

A Reporter s Handbook On Court Coverage

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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 of the innocence of a person who has been charged with a crime, setting the person free by a finding of not guilty.

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 have the opportunity to 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.

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 _ Breaking and entering into another's house or other building with the intent to commit a felony.

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.

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, usually because 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 as the result of an 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. An example of direct evidence is eye-witness testimony.

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 within a year.

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 exparte 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 imprisonment.

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 serious 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 treatment because he claims he was mentally ill when the crime was committed. NOT the same as innocent by reason of insanity. In order for a jury to find a person guilty but mentally ill they must find: A, That the defendant was guilty of the crime; B, That the defense failed to prove the defendant was insane at the time of the crime; and C, That beyond a reasonable doubt the defendant was mentally ill at the time.

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.

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 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. The commissioner of correction may discharge the prisoner after he has served the minimum term.

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 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-TES-tate) _ 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 _ Summary of the evidence and 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 guilt and unless the defendant has been acquitted, 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.

judgment suspended _ The judge does not enter sentence and the defendant may go on his way. During the period of the suspension the judge may terminate the suspension for a violation of a condition attached to the defendant's release and enter a sentence. 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.

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 people selected to declare truth of evidence. *See grand jury and petit jury.*

jury instructions _ After evidence is concluded and the lawyers have finished their arguments in a trial, the judge summarizes evidence and 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.

limitation, statute of _ 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 misdemeanor cases the limit is two years. In felony cases there is no time limit.

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 _ An officer of the circuit court. Magistrates have power to try certain small-claim actions and are authorized to accept guilty pleas to certain minor traffic and other criminal offenses. 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 without malice; may be either voluntary, upon a sudden impulse, or involuntary in the commission of some unlawful act.

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. Examples are an improperly influenced jury, incapacity of the judge or misconduct by the parties or counsel. A mistrial is followed by a completely new trial.

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 malicious and 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.

nolle prosequi (NOH-lay PROH-say-kee) _ When the prosecutor decides to go no further with prosecution of a particular defendant, he announces a nolle prosequi. A nol. pros. is sometimes taken with leave so that the prosecutor may reopen the case against the defendant at a later date. This device may not be used to deny the defendant's constitutional right to a speedy trial. A simple nol. pros. without leave usually means the end of the matter because the case cannot be reopened without the judge's permission.

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.

presentment _ A written statement from the grand jury to the court based on its own investigation that an offense has been committed. It amounts to an instruction to the prosecutor to draw a bill of indictment for presentment to the grand jury.

presumption of innocence _ Every criminal defendant enters trial presumed in fact to be innocent. This presumption remains with him until 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 state probation 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 misdemeanor.

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.

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 _ The searching of a property in hopes of finding evidence of guilt.

search warrant _ A document from a judge ordering the search of a property for evidence. This document is needed to make the search legal.

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.

stay _ An individual order stopping or arresting a judicial proceeding or execution of a judgment. *See arrest of 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. Summary judgment 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.

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 leaving 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. A 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

venire (veh-NY-reh) _ Technically an order summoning prospective jurors; popularly used to designate the panel of persons so summoned.

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 Department of Corrections.

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

Covering Trials

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:

ARRAIGNMENT — The defendant appears in court with a lawyer and a judge formally informs them of the charges. Bail may be set or denied and a further hearing is scheduled. The first judge is not likely to be the trial judge.

GRAND JURY INDICTMENT — In state or federal court, a grand jury may be convened to examine the evidence in a felony case. Such hearings are secret, although leaks can occur. If an indictment is issued, a second 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 (known as an affirmative defense) 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.

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. Such motions are rarely granted but it does happen. 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. When a panel of prospective jurors is sworn in, jeopardy attaches and any effort to stop the trial after that requires a mistrial motion. Prospective jurors are questioned either by lawyers, the judge of 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 and defense attorney deliver opening statements to the jury. 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 roadmap of the case, laying out the evidence they expect to present.

TESTIMONY — 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 import in determining the outcome. Jurors pay close attention to the, and you should too. Doors to the courtroom are 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, sealed in an envelope, 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 need 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 is returned to jail. If innocent 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 refile the charges and pursue another trial. 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.

The following sections give the specifics of South Dakota law:

The Grand Jury

A grand jury investigates public offenses or misconduct in office. It has the power to and duty to inquire into all public offenses committed in the county and to present them to the Circuit Court by indictment. A special grand jury may be impaneled to investigate only one case or particular type of activity. A general grand jury has the power to investigate all offenses committed in the county.

Generally, a grand jury is requested by the prosecutor or state's attorney. A circuit judge must be satisfied that a grand jury is necessary or desirable. Only a circuit judge may order a grand jury summoned.

Jurors are chosen from the master jury list by the clerk of courts. The first eight names randomly drawn will constitute the grand jury, unless any of those drawn are excused from serving. The grand jury will consist of not less than six nor more than eight citizens. Grand jurors may be challenged by the state's attorney for not being properly selected, drawn or summoned. The state's attorney also may challenge a particular grand juror for failure to meet certain legal criteria. If a defendant has been charged by complaint and is awaiting a preliminary hearing, and a grand jury is specially called for his case, he too may challenge the jury panel or individual jurors.

The circuit judge then appoints a foreman and deputy foreman. After being sworn the grand jurors select a member to be the grand jury clerk to take minutes and preserve any evidence received. The grand jury meets at a time and place convenient for the grand jury members. At least six must be present. All testimony before the grand jury must be recorded, and the clerk must take minutes. The foreman administers the oath to witnesses.

The rules of evidence apply to any evidence received. Grand jurors are not bound to hear the defendant's evidence, but they may order such evidence to be produced with the consent of the prosecutor. Grand juries may issue subpoenas for witnesses and for documents.

A grand jury witness may be represented by counsel, but the attorney may only advise the witness. The attorney may not ask questions and may not make statements. Witnesses may be held in contempt for refusing to testify. The subject (the potential defendant) may be given an opportunity to testify providing 1) he must be given adequate and reasonable notice of his legal rights; 2) he must waive immunity either in writing or orally on the record.

Grand jury proceedings are secret. Every grand jury member must keep secret what another grand juror said or how he or she voted. Matters occurring before the grand jury must not be disclosed unless permitted by the circuit judge. The prosecuting attorney may disclose evidence received in the performance of his official duties.

