

# A PHOTOGRAPHIC HISTORY OF THE SOUTH DAKOTA SUPREME COURT





*A bronze statue of Lady Justice on the Brown County Courthouse's Dome.*

*The*

# **South Dakota Supreme Court**

*A Photographic History*

The South Dakota Supreme Court is proud of its long history of service to the citizens of South Dakota. From the first Territorial Supreme Court in 1861 to the present, the Supreme Court has worked to safeguard the rights of every state citizen and assure due process of law. We hope you enjoy this brief history of the South Dakota Supreme Court, prepared as a permanent informational project for the citizens of the State of South Dakota.

For the Court,  
Chief Justice David Gilbertson

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## THE SUPREME COURT IN 2015

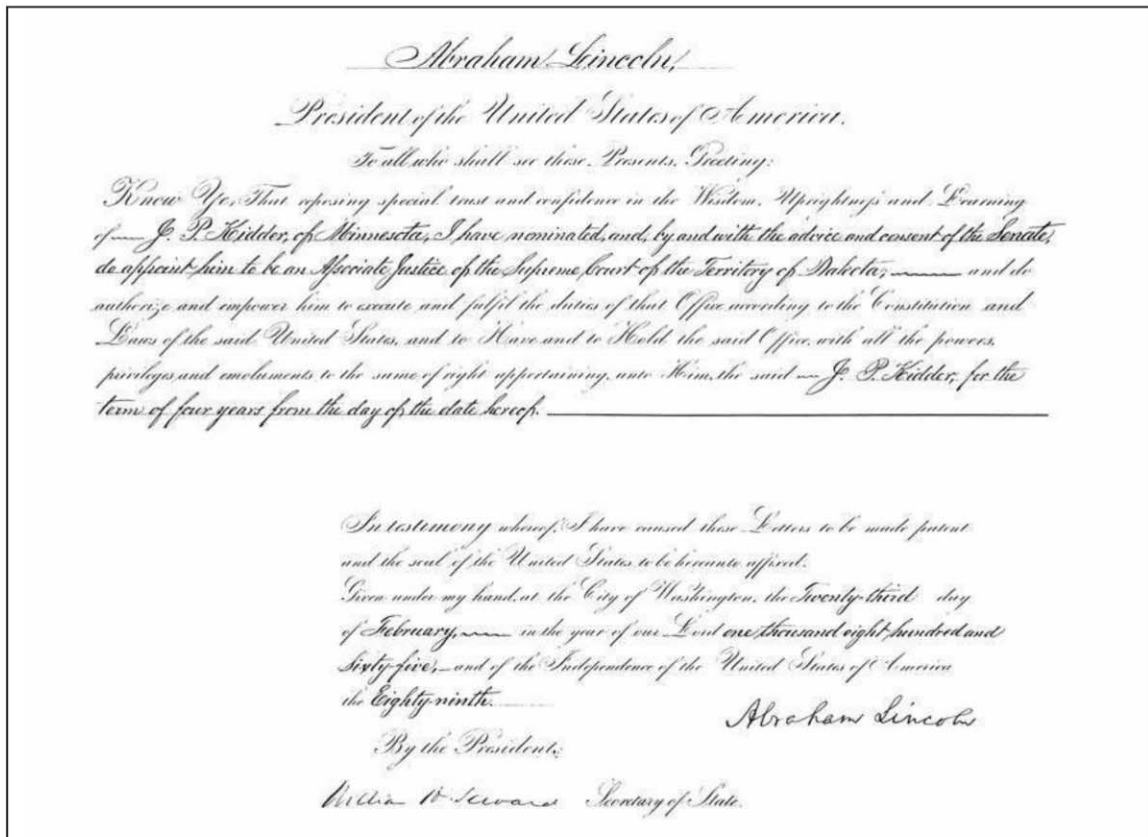


*Justices of the Supreme Court, left to right: Hon. Lori S. Wilbur, Sioux Falls, Fourth District; Hon. Steven L. Zinter, Pierre, Third District; Hon. David Gilbertson, Chief Justice, Lake City, Fifth District; Hon. Glen W. Severson, Sioux Falls, Second District; Hon. Janine M. Kern, Rapid City, First District.*

## THE SUPREME COURT OF DAKOTA TERRITORY

On March 2, 1861, President James Buchanan approved the legislative Act of Congress that created the Dakota Territory. The government of the federal territory was divided into three branches of government: executive, legislative, and judicial. The judicial power of the territory was vested in a Supreme Court, district courts, probate courts, and justices of the peace.

That same year, President Abraham Lincoln appointed Philemon Bliss, Joseph L. Williams, and George P. Williston as the first justices of the Supreme Court of Dakota Territory.



1865 Certificate of Appointment for Jefferson P. Kidder to the Dakota Territorial Supreme Court, signed by President Abraham Lincoln.

## MEMBERS OF THE TERRITORIAL SUPREME COURT

The President of the United States appointed all the members of the Territorial Supreme Court, because the Territorial Court was part of the federal judicial system. From 1861 to 1889, when South Dakota became a state, thirty presidential appointees served as justices on the Supreme Court of Dakota Territory.

