



# SUPREME COURT REPORTER



Volume 86

Pages 1-941

*Covering*

VOLUMES 382-383 U. S. REPORTS

---

*Cases Argued and Determined*  
*in the*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

ST. PAUL, MINN.  
WEST PUBLISHING CO.

1967

*Cite:*  
**86 S. Ct.**

COPYRIGHT © 1965, by WEST PUBLISHING CO.  
Supreme Court Reporter, Vol. 86, Nos. 1-5.

---

COPYRIGHT © 1966, by WEST PUBLISHING CO.  
Supreme Court Reporter, Vol. 86, Nos. 6-10.

---

COPYRIGHT © 1967, by WEST PUBLISHING CO.

# CONTENTS

---

	Page
Justices of Supreme Court .....	5
Allotment of Justices .....	7
Orders	
Assignments	
Mr. Justice Reed .....	9
Appointments	
Mr. Justice Fortas .....	9
Mr. Thurgood Marshall .....	11
Mr. Henry Charles Hallam, Jr. ....	11
Resignations	
Mr. Justice Goldberg .....	12
Mr. Justice Whittaker .....	14
Announcement of Death	
Miss Helen Catherine Newman .....	14
Mr. Henry A. Wallace .....	15
Disposition of Cases .....	16
Memorial Proceedings	
Mr. Justice Frankfurter .....	17
Mr. Justice Minton .....	37
Supreme Court Reporter References .....	53
Table of Cases Reported .....	59
Statutes and Rules Tables	
Statutes Construed .....	131
Supreme Court Rules .....	157
Admiralty Rules .....	157
Court of Claims Rules .....	157
Federal Rules of Civil Procedure .....	157
Federal Rules of Criminal Procedure .....	165
Words and Phrases .....	169
Court Rules	
Federal Rules of Civil Procedure .....	173
Supplemental Rules for Certain Admiralty and Maritime Claims .....	200
Federal Rules of Criminal Procedure .....	212
Statements	
Mr. Justice Black .....	232
Mr. Justice Douglas .....	236
Summary of Term .....	241
Text of Opinions	
October Term, 1965 .....	1

# SUPREME COURT REPORTER



Volume 86

Pages 1-941

*Covering*

VOLUMES 382-383 U. S. REPORTS

---

*Cases Argued and Determined*  
*in the*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

ST. PAUL, MINN.

WEST PUBLISHING CO.

1967

*Cite:*  
**86 S. Ct.**

COPYRIGHT © 1965, by WEST PUBLISHING CO.  
Supreme Court Reporter, Vol. 86, Nos. 1-5.

---

COPYRIGHT © 1966, by WEST PUBLISHING CO.  
Supreme Court Reporter, Vol. 86, Nos. 6-10.

---

COPYRIGHT © 1967, by WEST PUBLISHING CO.

# CONTENTS

---

	Page
Justices of Supreme Court .....	5
Allotment of Justices .....	7
Orders	
Assignments	
Mr. Justice Reed .....	9
Appointments	
Mr. Justice Fortas .....	9
Mr. Thurgood Marshall .....	11
Mr. Henry Charles Hallam, Jr. ....	11
Resignations	
Mr. Justice Goldberg .....	12
Mr. Justice Whittaker .....	14
Announcement of Death	
Miss Helen Catherine Newman .....	14
Mr. Henry A. Wallace .....	15
Disposition of Cases .....	16
Memorial Proceedings	
Mr. Justice Frankfurter .....	17
Mr. Justice Minton .....	37
Supreme Court Reporter References .....	53
Table of Cases Reported .....	59
Statutes and Rules Tables	
Statutes Construed .....	131
Supreme Court Rules .....	157
Admiralty Rules .....	157
Court of Claims Rules .....	157
Federal Rules of Civil Procedure .....	157
Federal Rules of Criminal Procedure .....	165
Words and Phrases .....	169
Court Rules	
Federal Rules of Civil Procedure .....	173
Supplemental Rules for Certain Admiralty and Maritime Claims .....	200
Federal Rules of Criminal Procedure .....	212
Statements	
Mr. Justice Black .....	232
Mr. Justice Douglas .....	236
Summary of Term .....	241
Text of Opinions	
October Term, 1965 .....	1





# JUSTICES

---

OCTOBER TERM, 1965

---

CHIEF JUSTICE

HON. EARL WARREN

ASSOCIATE JUSTICES

HON. HUGO L. BLACK  
HON. WILLIAM O. DOUGLAS  
HON. TOM C. CLARK  
HON. JOHN M. HARLAN  
HON. WILLIAM J. BRENNAN, Jr.  
HON. POTTER STEWART  
HON. BYRON R. WHITE  
HON. ABE FORTAS

ATTORNEY GENERAL

HON. NICHOLAS deB. KATZENBACH <sup>1</sup>  
HON. RAMSEY CLARK, Acting.