During the taking of evidence only grand jurors, prosecutors, interpreters, court reporters, witnesses and their attorneys may be present. The court may direct that a grand jury indictment be kept in secret until the defendant or defendants are in custody.

The grand jury may issue an indictment if six members of the grand jury agree. It must be signed by the foreman or deputy foreman. Or the grand jury may vote a no bill, which means no formal action will be taken. With the prosecutor's permission the grand jury may issue a report on the case.

A grand jury may not serve more than 18 months. A circuit judge can dismiss the grand jury sooner.

Initial Appearance

Following an arrest, the arrested person must be taken before the nearest available magistrate without unnecessary delay for his initial court appearance.

He must be informed of the following:

- 1) The right to retain counsel.
- 2) The right to request assignment of counsel if he is unable to obtain a lawyer.
- 3) The general circumstances under which the defendant may gain pretrial release.
- 4) That the defendant is not required to make a statement and that anything he says may be used against him.
- 5) The right to a preliminary hearing, if one is required.

Bail is set during the initial appearance. A time is set for the preliminary hearing. In the event there is an indictment by a grand jury, no preliminary hearing is required and the matter is transferred to circuit court for arraignment.

All persons are entitled to be released on bail, except in death penalty cases. A defendant must be released pending trial on his personal recognizance (his promise to appear) unless one of the following conditions exists:

- defendant is currently free on a personal recognizance bond.
- If the magistrate or judge determines that release will not reasonably assure the defendant's appearance in court or if the defendant poses a threat to any other person or to the community.

Arraignment

Arraignment is the procedure by which the defendant is brought before the court to enter a plea to the criminal charges. It is held in open court. The indictment is read or the substance of the charge is stated. A copy is given to the defendant.

The defendant is informed of the elements of the alleged offense, the maximum possible punishment, his or her constitutional and statutory rights, and the various pleas that are permitted.

The court calls upon the defendant to enter a plea. Pleas permitted include not guilty, not guilty and not guilty by reason of insanity, guilty, nolo contendere (no contest), or guilty but mentally ill.

A factual basis for the plea of guilty is required before the court can accept it. The court must inquire and determine whether the plea is voluntary, and knowingly and intelligently made. Disclosure of a plea bargain, if any, is required.

Pre-Trial Motions

At the arraignment, or as soon thereafter as possible, the court may set a time for making pre-trial motions. The motions may be oral or in writing.

Some motions are required before trial.

- Defenses or objections based upon defects in instituting the prosecution.
- Defenses and objections based on prior conviction or acquittal of the charges, such as double jeopardy.
- Defenses and objections based on defects in the indictment or information.
- Motions to suppress evidence.
- Requests for discovery.
- Requests for severance of the charges or for severance of the trials of several defendants.

Other motions may include a request for a change of venue, which means moving the trial to another location. This motion usually is based upon prejudice against a defendant because of pre-trial publicity. News stories, taped broadcasts or film footage may be subpoenaed to demonstrate the type of publicity.

Defense lawyers may make motions in limine to limit the use of certain specified evidence at trial.

The Trial

The right to a jury is established in the United States Constitution and in the South Dakota Constitution.

When the possible punishment upon a finding of guilty is 30 days or less, and the court informs the defendant at arraignment that no jail time will be imposed upon a finding of guilty, there is no right to a jury trial. The matter is tried to the court.

With the approval of the court and the consent of the prosecutor, a defendant may waive his right to a jury trial.

All citizens of the state, registered to vote, of sound mind, able to read, write and understand English, are competent to sit as jurors.

Attorneys, Supreme Court justices, judges and convicted felons are not allowed to serve as jurors.

Jurors are drawn randomly from a master jury list compiled from the precinct voter registration lists. The selection process can be subject to challenge because of irregularities in the selection process, because of racial discrimination in the process, or other challenges brought by the defense attorney.

Separate ballots containing the names of each person summoned to be a juror are placed in a container. The clerk publicly draws out of the container a suitable number of ballots to form the jury.

Two different approaches can be used to pick a jury. In the first, 12 jurors are seated and questioned by the attorneys. Each juror challenged is then replaced and the new juror is questioned. The process continues until 12 jurors are selected.

In the second method a number of jurors, including a number equal to the number of peremptory challenges, are drawn. Each juror challenged is then replaced and a new juror is called. Each lawyer then strikes a specified number of jurors until 12 are seated.

Challenges for cause are allowed if the juror is not qualified to serve because he is a lawyer or judge or for some other legal reason. Or a juror may be challenged if he or she shows actual or implied bias, if he or she has made a decision on the innocence or guilt of the defendant, or if the juror is related to a party in the lawsuit.

Peremptory challenges are the removal of a juror for no reason at all. If the defendant faces a sentence of life in prison or the death penalty, each side has 20 peremptory challenges. In all other felony cases, there are 10 peremptory challenges for each side.

In misdemeanor cases each side gets three peremptory challenges.

Upon a showing of good cause the court can increase the number of peremptory challenges.

Once the jury is seated the trial moves on to the reading of the indictment or information and the statement of the plea by the defendant.

Then the lawyers make their opening statements. The prosecutor is required to make an opening statement. The defense attorney may then make his opening statement or reserve it until after the state has presented its case. The defense need not make an opening statement at all.

No argument is allowed in opening statements. It is a summary of what the party believes the evidence will show.

The prosecution presents its case first, followed by the defendant s evidence. Rebuttal evidence is then allowed.

After all the evidence has been presented the lawyers and the judge will settle on instructions to the jury. Attorneys and the judge meet to discuss the law of the case, review the judge s drafted instructions, make corrections and objections to them and then decide which are the final instructions.

Instructions are read to the jury, followed by final arguments by the lawyers. The prosecution is allowed to go first, and then the defense. The prosecution is allowed rebuttal, because it has the burden of proof.

The jury retires to deliberate. When the verdict is received the parties are called back into the courtroom and the verdict is read in open court.

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 a year 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.

Recently, the attorney general's office used the statute to get death row inmate Robert Leroy Anderson's former cellmate, Jeremy Brunner, released after he told investigators where key evidence was hidden. He was still serving the first year of a drug sentence, so the law could be applied. If it had been past the first year, prosecutors would have had to ask for a pardon from the governor or the parole board.

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 22-42-1 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.

