



# SUPREME COURT REPORTER



Volume 78

*covering*

VOLUMES 355-358 U. S. REPORTS

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*Cases Argued and Determined  
in the*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

AUGUST SPECIAL TERM, 1958

ST. PAUL, MINN.

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1959

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# JUSTICES

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OCTOBER TERM, 1957

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## CHIEF JUSTICE

HON. EARL WARREN

## ASSOCIATE JUSTICES

HON. HUGO L. BLACK

HON. FELIX FRANKFURTER

HON. WILLIAM O. DOUGLAS

HON. HAROLD H. BURTON <sup>1</sup>

HON. TOM C. CLARK

HON. JOHN M. HARLAN

HON. WILLIAM J. BRENNAN, Jr.

HON. CHARLES E. WHITTAKER

HON. POTTER STEWART <sup>2</sup>

## ATTORNEY GENERAL

HON. HERBERT BROWNELL, Jr. <sup>3</sup>

HON. WILLIAM P. ROGERS <sup>4</sup>

## SOLICITOR GENERAL

HON. J. LEE RANKIN

## CLERK

JOHN T. FEY <sup>5</sup>

JAMES R. BROWNING <sup>6</sup>

## REPORTER OF DECISIONS

WALTER WYATT

## MARSHAL

T. PERRY LIPPITT

## LIBRARIAN

HELEN NEWMAN

<sup>1</sup> Retired Oct. 13, 1958.

<sup>2</sup> Appointed Oct. 14, 1958.

<sup>3</sup> Resigned effective Nov. 8, 1957.

<sup>4</sup> Appointed Nov. 8, 1957.

<sup>5</sup> Resigned, effective Aug. 14, 1958.

<sup>6</sup> Appointed, effective Aug. 15, 1958.



# ALLOTMENT OF THE JUSTICES

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## 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 FELIX FRANKFURTER, of Massachusetts.

Appointed by President Roosevelt; took office January 30, 1939.

## 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 HAROLD H. BURTON, of Ohio.

Appointed by President Truman; took office October 1, 1945.

## 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 CHARLES E. WHITTAKER, of Missouri.

Appointed by President Eisenhower; took office March 25, 1957.

### NINTH CIRCUIT.

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

JUSTICE WILLIAM O. DOUGLAS, of Connecticut.

