

SUPREME COURT REPORTER



Volume 92

Pages 1-1331

Covering

VOLUMES 404-405 U. S. REPORTS

Cases Argued and Determined

in the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

**ST. PAUL, MINN.
WEST PUBLISHING CO.**

1973

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92 S. Ct.

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JUSTICES

OCTOBER TERM, 1971

CHIEF JUSTICE

HON. WARREN E. BURGER

ASSOCIATE JUSTICES

HON. WILLIAM O. DOUGLAS

HON. WILLIAM J. BRENNAN, Jr.

HON. POTTER STEWART

HON. BYRON R. WHITE

HON. THURGOOD MARSHALL

HON. HARRY A. BLACKMUN

HON. LEWIS F. POWELL, Jr.¹

HON. WILLIAM H. REHNQUIST¹

RETIRED

HON. EARL WARREN, Chief Justice

HON. STANLEY REED, Associate Justice

HON. TOM C. CLARK, Associate Justice

HON. JOHN M. HARLAN, Associate Justice²

ATTORNEY GENERAL

HON. JOHN N. MITCHELL³

HON. RICHARD G. KLEINDIENST⁴

SOLICITOR GENERAL

HON. ERWIN N. GRISWOLD

CLERK

E. ROBERT SEAVER⁵

MICHAEL RODAK⁶

REPORTER OF DECISIONS

HENRY PUTZEL, jr.

MARSHAL

T. PERRY LIPPITT⁷

FRANK M. HEPLER⁸

LIBRARIAN

HENRY CHARLES HALLAM, Jr.

¹ Took oath January 7, 1972.

² Died December 29, 1971.

³ Resigned, effective March 1, 1972.

⁴ Appointed, took office June 12, 1972.

⁵ Resigned, effective March 4, 1972.

⁶ Appointed, effective March 4, 1972.

⁷ Retired December 31, 1971.

⁸ Appointed, effective January 1, 1972.

ALLOTMENT OF THE JUSTICES

DISTRICT OF COLUMBIA CIRCUIT

CHIEF JUSTICE WARREN E. BURGER, of Virginia.

Appointed Chief Justice by President Nixon June 23, 1969;
took office June 23, 1969.

FIRST CIRCUIT.

Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico.

JUSTICE WILLIAM J. BRENNAN, Jr., of New Jersey.

Appointed by President Eisenhower October 15, 1956;
took office October 16, 1956.

SECOND CIRCUIT.

Connecticut, New York, and Vermont.

JUSTICE THURGOOD MARSHALL, of New York.

Appointed by President Johnson August 30, 1967;
took office October 2, 1967.

THIRD CIRCUIT.

Delaware, New Jersey, Pennsylvania, and Virgin Islands.

JUSTICE WILLIAM J. BRENNAN, Jr., of New Jersey.

Appointed by President Eisenhower October 15, 1956;
took office October 16, 1956.

FOURTH CIRCUIT.

Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

CHIEF JUSTICE WARREN E. BURGER, of Virginia.

Appointed Chief Justice by President Nixon June 23, 1969;
took office June 23, 1969.

FIFTH CIRCUIT.

Alabama, Florida, Georgia, Louisiana, Mississippi, Texas, and Canal Zone.

JUSTICE LEWIS F. POWELL, Jr., of Virginia.

Appointed by President Nixon December 9, 1971;
took office January 7, 1972.

ALLOTMENT OF THE JUSTICES

SIXTH CIRCUIT.

Kentucky, Michigan, Ohio, and Tennessee.

JUSTICE POTTER STEWART, of Ohio.

Appointed by President Eisenhower October 14, 1958;
took office October 14, 1958.

SEVENTH CIRCUIT.

Illinois, Indiana, and Wisconsin.

JUSTICE WILLIAM H. REHNQUIST, of Arizona.

Appointed by President Nixon December 15, 1971;
took office January 7, 1972.

EIGHTH CIRCUIT.

*Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and
South Dakota.*

JUSTICE HARRY A. BLACKMUN, of Minnesota.

Appointed by President Nixon May 14, 1970; took office May 14, 1970.

NINTH CIRCUIT.

*Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada,
Oregon, and Washington.*

JUSTICE WILLIAM O. DOUGLAS, of Connecticut.

Appointed by President Roosevelt April 15, 1939; took office April 17, 1939.

TENTH CIRCUIT.

Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming.

JUSTICE BYRON R. WHITE, of Colorado.

Appointed by President Kennedy April 12, 1962; took office April 16, 1962.

SUPREME COURT OF THE UNITED STATES

October 4, 1971

Present: Mr. Chief Justice Burger, Mr. Justice Douglas, Mr. Justice Brennan, Mr. Justice Stewart, Mr. Justice White, Mr. Justice Marshall, and Mr. Justice Blackmun.

DEATH OF MR. JUSTICE BLACK

The Chief Justice said:

"It is a sad duty for us to take note today, on opening the October 1971 Term of Court, of the absence from this Bench for the first time in 34 years, of our beloved colleague the late Justice Hugo Black. His tenure spanned that of 5 of the 15 Chief Justices who have presided here since the Constitution was adopted and his departure is a profound loss to each of us personally and to the Court.

"Much has been and much more will be said and written of the life and work of Mr. Justice Black. His public service in the Army in World War I, in the State of Alabama, in the United States Senate, and on this Court covered more than 50 of the 85 years of a life rich in accomplishment.

