

'The people insist on remaining informed...'

Declaration of policy,
West Virginia Freedom of Information Act

2016 EDITION

Reporter's Field Guide:

**Public meetings,
public records
and other law
journalists
in West Virginia
must know**



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About the Reporter's Field Guide

This project arose from a Freedom of Information workshop at the August 2015 West Virginia Press Association convention. Attendees were asked what law-related resources the association might provide, and a request was made to resurrect WVPA's "Journalist's Survival Kit," a field guide to journalism-related law last published in 2003.

An ad hoc committee was formed to plan the new publication. The group decided that the new field guide will be available in multiple formats, both electronic and printed. The first printed booklet is being distributed at WVPA's 2016 convention; at the same time, an electronic version with some additional content and hyperlinks is being made available for laptops and tablets. In the near future, we hope to release a version optimized for smartphone use. The group also decided that this is to be a "living document," designed to be easily and quickly updated as the law changes or new content becomes available.

This publication is not meant to provide legal advice or analysis, which must come from lawyers. Rather, it is a compilation of law and law-related resources to which journalists in West Virginia might need quick access. It is important to note that obtaining a lawyer's advice on important legal issues is desirable if time and resources permit.

You can make the field guide better. If you see errors or omissions, or have suggestions for improvements, please inform WVPA by sending an email to fieldguide@wvpress.org.

Committee members: John Dahlia, Michael Johnson, Brad McElhinny, Mike Myer, Don Smith, Tom Stewart (compiler and editor), Jesse Wright, Sandy York.

The committee wishes to thank Patrick C. McGinley of West Virginia University's College of Law for his guidance on this project.

Press Freedom in West Virginia

Press freedom traces its roots to the First Amendment of the United States Constitution and to Article 3, Section 7 of the West Virginia Constitution. Both provisions are cited within.

West Virginia has a Freedom of Information law covering public records and an Open Governmental Proceedings law covering public meetings. The federal government has a Federal FOI Act, which applies to federal governmental records. In regard to each of these laws, there are a number of exemptions.

The West Virginia Supreme Court of Appeals has adopted voluntary guidelines covering the use of cameras in various state courts.

The reporter's privilege in West Virginia is defined primarily by the state shield laws passed in 2011 and by a 1989 state Supreme Court ruling.

All of these laws and guidelines are covered either in full or in summary on the following pages. Together they provide the keys to press access to events and information.

Constitution of the United States, Amendment One

FREEDOM OF RELIGION, OF SPEECH, AND OF THE PRESS

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Constitution of West Virginia Article 3, Section 7

FREEDOM OF SPEECH AND PRESS GUARANTEED

No law abridging the freedom of speech, or of the press, shall be passed; but the Legislature may, by suitable penalties, restrain the publication or sale of obscene books, papers, or pictures, and provide for the punishment of libel, and defamation of character, and for the recovery, in civil actions, by the aggrieved party, of suitable damages for such libel or defamation.

Freedom of Information

In general, the records of government are open to the people, but there are many exceptions. The rules for West Virginia state and local agencies are set in the state's Freedom of Information Act. The rules for federal agencies are set in the federal Freedom of Information Act.

(Note: The § symbol means "Section.")

WEST VIRGINIA FREEDOM OF INFORMATION ACT

§29B-1-1. Declaration of policy.

Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the state of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy.

§29B-1-2. Definitions.

As used in this article:

- (1) "Custodian" means the elected or appointed official charged with administering a public body.
- (2) "Person" includes any natural person, corporation, partnership, firm or association.
- (3) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.
- (4) "Public record" includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public's business.
- (5) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

§29B-1-3. Inspection and copying of public record; requests of Freedom of Information Act requests registry.

- (a) Every person has a right to inspect or copy any public record of a public body in

this state, except as otherwise expressly provided by section four of this article.

(b) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

(c) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his or her office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his or her duties. If the records requested exist in magnetic, electronic or computer form, the custodian of the records shall make copies available on magnetic or electronic media, if so requested.

(d) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

- (1) Furnish copies of the requested information;
- (2) Advise the person making the request of the time and place at which he or she may inspect and copy the materials; or
- (3) Deny the request stating in writing the reasons for such denial. A denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(e) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of records. A public body may not charge a search or retrieval fee or otherwise seek reimbursement based on a man-hour basis as part of costs associated with making reproduction of records.

(f) The Secretary of State shall maintain an electronic data base of notices of requests as required by section three-a of this article. The database shall be made available to the public via the Internet and shall list each freedom of information request received and the outcome of the request. The Secretary of State shall provide on the website a form for use by a public body to report the results of the freedom of information request, providing the nature of the request and the public body's response thereto, whether the request was granted, and if not, the exemption asserted under section four of this article to deny the request.

§29B-1-3a. Reports to Secretary of State by public bodies.

(a) Beginning January 1, 2016, each public body that is in receipt of a freedom of information request shall provide information to the Secretary of State relating to, at a minimum, the nature of the request, the nature of the public body's response, the time-frame that was necessary to comply in full with the request; and the amount of reimbursement charged to the requester for the freedom of information request: Provided, That the public body shall not provide to the Secretary of State the public records that were the subject of the FOIA request.

(b) Pursuant to article three, chapter twenty-nine-a of this code, the Secretary of State shall propose rules and emergency rules for legislative approval relating to the creation and maintenance of a publicly accessible database available on the Secretary of State's website; the establishment of forms and procedures for submission of information to the Secretary of State by the public body; and for other procedures and policies consistent with this section.

§29B-1-4. Exemptions.

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: Provided, That this article does not preclude an individual from inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body.

(9) Records assembled, prepared or maintained to prevent, mitigate or

respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

(15) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with *47 U.S.C. §222*; and

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident or to facility personnel.

(20) Information related to applications under section four, article seven, chapter sixty-one of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: Provided: That information in the aggregate that does not identify any permit holder other

than by county or municipality is not exempted: Provided, however, That information or other records exempted under this subdivision may be disclosed to a law enforcement agency or officer: (i) to determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law- enforcement purposes.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

- (1) Intimidate or coerce the civilian population;
- (2) Influence the policy of a branch or level of government by intimidation or coercion;
- (3) Affect the conduct of a branch or level of government by intimidation or coercion; or
- (4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

§29B-1-5. Enforcement.

- (1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.
- (2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any custodian of any public records of the public body found to be in non-compliance with the order of the court to produce the documents or disclose the information sought, may be punished as being in contempt of court.
- (3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date.

§29B-1-6. Violation of article; penalties.

Any custodian of any public records who willfully violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail for not more than twenty days, or, in the discretion of the court, by both fine and imprisonment.

§29B-1-7. Attorney fees and costs.

Any person who is denied access to public records requested pursuant to this article

and who successfully brings a suit filed pursuant to section five of this article shall be entitled to recover his or her attorney fees and court costs from the public body that denied him or her access to the records.

OTHER EXEMPTIONS

In addition to the exemptions listed within the state Freedom of Information Act, other state statutes exempt additional records from the law. They include:

§16-3A-2 (b)

Enables the director of the State Department Of Health to exempt from public disclosure certain information on hazardous materials during medical emergencies.

§22-5-10 Air Pollution Control

Exempts from the State Freedom of Information Act certain documents and information related to “processes entitled to protection as trade secrets.”

§31-15-22 West Virginia Economic Development Authority

Exempts from the state Freedom Of Information Act certain documents and information related to the West Virginia Economic Development Authority.

Any documentary material or data made or received by the authority for the purpose of furnishing assistance to a business, to the extent that such material or data consists of trade secrets or commercial or financial information regarding the financial position or business operation of such business, shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of such trade secrets or commercial or financial information may be held by the authority in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code: Provided, That the authority shall make publicly available the following information regarding executed loans or its provision of insurance: (1) the name of the debtor, (2) location(s) of the project, (3) amount of the authority loan or financial assistance provided by the insurance fund, (4) the purpose of the loan or financial assistance, (5) the term, rate and interest of the loan, and (6) the fixed assets which serve as security for the loan or insurance provided.

