



# SUPREME COURT REPORTER



Volume 79

*covering*

VOLUMES 358-360 U. S. REPORTS

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*Cases Argued and Determined  
in the*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

ST. PAUL, MINN.  
WEST PUBLISHING CO.

1960

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# JUSTICES

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OCTOBER TERM, 1958

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CHIEF JUSTICE

HON. EARL WARREN

ASSOCIATE JUSTICES

HON. HUGO L. BLACK

HON. FELIX FRANKFURTER

HON. WILLIAM O. DOUGLAS

HON. TOM C. CLARK

HON. JOHN M. HARLAN

HON. WILLIAM J. BRENNAN, Jr.

HON. CHARLES E. WHITTAKER

HON. POTTER STEWART

ATTORNEY GENERAL

HON. WILLIAM P. ROGERS

SOLICITOR GENERAL

HON. J. LEE RANKIN

CLERK

JAMES R. BROWNING

REPORTER OF DECISIONS

WALTER WYATT

MARSHAL

T. PERRY LIPPITT

LIBRARIAN

HELEN NEWMAN

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# 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 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 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.

# SUPREME COURT OF THE UNITED STATES

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## APPOINTMENT OF ASSOCIATE JUSTICE

HON. POTTER STEWART

May 7, 1959

It is ordered that the Commission of Mr. Justice Stewart be recorded and that his oaths be filed.

The Commission of Mr. Justice Stewart is in the words and figures following, viz.:

“DWIGHT D. EISENHOWER,

“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 Potter Stewart, of Ohio 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 fulfil 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 Potter Stewart, 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 seventh day of May, in the year of our Lord one thousand nine hundred and fifty-nine, and of the Independence of the United States of America the one hundred and eighty-third.

[SEAL]

“DWIGHT D. EISENHOWER.

“By the President:

“WILLIAM P. ROGERS,

“Attorney General.”

## **SUPREME COURT OF THE UNITED STATES**

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

### **ALLOTMENT OF JUSTICES**

#### **ORDER**

**October 14, 1958**

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, § 42, and that such allotment be entered of record, viz.:

For the District of Columbia Circuit, Earl Warren, Chief Justice.

For the First Circuit, Felix Frankfurter, 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, Earl Warren, Chief Justice.

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

For the Sixth Circuit, Potter Stewart, Associate Justice.

For the Seventh Circuit, Tom C. Clark, Associate Justice.

For the Eighth Circuit, Charles E. Whittaker, Associate Justice.

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

For the Tenth Circuit, Charles E. Whittaker, Associate Justice.

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

#### **ORDERS**

**October 20, 1958**

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 October 20, 1958, and ending June 30, 1959, 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**

**October 27, 1958**

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 3, 1958, and ending June 30, 1959, 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.

**ASSIGNMENT OF MR. JUSTICE BURTON**

**ORDER**

**Jan. 26, 1959**

An order of the Chief Justice designating and assigning Mr. Justice Burton (Retired) to perform judicial duties in the United States Court of Appeals for the District of Columbia Circuit beginning February 2, 1959, and ending June 30, 1959, 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.

**ASSIGNMENT OF MR. JUSTICE BRENNAN**

**ORDER**

**July 6, 1959**

Pursuant to the provisions of Title 28, U.S.C.A. § 42, It is ordered that Mr. Justice Brennan be, and he is hereby temporarily assigned to the Second Circuit as Circuit Justice.

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# SUPREME COURT REPORTER REFERENCES

