

SUPREME COURT REPORTER



Volume 96

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Covering

VOLUMES 423-424 U. S. REPORTS

Cases Argued and Determined

in the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

ST. PAUL, MINN.
WEST PUBLISHING CO.

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JUSTICES

OCTOBER TERM, 1975

CHIEF JUSTICE

HON. WARREN E. BURGER

ASSOCIATE JUSTICES

HON. WILLIAM O. DOUGLAS ¹
HON. WILLIAM J. BRENNAN, Jr.
HON. POTTER STEWART
HON. BYRON R. WHITE
HON. THURGOOD MARSHALL
HON. HARRY A. BLACKMUN
HON. LEWIS F. POWELL, Jr.
HON. WILLIAM H. REHNQUIST
HON. JOHN PAUL STEVENS ²

RETIRED

HON. STANLEY REED, Associate Justice
HON. TOM C. CLARK, Associate Justice

ATTORNEY GENERAL

HON. EDWARD H. LEVI

SOLICITOR GENERAL

HON. ROBERT H. BORK

CLERK

MICHAEL RODAK, Jr.

REPORTER OF DECISIONS

HENRY PUTZEL, jr.

MARSHAL

FRANK M. HELPER ³
ALFRED WONG ⁴

LIBRARIAN

EDWARD G. HUDON ⁵
BETTY J. CLOWERS ⁶

¹ Retired November 12, 1975.

² Took office December 19, 1975.

³ Resigned.

⁴ Appointed Acting Marshal Feb. 12, 1976.

⁵ Retired April 30, 1976.

⁶ Designated Acting Librarian May 4, 1976.

*

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 LEWIS F. POWELL, Jr., of Virginia.

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

ALLOTMENT OF THE JUSTICES

SIXTH CIRCUIT.

Kentucky, Michigan, Ohio, and Tennessee.

JUSTICE POTTER STEWART, of Ohio.

Appointed by President Eisenhower October 14, 1958;
took office October 14, 1958.

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.

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**

**ASSIGNMENTS OF MR. JUSTICE CLARK
ORDERS**

October 14, 1975

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 Fifth Circuit for the purpose of hearing the appeal in the case of USA v. Carden, No. 74-3037, and for such additional 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 Fourth Circuit during the week of November 10, 1975, and for such additional 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 District of Columbia Circuit from December 11, 1975, to December 17, 1975, and for such additional 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 Third Circuit on April 8 and 9, 1976, and for such additional 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

**ASSIGNMENT OF MR. JUSTICE REHNQUIST
ORDER**

November 17, 1975

Pursuant to the provisions of Title 28 U.S.C. Section 42, it is ordered that Mr. Justice Rehnquist be, and he is hereby, temporarily assigned to the Ninth Circuit as Circuit Justice.

**ASSIGNMENTS OF MR. JUSTICE CLARK
ORDERS**

November 17, 1975

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 Eighth Circuit from January 12, 1976, to January 16, 1976, and for such additional 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 Seventh Circuit during the week of May 24, 1976, and for such additional 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.

RETIREMENT OF MR. JUSTICE DOUGLAS

November 17, 1975

The Chief Justice said:

"I have a statement to make on behalf of the Court. The announcement of Mr. Justice Douglas' retirement as a member of this Court was made on Wednesday last week. We on the Court who have been intimate witnesses to his gallant struggle to recover his health and his strength hope now that he is free from the incessant burden that his high sense of duty placed on him, he will be able to direct his great courage and his infinite willpower to recovering his health.

"Our feelings about him officially as his colleagues, and personally as his friends, are more fully expressed in a letter signed by all of the members of the Court and Justice Douglas' reply to that letter. These letters, I think, will suggest something of the nature of the relationships within the Court in the constant contacts that occur day by day in an institution in which all of the members must act together and work together on every matter that comes before the Court."

SUPREME COURT OF THE UNITED STATES

SUPREME COURT OF THE UNITED STATES,
Washington, D.C.
November 14, 1975.

CHAMBERS OF
THE CHIEF JUSTICE

DEAR BILL: Only when you made your decision known did we fully sense what that meant to us and to the Court. For us, as colleagues and friends, your absence from the Conference table and our deliberations will be deeply felt. Whether ultimately we agreed or not, as colleagues we valued highly your unparalleled knowledge of the multitude of decisions of the Court covering more than one-third of this century. It was a unique resource for the Court and one that may never again be present at our Conference table. We shall always remember your occasional verbal "footnotes" telling us intimate details as to how some opinion evolved. As friends we shall miss the daily contacts, which have varied in length and kind for each of us. Some have long been colleagues, some have argued before you, some have come here more recently, but all of us share great respect and affection for you.

The hope on our part is that, relieved of the burdens of Court work, your health will improve, and this eases our sense of loss. In the months since last January we have felt boundless admiration for your courageous fight to recover your strength and your placing duty above concern for your health.

So much has been said and will be said on other occasions about your remarkable career that no more need be noted now than to recall that it is far more than a record of longevity, for it spanned a period in American history comparable to that of the formative period early in the 19th century when Marshall and then Taney were here.

We shall miss your vast reservoir of firsthand knowledge of the Court's cases of the past 36 years and, as well, the warm daily contacts in Conference and on the Bench. It goes without saying that we shall expect you to share our table as usual, for for you remain Senior Justice Emeritus.

Sincerely,

WARREN E. BURGER.
WILLIAM J. BRENNAN, JR.
POTTER STEWART.
BYRON R. WHITE.
THURGOOD MARSHALL.
HARRY A. BLACKMUN.
LEWIS F. POWELL, JR.
WILLIAM H. REHNQUIST.

SUPREME COURT OF THE UNITED STATES

SUPREME COURT OF THE UNITED STATES,
Washington, D.C.,
November 14, 1975.

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

MY DEAR BRETHREN: Your message, written on my retirement from the Court, filled my heart with overflowing emotion. You were kind and generous and made every hour, including the last one on our arduous journey, happy and relaxed.

I am reminded of many canoe trips I have taken in my lifetime. Those who start down a water course may be strangers at the beginning but almost invariably are close friends at the end. There were strong headwinds to overcome and there were rainy as well as sun drenched days to travel. The portages were long and many and some were very strenuous. But there were always a pleasant camp in a stand of white bark birch and water concerts held at night to the music of the loons; and inevitably there came the last camp fire, the last breakfast cooked over last night's fire, and the parting was always sad.

And yet, in fact, there was no parting because each happy memory of the choice parts of the journey—and of the whole journey—was of a harmonious united effort filled with fulfilling and beautiful hours as well as dull and dreary ones. The greatest such journey I've made has been with you, my Brethren, who were strangers at the start but warm and fast friends at the end.

The value of our achievements will be for others to appraise. Other like journeys will be made by those who follow us, and we trust that they will leave these wilderness water courses as pure and unpolluted as we left those which we traversed.

Yours faithfully,

WILLIAM O. DOUGLAS.

THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES.

The Chief Justice said:

"In accordance with tradition and practice, these letters will be made part of the permanent records of the Court and will be recorded in the Court's journal."

Adjourned until Monday, December 1, 1975, at 10 o'clock.