§31-18-27 West Virginia Housing Development Fund

Exempts from the state Freedom of Information Act certain documents and information related to the West Virginia Housing Development Fund. “Any documentary material or data made or received by the housing development fund for the purpose of furnishing assistance, to the extent that such material or data consists of trade secrets, commercial, financial or personal information regarding the financial position or business operation of such business or person, shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of such trade secrets, commercial, financial or personal information may be held by the housing development fund in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code: Provided, That the housing development fund shall make publicly available the following information regarding executed loans: (1) the name of the debtor, (2) location(s) of the

project, (3) amount of the loan or financial assistance provided by the fund, (4) the purpose of the loan or financial assistance, (5) the term, rate, and interest of the loan, and (6) the fixed assets which serve as security for the loan.”

§32A-2-24 *Certain Financial Transactions*

Exempts from the state Freedom of Information Act certain documents and information related to investigation and examination of financial institutions and transactions.

§48-1-303 (b) *Domestic Relations Cases*

“Upon the filing of a domestic relations action, all pleadings, exhibits or other documents, other than orders, that are contained in the court file are confidential and not open for public inspection either during the pendency of the case or after the case is closed.”

§48-22-702 *Adoption Records*

Exempts from the state Freedom of Information Act “all records of proceedings in adoption cases” and directs that such records be kept “in a locked or sealed cabinet, vault or other container and shall not be open to inspection or copy by anyone, except as otherwise provided in this article, or upon court order for good cause shown.”



Sample FOIA Request letter (for state and local agencies)

[Your Name]
[Street Address]
[City, State, ZIP Code]

[Date]

[Name of Custodian of Records]
[Title]
[Company Name]
[Street Address]
[City, ST ZIP Code]

Dear [custodian of records]:

Under the West Virginia Freedom of Information Act, §29-B-1-1 et seq., I am requesting an opportunity to inspect or obtain copies of public records that [Describe the records or information sought with enough detail for the public agency to respond. Be as specific as your knowledge of the available records will allow. But it is more important to describe the information you are seeking.]

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$_____. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of _____ [Here, you can identify yourself as a representative of the news media if applicable and state that your request is related to news gathering purposes.] This information is not being sought for commercial purposes.

The West Virginia Freedom of Information Act requires a response to this request be made within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,
[Your Name]
[Your Phone number]

The Federal FOIA

The Federal Freedom of Information Act provides access to all records of many federal agencies unless these records fall within one of the nine categories of exempt information which agencies are permitted (but not required) to withhold.

AGENCIES COVERED:

Every agency, department, regulatory commission, government-controlled corporation and “other establishment” in the executive branch of the federal government is covered by the FOI Act.

This includes such agencies as the FBI, FTC, Bureau of Prisons, all Cabinet offices (Department of Defense, etc.) and so forth.

It does not include the president or his staff.

NOT COVERED:

Not included under the FOI provisions are Congress, the federal courts, private corporations or state agencies (including those funded by the federal government.) State and local governments in West Virginia are covered by the state FOI law. Although state and local governmental agencies are not covered by the federal FOI Act as such, documents submitted to the federal government by state and local governmental agencies thereby may become subject to the federal FOI law once they reach federal agencies.

RECORDS COVERED:

The federal FOI Act covers all records in the possession or control of covered agencies — papers, reports, letters, films, computer media, photographs and sound recordings. Excluded are physical objects which cannot be reproduced.

EXEMPTIONS TO THE FEDERAL FOI ACT:

1. NATIONAL SECURITY MATTERS — Mainly, properly classified documents, the release of which would damage national security. (The courts may determine whether a claim of national security harm is valid.)
2. INTERNAL AGENCY RULES — Generally, agency management records, such as internal personnel rules and practices.
3. CATCH-ALL EXEMPTION — Applies to information required or permitted to be kept secret by scores of other federal laws: certain Census Bureau information, CIA operational files, personnel information of the National Security Agency, tax returns, certain FTC investigatory information, federal grand jury transcripts and witness/juror information — all are among the 20 general categories of records which fall under the “catch-all” exemption.
4. TRADE SECRETS — Two different categories of information: trade secrets such as customer lists and secret formulae; internal commercial information, which, if disclosed, would cause a company competitive harm.
5. INTERNAL AGENCY MEMORANDA — Advice, recommendations and opinions which are part of the deliberative and decision-making process, the “executive privilege”

exemption. Purely factual portions of such memoranda are not exempt.

6. **PERSONAL PRIVACY** — Designed to protect individuals from invasions of privacy, this exemption covers “personnel and medical and similar files.”

7. **INVESTIGATORY RECORDS** — Generally, those records which, if disclosed, would interfere with enforcement proceedings, the trial process or personal privacy; disclose confidential sources or confidential information; endanger law enforcement personnel.

8. **BANK REPORTS** — Records resulting from examining, regulating or supervising financial institutions, the disclosure of which might undermine public confidence in individual banks or the federal banking system.

9. **OIL AND GAS WELL DATA** — Designed to prohibit speculators from obtaining information about the location of oil and gas wells of private companies, including maps, geological information and data, etc.

WHO CAN USE THE FOI ACT?

“Any person” — U.S. citizens and foreign nationals alike may seek access to federal records under the FOI Act.

HOW TO USE THE FEDERAL FOI ACT:

1. First, call or visit the public information or press office of the agency involved and explain what you want to know. The “informal” approach often works, and works quickly.

2. If step No. 1 fails, make a formal request, by letter, to the appropriate agency or agencies. (Hint: if you do not know the specific subdivision of the agency holding the desired information, send your letter directly to the FOI Officer of the agency.) Technically, agencies have 10 business days to respond, either with a “yes” or “no” or to notify you that an additional 10 days will be needed to respond.

NOTE: You may be charged fees for search and copying. It’s best to specify the limits of what you are willing to pay in your letter of request, and ask to be notified if the costs are likely to exceed this limit. You may request a waiver of fees. You also may be allowed to inspect the documents in person.

3. If your request is wholly or partially denied, you may make a formal appeal to the head of the agency involved, within 30 days of the denial, preferably. (Hint: State your intention to pursue the matter in the courts, if necessary, and demonstrate why the public would benefit by release of the information.)

4. If your appeal is denied, or if the agency fails to respond to your appeal within 20 business days, you may file a FOI Act lawsuit in the U.S. District Court most convenient to you.



Sample FOIA Request letter (for federal agencies)

Agency Head [or Freedom of Information Act Officer]

Name of Agency

Address of Agency

City, State, ZIP Code

Re: Freedom of Information Act Request

Dear _____:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me: [identify the documents or information as specifically as possible].

In order to help to determine my status to assess fees, you should know that I am (insert a suitable description of the requester and the purpose of the request).

[Sample requester descriptions:

a representative of the news media affiliated with the _____ newspaper (magazine, television station, etc.), and this request is made as part of news gathering and not for a commercial use.

affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use.

an individual seeking information for personal use and not for a commercial use.

affiliated with a private corporation and am seeking information for use in the company's business.]

[Optional] I am willing to pay fees for this request up to a maximum of \$ _____. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. [Include a specific explanation.]

Thank you for your consideration of this request.

Sincerely,

Name

Address

City, State, Zip Code

Telephone number [Optional]

Open Meetings

WV Open Governmental Proceedings Act

§6-9A-1. Declaration of legislative policy.

The Legislature hereby finds and declares that public agencies in this state exist for the singular purpose of representing citizens of this state in governmental affairs, and it is, therefore, in the best interests of the people of this state for the proceedings of public agencies be conducted openly, with only a few clearly defined exceptions. The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies that serve them. The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

Open government allows the public to educate itself about government decision-making through individuals' attendance and participation at government functions, distribution of government information by the press or interested citizens, and public debate on issues deliberated within the government.

Public access to information promotes attendance at meetings, improves planning of meetings, and encourages more thorough preparation and complete discussion of issues by participating officials. The government also benefits from openness because better preparation and public input allow government agencies to gauge public preferences accurately and thereby tailor their actions and policies more closely to public needs. Public confidence and understanding ease potential resistance to government programs.

