

SUPREME COURT REPORTER



Volume 91

Pages 1-1040

Covering

VOLUMES 400-401 U. S. REPORTS

Cases Argued and Determined

in the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

ST. PAUL, MINN.
WEST PUBLISHING CO.

1972

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91 S. Ct.

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JUSTICES

OCTOBER TERM, 1970

CHIEF JUSTICE

HON. WARREN E. BURGER

ASSOCIATE JUSTICES

HON. HUGO L. BLACK
HON. WILLIAM O. DOUGLAS
HON. JOHN M. HARLAN
HON. WILLIAM J. BRENNAN, Jr.
HON. POTTER STEWART
HON. BYRON R. WHITE
HON. THURGOOD MARSHALL
HON. HARRY A. BLACKMUN

RETIRED

HON. EARL WARREN, Chief Justice
HON. STANLEY REED, Associate Justice
HON. TOM C. CLARK, Associate Justice

ATTORNEY GENERAL

HON. JOHN N. MITCHELL

SOLICITOR GENERAL

HON. ERWIN N. GRISWOLD

CLERK

E. ROBERT SEAVER

CHIEF DEPUTY CLERK

EDMUND P. CULLINAN ¹
MICHAEL RODAK ²

REPORTER OF DECISIONS

HENRY PUTZEL, jr.

MARSHAL

T. PERRY LIPPITT

LIBRARIAN

HENRY CHARLES HALLAM, Jr.

¹ Retired May 28, 1971.

² Appointed, effective June 1, 1971.

ALLOTMENT OF THE JUSTICES

DISTRICT OF COLUMBIA CIRCUIT

CHIEF JUSTICE WARREN E. BURGER, of Virginia.

Appointed Chief Justice by President Nixon;
took office June 23, 1970.

FIRST CIRCUIT.

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

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

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

SECOND CIRCUIT.

Connecticut, New York, and Vermont.

JUSTICE JOHN M. HARLAN, of New York.

Appointed by President Eisenhower; took office March 28, 1955.

THIRD CIRCUIT.

Delaware, New Jersey, Pennsylvania, and Virgin Islands.

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

Appointed by President Eisenhower; 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;
took office June 23, 1969.

FIFTH CIRCUIT.

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

JUSTICE HUGO L. BLACK, of Alabama.

Appointed by President Roosevelt; took office August 19, 1937.

SIXTH CIRCUIT.

Kentucky, Michigan, Ohio, and Tennessee.

JUSTICE POTTER STEWART, of Ohio.

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

ALLOTMENT OF THE JUSTICES

SEVENTH CIRCUIT.

Illinois, Indiana, and Wisconsin.

JUSTICE THURGOOD MARSHALL, of New York.

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

EIGHTH CIRCUIT.

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

JUSTICE HARRY A. BLACKMUN, of Minnesota.

Appointed by President Nixon; took office June 9, 1970.

NINTH CIRCUIT.

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

JUSTICE WILLIAM O. DOUGLAS, of Connecticut.

Appointed by President Roosevelt; 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; took office April 16, 1962.

SUPREME COURT

OF THE

UNITED STATES

ASSIGNMENT OF MR. JUSTICE CLARK

ORDER

October 6, 1970

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 for the week beginning November 30, 1970, 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. WILLIAM M. ALLISON

ORDER

October 6, 1970

It is ordered that William M. Allison be, and he hereby is, appointed a Deputy Clerk of this Court.

ASSIGNMENT OF MR. JUSTICE REED

ORDER

October 26, 1970

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 October 5, 1970, and ending June 30, 1971, and for such further times 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.

SUPREME COURT OF THE UNITED STATES

ASSIGNMENT OF MR. JUSTICE CLARK

ORDER

November 16, 1970

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 Eighth Circuit during the week of January 18, 1971, 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.

ASSIGNMENTS OF MR. JUSTICE CLARK

ORDERS

February 22, 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 Fifth Circuit beginning February 1, 1971, and ending February 4, 1971, 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.