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 an 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, police agencies and the 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. It is appropriate for law enforcement personnel to release to representatives of the news media photographs of a suspect or an accused. Before publication of any such photographs news media should eliminate any portions of the photographs that would indicate a prior criminal offense or police record.

Ethical Rules For Lawyers

Lawyers are bound by ethical rules that restrict their ability to comment on cases.

Rule 1.6: A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation.

Rule 3.6: A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

This includes statements relating to:

- 1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
- 2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
- 3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be submitted;
- 4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
- 5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would, if disclosed, create a substantial risk of prejudicing an impartial trial;
- 6) a lawyer may not disclose the existence or content 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.

A lawyer can tell reporters the following information:

1. The general nature of the claim or defense.
 2. The information contained in a public record.
 3. That an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved.
 4. The scheduling or result of any step in litigation.
 5. A request for assistance in obtaining evidence and information necessary thereto.
 6. A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest.
- 7) In a criminal case:
- a. The identity, residence, occupation and family status of the accused;
 - b. If the accused has not been apprehended, information necessary to aid in apprehension of that person;

- c. The circumstances of the arrest, including time, place, resistance, pursuit, possession of and all weapons used, and a description of the item seized at the time of the arrest;
- d. The identity of investigating and arresting officers or agencies and the length of the investigation.

Code of Judicial Conduct

The South Dakota Code of Judicial Conduct sets out rules that judges should follow in the conduct of their duties. Violations of the code could result in disciplinary action.

The code says in part:

A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

In another section the code says:

A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

The code also says:

A judge should prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recess between sessions except that a judge may authorize:

- a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration.
- b) the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings.
- c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions
 - the means of recording will not distract participants or impair the dignity of the proceedings.
 - the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction.
 - the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and
 - the reproduction will be exhibited only for instructional purposes in educational institutions.

DNA Testing

DNA testing has become almost routine in criminal prosecutions, and the technology changes quickly. New procedures are continually being developed to expand the number of testing procedures that can be used in a forensic case. The following information on DNA is from Rex Riis of the South Dakota Forensic Laboratory in Pierre.

DNA stands for deoxyribonucleic acid. The structure of DNA was discovered in 1953 at Cambridge University. Since then scientists all over the world have expanded our knowledge of genetics by the research done on DNA.

Each human cell which has a nucleus contains nuclear DNA in the form of double strands called chromosomes. The nucleus of most cells contains 46 chromosomes arranged in pairs of 22, plus two sex chromosomes (XX for female and XY for male). In the chromosomes, the DNA and associated proteins are arranged in a double helix, which resembles a spiral staircase.

The strands are connected to each other by the rungs of the ladder, which are the bases. There are four kinds of bases A, G, C, and T. The bases combine only four ways, AT, TA, CG or GC. Every gene is composed of a specific sequence of these base pairs. A single chromosome can be hundreds of thousands of base pairs long.

Some links of the DNA chain are common to every human being. They write the code for human organs versus the organs of other species. But every human except in the case of identical twins also has links of DNA that are unique to him or her. It is those highly variable links of DNA that are useful for identification.

For the purposes of forensics, there are several sources of DNA that may be used for typing. They include blood, semen, tissue, bone marrow, hair, saliva, urine and the pulp inside a tooth.

Three kinds of DNA typing methods are used in forensics: RFLP Analysis, PCR Analysis and Mitochondrial DNA Analysis. In each procedure, scientists are trying to match a known source of DNA, usually the suspect or the victim, to an unknown source recovered from the crime scene.

RFLP Analysis

RFLP stands for Restriction Fragment Length Polymorphism. It requires a larger sample of DNA and better quality DNA than other tests. In RFLP enzymes are used to cut the DNA into fragments between specific base pairs. Each person's DNA will be cut at slightly different places because of the location of the target base pairs varies from person to person. Therefore, different lengths of DNA fragments will be created from each person.

The bits of DNA are placed in a Jello-like substance, and an electric current causes the fragments to spread apart. The smaller the piece of DNA, the faster it moves. A substance is added to make the fragments visible on film, and the result is a striped pattern like the bar code on food packages in the supermarket.

The final step is to compare the bar codes in two samples of DNA to see if they are the same or different. Just finding similar DNA patterns isn't enough. Scientists also need to calculate how often a matching pattern, in that particular segment of DNA, shows up in a large population of people from the same race.

Scientists look for genetic regions that are known to be independently inherited. If two or more matches are found, the probabilities can be multiplied. The more matches in the sample the more likely that the two samples came from the same person.

PCR Analysis

If scientists don't have enough DNA to use RFLP Analysis, or if the DNA is of poor quality, they can use PCR or Polymerase Chain Reaction. PCR amplifies small amounts of DNA so it can be tested. First the DNA sample is heated and the double helix separates into two separate strands of DNA. Markers are added to section off the part of the pattern that is to be multiplied. Then a natural substance is added, called DNA polymerase enzyme. It copies the piece of DNA outlined by the markers, yielding two segments.

The process is repeated again, yielding four copies. And again, yielding eight copies and so on. Each cycle yields twice as much DNA as before, and the cycle can be repeated 20-35 times.

Once enough DNA is produced there are different kinds of typing tests that can be done. A reverse dot blot analysis uses a white membrane strip with dots on it. Each dot will accept only a certain bit of DNA with a very specific base sequence. If a dot turns blue it is positive for that specific DNA type in the sample.

A yes or no answer might not be very helpful if the segment of DNA being studied occurs in a large percentage of the population. So scientists look for a series of different DNA segments to see how many are found in both samples. By analyzing the results the scientist can narrow the percentage of the population that could have been the source of the sample.

Another way to use amplified DNA is called AMP-FLP, or amplified fragment length polymorphism. This test can identify different DNA types because they each have different lengths. In a process similar to the one used with RFLP, the amplified DNA is added to a gel, the electric current separates the different-sized bits of DNA, the pattern is revealed on film and the bar code is compared.

Mitochondrial DNA

This type of analysis can be used with very small quantities of DNA, such as hair shafts, bones and teeth, and when the DNA has been degraded or damaged by exposure to weather or other conditions. Mitochondria are tiny bodies inside the cell which are involved in energy production. Mitochondria have their own DNA, and it is in a circular form. Mitochondrial DNA is inherited from the mother only, so a person will have the same mitochondrial DNA as his or her mother, the mother's mother and so on back in the family tree.