## 358 UNITED STATES REPORTS

U.S.	S.Ct.	U.S.	S.Ct.	U.S.	S.Ct.	U.S.	S.Ct.	U.S.	S.Ct.	U.S.	S.Ct.	U.S.	S.Ct.
Pg.	Vol. Pg.	Pg.	Vol. Pg.	Pg.	Vol. Pg.	Pg.	Vol. Pg.	Pg.	Vol. Pg.	Pg.	Vol. Pg.	Pg.	Vol. Pg.
1	78 1401	242	79 245	806	79 69	826	79 43	849	79 77	868	79 100		
27	78 1397	270	79 273	806	79 75	826	79 44	850	79 76	868	79 101		
28	79 9	272	79 266	806	79 84	826	79 45	850	79 77	868	79 102		
28	78 1399	276	79 321	806	79 87	827	79 44	850	79 78	869	79 101		
29	78 1398	278	79 313	806	79 90	827	79 45	850	79 79	869	79 102		
30	79 9	279	79 312	806	79 22	828	79 46	850	79 80	869	79 99		
31	79 2	280	79 316	807	79 33	828	79 47	850	79 81	870	79 91		
36	79 27	281	79 322	807	79 38	828	79 48	851	79 77	870	79 92		
37	79 21	282	79 318	807	79 56	829	79 48	851	79 78	870	79 90		
38	79 39	282	79 323	808	79 26	829	79 49	851	79 79	870	79 110		
39	79 64	283	79 297	808	79 48	829	79 50	851	79 80	871	79 112		
40	79 24	305	79 346	809	79 23	830	79 49	852	79 79	871	79 110		
41	79 70	306	79 345	809	79 24	830	79 50	852	79 80	872	79 110		
42	79 70	307	79 329	809	79 43	830	79 52	852	79 81	872	79 113		
43	79 21	326	79 340	810	79 25	830	79 51	852	79 82	872	79 111		
43	79 44	331	79 350	810	79 56	831	79 51	853	79 82	872	79 112		
44	79 25	332	79 353	810	79 21	831	79 52	853	79 83	873	79 111		
44	79 43	333	79 351	810	79 27	831	79 53	853	79 85	873	79 113		
45	79 36	334	79 457	810	79 22	832	79 52	854	79 83	873	79 114		
45	79 37	354	79 468	811	79 59	832	79 53	854	79 84	874	79 113		
46	79 40	415	79 451	811	79 30	832	79 55	854	79 85	874	79 114		
46	79 70	423	79 445	811	79 38	833	79 53	855	79 85	874	79 115		
47	79 40	434	79 411	811	79 39	833	79 54	855	79 86	874	79 111		
47	79 84	450	79 357	811	79 42	833	79 55	855	79 87	875	79 115		
48	79 81	498	79 524	811	79 53	834	79 56	855	79 88	875	79 116		
48	79 76	516	79 429	812	79 54	834	79 57	856	79 87	875	79 112		
49	79 94	522	79 437	812	79 55	835	79 57	856	79 88	876	79 116		
51	79 94	534	79 383	812	79 60	835	79 58	856	79 89	876	79 120		
52	79 95	576	79 421	812	79 61	836	79 58	856	79 90	876	79 133		
53	79 95	588	79 503	812	79 63	836	79 59	857	79 90	876	79 134		
54	79 99	588	79 523	813	79 59	836	79 60	857	79 77	877	79 131		
54	79 100	613	79 517	813	79 63	837	79 60	857	79 87	877	79 132		
55	79 114	625	79 406	814	79 50	837	79 61	857	79 89	877	79 133		
56	79 111	633	79 432	814	79 65	837	79 62	857	79 78	877	79 134		
57	79 1	639	79 455	814	79 76	838	79 61	858	79 9	877	79 135		
58	79 110	642	79 536	814	79 20	838	79 62	858	79 10	877	79 117		
59	79 104	643	79 536	814	79 21	838	79 64	858	79 12	878	79 124		
64	79 116	643	79 538	815	79 22	839	79 62	858	79 13	878	79 118		
65	79 116	644	79 537	815	79 22	839	79 63	858	79 14	878	79 123		
66	79 117	645	79 536	816	79 22	839	79 65	858	79 15	878	79 125		
67	79 122	645	79 537	816	79 24	840	79 64	858	79 16	879	79 121		
67	79 127	646	79 537	816	79 25	840	79 63	859	79 16	879	79 122		
68	79 107	646	79 538	816	79 26	840	79 65	859	79 15	879	79 117		
73	79 153	801	79 9	817	79 26	840	79 66	859	79 17	879	79 118		
74	79 136	801	79 20	817	79 27	841	79 65	859	79 18	880	79 118		
84	79 141	802	79 11	817	79 28	841	79 66	860	79 12	880	79 119		
99	79 150	802	79 19	818	79 28	841	79 58	860	79 13	880	79 120		
100	79 218	802	79 18	818	79 29	842	79 23	860	79 14	881	79 122		
101	79 221	802	79 34	818	79 30	842	79 33	860	79 9	881	79 120		
102	79 223	803	79 19	819	79 30	842	79 51	861	79 92	881	79 121		
103	79 194	803	79 20	819	79 31	843	79 56	861	79 83	882	79 121		
121	79 203	803	79 35	820	79 31	843	79 62	861	79 103	882	79 122		
129	79 231	803	79 90	820	79 32	843	79 66	862	79 91	882	79 120		
130	79 230	804	79 37	820	79 34	843	79 15	862	79 93	882	79 123		
130	79 240	804	79 41	821	79 32	843	79 67	862	79 103	883	79 124		
131	79 230	804	79 46	821	79 33	844	79 67	863	79 99	883	79 125		
131	79 241	804	79 47	821	79 34	844	79 68	863	79 101	884	79 124		
132	79 235	805	79 10	822	79 35	845	79 69	863	79 96	884	79 128		
132	79 242	805	79 11	822	79 36	845	79 70	863	79 98	884	79 118		
133	79 170	805	79 76	822	79 37	845	79 71	864	79 83	884	79 119		
147	79 191	805	79 79	823	79 36	846	79 71	864	79 96	885	79 119		
153	79 160	805	79 80	823	79 37	846	79 72	865	79 94	885	79 123		
169	79 209	805	79 83	823	79 33	847	79 72	865	79 96	885	79 125		
184	79 180	805	79 84	823	79 39	847	79 73	865	79 97	885	79 126		
202	79 178	805	79 85	824	79 37	847	79 74	866	79 97	886	79 125		
205	79 288	805	79 86	824	79 39	847	79 75	866	79 98	886	79 126		
206	79 288	805	79 87	824	79 40	848	79 73	866	79 100	886	79 127		
207	79 260	805	79 88	824	79 41	848	79 74	867	79 97	886	79 128		
217	79 269	805	79 89	825	79 41	849	79 74	867	79 98	887	79 128		
224	79 274	806	79 66	825	79 42	849	79 75	867	79 99	887	79 129		
228	79 276	806	79 68	825	79 43	849	79 76	867	79 100	887	79 130		



