Omaha Tribe)

State Courts

South Dakota's courts are organized under the Unified Judicial System. The top state court is the Supreme Court, made up of five justices appointed by the governor for eight-year terms: Chief Justice David Gilbertson, Justice Richard W. Sabers, Justice John K. Konenkamp, Justice Steven L. Zinter and Justice Judith Meierhenry.

After his first three years on the court, a justice is put on the statewide ballot so voters can decide whether he should be retained. The retention elections come every eight years after that. If the justice loses the retention election, the governor would appoint a new justice.

Although voters statewide can cast ballots in a retention election, each justice is still appointed to represent one of five Supreme Court districts in the state. This ensures a statewide geographic distribution of justices on the court.

Below the Supreme Court are the seven circuit courts in South Dakota. Each circuit has a presiding judge and between three and seven circuit judges. Each circuit also has from one to four magistrate judges and a court administrator.

The central office for the Unified Judicial System is at the Capitol Building in Pierre, where a staff headed by the state court administrator handles the court system's budget and finance, personnel, information and technology, public information, probation and other court-related functions.

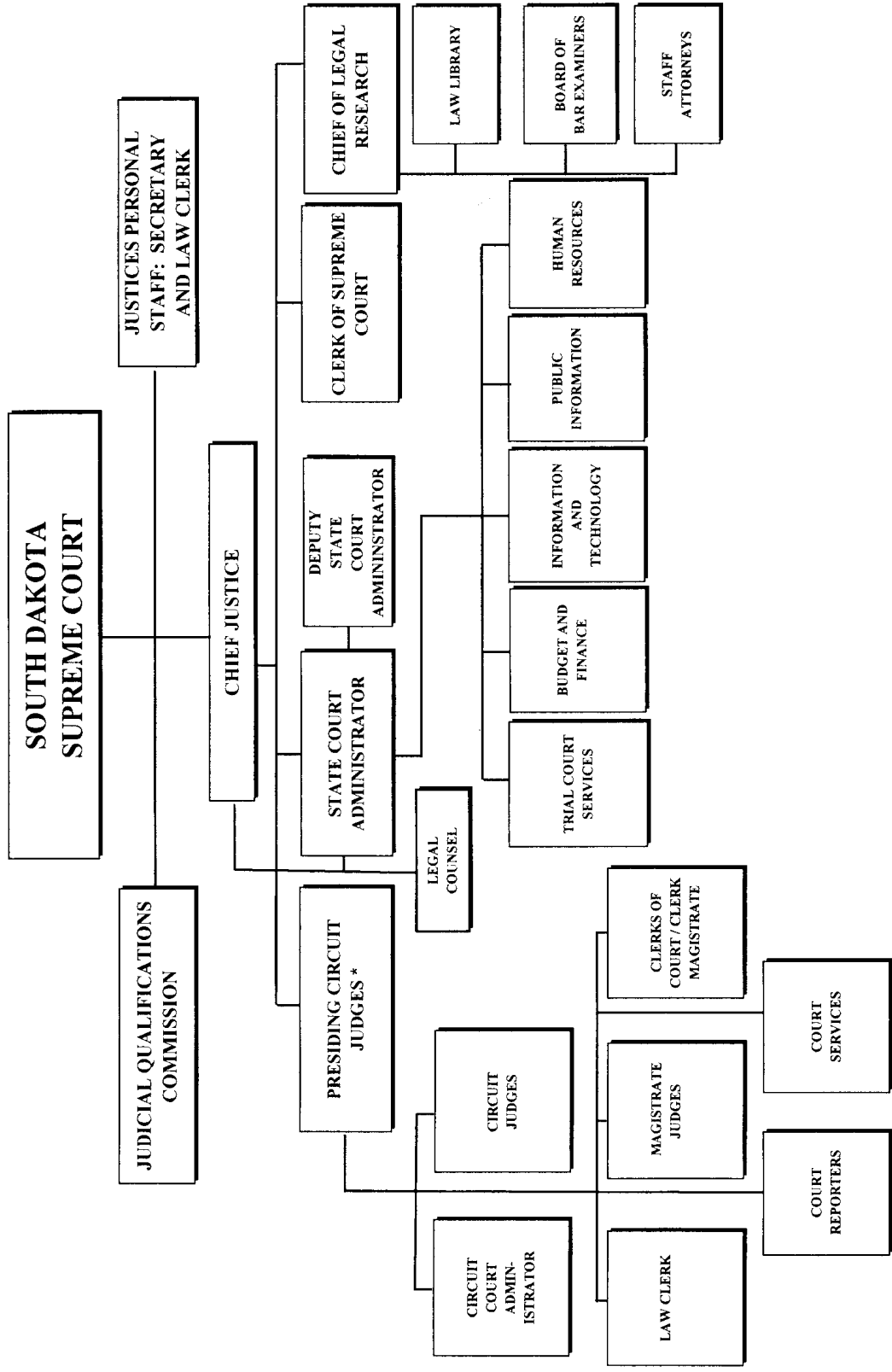
South Dakota has no intermediate appeals court. All cases appealed from circuit court end up in the state Supreme Court for consideration.