Accordingly, the benefits of openness inure to both the public affected by governmental decision making and the decision makers themselves. The Legislature finds, however, that openness, public access to information and a desire to improve the operation of government do not require nor permit every meeting to be a public meeting. The Legislature finds that it would be unrealistic, if not impossible, to carry on the business of government should every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting. It is the intent of the Legislature to balance these interests in order to allow government to function and the public to participate in a meaningful manner in public agency decision making.

§6-9A-2. Definitions.

As used in this article:

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present.

(2) "Emergency meeting" means any meeting called by a governing body for the purpose of addressing an unexpected event which requires immediate attention because it poses:

- (A) An imminent threat to public health or safety;
- (B) An imminent threat of damage to public or private property; or
- (C) An imminent material financial loss or other imminent substantial harm to a public agency, its employees or the members of the public which it serves.

(3) “Executive session” means any meeting or part of a meeting of a governing body which is closed to the public.

(4) “Governing body” means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members; for the purposes of this article, a governing body of the Legislature is any standing, select or special committee, except the commission on special investigations, as determined by the rules of the respective houses of the Legislature.

(5) “Meeting” means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means.

The term meeting does not include:

(A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or Court of Claims proceeding;

(B) Any on-site inspection of any project or program;

(C) Any political party caucus;

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

(6) “Official action” means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.

(7) “Public agency” means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power. The term “public agency” does not include courts created by article eight of the West Virginia Constitution or the system of family law masters created by article four, chapter forty-eight-a of this code.

(8) “Quorum” means the gathering of a simple majority of the constituent membership of a governing body, unless applicable law provides for varying the required ratio.

(9) “Regular meeting” means a meeting of a governing body at which the regular

business of the public is conducted.

(10) “Special meeting” means a meeting of a governing body other than a regular meeting or an emergency meeting.

§6-9A-3. Proceedings to be open; public notice of meetings.

(a) Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public.

(b) Any governing body may make and enforce reasonable rules for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend.

(c) This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: Provided, That persons who desire to address the governing body may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.

(d) Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media.

(e) Each governing body of the executive branch of the state shall electronically file a notice of each meeting with the Secretary of State for publication on the Secretary of State’s website.

(1) Each notice shall state the date, time, place and purpose of the meeting.

(2) Each notice of a special meeting or a regular meeting shall be filed in a manner to allow each notice to appear on the Secretary of State’s website at least five business days prior to the date of the meeting.

(3) When calculating the days, the day of the meeting is not to be counted. If a meeting notice is filed anytime other than during the Secretary of State’s regular business hours, the date of filing will be considered the next business day.

(f) The Secretary of State shall retain copies of all notices filed for ten years.

(g) The Secretary of State may promulgate procedural rules governing the electronic filing of meeting notices.

(h) In the event of an emergency a governing body may call an emergency meeting.

(1) The governing body of a state executive branch agency shall electronically file a notice for an emergency meeting with the Secretary of State, as soon as practicable prior to the meeting. Any other governing body shall notice an emergency meeting in a manner which is consistent with this article and the Ethics Commission Committee on Open Governmental Meeting’s opinions issued pursuant to the authority of section ten of this article, as soon as practicable prior to the meeting.

(2) The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

(i) Upon petition by any adversely affected party any court of competent jurisdiction may invalidate any action taken at any meeting for which notice did not comply with the requirements of this section.

§6-9A-4. Exceptions.

(a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall identify the authorization under this section for holding the executive session and present it to the governing body and to the general public, but no decision may be made in the executive session.

(b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency. A public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions:

(1) To consider acts of war, threatened attack from a foreign power, civil insurrection or riot;

(2) To consider:

(A) Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee or prospective public officer or employee requests an open meeting; or

(B) For the purpose of conducting a hearing on a complaint, charge or grievance against a public officer or employee, unless the public officer or employee requests an open meeting. General personnel policy issues may not be discussed or considered in a closed meeting. Final action by a public agency having authority for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of an individual shall be taken in an open meeting;

(3) To decide upon disciplining, suspension or expulsion of any student in any public school or public college or university, unless the student requests an open meeting;

(4) To issue, effect, deny, suspend or revoke a license, certificate or registration under the laws of this state or any political subdivision, unless the person seeking the license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting;

(5) To consider the physical or mental health of any person, unless the person requests an open meeting;

(6) To discuss any material the disclosure of which would constitute an unwarranted invasion of an individual's privacy such as any records, data, reports, recommendations or other personal material of any educational, training, social service, rehabilitation, welfare, housing, relocation, insurance and similar program or institution operated by a public agency pertaining to any specific individual admitted to or served by the institution or program, the individual's personal and family circumstances;

(7) To plan or consider an official investigation or matter relating to crime prevention or law enforcement;

(8) To develop security personnel or devices;

(9) To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the state or any political subdivision: Provided, That information relied on during the course of deliberations on matters involving commercial competition are exempt from disclosure under the open meetings requirements of this article only until the commercial competition has been finalized and completed: Provided, however, That information not subject to release pursuant to the West Virginia freedom of information act does not become subject to disclosure as a result of executive session;

(10) To avoid the premature disclosure of an honorary degree, scholarship, prize or similar award;

(11) Nothing in this article permits a public agency to close a meeting that otherwise would be open, merely because an agency attorney is a participant. If the public agency has approved or considered a settlement in closed session, and the terms of the settlement allow disclosure, the terms of that settlement shall be reported by the public agency and entered into its minutes within a reasonable time after the settlement is concluded;

(12) To discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record within the meaning of the freedom of information act as set forth in article one, chapter twenty-nine-b of this code.

§6-9A-5. Minutes.

Each governing body shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.

The circuit court in the county where the public agency regularly meets has jurisdiction to enforce this article upon civil action commenced by any citizen of this state within one hundred twenty days after the action complained of was taken or the decision complained of was made. Where the action seeks injunctive relief, no bond may be required

unless the petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

The court is empowered to compel compliance or enjoin noncompliance with the provisions of this article and to annul a decision made in violation of this article. An injunction may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article: Provided, That no bond issue that has been passed or approved by any governing body in this state may be annulled under this section if notice of the meeting at which the bond issue was finally considered was given at least ten days prior to the meeting by a Class I legal advertisement published in accordance with the provisions of article three, chapter fifty-nine of this code in a qualified newspaper having a general circulation in the geographic area represented by that governing body.

In addition to or in conjunction with any other acts or omissions which may be determined to be in violation of this article, it is a violation of this article for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action.

Any order which compels compliance or enjoins noncompliance with the provisions of this article, or which annuls a decision made in violation of this article shall include findings of fact and conclusions of law and shall be recorded in the minutes of the governing body.

§6-9A-7. Violation of article; criminal penalties; attorney fees and expenses in civil actions.

(a) Any person who is a member of a public or governmental body required to conduct open meetings in compliance with the provisions of this article and who willfully and knowingly violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars: Provided, That a person who is convicted of a second or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars.

(b) A public agency whose governing body is adjudged in a civil action to have conducted a meeting in violation of the provisions of this article may be liable to a prevailing party for fees and other expenses incurred by that party in connection with litigating the issue of whether the governing body acted in violation of this article, unless the court finds that the position of the public agency was substantially justified or that special circumstances make an award of fees and other expenses unjust.

(c) Where the court, upon denying the relief sought by the complaining person in the action, finds that the action was frivolous or commenced with the primary intent of harassing the governing body or any member thereof or, in the absence of good faith, of delaying any meetings or decisions of the governing body, the court may require the complaining person to pay the governing body's necessary attorney fees and expenses.

§6-9A-8. Acting by reference; written ballots.

(a) Except as otherwise expressly provided by law, the members of a public agency may not deliberate, vote, or otherwise take official action upon any matter by reference to a letter, number or other designation or other secret device or method, which may render it difficult for persons attending a meeting of the public agency to understand what is being deliberated, voted or acted upon. However, this subsection does not prohibit a public agency from deliberating, voting or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon, are available for public inspection at the meeting.

(b) A public agency may not vote by secret or written ballot.

