

SUPREME COURT REPORTER



Volume 75

covering

VOLUMES 348-349 U. S. REPORTS

*Cases Argued and Determined
in the*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

ST. PAUL, MINN.
WEST PUBLISHING CO.
1955

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JUSTICES

OCTOBER TERM, 1954

CHIEF JUSTICE

HON. EARL WARREN

ASSOCIATE JUSTICES

HON. HUGO L. BLACK

HON. STANLEY REED

HON. FELIX FRANKFURTER

HON. WILLIAM O. DOUGLAS

HON. ROBERT H. JACKSON¹

HON. HAROLD H. BURTON

HON. TOM C. CLARK

HON. SHERMAN MINTON

HON. JOHN M. HARLAN²

ATTORNEY GENERAL

HON. HERBERT BROWNELL, Jr.

SOLICITOR GENERAL

HON. SIMON E. SOBELOFF

CLERK

HAROLD B. WILLEY

REPORTER OF DECISIONS

WALTER WYATT

MARSHAL

T. PERRY LIPPITT

LIBRARIAN

HELEN NEWMAN

¹Died Oct. 9, 1954.

²Appointed took office March 23, 1955.

ALLOTMENT OF THE JUSTICES

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 HAROLD H. BURTON, of Ohio.

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

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 STANLEY REED, of Kentucky.

Appointed by President Roosevelt; took office January 31, 1938.

ALLOTMENT OF THE JUSTICES

SEVENTH CIRCUIT.

Illinois, Indiana, and Wisconsin.

JUSTICE SHERMAN MINTON, of Indiana.

Appointed by President Truman; took office October 12, 1949.

EIGHTH CIRCUIT.

Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

JUSTICE TOM C. CLARK, of Texas.

Appointed by President Truman; took office August 24, 1949.

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 TOM C. CLARK, of Texas.

Appointed by President Truman; took office August 24, 1949.

SUPREME COURT OF THE UNITED STATES

APPOINTMENT

ASSOCIATE JUSTICE HON. JOHN MARSHALL HARLAN

March 28, 1955

The Chief Justice said:

"The President, with the advice and consent of the Senate, has appointed the Honorable John Marshall Harlan, Circuit Judge from New York, an Associate Justice of this Court to succeed Justice Jackson. Justice Harlan has taken the Constitutional Oath administered by the Chief Justice. He is now present in Court. The Clerk will read his commission. He will then take the Judicial Oath, to be administered by the Clerk, after which the Marshal will escort him to his seat on the bench."

The Clerk then read the commission as follows:

"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 John Marshall Harlan of New York 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 Hold the said Office, with all the powers, privileges, and emoluments to the same of right appertaining, unto Him, the said John Marshall Harlan, 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.

APPOINTMENT—HON. JOHN MARSHALL HARLAN

"Done at the City of Washington this seventeenth day of March, in the year of our Lord one thousand nine hundred and fifty-five, and of the Independence of the United States of America the one hundred and seventy-ninth.

"DWIGHT D. EISENHOWER.

"By the President:

"HERBERT BROWNELL, Jr.,
"Attorney General."

The oath of office was then administered by the Clerk, and Mr. John Marshall Harlan was escorted by the Marshal to his seat on the bench.

The oaths taken by Mr. Justice Harlan are in the following words, viz.:

"I, John Marshall Harlan, 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.

"J. MARSHALL HARLAN.

"Subscribed and sworn to before me this 28th day of March A. D. 1955.

"EARL WARREN,
"Chief Justice of the United States."

"I, John Marshall Harlan, 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 on 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.

"J. MARSHALL HARLAN.

"Subscribed and sworn to before me this 28th day of March A. D. 1955.

"EARL WARREN,
"Chief Justice of the United States."

Present: Mr. Chief Justice Warren, Mr. Justice Black, Mr. Justice Reed, Mr. Justice Frankfurter, Mr. Justice Douglas, Mr. Justice Burton, Mr. Justice Clark, Mr. Justice Minton, and Mr. Justice Harlan.

In Memory of

HONORABLE ROBERT HOUGHWOUT JACKSON

Associate Justice of the United States

APRIL 4, 1955

Mr. Solicitor General Sobeloff addressed the Court as follows:

"May it please the Court: This morning, in the Conference Room, there was a meeting of the Bar of the Supreme Court in honor of the memory of Mr. Justice Jackson. The meeting was addressed by Mr. John Lord O'Brian, Mr. Gordon Dean, and Professor Paul Freund. Resolutions read by Mr. Sidney Alderman, Chairman of the Committee, were adopted. With your permission I will read the Resolutions.

"RESOLUTIONS

"Associate Justice Robert Houghwout Jackson died suddenly of a heart attack on Saturday, October 9, 1954, at the age of sixty-two and at the height of his brilliant judicial career. On the convening of the Court on Monday, October 11, Chief Justice Warren made the following statement:

" "One short week ago this Court convened for its 164th Term, its membership intact and cheerfully anticipating the work before us. Today the chair of our Brother Jackson is vacant, and we are sad indeed. He passed away last Saturday suddenly but by the Grace of God without suffering. For this we are all grateful, because he lived and died as was his great desire—active and useful to the end.

