

# A GUIDE FOR WITNESSES ON COURT PROCEEDINGS

U.S. Department of Justice  
National Institute of Justice

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Prepared by  
**The South Dakota State  
 Criminal Justice  
 Commission**  
 and  
**The South Dakota  
 Division of Law  
 Enforcement Assistance**

118 West Capitol Avenue  
 Pierre, South Dakota 57501  
 (605) 773-3665

OCT 4 1982

ACQUISITIONS

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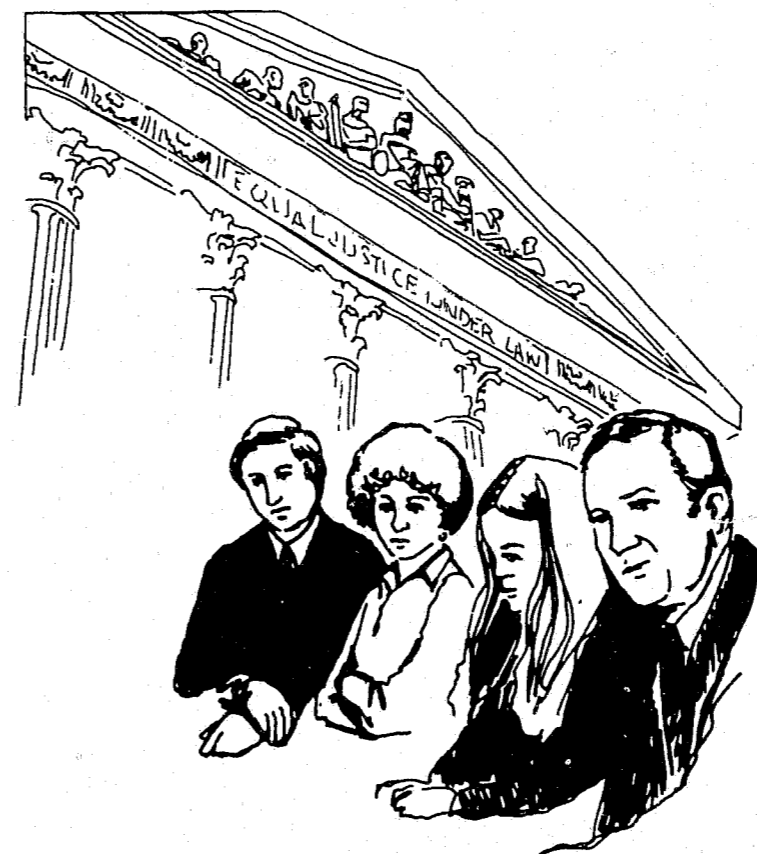
This project was supported by grant numbers 80-FG-AX-0046 and 80-BA-AX-0046 awarded by the Department of Justice, Law Enforcement Assistance Administration under the Omnibus Crime Control and Safe Streets Act of 1968, as amended and subgrant number 0-04-10-001 awarded by the South Dakota Criminal Justice Commission through the Law Enforcement Assistance Administration. Points of view or opinions stated in this report are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice. The illustrations are reprinted with permission from the National Institute of Justice, U.S. Department of Justice.

**Introduction**

This pamphlet is designed for those individuals who may be called as witnesses in court proceedings. Its purpose is to answer some questions that arise concerning the courtroom process and to briefly explain the criminal justice system as it affects individuals called to testify.

**Citizen's Role In The Courts**

Every South Dakota citizen has a good chance of participating in the judicial system. The growing number of cases brought before courts has increased citizen involvement.



Many people are unfamiliar with court proceedings and as a result have misconceptions and apprehensions and are confused about their role in the courts. As a witness, your role in the courts is vital.

**South Dakota's Unified Judicial System**

The state court system was reorganized into the Unified Judicial System in 1975 when an amendment to the State Constitution took effect. The Supreme Court and the Circuit Courts are the two basic levels in the statewide system. The Supreme Court, through the State Court

Administrator's Office, administers the Unified Judicial System. All court personnel are state employees.