§6-9A-9. Broadcasting or recording meetings.

(a) Except as otherwise provided in this section, any radio or television station is entitled to broadcast all or any part of a meeting required to be open.

(b) A public agency may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting, so as to prevent undue interference with the meeting. The public agency shall allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of the equipment may not be declared to constitute undue interference: Provided, That if the public agency, in good faith, determines that the size of the meeting room is such that all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public agency, acting in good faith and consistent with the purposes of this article, may require the pooling of the equipment and the personnel operating it.

§6-9A-10. Open governmental meetings committee.

The West Virginia ethics commission, pursuant to subsection (j), section one, article two, chapter six-b of this code, shall appoint from the membership of the commission a subcommittee of three persons designated as the West Virginia ethics commission committee on open governmental meetings. The chairman shall designate one of the persons to chair the committee. In addition to the three members of the committee, two additional members of the commission shall be designated to serve as alternate members of the committee.

The chairman of the committee or the executive director shall call meetings of the committee to act on requests for advisory opinions interpreting the West Virginia open government meetings act. Advisory opinions shall be issued in a timely manner, not to exceed thirty days.

§6-9A-11. Request for advisory opinion; maintaining confidentiality.

(a) Any governing body or member thereof subject to the provisions of this article may seek advice and information from the executive director of the West Virginia Ethics Commission or request in writing an advisory opinion from the West Virginia Ethics Commission Committee on Open Governmental Meetings as to whether an action or proposed action violates the provisions of this article. The executive director may render oral advice and information upon request. The committee shall respond in writing and in an expeditious manner to a request for an advisory opinion. The opinion is binding on the parties requesting the opinion.

(b) Any governing body or member thereof that seeks an advisory opinion and acts in good faith reliance on the opinion has an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on the opinion unless the committee was willfully and intentionally misinformed as to the facts by the body or its representative.

(c) A governing body or member thereof that acts in good faith reliance on a written advisory opinion sought by another person or governing body has an absolute defense to any civil suit or criminal prosecution for any action taken based upon a written opinion of the West Virginia ethics commission committee, as long as underlying facts and circumstances surrounding the action were the same or substantially the same as those being addressed by the written opinion.

(d) The committee and commission may take appropriate action to protect from disclosure information which is properly shielded by an exception provided in section four of this article.

§6-9A-12. Duty of attorney general, secretary of state, clerks of the county commissions and city clerks or recorders.

It is the duty of the attorney general to compile the statutory and case law pertaining to this article and to prepare appropriate summaries and interpretations for the purpose of informing all public officials subject to this article of the requirements of this article. It is the duty of the secretary of state, the clerks of the county commissions, joint clerks of the county commissions and circuit courts, if any, and the city clerks or recorders of the municipalities of the state to provide a copy of the material compiled by the attorney general to all elected public officials within their respective jurisdictions. The clerks or recorders will make the material available to appointed public officials. Likewise, it is their respective duties to provide a copy or summary to any newly appointed or elected person within thirty days of the elected or appointed official taking the oath of office or an appointed person's start of term.

HOW TO OBJECT TO THE CALLING OF AN EXECUTIVE SESSION

If a state or local agency covered by the Open Governmental Proceedings Act calls an executive session for a reason that you do not believe is allowed under §6-9A-4, you may wish to object. The following statement may be used (with the approval of your news organization):

“Mr./Madam Chairman, I am (name), a reporter for (name of news organization), and I would like to object on behalf of my employer and the public to this proposed executive session. I believe that the announced purpose of this executive session does not fall within the exemptions stated in Section 6-9A-4 of the State Code. I respectfully request that this body refrain from holding an executive session on this matter. I also respectfully remind this body that the state Open Governmental Proceedings law contains provisions under which actions taken in violation of this law can be voided.”

FEDERAL OPEN MEETINGS LAWS

Most executive branch agencies, as well as private sources that advise those agencies or the president, are generally required to make their proceedings open to the public.

The Reporter's Committee for Freedom of the Press has compiled guides for the two main laws involved: the Federal Advisory Committee Act and the Government in the Sunshine Act.

The guides can be found here:

www.rcfp.org/federal-open-government-guide/federal-open-meetings-laws

Court Concerns

The Reporter's Privilege

This is the legal concept that, in the interest of freedom of the press, journalists should be protected from being compelled to testify.

In West Virginia, the two main sources of protection for journalists come from the state's shield law, passed in 2011, and the 1989 Supreme Court of Appeals ruling in *Hudok v. Henry*.

There is no federal shield law.

WEST VIRGINIA SHIELD LAW

§57-3-10. *Reporters' Privilege.*

(a) "Reporter" means a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information that concerns matters of public interest for dissemination to the public for a substantial portion of the person's livelihood, or a supervisor, or employer of that person in that capacity: Provided, That a student reporter at an accredited educational institution who meets all of the requirements of this definition, except that his or her reporting may not provide a portion of his or her livelihood, meets the definition of reporter for purposes of this section.

(b) No reporter may be compelled to:

(1) Testify in any civil, criminal, administrative or grand jury proceeding in any court in this state concerning the confidential source of any published or unpublished information obtained by the reporter in the course of the above described activities without the consent of the confidential source, unless such testimony is necessary to prevent imminent death, serious bodily injury or unjust incarceration; or

(2) Produce any information or testimony that would identify a confidential source, without the consent of the confidential source, unless such testimony or information is necessary to prevent imminent death, serious bodily injury or unjust incarceration.

(c) Nothing in this section shall be read to limit any existing Constitutional protections afforded any person under the United States or West Virginia Constitutions.

HUDOK V HENRY 389 S.E.2D 188 (1989)

This ruling, written by Justice Thomas Miller, established a three-part test to be met before reporters can be compelled to testify in most civil cases.

"To protect the important public interest of reporters in their news-gathering functions under the First Amendment to the United States Constitution, disclosure of a reporter's confidential sources or news-gathering materials may not be compelled except upon a clear and specific showing that the information is highly material and relevant,

necessary or critical to the maintenance of the claim, and not obtainable from other available sources.”

The court clearly indicated that subpoenas issued by grand juries in criminal investigations do not have to meet this test. It also noted that this concept of “limited privilege” would not apply in libel actions to which the reporter is a party or in circumstances where the reporter becomes the witness to an event while not engaged in a news-gathering function.

The Reporter’s Committee for Freedom of the Press notes that the court “concluded that the reporters’ qualified privilege applied equally to both confidential and non-confidential information obtained by the reporter in his/her news gathering role.”

www.rcfp.org/rcfp/orders/docs/privilege/WV.pdf

Courtroom photography, recording and broadcasting

Recording or Photographing in the Courtroom

STATE COURTS (WEST VIRGINIA TRIAL COURT RULES 8.01-8.10)

Rule 8. Cameras, Audio Equipment, and Media in the Courtroom

Rule 8.0.1 Permission of the Court Required

Cameras and audio equipment may be permitted in and around the courtrooms at the discretion of each presiding circuit judge or magistrate (hereafter in this Rule 8, presiding officer).

Rule 8.0.2 Procedure to Obtain Permission

The presiding officer, based upon requests made by a party or any other person at least one day in advance of the proceedings, shall decide whether to allow camera and/or audio coverage of proceedings in and around the courtroom in a given case. A party, witness, or counsel may object to such coverage of any case or of any portion of the proceedings, and the presiding officer shall rule upon such an objection. The decision whether to cover judicial proceedings shall be left to the discretion of the individual media organization for which coverage has been approved.

It shall be the affirmative duty of the media personnel to affirm that they have read these rules and will abide by the same and further to demonstrate to the presiding officer sufficiently and in advance of any proceeding that the equipment sought to be used does not produce a distracting sound or light. A failure to obtain such advance approval may preclude the use of such equipment in any proceeding.

Rule 8.0.3 Termination of Coverage

After the proceedings have commenced, the presiding officer shall terminate coverage of any portion of the proceedings or of the remainder of the proceedings if the presiding officer determines that coverage will impede justice or deny any party a fair trial.