George P. Williston	1861 – 1864	A.J. Edgerton	1882 – 1886
Philemon Bliss	1861 – 1865	William E. Church	1883 – 1886
Joseph L. Williams	1861 – 1865	Cornelius S. Palmer	1883 – 1888
Ara Bartlett	1864 – 1869	William H. Francis	1884 – 1888
William E. Gleason	1865 – 1867	Seward Smith	1884 – 1885 <sup>1</sup>
Jefferson P. Kidder	1865 – 1875	Louis K. Church	1885 – 1887
John W. Boyle	1867 – 1869	William B. McConnell	1885 – 1889
Wilmot W. Brookings	1869 – 1873	Bartlett Tripp	1886 – 1889
George W. French	1869 – 1873	Charles M. Thomas	1887 – 1889
Alanson H. Barnes	1873 – 1881	James Spencer	1887 – 1889
Peter C. Shannon	1873 – 1882	John E. Carland	1888 – 1889
Granville G. Bennett	1875 – 1878	Roderick Rose	1888 – 1889
Jefferson P. Kidder	1879 – 1883	C.F. Templeton	1888 – 1889
Gideon C. Moody	1878 – 1883	L.W. Crofoot	1888 – 1889
Sanford A. Hudson	1881 – 1885	Frank R. Aikens	– 1889

1. Suspended by President Grover Cleveland



## THE FIRST TERRITORIAL SUPREME COURT

The early Territorial Supreme Court had little appellate business and, in fact, the first time it met to hear appeals was on December 3, 1867, in Yankton. However, the members of the Court were not idle as they also served as the only trial judges for the Dakota Territory.



*The 1867 Supreme Court of Dakota Territory conducting business at its first meeting as an appeals court. Members of the Court at its first sitting were Jefferson P. Kidder, Ara Bartlett, and John W. Boyle.*

The Supreme Court of the Dakota Territory was comprised of three justices until 1879 when another associate justice was added. The total number of justices increased to six in 1884 and increased to eight in 1888.



## THE TERRITORIAL SUPREME COURT IN 1885



*The Territorial Supreme Court in 1885. Pictured from left to right: Hon. Seward Smith, Hon. William E. Church, Hon. Alonzo J. Edgerton, Hon. Sanford Hudson, Hon. Cornelius S. Palmer, and Hon. William H. Francis.*

The decisions of the Supreme Court of Dakota Territory, cited as "Dakota Reports," cover six volumes. The Territorial Supreme Court was dissolved in 1889 when President Benjamin Harrison proclaimed statehood for South Dakota.

## SUPREME COURT DISPLAY CASE



*Chief Justice David Gilbertson views a display case outside the Supreme Court courtroom which recognizes the contributions of the justices of the Dakota Territory. The display contains photos of the justices as well as historical documents.*

## THE FIRST SOUTH DAKOTA SUPREME COURT

The 1889 South Dakota Constitution provided for three branches of government: executive, legislative, and judicial. The judicial branch consisted of a Supreme Court, circuit courts, county courts, and justices of the peace. Three judges, each elected from a district, comprised the Supreme Court. The judges ran on political party tickets, after nomination in the party primary process, just as the other elected state officials.

On October 1, 1889, a statewide election was held in South Dakota to:

1. approve the new state constitution,
2. select a temporary capital city, and,
3. elect a governor, legislature, and judges for the Supreme and circuit courts.

The judges elected to the first South Dakota Supreme Court were Dighton Corson, Alphonso G. Kellam, and John E. Bennett.



*The newly elected legislative delegation and Supreme Court judges leaving Deadwood, 1889.*



## OATH CEREMONY

On October 15, 1889, all of the newly elected officers for the State of South Dakota met in Pierre to take the oath of office. However, there was no capitol for the new officers because Pierre had just won the temporary capital site. The oath ceremony for the new officers was given at the Hughes County Courthouse in Pierre.



*Oaths of the first state officials for the new State of South Dakota were taken at the Hughes County Courthouse in 1889.*

The oath-taking ceremony for the new state officers, including the judges of the Supreme Court, was described in the October 16, 1889 newspaper, *The Daily Capital*:

Never was there a more auspicious day for the launching of the ship of state of South Dakota. It was a perfect day. The officers all assembled on the front veranda of the courthouse in a semicircle. The oath of office was administered by Territorial Presiding Judge Bartlett Tripp and was very short. Most of the people supposed Governor Mellette would make an inauguration speech, but in this they were disappointed as no speeches were made.



## FIRST SUPREME COURT OPENING CEREMONY

The South Dakota Supreme Court began its first term of court on February 4, 1890, in the courtroom of the Hughes County Courthouse. The February 6, 1890 *Free Press* described the opening of the Supreme Court:

A large delegation of attorneys, ladies, and citizens were present to witness the impressive ceremony of opening the Court. At the time set for opening, Presiding Judge Dighton Corson, followed by Judges A.G. Kellam and J. E. Bennett, entered from their private room. As they took their positions, the attorneys and audience arose to their feet as a due mark of respect to the dignity and the majesty of the law.

Presiding Judge Corson then administered the oath to 57 attorneys who were admitted to practice before the Supreme Court. Judge C.H. Winsor of Sioux Falls, the oldest member of the bar, was granted the distinction of having his name entered first on the roll of attorneys. The Court then proceeded to hear cases.



