



# SUPREME COURT REPORTER



Volume 90

Pages 1-1152

*Covering*

VOLUMES 396-398 U. S. REPORTS

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*Cases Argued and Determined*

*in the*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

ST. PAUL, MINN.  
WEST PUBLISHING CO.

1971

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**90 S. Ct.**

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# JUSTICES

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OCTOBER TERM, 1969

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## 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 <sup>1</sup>

## 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

JOHN F. DAVIS <sup>2</sup>  
E. ROBERT SEAVER <sup>3</sup>

## CHIEF DEPUTY CLERK

EDMUND P. CULLINAN

## REPORTER OF DECISIONS

HENRY PUTZEL, jr.

## MARSHAL

T. PERRY LIPPITT

## LIBRARIAN

HENRY CHARLES HALLAM, Jr.

<sup>1</sup> Took oath June 9, 1970.

<sup>2</sup> Retired, effective June 22, 1970.

<sup>3</sup> Appointed, effective June 22, 1970.



# ALLOTMENT OF THE JUSTICES

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## 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**

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## **ASSIGNMENT OF MR. JUSTICE REED ORDER**

**March 16, 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 March 12, 1970, and ending March 12, 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.

## **ASSIGNMENTS OF MR. JUSTICE CLARK ORDERS**

**May 25, 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 Seventh Circuit beginning May 26, 1970, and ending May 28, 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.

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 13, 1970, and ending October 16, 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.

**SUPREME COURT OF THE UNITED STATES**

**RETIREMENT OF MR. JOHN F. DAVIS**

**June 8, 1970**

The Chief Justice said:

"Today's orders of the Court have been certified by the Chief Justice, filed with the Clerk, and will not be announced orally except for two orders which I shall announce."

"On behalf of the Court I announce with regret the retirement of one of its able and trusted officers, Mr. John F. Davis, Clerk of the Court since 1961. For many years before he was appointed senior officer of the Court, Mr. Davis was one of the able advocates who appeared regularly before the Court.

"Your departure is an occasion for regret on our part, Mr. Davis, but we wish you happiness and continued success in the years ahead."

**APPOINTMENT OF MR. E. ROBERT SEAVER**

The Chief Justice said:

"Today's order list announces the appointment of Mr. Davis' successor who is Mr. E. Robert Seaver of Virginia. Mr. Seaver has had a long career of government service for more than 20 years, including service in the Department of Justice, as General Counsel of the Federal Maritime Commission, and as a Federal Hearing Examiner."

**ORDER**

**June 8, 1970**

It is ordered that E. Robert Seaver be appointed Clerk of this Court to succeed John F. Davis effective at the commencement of business June 22, 1970, and that he take the oath of office and give bond as required by statute and the order of this Court entered November 22, 1948.

**APPOINTMENT OF MR. ROWLAND FALCONER KIRKS**

The Chief Justice said:

"Today's order list also includes announcement of the appointment by the Court of the Director of the Administrative Office of the United States Courts succeeding Mr. Ernest Friesen, who resigned in February to become Director of the Institute of Court Management, at the University of Denver. The new director is

## SUPREME COURT OF THE UNITED STATES

Mr. Rowland F. Kirks, a member of the Bar of Washington, D. C. and former Assistant Attorney General of the United States, Mr. Kirks will assume the duties of the Office of Directors July 1, 1970."

### ORDER

June 8, 1970

It is ordered that Rowland Falconer Kirks be appointed Director of the Administrative Office of the United States Courts, effective at the commencement of business July 1, 1970, pursuant to the provisions of § 601 of Title 28 of the United States Code.

### ADMINISTRATION OF OATH TO MR. JUSTICE BLACKMUN

June 9, 1970

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

The Chief Justice said:

"In this special sitting of the Court, we will receive the commission of the Justice-designate, 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 appointed Judge Harry A. Blackmun of Minnesota, as an Associate Justice of the Supreme Court of the United States.

"I bear with me the commission, dated May 14, 1970, signed by the President of the United States, and attested by me as Attorney General, and with the permission of the Court, I will turn the commission over to the Clerk of the Court."

The Chief Justice said:

"The commission is accepted, Mr. Attorney General.

"Thank you.

"Mr. Clerk, will you read the commission."



SUPREME COURT OF THE UNITED STATES

The Clerk said:

"The commission reads as follows:

"Richard Nixon,

"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 Harry A. Blackmun of Minnesota, 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 Harry A. Blackmun, 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 in the City of Washington, this 14th day of May, in the year of our Lord one thousand nine hundred and seventy, and of the Independence of the United States of America the one hundred and ninety-fourth."

Signed, Richard Nixon, and attested by John N. Mitchell, Attorney General, with the seal of the Department of Justice affixed.

The Justice designate was then escorted by the Clerk to the center of the bench.

The Chief Justice said:

"Please raise your right hand, Judge Blackmun, and repeat after me:

(The following oath was administered by the Chief Justice and repeated by Judge Blackmun:)

"I, Harry Andrew Blackmun, 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 an Associate Justice of the Supreme Court of the United States, according to the best of my abilities and understanding, agreeably to the Constitution of the United States; and 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 faith-