Rule 8.0.4 Scope of Coverage

Camera coverage shall be limited to those proceedings open to the public. In order to protect the attorney-client privilege and the right to effective assistance of counsel, there shall not be audio coverage or broadcast of any conferences occurring between or among attorneys and their clients; or between and among attorneys, clients, and the presiding officer.

Rule 8.0.5 Nonjudicial Meetings

Coverage of any nonjudicial meeting or other gathering in the courtrooms shall be determined by the concurrence of the sponsoring group and the presiding officer and shall be conducted in accordance with these rules. These rules shall not limit media coverage

of ceremonial proceedings conducted in court facilities under such terms and conditions as may be established by the prior consent of the presiding officer.

Rule 8.0.6 Equipment and Personnel

The following equipment and persons shall be the maximum equipment and broadcast personnel permitted in the courtroom at any one time:

One portable television camera or film camera with not more than one person operating the same.

One still photographer with one camera and not more than two lenses and necessary related equipment.

As used in these rules, “television equipment” includes both film and videotape cameras. Only television equipment which does not produce distracting sound or light shall be employed in the courtroom. No artificial lighting (other than that normally present in the courtroom) shall be employed in the courtroom except that, with the concurrence of the presiding officer, modifications and additions may be made to lighting in the courtroom, provided that such modifications or additions are installed and maintained without public expense.

Only film and video cameras without working audio pickup, unless otherwise approved by the presiding officer, shall be employed in the courtroom. Only still camera equipment that does not produce distracting sound or light shall be employed in the courtroom.

Audio equipment of any type shall not be permitted in the courtroom at any time, without prior permission of the presiding officer. If permission is given, not more than one audio system for radio broadcast shall be permitted in any proceeding. If a technically suitable audio system exists in the court facility, audio pickup for both radio and television shall be accomplished from such system. If a technically suitable audio system does not exist in the court facility, microphones and related wiring shall be unobtrusive and shall be located in places designated in advance of the proceeding by the presiding officer.

Rule 8.0.7 Location of Equipment

The equipment as designated above shall be located in the courtroom as follows:

Television equipment shall be positioned in such location in the courtroom as shall be designated by the presiding officer. All camera equipment shall be positioned only in such area. Television equipment shall be positioned in an area outside the courtroom if that is technically possible. Cables and wiring will be placed in a safe and unobtrusive manner.

A still camera photographer shall position himself or herself in such location in the courtroom as shall be designated by the presiding officer. The photographer shall assume a fixed position within the designated area and shall act so as not to create a disturbance or call attention to himself or herself through further movement. The photographer shall not move about the courtroom.

Audio equipment shall be positioned in such location in the courtroom as shall be designated by the presiding officer. Cables and wiring will be placed in a safe and unobtrusive manner.

Representatives of the media shall not move about the courtroom while a proceeding is in progress, and equipment, once positioned, shall not be moved during a proceeding.

Rule 8.0.8 Pooling Arrangements

Any pooling arrangements among those seeking to provide camera coverage that are required by these limitations on equipment and personnel shall be the sole responsibility of media persons. The presiding officer will not resolve any dispute regarding the same. In the absence of an advance agreement on pooling by multiple media representatives, the presiding officer may exclude all contesting video media equipment from the courtroom.

Rule 8.0.9 Admissibility in Evidence

None of the film, videotape, photograph, or audiotape developed during any proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any retrial or appeal of such proceeding, unless the presiding officer has designated it as part of the official record of the proceeding.

Rule 8.10 Prior Approval to Identify or Show Jurors

Without prior approval by the presiding officer, no person shall broadcast or publish any written report, film, videotape, photograph, audio tape, or other report of any kind or character, taken or made in or out of the courtroom where the face of a juror is shown or the identity of any juror is stated or is otherwise discernible. Nothing herein shall be interpreted to prohibit a juror from voluntarily disclosing his or her identity to the media, after the completion of such juror's term of service.

Note: The rules are similar for media coverage of the WV Supreme Court of Appeals. Rules for covering that court are contained in Section 42 of the Rules of Appellate Procedure, which can be found here:

www.courtswv.gov/legal-community/court-rules/appellate-procedure/Part-IX.html#rule42

FEDERAL COURTS

Federal courts have been much more restrictive on recording and broadcasting devices in the courtroom. The Reporter's Committee for Freedom of the Press summarizes them here:

www.rcfp.org/browse-media-law-resources/digital-journalists-legal-guide/cameras-courtrooms

TO OBJECT TO THE CLOSING OF COURT PROCEEDINGS

Reporters covering courts should consult with their employers in advance to establish whether they are generally authorized to object to closings of in-court proceedings. If a reporter is authorized, and if he or she does not have time to consult with supervisors about a judge's decision to close a court hearing or trial, the reporter may use the following statement in court. The reporter should first get the judge's attention by notifying the court tipstaff or the judge's secretary or by politely asking to address the court. If the judge permits the reporter to speak, the reporter may say the following:

“Your honor, I am (name), a reporter for (name of news organization), and I would like to object on behalf of my employer and the public to this proposed closing. I ask that the court note on the record that my news organization objects to this proceeding being closed.

(Having this objection on the record may allow counsel for the news organization later to ask that the records of the proceeding be made public or to seek to

prohibit similar efforts to close proceedings.)

If a reporter learns of a possible closure in advance, he or she should alert supervisors. If the news organization authorizes the reporter to object when the closure is considered, and the news organization's lawyer is available to argue against closing, the reporter may use the following language:

“Your honor, I am (name), a reporter for (name of news organization), and I would like to object on behalf of my employer and the public to the proposed closing of this proceeding. Our attorney is prepared to appear before the court to address the legal and constitutional reasons the press and the public are entitled to access to proceedings like this one. We respectfully request the court for a hearing on those issues. I believe our attorney can be here relatively quickly at the court's convenience, and he/she will be able to demonstrate that closure of the proceedings in this case will violate the First Amendment and possibly state constitutional and statutory provisions as well. I can't make the arguments myself, but our attorney is ready and willing to do so. If it pleases the court, we request the opportunity to be heard through counsel.”

The Reporter's Committee for Freedom of the Press offers advice on court closures here:

www.rcfp.org/first-amendment-handbook/you-have-right-oppose-secrecy-what-you-should-do

Juvenile Records access

§49-5-101. Confidentiality of records; nonrelease of records; exceptions; penalties.

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the Division of Juvenile Services, the Department of Health and Human Resources, a child agency or facility, court or law-enforcement agency is confidential and shall not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records and records disclosing the identity of a person making a complaint of child abuse or neglect may be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated; or

(C) The attorney of the child or parent;

(3) With the written consent of the child or of someone authorized to act on the child's behalf; or

(4) Pursuant to an order of a court of record. However, the court shall review the record or records for relevancy and materiality to the issues in the proceeding and safety, and may issue an order to limit the examination and use of the records or any part thereof.

(c) In addition to those persons or entities to whom information may be disclosed under subsection (b) of this section, information related to child abuse or neglect proceedings, except information relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available, upon request, to:

(1) Federal, state or local government entities, or any agent of those entities, including law-enforcement agencies and prosecuting attorneys, having a need for that information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(2) The child fatality review team;

(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

(5) A grand jury, circuit court or family court, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court or family court.

(d) In the event of a child fatality or near fatality due to child abuse and neglect, information relating to a fatality or near fatality shall be made public by the

Department of Health and Human Resources and to the entities described in subsection (c) of this section, all under the circumstances described in that subsection. However, information released by the Department of Health and Human Resources pursuant to this subsection may not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, “near fatality” means any medical condition of the child which is certified by the attending physician to be life threatening.

(e) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files.

Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to section one hundred three of this article.

(f) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months, or both fined and confined. A person convicted of violating this section is also liable for damages in the amount of \$300 or actual damages, whichever is greater.

(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public;

(h)(1) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the Division of Juvenile Services may provide access to and the confidential use of a treatment plan, court records or other records of a juvenile to an agency in another state which:

(A) Performs the same functions in that state that are performed by the Division of Juvenile Services in this state;

(B) Has a reciprocal agreement with this state; and

(C) Has legal custody of the juvenile.