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 Tenth Circuit during the week of March 22, 1971, 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.

SUPREME COURT OF THE UNITED STATES

**TRIBUTE TO CHIEF JUSTICE WARREN
(RETIRED)**

MONDAY, MARCH 22, 1971

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

THE CHIEF JUSTICE said:

Before we hear arguments in the first case today I have a pleasant task, if it can be called that. This is the nearest sitting of the Court to Friday, the 19th of March, and that was an important day because it marked the 80th birthday of the very distinguished former Chief Justice of the United States, Earl Warren.

This is another milestone in his great career of public service which extends over a period of more than a half century. Chief Justice Warren presided over this Court for a few months short of 16 years and in one of the most important periods in the history of the Court and the country.

I know that I speak for every one of my colleagues on the bench and for Mr. Justice Reed and Mr. Justice Clark, retired, when I say for the record, and to you, Sir, Chief Justice Warren, that we wish you the best of everything in the years ahead and many, many more years of the vigorous good health which you have always enjoyed and our very best wishes to you and to Mrs. Warren on the occasion of your 80th birthday.

ASSIGNMENT OF MR. JUSTICE CLARK

ORDER

April 19, 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 Second Circuit beginning June 1, 1971, and ending June 4, 1971, and for such further time as may

SUPREME COURT OF THE UNITED STATES

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.

ORDER

April 26, 1971

It is ordered that the call of the calendar, except for special assignments, be suspended for the term upon the conclusion of the arguments in the cases listed for hearing this week.

ASSIGNMENT OF MR. JUSTICE CLARK

ORDER

May 24, 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 Second Circuit beginning October 12, 1971, and ending October 15, 1971, and for such additional time in advance thereof to prepare for the trial of cases, or thereafter 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.

ORDER

May 24, 1971

Applications for admission to the Bar of the Court on written motion which are received during the summer recess may be approved by a Single Justice. Certificates of admission shall be issued forthwith and all orders approving such applications shall be entered in the Journal at the beginning of the following Term.

SUPREME COURT OF THE UNITED STATES

APPOINTMENT OF MR. MICHAEL RODAK, JR.

ORDER

June 28, 1971

It is ordered that Michael Rodak, Jr., be, and he is hereby, appointed Chief Deputy Clerk of this Court.

ALLOTMENT OF JUSTICES

ORDER

June 28, 1971

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, viz:

For the District of Columbia Circuit, Warren E. Burger, Chief Justice,

For the First Circuit, William J. Brennan, Jr., Associate Justice,

For the Second Circuit, John M. Harlan, Associate Justice,

For the Third Circuit, William J. Brennan, Jr., Associate Justice,

For the Fourth Circuit, Warren E. Burger, Chief Justice,

For the Fifth Circuit, Hugo L. Black, Associate Justice,

For the Sixth Circuit, Potter Stewart, Associate Justice,

For the Seventh Circuit, Thurgood Marshall, Associate Justice,

For the Eighth Circuit, Harry A. Blackmun, Associate Justice,

For the Ninth Circuit, William O. Douglas, Associate Justice,

For the Tenth Circuit, Byron R. White, Associate Justice.

It is further ordered that when the Circuit Justice is unavailable to act on an application in a case arising in his circuit, the Clerk shall present such application to the Acting Circuit Justice.

The Acting Circuit Justice, for this purpose, is that Justice, then available, who is next junior to the Circuit Justice; except that the turn of the Chief Justice in this cycle shall follow that of the Justice most recently appointed.

SUPREME COURT OF THE UNITED STATES

ORDER

CONTINUING CASES ON DOCKET

June 30, 1971

The Chief Justice announced the following order of the Court:

“All cases and all matters submitted to the Court at this term, and ready for disposition, have been disposed of and,

“It is therefore ordered that all cases on the docket be, and they are hereby, continued to the next term.”