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888	79	129	897	79	227	908	79	237	917	79	289	927	79	311	938	79	322
888	79	130	897	79	225	909	79	236	918	79	289	927	79	312	938	79	323
888	79	131	897	79	221	909	79	237	918	79	290	927	79	313	938	79	324
888	79	132	897	79	223	909	79	230	918	79	291	928	79	313	938	79	321
889	79	131	898	79	223	909	79	235	919	79	293	928	79	314	939	79	310
889	79	132	898	79	222	910	79	235	919	79	292	928	79	315	939	79	311
889	79	133	899	79	222	910	79	236	919	79	287	929	79	316	939	79	344
889	79	134	899	79	224	910	79	237	920	79	290	929	79	316	939	79	347
889	79	135	899	79	225	910	79	238	920	79	291	929	79	317	939	79	349
890	79	135	900	79	225	911	79	238	920	79	288	930	79	316	940	79	346
890	79	129	900	79	226	911	79	239	920	79	292	930	79	317	940	79	347
890	79	130	900	79	227	911	79	240	921	79	290	930	79	318	940	79	345
890	79	117	901	79	221	912	79	239	921	79	293	930	79	317	941	79	347
890	79	126	901	79	221	912	79	241	921	79	294	931	79	317	941	79	348
890	79	127	901	79	218	912	79	242	921	79	296	931	79	318	941	79	349
891	79	152	901	79	219	913	79	242	922	79	294	931	79	319	942	79	348
891	79	151	901	79	224	913	79	243	922	79	295	931	79	320	942	79	349
891	79	158	901	79	224	913	79	227	923	79	291	932	79	321	942	79	354
891	79	157	902	79	223	913	79	228	923	79	295	932	79	312	943	79	354
892	79	153	902	79	228	913	79	229	923	79	296	933	79	314	943	79	353
892	79	155	903	79	237	913	79	239	923	79	292	933	79	316	944	79	356
893	79	154	903	79	243	914	79	228	923	79	291	933	79	323	944	79	352
893	79	155	903	79	231	914	79	229	923	79	293	934	79	320	945	79	354
894	79	156	904	79	233	914	79	238	923	79	285	934	79	318	945	79	352
894	79	154	905	79	234	914	79	239	923	79	286	934	79	322	945	79	355
895	79	156	905	79	236	914	79	240	924	79	287	934	79	323	946	79	350
895	79	157	905	79	233	914	79	286	924	79	296	935	79	324	946	79	356
895	79	159	906	79	229	914	79	285	924	79	310	935	79	325	946	79	351
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896	79	153	906	79	233	915	79	286	925	79	312	936	79	327	947	79	354
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896	79	155	907	79	233	916	79	292	925	79	326	937	79	321	948	79	355
896	79	157	907	79	234	916	79	295	925	79	327	937	79	326	948	79	349
896	79	156	907	79	236	916	79	296	925	79	328	937	79	310	948	79	350
896	79	218	908	79	234	916	79	294	926	79	317	938	79	310	948	79	351
897	79	226	908	79	235	917	79	287	926	79	319	938	79	311	948	79	603