The highest state court is the Supreme Court, which consists of the Chief Justice and four Associate Justices. The cases before the Supreme Court are mainly appeals of circuit court decision, although there are some cases which are initiated in the Supreme Court.

The Circuit Courts are the trial courts of the Unified Judicial System. South Dakota is divided into eight judicial circuits with thirty-six elected circuit judges. One judge in each circuit is appointed by the Chief Justice of the Supreme Court to act as the presiding circuit judge. This individual is responsible for the administration of the courts in the circuit.

Circuit Judges hear both civil and criminal cases. In cases tried without a jury, the judge decides the outcome of the case. In those cases where a jury has been requested the judge rules on what evidence may be considered by jurors in reaching their verdict, and instructs the jury on the law that is to be applied.

In each circuit there are magistrates who act as judges in cases involving less serious criminal acts and smaller amounts of money. Most of the magistrates in South Dakota are lay magistrates, meaning that they are not lawyers. Those magistrates who are law-trained have broader powers than the lay magistrates.

There are two other judicial systems in the state which should be mentioned. One is the federal district courts and the other is the tribal courts. Federal courts hear cases which involve federal questions or where there are lawsuits involving persons from other states, Indians residing on Indian reservations, or actions arising on Indian reservations. Tribal courts on the Indian reservations hear cases involving violations of tribal ordinances by Indians and civil suits involving tribal members.

The Supreme Court of South Dakota has prepared a booklet explaining the organization and functions of the Unified Judicial System. This booklet is available from the State Court Administrator's Office, State Capitol, Pierre, South Dakota, and through most Clerk of Court offices.

### **The Judicial System: How It Works**

There are many procedures in the processing of a criminal case in South Dakota. These procedures are needed to ensure that individuals receive their constitutional rights and to see that justice is served. The basic procedures applied to individuals processed by the criminal justice system are outlined below.

Arresting an individual is the first official action by the criminal justice system. An arrest may be made with or without a warrant. A warrantless arrest cannot be made for a Class 2 misdemeanor unless it was committed in the presence of the officer. An officer may arrest an individual suspected of committing a Class 1 misdemeanor or felony without a warrant. A warrant for arrest is issued by a committing magistrate after reviewing a complaint made against an individual through the State's Attorney. The committing magistrate may issue a summons instead of an arrest warrant. A summons requires an individual to appear in court to face criminal charges.

The next step is the initial appearance of the defendant before a committing magistrate. The main purpose of this procedure is to set bail, inform the defendant of the complaint against him, of his right to retain counsel and the procedures to obtain court appointed counsel if he cannot afford his own. Also the defendant is advised of his constitutional and Statutory rights and of the right to a preliminary hearing if the charge against him is a Class 1 misdemeanor or felony.

A preliminary hearing is allowed if the defendant could receive a fine of \$100 or more and/or one year in jail. The defendant may waive the right to a preliminary hearing. The preliminary hearing must be scheduled within ten days after the initial appearance if the defendant is in custody or within 45 days if the defendant has been released. Only under extraordinary circumstances can these time frames be altered.

The preliminary hearing is held in order to review the evidence and determine whether a crime was committed and if there is probable cause to believe that the defendant committed the offense. The state must prove that there is probable cause to the magistrate. Witnesses may be cross-examined by the defendant and the defendant may introduce evidence on his own behalf. If

the committing magistrate believes that an offense was committed and there is probable cause that the defendant committed it, the defendant will have to go to either circuit court or law-trained magistrate court if the charge is a misdemeanor.

Another procedure in which to investigate an offense and bring an individual to circuit court is through a grand jury. A grand jury is summoned by a circuit judge at the request of the prosecutor to investigate public offenses or misconduct in office. The grand jury consists of six to eight citizens of the county and hears evidence in secret proceedings. If the grand jury, after listening to evidence wants to charge a person with a crime, an indictment is issued. After an indictment by a grand jury, a bench warrant is issued by the judge and the defendant is required to appear in court where bond is set and an arraignment date is scheduled.