(2) A record which is shared under this subsection may only provide information which is relevant to the supervision, care, custody and treatment of the juvenile.

(3) The Division of Juvenile Services is authorized to enter into reciprocal agreements with other states and to propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement this subsection.

(4) Other than the authorization explicitly given in this subsection, this subsection may not be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

§49-5-103. Confidentiality of juvenile records; permissible disclosures; penalties; damages.

(a) Any findings or orders of the court in a juvenile proceeding shall be known as the juvenile record and shall be maintained by the clerk of the court.

(b) Records of a juvenile proceeding conducted under this chapter are not public records and shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

(c) Notwithstanding the provisions of subsection (b) of this section, a copy of a juvenile’s records shall automatically be disclosed to certain school officials, subject to

the following terms and conditions:

(1) Only the records of certain juveniles shall be disclosed. These include, and are limited to, cases in which:

(A) The juvenile has been charged with an offense which:

- (i) Involves violence against another person;
- (ii) Involves possession of a dangerous or deadly weapon; or
- (iii) Involves possession or delivery of a controlled substance as that term is defined in section one hundred one, article one, chapter sixty-a of this code; and

(B) The juvenile's case has proceeded to a point where one or more of the following has occurred:

- (i) A circuit court judge or magistrate has determined that there is probable cause to believe that the juvenile committed the offense as charged;
- (ii) A circuit court judge or magistrate has placed the juvenile on probation for the offense;
- (iii) A circuit court judge or magistrate has placed the juvenile into a preadjudicatory community supervision period in accordance with section seven hundred eight, article four of this chapter; or
- (iv) Some other type of disposition has been made of the case other than dismissal.

(2) The circuit court for each judicial circuit in West Virginia shall designate one person to supervise the disclosure of juvenile records to certain school officials.

(3) If the juvenile attends a West Virginia public school, the person designated by the circuit court shall automatically disclose all records of the juvenile's case to the county superintendent of schools in the county in which the juvenile attends school and to the principal of the school which the juvenile attends, subject to the following:

(A) At a minimum, the records shall disclose the following information:

- (i) Copies of the arrest report;
- (ii) Copies of all investigations;
- (iii) Copies of any psychological test results and any mental health records;
- (iv) Copies of any evaluation reports for probation or facility placement; and
- (v) Any other material that would alert the school to potential danger that the juvenile may pose to himself, herself or others;

(B) The disclosure of the juvenile's psychological test results and any mental health records shall only be made in accordance with

subdivision (14) of this subsection;

(C) If the disclosure of any record to be automatically disclosed under this section is restricted in its disclosure by the Health Insurance Portability and Accountability Act of 1996, PL 104-191, and any amendments and regulations under the act, the person designated by the circuit court shall provide the superintendent and principal any notice of the existence of the record that is permissible under the act and, if applicable, any action that is required to obtain the record; and

(D) When multiple disclosures are required by this subsection, the person designated by the circuit court is required to disclose only material in the juvenile record that had not previously been disclosed to the county superintendent and the principal of the school which the juvenile attends.

(4) If the juvenile attends a private school in West Virginia, the person designated by the circuit court shall determine the identity of the highest ranking person at that school and shall automatically disclose all records of a juvenile's case to that person.

(5) If the juvenile does not attend school at the time the juvenile's case is pending, the person designated by the circuit court may not transmit the juvenile's records to any school. However, the person designated by the circuit court shall transmit the juvenile's records to any school in West Virginia which the juvenile subsequently attends.

(6) The person designated by the circuit court may not automatically transmit juvenile records to a school which is not located in West Virginia. Instead, the person designated by the circuit court shall contact the out-of-state school, inform it that juvenile records exist and make an inquiry regarding whether the laws of that state permit the disclosure of juvenile records. If so, the person designated by the circuit court shall consult with the circuit judge who presided over the case to determine whether the juvenile records should be disclosed to the out-of-state school. The circuit judge has discretion in determining whether to disclose the juvenile records and shall consider whether the other state's law regarding disclosure provides for sufficient confidentiality of juvenile records, using this section as a guide. If the circuit judge orders the juvenile records to be disclosed, they shall be disclosed in accordance with subdivision (7) of this subsection.

(7) The person designated by the circuit court shall transmit the juvenile's records to the appropriate school official under cover of a letter emphasizing the confidentiality of those records and directing the official to consult this section of the code. A copy of this section of the code shall be transmitted with the juvenile's records and cover letter.

(8) Juvenile records are absolutely confidential by the school official to whom they are transmitted and nothing contained within the juvenile's records may be noted on the juvenile's permanent educational record. The juvenile records are to be maintained in a secure location and are not to be copied under any circumstances. However, the principal of a school

to whom the records are transmitted shall have the duty to disclose the contents of those records to any teacher who teaches a class in which the subject juvenile is enrolled and to the regular driver of a school bus in which the subject juvenile is regularly transported to or from school, except that the disclosure of the juvenile's psychological test results and any mental health records may only be made in accordance with subdivision (14) of this subsection. Furthermore, any school official to whom the juvenile's records are transmitted may disclose the contents of those records to any adult within the school system who, in the discretion of the school official, has the need to be aware of the contents of those records.

(9) If for any reason a juvenile ceases to attend a school which possesses that juvenile's records, the appropriate official at that school shall seal the records and return them to the circuit court which sent them to that school. If the juvenile has changed schools for any reason, the former school shall inform the circuit court of the name and location of the new school which the juvenile attends or will be attending. If the new school is located within West Virginia, the person designated by the circuit court shall forward the juvenile's records to the juvenile's new school in the same manner as provided in subdivision (7) of this subsection. If the new school is not located within West Virginia, the person designated by the circuit court shall handle the juvenile records in accordance with subdivision (6) of this subsection.

If the juvenile has been found not guilty of an offense for which records were previously forwarded to the juvenile's school on the basis of a finding of probable cause, the circuit court may not forward those records to the juvenile's new school. However, this does not affect records related to other prior or future offenses. If the juvenile has graduated or quit school or will otherwise not be attending another school, the circuit court shall retain the juvenile's records and handle them as otherwise provided in this article.

(10) Under no circumstances may one school transmit a juvenile's records to another school.

(11) Under no circumstances may juvenile records be automatically transmitted to a college, university or other post-secondary school.

(12) No one may suffer any penalty, civil or criminal, for accidentally or negligently attributing certain juvenile records to the wrong person. However, that person has the affirmative duty to promptly correct any mistake that he or she has made in disclosing juvenile records when the mistake is brought to his or her attention. A person who intentionally attributes false information to a certain person shall be subjected to both criminal and civil penalties in accordance with subsection (e) of this section.

(13) If a circuit judge or magistrate has determined that there is probable cause to believe that a juvenile has committed an offense but there has been no final adjudication of the charge, the records which are transmitted by the circuit court shall be accompanied by a notice which clearly states in bold print that there has been no determination of delinquency and that our legal system requires a presumption of innocence.

(14) The county superintendent shall designate the school psychologist or psychologists to receive the juvenile's psychological test results and any mental health records. The psychologist designated shall review the juvenile's psychological test results and any mental health records and, in the psychologist's professional judgment, may disclose to the principal of the school that the juvenile attends and other school employees who would have a need to know the psychological test results, mental health records and any behavior that may trigger violence or other disruptive behavior by the juvenile. Other school employees include, but are not limited to, any teacher who teaches a class in which the subject juvenile is enrolled and the regular driver of a school bus in which the subject juvenile is regularly transported to or from school.

(d) Notwithstanding the provisions of subsection (b) of this section, juvenile records may be disclosed, subject to the following terms and conditions:

(1) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant to the provisions of subsection (c) or (d), section seven hundred ten, article four of this chapter, the juvenile records are open to public inspection.

(2) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant to the provisions of subsection (e), (f) or (g), section seven hundred ten, article four of this chapter, the juvenile records are open to public inspection only if the juvenile fails to file a timely appeal of the transfer order, or the Supreme Court of Appeals refuses to hear or denies an appeal which has been timely filed.