*The First Supreme Court in session in the old Hughes County Courthouse. Left to right: Clerk Ivan W. Goodner; Judge Alphonso G. Kellam; Presiding Judge Dighton Corson; and Judge John E. Bennett.*

## HOME OF THE SUPREME COURT

The citizens of Pierre raised \$30,000 to erect and donate to the state a wooden capitol on the southwest corner of the present capitol grounds. The wooden South Dakota capitol was ready for occupancy by the governor and the legislature on January 9, 1890. Unfortunately, the building was too small to house the Supreme Court. The Supreme Court was given offices in the Hughes County Courthouse and jointly shared the courtroom with the circuit court judge.

## SUPREME COURT MOVES INTO NEW WOODEN CAPITOL IN 1891

In 1891, the legislature approved \$7,000 to build an east wing addition to the wooden capitol to provide office space for the Supreme Court and other state officers. The two-story, fifty-foot by sixty-foot addition was completed on October 1, 1891. The South Dakota Supreme Court moved into the addition in 1891 and remained there until completion of the current stone capitol in 1910.



*South Dakota's wooden capitol showing the new sixty-foot east wing addition on the right side of the photograph.*

## NO COURTROOM IN NEW CAPITOL

The new addition to the wooden capitol did not include a courtroom. Therefore, the Supreme Court held its first session in the Senate chamber of the capitol on October 13, 1891, with sixty-two cases on its calendar.



*The members of the Supreme Court pose with entire statehouse workforce in 1903 in front of the old capitol. Front row second from left, Judge Dighton Corson; third from left, Judge Howard G. Fuller; fifth from left, Governor Charles N. Herreid; and sixth from left, Judge Dick Haney.*

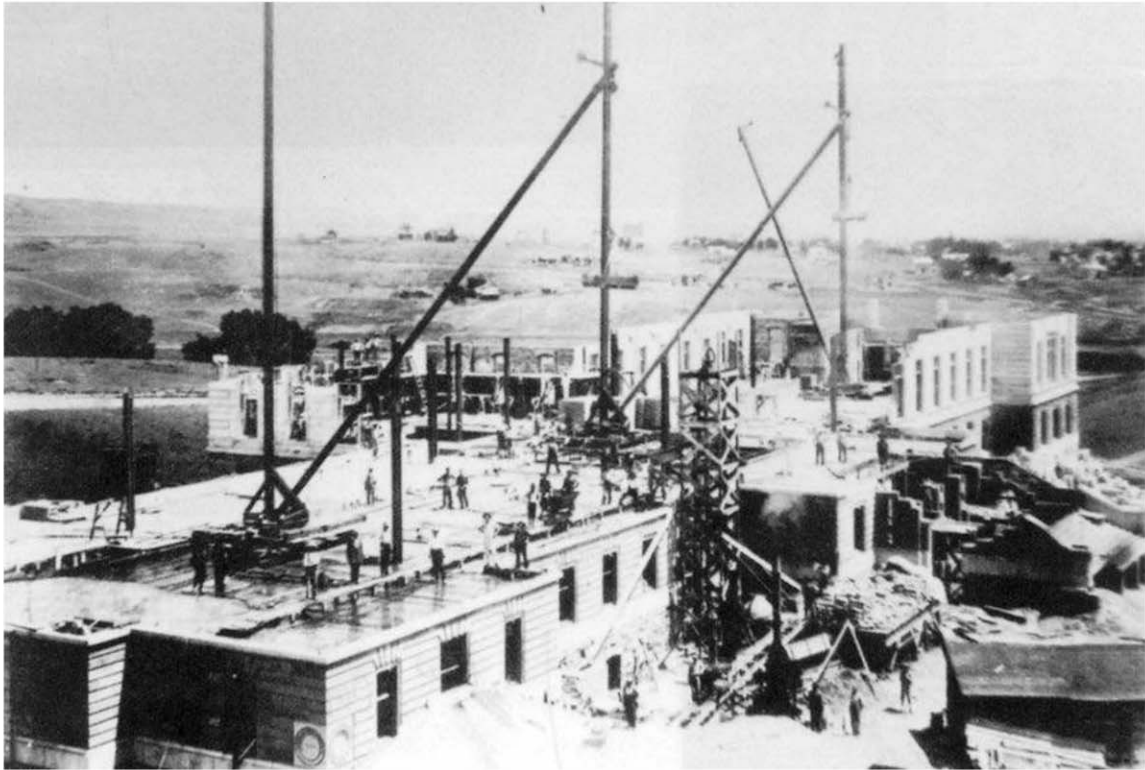
Both the House and Senate chambers were available for official and private use because the legislature met only once every two years for a sixty-day term. Frequently, the state Supreme Court was in session downstairs in the Senate chamber while the Federal Court was in session upstairs in the House chamber.



## **NEW STONE CAPITOL BECOMES PERMANENT LOCATION OF THE SUPREME COURT**

After Pierre won the elections of 1889, 1890, and 1904 to be the South Dakota capital city, the 1905 legislature authorized the construction of a new stone capitol in Pierre.