An arraignment is the procedure that follows either a preliminary hearing or an indictment. The purpose of the arraignment is to obtain a plea by the defendant and to give extensive advisement of the defendant's constitutional and statutory rights. The prosecutor files an instrument entitled an information which states the charges and must contain the names of the state's witnesses. If the defendant pleads guilty at the arraignment, the plea must be voluntary, knowingly and intelligent. The judge makes the decision whether or not to accept the guilty plea. A judgment is made if the guilty plea is accepted. The defendant has a right to choose either a trial by jury or judge if he pleads not guilty or not guilty by reason of mental illness.

After an arraignment and before the trial, various hearings may be held to determine whether or not statements made by the defendant and evidence obtained may be used in the trial. Also, the outcome of the case may have been decided before the arraignment or the trial through plea bargaining or even a dismissal of the charges.

The trial, either by a jury or the judge, determines the guilt or innocence of the defendant. The selection of the jury is the first step in a trial where a jury is requested. Each prospective juror is examined under oath in a process referred to as voir dire. Once the jury is selected, opening statements are generally made by both sides, with the prosecutor first. After the opening statements,

the prosecutor, on behalf of the state, presents its witnesses. Witnesses testifying for the prosecution are heard with cross-examination by the defense. After the prosecution presents its case, the defense is allowed to present its evidence if they choose to do so because they are under no obligation since the burden of proof is on the state. Witnesses for the defense are heard and cross-examined by the prosecutor. The state (prosecutor) may present rebuttal arguments after the defense finishes. Following the state's rebuttal, the defense may present evidence to rebut the rebuttal evidence presented by the state. The judge then, in a jury trial, instructs the jury on the law it must apply. Before the jury retires to decide on a verdict, closing arguments are presented. The prosecutor is first to present his closing arguments with the defense following. After the defense, the prosecutor may address the jury again as the state has the final arguments before the jury leaves the courtroom.

The jury then decides whether the defendant is guilty or not guilty. A verdict of guilty will result in a judgment and sentence. The defendant has a right to appeal the case to the Supreme Court of South Dakota and possibly to the Federal Court System.

## Questions and Answers

### How Are Witnesses Called?

If you receive a notice or subpoena, you are needed as a witness. Any attorney may issue subpoenas for witnesses they may require. Subpoenas are delivered by law enforcement personnel. The law provides a penalty for disobedience to a subpoena.

A witness may not only be a victim or someone who saw a crime happen, but also include others who may have seen part of an incident. In court, lawyers try to establish a chain of evidence which when put together may form a complete story. Your knowledge of a part may complete the puzzle.

### Does The State Pay Witnesses?

Yes.

Witnesses are compensated for mileage and receive a witness fee that is fixed by statute. The compensation is minimal and is usually not enough to compensate a person for the full financial costs of his appearance, although it does lessen the inconvenience and expense of testifying. Sacrifices are often made in terms of time and



expense by witnesses, but the criminal justice system could not operate without the cooperation of those who are called to testify. **You must keep your subpoena and turn it in to the Clerk of Courts in order to receive compensation.** It is possible to receive an advance payment if you are subpoenaed by the state and the prosecutor approves an advance payment.

#### **How Does A Witness Testify?**

When your name is called by the Clerk of Courts, you will be asked to step forward, you will be administered an oath of truth (or an affirmation if personal or religious beliefs prohibit an individual from taking an oath), and be seated in the witness chair.



If you have been called by the state, the prosecutor will first ask you questions concerning any relevant knowledge you possess about the case. This is referred to as direct examination.

Following the prosecutor's questions, the defense attorney will conduct his cross examination. You should remain seated until excused from the stand by the judge since further questions may follow direct and cross examination. If you wish to leave the area after you have testified, you must obtain permission from the judge.