When mitochondrial DNA is tested the experts are trying to determine the base sequence for a certain region of DNA from both the known sample and the unknown sample. The sequences are compared to see if they are the same.

DNA testing has been widely admitted in courts across the country because the tests are generally accepted in the scientific community. The biggest disputes now come from the reliability of the laboratory doing the testing and sometimes from the handling of the samples before they were tested.

The opposing side in a trial must be informed, not only of the outcome of the testing, but also of how the testing was done and analyzed.

DNA evidence is very complicated and intimidating to a jury. For this reason, when lawyers know DNA evidence will be used in a trial it becomes a factor in selecting the jury. DNA evidence also requires the use of expert witnesses to present the results in court.

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 and Judge Donald Porter of Pierre, who is retired.

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.

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.

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 Harland Danielsen, systems manager, at the Sioux Falls clerk s office, 330-4544.

PACER is the Public Access to Court Electronic Records at 800-261-3167. You need a personal computer and modem to access dockets, claims registers, and a list of cases filed each day for the previous five days. There is a charge for the time you spend on PACER. For more information contact Harland Danielsen, systems manager, at the Sioux Falls clerk s office 330-4544.

Tribal Court

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 Brute; 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 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.

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 eight circuit courts in South Dakota. Each circuit has a presiding judge and from three to five circuit judges. Each circuit also has from one to three magistrate judges.

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 budget, personnel, record-keeping and other 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.

Supreme Court Camera Rules

In July 2001, the state 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.

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 wave 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 www.state.us/judicial/.

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.

Faxing Court Documents

In 1999 the Unified Judicial System responded to reporters requests by establishing a system for the media to obtain court documents from remote courthouses. Previously, clerks of court required reporters to appear in person and pay the copying fees before obtaining documents.

The new system creates a charge account within the Unified Judicial System for each media organization. Media requests made in any circuit can be charged to the UJS account. The organization receives monthly bills for any documents that were faxed.

Requests for charge accounts should be directed to the office of the State Court Administrator, Capitol Building, Pierre, S.D. 57501, or call 773-3474.

The UJS set a fee of \$15 for general document searches, such as a list of all felony convictions for a certain period of time. Searches may also be made on civil cases.

More commonly reporters may request copies of documents recently filed in an ongoing case. The search fee does not apply to current cases. There will be a \$5 fee for the faxing of the documents.

Reporters should use the official case number whenever possible. This simplifies the task for the clerk of courts and will result in faster service.

Police Radio Codes

Here is a list of radio call codes used by law enforcement and emergency agencies:

- 10-1 Receiving poorly
- 10-2 Receiving well
- 10-4 Message received
- 10-5 Relay
- 10-6 Busy
- 10-7 Out of service (not available for call)
- 10-8 In service
- 10-9 Repeat the message
- 10-10 On break at _____.
- 10-12 Visitor present
- 10-13 Weather and road conditions
- 10-14 Escort
- 10-15 Prisoner in custody
- 10-16 National Crime Information Computer search
- 10-17 Serving civil papers
- 10-19 Return to your headquarters
- 10-20 Location
- 10-21 Call by telephone to the following number _____.
- 10-22 Disregard
- 10-23 Status check
- 10-24 Meet a party at _____.
- 10-25 Request film on in-booking
- 10-28 Check registration
- 10-29 Check warrant on _____.
- 10-30 Traffic unnecessary or does not conform to rules
- 10-31 Send tow truck to _____.
- 10-32 Ambulance
- 10-33 EMERGENCY
- 10-36 Correct time
- 10-39 Message was delivered
- 10-40 Request permission to transmit car to car
- 10-41 Permission granted for 10-40
- 10-42 Officer at his or her residence
- 10-43 Officer taking a meal break at _____.
- 10-44 Traffic stop
- 10-45 A patrol with two officers
- 10-50 Use caution
- 10-51 Driving while intoxicated
- 10-54 Send backup units
- 10-55 Change channels
- 10-59 Check for valid driver s license and restrictions
- 10-65 Stand by to copy
- 10-70 Do you have any traffic for this unit?
- 10-89 Unit is off the air for service at _____.
- 10-97 Arrived at scene
- 10-99 EMERGENCY - OFFICER NEEDS ASSISTANCE
- 10-100 Transport an officer from _____.

Criminal Penalties

Felonies:

The following South Dakota statutes list the maximum penalties for various classes of crimes:

22-5-1. Except as otherwise provided by law, felonies are divided into the following eight classes which are distinguished from each other by the respective maximum penalties hereinafter set forth, which are authorized upon conviction;

- 1) Class A felony: death or life imprisonment in the state penitentiary. A lesser sentence than death or life imprisonment may not be given for a Class A felony.
- 2) Class B felony: life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class B felony.
- 3) Class 1 felony: life imprisonment in the state penitentiary. In addition, a fine of \$25,000 may be imposed.
- 4) Class 2 felony: 25 years imprisonment in the state penitentiary. In addition, a fine of \$25,000 may be imposed.
- 5) Class 3 felony: 15 years imprisonment in the state penitentiary. In addition, a fine of \$15,000 may be imposed.
- 6) Class 4 felony: 10 years imprisonment in the state penitentiary. In addition a fine of \$10,000 may be imposed.
- 7) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine of \$5,000 may be imposed.
- 8) Class 6 felony: 2 years imprisonment in the state penitentiary or a fine of \$2,000 or both.

The court, in imposing sentence on a defendant who has been found guilty of a felony, may order in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of Chapter 23A-28.

22-6-1.1. If a person is convicted of a Class 5 or Class 6 felony, the court may sentence the person so convicted to imprisonment in the county jail of the county where such person was convicted, for a term of not more than one year.

Misdemeanors:

22-6-2. Except as otherwise provided by law, misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction.

- 1) Class 1 misdemeanor: one year imprisonment in a county jail or \$1,000 fine or both.
- 2) Class 2 misdemeanor: 30 days imprisonment in a county jail or \$200 fine or both.

The court in imposing sentence on a defendant who has been found guilty of a misdemeanor may order, in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Except in cases where punishment is prescribed by law, every offense declared to be a misdemeanor and not otherwise classified is a Class 2 misdemeanor.