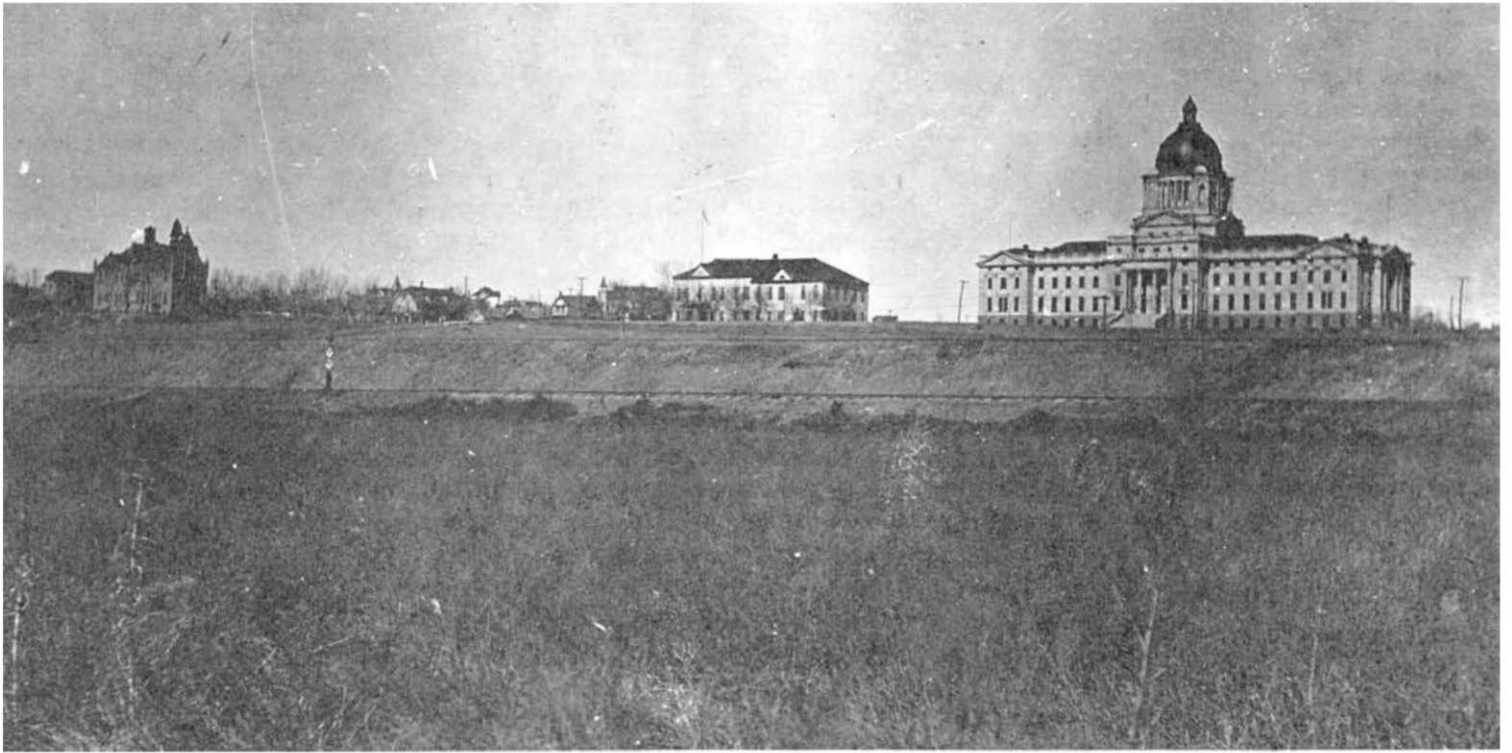
The capitol would be paid for by monies obtained from the sale of public lands owned by the state. The legislature, believing these lands would sell slowly, decided that the east wing of the capitol should be built first. The east wing foundation was finished in the fall of 1905.



*The capitol under construction. In the background is the east wing with exposed area showing the site of the current courtroom, law library, and offices of the Supreme Court.*



## OLD AND NEW CAPITOL –1910



*The new stone capitol under construction to the east of the old wooden capitol. The Supreme Court maintained offices in the east wing of the wooden capitol, pictured in the center of the photograph, until the new capitol was completed in 1910.*

## CAPITOL IN 1910 AND 100 YEARS LATER



*South Dakota's new capitol completed in 1910.*

The stone capitol was completed in 1910, and dedicated in June of 1910. The new home of the South Dakota Supreme Court was in the east wing of the new capitol, and included space for administrative offices, a courtroom, the law library, and offices for the five judges of the Supreme Court. In 1909, the number of judges on the Court was increased from three to five.



*The capitol in 2010, 100 years later.*

## THE SUPREME COURT COURTROOM

The South Dakota Supreme Court courtroom in the stone capitol was decorated in brown, tan, and gold, with painted wall designs, matching draperies and matching carpet. The furniture was polished mahogany.



*The newly completed Supreme Court courtroom in the new capitol, before the placement of the mural "The Mercy of the Law."*



## **“THE MERCY OF THE LAW” MURAL – SUPREME COURT COURTROOM STATE CAPITOL**

The mural by Charles Holloway represents “The Mercy of the Law” and is also known as the “Gate of Justice.” The mural is a classical expression of art in decorative form and color and emblematic meaning. Holloway described his mural in writing:

In the early middle ages, structures following the general form of gates were erected to receive the throne of the justiciary. In various regions of Europe the church gates, the gates of justice, were adorned with sculptured lions. In the painting, on each side of the gateway is shown the sculptured lions, a symbol of courage.

