

# REPORTER

Vol. 33  
No. 2

**N**AFFILIATED  
ASSOCIATION

SEPTEMBER 2022

SDParalegals.com

## INSIDE

Advertising . . . . .	17
Apparel/Accessories Store . . . . .	22
2022 Annual Meeting Minutes . . . . .	6
Calendar . . . . .	3
Careers . . . . .	10
Committee Reports . . . . .	14
<b>COURT OPINIONS</b>	
<i>SD Supreme Court</i> . . . . .	15
<i>8<sup>th</sup> Circuit Court of Appeals</i> . . . . .	18
CP/ACP Certification . . . . .	23
<b>DID YOU KNOW?</b> . . . . .	13
<i>Court News</i>	
Good for You . . . . .	3
<b>GRAMMAR CHECK</b> . . . . .	9
<i>Plurals &amp; Possessives (Part 1)</i>	
In Memoriam . . . . .	8, 10
Judicial News . . . . .	8
Member of the Year 2021-2022 . . . . .	7
NALA Liaison's Report . . . . .	3
New Members . . . . .	10
Past President 2021-2022 . . . . .	7
<b>PARABLOG</b> . . . . .	11
<i>Putting the Audience First: A Perspective on Legal Writing</i>	
President's Message . . . . .	2
Q&A . . . . .	22
Recipe . . . . .	17
<b>WORD FIND</b> . . . . .	22
<i>U.S. Constitution</i>	

## *Legal Writing* **PUTTING THE AUDIENCE FIRST** p. 11

**MEETING NOTICE  
& AGENDA**  
p. 2, 4

**NOMINEE BIOS  
& ABSENTEE BALLOT**  
p. 5, 4

**SEMI-ANNUAL  
Social, Seminar  
& Meeting**

**OCTOBER 20-21, 2022**  
*Brookings*



# President's Message

Autumn Nelson, ACP



## 2022-2023 Executive Committee

### PRESIDENT

*Autumn Nelson, ACP*

[NelsonA@GoosmannLaw.com](mailto:NelsonA@GoosmannLaw.com)

### 1<sup>st</sup> VICE PRESIDENT

*Christal Schreiber*

[Christal@XtremeJustice.com](mailto:Christal@XtremeJustice.com)

### 2<sup>nd</sup> VICE PRESIDENT

*Cindy Wooten, ACP*

[Cindy.Wooten@Midco.com](mailto:Cindy.Wooten@Midco.com)

### NALA LIAISON

*Sarah Havlin, ACP*

[Havlin@RedstoneLawFirm.com](mailto:Havlin@RedstoneLawFirm.com)

### SECRETARY

*Michelle Tyndall, ACP*

[ShellyTyndall@WestRiverLaw.com](mailto:ShellyTyndall@WestRiverLaw.com)

### TREASURER

*Clara Kiley, CP*

[PKKiley@msn.com](mailto:PKKiley@msn.com)

I would like to send out a Thank You to all of our members for this opportunity to serve as President of SDPA for the 2022-2023 term. It has been a privilege to serve on the Executive Committee for the previous years under Vicki Blake, ACP, Dixie Bader, CP, and Jessi Stucke, ACP. Our past Presidents have set great examples and provided a plethora of knowledge as to what it takes to manage SDPA, and I hope to add to all they have accomplished.

For those of you who do not know me, let me tell you a bit about myself. I grew up in Lake City, South Dakota, a small town of about forty people. I graduated high school from Britton, SD, and moved to Sioux Falls in 2008. In 2012 I graduated with my Bachelor's Degree in Criminal Justice – Forensic Investigation. While in college, I got started in the legal field by working part-time as a Runner for Bill Janklow's law firm. I liked the atmosphere, and working under the paralegals there I gained a lot of knowledge that eventually led me to my current position as a Paralegal for the Goosmann Law Firm, PLC. I'm located in our Sioux Falls office, but handle litigation and employment law matters with our Sioux City and Spirit Lake, Iowa, and Omaha, Nebraska locations as well. In 2016 Cindy Smeins, ACP, led a study group for NALA Certification, and about eight other SDPA members and I studied, tested, and earned our CP credential that year. Earlier this year, I received my ACP in Trial Practice. Just last year I decided to make Sioux Falls my permanent home and bought a condo, where I currently live with my fifteen-year-old Pekingese, Alfie.

It has been a whirlwind so far as incoming President, and I would like to take this opportunity to also thank the Executive Committee that will be my core team for the rest of this year--First Vice President Christal Schreiber; Second Vice President Cindy Wooten, ACP; NALA Liaison Sarah Havlin, ACP; Treasurer Clara Kiley, CP; and Secretary Michelle Tyndall, ACP. You have all already been an integral part of this team and the transition would not have been half as easy without all of your support, so Thank You!

One of the first items I was privileged to check off my President list was attending the 2022 NALA Conference & Expo in Phoenix, Arizona. This year marked the first year back-in-person after a two-year in-person hiatus due to the Covid-19 pandemic. It was also the first year the conference was offered via webinar in conjunction with in-person attendance. Sarah Havlin and I hosted an affiliated association booth as President and NALA Liaison for SDPA and we were able to make so many networking connections, as well as new paralegal friends across the U.S.! Also in attendance representing SDPA were Tasha Altmann, Dixie Bader, CP (President 2020-2021), Chris Lillo, ACP (President 2002-2003), Jessi Stucke, ACP (President 2021-2022), and Cindy Wooten, ACP (NALA Liaison 2021-2022). Next year is planned for July 12-14, 2023, in Boston, Massachusetts, and I encourage everyone to make at least one of these conferences in your lifetime!

We also look forward to our Semi-Annual Meeting & Seminar that our Education Committee is currently planning tentatively for mid-October. The location and final date will be announced soon! Our seminars are open to members and non-members and offered live and via webinar. We encourage anyone and everyone to attend!



## NOTICE OF SEMI-ANNUAL MEETING of the SOUTH DAKOTA PARALEGAL ASSOCIATION, INC.

Pursuant to the Bylaws (Article VI, Section 2), notice of the South Dakota Paralegal Association's 2022 Semi-Annual Meeting was given by President Autumn Nelson, ACP, via email on September 9, 2022. The 2022 Semi-Annual Meeting will be held on Friday, October 21, 2022, commencing at 11:20 a.m. CST at the Wilbert Square Event Center in Brookings, South Dakota, and via GoToMeeting. Prior to the meeting, members who have registered to attend virtually will receive the GoToMeeting login credentials via email. The purpose of the semi-annual meeting is to hear reports of officers and committee chairpersons, to adopt a budget for fiscal year 2023, to elect officers for the 2023-2024 Executive Committee, and to transact such other business that may come before the members.

Pursuant to the Bylaws (Article VIII), the Nominations & Elections Committee has submitted a slate of officers for election at this meeting, as follows:

- Christal Schreiber -- President
- Cindy Wooten, ACP -- 1<sup>st</sup> Vice President
- Sara Shelbourn -- 2<sup>nd</sup> Vice President
- Rebecca Goeken -- NALA Liaison
- Jennifer Pravecek, ACP -- Treasurer
- Michelle Tyndall, ACP -- Secretary

Autumn Nelson, ACP  
SDPA President

# NALA Liaison's Report

Sarah Havlin, ACP



I had the privilege to attend the 2022 NALA Conference and Expo in Phoenix, Arizona, as SDPA's NALA Liaison. This was NALA's first-ever hybrid conference, which meant you could choose to attend either in-person or virtually. With either option, attendees could earn up to 15 hours of CLE over three days with more than 30 educational sessions to choose from. An added bonus to attending in person included receiving the entire 2022 NALA Conference & Expo recording bundle at no additional cost.

This year's lineup of speakers did not disappoint and covered a wide range of topics, including Space Law 101, Steps to Becoming a Freelance Paralegal, and Police Shootings, Excessive Force, and the Constitution. There were also CP review sessions for those studying to be a Certified Paralegal. I am looking forward to earning additional CLE credits by listening to the recordings of the sessions I did not get to attend in person.

In addition to the numerous educational sessions, I had many opportunities to network with fellow attendees. During the affiliate showcase event, Autumn Nelson, ACP, and I covered SDPA's affiliate booth. This gave us the opportunity to meet other paralegals from all over the country while showcasing what our association has to offer. Moreover, I attended the Affiliated Association Annual Meeting where SDPA's Education Committee received a NALA Affiliates Award. Congratulations to the Education Committee!

NALA's 2023 Conference & Expo will be held in Boston, Massachusetts, July 12-14 at The Westin Copley Place. I encourage each of you to attend a conference in the future.



**Vicki Blake, ACP**

Vicki recently obtained NALA's Advanced Certified Paralegal credential in Family Law. Vicki is a Past President (2019-2020) and has remained a very active member of SDPA. She serves on/chairs various committees and has volunteered to be our new Parliamentarian. SDPA is fortunate to have her!

**CONGRATULATIONS, Vicki!**

**GOOD  
FOR YOU**



**Education Committee**

SDPA's Education Committee received a NALA Affiliates Award at the NALA Conference & Expo in Phoenix in July! The committee was nominated by Tasha Altmann. The committee members are Rebekah Mattern, Chair, Christal Schreiber, Amanda Anderson, Heidi Anderson, Rebecca Goeken, Stephanie Bentzen, and Courtney Vanden Berg, CP.

**CONGRATULATIONS, Ladies!**

# CALENDAR

## September

- 7 \*Life Care Plans:..... 12pm  
Experts & Paralegals Working Together
- 8 +Bankruptcy Seminar .....9am-4pm  
Country Club of Sioux Falls [Register here](#)
- 8 SD Land & Lending Conference .... 8:30am  
Denny Sanford Premier Center - 6pm  
Sioux Falls [Register here](#)
- 9 +Estate Planning..... 8am-12pm  
Country Club of Sioux Falls
- 9 +Advanced Transactional Negotiations  
Missouri River Energy Services..... 1-4pm  
Sioux Falls [Register here](#)
- 21 \*¿Se habla español? An overview..... 12pm  
of the language services industry
- 28 \*Drafting & Implementing Trusts..... 12pm  
The Good, the Bad, and the Ugly

## October

- 5 \*Legal Writing Outlining 101..... 12pm
- 6-7 SD Trust Association 2022 Fall Forum  
Sioux Falls
- 13 \*Advertising Law 101 ..... 12pm
- 19 \*Remote Online Notarization..... 12pm  
(RON) & Estate Planning Best Practices
- 20 SDPA Social ..... 6:30-8pm  
Wilbert Square Event Center, Brookings
- 21 SDPA Semi-Annual ..... 7:30am-5pm CST  
Seminar & Meeting [Register here](#)  
Wilbert Square Event Center, Brookings
- 21 +State Bar Nuts & Bolts CLE  
Pierre

\* NALA webinars: CST/CDT. Course info available [here](#).  
+ SD State Bar seminars/webinars: CST/CDT



## MISSION STATEMENT

To establish good fellowship among association members, NALA, and members of the legal community.

To encourage a high order of ethical and professional attainment.

To further education among members of the profession.

To cooperate with bar associations.

To support and carry out the programs, purposes, aims, and goals of NALA.



# 2022 Semi-Annual Meeting

Friday, October 21, 2022: 11:20am CST / 10:20am MST

Brookings - Wilbert Square Event Center (and live via GoToMeeting)

## AGENDA

- Call to Order ..... President ~ Autumn Nelson, ACP
- Roll Call ..... Secretary ~ Shelly Tyndall, ACP
- Approval of Minutes of June 24, 2022, Annual Meeting. .... Secretary ~ Shelly Tyndall, ACP
- Treasurer’s Report..... Treasurer ~ Clara Kiley, CP
- NALA Liaison’s Report .....NALA Liaison ~ Sarah Havlin, ACP
- Committee Reports
- Old Business ..... President ~ Autumn Nelson, ACP
- New Business..... President ~ Autumn Nelson, ACP
  1. SDPA Swag Store is live (<https://SDParalegal.ByQQP.com>)
  2. Proposal and Approval of 2023 Budget
  3. Election of Officers for 2023-2024 Executive Committee
- Acknowledgements ..... President ~ Autumn Nelson, ACP
- Announcements..... Education Committee Chair ~ Rebekah Mattern

## Absentee/Virtual Attendee BALLOT

If you cannot attend the SDPA Semi-Annual Meeting or will be attending via GoToMeeting, please complete this Absentee Ballot for the 2023-2024 Executive Committee nominations and return it to Nominations & Elections Committee Chair, Cindy Smeins, ACP, at 5605 E. Eastbridge Place, Sioux Falls, SD 57110, or [CindySmeins@gmail.com](mailto:CindySmeins@gmail.com) by October 14, 2022.

Circle Nominee: or Write In:

Nominees (votes not necessary)

1<sup>st</sup> Vice President .. Cindy Wooten, ACP \_\_\_\_\_

President ... Christal Schreiber

2<sup>nd</sup> Vice President .. Sara Shelbourn \_\_\_\_\_

Secretary ... Michelle Tyndall, ACP

NALA Liaison..... Rebecca Goeken \_\_\_\_\_

Treasurer ..... Jennifer Pravecck, ACP \_\_\_\_\_

MEMBER NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

## 2023-2024 Executive Committee Nominations



**Sara Shelbourn**

2<sup>nd</sup> Vice President

**Bantz, Gosch & Cremer**  
Aberdeen

Sara Shelbourn was born and raised in Lincoln, NE. She moved with her family to Aberdeen, SD, her junior year of high school. After graduating from Aberdeen Roncalli, she attended Southeast Community College in Lincoln. She returned to Aberdeen in 2010 and joined the staff of Bantz, Gosch & Cremer.

Sara works primarily with attorneys Jim Cremer and Josh Wurgler. She has been a member of the South Dakota Paralegal Association (SDPA) since 2019.