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 appears to be mentally ill, the governor must order a commission of doctors to examine him or her.

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 lethal injection must be given at some location within the grounds of the state penitentiary. The law prescribes an ultra-short-acting barbiturate in combination with a chemical paralytic agent administered intravenously. The person giving the IV must be trained but need not be a doctor or nurse, and the law says no prescription is required to obtain the drugs from a pharmacy.

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 one member 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.

Execution Guidelines (May 2001 draft)

SCHEDULE: The execution of an inmate will take place within the week designated on the Warrant of Execution (SDCL 23A-27A-15). The Warden will set the exact time of the execution. The time fixed by the Warden for the execution will be provided to the people invited or requested to be present at the execution. However, it is a Class 2 misdemeanor for the people invited or requested to be present to divulge such an invitation to any person or persons nor in any manner disclose the time of the execution (SDCL 23A-27A-37).

Not less than forty-eight (48) hours prior to the execution, the Warden will make a public announcement of the day and hour of the execution (SDCL 23A-27A-17). Prior to the Warden's announcement, the inmate will be moved to a holding cell adjacent to the execution room. A DOC official will be posted near the holding cell to observe the inmate's activities. The official posted near the holding cell should be someone who has typically not dealt with the inmate on a regular basis.

About four (4) to five (5) hours prior to the execution, the Warden will visit with the inmate and explain the process. The Warden will try to ascertain what the inmate's last statement will be.

VISITS: The inmate will be provided a reasonable amount of time to visit with his attorney(s) and a chaplain or a bona fide religious representative after he has been moved to the holding cell adjacent to the execution room. Arrangements may be made for immediate family members (father, mother, step father, step mother, brothers, sisters, step brothers, step sisters, children and spouse) to visit with the inmate at his holding cell. However, the visits with immediate family members should cease at least twelve (12) hours prior to the scheduled execution time. The inmate will not be removed from the holding cell for such visits. However, DOC officials may make privacy allowances, so long as the safety and security of the institution are not compromised. Telephone calls may be substituted for face-to-face visits.

LAST MEAL: The inmate's last meal prior to the execution should be close to the regular feeding time of general population inmates. The inmate may request a special diet for his last meal but he will only be provided with food items that are normally available in the kitchen.

APPEALS: An open line of communication will be maintained with the Governor's office and the Attorney General's office. Contact with the Governor and the Attorney General, or their respective offices, should be made approximately twelve (12) hours prior to the scheduled execution to get a status report on any appeals. Contact should be made again approximately one (1) hour before the execution to see if there are any last minute appeals that would delay the execution.

Once the inmate is strapped on to the gurney the appeals process is over, unless the Supreme Court stays the execution. The inmate's attorney(s) will not be allowed in the execution room.

PREPARATIONS: Senior ranking officers should do the actual strapping of the inmate to the gurney. An I.V. will be put in both arms, with one intended as a back-up. In the event that the inmate was a heavy drug user with bad veins, the I.V. may have to be put in the feet or the neck. The inmate will not be sedated before hand. The inmate can wear regular inmate clothing or "dress outs" if they can obtain them. The inmate will wear shoes.

Curtains or blinds should be in place over the viewing windows in each witness room. Witnesses will be brought in to the viewing room after the I.V. is hooked up. The curtains/blinds will be opened at the time the execution is to begin. At the conclusion of the execution the curtains/blinds will be closed and the witnesses will be lead out.

PRIOR ARRANGEMENTS: Prior arrangements will be made for disposal of an inmate's commissary items, personal property and his body.

WITNESSES: The Warden shall request, by at least two (2) days' previous notice, the presence of the following at the execution:

- Æ The Attorney General.
- Æ The trial Judge before whom the conviction was had or his/her successor in office.
- Æ The State's Attorney and Sheriff of the county where the crime was committed.
- Æ Not more than ten (10) reputable adult citizens, including at least one (1) member of the news media.

The Warden will also arrange for the attendance of the prison physician and two (2) other licensed physicians of this state. The Warden will also arrange for the attendance of such prison guards and peace officers as he may deem proper (SDCL 23A-27A-34).

At the request of the inmate; ministers of the gospel, priests or clergymen of any denomination as the inmate may require (not exceeding two) and any relatives or friends (not exceeding five) will be permitted to attend the execution (SDCL 23A-27A-35).

The presence of any person under the age of eighteen (18) years old, unless a relative, will not be permitted. No relatives of tender years will be admitted (SDCL 23A-27A-36). "Tender years" is defined as five (5) years old or younger.

CHEMICALS: Any pharmacist or pharmaceutical supplier is authorized to dispense the drugs to the Warden, without prescription, for carrying out the provisions of an execution (SDCL 23A-27A-32). The chemicals will be kept in a secured location until they are needed.

The chemicals to be used are Sodium Thiopental (lethal dose - sedate person), Pancuronium Bromide (muscle relaxant - collapse diaphragm and lungs) and Potassium Chloride (stops heart beat). In between each dose of the prescribed chemical, a saline solution will be run through the I.V. line(s) to ensure that the lines are kept free of any blockage.

CHEMICAL ROOM: The chemical room has a one-way mirror that permits people in the room to see out but does not permit people from the outside to see inside the room.

The Attorney General, Governor and any Department of Corrections' officials (other than the Warden) may be in this room. Arrangements will be made ahead of time to have an Emergency Medical Technician (EMT) present who meets the criteria in SDCL 23A-27A-32. The EMT will be in the execution room for a short time to hook up the I.V. to the inmate. The other end of the I.V. line will be inside the chemical room. The EMT will then go inside of the chemical room and will administer the chemicals upon the signal from the Warden.

EXECUTION ROOM: The Warden, the inmate and a minister of the gospel/priest/clergyman (if requested by the inmate) will be the only people in the execution room. The inmate will be allowed time to give a final statement. The final statement will be recorded through a microphone near the inmate.

Approximately three (3) minutes after the administering of the last chemical, the doctor will be brought into the execution room. The doctor will pronounce the inmate dead.

POST EXECUTION: Immediately after the execution, a post-mortem examination of the body will be made by the physicians present. They shall report in writing the result of their examination stating the nature thereof and the finding made (SDCL 23A-27A-38). After the post-mortem examination of the body, unless claimed by some relative, will be interred in a cemetery within the county where the penitentiary is situated (SDCL 23A-27A-39).