(3) If a juvenile is fourteen years of age or older and a court has determined there is a probable cause to believe the juvenile committed an offense set forth in subsection (g), section seven hundred ten, article four of this chapter, but the case is not transferred to criminal jurisdiction, the juvenile records are open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

(4) If a juvenile is younger than fourteen years of age and a court has determined there is probable cause to believe that the juvenile committed the crime of murder under section one, two or three, article two, chapter sixty-one of this code, or the crime of sexual assault in the first degree under section three, article eight-b of chapter sixty-one, but the case is not transferred to criminal jurisdiction, the juvenile records shall be open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

(5) Upon a written petition and pursuant to a written order, the circuit court may permit disclosure of juvenile records to:

(A) A court, in this state or another state, which has juvenile jurisdiction and has the juvenile before it in a juvenile proceeding;

(B) A court, in this state or another state, exercising criminal jurisdiction over the juvenile which requests records for the purpose

of a presentence report or disposition proceeding;

(C) The juvenile, the juvenile's parents or legal guardian, or the juvenile's counsel;

(D) The officials of a public institution to which the juvenile is committed if they require those records for transfer, parole or discharge; or

(E) A person who is conducting research. However, juvenile records may be disclosed for research purposes only upon the condition that information which would identify the subject juvenile or the juvenile's family may not be disclosed.

(6) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, to a probation officer upon his or her request. Any probation officer may access relevant juvenile case information contained in any electronic database maintained by or for the Supreme Court of Appeals and share it with any other probation officer.

(7) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, in response to any lawfully issued subpoena from a federal court or federal agency.

(8) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, to the department or the Division of Juvenile Services for purposes of case planning for the juvenile and his or her parents, custodians or guardians.

(e) Any records open to public inspection pursuant to this section are subject to the same requirements governing the disclosure of adult criminal records.

(f) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months, or both fined and confined. A person who violates this section is also liable for damages in the amount of \$300 or actual damages, whichever is greater.

§49-5-104. Confidentiality of juvenile records for children who become of age while a ward of the state or who have been transferred to adult criminal jurisdiction; separate and secure location; penalties; damages.

(a) One year after the juvenile's eighteenth birthday, or one year after personal or juvenile jurisdiction has terminated, whichever is later, the records of a juvenile proceeding conducted under this chapter, including, but not limited to, law-enforcement files and records, may be kept in a separate secure confidential place and the records may not be inspected except by order of the circuit court.

(b) The records of a juvenile proceeding in which a juvenile was transferred to criminal jurisdiction pursuant to section seven hundred ten, article four of this chapter shall be kept in a separate secure confidential place and the records may not be inspected except by order of the circuit court if the juvenile is subsequently acquitted or found guilty only of an offense other than an offense upon which the waiver or order of transfer was based, or if the offense upon which the waiver or order of transfer was based is subsequently dismissed.

(c) To keep the confidentiality of juvenile records, they shall be returned to the circuit court in which the case was pending and be kept in a separate confidential file. The records shall be physically marked to show that they are to remain confidential and shall be securely kept and filed in a manner so that no one can have access to determine the identity of the juvenile, except upon order of the circuit court.

(d) Marking the juvenile records to show they are to remain confidential has the legal effect of extinguishing the offense as if it never occurred.

(e) The records of a juvenile convicted under the criminal jurisdiction of the circuit court pursuant to subdivision (1), subsection (d), section seven hundred ten, article four of this chapter may not be marked and kept as confidential.

(f) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than six months, or both so fined and confined, and is liable for damages in the amount of \$300 or actual damages, whichever is greater.

§49-5-105. Juvenile justice database; individual records confidential.

The West Virginia Supreme Court of Appeals is responsible for collecting, compiling and disseminating information in the juvenile justice database. Notwithstanding any other provision of this code to the contrary, the court shall grant the Division of Justice and Community Services access to confidential juvenile records for the limited purpose of the collection and analysis of statistical data. However, the division shall keep the records confidential and not publish any information that would identify any individual juvenile.

Recording and Photographing

THE PHOTOGRAPHER'S RIGHT

Attorney Bert P. Krages has created a downloadable one-page general education guide about the rights to take photographs, including how to handle confrontations when doing so. Many photographers print out and carry this document with them.

You can download it here:

www.krages.com/phoright.htm

ACLU GUIDE FOR PHOTOGRAPHERS

The American Civil Liberties Union offers a basic guide to the rights of photographers. It can be found here:

www.aclu.org/know-your-rights-photographers

Recording conversations

While you generally have the right to record images, moving and still, without permission, the law is more restrictive regarding the recording of conversations.

THE DIGITAL MEDIA LAW PROJECT ADVISES:

“... it is almost always illegal to record a phone call or private conversation to which you are not a party, do not have consent from at least one party, and could not naturally overhear. In addition, federal and many state laws do not permit you to surreptitiously place a bug or recording device on a person or telephone, in a home, office or restaurant to secretly record a conversation between two people who have not consented.”

From an ethical standpoint, a journalist generally should not be secretly recording conversations. Legally, some states require the consent of all parties to a conversation before it can be recorded. Some states – including West Virginia – require the consent of only one party.

FROM THE WEST VIRGINIA WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT:

§62-1D-3. Interception of communications generally.

(a) Except as otherwise specifically provided in this article it is unlawful for any person to:

(1) Intentionally intercept, attempt to intercept or procure any other person to intercept or attempt to intercept, any wire, oral or electronic communication; or

(2) Intentionally disclose or intentionally attempt to disclose to any other person the contents of any wire, oral or electronic communication, knowing or having reason to

know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this article; and

(3) Intentionally use or disclose or intentionally attempt to use or disclose the contents of any wire, oral or electronic communication or the identity of any party thereto, knowing or having reason to know that such information was obtained through the interception of a wire, oral or electronic communication in violation of this article.

(b) Any person who violates subsection (a) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary for not more than five years or fined not more than ten thousand dollars or both fined and imprisoned.

(c) It is lawful under this article for an operator of a switchboard or an officer, employee, or provider of any wire or electronic communication service whose facilities are used in the transmission of a wire communication to intercept, disclose or use that communication or the identity of any party to that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the carrier of the communication. Providers of wire or electronic communication services may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(d) Notwithstanding any other law, any provider of wire or electronic communications services, or the directors, officers, employees, agents, landlords or custodians of any such provider, are authorized to provide information, facilities or technical assistance to persons authorized by this article to intercept wire, oral or electronic communication if such provider or its directors, officers, employees, agents, landlords or custodians has been provided with a duly certified copy of a court order directing such assistance and setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities or assistance required. No cause of action shall lie in any court against any such provider of wire or electronic communication services, its directors, officers, agents, landlords or custodians for providing information facilities or assistance in accordance with the terms of any such order.

(e) It is lawful under this article for a person to intercept a wire, oral or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or the constitution or laws of this state:

(f) Notwithstanding the provisions of this article or any other provision of law, an electronic interception as defined by section one, article one-f of this chapter, is regulated solely by the provisions of article one-f of this chapter, and no penalties or other requirements of this article are applicable.