Sara is a member of the Aberdeen Lioness Lions Club, and is a very active member of Bethlehem Lutheran Church where she serves on the Welcome Ministry Team, teaches Wednesday School, and leads the BLC Singles group. Sara enjoys sewing, reading, singing, playing handbells, and cheering for her friends' kids at their events.



**Rebecca Goeken**

NALA Liaison

**Goosmann Law Firm**  
Sioux Falls

Rebecca Goeken earned her Associate's Degree in Paralegal Studies from National American University in 2014. Following graduation, she began working at Christopherson, Anderson, Paulsen & Fidler, LLP as a paralegal.

In 2019, she was hired at Goosmann Law Firm, PLC, and continues to work there primarily with Beth Roesler and Emily Maurice in the areas of family law, guardianship and conservatorship matters, immigration law, and personal injury. Rebecca has also worked in the areas of civil litigation, estate planning, employment law, and probate. She has been a member of SDPA since 2017. Rebecca currently serves on the Education Committee. Rebecca is working to obtain her certification through the National Association of Legal Assistants (NALA).

When Rebecca is not working, she enjoys spending time with her children, Peyton, Paisley, and family. In her spare time, she enjoys attending concerts, attending sporting events, coaching volleyball, and crafting.



**Jennifer Pravecek, ACP**

Treasurer

**Johnson, Janklow,  
Abdallah & Reiter**  
Sioux Falls

Jennifer Pravecek was born in Boise, ID. She graduated from Washington High School in Sioux Falls, SD, and earned an Associates of Applied Science Degree in Paralegal Studies from Kilian Community College in Sioux Falls, SD. Jennifer is an Advanced Certified Paralegal at Johnson, Janklow, Abdallah & Reiter in Sioux Falls, SD (where she has been employed since 1996). Her practice areas focus almost exclusively in the areas of civil litigation and trial work, including personal injury, wrongful death, bad faith, and business litigation.

Jennifer has been member of SDPA since 1996 and served on the Executive Committee for several years in various capacities before being elected President in 2006-2007. She is also a member of NALA and has earned advanced certifications in the areas of automobile collisions, trial practice, discovery and E-discovery. Jennifer and her fiancé, Jason, live in Harrisburg, SD. They have one daughter (Addison), two sons (Cameron and Blake), and two fur babies (Chase and Bear). In her spare time, Jennifer enjoys reading, yard work and movies.

## MINUTES OF THE ANNUAL MEETING: June 24, 2022

**Welcome:** President Jessi N. Stucke, ACP, called the 2022 Annual Meeting to order and welcomed those in attendance via GoTo-Meeting. President Stucke noted that today's meeting was being held in person and virtually. President Jessi Stucke, ACP, then introduced the other members of the Executive Committee present, which included Autumn Nelson, ACP (First Vice President), Christal Schreiber (2nd Vice President), Cindy Wooten, ACP, (NALA Liaison), and Dixie A. Bader, (Secretary).

**Roll Call:** Taken by Dixie A. Bader, CP, Secretary. There were 32 members at this meeting, seventeen (17) members in attendance in person at the Best Western Ramkota in Rapid City and fifteen (15) members present via GoToMeeting.

**Minutes of October 15, 2021, Semi-Annual Meeting:** A Motion was presented by Vicki Blake, ACP, to waive the reading of the minutes from the October 15, 2021, Semi-Annual Meeting and to approve the minutes as written. The Motion was seconded by Heidi Anderson. No discussion. Motion carried and the minutes were approved.

**Treasurer's Report:** The Treasurer's Report was read by Clara Kiley, CP, Treasurer. A motion to approve the Treasurer's Report was made by Vicki Blake, ACP, and seconded by Rebekah Mattern. No discussion. Motion carried and the Treasurer's Report was approved.

**NALA Liaison's Report:** Report was given by Jessi Stucke, ACP, on behalf of Cindy Wooten, ACP, attending via webinar.

### COMMITTEE REPORTS

**Audit Committee:** Report read by Dixie Bader, CP, on behalf of Cindy Smeins, ACP. The credit card and bank statements have been reviewed and find them to be without error.

**CLE Luncheons:** No news.

**Education Committee:** Report given by Rebekah Mattern that a seminar will be held October 2022 with date and location to be determined.

**Ethics Committee:** Jennifer Frederick, CP said there was no news to report.

**Finance:** No news other than the budget status as presented by the Treasurer. Report given by Clara Kiley, CP.

**Job Bank:** Read by Autumn Nelson, ACP, for Laura Stewart, Chair. There are currently 20 positions posted. Please check the website under the careers tab. These posts change frequently so feel free to see what is available. If your employer wants to post an ad for a paralegal or legal staff, please contact the Job Bank committee.

**Library:** Read by Clara Kiley, CP, for Courtney Vanden Berg, CP. There has been a lot of activity with renting materials. If you wish

to watch CLEs, those are available online by paying through the website.

**Membership Committee:** Report read by Autumn Nelson, ACP. There are currently 89 SDPA members. Please remember to keep the membership committee informed of your current information for your employer and email address to receive timely notices.

**Newsletter Committee:** Report given by Jessi Stucke, ACP, that she and Jennifer Frederick, CP, will alternate in working to complete and edit the newsletters.

**Nominations & Elections:** Read by Dixie Bader, CP, for Cindy Smeins, ACP. If anyone is interested in serving on SDPA's Executive Committee, please contact the Nominations and Elections Committee or someone on the Executive Committee. We are currently accepting nominations for 2nd Vice President, Treasurer, and NALA Liaison.

**Professional Development Committee:** No report.

**Public Relations:** Read by Vicki Blake, ACP, Chair. SDPA members Vicki Blake, ACP, and Tasha Altmann, on behalf of SDPA, delivered Cookies to the Clerks in Minnehaha County and Lincoln County and to the Lincoln County Register of Deeds to thank them for their help throughout the year. They also attempted to deliver to the Federal Courthouse, but the staff were unable to accept the treats. The Public Relations Committee also spearheaded participation in Project SOS (Supply One Student), donating backpacks on behalf of SDPA.

**Website Committee:** Read by Jessi Stucke, ACP, for Jessica Huyck, ACP. The Committee was excited to help coordinate online registrations and payments for the year's annual seminar. We are continuing to update career postings, news, and forms on the website. The member login is now also available. Please check out the website.

A motion to accept all of the committee reports, including the NALA Liaison Report, was made by Clara Kiley, CP. Seconded by Joanie Littrel. No discussion. Motion carried.

### OLD BUSINESS

- New website has been up and going and the member portal is now available.
- The apparel/accessory store is also now available at [www.sdparalegal.byqqp.com](http://www.sdparalegal.byqqp.com). This will be available for limited time to make purchases for shirts, water bottles, mouse pads, etc.

### NEW BUSINESS

- Professional Development Committee-volunteers needed.
- 2022-2023 Parliamentarian, is needed. Sarah Havlin, ACP, was serving in the role as Parliamentarian but she will now be our new NALA Liaison. We are looking for someone to serve.
- Proposed bylaw changes – language

updates to be addressed and notice will be given for the October 2022 Semi-Annual Meeting to vote on the proposed changes.

- NALA Conference and Expo – Jessi Stucke, ACP, Autumn Nelson, ACP, Cindy Wooten, ACP, Sarah Havlin, ACP, and Dixie Bader, CP, will be attending as well as at least two other SDPA members. Jessi, Cindy, and Dixie were unable to go previously due to NALA's decision to hold the conference virtually the past two years due to COVID. This will be great to have South Dakota represented at the NALA Convention.
- Welcome to our 2022-2023 Executive Committee – Jessi Stucke, ACP, introduced: President, Autumn Nelson, ACP; 1st Vice President, Crystal Schreiber; 2nd Vice President, Cindy Wooten, ACP; NALA Liaison, Sarah Havlin, ACP; Treasurer, Clara Kiley, CP; and Secretary, Michelle Tyndall, ACP.
- President Jessi Stucke, ACP, updated the membership that the fees for new member applications and renewals, whether done on paper or online, shall be non-refundable. Amendments have been made to website and the paper form to indicate this.
- Budget amendment – Vicki Blake, ACP, proposed an increase in the seminar social budget from \$300 to \$600 based on the inflation costs and the number of members in attendance. Motion made by Vicki Blake, ACP, seconded by Jennifer Frederick, CP, to approve increase. No discussion. Motion carried.

### ANNOUNCEMENTS

Jessi Stucke, ACP, made the following announcements:

- The names of the nominees for the 2021-2022 Member of the Year, and read the nomination by Jennifer Frederick, CP, for Rebekah M. Mattern. Rebekah was presented with a plaque to thank her for her service.
- The Education Committee was thanked for their work in holding this seminar and their continued work through the year.
- Thank you to Executive Committee for their hard work, involvement, and support this past year.
- Like and share SDPA on Facebook.
- Rebekah Mattern, Education Committee Chair, reminded everyone to fill out their evaluation forms.
- Autumn Nelson, ACP, acknowledged outgoing President Jessi Stucke, ACP, for her service and presented her with an engraved clock for her role as President for 2021-2022.

### ADJOURNMENT

No further business. Motion to adjourn made by Clara Kiley, CP. Motion seconded by Tasha Altmann. Motion carried. Meeting was adjourned.

Submitted by Dixie Bader, CP,  
Interim Secretary

## Member of the Year 2021-2022



*Rebekah Mattern*

"I would like to nominate Rebekah "Becky" Mattern. I remember the first time I met Becky. It was during a jury trial and we were on opposing sides. We were both wearing similar tops, and it made me chuckle. I remember she was so friendly, yet professional with her supervising attorney and client throughout the trial. I later learned she was a member of SDPA, and I had the pleasure of connecting with her at seminars. I have watched her take on leadership positions within SDPA since then, and she always has that positive attitude, friendly demeanor, and professionalism that I remember from our very first encounter. She is a wonderful (and humble) person, and a huge asset to our association. For those reasons, I nominate Becky for SDPA's Member of the Year."

~ Submitted by Jennifer X. Frederick, CP, Past President

Becky is a Canton, South Dakota native, and the youngest of five girls. She obtained her Bachelors Degree in Paralegal Studies in 2007, graduating with honors, from Minnesota State University - Moorhead. After college, she worked in Fargo, ND, at the local legal aid office. After nearly ten years there, she returned home to South Dakota and is currently working in Sioux Falls as a litigation paralegal at Lynn, Jackson, Shultz & Lebrun, P.C. In her free time, she enjoys volunteering. Currently, she is the Volunteer Chair and a board member for the East River Foster Parent Network, and she volunteers regularly at REACH Literacy. When she's not working or volunteering, she likes to read, bake, and spend time with her family.

Congratulations, Becky, and THANK YOU!

### Past Presidents

- |                                       |                                      |
|---------------------------------------|--------------------------------------|
| 2020-21.....Dixie A. Bader, CP        | 2003-04 ....Rosie Kean               |
| 2019-20..... Vicki Blake, ACP         | 2002-03 ....Chris Lillo, ACP         |
| 2018-19.....Jennifer X. Frederick, CP | 2001-02.....Don Bender, CP           |
| 2017-18.....Jessica Huyck, ACP        | 2000-01.....Shiloh MacNally, JD      |
| 2015-17 .....Janet Miller, ACP        | 1999-00.....Cherly Brewer, CP        |
| 2014-15.....Becky Purington, ACP      | 1998-99.....Terri Miller, CP         |
| 2013-14.....Christi M. Weideman, Esq. | 1997-98.....Joan Gillespie, CP       |
| 2012-13.....Dixie Riter, CP           | 1996-97 .....Dennyce Korb, CP        |
| 2011-12.....Tammy Ackerman, CP        | 1995-96.....Michael Bultema          |
| 2010-11.....Cindy Smeins, ACP         | 1994-95.....Dory Maks                |
| 2009-10.....Kayne Larimer, ACP        | 1993-94.....Pam van Engelenhoven, CP |
| 2008-09 ....Dixie A. Bader, CP        | 1992-93.....Debra Niemi, CP          |
| 2006-07 .....Jennifer Pravacek, ACP   | 1991-92.....Louise Peterson, CP      |
| 2005-06 ....Michelle Schmidt, ACP     | 1990-91.....Cindy Johnson, CP        |
| 2004-05 ....Rhonda Rentz, CP          | 1989-90.....Karen Jaqua, CP          |

## Past President 2021-2022



*Jessi N. Stucke, ACP*

Jessi was raised in Sheldon, IA, Sioux Falls, and Aberdeen. She attended the University of Minnesota–Minneapolis and later received a Bachelor of Fine Arts degree from Minneapolis College of Art & Design in 2003. She returned to Aberdeen in 2005 and was the 2011 recipient of the Dale Stein Award upon graduation from Leadership Aberdeen, a program of the Aberdeen Area Chamber of Commerce.

Jessi joined Richardson, Wylly, Wise, Sauck & Hieb in 2014 and works primarily with Jack H. Hieb. Jessi became a Certified Paralegal (CP) in 2016 and obtained her Advanced Certified Paralegal (ACP) credential in Trial Practice in 2021 and is in the process of obtaining the ACP credential in e-Discovery. She has been a member of the National Association of Legal Assistants (NALA) and the South Dakota Paralegal Association (SDPA) since 2016. She had the privilege of serving as SDPA's President for 2021-2022 and continues to serve as chair of the Newsletter Committee, a position she has held since 2017 as co-editor of SDPA's quarterly publication, the *Reporter*. She also serves as Chair of the CLE Luncheon Committee, Co-Chair of the Membership Committee, and is a member of the Nominations & Elections Committee and the Website Committee. She served previously on the Education Committee and received SDPA's Member of the Year Award in 2018.

Jessi and her husband, Chris, have two children, Evin and Adeline. Away from the office, she serves as Treasurer for the Aberdeen Curling Club, Treasurer for the Holgate Middle School PTA, and Vice President at Holy Cross Lutheran Church. She enjoys trapshooting, curling, archery, and playing board games and video games with her family.