#### **May A Witness Be In The Courtroom Before And After Testifying?**

Witnesses may watch the proceedings unless excluded by the judge. Such exclusion is called sequestration. You should ask the attorney who requested your attendance about this. In any event, witnesses should not discuss their testimony among themselves until after the trial.

#### **Must A Witness Answer All Questions?**

A witness must answer all legal and pertinent questions except those which the judge indicates need not be answered, and those which would violate the witness' Fifth Amendment right not to give testimony which would be self-incriminating.



#### **Suggestions For Witnesses**

The information that you have regarding an incident may be very important in determining the outcome of the trial. Therefore, you should review the case in your mind a day or two before the court date. Before testifying, try to visualize the incident. This will help you recall details you may have forgotten. Taking notes may help you to remember details, but don't memorize material or your testimony might appear "staged".

Before you take the witness stand, an oath of truth will be administered. You will have the choice of either swearing or affirming to this oath. From a witness' standpoint, telling the truth goes beyond deliberately lying; it means telling quite accurately what you know. By confining your statements absolutely to those you know to be true, there will not be a need to be concerned about cross examination. Telling a deliberate untruth under oath is perjury, a punishable offense.

Questions involving distance and time are among the most difficult you will be asked. If you do make an estimate, be sure everyone knows you are estimating.

It is important that you fully understand every question that is asked. If you do not understand a question, ask that it be repeated or explained. Not knowing is a legitimate answer if that is the case. Think carefully before answering questions. Answer only the question being asked and do not draw conclusions or state opinions unless asked. A yes or no answer is preferred.



For example, the question "Do you have an opinion as to the speed of the car?" should be answered yes, and not with the speed you think the car was going.

Stop immediately if the judge interrupts you or if an attorney makes an objection. If there is an objection, do not answer until the judge has ruled on it.

Your testimony is very valuable, so speak loudly and clearly in order for all to hear you. If there is a jury, address your testimony to them rather than to the attorney asking the question. The witness stand is near the jury for the purpose of aiding the jurors.

Cross examination is not really different than direct examination. Answer the questions asked as accurately and as courteously as possible. Do not lose your temper or argue with an attorney. The purpose of cross examination is to test your perception, recollection and credibility. Many attorneys rigorously cross examine witnesses to try to discredit them. Do not let yourself get upset with an attorney who is performing this valuable function of the adversary system.

### Conclusion

Those who have been a victim of a crime and have gone to court know how important it is to have witnesses take their time and make the effort to appear in court. The criminal justice system cannot function as it should without citizen participation. The system works better when witnesses on both sides of the case are willing and prepared to testify to the facts surrounding the incident at issue.

If you have any questions about the witness process or the criminal justice process which are not answered in this pamphlet, please write or call your State's Attorney Office.

### Glossary Of Court-Related Terms

**Acquittal** — A judgment of a court, based either on the verdict of a jury or judicial officer, stating that the defendant is not guilty of the offense(s) for which he/she has been tried.

**Appeal** — An application to a higher court to review, correct or modify the judgment of a lower court.

**Arraignment** — The first appearance before the court of a person charged with a crime where he/she is advised of all pending charges, of all his/her statutory and constitutional rights, and is asked to plead to these charges.

**Bail** — An amount of money set by the court which would allow the defendant to remain free pending trial while insuring his/her appearance in court.

**Bench Warrant** — An order from a judge to arrest a person who failed to obey a court order. Bench warrants can be issued for defendants who fail to appear for trial and witnesses who fail to appear after having been subpoenaed to appear and testify.

**Complaint** — A written statement presented to the court charging the defendant with the offense.

**Contempt of Court** — Any willful act intended to embarrass or obstruct the court in administration of justice, or calculated to diminish the court's authority or dignity.

It is important that you fully understand every question that is asked. If you do not understand a question, ask that it be repeated or explained. Not knowing is a legitimate answer if that is the case. Think carefully before answering questions. Answer only the question being asked and do not draw conclusions or state opinions unless asked. A yes or no answer is preferred.