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Pg.	Vol.	Pg.	Pg.	Vol.	Pg.	Pg.	Vol.	Pg.	Pg.	Vol.	Pg.	Pg.	Vol.	Pg.	Pg.	Vol.	Pg.
1	79	564	310	79	876	901	79	576	914	79	583	924	79	604	936	79	653
19	79	560	310	79	880	901	79	578	914	79	584	924	79	607	936	79	652
25	79	602	311	79	876	901	79	577	914	79	587	925	79	606	937	79	651
26	79	602	311	79	887	902	79	576	915	79	584	925	79	607	937	79	652
27	79	603	312	79	877	902	79	597	915	79	589	925	79	608	937	79	653
27	79	607	312	79	888	902	79	599	915	79	591	926	79	608	938	79	654
28	79	602	313	79	878	902	79	600	915	79	592	926	79	609	938	79	655
29	79	554	313	79	891	902	79	601	916	79	592	927	79	603	939	79	652
41	79	539	314	79	857	903	79	596	916	79	593	927	79	605	939	79	727
64	79	647	326	79	847	903	79	595	916	79	594	927	79	606	939	79	733
64	79	655	341	79	896	903	79	576	917	79	594	927	79	610	940	79	720
65	79	618	342	79	896	903	79	580	917	79	595	928	79	610	940	79	729
102	79	637	343	79	897	903	79	581	917	79	598	928	79	611	941	79	720
108	79	641	344	79	838	904	79	583	918	79	595	928	79	612	941	79	732
115	79	721	354	79	844	904	79	577	918	79	596	929	79	612	941	79	733
116	79	730	360	79	804	904	79	580	918	79	597	929	79	613	941	79	734
117	79	720	385	79	818	905	79	582	919	79	597	929	79	614	941	79	736
118	79	721	394	79	825	905	79	580	919	79	598	930	79	613	941	79	729
119	79	722	419	79	864	905	79	581	919	79	599	930	79	614	942	79	721
120	79	722	434	79	939	906	79	601	920	79	600	930	79	615	942	79	723
120	79	730	435	79	940	906	79	579	920	79	601	930	79	616	942	79	724
121	79	676	436	79	940	907	79	582	920	79	591	931	79	615	943	79	722
171	79	714	436	79	941	907	79	583	921	79	592	931	79	616	943	79	723
180	79	710	437	79	921	908	79	582	921	79	576	931	79	617	943	79	724
187	79	666	464	79	904	908	79	584	921	79	577	931	79	610	943	79	725
205	79	738	495	79	936	908	79	587	921	79	578	931	79	612	943	79	726
206	79	738	498	79	1117	909	79	585	921	79	580	932	79	606	944	79	723
206	79	739	498	79	1118	909	79	586	921	79	579	932	79	605	944	79	724
207	79	705	499	79	1115	910	79	586	921	79	593	932	79	610	944	79	725
215	79	656	499	79	1130	910	79	587	921	79	600	932	79	647	945	79	726
227	79	664	500	79	948	910	79	590	922	79	591	932	79	653	945	79	722
230	79	797	520	79	962	911	79	587	922	79	603	932	79	655	945	79	725
230	79	802	531	79	1138	911	79	588	922	79	604	933	79	648	945	79	730
231	79	760	532	79	1136	912	79	588	922	79	795	933	79	647	945	79	731
236	79	773	532	79	1141	912	79	589	923	79	605	934	79	649	946	79	731
255	79	746	533	79	1137	912	79	590	923	79	611	934	79	650	946	79	726
271	79	763	534	79	1137	912	79	593	923	79	613	935	79	650	946	79	727
275	79	785	535	79	968	913	79	588	923	79	617	935	79	651	947	79	727
290	79	756	550	79	947	913	79	589	923	79	604	935	79	648	947	79	728
297	79	766	552	79	1147	913	79	590	924	79	606	936	79	649	947	79	729
309	79	755	552	79	1151	914	79	578	924	79	610	936	79	651	948	79	729

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