The Reporters Committee for Freedom of the Press offers this guide to the rules in all 50 states for recording conversations:

www.rcfp.org/rcfp/orders/docs/CANWETAPE.pdf

Glossary of Commonly Used Legal Terms

- ACCESSORY** A person who contributes or aids in the commission of a crime.
- ACCOMPLICE** A person who together with the principal offender commits a crime.
- ACQUIT** To legally determine the innocence of one charged with crime.
- AMICUS CURIAE** A friend of the court; one who has an interest in a case, although not a party in the case, and who volunteers to advise the court upon matters of the law.
- BAIL** To obtain the release of a person from legal custody by giving security and promising that he shall appear in court at a particular time.
- BENCH** The Court itself or the Judge.
- BONA FIDE** In or with good faith; honestly.
- CERTIORARI** The name of a writ issued by a superior or higher court directing the lower court to send up the record and proceedings of a case.
- CHATTEL** An article of personal property.
- COMMON LAW** The term distinguished from a law as created by the enactment of a legislature (called statutory law), it relates to those principles and rules of action which derive their authority solely from usages and customs and are found in court decisions principally.
- CONSPIRACY** An agreement between two or more persons to commit an unlawful act.
- CONTINUANCE** The adjournment or postponement of an action pending in a court.
- CONVICTION** The result of a criminal trial which ends in a judgment or sentence that the defendant is guilty as charged.
- CORROBORATE** To strengthen; to add weight by additional evidence.
- DE FACTO** In fact; actually but without legal authority.
- De JURE** Of legal right; legitimate; lawful.
- DE NOVO** To start over again; a second time; Anew.
- DEFENDANT** The person defending or denying; the person against whom relief or recovery is sought in an action or suit.
- DEMURRER** To dispute the sufficiency in law of pleading (or the indictment); to challenge the completeness of the indictment on its face.
- DISSENT** To denote disagreement of one or more judges of a court with the decision passed by the majority upon a case before them.
- DOCKET** A formal record entered in a brief of the proceedings in court.
- DOMICILE** That place where a person has his true, fixed and permanent home, to which whenever he is absent he has the intention of returning.
- DURESS** To use force to compel performance or nonperformance of an act.
- EMBEZZLEMENT** To steal; to appropriate fraudulently to one's own use property entrusted to one's care.
- EQUITY** The spirit and the habit of fairness, justness and the right dealing with the conduct of men.
- ERROR** A mistake of law, or the false or irregular application of law.
- ESTOPPEL** A rule of law which prevents a man from alleging or denying a fact, because of his own previous act.
- EVIDENCE** Documents or testimony of witnesses which tend to prove or disprove any matter in question.
- EX OFFICIO** By virtue of the office (as where one has a certain right or duty by virtue of the fact that he holds a particular office).
- EX POST FACTO** After the fact.

FELONY A criminal offense that may be punished by imprisonment at a place other than the local jail (in West Virginia any offense punishable by confinement in the penitentiary).

FORGERY Fabricating or producing falsely, counterfeited.

GARNISHMENT A legal process to reach the money or effects of a defendant in the possession or control of a third party.

HABEAS CORPUS The name given to a variety of writs having for their object to bring a party before a court judge for decision as to whether such person is being lawfully held prisoner.

HEARSAY A type of testimony given by a witness who relates, not what he knows personally, but what others have told him, or what he has heard said by others.

HYPOTHESIS A supposition, assumption or theory.

ILLICIT Prohibited, unlawful.

IMPLIED Inferred, not expressly stated.

INCOMPETENT One who is incapable of caring for his own affairs because he is mentally deficient or undeveloped.

INDICTMENT An accusation in writing found and presented by a grand jury charging that a person has committed a crime.

INFORMATION A formal accusation of a crime made by a prosecuting attorney.

INJUNCTION A writ or order by the court requiring a person generally to do or to refrain from doing an act.

INSTRUCTION A direction given by the judge to the jury concerning the laws of the case.

ISPO FACTO By the fact itself.

JEOPARDY Danger, hazard, peril. As where a person is being put in jeopardy of being convicted of crime, hence double jeopardy.

JURISDICTION The authority to hear and determine controversies between two parties.

JURY A body of persons legally selected to inquire into a matter of fact, and to render their verdict according to the evidence.

LACHES The failure to diligently assert a right, which results in a refusal to allow relief.

LARCENY Stealing personal property belonging to another.

LEGITIMATE Lawful.

LIBEL To defame or injure a person's reputation by a published writing.

LIS PENDENS A pending suit.

MALICE The doing of a wrongful act intentionally without just cause or excuse.

MANDAMUS The name of a writ issued by a court to enforce the performance of some public duty.

MISDEMEANOR A crime less than a felony and punishable by a fine or imprisonment in the county jail.

NEGLIGENCE The failure to exercise that degree of care which an ordinary prudent person would exercise under like circumstances.

NOLLE PROSEQUI A formal entry upon the record, by the prosecuting attorney in a criminal action, by which he declares that he will no further prosecute the case.

NOLO CONTENDERE The name of a plea in a criminal action, having the same effect as a plea of guilty but not constituting a direct admission of guilt.

NUNC PRO TUNC A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect.

PAROL Oral or verbal (as in the "Parol Evidence Rule").

PER CURIAM A phrase used in the report of a decision to distinguish an opinion of the whole court from an opinion written by any judge.

PEREMPTORY An absolute right, as the defendant's right to a peremptory challenge in a felony case of six of the jury panel.

PERJURY To lie or state falsely under oath. (A felony in West Virginia)

PERPETUITY Perpetual existence.

PREPONDERANCE To outweigh, as the preponderance of the evidence, meaning that the evidence on one side of the litigating outweighs the evidence for the other side.

PRIMA FACIE At first sight.

PROVISO A limitation or condition in a legal instrument.

PUNITIVE Relating to punishment.

QUASI As if it were.

QUID PRO QUO The giving of one valuable thing for another.

REMAND To send a case back to the lower court from which it came for further proceedings.

RES JUDICATA A thing previously judicially acted upon or decided.

REVERSED A term used by appellate courts to indicate that the decision of the lower court in the case before it has been set aside.

SITUS Location of the thing.

STARE DECISIS To follow decided cases previously reported.

STATUTE An act of a legislature.

STATUTE OF LIMITATIONS A statute limiting the time to bring an action after the right of action has arisen.

STAY To hold in abeyance an order of a court.

SUBPOENA An order or writ directed to a person and requiring his attendance at a particular time and place to testify as a witness.

SUBPOENA DUCES TECUM A subpoena used not only for the purpose of compelling a witness to attend in court alone but also requiring such a witness to bring with him books or documents in his possession and which may tend to establish a matter in the trial.

SUMMONS A notice to a defendant that an action against him has been commenced and requiring him to appear and answer the complaint.

SUPRA Above, the referring to a something written previously.

SURETY A person who binds himself for the payments of a sum of money or for the performance of something else for another.

SYLLABUS A note prefix to a report, especially a Supreme Court case giving a brief statement of the court's ruling on different issues of the case.

TO WIT That is to say, namely.

TORT A civil wrong or injury to the person.

UNILATERAL One-sided; obligation upon or act of one party.

VACATE To set aside; to move out.

VARIANCE A discrepancy or disagreement between two instruments or two aspects of some case.

VENUE The place at which an action is tried, generally based on location or judicial district in which an injury occurred or a material fact happened.

VERDICT A formal decision or finding of a jury.

VOID Having no legal force or binding effect.

VOIR DIRE To spread the truth (in the trial of a jury case, to question prospective jurors to determine their interest in and knowledge of the case or for the purpose of exercising peremptory challenges).

WARRANT A writ issued by a judge or other competent authority addressed to an officer requiring him to arrest a person before the authority to be examined regarding the offense.

WRIT An order or process issued in the name of a state or in the name of a court demanding the performance or nonperformance of some act.

Useful links: Quick reference E

Society of Professional Journalists' guide to FOIA:
www.spj.org/foi-guide-pros.asp

Federal Open Meetings laws: The Reporter's Committee for Freedom of the Press guides for the Federal Advisory Committee Act and the Government in the Sunshine Act:

www.rcfp.org/federal-open-government-guide/federal-open-meetings-laws

The Reporter's Committee for Freedom of the Press on reporter's privilege:
www.rcfp.org/rcfp/orders/docs/privilege/WV.pdf

Rules for covering WV Supreme Court of Appeals:

www.courtswv.gov/legal-community/court-rules/appellate-procedure/Part-IX.html#rule42

Advice from the Reporter's Committee for Freedom of the Press on court closures:

www.rcfp.org/first-amendment-handbook/you-have-right-oppose-secrecy-what-you-should-do

The Photographer's Right: Attorney Bert P. Krages' downloadable one-page general education guide about the rights to take photographs:

www.krages.com/phoright.htm

American Civil Liberties Union basic guide to the rights of photographers:

www.aclu.org/know-your-rights-photographers

The Reporters Committee for Freedom of the Press guide to rules in all 50 states for recording conversations:

www.rcfp.org/rcfp/orders/docs/CANWETAPE.pdf