DISABILITY OF WARDEN: In case of the disability from illness or other sufficient cause of the Warden to whom the death warrant is directed to be present and execute the same, it shall be the duty of the principal Deputy Warden or such other officer of the prison as may be designated by the Warden to execute the warrant and to perform all other duties imposed upon the Warden (SDCL 23A-27A-41).

Counseling and debriefing will be made available to staff who witness the execution.

Department of Corrections Media Policy

Department of Corrections (DOC) staff will deal with people and organizations legitimately interested in the DOC and its institutions and agencies in a manner which maintains and enhances integrity and credibility.

Definitions

1. Recognized News Media: For the purpose of this policy, recognized news media includes: (1) General circulation newspapers which have met the requirements to be a legal newspaper as outlined in SDCL chapter 17-2, (2) Radio/television stations holding an FCC license who provide news as part of their service, (3) Periodical news magazines of national circulation sold through newsstands or mail subscriptions to the general public, (4) National/International news services.

Procedural Guidelines

- I. The public information process will encourage an understanding of the operations, programs, and goals of the Department of Corrections and its institutions/agencies and will include:
 - A. Prompt, courteous, and complete responses to requests from the public or private agencies and individuals.
 - B. Appropriate contact with the public and news media.
 - C. Public access to the institutions/agencies consistent with privacy concerns and the security and disciplined operation of each facility.
 - D. Cooperation with other criminal justice agencies in information gathering, exchange, and standardization.
 - E. Prompt investigation of complaints directed toward the Department of Corrections or its institutions/agencies from public or private agencies or citizens.
- II. Release of Information:
 - A. The Chief Executive Officer is responsible for the orderly dissemination of information from that institution/agency.
 1. The release of sensitive information such as emergency response, offender records or security procedures is subject to state and Federal laws, Department of Corrections policy and Chief Executive Officer approval.
 - B. The Chief Executive Officer of each institution/agency may designate a staff member as the Public Information Officer.
 1. Inquiries concerning institutional/agency operations may be referred to the Public Information Officer for a response.
 - C. Opinions solicited concerning departmental operations or questions concerning the DOC in general shall be referred to the DOC Central Office for official comment.
 - D. Responses to inquiries regarding an individual or requiring the identification of an offender are subject to statutory provisions regarding public information, DOC policy, and institutional policy.
 1. A list of public record information concerning an adult offender that may be released to inquiring parties is contained in Attachment 1.
 2. Information concerning specific juvenile offenders is confidential and will not be released to the general public.
 3. Information concerning a specific juvenile will only be available to that juvenile's parents/guardians, the court (judges) and legal counsel (the prosecuting and defense attorney). This information is limited to the following:
 - a. Master Intake Form;
 - b. Intake Summary;

- c. Classification/Reclassification form;
- d. Institution Progress Report;
- e. Release Summary;
- f. Discipline Reports, and;
- g. Aftercare Violation Report.

4. In no case should an offender or other unauthorized person be given direct access to an offender's file or other official institutional or DOC records.

5. If an employee is in doubt regarding the propriety of a request for information, the employee should contact the Department of Corrections Central Office.

III. Access of Governmental Officials to DOC Institutions:

A. If properly identified, the following people are allowed to visit a DOC institution at any time:

- 1. Governor, State Legislators, US Congressmen, Attorney General, and other elected state officials.
- 2. Members of the Judiciary.
- 3. Members of the Board of Pardons and Paroles.
- 4. Members of the Corrections Commission.
- 5. Department of Corrections employees.
- 6. Any other person authorized by the Warden or Chief Executive Officer of the institution/agency.

B. The Chief Executive Officer or designee should be notified as soon as possible upon the arrival of any of these officials.

IV. Tours of DOC Institutions:

A. Tours of DOC institutions will normally be limited to those people who have a legal, educational, security, business, or vested interest in that institution.

B. Tour groups will be of a manageable size, normally 10 - 25 people.

- 1. All tour participants must be at least eighteen (18) years old.
- 2. Prospective tour members may be subject to a background check prior to being allowed to participate in a tour.
- 3. A tour may be denied for an individual or group if their presence could compromise the security or disciplined operation of the institution.

a. People who are an immediate family member of an offender or who are on an offender's visit list will not be allowed to participate in a tour.

C. The institution will arrange for at least one (1) full-time staff member to provide an escort for the tour group.

- 1. All tour participants must bring a picture ID with them.

D. Additional rules and guidelines regarding tours may be developed by each institution.

V. Interviews:

A. Requests by recognized news media representatives for filmed, recorded, or non-recorded interviews with offenders or staff may be approved if the interview doesn't interfere with the disciplined operation and security of the institution or agency.

- 1. The Chief Executive Officer of a juvenile facility may allow an interview with a juvenile where the identity and specific crime(s) are not disclosed provided the juvenile agrees to the interview.
- 2. Media requests for interviews of an adult offender must be directed to a specific offender. Institutions are not expected to and should not recruit an offender for the news media to interview.

3. Interviews will be prearranged and may be held in private if requested by the interviewer.

4. Live broadcasts of offender interviews are not allowed.

5. News conferences by offenders are not allowed.

6. Interviews with adult offenders in the Admissions and Orientation Unit are not allowed.

B. Recognized news media representatives must have the written consent of the offender being interviewed (See Attachment 2), and must themselves sign an agreement for the interview (See Attachment 3).

1. Normally, offenders will be limited to one (1) press interview per month. If there is considerable interest in a particular offender, extra interviews or a press pool may be granted by the Chief Executive Officer.

C. While in the institution, media representatives will usually meet first with the Chief Executive Officer or the Public Information Officer.

D. Juvenile offenders may not be photographed or videotaped.

E. Adult offenders may be photographed or videotaped by media representatives either in groups or as individuals.

1. If an offender in a picture is identifiable, in cases where he or she hasn't signed a consent for an interview his/her written consent is required prior to release of the picture (Attachment 4).

F. Consent forms for media interviews and photographs will be placed in the offender's Institutional File.

VI. Notification and Approval:

A. The Secretary of Corrections or his/her designee or the DOC Public Information Officer will be notified in advance by the Chief Executive Officer of scheduled VIP, Legislative, news media or other official visits to an institution or contact with an agency.