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**Contempt of Court** — Any willful act intended to embarrass or obstruct the court in administration of justice, or calculated to diminish the court's authority or dignity.

**Defendant** — A person against whom charges are brought in civil or criminal actions.

**Deposition** — A sworn statement of a party or witness taken outside the court, after notice is given to the opposing side, which provides information or evidence to a court.

**Disposition** — The final outcome of a case.

**Evidence** — All the means of proving or disproving alleged facts. There are basically two types of evidence:

- (1) **Direct Evidence**, by which facts are proved by witnesses who saw an act done or heard word(s) spoken.
- (2) **Circumstantial Evidence**, by which facts are inferred or deduced.

**Felony** — A term used for any crime for which the accused, if convicted, could receive a prison term or possibly a death penalty.

**Indictment** — Grand jury instrument charging an individual with an offense.

**Indigent** — Any person whose financial resources are insufficient (as defined by court rule or law) to obtain legal counsel or pay court fees.

**Initial Appearance** — Procedure to set bail, inform the defendant of the complaint against him, of the right to retain counsel, of his constitutional rights and of the right to a preliminary hearing if charged with a Class 1 misdemeanor or a felony.

**Misdemeanor** — Offenses less serious than felonies. Class 1 misdemeanor is punishable by a maximum \$1,000 fine and or imprisonment in a county or city jail, not to exceed one year. Class 2 misdemeanor carries a maximum penalty of 30 days in jail and or a maximum \$100 fine.

**Objection** — Opposition by a prosecutor or defense counsel to a specific question, line of questioning, or evidence presented.

**Parole** — Release of an offender from confinement before the sentence is completed.

**Peremptory Challenge** — The right of both prosecution and defense counsel in a jury trial to object to accepting a prospective juror without giving any reason for such objection. The number of challenges are always limited by statute or rule of court.

**Overrule** — A judge's decision to set aside the authority of a former decision or reject a motion or objection made by a prosecutor or defense counsel.

**Perjury** — A deliberate false statement made under oath.

**Petit Jury** — A group of citizens selected to determine the outcome of a criminal or civil trial.

**Plaintiff** — A person who initiates a lawsuit in a civil action. Criminal cases are brought in the name of the state.

**Plea Bargaining** — Negotiation between the defendant, his counsel, and the prosecution in which a possible agreement regarding the charging and or sentencing of the case is discussed.

**Preliminary Hearing** — Court proceeding for felonies and Class 1 misdemeanors to determine if enough evidence (probable cause) exists to have the defendant bound over to stand trial.

**Probable Cause** — Facts or circumstances which will induce a reasonable person to believe that an accused person has committed a crime.

**Probation** — Allowing a person found guilty of criminal conduct to remain at large, during good behavior, under certain conditions imposed by the court. Probation may be either supervised by a probation officer or unsupervised, depending on the order of the court.

**Public Defender** — An attorney appointed by a governmental body to provide legal counsel to indigent defendants in criminal proceedings within that jurisdiction.

**Sequestration** — Exclusion of the witnesses from the court proceedings so witnesses can't hear each other testify.

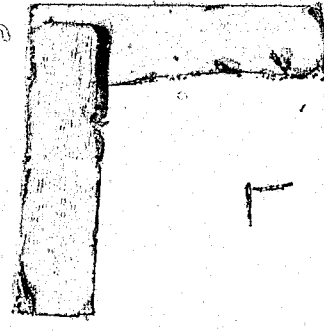


**Subpoena** — Written order requiring an individual to appear in court.

**Suppression Hearings** — Hearing held before the trial to decide whether certain evidence will be admissible at the trial.

**Sustain** — To allow an objection made by counsel.

**Voir Dire** — A preliminary examination in a court proceeding to determine if a prospective juror is qualified to sit on a jury panel and, in some cases, to determine the competence of a witness or the admissibility of evidence.



**END**