The ornamental surrounding of the painting is simple suggestion. Shown at the top, the birds as emblems of peace and at the bottom, the cherubs as emblems of the spirit of goodness and love and the serpents as emblems of evil. On each side of the lower part of the center of the painting is shown the despairing and remorseful guilty.

In the center is the spirit of mercy — the symbol of God’s soul, showing pity and compassion for the guilty, but the guardians of nature’s law, the strong arm of God, demand their penalty. The offenders’ lives lie in the mercy of God, yet they must pay the penalty of their crime.





## JUDGE SAMUEL C. POLLEY AND FRIEND IN CHAMBERS



*Judge Samuel C. Polley in the office currently occupied by Justice Janine M. Kern. This photograph is believed to have been taken around 1930. Note that Judge Polley brought "man's best friend" along with him to his chambers while carrying out his judicial duties.*

## THE MODERN LOOK

To obtain a modern look, the Supreme Court courtroom was remodeled in 1952. The ceilings were lowered with acoustical tile, the walls were covered with paneling, and fluorescent lights were installed.



*The modernized courtroom, with the mural "The Mercy of the Law" in the background. At that time Supreme Court judges did not wear black robes. Judges are listed from left to right: Vernon R. Sickle, Everett D. Roberts, Herbert B. Rudolph, St. Clair Smith, and Boyd Leedom. The Clerk in the front row is F.M. Pinckney.*

## RESTORATION

In preparation for the celebration of the century of South Dakota statehood, the Supreme Court courtroom was restored in 1979. The acoustical tile and paneling were removed and the courtroom was faithfully restored to its original appearance. Restoration efforts included repainting and refinishing all the walls and furniture to match the original color and design of the courtroom as closely as possible.



*The Supreme Court courtroom after restoration.*



## THE SOUTH DAKOTA SUPREME COURT – UNIFIED JUDICIAL SYSTEM

In 1972, the South Dakota Constitution was amended to unify the judicial branch. South Dakota's courts are organized into a unified judicial system with two levels of courts, the Supreme Court and the circuit courts. The Chief Justice, on behalf of the Supreme Court, has the responsibility of administering the statewide unified court system.

The Supreme Court has original jurisdiction over certain types of proceedings, which means the matter is filed directly with the Supreme Court. However, the Court most often serves as an appellate court, hearing appeals of circuit court decisions.

In South Dakota, the Supreme Court has final supervision of judges. The non-partisan Judicial Qualifications Commission hears and investigates complaints against judges believed to be acting improperly, recommending to the Supreme Court whether disciplinary actions should be taken. If the Court finds a complaint is justified, it may discipline the judge by censure, removal from office or retirement.

The Supreme Court has superintending powers over lawyers in South Dakota, since the work of the courts depends to a great extent upon the cooperation and assistance of lawyers. The Supreme Court appoints a five-member Board of Bar Examiners that administers the requirements for admission to practice law in South Dakota. The Supreme Court has adopted a body of rules called the South Dakota Rules of Professional Conduct because it is necessary to have rules governing the way lawyers deal with their clients, the courts and the public. These rules establish standards for lawyers' conduct and provide for disciplinary proceedings if a lawyer violates the code.



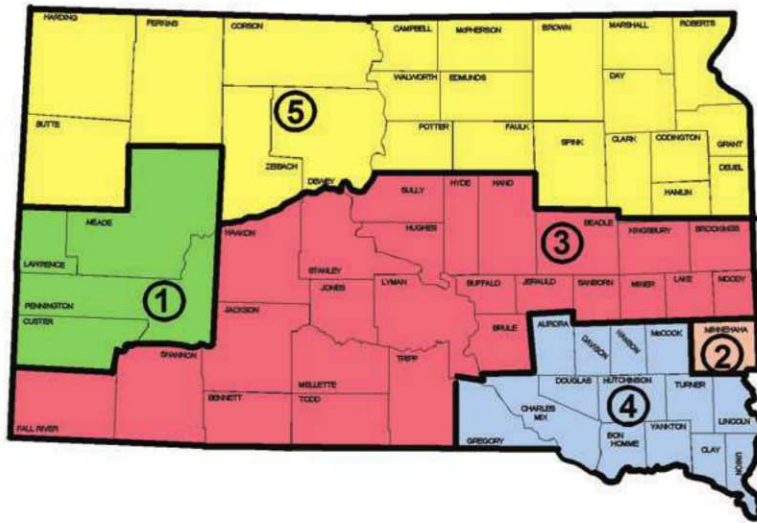
*State seals were recently added to the justices' chairs in the Supreme Court courtroom.*



## SUPREME COURT APPOINTMENT DISTRICTS

Following appointment, and after serving on the Court for three years, each justice must stand for retention at the next statewide general election, with retention every eight years thereafter. The following map shows the Supreme Court appointment districts effective January 23, 2012.