Thank You, Jessi, for your time and dedication on behalf of SDPA and the legal profession in South Dakota!

### Past Member of the Year Award Recipients

- |                                      |                                 |
|--------------------------------------|---------------------------------|
| 2020-21.....Courtney Vanden Berg, CP | 2010-11.....Michael Bultema     |
| 2019-20.....Clara Kiley, CP          | 2009-10.....Valerie Winegar, CP |
| 2018-19.....Autumn Nelson, ACP       | 2008-09 ....Vicki Blake, ACP    |
| 2017-18.....Jessi Stucke, ACP        | 2007-08.....Cindy Smeins, ACP   |
| 2016-17 .....Chris Lillo, ACP        | 2006-07 .....Tammy Ackerman, CP |
| 2015-16.....Cindy Smeins, ACP        | 2005-06 ....Terri Braun, CP     |
| 2014-15.....Jessica Huyck, ACP       | 2004-05 ....Deana Olson, CP     |
| 2013-14.....Karen Armstrong, PP, PLS | 2003-04 ....Karen Anderson      |
| 2012-13.....Jackie Hoefener, CP      | 2002-03 ....Rhonda Rentz, CP    |
| 2011-12.....Jennifer Frederick, CP   |                                 |



## Fifth Judicial Circuit **IN MEMORIAM** *Honorable Jon S. Flemmer*

Jon Flemmer, 66, of Webster, SD, passed away at his home in Webster on Thursday, August 4, 2022.

Jon Somers Flemmer was born on May 21, 1956, to Gordon and Amy (Somers)

Flemmer in Aberdeen, South Dakota. He was baptized and confirmed at the Zion Lutheran Church in Andover, South Dakota. Jon attended school at Andover from Kindergarten to 6th grade and later graduated from Groton High School in 1974. He furthered his education at South Dakota State University where he earned his Animal Science Degree. While at SDSU he was a member of Sigma Alpha Epsilon, Statesmen, and Hobo Day Committee. While at SDSU Jon was challenged to take the LSAT exam. After taking the exam and earning a higher score than the challenger, he was inspired to further his education at the University of South Dakota where he earned his law degree, Juris Doctorate. Upon completion, he took a job as the Assistant States Attorney in Clark. He then went on to take over as States Attorney. After working in Clark, he accepted a job in Aberdeen as Magistrate Judge.

He was united in marriage to Jill Anderson on April 13, 1991, at the Courthouse in Watertown, South Dakota. A few years following their marriage, the couple adopted their son, Seth. Jon later ran and won a position as Circuit Judge which brought the family to Webster where he has served as Circuit Judge for 21 years. Jon was a member of the South Dakota Bar Association. He enjoyed watching the Minnesota Twins and Vikings teams, hunting, taking naps in his chair, International Harvester, and tractor memorabilia. He shared his enthusiasm for sports with his son by coaching him in baseball for many years.

Jon will be deeply loved and missed by his wife, Jill, of Webster, SD, one son, Seth (Rachel) Flemmer of Harrisburg, SD; one brother, Ross and Cristy Flemmer (Lucas and Jacob) of Dell Rapids, SD; one sister, Candace and Dan Kauffman (Chris, Beth, and Amy) of Minneapolis, MN. He was preceded in death by his parents, maternal grandparents, paternal grandparents, and one brother, Kim Flemmer.



## Rosebud Sioux Tribe *Chief Judge Sherman Marshall Retires*

*By Frank Pommersheim, Emeritus  
Professor of Law, University of South  
Dakota School of Law & Associate  
Justice, Rosebud Sioux Supreme Court:*

Sherman Marshall, Chief Judge of the Rosebud Sioux Tribal Court, recently retired after more than 35 years as the heart and soul of the Rosebud Sioux Tribal Court system. Judge Marshall was born and raised on the Rosebud Sioux Indian Reservation. He is a fluent Lakota speaker and deeply steeped in Lakota tradition and custom. Sherman received his Associate of Arts degree from Sinte Gleska University and also was the first recipient of a Bachelor of Selected Studies from Sinte Gleska University. He is a 1984 graduate of the University of South Dakota School of Law and a long-time member the South Dakota Bar Association. Upon graduation from USD Law,

Sherman was admitted to practice and returned home to the Rosebud Sioux Reservation. After serving as an administrator at Sinte Gleska University for several years, he joined the Rosebud Sioux Tribal Court as the Chief Judge, a position he has held since 1986. It is likely that Judge Marshall is one of longest-serving judges on any tribal court in Indian Country.

It is difficult to fully understand and comprehend how much Sherman was able to accomplish during his long tenure on the bench. Early in his judicial career, Judge Marshall decided that it was incumbent upon him and his staff to visit all 20 tribal communities on the Reservation to describe the judicial system to community members and equally important, to receive input (including criticism) from community members. Over time, these efforts did much to enhance and increase community respect for the Rosebud Sioux Tribal Court system. Judge Marshall was also instrumental in helping to establish the Rosebud Sioux Tribal Bar Examination, as a necessary prerequisite for practice in the tribal courts of the Rosebud Sioux Tribe. Rosebud is the only tribe in South Dakota and one of the few anywhere in Indian country that prepares and administers its own Bar Examination. Closely related to the implementation of its own Bar Examination, Sherman was a key figure in establishing Sicangu Oyate Tribal Bar Association, one of the very few functioning tribal bar associations that exists in Indian Country. The Sicangu Oyate Tribal Bar Association, which includes both law trained and non-law trained tribal advocates, has served to help create and identify a community of practitioners who are committed to practicing in tribal court with integrity and a commitment to fairness and due process.

Judge Marshall is well known for conducting his courtroom with respect for all who enter whether native or non-native, whether pro se or represented by counsel, whether a humble individual, large corporate entity, or the Tribe itself. No one walks away feeling they were disrespected or didn't have a chance to be heard. This includes parties or witnesses who might feel more comfortable speaking or testifying in Lakota with Judge Marshall translating.

Judge Marshall's respect and generosity extended to visitors as well, including the students in my Indian law class over a 25-year period in which Judge Marshall warmly received students, patiently answered their questions, and went so far as to have his staff prepare a traditional meal including fry bread and wojapi to eat and share in the courtroom. My students were often stunned by a generosity they had done nothing to earn. And it is fair to say, I think, it changed many student attitudes about what is possible and what occurs in tribal courts. Judge Marshall was not trying to impress or to change anyone. He simply was a Lakota person deeply committed to the traditional values that are part of who he is.

Without fanfare or ever calling attention to himself, Sherman also served for 20 years on the Oglala Sioux Tribe Supreme Court and as a long-time trial judge for the Flandreau Santee Sioux Tribe.

Judge Marshall is also deeply committed to his family, which includes his wife Marilyn Bearshield Marshall and their adult children William and James. Sherman also served his country in Vietnam.

Sherman and I have been personal friends and professional colleagues for almost 50 years! He was in the first class I taught at Sinte Gleska University way back in 1973 and was already the chief judge at Rosebud when I joined the Rosebud Sioux Supreme Court in 1986. I have learned much from Sherman about courage, respect, compassion, generosity, and humility. Sherman has lived and practiced a life deeply committed to justice and good will for all. He has always brought honor to the legal profession and to the Rosebud Sioux Tribe.

# Grammar Check PART 1: Plurals, Possessives, and Plural Possessives

*I have seen that a lot of people have trouble with plurals, possessives, and plural possessives. I will try to give you some simple “rules” that may help if you struggle with any of these.*

## Plurals

First of all, “plural” is an adjective that means “containing, involving, or composed of more than one person, place, or thing.”

1. To make most regular nouns plural, you just add an “s” to the end of the word:

Examples:	<u>Singular</u>	<u>Plural</u>
	house	houses
	dog	dogs
	song	songs

2. If the singular noun ends in -ch, -sh, -ss, -s, -x, or -z, you would add “es” to the end of the word:

Examples:	<u>Singular</u>	<u>Plural</u>
	sandwich	sandwiches
	flash	flashes
	boss	bosses
	virus	viruses
	index	indexes
	waltz	waltzes

3. Of course, the English language always has exceptions to the rule! In some cases, if a singular noun ends in -s or -z, for some words you need to double the -s or -z before adding the “es” to the end of the word:

Examples:	<u>Singular</u>	<u>Plural</u>
	quiz	quizzes
	gas	gasses

4. If the singular noun ends with -f or -fe, the “f” is often changed to “ve” before adding the “s”:

Examples:	<u>Singular</u>	<u>Plural</u>
	calf	calves
	wife	wives
	knife	knives
	thief	thieves

Of course, there are some exceptions: cliff – cliffs; chief – chiefs; belief – beliefs; roof – roofs; chef – chefs, etc.

5. If a singular noun ends in -y and the letter before the -y is a vowel, you only need to add an “s” to make it plural:

Examples:	<u>Singular</u>	<u>Plural</u>
	key	keys
	tray	trays

6. If a singular noun ends in -y and the letter before the -y is a consonant, you usually need to remove the “y” and add “ies” to the end of the word to make it plural:

Examples:	<u>Singular</u>	<u>Plural</u>
	penny	pennies
	city	cities
	party	parties

7. If a singular noun ends in -o and the letter before the -o is a vowel, you would usually add an “s” to make it plural:

Examples:	<u>Singular</u>	<u>Plural</u>
	video	videos
	radio	radios
	zoo	zoos
	stereo	stereos

8. If a singular noun ends in -o and the letter before the -o is a consonant, you would usually add an “es” to make it plural:

Examples:	<u>Singular</u>	<u>Plural</u>
	potato	potatoes
	tomato	tomatoes
	echo	echoes
	hero	heroes

Of course, there are exceptions to this rule:

Examples:	<u>Singular</u>	<u>Plural</u>
	photo	photos
	piano	pianos
	halo	halos

9. If a singular noun ends with a -us, the plural ending “us” is frequently deleted and an “i” is added:

Examples:	<u>Singular</u>	<u>Plural</u>
	alumnus	alumni
	cactus	cacti
	fungus	fungi
	stimulus	stimuli

10. If a singular noun ends with -on, the plural ending is frequently to delete the “on” and add an “a”:

Examples:	<u>Singular</u>	<u>Plural</u>
	phenomenon	phenomena
	criterion	criteria

11. If the noun ends with -is, the plural ending “is” is usually changed to “es”:

Examples:	<u>Singular</u>	<u>Plural</u>
	basis	bases
	analysis	analyses
	crisis	crises

12. And, of course, some nouns don’t change at all when they are pluralized:

Examples:	<u>Singular</u>	<u>Plural</u>
	deer	deer
	sheep	sheep
	series	series
	fish	fish

13. Finally, there are many irregular plural nouns. There are no specific rules for these nouns—you will just have to memorize them: ox – oxen; woman – women; man – men; child – children; person – people; mouse – mice; foot – feet; goose – geese; tooth – teeth.

*Who would have guessed there were so many rules about one simple task—turning singular nouns into plural nouns! Maybe that’s why there is so much confusion about the subject! I was going to write about possessives and plural possessives in this article, but I’ve run out of room. I guess I have my subject figured out for next time!*

# Careers

Position details are on our [website](#). If you are aware of open positions, please contact Laura Stewart, Job Bank Chair, at [LStewart@FullerAndWilliamson.com](mailto:LStewart@FullerAndWilliamson.com)

## Legal Secretary RAPID CITY

Bangs, McCullen, Butler, Foye & Simmons  
Posted 8-24-22

-----

## Litigation Paralegal RAPID CITY

Bangs, McCullen, Butler, Foye & Simmons  
Posted 8-19-22

-----

## Business Paralegal RAPID CITY

Bangs, McCullen, Butler, Foye & Simmons  
Posted 8-19-22

-----

## Legal Assistant/Paralegal

**RAPID CITY**  
Goodsell Oviatt  
Posted 7-20-22

-----

## Administrative Secretary SIOUX FALLS

Federal Public Defender  
South Dakota / North Dakota  
Posted 7-20-22

## Legal Assistant/Paralegal SIOUX FALLS

Strange, Farrell, Johnson & Brewers  
Posted 7-8-22

-----

## Paralegal SIOUX FALLS

Heidepriem, Purtell, Siegel,  
Hinrichs & Tysdal  
Posted 7-6-22

-----

**Paralegal**  
**SIOUX FALLS**  
MIDCO Communications  
Updated 6-28-22

-----

**Legal Assistant**  
**BUFFALO COUNTY, NE**  
Buffalo County Public Defender  
Posted 6-9-22

## Assistant Trust Officer RAPID CITY

South Dakota Trust Company  
Posted 6-8-22

-----

**Assistant Trust Officer**  
**SIOUX FALLS**  
South Dakota Trust Company  
Posted 6-8-22

-----

**Legal Assistant**  
**RAPID CITY**  
Hansen Law Office  
Posted 6-6-22

-----

**Part-Time /**  
**Project-Based Paralegal**  
**SIOUX FALLS**  
**(LOCAL REMOTE)**  
N. Dean Nasser, Jr.  
Posted 5-24-22

## Transactional Paralegal SIOUX FALLS

Goosmann Law Firm  
Posted 5-9-22

-----

## Legal Administrative Assistant SIOUX FALLS

Cadwell, Sanford, Deibert & Garry  
Posted 5-6-22

-----

## Paralegal RAPID CITY

Beardsley, Jensen & Lee  
Posted 3-22-22

-----

**Paralegal**  
**AGENCY VILLAGE/SISSETON**  
Sisseton-Wahpeton Oyate  
Posted 3-15-22

-----

**Paralegal/Legal Assistant**  
**RAPID CITY**  
Gunderson, Palmer, Nelson & Ashmore  
Posted 3-10-22



## IN MEMORIAM



Elizabeth "Liz"  
Yarman



Elizabeth, daughter of David and Priscilla Yarman, was born on August 25, 1979, in West Lake Village, CA. Liz grew up in Thousand Oaks, CA, with her parents and older brother, John Yarman. She moved to Sioux Falls in 2005 with her family. She was working at Woods, Fuller, Shultz & Smith at the time of her passing.