"In time, I believe, one thing will stand out above all in his work and in his thinking. Throughout his entire life he never wavered in his unbounded faith in the people and in the political processes of a free people under the American Constitution. He loved this Court as an institution, and contributed mightily to its work, to its strength, and to its future. He revered the Constitution; he had enormous respect for the Presidency and for the Congress, but above all else, he believed in the people.

"In a period when institutions are under attack and when people are having doubts about their capacity to govern themselves, this should give heart to all, for Hugo Black had no doubt whatever about the ability of an informed and free people to govern their own destinies.

"We will miss his wise counsel, his rare spirit, his vigor, his sparkle, and the warmth of his comradeship.

"In the near future a date will be fixed for presentation in this Court, of appropriate memorials to him."

RETIREMENT OF MR. JUSTICE HARLAN

The Chief Justice said:

"It is with deep regret that we take note today of the retirement of our beloved colleague, Mr. Justice Harlan, who served on this Court since March 28, 1955, after prior service on the United States Court of Appeals for the Second Circuit.

"Before going on the Bench, Mr. Justice Harlan combined a brilliant career as a lawyer with significant positions of high public responsibility, including a distinguished military career in the European theater in World War II. Ill health led Mr. Justice Harlan to submit to retirement when his high sense of duty persuaded him he could not continue to carry out his obligations to the Court. The volumes of the U.S. Reports from 1955 through the most recent Term attest to his prolific and erudite contributions to the work of the Court.

"I speak for the whole Court, and the Bar as well, in expressing heartfelt wishes for Justice Harlan's restoration to health."

ASSIGNMENT OF MR. JUSTICE MARSHALL

ORDERS

September 24, 1971

On September 24, 1971, during the summer recess, the Chief Justice entered an order pursuant to Title 28 U.S.C. Sec. 42 temporarily assigning Mr. Justice Marshall to the Second Circuit as Circuit Justice.

October 11, 1971

Pursuant to the provisions of Title 28, U.S.C. § 42, It is ordered that Mr. Justice Marshall be, and he is hereby, temporarily assigned to the Second Circuit as Circuit Justice.

ASSIGNMENT OF MR. JUSTICE STEWART

ORDER

October 11, 1971

Pursuant to the provisions of Title 28, U.S.C. § 42, It is ordered that Mr. Justice Stewart be, and he is hereby, temporarily assigned to the Fifth Circuit as Circuit Justice.

SUPREME COURT OF THE UNITED STATES

ASSIGNMENT OF MR. JUSTICE REED

ORDER

November 9, 1971

An order of the Chief Justice designating and assigning Mr. Justice Reed (Retired) to perform judicial duties in the United States Court of Claims beginning November 29, 1971, and ending June 30, 1972, and for such further time as may be required to complete unfinished business, pursuant to 28 U.S.C. § 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. § 295.

AMENDMENTS TO RULES

ORDER

November 22, 1971

Rule 16

It is ordered that the Rules of the Supreme Court of the United States be, and the same are hereby, amended by revising paragraph 1 of Rule 16 to read as follows:

Within thirty days after receipt of the jurisdictional statement, unless the time is enlarged by the court or a justice thereof, or by the clerk under the provisions of paragraph 5 of Rule 34, the appellee may file a printed motion to dismiss, or motion to affirm. In cases where the United States or any agency, officer or employee thereof is the appellee, the appellee shall have an additional twenty days to file said motions. Where appropriate, a motion to affirm may be united in the alternative with a motion to dismiss.

Rule 24

It is further ordered that paragraph 1 of Rule 24 be revised by adding the following sentence to the said paragraph:

In cases where the United States or any agency, officer or employee thereof is the respondent, the respondent shall have an additional twenty days to file the said opposing brief.

SUPREME COURT OF THE UNITED STATES

ASSIGNMENT OF MR. JUSTICE CLARK

ORDER

December 14, 1971

An order of the Chief Justice designating and assigning Mr. Justice Clark (Retired) to perform judicial duties in the United States Court of Appeals for the Sixth Circuit during the week of February 7, 1972, and for such additional time in advance thereof to prepare for the trial of cases, and for such further time as may be required to complete unfinished business, pursuant to 28 U.S.C. § 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. § 295.

APPOINTMENT OF MR. FRANK M. HEPLER

ORDER

December 20, 1971

It is ordered by the Court that Frank M. Hepler be, and he is hereby, appointed Marshal of this Court effective January 1, 1972.

ADMINISTRATION OF OATH

TO

MR. JUSTICE POWELL

and

MR. JUSTICE REHNQUIST

JANUARY 7, 1972

Present: Mr. Chief Justice Burger, Mr. Justice Douglas, Mr. Justice Brennan, Mr. Justice Stewart, Mr. Justice White, Mr. Justice Marshall, Mr. Justice Blackmun, Mr. Justice Powell and Mr. Justice Rehnquist.

The Chief Justice said:

"In this special sitting of the Court, we will receive the commission of the Justice-designate Powell and at this time the Court recognizes the Attorney General.

"Mr. Attorney General."

Mr. Attorney General Mitchell said:

"Mr. Chief Justice, may it please the Court:

"I am happy to advise that the President of the United States has nominated, the Senate has consented and the President has