South Dakota Supreme Court Appointment Districts  
*Effective January 23, 2012*



Members of the Supreme Court were called judges until the 1972 constitutional amendment, when their title changed to justice. The Chief Justice of the Supreme Court is elected by and from the five justices to serve a four-year term, and may be re-elected to additional terms. The Chief Justice administers the state's unified court system.

## WOMEN JOIN THE COURT



*Judge Mildred Ramynke, was South Dakota's first female county district judge (1958-1975) and the first female circuit court judge (1975-1985). Commencing in 1975, she was also the first female circuit judge to sit with the South Dakota Supreme Court to replace a disqualified Justice. She sat with the Supreme Court numerous times until her retirement in 1985.*



*Justice Judith M. Meierhenry, the first female Supreme Court Justice in South Dakota history began her judicial career as a circuit judge in 1988. In 1997 she was appointed the presiding judge in the Second Judicial Circuit. Justice Meierhenry was appointed to the Supreme Court in 2002 and retired in 2011.*



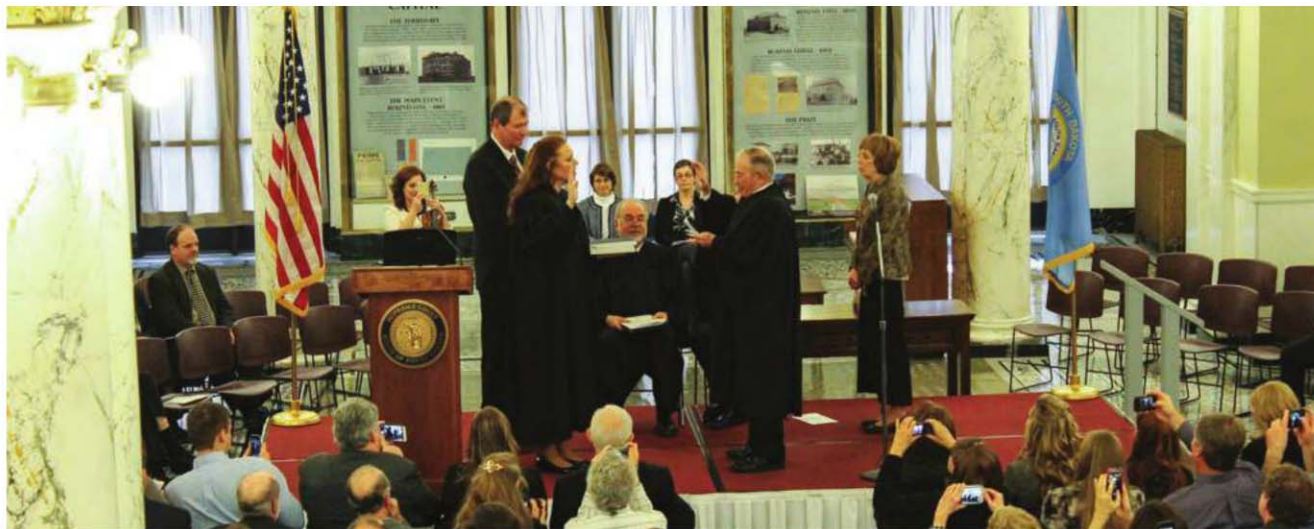
*Justice Lori S. Wilbur was appointed in 2011 as the second female Justice of the South Dakota Supreme Court. Justice Wilbur began her legal career as a Supreme Court law clerk and her judicial career as a magistrate judge in 1992. She was appointed in 1999 as a circuit judge and in 2007 as presiding judge in the Sixth Judicial Circuit.*



*Justice Janine M. Kern became the third female and the 49th Justice appointed to the South Dakota Supreme Court. Justice Kern began her career in the Attorney General's office serving in the appellate division, drug prosecution unit, and as director of the Litigation Division. She was appointed a circuit court judge in 1996 in the Seventh Judicial Circuit and served 18 years on the trial court bench.*

## SELECTION OF JUSTICES

The Supreme Court is comprised of five justices appointed by the Governor from a list of two or more persons nominated by the Judicial Qualifications Commission. The Judicial Qualifications Commission reviews applications for vacancies on the Supreme Court and the circuit court bench. It nominates the most qualified applicants to the Governor, who in turn appoints a person to fill the vacancy from the nominees.



*Former circuit court judge and assistant attorney general Janine M. Kern became the 49th South Dakota Supreme Court Justice on January 5, 2015. An investiture ceremony was held at the capitol in which Justice Kern took the oath of office administered by her father, retired circuit court Judge Paul J. Kern.*

*Justice Kern succeeds Justice John K. Koenkamp who retired at the end of December 2014 after twenty years on the Court. Justice Kern joins Chief Justice David Gilbertson and fellow Justices Steven Zinter, Glen Severson and Lori Wilbur on the South Dakota Supreme Court.*



## ACCESS TO THE COURT PROCESS

The Supreme Court travels throughout the state to hear oral arguments. This gives the citizens of South Dakota the opportunity to see and hear for themselves firsthand how the Supreme Court functions. The Court allows expanded media coverage of oral arguments and the inclusion of cameras in the courtroom to increase public access to the court process. Court decisions are available to the public soon after they are issued on the South Dakota Unified Judicial System's web page and, commencing in August 2002, the public has the ability to hear oral arguments "live" on the same web page at <http://ujs.sd.gov>. The oral arguments are archived on this website for review by the public.