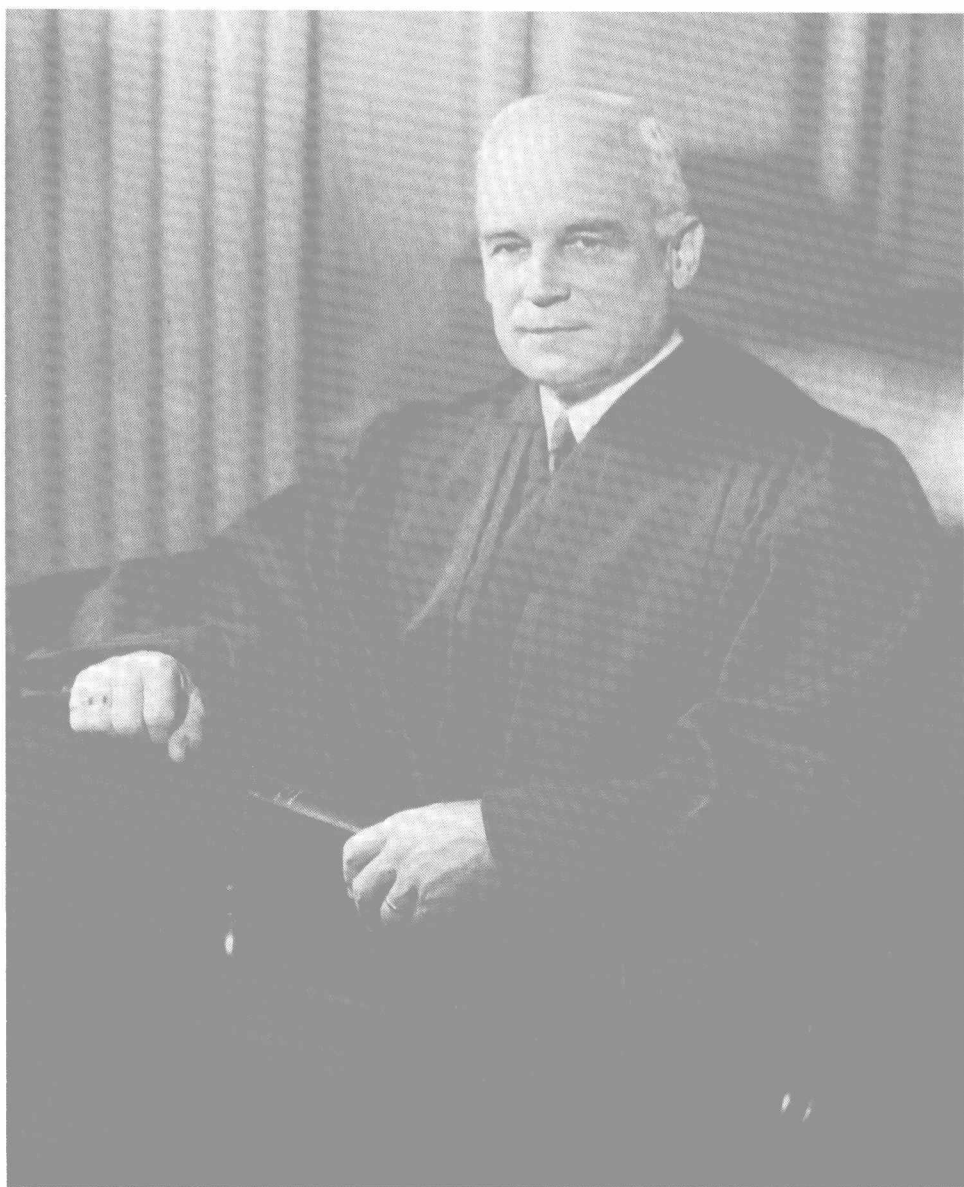
Appointed by President Roosevelt; took office April 17, 1939.

### TENTH CIRCUIT.

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

JUSTICE CHARLES E. WHITTAKER, of Missouri.

Appointed by President Eisenhower; took office March 25, 1957.



HON. HAROLD H. BURTON



# SUPREME COURT OF THE UNITED STATES

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## ANNOUNCEMENT OF RETIREMENT

**MR. JUSTICE HAROLD H. BURTON**

**October 13, 1958**

The Chief Justice said:

"With the concurrence of all my colleagues, I announce with regret the retirement of Mr. Justice Burton from this Court at the conclusion of today's session.

"The last thirteen years of his long and distinguished career of public service have been spent with us as a member of this Court. He has been a friend, counselor, and companion of all of us. We shall miss him greatly, but we hope that the more leisurely activities which he may now pursue will preserve his health and afford him the satisfactions to which his devoted service to his Government and mankind so justly entitle him.

"Our appreciation of his services and our personal regard for him are more adequately expressed in a letter to him which, together with his letter of retirement, will be spread upon the Minutes of the Court.

"His successor will take the oath of office tomorrow."

### **ORDER**

It is ordered by the Court that the accompanying correspondence between members of the Court and Mr. Justice Burton upon his retirement as an Associate Justice of the Court be this day spread upon the record, and that it also be printed in the reports of this Court.

SUPREME COURT OF THE UNITED STATES

WASHINGTON 25, D. C.

CHAMBERS OF  
JUSTICE HAROLD H. BURTON

October 2, 1958

MY DEAR CHIEF JUSTICE:

In confirmation of my retirement from active service as an Associate Justice of this Court effective October 13, 1958, I enclose a copy of my letter of July 17, 1958, to the President, and of his reply of September 23, 1958.

SUPREME COURT OF THE UNITED STATES

SUPREME COURT OF THE UNITED STATES  
WASHINGTON 25, D.C.

Chambers of

Justice Harold H. Burton

July 17, 1958

My dear Mr. President:

Having passed the permissive retirement age of 70, and having rendered over 25 years of public service, including nearly 13 as a member of this Court, I hereby submit this notice of my retirement from further active service as an Associate Justice of the Supreme Court of the United States to take effect at the close of Monday, October 13, 1958. I do this with regret but in accordance with competent medical advice and with a desire to serve the best interests of all concerned.