Liz lived by love, her golden standard. She especially loved her three children, Madeline, Winter, and Jonah, and her beloved cats. Liz loved the Pacific Ocean and often told stories of her life in California with a smile. Animals loved her, people loved her, and the universe will continue to love her.

As a poet by heart, Liz influenced her family and workplace through her intelligence and relentless compassion. She always told her children that if she had their voices then she would never talk again and only sing. But she always had a jingle for daily occurrences, so much so that her children have them memorized by heart. Bringing out the loudest laughs from people, Liz never failed to bring a sense of humor to any situation. And even in the worst, most unthinkable situations, Liz always knew a resolution. She was a problem-solver and the biggest supporter for her children, completely self-less.

Liz's love language was quality time. When she wasn't at work, her family would spend time with her watching a movie or TV series, or just sitting together in silence. She was most looking forward to watching the *Game of Thrones* series spin-off *House of the Dragon* with her children.

Liz's family is devastated by her unexpected passing. Following Liz's request, her family will hold a private service and take her ashes to the Pacific Ocean. Liz will always be remembered for her wit, charm, natural love, and songs of Ice & Fire. Her family will forever miss her.

"Mother, always you wrestle inside me. Always you will."

HELLO!

New Members!

## Stephanie Bahr

FOLEY & FOLEY  
Watertown

## Lauren Collins

SCHOENBECK  
& ERICKSON  
Watertown

## Araceli Jimenez Magdaleno

RICHARDSON, WYLY,  
WISE, SAUCK & HIEB  
Aberdeen

Welcome!

# PUTTING THE AUDIENCE FIRST:



## A Perspective on Legal Writing

By Kirsten K. Davis

Originally printed in the *Appellate Advocacy Blog* on Thursday, May 5, 2022—reprinted with permission from the author.

A few weeks ago, I was invited to give a short dinner talk about legal writing to a group of federal district court staff attorneys and judges. The talk was entitled “*Audience-First Legal Writing*.” This month’s post is based on that talk.

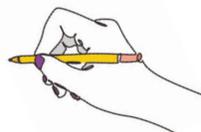
**Legal** writing is always and almost exclusively at its best when it is audience-centered. That is, the best legal writers know that they can be most effective when their documents meet the audience’s needs. Accordingly, the best legal writers write legal documents not for themselves but for the audience. And the consequence of that commitment to audience is the knowledge that every rhetorical move and every writing choice contributes to the audience’s view on whether the writing is “good.”

What an audience thinks is “good” legal writing changes with the purpose of and context for the document. Much of the time, a writer can’t know with certainty what an audience will deem “good.” Of course, the better the writer knows the specific audience, the more likely the writer can be successfully audience-centered. But, even without this knowledge, legal writers can anticipate some common needs that audiences might have of a document. Is the document understandable? Accurate? A quick read? Logically sound? Interesting? Well organized? Engaging? Convincing? In other words, writers are not without resources when it comes to anticipating and writing for audiences in ways that satisfy their needs. But, without prioritizing an audience-centered view of writing, none of those resources can be brought to bear in a writing project.

As such, I’ll suggest that the legal writer’s prime directive is this: In a deliberate way and in every writing choice, put the audience first.

### “Audience-First” is a Perspective on How to Write

I notice that legal writing instruction—particularly in the context of continuing legal education—is often directed to



the tactics that one can use to make their legal writing better. For example, “prefer active voice,” is a tactic of good legal writing. Nothing is wrong with learning good legal writing tactics. But those tactics aren’t all that useful without a perspective on or a strategy for deploying them.

An audience-first approach to legal writing that perspective or strategy. An audience-first orientation toward the writing project can guide how one chooses which tactics to use to write a document. In other words, having an audience-first approach to writing is way of *being* and *seeing* as a writer that will lead to effective writing choices.

### Actual, Imagined, and Implied Audiences

The first goal of an audience-first legal writer is first understand the audiences to which one writes. To start, a writer wants to get to know the *actual* audience of a document as well as one possibly can. For example, if a writer knows the particular preferences or desires of the actual audience, that knowledge can play a big role in meeting those needs.

But it’s tough to always know (and know well) the actual audience of a legal document. In fact, I’d argue, that there is no one, “actual” audience for a legal document; audiences in legal writing are typically multiple. For example, an appellate brief might find audiences in clients, opposing counsel, supervisors, clerks, judges, the press, and a host of legally interested internet surfers. Moreover, even within an actual audience, like judicial clerks, for example, a writer may be unable to know the specific expectations, preferences, and needs of those readers.

But lacking information about the actual audience does not leave a legal writer without options. This is because a writer’s audience is not just the audience the writer can identify with specificity, but it is also the audience that the writer can *imagine*, based upon their educated guesses about that audience. Key to the imagined audience is that it is a composite audience, an idealized example of the people who will be reading the document. Unlike the actual audience, the imagined audience represents a group of anticipated readers in terms of their collective goals and characteristics. So, an audience-first approach means to imagining this idealized example and then writing for it.

Finally, an audience-first approach means being attentive to the audience that is *implied* in a document. That is to say, audiences are not only actual or imagined, but they are also the ones that the document itself brings into being. Think of it this way: Actual and imagined audiences exist *even if* a text didn’t. Implied audiences exist *only because* the text does.

### Unpacking the Implied Audience: Everything You Need to Plan the Most Epic Prom Ever

An implied audience is one that is constructed by the document itself and can be inferred from analyzing that



document. Writers imply an audience in a document based on how they decide to organize the text and describe the concepts within it. In other words, when writers make choices about the writing, one can see in the document who the *writer* wants the audience to be.

The idea of the implied audience can be seen as a perspective on persuasion that gives a legal writer tremendous power over a reader's reception of the document. Writing a document to not only *address* but also *imply* a particular audience results in content that can both *create needs in the audience and then satisfies them*. In other words, implying an audience in a text can motivate a reader to become an audience with a need (perhaps one that the reader didn't even know they had) that the document can satisfy.

I'll use a nonlegal example of how implied audience works in a text to help simplify the analysis.

In March, *Seventeen* magazine published this headline on the front page of its website: "Everything You Need to Plan the Most Epic Prom Ever."

There's a good bit of implied audience at work in this sentence. First, the sentence implies an audience that is—or should be—interested in having a great prom experience. This sentence not only attracts the attention of an audience already looking for information about a great prom, the sentence also constructs a prom-interested audience; it tells readers *to be* an audience with an interest in prom. In other words, the words of the sentence create an audience with certain needs; in fact, the sentence is not even subtle about this—it specifically says that "you" have a "need"!

Second, the sentence tells the audience that the website has what the audience needs; it has, as the title says, "everything." Keep reading, implied audience, to meet your (constructed-in-the-text) need for everything!

Third, the title implies an audience who is willing to work at accomplishing this epic prom. In other words, the text implies an active audience—one who will "plan" everything necessary to ensure this experience is fantastic. By creating for the audience a need for action steps, the text sets up a particular relationship with that audience—one where the audience prepares to do something with the information they've learned.

Finally, the title artfully uses the word "epic." The word "epic" implies an audience of a certain generation—one that would use the word "epic"—and with certain expectations—very high ones. The tone of the sentence might even suggest that the implied audience has a fear of missing out on all of prom's "epic" possibilities. This fear might motivate action—I, too, want the most epic prom ever—what do I need to do? At the very least, the sentence suggests, look at the website (and perhaps all of the advertisements?) for everything you need!

So, what should a legal writer, taking an audience-first approach, conclude about the implied audience from this

analysis of *Seventeen* magazine's website headline? This sentence invites into being an audience that is probably in high school, is interested in prom, is expecting prom to be an amazing experience, is willing to plan, and is looking for exhaustive information on what to do. This audience, and all its characteristics, is *implied* in the sentence; the sentence creates an audience who has needs, invites the reader to be in that audience, and implicitly promises that those needs will be met in the text that follows.

As legal writers, we might ask ourselves—if one sentence can do that much work implying an audience and creating and satisfying its needs, what could we accomplish with all the sentences of a legal document?

## A Recap and Some Questions

So, as a reminder, this post suggests that the best way to approach legal writing is to take an audience-first approach. First, write to the audiences you know as well as the audiences you can imagine. You can do this by asking a few questions at the beginning of your writing process, the answers to which will guide your writing choices:

- What are the characteristics of the actual audience that will be reading your document? What will they need?
- Equally important, who is your imagined audience? What will the idealized reader need from the document?

Second, write with a conscious awareness of the audiences that your documents imply. Implying an audience gives you the power to be more persuasive by motivating readers to become audiences with needs you can satisfy through your writing choices. To become more aware of the implied audience in your writing, ask:

- What needs do you want the audience to have that can be met by the document?



### Next Month: Connecting Writing Tactics to the Audience-First Legal Writing Strategy

An audience-first perspective on legal writing can give a legal writer a useful strategy for writing effective documents that can appeal to and meet the needs of audiences. The next step is to connect the audience-first strategy to the writing tools that writers already have in their toolboxes. These tools are the tactics that the writer will use to satisfy the needs of the audience. In next month's post, I'll connect some writing tactics to the audience-first approach.

### About the Author



Kirsten Davis teaches at Stetson University College of Law and in the Tampa Bay region of Florida. She is the Director of the Institute for the Advancement of Legal Communication. The Institute's mission is to study legal communication issues and provide programming and training that improves legal communication skills. Among other things she's up to right now, she's currently serving on the Florida Bar Association's Special Committee on Professionalism. The views she expresses here are solely her own and not intended to be legal advice. You can reach Dr. Davis at [KkDavis@Law.Stetson.edu](mailto:KkDavis@Law.Stetson.edu).

## SUPREME COURT CASE FILINGS

The Supreme Court is moving to Odyssey for a case management system. As of Sept 1, 2022, attorneys must start submitting their Supreme Court case filings through File & Serve for cases numbered 30000 and above. Cases numbered 29999 and under will still need to be submitted using the SC Clerk Briefs email address as you currently do. Attorney firms will only need one Firm account for filings in the Circuit Court and Supreme Court cases. If you already have a firm account for Circuit Court filings, you can use that same account for your Supreme Court filings.

All Supreme Court cases should be initiated in the same manner as you currently initiate them, with the exception of the 4 listed below. Then, any subsequent filings can be submitted through File & Serve once you have your Supreme Court case number. When searching for a case number, you will need to use the five-digit Supreme Court case number.

These 4 Supreme Court cases can be initiated through File & Serve:

- Notice of Review – Civil, Criminal
- Intermediate Appeal – Civil, Criminal\*

\* the \$100 fee will still need to be mailed via check to the Supreme Court Clerk's office

Briefs for Supreme Court Cases will be submitted through File & Serve. You will select the appropriate brief filing code and will include a PDF as the Lead document and the brief in Word format as the Attachment. Word Perfect documents cannot be submitted through File & Serve so you will need to convert to Word or submit through the SC Clerk Briefs email. Please contact [UJSeSupport@ujs.state.sd.us](mailto:UJSeSupport@ujs.state.sd.us) if you have questions.

## U.S. DISTRICT COURT – NEW LOCAL RULES

The Civil and Criminal Local Rules of Practice have been updated and are now available in a new format. Although you can still download complete copies of each set of the local rules, they are now available individually as well. To access individual rules, select the blue For Attorneys tab, then select Local Rules from the drop-down menu (or click [here](#)). Next, select Civil or Criminal, then the applicable rule. A memorandum from Chief Judge Lange explaining the new rules can also be found [here](#).

**Access to Criminal Documents.** Two local criminal rules restrict access to certain documents: Crim. LR 32.1 and LR 57.10. The purpose of these rules is to protect those who cooperate in criminal investigations and related prosecutions. [Crim. LR 32.1](#) clarifies that counsel may review confidential sentencing documents with their clients but may not provide copies to them. [Crim. LR 57.10](#) is new. It incorporates Amended Standing Order 16-04, which requires court reporters to prepare two versions of change of plea and sentencing transcripts: a restricted transcript and a public transcript. It expands the requirement in section B.4 to all transcripts involving cooperator information and imposes a requirement on the prosecutor to notify the court, court reporter, clerk and counsel of cooperating witnesses prior to eliciting their testimony. If there is law enforcement testimony regarding cooperation or statements by counsel or others identifying a person as a cooperator, the prosecutor is to submit a redaction request, either orally at a bench conference or electronically prior to the preparation of the transcript. If public transcripts including cooperator information were filed prior to the effective date of the new rule, it imposes an obligation for prosecutors to retroactively move to seal and redact this information. Finally, the rule clarifies that when inmates request copies of documents in their case, only sealed and/or restricted documents must be sent to the warden. Absent an order to the contrary, publicly filed documents may be sent directly to an inmate.

**Social Security Cases.** The October newsletter described a new procedure based on a standing order that initially assigns social security case appeals to a magistrate judge. The procedure is now included in our Civil Local Rules. [Civ. LR 83.9](#).

Under the rule, after case opening, each party has 60 days to submit a completed Social Security Case Assignment Form, through which the party either consents to disposition of the case by the magistrate judge or asks to have a district judge assigned. If there is not unanimous consent, the case is randomly assigned to a district judge. The rule also requires that

within 60 days after the United States is served with a pleading under 42 U.S.C. § 405(g), the Commissioner of Social Security must electronically file and serve an answer and certified copy of the administrative record. Previously, the Clerk's Office electronically filed the administrative record.

## U.S. COURT OF APPEALS – 8<sup>TH</sup> CIRCUIT BRIEF QUALITY CONTROL PROGRAM

The Eighth Circuit Court of Appeals Clerk's Office has initiated a new Brief Quality Control Program (BriefQC) that will be observed by filers who choose the event "Brief Submitted for Review" in CM/ECF. The purpose of this program is to assist with quality control of briefs submitted to this Court as we aim to reduce the number of deficient briefs. While we feel this service is helpful for filers and the Court, the filer will have the option to proceed with filing regardless of the Brief Quality Control Program Results.