Here are the counties in each circuit:

- 1) Charles Mix, Douglas, Hutchinson, Turner, Bon Homme, Yankton, Clay, Union, Buffalo, Brule, Aurora, Davison, Hanson, McCook.
- 2) Lincoln, Minnehaha.
- 3) Hand, Beadle, Clark, Codington, Grant, Deuel, Hamlin, Kingsbury, Brookings, Miner, Lake, Moody, Jerauld, Sanborn.
- 4) Harding, Perkins, Corson, Butte, Meade, Lawrence, Ziebach, Dewey.
- 5) Campbell, Walworth, McPherson, Edmunds, Faulk, Brown, Spink, Marshall, Day, Roberts.
- 6) Potter, Sully, Hyde, Hughes, Stanley, Haakon, Jackson, Jones, Lyman, Bennett, Mellette, Todd, Tripp, Gregory.
- 7) Pennington, Custer, Fall River, Shannon.

Unified Judicial System — <http://www.sdjudicial.com/>

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM Organizational Chart



* One presiding judge for each circuit.

Supreme Court Camera Rules

In July 2001, the South Dakota Supreme Court adopted a new rule that allows print and broadcast media to cover all public sessions of the state Supreme Court with video cameras, still cameras, audio equipment and electronic recording devices (SDCL Ch. 15-24).

Coverage is limited to two video camera operators and two still photographers in the courtroom. If additional media outlets want coverage, reporters will be expected to form a pool and share the pictures and video.

Anyone wishing to cover a Supreme Court session must notify the media coordinator, who is appointed by the high court. Notice must come 48 hours before the proceeding is set to begin, although the court could waive the 48-hour requirement for good cause.

The name of the media coordinator will be on file with the clerk of the Supreme Court. The schedule for upcoming Supreme Court hearings may be obtained from the clerk, or from the Unified Judicial System Web site at <http://www.sdjudicial.com>.

If more than two still and two video cameras are planning to cover a court session, the media coordinator will be responsible for pooling arrangements so the photos, video and audio can be shared. Disputes will be settled by the media coordinator, and the justices will not be called upon to resolve such issues.

Media employees covering the high court are expected to dress neatly and inform themselves of all the rules for conduct in the courtroom. No clothing or equipment may display insignia of the media organizations.

Media personnel must be inside the courtroom, with all equipment set up, 15 minutes before the court sessions begins. They cannot move from their assigned positions during the hearing. They are not allowed to change lenses or tape, make repairs, or do anything that would disrupt the proceedings.

The high court requires that electronic equipment to be used in the courtroom be as quiet and unobtrusive as possible, without extra lights or flash. Reporters may use hand-held tape recorders for note-taking as long as they are no more sensitive than the human ear. There can be no recording of in-chambers conferences, discussions between lawyers and their clients or lawyers and judges and no photographing of materials on the tables or on the bench.

No interviews may be conducted inside the courtroom before, during or after the proceedings.

Any media personnel violating the court's rules will be removed and denied further coverage privileges at the discretion of the court.

The justices retain the right to deny electronic coverage of a session in the interest of justice. Anyone may object to electronic coverage at least 10 days before the proceeding, but coverage will not be limited without showing of good cause. If electronic coverage is denied, the media coordinator will notify the media.

The court reserves the right to obtain copies of any photos, film, or tape taken by the media. Such duplicate materials will be provided by the media free of charge.

UPDATE: The 2008 Legislature passed and Gov. Mike Rounds signed a bill that removes the statutory prohibition of recording devices in lower courts. The South Dakota Supreme Court now must consider whether to adopt a new rule that would allow cameras.

Court Documents

In 1999, the Unified Judicial System responded to reporters' requests by establishing a system for the media to obtain court documents from clerk's of court offices. Previously, reporters were required to appear in person and pay the copying fees before obtaining documents. Currently, a reporter may fax a written request to any clerk of court office to obtain case specific information and the clerk may fax information back to the requester.

The new system allows charge accounts to be established with the Unified Judicial System for each media organization. Media requests made in any circuit can be charged to the established UJS account. The organization will receive a monthly statement from each office for any charges that are incurred.

Requests to establish media charge accounts should be directed to the State Court Administrator's Office, 500 East Capitol Avenue, Pierre, SD 57501, or call (605) 773-3474.