Mrs. Burton and I wish to express, through you, to the people of the United States our deep appreciation of the privilege which has been mine for so long to serve their interests to the extent of my ability to do so.

Respectfully yours,

Harold H. Burton

The President  
The White House  
Washington, D. C.

THE WHITE HOUSE  
WASHINGTON

September 23, 1958.

Dear Mr. Justice:

It is with great regret that I have read your notice of retirement on Monday, October 13, 1958, as an Associate Justice of the Supreme Court of the United States.

I share, with millions of our citizens, the conviction that, as a member of the Court, you served with high distinction and great dedication to the principles under which we live and the changing conditions of the world today. The decisions of the Court are helping to shape—as they have in the past—the destiny of our country. This realization has imposed upon you vital responsibilities, which I know you have discharged seriously and conscientiously. Your work on the Supreme Court was, of course, but a continuation of your earlier years of devoted and dedicated public service. Our country is indebted to you.

I trust that with the leisure your retirement will bring, your health will greatly improve.

Mrs. Eisenhower joins me in best wishes to you and Mrs. Burton, and in expressions of our feelings of personal friendship for you both.

Sincerely,

Dwight D. Eisenhower

The Honorable Harold H. Burton,  
Associate Justice,  
Supreme Court of the United States.

SUPREME COURT OF THE UNITED STATES

Although I believe that my retirement at this time is in the best interests of all concerned, I wish to express my cordial regards and deep affection for each member of the Court with whom I have served. I appreciate greatly the privilege which has been mine to serve on this Court for thirteen years, and I thank each of my associates on the Bench, as well as the members of the staff of the Court, for their uniformly helpful and courteous co-operation.

As for the future, although I shall not be available for active service on the Court, I hope to be of service to its best interests.

Yours sincerely,  
HAROLD H. BURTON.

THE CHIEF JUSTICE.

SUPREME COURT OF THE UNITED STATES,

WASHINGTON 25, D. C.

CHAMBERS OF  
THE CHIEF JUSTICE

October 13, 1958

*Honorable HAROLD H. BURTON,*  
*Associate Justice of the Supreme Court.*  
*Washington, D. C.*

DEAR JUSTICE BURTON:

Your gain of freedom from the preoccupations of the Court is the loss of all your brethren. But we would not gainsay your greatly deserved right to pursue those satisfying activities that are, of necessity, so often denied busy public servants until their retirement. We know no person who, with clearer conscience, could leave to younger hands the specific task of protecting the Constitution of the United States and the institutions it guarantees.

Your entire adult life has been devoted to the public welfare, both through public service and the private pursuit of good causes. Your City and State, as well as your country, have greatly benefited from those activities. As Director of Law and as Mayor of your home City of Cleveland, as a State Legislator, as a soldier of the famous 91st Division and decorated by both the United States and Belgian Governments 40 years ago, as a United States Senator from the great State of Ohio, and for the past 13 years as a member of this Court, your life has been dedicated to the Government under which we are privileged to live.

SUPREME COURT OF THE UNITED STATES

As a husband, father, churchman, public-spirited citizen, and tolerant, companionable fellow worker, you have endeared yourself to all who have passed your way.

Need we say that we, your brethern, will miss you? I am sure you know that we shall. Without exception, we believe that of all the Justices who have sat on this Bench, not one has adhered more closely than you to the ideal for which we all strive—"Equal Justice Under Law."

With the fondest wishes for the health and happiness of you and yours, we are

Sincerely,

EARL WARREN.  
HUGO L. BLACK.  
FELIX FRANKFURTER.  
WILLIAM O. DOUGLAS.  
TOM C. CLARK.  
JOHN MARSHALL HARLAN.  
WILLIAM J. BRENNAN, JR.  
CHARLES E. WHITTAKER.

Present: Mr. Chief Justice Warren, Mr. Justice Black, Mr. Justice Frankfurter, Mr. Justice Douglas, Mr. Justice Burton, Mr. Justice Clark, Mr. Justice Harlan, Mr. Justice Brennan, and Mr. Justice Whittaker.





HON. POTTER STEWART