*The South Dakota Supreme Court visiting with students from Crazy Horse High School at the 2007 term of court at Black Hill State University. Justices of the Court during this term were from left to right: Justice Richard Sabers, Chief Justice David Gilbertson, Justice Steven Zinter, Justice Judith Meierhenry, and Justice John Konenkamp.*

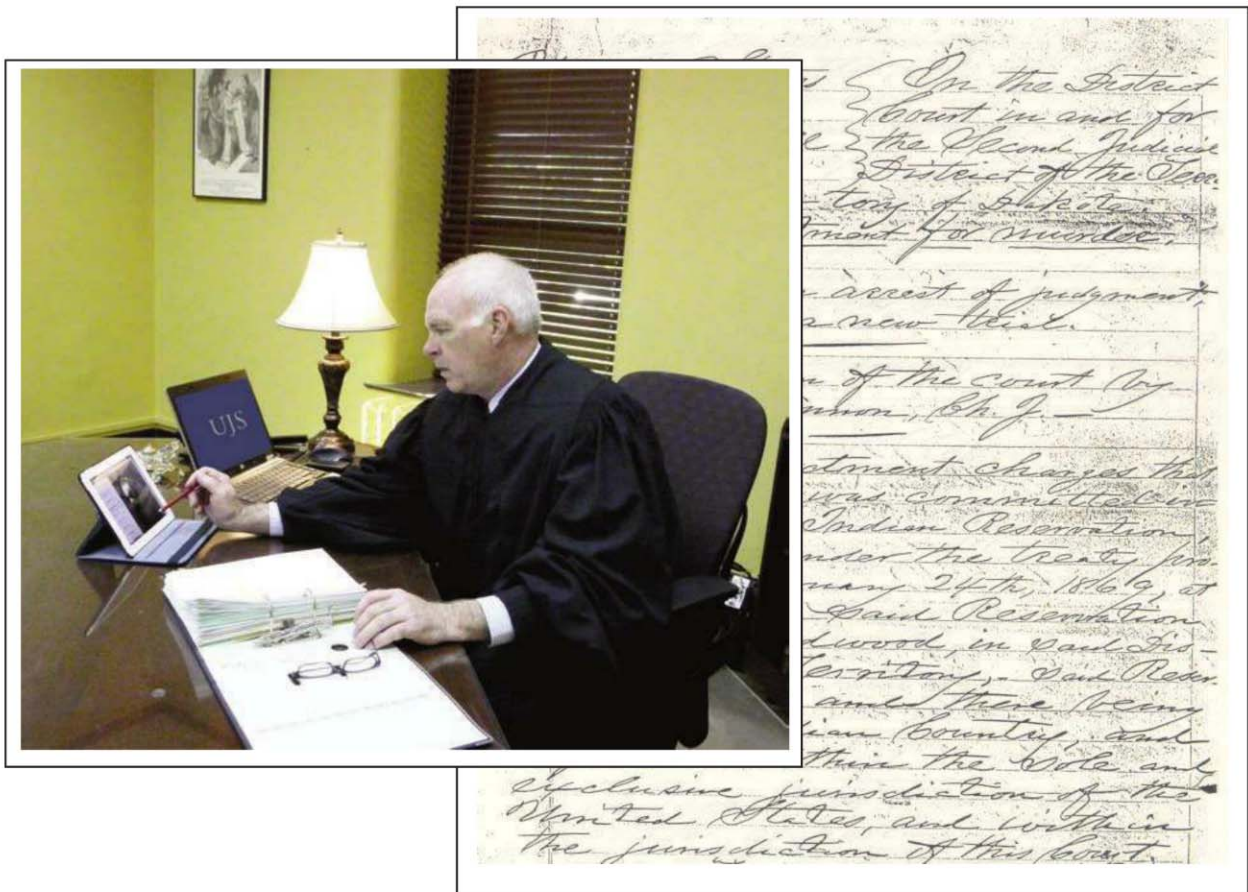
## CAMERAS IN THE COURTROOM

From 1889 until 2001 cameras were prohibited from the sessions of the South Dakota Supreme Court. In August of 2001 both television and still cameras were permitted in the Supreme Court. In July of 2011 video and still cameras were permitted on a limited basis in circuit courts.