Filers will continue to submit the brief as usual—taking care to select from the drop down the type of brief being submitted before entering the description & then selecting "Browse" to upload the PDF of the brief being submitted.

The filer may notice an additional few seconds of delay during the upload. This delay is a result of the BriefQC Program running a review of the document uploaded. At this point, if the BriefQC Program has found any errors, you will see a new screen titled "Document Check Results." See the following example:

Please notice the scroll bar to the right side, as well as the "Print" and "Done" buttons. You may need to scroll down to see the full list of results and you might like to print them to have on hand as you make changes to your brief. Next, you will choose "Done." Now, you will notice that your document has dropped down, as it usually does once you've browsed and uploaded it; however, note there is a new column titled "Validation." (If you missed printing the results earlier, you can choose the "errors" hyperlink now and still do so.)

Document	Description	Size	Validation	Sequence	Remove All
Dist.pdf	Appellant's Brief Submitted	427 KB	Errors		

If you would like to proceed with submission of the brief regardless of the errors presented by the BriefQC Program, choose "Continue." However, if you would like to address the errors presented before submitting your brief, choose "Cancel." Finally, please note that while the BriefQC program accurately identifies deficiencies, it may also mistakenly suggest that a deficiency exists. This most commonly occurs when the program does not find the exact or close match for required contents or sections, or when nearby text or characters confuse the search engine. If you believe that the program incorrectly identified a deficiency, continue with docketing the brief submission. Additionally, as the BriefQC program is not capable of observing all deficiencies, the Clerk's Office will continue to review a submitted brief manually and the Clerk's Office, not the program, will determine if a deficiency notice is necessary. If the BriefQC Program finds no errors, you will not be presented with the screen entitled "Document Check Results" and the "Validation" column will show "Complete" instead of "Errors."

## AUDIT

Chair: Cindy Smeins, ACP  
[CindySmeins@gmail.com](mailto:CindySmeins@gmail.com)  
Member: Vicki Blake, ACP

The Audit Committee has received and reviewed the credit card and bank statements from CorTrust Bank through July 31, 2022, and find them to be without error.

## CLE LUNCHEON

Chair: Jessi Stucke, ACP  
[JStucke@rwwsh.com](mailto:JStucke@rwwsh.com)  
Members: Vicki Blake, ACP  
Jennifer Frederick, CP  
Jessica Huyck, ACP  
Cindy Smeins, ACP

We've been off to a slow start, but had a productive meeting to discuss topics we'd like to cover, and these are based on the speakers that we think we can lock in over the next year. If you know of someone who is interested in speaking, please contact a committee member. We are leaning toward having speakers present solely through GoToMeeting to avoid the audio issues we've experienced in the past.

## EDUCATION

Chair: Rebekah M. Mattern  
[RMattern@LynnJackson.com](mailto:RMattern@LynnJackson.com)  
Members: Christal Schreiber  
Amanda Anderson  
Heidi Anderson  
Rebecca Goeken  
Stephanie Bentzen  
Courtney Vanden Berg, CP

No report.

## ETHICS

Chair: Jennifer Frederick, CP  
[Jen@SchoenbeckLaw.com](mailto:Jen@SchoenbeckLaw.com)  
Member: Dixie A. Bader, CP  
Vikki Kelner, ACP  
Janet Miller, ACP

No report.

## FINANCE

Clara Kiley, CP  
[PKiley@msn.com](mailto:PKiley@msn.com)

No report (budget and expenses report to be provided at the Semi-Annual Meeting).

## PROFESSIONAL DEVELOPMENT

Chair: Autumn Nelson, ACP  
Member: Cindy Wooten, ACP

No report.

## JOB BANK

Chair: Laura Stewart  
[LStewart@FullerAndWilliamson.com](mailto:LStewart@FullerAndWilliamson.com)  
Members: Kayne Larimer, ACP  
Ashly Luke  
Jackie Schad, ACP

Open positions are listed on page 10. The job information is available on our website [here](#). If you are an employer or know of an employer seeking legal staff, please contact Laura.

## LIBRARIAN

Courtney Vanden Berg, CP  
[Courtney@StrangeLaw.com](mailto:Courtney@StrangeLaw.com)

The Library has received seven requests for past seminar recordings and one request for a CLE Luncheon recording as individuals work to complete their CLE requirements for NALA. The library now has the June 2022 Seminar available to check out for all those who were unable to attend. If you or someone you know is in need of CLE credits please keep in mind we have the library catalog available online at <https://www.sdparalegals.com/news-resources>, and material can be checked out through the website store. Please take a moment to review the catalog and if there are any recommendations for additional resources, please let me know.

As a reminder, recordings of previous seminars can be checked out by SDPA members for \$45.00 or \$60.00 for nonmembers (pricing includes postage). Let me know what seminars you were not able to attend but would like to view, and I can get the DVDs out to you.

The library also has two copies of the NALA Certified Paralegal Exam Fundamentals manual available for members to check out if you are thinking now is the time to get certified. Members are allowed to use the manual for three months to study for the exam after paying a \$100.00 deposit. The manual is an excellent resource for anyone studying for the CP exam.

If you have questions or would like to check out any of the library materials, please email Courtney.

## MEMBERSHIP

Co-Chairs: Autumn Nelson, ACP  
[NelsonA@GoosmannLaw.com](mailto:NelsonA@GoosmannLaw.com)  
Jessi Stucke, ACP  
[JStucke@rwwsh.com](mailto:JStucke@rwwsh.com)

SDPA has 92 members as of the end of August. We have welcomed three new members and sadly, lost Liz Yarman. Liz's obituary and the names of our newest members are on page 11. Please remember to keep the membership committee informed of your current information for your employer and email address to receive timely notices.

## NEWSLETTER

Chair: Jessi Stucke, ACP  
[JStucke@rwwsh.com](mailto:JStucke@rwwsh.com)  
Members: Karen Armstrong, PP, PLS  
Amanda Bain, CP  
Jennifer Frederick, CP  
Jessica Huyck, ACP  
Michelle Tyndall, ACP

We hope you enjoyed this edition of SDPA's *Reporter*. If you are interested in contributing information or articles for future issues, please contact us! We welcomes tips and suggestions so that we can continue to provide you information to help you in your daily work and for your career.

## NOMINATIONS & ELECTIONS

Chair: Cindy Smeins, ACP  
[CindySmeins@gmail.com](mailto:CindySmeins@gmail.com)  
Members: Dixie Bader, CP  
Vicki Blake, ACP  
Jessi Stucke, ACP

The nominations for the 2023-2024 Executive Committee are:

Christal Schreiber – President  
Cindy Wooten, ACP – 1<sup>st</sup> Vice President  
Sara Shelbourn – 2<sup>nd</sup> Vice President  
Rebecca Goeken – NALA Liaison  
Michelle Tyndall, ACP – Secretary  
Jennifer Pravecek, ACP – Treasurer

If you are unable to attend the Semi-Annual Meeting or will be attending virtually, please send your ballot (page 5) to Cindy Smeins, ACP, on or by October 8, 2022.

## PUBLIC RELATIONS

Chair: Vicki Blake, ACP  
[Vicki@ddLawSD.com](mailto:Vicki@ddLawSD.com)  
Members: Jennifer Frederick, CP  
Dixie Bader, CP

The committee has no new activity to report but welcomes suggestions from across the state. We'd be happy to follow up on opportunities for our association to volunteer for things that we wouldn't know about, and we'd be happy to help promote them!

## WEBSITE

Chair: Jessica Huyck, ACP  
[Jessica.Huyck@SDstate.edu](mailto:Jessica.Huyck@SDstate.edu)  
Members: Carrie Reider, CP  
Jessi Stucke, ACP

The committee is continuing to make the final touches to our website. The Member Portal went live in June. Please contact a member of the committee if you need the password.

## RECENT OPINIONS: *South Dakota Supreme Court*

**NIEMITALO v. SEIDEL**

2022 S.D. 13

*Wife's tort claims against husband not barred by divorce settlement agreement*

**STATE v. BETTELYOUN, EHRET, OSBORNE**

2022 S.D. 14

*Minors are subject to DUI prosecution in criminal court*

**MILES v. SPINK COUNTY BOARD OF ADJUSTMENT**

2022 S.D. 15

*Denial of CUP for CAFO upheld*

**BRUGGEMAN v. RAMOS**

2022 S.D. 16

*Vulnerable adult protected*

This is an action brought on behalf of a "vulnerable adult subject to abuse," approximate age of 76 at the time of this opinion. The Defendant is a former primary caregiver who was acting with power of attorney. The trial court granted relief, entered a restraining order against Defendant, ordered the Defendant to return \$296,500 to the plaintiff and also awarded attorney fees to Plaintiff Black Hills Advocate LLC. The SD Supreme Court affirmed all aspects of the lower court's ruling but denied appellate attorney fees to Black Hills Advocate LLC. The Court's decision is a 3-1-1 ruling, with opinion authored by Justice DeVaney.

Justice Kern dissented on the sole issue of appellate attorneys, agreeing with the majority on all other issues.

Chief Justice Jensen dissented because the trial court quashed a subpoena by Defendant for the alleged "vulnerable adult" to appear in court and testify. According to the dissent, "The circuit court quashed the subpoena for perhaps the most crucial witness in this case."

**STATE v. RED CLOUD**

2022 S.D. 17

*Criminal convictions affirmed*

**EHLEBRACHT v. DEUEL CNTY. PLN. COMM'N and CROWNED RIDGE WIND II, LLC**

2022 S.D. 18

*Deuel County wind farm proposal prevails*

**EHLEBRACHT v. CROWNED RIDGE WIND II, LLC and S.D. PUB. UTIL. COMM'N**

2022 S.D. 19

*Deuel County wind farm proposal prevails (SD Public Utilities Commission)*

**STATE v. AHMED**

2022 S.D. 20

*Criminal convictions affirmed*

**STATE v. DELEON**

2022 S.D. 21

*Consecutive 25-year sentences*

**GANTVOORT v. RANSCHAU**

2022 S.D. 22

*Civil claim by opposing party against divorce attorney recognized*

This is a civil action against Attorney and client (wife), arising out of the surreptitious recording of opposing party (husband) during a "tumultuous divorce" proceeding. Some 51 recordings were made via a voice-activated recording device placed in H's office. Two of the recordings were offered into evidence in the divorce trial. This appeal relates only to the claims against Attorney. The trial court granted summary judgment for Attorney on all three counts made against him -- invasion of privacy, aiding and abetting W in invasion of his privacy, and civil conspiracy with wife. The SD Supreme Court reversed and remanded on Count 2 (aiding and abetting). This ruling is unanimous with opinion authored by Justice Kern. Former Chief Justice Gilbertson participated on this case, which was orally argued on Nov. 17, 2020.

**LACROIX v. FLUKE**

2022 S.D. 29 – May 26, 2022

*Habeas relief denied on rape charges filed 16 years after the offense*

Defendant entered a *nolo contendere* plea to charges of first-degree rape and sexual contact against his daughter who was 10 at the time of the alleged offenses. Charges were filed after daughter turned 26 and made a report to law enforcement personnel. The trial court sentenced Defendant 25 years in prison, with 5 years suspended on the rape charge and entered a suspended one-year jail sentence on the sexual conduct charge.

In his first application for writ of *habeas corpus*, Defendant asserted ineffective assistance of counsel. In his amended application for *habeas corpus*, Defendant asserted this was an "unconstitutional *ex post facto*" prosecution

(because he "was charged and pled guilty to a crime that wasn't a crime at the time it was committed and was sentenced for the same"), protection by the statute of limitations, arguing "the charges were barred by the statute of limitations because the charges were filed when [the victim] was 26 years old and SDCL 22-22-1 required that the charges be filed within seven years of the offense date or prior to the time the victim turns 25 years of age." The habeas trial court denied relief, holding that the Defendant's "waiver of rights" in the plea agreement foreclosed habeas relief.

The SD Supreme Court affirmed in a unanimous ruling with opinion authored by Justice Kern. Similar to the trial court, the SD Supreme Court also applied the doctrine of waiver to Defendant's assertions and further stated that appellate review as to the statute of limitations issue was "precluded because [the issue] was not certified by the habeas court in its CPC. Our review is limited to consideration of only those issues certified for probable cause by the habeas court under SDCL 21-27-18.1."

**DUNHAM v. LAKE CTY. COMMISSION**

2022 S.D. 30 – June 2, 2022

*Reversal of decision upon remand where trial court's new decision rests on previously unraised issue of standing*

**STATE v. ALEXANDER**

2022 S.D. 31 – June 2, 2022

*Conviction for having a potentially dangerous animal reversed*

Defendant was "convicted of violating SDCL 40-1-23 for having a 'potentially dangerous animal.'" (Pit Bulls). The SD Supreme Court reversed because there was a failure of due process in the making the determination that the dogs were in fact "dangerous" as defined in SDCL 40-1-1(5). All five justices agree with the result. The Court's opinion is authored by Justice Kern. Justice Salter filed a concurring opinion, as to which Chief Justice Jensen agreed.

**NORTHLAND CAPITAL v. ROBINSON**

2022 S.D. 32 – June 8, 2022

*Enforcement of forum selection clause is non-waivable*

**PESKA PROPERTIES, INC. v. NORTHERN RENTAL CORP.**

2022 S.D. 33 – June 16, 2022

*Breach of contract action reversed*



## RECENT OPINIONS: *South Dakota Supreme Court*

### **DITTMAN v. RAPID CITY SCHOOL DISTRICT**

2022 S.D. 34 – June 16, 2022

***“Out of plan” medical expenses permitted in Work Comp setting***

Back injury on the job. The trial court’s ruling was reversed and remanded because it held that expenses incurred by an “out of plan” doctor were not compensable. The SD Supreme Court reversed and remanded, holding that the expenses were compensable as a referral under SDCL 62-4-43 and ARSD 47:03:04:05(4). This decision is unanimous with opinion authored by Justice Myren.

