

SUPREME COURT REPORTER



Volume 102

Pages 1-1649

Covering

VOLUMES 454-458 U. S. REPORTS

Cases Argued and Determined

in the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

ST. PAUL, MINN.

WEST PUBLISHING CO.

1984

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1st Reprint—1986



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*

JUSTICES

OCTOBER TERM, 1981

CHIEF JUSTICE

HON. WARREN E. BURGER

ASSOCIATE JUSTICES

HON. WILLIAM J. BRENNAN, Jr.

HON. BYRON R. WHITE

HON. THURGOOD MARSHALL

HON. HARRY A. BLACKMUN

HON. LEWIS F. POWELL, Jr.

HON. WILLIAM H. REHNQUIST

HON. JOHN PAUL STEVENS

HON. SANDRA DAY O'CONNOR¹

ATTORNEY GENERAL

HON. WILLIAM FRENCH SMITH

SOLICITOR GENERAL

HON. REX E. LEE²

CLERK

ALEXANDER L. STEVAS

REPORTER OF DECISIONS

HENRY C. LIND

MARSHAL

ALFRED WONG

LIBRARIAN

ROGER F. JACOBS

*

¹ Took office September 25, 1981.

² Took office August 6, 1981.

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 BYRON R. WHITE, of Colorado.

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

ALLOTMENT OF THE JUSTICES

SIXTH CIRCUIT.

Kentucky, Michigan, Ohio, and Tennessee.

JUSTICE SANDRA DAY O'CONNOR, of Arizona.

Appointed by President Reagan September 22, 1981;
took office September 25, 1981.

SEVENTH CIRCUIT.

Illinois, Indiana, and Wisconsin.

JUSTICE JOHN PAUL STEVENS, of Illinois.

Appointed by President Ford, December 17, 1975;
took office December 19, 1975.

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 June 9, 1970.

NINTH CIRCUIT.

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

JUSTICE WILLIAM H. REHNQUIST, of Arizona.

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

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.

ELEVENTH CIRCUIT.

Alabama, Georgia, and Florida.

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

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

TEMPORARY EMERGENCY COURT OF APPEALS.

CHIEF JUSTICE WARREN E. BURGER, of Virginia.

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

**SUPREME COURT
OF THE
UNITED STATES**

**APPOINTMENT OF ASSOCIATE JUSTICE
SANDRA DAY O'CONNOR**

September 25, 1981

Present: Chief Justice Burger, Justice Brennan, Justice White, Justice Marshall, Justice Blackmun, Justice Powell, Justice Rehnquist, Justice Stevens, and Justice O'Connor.

The judicial oath was administered by the Chief Justice in the Conference Room:

Judge O'Connor took the following oath:

"I, Sandra Day O'Connor, 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."

"SANDRA DAY O'CONNOR.

"Subscribed and sworn to before me this twenty-fifth day of September 1981.

"WARREN E. BURGER,

"Chief Justice."

The Chief Justice said:

"This special sitting of the Court is held to receive the Commission of our newly-appointed Associate Justice, Judge Sandra Day O'Connor. On behalf of the Court, Mr. President, I extend to you and Mrs. Reagan a warm welcome.

"The Court now recognizes the Attorney General of the United States, William French Smith."

Mr. Attorney General Smith said:

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

"I have the Commission which has been issued to Judge Sandra Day O'Connor as an Associate Justice of this Court. It has been

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duly signed by the President of the United States and attested by me as Attorney General of the United States.

"I move that the Clerk read the Commission and that it be made a permanent record of this Court. Thank you."

The Chief Justice said:

"Your motion is granted, Mr. Attorney General. Mr. Clerk, will you please read the Commission?"

The Clerk then read the Commission as follows:

"RONALD REAGAN,
"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 Sandra Day O'Connor, of Arizona, I have nominated, and, by and with the advice and consent of the Senate, do appoint her an Associate Justice of the Supreme Court of the United States and do authorize and empower her 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 Her, the said Sandra Day O'Connor, during her 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 twenty-second day of September, in the year of our Lord one thousand nine hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth."

[SEAL]

"RONALD REAGAN.

"By the President:

"WILLIAM FRENCH SMITH,
"Attorney General."

The Chief Justice said:

"In the meantime, Judge O'Connor has been waiting, occupying the chair once occupied by John Marshall when he was Chief Justice of the United States and I now ask the Clerk to escort Judge O'Connor to the bench."

Judge O'Connor was escorted by the Clerk to the Bench and the oath of office was then administered by the Chief Justice.

"Judge O'Connor, are you prepared to take the oath?"

On Judge O'Connor's acquiescence Judge O'Connor took the following oath:

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"I, Sandra Day O'Connor, 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."

The Chief Deputy Marshall assisted Justice O'Connor in robing and escorted her to her place on the Bench.

The Chief Justice said:

"Justice O'Connor, on behalf of all the members of the Court, and retired Justice Potter Stewart, it is a pleasure to extend to you a very warm welcome as an Associate Justice of this Court and to wish you a very long life and a long and happy career in our common calling."

Adjourned until Monday, October 5, 1981.

DESIGNATION AND ASSIGNMENT OF JUSTICE
STEWART TO THE SIXTH CIRCUIT

Assignment Order

October 5, 1981

An order of the Chief Justice designating and assigning Justice Stewart (Retired) to perform judicial duties in the United States Court of Appeals for the Sixth Circuit beginning February 8, 1982, and ending February 12, 1982, and for such further time as may be required to complete unfinished business, pursuant to 28 U.S.C. Sec. 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. Sec. 295.

ALLOTMENT OF CHIEF JUSTICE AND ASSOCIATE
JUSTICES PURSUANT TO TITLE 28, UNITED
STATES CODE, SECTION 42

ORDER

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, effective *nunc pro tunc* October 1, 1981, 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, Thurgood Marshall, 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, Byron R. White, Associate Justice,

For the Sixth Circuit, Sandra Day O'Connor, Associate Justice,

For the Seventh Circuit, John Paul Stevens, Associate Justice,

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

For the Ninth Circuit, William H. Rehnquist, Associate Justice,

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

For the Eleventh Circuit, Lewis F. Powell, Jr., Associate Justice.

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DESIGNATION AND ASSIGNMENT OF JUSTICE STEWART TO THE SEVENTH CIRCUIT

Assignment Order

November 30, 1981

An order of the Chief Justice designating and assigning Justice Stewart (Retired) to perform judicial duties in the United States Court of Appeals for the Seventh Circuit beginning February 24, 1982, and ending February 26, 1982, and for such further time as may be required to complete unfinished business, pursuant to 28 U.S.C. Sec. 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U.S.C. Sec. 295.