*In July 2011, the Beadle County States Attorney Michael Moore and defense attorney, Ron Volesky tried a criminal homicide case before Circuit Judge Jon Erickson in Huron, South Dakota with live television coverage of the trial. This was the first jury trial where video, still cameras, and audio recording devices were allowed in a South Dakota courtroom.*

## GOOSE QUILLS TO COMPUTERS



*In the upper right is a copy of the earliest known surviving legal opinion of the Dakota Territorial Supreme Court. In US v. John (Jack) McCall, Chief Justice Peter Shannon wrote the opinion of the Court in his own hand affirming McCall's death sentence for the killing of Wild Bill Hickock. The photograph in the lower left shows Justice Glen Severson drafting an opinion with an iPad which allows him to research and work in his chambers, his home or elsewhere. It gives him access to all the Court's opinions to assist him with legal research.*



## MEMBERS OF THE SOUTH DAKOTA SUPREME COURT

*Dighton Corson, District 1	1889 – 1913	*Charles S. Hanson, District 2	1956 – 1973
*Alphonso G. Kellam, District 2	1889 – 1896	Harold Bogue, District 4	1957 – 1959
*John E. Bennett, District 3	1889 – 1893	**Frank Biegelmeier, District 4	1959 – 1974
*Howard G. Fuller, District 3	1894 – 1908	*Frederick J. Homeyer, District 5	1962 – 1971
*Dick Haney, District 2	1896 – 1913	Fred R. Winans, District 3	1971 – 1976
*Charles S. Whiting, District 3	1908 – 1922	James M. Doyle, District 1	1971 – 1976
*James H. McCoy, District 5	1909 – 1921	Oren P. (Phil) Coler, District 4	1974 – 1977
*Ellison G. Smith, District 4	1909 – 1923	Lawrence J. Zastrow, District 1	1976 – 1979
*Samuel C. Polley, District 1	1913 – 1947	Donald J. Porter, District 3	1977 – 1979
*John Howard Gates, District 2	1913 – 1927	**Francis G. Dunn, District 2	1973 – 1985
*Frank Anderson, District 5	1921 – 1925	**Roger L. Wollman, District 5	1971 – 1985
*Carl G. Sherwood, District 3	1922 – 1931	Robert E. Morgan, District 4	1977 – 1991
Charles H. Dillon, District 4	1923 – 1926	Frank E. Henderson, District 1	1979 – 1994
*Dwight Campbell, District 5	1925 – 1937	**Jon Fosheim, District 3	1979 – 1986
*Newton D. Burch, District 4	1926 – 1931	**George W. Wuest, District 5	1986 – 1994
James Brown, District 2	1927 – 1931	Richard W. Sabers, District 2	1986 – 2009
*Frederick A. Warren, District 2	1931 – 1944	**Robert A. Miller, District 3	1986 – 2001
*Everett D. Roberts, District 3	1931 – 1970	Robert A. Amundson, District 4	1991 – 2002
*Herbert B. Rudolph, District 4	1931 – 1957	Judith K. Meierhenry, District 4	2002 – 2011
*St. Clair Smith, District 5	1937 – 1962	John K. Konenkamp, District 1	1994 – 2014
*Vernon R. Sickel, District 2	1944 – 1956	**David Gilbertson, District 5	1995 –
*Charles R. Hayes, District 1	1947 – 1951	Steven L. Zinter, District 3	2002 –
*Boyd Leedom, District 1	1951 – 1955	Glen A. Severson, District 2	2009 –
*Alex Rentto, District 1	1955 – 1971	Lori S. Wilbur, District 4	2011 –
*Charles S. Hanson, District 2	1956 – 1973	Janine M. Kern, District 1	2015 –

+ The number of members of the Supreme Court was increased from three judges to five judges in 1909.

\* Served as Presiding Judge of the South Dakota Supreme Court.

\*\* Served as Chief Justice of the South Dakota Supreme Court.

## CHIEF JUSTICES OF THE SOUTH DAKOTA SUPREME COURT

Frank Biegelmeier, District 4	1972 – 1974	George W. Wuest, District 5	1986 – 1990
Francis G. Dunn, District 2	1974 – 1978	Robert A. Miller, District 3	1990 – 2001
Roger L. Wollman, District 5	1978 – 1982	David Gilbertson, District 5	2001 –
Jon Fosheim, District 3	1982 – 1986		

## SOUTH DAKOTA COUNTY COURTHOUSES



Kingsbury County



Marshall County



McCook County



Beadle County

*A substantial portion of the work of the South Dakota Supreme Court is consideration of appeals from trials conducted in virtually every county in South Dakota. The Supreme Court provides management oversight in the operation of trial courts which exist in each county. These two pages contain photographs taken by Chief Justice David Gilbertson of some of the courthouses in South Dakota where the work of the Supreme Court originates.*





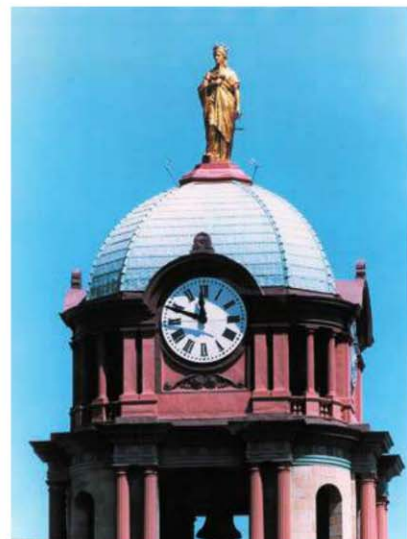
Former Minnehaha County



Lake County



Butte County



Brown County





*The decorative carving on the Spink County Courthouse.*

2015 Revision by:

Chief Justice David Gilbertson, South Dakota Supreme Court  
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2,500 copies of this booklet were printed at a cost of \$3.87 each.



*The main stairway in the Lawrence County Courthouse.*



*The courtroom doors in the Bon Homme County Courthouse.*