### **STATE v. OTOBHIALE**

2022 S.D. 35 – June 16, 2022

***Prison sentence for Facebook fraud scheme upheld***

### **NATIONWIDE AGRIBUSINESS v. FITCH**

2022 S.D. 36 – June 16, 2022

***Farm liability insurer prevails on coverage for personal injuries claim***

Insurer under a farm liability policy successfully sought a declaratory judgment that it had no duty to indemnify nor defend a “personal injury lawsuit stemming from an accident that occurred on [insureds’] farm.” The plaintiff is the grandson of the insureds and he sustained permanent injuries to his legs when he was trapped under a Gator while attempting to spray for weeds on insureds’ property. The trial court held that while coverage appears to exist under the “Recreational Vehicle Liability Coverage Endorsement,” this incident is excluded “the Gator when it [wa]s used for farming purposes.” The SD Supreme Court affirmed in a unanimous decision with opinion authored by Justice Salter. Both the trial court and the SD Supreme Court were disinclined to find coverage through the “concurrent cause doctrine,” which is addressed in this opinion. This doctrine has been addressed in previous decisions by the SD Supreme Court, but never adopted by the Court.

### **YANKTON COUNTY v. MCALLISTER**

2022 S.D. 37 – June 23, 2022

***Barratry claim against County of Yankton permitted to stand***

### **RAPID CITY JOURNAL v. CALLAHAN**

2022 S.D. 38 – June 23, 2022

***Rapid City Journal prevails in “right to records” claim by 3-2 decision***

### **DAVIS v. OTTEN & MEEMIC INSURANCE**

2022 S.D. 39 – July 14, 2022

***Non-resident UIM insurer not subject to personal jurisdiction simply because non-resident insured is injured in SD***

### **BAKER v. RAPID CITY REGIONAL HOSPITAL**

2022 S.D. 40 – July 21, 2022

***Work Comp claim for total permanent disability for PTSD and PCS denied***

### **ESTATE OF SMEENK**

2022 S.D. 41 – July 21, 2022

***Mutual wills litigation resolved***

### **MCCOY v. MCCALLUM**

2022 S.D. 42 – July 28, 2022

***Adverse ruling for lessee attempting to enforce right of first refusal***

### **HEALY RANCH v. HEALY**

2022 S.D. 43 – August 4, 2022

***Brule County real estate dispute resolved***

The situation in this appeal is described in the first two paragraphs of the Court’s opinion, as follows:

[¶1.] This case arises under the South Dakota Marketable Title Act (SDMTA) as a quiet title action by Healy Ranch, Inc., (HRI), seeking to defeat a notice of claim filed by Bret Healy to certain real property in Brule County. HRI asserts that doing so will establish for itself marketable record title to the property. In its complaint, HRI also sought costs and attorney fees, alleging that Bret had filed the notice for the purpose of slandering title to the property. Bret filed a counterclaim in which he sought to quiet title to the property in the name of Healy Ranch Partnership (HRP).

[¶2.] The circuit court granted HRI’s motion for summary judgment, voiding Bret’s notice of claim, but denied HRI’s request for attorney fees. HRI appeals this latter decision, and by notice of review, Bret appeals the circuit court’s determination that HRI possesses marketable record title to the property. We affirm, but under a different analysis than the circuit court.

This decision is unanimous with opinion authored by Justice Salter. Circuit Judge Sogn sat on this case in lieu of Chief Justice Jensen.

### **HEALY RANCH v. MINES**

2022 S.D. 44 – August 4, 2022

***Brule County real estate dispute resolved***

The situation in this appeal is described in the first

paragraph of the Court’s opinion, as follows:

[¶1.] Healy Ranch Partnership (HRP) commenced this action to quiet title to a parcel of land located in Brule County. The complaint named multiple defendants, including the current possessors of the land, the previous possessors, and another member of HRP. The individuals currently in possession of the land filed a counterclaim, alleging they had acquired title through adverse possession. The circuit court decided motions to dismiss and for summary judgment adversely to HRP, determining that the current possessors of the land acquired title by adverse possession. HRP appeals. We reverse the court’s decision to grant the motion to dismiss but affirm its summary judgment decision quieting title in favor of the current possessors.

This decision is unanimous with opinion authored by Justice Salter.

### **CHRISTENSON v. CROWNED RIDGE WIND, LLC I**

2022 S.D. 45 – August 4, 2022

***NESD wind energy farm approved***

### **CHRISTENSON v. CROWNED RIDGE WIND, LLC II**

2022 S.D. 46 – August 4, 2022

***NESD wind energy farm approved***

### **FARMER v. FARMER AND FIRST WESTERN v. LAKOTA LAKE CAMP, LLC & FARMER**

2022 S.D. 47 – August 11, 2022

***Post-divorce squabble addressed***

### **MACH V. CONNORS**

2022 S.D. 48 – August 11, 2022

***Reversible error to dismiss claims involving members of LLC***

### **ALTHOFF V. PRO-TEC ROOFING, INC.**

2022 S.D. 49 – August 11, 2022

***Tort claim against employer denied***

### **DT-TRAK CONSULTING, INC. V. KOLDA**

2022 S.D. 50 – August 18, 2022

***Former employee prevails in dispute over non-compete agreement***



# RECENT OPINIONS: *South Dakota Supreme Court*

## DEITER v. XL SPECIALTY INS. CO.

2022 S.D. 51 – August 25, 2022

### *Certified questions from federal judge (SD Division of Insurance matter)*

This proceeding arose in the SD Supreme Court with the certification of two questions from SD Federal District Court, Honorable Roberto A. Lange. The underlying efforts in this litigation involve the SD Division of Insurance’s effort, as a “liquidator,” to deal with an insolvent insurer.

This particular lawsuit was filed in state court and removed to federal court. The Federal Court certified two questions to the SD Supreme Court. This decision answers one question but declines to answer the 2nd question because it would involve fact-finding. The gist of the questions and the result in the SD Supreme Court may be ascertained by reading the first and last two paragraphs of the Court’s opinion:

[¶1.] This matter is before us as two certified questions of law from the United States District Court for the District of South Dakota, asking whether SDCL 58-29B-56 provides a state insurance liquidator an additional 180 days to provide notice of a claim under a claims-made professional liability policy. We hold that it does.

[¶32.] While we may “answer questions of law certified to [this Court] by . . . the United States district court,” we cannot answer questions of fact. SDCL 15-24A-1. We therefore cannot extend our authority to the second portion of the certified question, which asks whether the Liquidator’s November 1, 2018, notice of claim was timely and triggered coverage under the policy. Beyond this, the parties’ submissions suggest that questions remain as to whether additional, more detailed allegations described by the Liquidator in April and October of 2019 would relate back to the November 1, 2018, notice because they describe “interrelated wrongful acts.”

[¶33.] We answer the first sentence of the certified question in the affirmative and decline to address the second part of the question.

The Court’s decision is unanimous (5-0), with opinion authored by Justice Salter. Circuit Judge Craig Pfeifle sat on this case in lieu of Justice DeVaney.

## RIES V. JM CUSTOM HOMES, LLC

2022 S.D. 52 – August 25, 2022

### *Work Comp exclusivity*

Employee of Sub-contractor brought negligence claim in state court directly against the General Contractor. The trial court granted summary judgment for General Contractor on the basis of statutory immunity, as provided by SD’s work comp provision, SDCL 62-3-10. The SD Supreme Court affirmed in a 4-1 ruling. The Court’s opinion is authored by Justice Myren. Chief Justice Jensen filed a dissenting opinion, stating:

[Employer] failed to make the necessary showing that it is an ‘employer’ entitled to immunity under the exclusive remedy provisions of the workers’ compensation statutes... [Employer] failed to present any facts in support of its statement of material facts showing that it paid [Plaintiff] for any services he performed or that it is an employer entitled to claim immunity as provided in the exclusive remedy statute in SDCL 62-3-2. Instead, [Employer] presented facts showing that [Plaintiff’s Employer] was a subcontractor of [Employer] and that “[Plaintiff] was an employee of [subcontractor].”

## HICKEY LIVING TRUST

2022 S.D. 53 – August 25, 2022

### *Trust amendment litigation*

This litigation evolved over an effort to amend a trust, with facts and background not well-suited for a simple description. In lieu thereof, I will reproduce the opening paragraph of the Court’s opinion which describes the litigation, the result at the trial level and the result on appeal, as follows:

[¶1.] Bradley Hickey filed a petition challenging the validity of an amendment to the Shirley A. Hickey Trust (Trust). Nearly a year later, Kristina Lippert and Darren Hickey filed a motion to intervene in the petition. The circuit court denied the motion to intervene, finding that the motion was untimely under SDCL 15-6-24(a) because Kristina and Darren had failed to timely challenge the validity of the Trust as required by SDCL 55-4-57(a).

Kristina and Darren filed a motion for clarification and reconsideration, requesting the court to reconsider the denial of the motion to intervene and to clarify their ability to participate in discovery and at trial. The circuit court denied the motion for reconsideration and determined Kristina and Darren could not participate in the trial through the presentation of evidence and the examination of witnesses. Kristina and Darren appeal the denial of their motion to intervene and the denial of their motion for clarification and reconsideration. We reverse, vacate a portion of the order denying the motion for clarification and reconsideration, and remand for further proceedings.

This decision is unanimous with opinion authored by Chief Justice Jensen.

*Decisions are available [here](#).*

*The USDLaw list serve is designed to facilitate discussion of matters of interest to South Dakota lawyers, law students, judges and others as may be permitted by discretion of the moderator, and is made available through the University of South Dakota (USD). Professor Roger Baron, Professor Emeritus, University of South Dakota School of Law, launched USDLaw in 1997 and continues to serve as operator and moderator. Any views expressed are his personal views which do not reflect the views of USD. If you would like to subscribe, email the moderator [here](#).*

# Vicki's Lasagna

by Vicki Blake, ACP



## Ingredients

- 2 lbs. ground beef
- 2 envelopes dry onion soup mix
- 2 lg cans of tomato sauce
- 1 lg container cottage cheese (small curd)
- 1 pkg ready-to-bake lasagna noodles
- 4 c. mozzarella cheese

## Instructions

Brown the ground beef and drain well; add the onion soup mix and the tomato sauce. Let simmer for half an hour or so. Add container of cottage cheese directly into the sauce and stir well. Spray 13 x 9 pan; start with a half a cup or so of the sauce on the bottom of the pan. Layer the uncooked lasagna noodles, then the sauce, then the mozzarella cheese, and repeat for three layers ending with mozzarella cheese on the top. This can be refrigerated overnight and baked at your convenience or baked immediately. Bake for an hour at 350-degrees until bubbly and browned on the top. Let sit for about 15 minutes to set up before serving. Serve with garlic toast and a tossed salad.

## SUBMISSIONS

The Reporter is published quarterly. Submissions are due to [ReporterSubmissions@gmail.com](mailto:ReporterSubmissions@gmail.com) by:

- January 31 ..... March
- July 31 ..... September
- April 30 ..... June
- October 31 ..... December

## ADVERTISING

Rates are per issue and include sales tax:

- Full Page.....\$53.25
- Half Page.....\$31.95
- Quarter Page.....\$21.30
- Business Card.....\$15.98

Inquiries: Jessi N. Stucke, ACP  
[@ JStucke@rwwsh.com](mailto:JStucke@rwwsh.com)

# RECENT OPINIONS: 8<sup>th</sup> Circuit U.S. Court of Appeals

The following unofficial case summaries were prepared by the clerk's office and/or the USD ListServe as a courtesy. They are not part of the court's opinion.

## UNITED STATES v. RICKY BAGOLA USCA 21-1916 D.S.D. Western Division

**Criminal case - Sentencing.** The district court did not err in applying a two-level enhancement for obstruction of justice under Guidelines Sec. 3C1.1 based on defendant's attempt to influence a witness; nor did the court plainly err in imposing a career offender enhancement under Guidelines Sec. 4B1.1 based on defendant's Wyoming conviction for possession with intent to deliver marijuana; while the district court erred in stating that defendant had been present in the victim's trailer before he began shooting into it, defendant cannot show the court's statement affected his substantial rights, as whether defendant entered the trailer had no impact on the district court's explanation of its sentencing decision. Opinion available [here](#).

## UNITED STATES v. BRYAN HOWARD USCA 20-3507 D.S.D. Central Division

A three-judge panel handed down a unique decision. The Court's decision is delivered by a per curiam opinion, but each of the three judges provided a separate concurring opinion. (I don't believe I have ever seen this sort of configuration. I have seen separate opinions, dissenting or concurring, attached to a per curiam ruling, but not a separate opinion by each of the entire panel attached thereto.)

The result of this decision is that this criminal defendant's appeal is dismissed because, "His plea agreement contained an appeal waiver in which he waived 'all defenses and his right to appeal any non-jurisdictional issues.'" Notably, this "waiver" did not specifically address an appeal relating to an alleged improper upward deviation from the sentencing guidelines – which is what happened here. Nonetheless the appeal is dismissed on the basis of the waiver contained in the plea bargain.

**Criminal case - Criminal law.** Defendant's sentencing issue falls within the scope of his valid and enforceable appeal waiver; enforcing the waiver would not result in a miscarriage of justice; under this court's precedents, any sentence within the statutory range is not appeal under the illegal-sentence exception, and an allegation that the district court misapplied the Guidelines or abused his or her discretion is not subject to appeal in the face of a valid appeal waiver; the appeal is dismissed. Opinion available [here](#).