In addition, a complete statewide criminal record search may be requested through any clerk's office for a fee of \$15 which includes data from July 1989 to present. This will provide all court information on an individual from filing to disposition, unless a file has been sealed by a judge.

More commonly reporters may request copies of specific documents recently filed in an ongoing case. The \$15 search fee does not apply to current and specific case documents. There may be a \$5 fee for the clerk to fax the documents back to a media agency.

Reporters should use the official case/docket number whenever possible. This simplifies the task for the clerk of courts and will result in a quicker response and more accurate information. The following document can be used to fax in a formal request.

Criminal Penalties

(July 1, 2006)

Misdemeanors:

Class 1: Up to one year in jail and a \$2,000 fine.

Class 2: Up to 30 days in jail and a \$500 fine.

Petty Offense: Up to \$20 fine.

Felonies:

Class A: Death or a minimum of life in prison; \$50,000 fine.

Class B: Minimum of life in prison; \$50,000 fine.

Class C: Up to life in prison; \$50,000 fine.

Class 1: Up to 50 years in prison; \$50,000 fine.

Class 2: Up to 25 years in prison; \$50,000 fine.

Class 3: Up to 15 years in prison; \$30,000 fine.

Class 4: Up to 10 years in prison; \$20,000 fine.

Class 5: Up to 5 years in prison; \$10,000 fine.

Class 6: Up to 2 years in prison; \$4,000 fine.

Death Penalty Laws

South Dakota law provides for execution by lethal injection in first-degree murder cases if at least one aggravating circumstance is found to exist beyond a reasonable doubt. If the jury in a capital case recommends the death penalty, the judge is required by law to impose it. Death penalty cases are automatically reviewed by the State Supreme Court, which can affirm the sentence or require the trial judge to impose a new sentence.

Once the death penalty is settled, the judge must choose the week in which the sentence will be carried out and inform the penitentiary warden. The sentenced person must be held in solitary confinement in the penitentiary while awaiting the execution. No person may have access to the condemned person without an order of the court, except for his lawyer, doctor, clergy and members of his family.

Notice of the death penalty also must be given to the governor, who can take up to 90 days to investigate the situation. If the defendant is found to be mentally incompetent, he or she will be confined in the state human services center and the case reviewed every six months until he or she is no longer incompetent. At that time the execution can proceed. If a female defendant is pregnant the execution will be held up until the defendant is no longer pregnant. The death penalty may not be imposed upon a person who was mentally retarded at the time the crime was committed.

Once the way is cleared for the execution to take place, the governor or the court will again set the week for the execution. The time of the execution within such week is left to the discretion of the warden. No less than 48 hours before the appointed time the warden must make a public announcement of the day and hour set for the execution.

The warden will give at least two days' notice to the following people, asking them to appear at the execution: the attorney general, the trial judge who handed down the sentence, the state's attorney and sheriff of the county where the crime was committed and not more than 10 citizens, including at least two members of the news media. The warden also will call for the attendance of three doctors and any guards or peace officers he deems proper. The defendant may request the presence of no more than two members of the clergy and not more than five relatives or friends. No one else can attend. No one under age 18 shall be permitted, unless a relative, and no relatives of tender years shall be admitted.

The time set by the warden for the execution must be kept secret. The warden can tell the persons he has invited, but they must keep the time secret from others under penalty of a Class 2 misdemeanor. Immediately after the execution the doctors present must conduct a post-mortem examination of the body and issue a report in writing. The body will be buried in a local cemetery unless it is claimed by relatives.

Other Resources

State Bar of South Dakota — <http://www.sdbar.net/>

South Dakota Statutes — <http://legis.state.sd.us/statutes/index.aspx>

Associated Press Stylebook and Briefing on Media Law. The new edition includes a special section on Internet and computer terms. The book can be ordered online by credit card, at <http://www.apbookstore.com/>. Requests for the electronic version can be made at that site or by e-mail to apstylebook@ap.org.

Associated Press Broadcast News Handbook. The spiral-bound book deals with the art of broadcast news writing, field and newsroom reporting, story structure and style, editing and producing. Written by Brad Kalbfeld, deputy director and managing editor of AP Broadcast Services, it also contains an A-to-Z guide to the specifics of broadcast style and the AP Libel Manual. The book can also be ordered online by credit card, at <http://www.apbookstore.com/>.

DNA:

Lawyer Source: <http://www.criminal-law-lawyer-source.com/terms/dna-evidence.html>

How Stuff Works: <http://www.howstuffworks.com/dna-evidence.htm>

How DNA Determines Guilt or Innocence: <http://www.koshland-science-museum.org/exhibitdna/crime01.jsp>