

# May 17, 1954

*John Q. Barrett\**

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Monday, May 17, 1954, was a day of arrivals and events at the Supreme Court of the United States.

Justice Robert H. Jackson, who had been at Doctors Hospital in downtown Washington since suffering a serious heart attack on March 30<sup>th</sup>, came directly from the hospital to his chambers that morning.

Justice William O. Douglas, who in late March had led a highly publicized, week-long, 185 mile hike along the Chesapeake & Ohio (C&O) Canal towpath from Cumberland, Maryland, to Washington, D.C., to urge (ultimately successfully) that it not be developed into a highway, was honored in his chambers at 11:00 a.m. He received, from representatives of the American Foot Health Association, its emblem, a bronze winged foot, in recognition of (in the AFHA's words) his demonstration of the usefulness "of the lower extremities" that many Americans had "forgotten."

Many attorneys and government officials, some tipped off to expect bigger announcements, also arrived at the Court that morning. They included Thurgood Marshall, Director-Counsel of the NAACP Legal Defense & Education Fund, Inc., along with his colleagues George Hayes and James Nabrit, Jr. In December 1953, they and other colleagues had argued the school segregation cases that were awaiting decision.

At noon, the justices stepped through the curtain behind the Court's bench and took their seats. They were, from left to right as the audience viewed them, Associate Justices Tom Clark, Robert Jackson, Felix Frankfurter and Hugo Black, Chief Justice Earl Warren, and Associate Justices Stanley Reed, Bill Douglas, Harold Burton and Sherman Minton.

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Chief Justice Warren, the most recently appointed, had joined the Court as a recess appointee by President Eisenhower at the start of the Term in October 1953. The Senate confirmed Warren's appointment as chief justice five months later. The other justices had been serving for periods ranging from four years (Clark and Minton) to almost seventeen (Black). Only Minton, who had been appointed to the United States Court of Appeals for the Seventh Circuit following his 1940 defeat when he had sought reelection to the United States Senate, had any substantial judicial experience before his appointment to Court. (Black had served briefly as a police court judge in Alabama.)

The courtroom was jammed. Most justices had told their law clerks to be sure to come to Court that day—but only that. Many attorneys were present. As people saw Justice Jackson, looking well after forty-nine days in the hospital, take his seat on the bench, a knowing murmur moved through the audience. (In a courtroom alcove, Jackson's family, one of his doctors, a nurse, his secretary, his law clerk and the historian who was taking Jackson's oral history all were present, watching him closely and hoping for the best.)

The proceedings began with the admission of a very large number of attorneys—119 of them—to practice before the Supreme Court. Former secretary of state Dean Acheson moved the admission of his son David. John Lord O'Brian, another leading Washington lawyer (and one of Dean Acheson's law firm partners) who years earlier had moved Robert Jackson's admission to the Supreme Court bar, moved the admission of three lawyers from his native western New York State. United States Senator John Calhoun Stennis (D.-MS) moved the admission of a constituent. Department of Justice attorney Warren E. Burger moved the admission of three friends, two from his native Minnesota. Another Member of Congress, Representative Roman Hruska (R.-NE), was admitted to the Supreme Court bar. (In later years, Burger of course succeeded Warren as chief justice of the United States and Hruska, by then an elected U.S. Senator, defended mediocrity as a credential for appointment to the Court—a remark that lives in infamy.)

The Justices then began to read the Court's decisions of the day. Justice Clark read his opinion for the Court in *United States v. The Borden Company*, an antitrust case. Justice Douglas then read his opinions for the Court in *Capital Services, Inc. v. National Labor Relations Board*, a case concerning an injunction against union picketing, and in *United States v.*

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*Gilman*, which rejected a government effort to seek indemnification from an employee whose negligence had created government tort liability. Chief Justice Warren then announced the Court's summary affirmance, *per curiam*, in *United Shoe Machinery Corporation v. United States*, a major antitrust case that had been tried in Boston.

As these somewhat boring announcements were occurring, reporters in the Supreme Court press room were told what many in the courtroom already understood: the Court was about to announce its decisions in the cases concerning the constitutionality of racial segregation in public elementary and secondary schools.

At about 12:40 p.m., Chief Justice Warren began to read his opinion for the Court in Case Number 1 on that Term's docket, *Oliver Brown et al. v. Board of Education of Topeka, Shawnee County, Kansas*, along with its companion cases from South Carolina, Virginia and Delaware. In a clear, unhurried voice, Chief Justice Warren took about thirty minutes to read his opinion, which is not lengthy. (Published the next day in newspapers, it filled less than one-third of a page.) As he read, the other justices sat almost motionless. Near the end of the opinion, Warren read the Court's judgment:

We conclude, unanimously, that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

"Unanimously" does not appear in the Court's written opinion. The Chief Justice, nodding toward Jackson's physical presence that day and the perhaps surprising votes of one or two of the justices who hailed from the South, added it extemporaneously.

Following his reading of *Brown*, Chief Justice Warren read his opinion for the Court in *Bolling v. Sharpe*. It held, also unanimously, that the federal government's racial segregation in the public schools of the District of Columbia violated the Due Process Clause of the Fifth Amendment.

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At 1:15 p.m., the Court adjourned. Justice Jackson, returning to his chambers, had a celebratory lunch there with his family, colleagues, doctor and nurse. He then left early, heading home to Hickory Hill for the first time in seven weeks.

Back in chambers the next day, Justice Jackson received a note of good wishes from the Solicitor General of the United States, Simon Sobeloff. “It did *my* heart good,” he wrote, “to see you in your seat yesterday.”