SOLICITOR GENERAL

HON. THURGOOD MARSHALL

CLERK

JOHN F. DAVIS

CHIEF DEPUTY CLERK

EDMUND P. CULLINAN

REPORTER OF DECISIONS

HENRY PUTZEL, Jr.

MARSHAL

T. PERRY LIPPITT

LIBRARIAN

HENRY CHARLES HALLAM <sup>2</sup>

\*

<sup>1</sup> Resigned Oct. 3, 1966.  
<sup>2</sup> Appointed Nov. 8, 1965.



# ALLOTMENT OF THE JUSTICES

---

## DISTRICT OF COLUMBIA CIRCUIT

CHIEF JUSTICE EARL WARREN, of California.

Appointed Chief Justice by President Eisenhower;  
took office October 5, 1953.

## FIRST CIRCUIT.

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

JUSTICE ABE FORTAS, of Tennessee.

Appointed by President Johnson; took office October 4, 1965.

## 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 EARL WARREN, of California.

Appointed Chief Justice by President Eisenhower;  
took office October 5, 1953.

## 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 TOM C. CLARK, of Texas.

Appointed by President Truman; took office August 24, 1949.

### EIGHTH CIRCUIT.

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

JUSTICE BYRON R. WHITE, of Colorado.

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

### NINTH CIRCUIT.

*Alaska, Arizona, California, 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 REED**

#### **ORDER**

**October 18, 1965**

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 1, 1965, and ending June 30, 1966, 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.

#### **ORDER**

**December 6, 1965**

An order of the Chief Justice designating and assigning Mr. Justice Reed (retired) to perform judicial duties in the United States Court of Appeals for the District of Columbia Circuit beginning December 1, 1965, and ending January 31, 1966, 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. JUSTICE FORTAS**

**October 4, 1965**

The Chief Justice said further:

"We are fortunate, however, that his successor was appointed to fill the vacancy before the opening of our 1965 Term. We welcome him today.

"The President, with the advice and consent of the Senate, has appointed the Honorable Abe Fortas of Tennessee an Associate Justice of the Supreme Court. Justice Fortas has taken the Constitutional Oath administered by the Chief Justice. He is now present in Court. The Clerk will read his commission. He will

SUPREME COURT OF THE UNITED STATES

then take the Judicial Oath, to be administered by the Clerk, after which the Marshal will escort him to his seat on the Bench."

The Clerk then read the commission as follows:

"LYNDON B. JOHNSON,

*"President of the United States of America,*

*"TO ALL WHO SHALL SEE THESE PRESENTS, Greeting:*

"Know Ye; That reposing special trust and confidence in the Wisdom, Uprightness, and Learning of Abe Fortas of Tennessee I have nominated, and, by and with the advice and consent of the Senate, do appoint him Associate Justice of the Supreme Court of the United States, and do authorize and empower him to execute and fulfill the duties of that Office according to the Constitution and Laws of the said United States, and to Have and to Hold the said Office, with all the powers, privileges and emoluments to the same of right appertaining, unto Him, the said Abe Fortas, during his good behavior.

"In testimony whereof, I have caused these letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

"Done at the City of Washington this eleventh day of August, in the year of our Lord one thousand nine hundred and sixty-five, and of the Independence of the United States of America the one hundred and ninetieth.

[SEAL]

"LYNDON B. JOHNSON.

"By the President:

"NICHOLAS DEB. KATZENBACH,  
*"Attorney General."*

The oath of office was then administered by the Clerk, and Mr. Justice Fortas was escorted by the Marshal to his seat on the bench.

The oaths taken by Mr. Justice Fortas are in the following words, viz.:

"I, Abe Fortas, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter.

"So help me God.

"ABE FORTAS.

"Subscribed and sworn to before me this 4th day of October A.D. 1965.

"EARL WARREN,  
*"Chief Justice."*

**SUPREME COURT OF THE UNITED STATES**

I, Abe Fortas, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as Associate Justice of the Supreme Court of the United States according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States.

"So help me God.

"ABE FORTAS.

"Subscribed and sworn to before me this 4th day October A.D. 1965.

"JOHN F. DAVIS,

*"Clerk of the Supreme Court of the United States."*

**APPOINTMENT OF MR. THURGOOD MARSHALL**

**October 11, 1965**

Present: Mr. Chief Justice Warren, Mr. Justice Black, Mr. Justice Douglas, Mr. Justice Clark, Mr. Justice Harlan, Mr. Justice Brennan, Mr. Justice Stewart, Mr. Justice White, and Mr. Justice Fortas.