B. The Secretary of Corrections or his/her designee or the DOC Public Information Officer will be notified of non-scheduled VIP, Legislative, news media or other official visits or contact as soon as reasonable following the contact of visit.

C. Interviews with staff or inmates must be approved in advance through the Secretary of Corrections or his/her designee or the DOC Public Information Officer.

D. Camera and recording equipment are not allowed on the grounds of a DOC institution unless prior approval has been obtained through the Secretary of Corrections or his/her designee or the DOC Public Information Officer.

E. The DOC Public Information Officer will be notified of all media contacts.

VII. Investigation of Complaints:

A. Complaints regarding an institution's relationship with the media, public, and other agencies should be brought to the attention of the Chief Executive Officer, and the Secretary of Corrections.

B. The Chief Executive Officer will promptly assign a staff member to investigate the complaint.

C. Staff involved in the complaint will not initiate the investigation.

D. Results of the investigation will be disseminated to the complaining party, the subject of the complaint, and the Secretary of Corrections; if personnel policy and public information concerns do not preclude such a release.

Attachment 1 — Inmate Information

THE FOLLOWING IS PUBIC INFORMATION REGARDING ADULT OFFENDERS WHICH MAY BE GIVEN OUT TO INQUIRING PARTIES:

Please Note: If an offender is or was incarcerated under a Suspended Imposition of Sentence (SIS) all information concerning this offender is considered confidential.

1. Name and date of birth.
2. Sentencing county and sentence imposed, along with court records of any judicial proceedings.
3. Crime, plea, prosecution and defense counsel, judge and number of felony convictions.
4. Release dates and parole eligibility dates.
5. Outcomes of parole hearings (granted/denied/noncompliance/revocation).
6. Place(s) of incarceration (except for Protective Custody situations).
7. Dates and places of release from incarceration.
8. Custody status.
9. Notations and issuance of arrest warrants, arrests, detentions, indictments, charges of information and other formal criminal charges.
10. Disposition arising from arrests of form formal criminal charges.
11. If the offender escapes or absconds from supervision, physical descriptions and photos.
12. Original records of entry such as police blotters or offense reports maintained by criminal justice agencies.
13. Offender status (inmates, parolee or under suspended sentence).
14. Supervising agent of a Parolee or person under suspended sentence supervision.

Attachment 2 — Inmate Consent for Media Interview

I, _____(inmate name), do hereby freely give permission to _____(media organization), to interview me on or about _____(date), and I authorize the media organization to use and release any information gathered from me during this interview for any legitimate purpose.

I further freely give permission to the media organization to make recordings of my voice during this interview and to take photos of me (still, movie or video) and authorize the use and release of such recording or pictures by the media represented for any legitimate purpose.

The consent for media interview may be revoked by me any time prior to the interview.

_____(Inmate Signature)

-(Date)

_____(Staff witness)

_____(Date)

Attachment 3 —Agreement for Media Interview

I, ____ (name), do hereby state that I am employed by ____ (media organization) and am authorized by them to conduct the interview of the inmate.

Institution staff have informed me of rules governing my conduct during interviews and visits within the institution, and I agree to comply fully with them. I hereby fully and completely waive my right to be free from search of my person or property so long as I remain within the boundaries of the facility grounds. I agree that no compensation or consideration of any kind, either direct or indirect, will be provided to the inmate for any interview or correspondence.

I further agree to respect the rights of privacy of all inmates and to obtain a release from any inmate before photos or recordings are utilized or personal information derived from any interview or correspondence is used in any publication or broadcast.

I acknowledge by professional responsibility to make reasonable attempts to verify any allegations regarding an inmate, staff member, or institutional program.

I recognize a visit to a prison presents certain hazards, and I agree to assume all ordinary and usual risks to my personal safety inherent in a visit to the facility.

Signature: ____

Date: ____

Attachment 4 —Authorization for Release of Inmate Information

I, ____ (inmate s name), hereby authorize and request that the below information be released by ____ (staff member/facility), of the S.D. Department of Corrections to ____ (person/organization/address) for the purpose of ____ .

Specific information authorized to be released: ____

This authorization for release of information may be revoked by me at any time except to the extent that information has been released based on this authorization prior to receipt of notice of revocation.

Inmate Signature: ____

Date: ____

Staff Witness: ____

Date: ____

Visitation rules are found on the Department of Corrections home page

<http://www.state.sd.us/corrections/corrections.html>

link to Visitation Hours for general rules

South Dakota Prison Contacts

Governor's Office

William J. Janklow, governor
Bob Mercer, press secretary
Jim Soyer, chief of staff
500 E. Capitol
Pierre, SD 57501-5070
Phone (605) 773-3212
sdgov@state.sd.us

Department of Corrections

Jeff Bloomberg, secretary of corrections
Michael Winder, public information officer
3200 E. Highway 34
Pierre, SD 57501-5070
Phone (605) 773-3478
Fax (605) 773-3194

Adult Corrections System

South Dakota State Penitentiary

Doug Weber, warden
1600 North Drive, Box 5911
Sioux Falls, SD 57117-5911
Phone (605) 367-5051
Fax (605) 367-5038

Jameson Annex

Doug Weber, warden
1600 North Drive, Box 5911
Sioux Falls, SD 57117-5911
Phone (605) 367-5120
Fax (605) 367-5585

Mike Durfee State Prison

Robert Dooley, warden
North Wood Street, Box 322
Springfield, SD 57062-0322
Phone (605) 369-2201
Fax (605) 369-2813

Juvenile Corrections System

Solem Public Safety Center

Dwane Russell, warden
3200 E. Highway 34
Pierre, SD 57501-5070
Phone (605) 773-3478
Fax (605) 773-3194

Yankton Trusty Unit

Robert Dooley, warden
Susan Jacobs, unit manager
Box 76
Yankton, SD 57078-0076
Phone (605) 668-3354

Redfield Trusty Unit

Doug Weber, warden
Randy Christensen, unit manager
Route 3, Box 500
Redfield, SD 57469-0410
Phone (605)

Pheasantland Industries

(prison license plate shop, machine shop, carpentry shop, upholstery shop, sign shop, print shop, garment shop, elderly housing project, Braille unit, bookbindery)
Jeff Stroup, director
1600 North Drive, Box 5911
Sioux Falls, SD 57117-5911
Phone (605) 367-5111
Fax (605) 367-5102