" "Able lawyer, statesman and jurist, his passing leaves a great void in this Court. We shall miss greatly his wise counsel, his clarity of expression and his genial companionship.

" "For 20 years, as General Counsel, as Solicitor General, as Attorney General of the United States, and as a member of this Court, he labored manfully with the complex and baffling problems of our time. His contributions were great. He has earned his rest.

IN MEMORY OF

“ “Funeral services will be held tomorrow afternoon at three o'clock at the Washington Cathedral, this city. His body will then be taken tenderly to Jamestown, New York, the little city of his youth, where, in pleasant and familiar surroundings, it will abide in peace among his earliest friends.

“ “In respect to his memory, this Court will now adjourn until Thursday, October 14, 1954, at twelve noon.”

“ “The Chief Justice, all the Associate Justices, and the Clerk and the Marshal of the Court accompanied the remains, along with the family and the office staff of Mr. Justice Jackson, to Jamestown, New York, and the members of the Court acted as honorary pallbearers at the funeral services at Jamestown and at the interment at Frewsburg.

“ “Justice Jackson had suffered a previous attack in the spring of 1954 and had spent several weeks in a hospital in Washington and recuperating at his beautiful home, Hickory Hill, at McLean, Virginia. His doctors gave him the choice between years of comparative inactivity or a continuation of his normal activity at the risk of death at any time. With characteristic fortitude he chose the second alternative. He returned to his work on the Court, sat at the session of May 17, 1954, and joined in the unanimous opinion of that date in the school segregation cases. After a restful summer vacation at his home, at the Bohemian Grove in California and on a fishing trip in Canada, he returned for the present term of the Court and sat at its opening session on Monday, October 4.

“ “The members of the bar of the Supreme Court are met today to honor his memory and to record their estimate of the man, of the lawyer, of the judge, and of the statesman.

“ “He was a self-educated and self-made man in the Lincoln tradition and his life will ever be an inspiration to young men of our time who, all too often, tend to feel that ours may be no longer a land of opportunity.

“ “He was born at Spring Creek, Warren County, Pennsylvania, on February 13, 1892, the son of William Eldred and Angelina Houghwout Jackson. His father, a lumberman, farmer and stock breeder, was a stubborn Scotsman who wanted his son to be a doctor and refused to assist him in obtaining a legal education. He died when the son was a young man. His mother, a woman of strength and fortitude, with the best characteristics of her Dutch ancestry, had a profound influence on her son's life and character. She died shortly after he became Associate Justice. He was the only son and is survived by two devoted sisters, Mrs. Helen J. Adams and Mrs. Ella M. Springer, both of Frewsburg, New York.

"When Robert H. Jackson was five years old, the family moved across the state line to Frewsburg, Chautauqua County, New York, a small village some five miles south of Jamestown. There he attended grade and grammar school. In 1910 he graduated from Jamestown High School. He never attended college, but immediately entered the office of Frank H. Mott, an able young lawyer and like Jackson a Democrat, to study law. He attended Albany Law School for one year and then resumed his studies in Mr. Mott's law office. He passed the New York bar examinations and was admitted to practice on November 24, 1913, at the age of twenty-one, when he would normally have been graduating from college. He always retained the view that the old system of studying in a law office provided one of the best schools for a legal education.

"Years later, in his thoughtful address on "Training the Trial Lawyer"¹ delivered at the dedication of The Stanford University School of Law, he made witty reference to his own law education, saying:

" "Considerations of an autobiographical nature would make it immodest for me to suggest what a law school should teach and how best to teach it. I am a vestigial remnant of the system which permitted one to come to the bar by way of apprenticeship in a law office. Except for one term at law school, I availed myself of that method of preparation which already was causing uneasiness—to which feeling I must have added, for the system was almost immediately abolished. You may be comforted to realize that I am the last relic of that method likely to find a niche on the Supreme Court."

"He was always an omnivorous reader. He devoured everything he could lay his hands on in history, biography, philosophy, the law and the classics of literature, so that he became an extraordinarily well-read man. He was a lifelong student of the Bible, an Episcopalian and a thirty-third degree Mason. He was a deeply religious man but was bound to no orthodoxy.

"His farm boyhood taught him the strength and solace that comes from nature and the out-of-doors life. He was an ardent horseman, fisherman, camper, hiker; best of all, he loved a morning canter or a summer camping trip with his daughter, Mary. In these recreations he found release from the turmoil and contentions of an active professional life, although it is said he sometimes argued his cases on horseback.

"Standing and reputation came to him rapidly in that greatest school for trial advocates, the general, country and small-town practice. He was early made corporation counsel of Jamestown. Like Lincoln he was a railroad trial lawyer and represented a

1. 3 Stanford Law Review 48.