Mr. Nicholas deB. Katzenbach, Attorney General, stated:

"Mr. Chief Justice:

"May it please the Court. I have the honor to present the newly appointed Solicitor General of the United States, The Honorable Thurgood Marshall of New York."

The Chief Justice said:

"Mr. Solicitor General, the Court welcomes you to the performance of the important duty with which you are specially charged, the duty of representing the Government at the Bar of this Court in all cases in which it asserts an interest. Your commission will be recorded by the Clerk."

**APPOINTMENT OF MR. HENRY CHARLES HALLAM, JR.**

**ORDER**

**November 8, 1965**

IT IS ORDERED that Henry Charles Hallam, Jr., be, and he is hereby, appointed Librarian of this Court in the place of Miss Helen Newman, deceased.

SUPREME COURT OF THE UNITED STATES

RESIGNATION OF MR. JUSTICE GOLDBERG

October 4, 1965

Present: Mr. Chief Justice Warren, Mr. Justice Black, Mr. Justice Douglas, Mr. Justice Clark, Mr. Justice Harlan, Mr. Justice Brennan, Mr. Justice Stewart, Mr. Justice White, and Mr. Justice Fortas.

The Chief Justice said:

"With the concurrence of my colleagues, I announce the resignation of Mr. Justice Goldberg who resigned as an Associate Justice of this Court since we last met to become the United States Representative to the United Nations.

"Justice Goldberg is a native of Chicago, Illinois. He attended the public schools of that city and Northwestern University where he graduated from the Law School with highest honors.

"With the exception of the time he served with distinction in the Armed Forces during World War II, he practiced law for over thirty years in Chicago and in Washington, D. C. During all of that time he pursued good causes and without regard as to whether they were popular or not.

"In 1961, he was appointed Secretary of Labor by the late lamented President John F. Kennedy, and served in that capacity until October 1, 1962, when he was appointed an Associate Justice of this Court. His service here was brief but distinguished, and he has left an indelible mark on our jurisprudence.

"The Court would make this announcement with deep regret except for the fact that Justice Goldberg has accepted another post of duty in our Government which he in conscience felt he could not decline. We wish him every happiness and success in his new position.

"Our appreciation of our association with Justice Goldberg and for his fine service to the Court is amplified in a letter to him which, together with his letter to the members of the Court, will be spread upon the Minutes of the Court."

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C., 20543

CHAMBERS OF

JUSTICE ARTHUR J. GOLDBERG

July 26, 1965

MY DEAR BRETHREN:

It is with the deepest of regrets that I take my leave of you. These three short but eventful years have been the happiest and most rewarding of my life, not only because service here is the



SUPREME COURT OF THE UNITED STATES

dream of every man of law and because of the opportunities for creative and useful work, but also because of the kindness and fellowship which each of you has shown to me.

As you must know, only the most compelling call to duty could bring me to leave this Court and your dedicated and joyous company. But that call did come, and I could not refuse.

In those days and years ahead allotted to me, my thoughts will often be of you and your unstinting efforts to bring equal justice under law to all of our countrymen. And I trust that I shall enjoy the benefit of your prayers as I undertake my part in our country's striving to bring peace and the rule of law to all mankind.

Sincerely yours,

ARTHUR J. GOLDBERG.

THE CHIEF JUSTICE.  
MR. JUSTICE BLACK.  
MR. JUSTICE DOUGLAS.  
MR. JUSTICE CLARK.  
MR. JUSTICE HARLAN.  
MR. JUSTICE BRENNAN.  
MR. JUSTICE STEWART.  
MR. JUSTICE WHITE.

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C., 20543

CHAMBERS OF  
THE CHIEF JUSTICE

October 4, 1965

HONORABLE ARTHUR J. GOLDBERG,  
United States Representative to the United Nations,  
New York, New York.

DEAR AMBASSADOR GOLDBERG:

Your letter advising us of your resignation from the Court was received with deep regret. In the three years you were with us, you became so much a part of the Court and of our lives that we shall miss you greatly.

We fully realize that your decision to leave was a difficult one to make. And we also realize that in making that decision you were moved by a profound sense of duty to our country and to the world of which we are all a responsible part. Men of your stature do not resist a call to duty in times of crisis regardless of the sacrifice involved, and we honor you for obeying the demand of your conscience. Also, we believe that those great qualities which made you an invaluable member of this Court will guide you in your efforts to achieve honorable peace for everyone in this troubled world.