State Training School

Owen Spurrell, superintendent
Circle Drive, Box 70 Plankinton, SD 57368-0070
Phone (605) 942-7704
Fax (605) 942-7707

Juvenile Prison

Crystal Van Vooren, warden
Circle Drive, Box 70
Plankinton, SD 57368-0070
Phone (605) 942-7801
Fax (605) 942-7805

Custer Youth Corrections Center

Doug Herrmann, superintendent
Route 1, Box 98
Custer, SD 57730-9647
Phone (605) 673-2521
Fax (605) 673-5489

Patrick Henry Brady

Boot Camp
Col. Mark Snyder, director
Route 1, Box 98
Custer, SD 57730-9647
Phone (605) 673-2521
Fax (605) 673-5489

Quest Program

Melody Tromburg, director
HC 83, Box 69B
Custer, SD 57730-9705
Phone (605) 255-4835
Fax (605) 255-4838

Living Center

Todd Cheever, director
Route 1, Box 98
Custer, SD 57730-9647
Phone (605) 673-2521
Fax (605) 673-5489

S. D. Open Meetings Law

South Dakota's open meetings law was written in 1965 and amended in 1980 and again in 1987. The law is intended to encourage public participation in government. It is contained in three relevant statutes.

SDCL 1-25-1 requires that official meetings of cities, counties, school boards and all related boards and commissions be open to the public. 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, punishable by a penalty of 30 days in jail, a \$100 fine or both.

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 and although state law may not require an entity to open a meeting to the public, state law in no way prevents openness. When in doubt, open the meeting.

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

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 prior to the meeting. In the case of a special or rescheduled meeting, 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?

Because there is no definition in law the attorney general is of the opinion that local media is all media, broadcast and print, that regularly carries news to the community. While this is a very broad definition, the number of requests by news organizations for notification has not been excessive.

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

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?

SDCL 1-25-2 allows a majority of a 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.

Note that the statute does not require meetings be closed in these circumstances. Federal legislation regarding the student records often requires school districts to close meetings.

Finally, governmental organizations must act responsibly when dealing with information harmful to an individual's reputation.

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.

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

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.

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.

The attorney general encourages public bodies to cite the specific reason when calling for an executive session.

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

Excluding the media or the public from a meeting that has not been properly closed is a Class 2 misdemeanor punishable by a maximum sentence of 30 days in jail, a \$100 fine, or both. The first level of enforcement is the local state's attorney. Repeated violations should be brought to the attention of the attorney general.

Q: WHO DOES THE OPEN MEETINGS LAW APPLY TO?

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 TELEPHONE CONFERENCE CALLS BE CONSIDERED TO BE PUBLIC MEETINGS?

Yes. The 1989 South Dakota Legislature passed a bill that allows meetings, including executive or closed meetings to be conducted by telephone conference call if a place is provided for the public to participate. Conference call meetings must meet the same notice requirements as any other meeting.

The use of Email for deliberations among individuals on a public board has not been tested in South Dakota. But the North Dakota attorney general issued an opinion in 1998 that e-mail may not be used to discuss public issues or take straw votes on subjects that should be deliberated during official meetings.

Q: WHAT DOES THE LAW SAY ABOUT THE PROPER REASONS FOR HOLDING A CLOSED OR EXECUTIVE SESSION OF A PUBLIC BODY?

1-25-2. 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, where public discussions would 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.

Legal Use of Internet

The Internet is crammed with information on every subject under the sun, even breaking news and sports. It's tempting to copy what you need from your favorite sites and use it as you wish.

But be warned—traditional copyright and trademark laws still apply. It is illegal to download news stories from Web sites and redistribute them to your listeners or readers. Ethically it would be dishonest to represent another source's reporting as your own, whether you took the story out of a newspaper, taped it off the air or downloaded it from a web site.

Another growing area of concern is linking. Some companies are very protective of their sites and they may not want you to include links from your site to theirs. The safest course of action is to make sure you get permission from the other site before offering a link.

Trademarks also are an issue on the Internet. Be careful about posting another's trademark on your web site unless you get a license from the trademark holder. Using another's trademark in the hidden text of your website could also present legal problems for you. While the trademark may not be displayed on the screen, an Internet browser can detect it in the hidden text and may point a user to your site instead of the site maintained by the trademark holder.

Remember—on the Internet as in the rest of commerce—if it appears you are getting information for nothing or the deal seems too good to be true, take another look. Redistributing information you got off the Internet may put you in violation of trademark or copyright law.

Resources

Internet:

PACER - Public Access to Court Electronic Records. Check civil filings, dockets, decisions and other documents from federal courts. 800-261-3167. For information, contact Harland Danielsen, systems manager, 338-5566. (This site is currently limited to a portion of documents in civil cases.)

State Bar of South Dakota <http://www/sdbar.org>. South Dakota Supreme Court decisions, South Dakota Federal District Court opinions, South Dakota Bankruptcy decisions.

United States District Court, South Dakota <http://www.sdd.uscourts.gov>

Eighth U.S. Circuit Court of Appeals <http://ls.wustl.edu/8th.cir/cindex.html>

U.S. Bankruptcy Court for South Dakota <http://www.sdb.uscourts.gov/>

Legislative Research Council <http://www.state.sd.us/state/legis/lrc.htm>

South Dakota Home Page <http://www.state.sd.us/>

Unified Judicial System <http://www.state.sd.us/state/judicial/>

South Dakota Statutes On-line <http://legis.state.sd.us/statutes/index.cfm>

Department of Corrections <http://www.state.sd.us/corrections/corrections.html> (**Note new and expanded Frequently Asked Questions section that has a lot of basic information**)

Other Sources:

South Dakota Criminal Justice Directory - Listings for county, state and federal law enforcement and courts. Published by the attorney general's office, 605-773-6310.

Associated Press Stylebook and Briefing on Media Law. The new edition includes a special section on Internet and computer terms. The spiral-bound book is available to members for \$7.75 a copy and to others for \$11.75. Shipping charge is \$4 for up to nine books, \$8 for 10 or more. Members can be directly assessed; prepayments from others should be sent to Stylebook, The Associated Press, 50 Rockefeller Plaza, New York, NY 10020. The book can also 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. Cost is \$10.00, which includes shipping. The book can also be ordered online by credit card, at <http://www.apbookstore.com>.