## UNITED STATES v. ZACHARIAH POOR BEAR USCA 20-2793 D.S.D. Western Division

**Criminal Case - Conviction.** Poor Bear argues his due process rights were violated by introduction

of testimony by T.H., the juvenile mother of the murder victim, that conflicted with the federal juvenile information pending against T.H. charging her with aiding and abetting the murder. T.H.'s testimony implicated only Poor Bear. No due process violation occurred, as the government explained the discrepancies in the evidence and Poor Bear had the opportunity to cross-examine T.H. The government's theory and the evidence presented did not constitute a material variance from the allegations in the indictment, as Poor Bear had notice of the charges and did not suffer prejudice. The combined effect of the alleged errors did not result in a due process violation. Opinion available [here](#).

## CHAD DRESSEN v. UNITED STATES USCA 20-2846 D.S.D. Southern Division

**Prisoner case - Habeas.** In this Section 2255 proceeding, the district court did not err in determining that Dressen had not asked his attorney to appeal and that counsel was not ineffective for not filing an appeal; the district court's factual finding that Dressen did not direct counsel to file an appeal was based on a reasonable credibility determination, and the court sees no clear error. Opinion available [here](#).

## UNITED STATES v. DUSTIN RED LEGS USCA 20-3506 D.S.D. Central Division

**Criminal case - Criminal law.** Defendant challenges the district court's decision to admit testimony of an expert witness for the government who compared finger and knuckle creases in sexually explicit photos with photos of defendant's fingers and knuckles to give an opinion as to the identity of the person in the photos; the court need not decide whether the district court abused its discretion in admitting the testimony because any error in admitting the evidence was harmless in light of the overwhelming evidence of defendant's guilt. Opinion available [here](#).

## UNITED STATES v. CLARENCE YELLOW HAWK USCA 20-2682 D.S.D. Western Division

**Criminal case - Criminal law.** The self-defense instruction given in the case adequately allowed defendant to argue the mistake-of-fact defense he advanced at trial and ensure the jury properly considered it, and he was not entitled to his proposed mistake-of-fact instruction; the district court did not abuse its discretion by permitting the government to argue in its closing argument

that the victim's killing may have resulted from her incursion into defendant's drug territory; the statements were only a brief mention during the government's comments concerning several possible motives for the killing, and the district court gave a cautionary instruction that lawyer's arguments are not evidence and that the jurors should trust their own recollections. Opinion available [here](#).

## UNITED STATES v. BENTON ROWLAND USCA 21-1815 D.S.D. Western Division

**Criminal case - Criminal law.** Defendant's guilty plea was knowing and voluntary and he was advised, contrary to his later assertions, that his offense carried a maximum term of up to life. Opinion available [here](#).

## UNITED STATES v. TYSON KEEPSEAGLE USCA 20-3626 D.S.D. Northern Division

**Criminal case - Criminal law.** After alleging defendant abused a child victim, the government put on evidence of three separate incidents of abuse under that count; under South Dakota law, the government should have either elected one of the incidents or had the court give a unanimity instruction telling the jury they must unanimously agree that defendant committed all acts offered into evidence; the failure to give the unanimity instruction was plain error, and defendant's conviction on that count must be vacated; the evidence was sufficient on the remaining two counts to support defendant's convictions for aggravated child abuse; the district court did not abuse its discretion in denying defendant's motion to continue the trial date after he received information on the eve of trial that one of the government's main witnesses had been accused of child abuse; defendant had the information from his investigator one month prior to trial, was well prepared to address it and failed to identify what admissible evidence he would have entered had the continuance request been granted. Opinion available [here](#).

## UNITED STATES v. MARCIN GARBACZ USCA 20-3559 D.S.D. Western Division

**Criminal case - Criminal law.** Defendant's credit-union deposits of stolen cash furthered the scheme, and the district court did not plainly err in failing to sua sponte overturn the jury's finding that defendant's cash deposits furthered the



scheme; however, the district court did plainly err in upholding the wire fraud convictions on three counts which involved electronic transfer of funds rather than cash deposits, as the transfers occurred after the cash deposits, and these transfers did not further a fraudulent scheme; there was sufficient evidence to show that the cash deposited in the credit union accounts was stolen; defendant's conviction for transporting stolen money was supported by sufficient evidence such that a reasonable jury could find that the money transported was stolen money and not defendant's legitimate income; defendant's convictions for money laundering were supported by sufficient evidence, as was his conviction for filing a false tax return; two statutes were properly forfeited as the preponderance of the evidence showed they were purchased with funds traceable to defendant's wire fraud; restitution order affirmed; while the court has reversed defendant's convictions for wire fraud on three counts, a remand for resentencing is not necessary as the sentences for those counts were concurrent to defendant's other counts of conviction; even without the three counts, it was not clear error for the court to find that defendant used sophisticated means to commit the crimes. Opinion available [here](#).

**UNITED STATES v. FERRIS VALENTINE**  
USCA 21-2261  
D.S.D. Southern Division

**Criminal case - Criminal law and sentencing.** Anders case. The evidence was sufficient to support defendant's armed bank robbery convictions; the sentence imposed was substantively reasonable; defendant had reasonable notice of challenged sentencing enhancements. Opinion available [here](#).

**UNITED STATES v. SAMUEL WHITE HORSE**  
USCA 21-2871 – June 3, 2022  
D.S.D. Central Division

**Criminal case - Criminal law.** The jury instruction properly stated the elements of the offense of tampering with evidence. Opinion available [here](#).

**UNITED STATES v. ROBERT O'ROURKE**  
USCA 21-2061 – June 13, 2022  
D.S.D. Western Division

**Criminal case - Criminal law.** Defendant knowingly and voluntarily waived his right to appeal a sentence within his advisory guidelines range, which this sentence was, and the appeal is dismissed. Opinion available [here](#).

**UNITED STATES v. RICHARD BEAR RUNNER**  
USCA 21-3382 – June 13, 2022  
D.S.D. Western Division

**Criminal case - Sentencing.** The sentence imposed upon the fifth revocation of defendant's supervised release was a within-guidelines-range sentence and was not substantively unreasonable. Opinion available [here](#).

**NEIL BERGESON, JR. v. STATE OF SOUTH DAKOTA**  
USCA 22-1318 – June 13, 2022  
D.S.D. Northern Division

This decision upholds the dismissal of a civil rights claim filed against the State of South Dakota, the South Dakota State Bar, and various state and tribal officials.

**Civil case.** Dismissal affirmed without comment. Opinion available [here](#).

**UNITED STATES v. ROBERT DOWTY, SR.**  
USCA 21-3005 – June 14, 2022  
D.S.D. Western Division

**Criminal case - Criminal law and sentencing.** In this prosecution for aggravated sexual abuse of a minor, the district court did not err in admitting testimony concerning prior incidents of molestation of other girls; the district court did not err in refusing to permit defendant to ask the victim's grandmother whether she had told the treating physician that she did not believe the assault had occurred because this testimony had no bearing on the victim's character for truthfulness and it was nothing more than a conclusory statement made without any knowledge of the incident or the details of the victim's allegations; there is no indication that defendant's substantial rights were affected by a single incident of a person in the gallery shaking his or her head during defendant's cross-examination; the district court promptly addressed the matter and defendant raised no questions or objections at the time of the incident; the evidence was more than enough evidence to support defendant's conviction; the district court did not err in applying an enhancement under Guidelines Sec. 4B1.5(b)(1) for a pattern of activity; the victim testified that defendant had touched her several years earlier, and that evidence was sufficient to support application of the enhancement. Opinion available [here](#).

**UNITED STATES v. GREGORY HARRISON**  
USCA 21-1962 – June 15, 2022  
D.S.D. Western Division

The first paragraph of the opinion states:

Gregory Harrison was charged with one count of conspiracy to commit bank fraud, eleven counts of bank fraud, and four counts of aggravated identity theft. See 18 U.S.C. §§ 1344, 1349, and 1028A(a)(1). He entered into a non-binding Plea Agreement in which he pleaded guilty to the conspiracy count and two counts of aggravated identity theft. After a change-of-plea hearing, a magistrate judge found that the plea was knowing and voluntary. The district court adopted those findings, accepted the guilty plea, adjudged Harrison guilty of the offenses, and sentenced him to 71 months imprisonment on the conspiracy count and 24 months imprisonment on each aggravated identity theft count, with the three sentences to be served consecutively, for a total of 119 months imprisonment. Harrison appeals, challenging (i) the court's compliance with Rule 11 of the Federal Rules of Criminal Procedure and (ii) the substantive reasonableness of his sentence. We affirm.

Footnote 2 of the opinion is interesting:

At sentencing, Harrison's counsel, an Assistant Federal Public Defender, said that he and the government "did more negotiation in this case than I recall doing in almost any other since coming to the office where I work now."

**Criminal case - Criminal law and sentencing.** In a challenge to his guilty plea, defendant has failed to meet his burden to show that the alleged Rule 11 plain error affected his substantial rights; the court provided ample explanation for its decision to impose an upward variance, and the district court did not impose a substantively unreasonable sentence. Opinion available [here](#).

**UNITED STATES v. JONATHAN BLACKSMITH**  
USCA 21-2497 – July 21, 2022  
D.S.D. Western Division

This case took place on the Pine Ridge Indian Reservation involving the Bureau of Indian Affairs ("BIA") Drug Task Force and the Oglala Sioux Tribe Department of Public Safety ("OSTDPS"). The 8<sup>th</sup> Circuit upheld the Trial Court's denial of motion to suppress evidence.

**Criminal case - Criminal law.** The arresting officers' decision to impound defendant's vehicle was guided by policy and was not done simply on the suspicion of criminal activity; the subsequent search of the vehicle was also performed according to established policy and was a valid inventory search. Opinion available [here](#).

**DANIEL GOMEZ v. STATE OF SOUTH DAKOTA**  
USCA 22-1470 – July 22, 2022  
D.S.D. Southern Division

Inmate sued the State of South Dakota and various county officials in Minnehaha County. Trial court (Honorable Roberto Lange, sitting in the Southern Division) granted summary judgment for all Defendants. The 8th Circuit affirmed. The entire court order is one paragraph, as follows:

South Dakota inmate Daniel Gomez appeals following the district court's adverse grant of summary judgment in his 42 U.S.C. § 1983 action.

After careful review of the record and the parties' arguments on appeal, we agree with the reasoning of the district court. Accordingly, we affirm and deny Gomez's pending motions as moot. See 8<sup>th</sup> Cir. R. 47B.

**Prisoner case - Prisoner civil rights.** Order granting defendants summary judgment affirmed without comment. Opinion available [here](#).

**KRISTI NOEM v. DEB HAALAND**  
USCA 21-2542 – July 27, 2022  
D.S.D. Central Division

This decision addresses the appeal by the State of South Dakota, supported by amici briefing filed by 16 additional states (Kansas, Alabama, Arizona, Arkansas, Indiana, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, Texas, & West Virginia) in connection with the federal government's (U.S. Secretary of Interior, National Park Service) decision denying a fireworks permit for the 4<sup>th</sup> of July celebration at Mount Rushmore.

Fireworks have been denied consistently for some 12 years, with the exception of 2020 (for which President Trump attended the celebration). The State of South Dakota was denied permission in 2021. Thereafter, the State of South Dakota instituted this action seeking injunctive and declaratory relief. The trial court denied relief. This decision vacates the trial court's ruling (because it was moot when rendered) and dismisses this appeal. In so doing, the 8<sup>th</sup> Circuit states:

The bottom line is that we cannot change what happened last year, and South Dakota has not demonstrated that deciding this otherwise moot case will impact any future permitting decision. Any controversy has, in other words, fizzled out.

In support of the decision by the National Parks Service, the Cheyenne River Sioux Tribe intervened as a party Defendant/Appellee.

**Civil case.** The Park Service denied the State of South Dakota's application for a permit for a fireworks display at Mount Rushmore on July 4, 2021, citing COVID risks, concerns about tribal relations,

the effects on other visitors, on-going construction at the monument site and water-contamination and wildfire risks. The State sued the Park Service alleging the decision was arbitrary and capricious and that the permit scheme violated the nondelegation doctrine of Article I of the Constitution. It sought an injunction ordering the Park Service to issue the permit. The district court denied the request for injunctive relief and later, after the Fourth of July, converted the order to final judgment. The State appeals. The matter is moot - the court cannot change what happened in 2021, and South Dakota has not demonstrated that deciding this otherwise moot case will impact any future permitting decision; South Dakota lacked standing to pursue its claim concerning the nondelegation doctrine as the claim is not redressable. Opinion available [here](#).

**MARY TRIPLET v. MENARD, INC.**  
USCA 21-3157 – July 29, 2022  
D.S.D. Northern Division

In this case, the plaintiff filed suit for employment discrimination and various state law tort claims. Defendant filed a motion to compel arbitration which the trial court denied. The 8<sup>th</sup> Circuit reversed and remanded:

The district court did not decide whether [Plaintiff] was "entirely without understanding" at the time she signed the arbitration agreement. Nor is the record developed enough for us to make that finding. We remand the case for a summary trial to determine whether the arbitration agreement is enforceable under South Dakota law. See *Neb. Mach. Co. v. Cargotec Sols., LLC*, 762 F.3d 737, 744 (8<sup>th</sup> Cir. 2014) (remanding a motion to compel arbitration "for the district court to hold a non jury trial, make findings of fact, and apply the appropriate [law] in light of those facts").

**Civil case - Arbitration.** Plaintiffs sued defendant after plaintiff Maggie Triplett was terminated, alleging employment discrimination in violation of the ADA, as well as several state law torts. Maggie's employment agreement contained an arbitration clause, and defendant moved to compel arbitration and stay the proceedings. The district court found the arbitration agreement was unenforceable as a matter of equity and that the state law claims were outside the scope of arbitration. Defendants appeal. While the arbitration agreement is facially valid under South Dakota law, it may be revocable under the void contract defense if Maggie, who is under a conservatorship based on her mental competency, was without understanding when she signed the agreement. The district court did not decide whether Maggie was entirely without understanding when she signed, and the decision is reversed and the case remanded for further findings on that question. Opinion available [here](#).

**JANE DOE v. BECKY GUFFIN**  
USCA 21-3269 – August 1, 2022  
D.S.D. Northern Division

The dispute in this case and the result on appeal is described in the first and last paragraphs of the opinion as follows:

This case involves allegations that Carrie Weisenburger restrained, secluded, and abused her students as a teacher in a special education classroom. The students' parents sued Weisenburger, along with Aberdeen School District ("ASD") and a host of its administrative officials, on their children's behalf under 42 U.S.C. § 1983. The district court denied Weisenburger's assertion of qualified immunity from claims for infringing the Fourth and Fourteenth Amendment rights of three students, identified as A.A., B.B., and C.C. We affirm in part and reverse in part.

\* \* \*

We affirm the denial of qualified immunity for Weisenburger on the students' Fourth Amendment claims to the extent held above. In all other respects, we reverse the denial of qualified immunity for Weisenburger and the remaining ASD officials. This matter is remanded for further proceedings consistent with this opinion.

**Civil case - Civil rights.** Plaintiffs alleged defendant Weisenburger restrained, secluded and abused three of her special education students; Weisenburger moved for summary judgment based on qualified immunity from claims for infringing the Fourth and Fourteenth Amendment rights of the three students, and the district court denied the motion; Weisenburger appeals. Secluding special education students in a small room and calm-down corner constituted seizures for Fourth Amendment purposes; grabbing a student and pushing him into a swimming pool and pinning a student down to strip off his clothes and force on a bathing suit also rose to the level of seizures; Weisenburger's actions were a substantial departure from accepted professional judgment, practice, or standards and the seizures were unreasonable and a violation of the students' Fourth Amendment rights; these rights were clearly established, and defendant Weisenburger was not entitled qualified immunity on four different violations alleged by the plaintiffs; Weisenburger was entitled to qualified immunity on the students' substantive due process claims as their unreasonable seizure claims must rise or fall under the Fourth Amendment; without a viable substantive due process claim against Weisenburger, supervisory liability claims founded on the same conduct necessarily fail. Opinion available [here](#).

**UNITED STATES v. STANLEY SHILY, SR.**  
USCA 21-3716 – August 1, 2022  
D.S.D. Northern Division

**Criminal case - Criminal law.** The evidence was sufficient to support defendant's conviction for conspiring to distribute methamphetamine. Opinion available [here](#).

**CLIFTON ODIE v. UNITED STATES**  
USCA 21-2652 – August 2, 2022  
D.S.D. Southern Division

**Prisoner case - Habeas.** The district court did not err in determining Odie's Section 2255 petition was untimely and that there was no basis for equitable tolling of the one-year limitations period of Sec. 2255(f). Opinion available [here](#).

**UNITED STATES v. TIFFANY BERNARD**  
USCA 21-3412  
USCA 21-3417  
USCA 21-3874  
August 2, 2022  
D.S.D. Northern Division

The opening paragraph of this opinion states:

The district court had strong views about what charges fit Tiffany Bernard's crimes. It rejected both her plea agreement and a motion by the government to dismiss four of the five counts in the indictment. The latter ruling went too far, which is why we reverse and remand with instructions to grant the government's motion.

**Criminal case - Criminal law.**

The court had appellate jurisdiction over an order denying the government's motion to dismiss charges under the collateral-order doctrine; the district court erred in denying the government's motion to dismiss some of the charges based on its disagreement as to what penalty the defendant ought to face; while the factors the court listed as to why it thought defendant was getting off too easy may be important factors at sentencing, they are not reasons to interfere with the government's charging decisions, no matter how much the district court may disagree with them; reversed and remanded with instructions to grant the government's motion to dismiss four counts of the five counts in the matter. Opinion available [here](#).

**UNITED STATES v. FRANK SANCHEZ**  
USCA 21-3138 – August 3, 2022  
D.S.D. Southern Division

**Criminal case - Criminal law and Sentencing.** The government sufficiently proved that the crime

in question occurred in Indian Country on the Yankton Sioux Reservation; no error in admitting prior acts of child molestation and sexual assault under Rules 413 and 414 as the evidence was highly probative of defendant's propensity to molest young girls; even though one of the incidents occurred more than 35 years ago, it was not an abuse of the district court's discretion to admit the evidence as it bore a striking resemblance to the charged conduct and this court has consistently rejected a time-limit on prior child molestation evidence; the district court limited any prejudice by giving limiting instructions; under this court's binding precedents, a district court may consider acquitted conduct at sentencing without violating a defendant's Fifth and Sixth Amendment rights. Opinion available [here](#).

**UNITED STATES v. MICHAEL LEBEAU**  
USCA 22-1091 – August 9, 2022  
D.S.D. Western Division

**Criminal case - Sentencing.** The district court did not err in applying a two-level enhancement under Guidelines Sec. 2D1.1(b)(1) for possession of a firearm in connection with defendant's drug offense. Opinion available [here](#).

**UNITED STATES v. NICKOLAS LAMM**  
USCA 22-1535 – August 15, 2022  
D.S.D. Southern Division

**Criminal case - Criminal law. Anders case.** Defendant's appeal from his sentence falls within the scope of his knowing and voluntary appeal waiver, and the appeal is dismissed. Opinion available [here](#).

**UNITED STATES v. CHRISTOPHER GOLDEN**  
USCA 21-2684 – August 17, 2022  
D.S.D. Western Division

**Criminal case - Criminal law and Sentencing.** The evidence was sufficient to support defendant's convictions for receipt and possession of child pornography; even if the district court erred in imposing sentencing enhancements under Guidelines Sec. 2G2.2(b)(4)(B) for possession of materials depicting sexual exploitation of a toddler or under Guidelines Sec. 2G2.2(B)(7)(C) for possessing between 300 and 600 images, the error was harmless as the court stated it would impose the same 97-month sentence without the enhancements. Opinion available [here](#).

**BRET HEALY v. ALBERT FOX**  
USCA 21-3773 – August 22, 2022  
D.S.D. Central Division

The 8<sup>th</sup> Circuit issued its decision affirming the lower court's dismissal of a RICO action. The dismissal was based upon *res judicata*, in connection with similar litigation filed by the plaintiff in state court. In fact, the most recent decision in state court between these parties was the decision handed down by the SD Supreme Court in a decision in the Healy Farms litigation 18 days prior to this decision. Although the RICO claim is different than the claims asserted in state court, the 8<sup>th</sup> Circuit applies the "common nucleus of operative fact" test and holds that dismissal upon the basis of *res judicata* is appropriate:

True, the theories of liability that Bret asserts in this action are different from those that he asserted in Healy I. And the two actions do not require absolutely identical proof. But South Dakota law requires only that the actions seek to redress the same wrong, not that they involve the same legal theories. *Healy II*, 2022 WL 3097830, at \*9; *Farmer*, 781 N.W.2d at 660. South Dakota courts also do not require entirely the same proof in both actions. See *Ruple*, 714 F.2d at 861-62 (noting that "all of the theories that a dismissed employee can bring . . . to challenge the dismissal should be raised and decided in the same lawsuit," which would include theories that do not require identical proof). Though Bret focuses his federal complaint on the stock issuance, the underlying facts in both actions are sufficiently similar to render the causes of action in the two actions identical for purposes of *res judicata* under South Dakota law.

**Civil Case - RICO.** The district court did not err in dismissing Bret Healy's RICO action as barred by *res judicata*. Under South Dakota law, his RICO action was the same cause of action as a civil case he had previously litigated in the South Dakota courts, as the actions both arose out of the same nucleus of operative fact and sought to address the same wrong, albeit under different theories of liability. Bret had a full and fair opportunity to litigate his claim in the state court case. Opinion available [here](#).

Opinions are posted by the 8<sup>th</sup> Circuit between 10:00-11:00 a.m. [here](#).

The USDLaw list serve is designed to facilitate discussion of matters of interest to South Dakota lawyers, law students, judges and others as may be permitted by discretion of the moderator, and is made available through the University of South Dakota (USD). Professor Roger Baron, Professor Emeritus, University of South Dakota School of Law, launched USDLaw in 1997 and continues to serve as operator and moderator. Any views expressed are his personal views which do not reflect the views of USD. If you would like to subscribe, email the moderator [here](#).

# WORD FIND: *U.S. Constitution*

O Y T K M V J I V F T E F K V E K P Q M Z Q D C  
 P M Z D Y M N O I N U R F F D A E U O T N Z Q Z  
 L A N Z S W U M Y E B Y A C P H Q B D J E J O I  
 X B P X O H X G S Z R C H N A B C M H J Y K Z X  
 S E V L E S R U O S J X X G Q J Q R A L D Q W U  
 I D T C O N S T I T U T I O N U X O J I F S K S  
 I G X U C M N Y I R H B N C I A I F B Y G J F H  
 Z S W W E O C H Y Y R C S F E Q M L V N D K N K  
 E E C Q U L Y P N G S H P R L T I E I J H V C E  
 V S A K U T B D L E E R C Z L Q O S R T K X B W  
 H G N M Z N E A T J K T P Z W T S M D I Y X J E  
 S A T E B N B N N W U Q V G X E N N O P C Y M L  
 M Z H V F Q E L B E D S A G L H E I O R K A L F  
 E H S J T E X X R I I W T B P S L S Z V P H O A  
 M J U R T P D B I L X L M I T S T P K F L G I R  
 G D Y Y I F O I V M L P A A C E W W F T D V R E  
 Q W U S Y G Q Y E Q I G B N R E S T R C K U R H  
 T R S Y R A H L G G U L S I I A I I Z A F Q H G  
 P V C D X D P T U H I J T P U R S U I T X Z P Q  
 E A E A E O F V S S R Y F Y N P W C Z Y Q E A D  
 H N X E E W H L H I Y T N M R X J A Z V R S X S  
 F C L P K M P X N W X E F S X R E I T U T R O D  
 I R X B L D X Y T R E B I L E N S U R E B N G G  
 I Z N K U F W T H Q Y M O R D A I N B G S C B N

UNION	WELFARE	BLESSINGS	DEFENSE
POSTERITY	TRANQUILITY	RIGHTS	AMERICA
ORDAIN	PEOPLE	INALIENABLE	PROMOTE
FORM	LIBERTY	OURSELVES	ENSURE
CONSTITUTION	ESTABLISH	JUSTICE	PURSUIT



## Apparel & Accessories!

This is a pop-up store just for SDPA, and your order will ship directly to you!

SDPA will earn a portion of the proceeds, which is all the more reason to promote SDPA and our profession!

Here are a few examples -- we have 14 Women's styles, 6 Men's styles, and 11 different accessories available!



LIMITED TIME ONLY!



## 2022 UPCOMING Live Webinars

Webinars are a fast, convenient, and affordable way to receive the continuing education you need.

[VIEW ALL WEBINARS](#)



## Q&A

If you would like to submit a question to our members on a legal or administrative issue, please email it to the President. The President will email your question to the Membership and ask that members respond directly to you. If anyone else would like to get a copy of any information received, please contact the person who posed the question. Q&A emails go to all members. You can opt out or opt in again at any time by emailing the President.



[CLICK HERE for COMPLETE INFORMATION](#)

NALA released new editions of the CP study materials in 2018 to correspond with the current testing format.

Part 1	KNOWLEDGE Exam
Available year-round at PSI testing centers. Contact your chosen testing center for availability.	

- Administered on-demand, year-round at testing centers with preliminary results upon completion.
- 120\* multiple-choice questions covering the topics listed in Appendix A online. *Only 100 questions will be scored.*
- Subjects addressed:
  - Corporate/Commercial Law
  - Criminal Law & Procedure
  - Estate Planning & Probate
  - Real Estate & Property
  - Professional & Ethical Responsibility
  - U.S. Legal System
  - Civil Litigation
  - Contract Law
  - Torts

Candidates must successfully complete the Knowledge Exam in order to be eligible to take the Skills Exam.

- Candidates must wait at least two weeks after passing the Knowledge Exam to take the Skills Exam.

Part 2	SKILLS Exam
Candidates are eligible two weeks after passing the Knowledge Exam.	

- Administered four times each year: February, April, July, and October.
- Written assignment (see Appendix A online).
- Written submissions will be evaluated according to the following criteria:

**WRITING**

- Grammar, Spelling & Punctuation
- Clarity of Expression

**CRITICAL THINKING**

- Reading Comprehension
- Analysis of Information
- Decision Making

**Re-Testing**

Candidates who do not pass the Knowledge Exam must wait 90 days before re-taking it. Candidates must pass each exam within the first three attempts at each exam during a 365-day period or wait 365 days before trying again.



[CLICK HERE for COMPLETE INFORMATION](#)

ACP certification is available for Certified Paralegals and is focused on mastery of any of the following law specialties.

Courses are self-study, web-based modules. The courses include presentations(s), detailed exercises, and a final assessment exam. Courses average 20 hours to complete.

Self-Study / Web-Based
Online course module, detailed exercises and assessment.

NALA has converted some ACP courses to its new online platform. The following focus areas are available at this time:

**BUSINESS ORGANIZATIONS:** Incorporated Entities

**CRIMINAL LITIGATION**

**DISCOVERY**

**E-DISCOVERY**

**FAMILY LAW:**

- Adoption & Assisted Reproduction
- Child Custody, Child Support, Visitation
- Dissolution Case Management
- Division of Property & Spousal Support

**LAND USE**

**REAL ESTATE PRINCIPLES**

**TRIAL PRACTICE**

**Returning Soon:**

**BUSINESS ORGANIZATIONS:** Non-Corporate Entities

**COMMERCIAL BANKRUPTCY**

**CONTRACTS MANAGEMENT**

**ESTATE PLANNING**

**PERSONAL INJURY**

- Automobile Accidents • Entity Medical Liability
- Individual Medical Liability • Intentional Torts
- Premises Liability • Product Liability
- Worker's Compensation • Wrongful Death

**TRADEMARKS**