

E. Barrett Prettyman Jr. papersMSS.86.5

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1944-1989



Title Statement

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Sponsor: Web version of the finding aid funded in part by a grant from the National Endowment for the Humanities.

Publication Statement

Publisher: Arthur J. Morris Law Library Special Collections

Arthur J. Morris Law Library
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Charlottesville, Virginia 22903
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URL: <http://archives.law.virginia.edu/>



Profile Description

Creation: This finding aid was produced using ArchivesSpace on 2026-05-21 11:00:49 +0000.

Language Usage: Description is written in: English, Latin script.

Descriptive Rules: Describing Archives: A Content Standard

Revision Description

- Feb 17, 2004** PUBLIC "-//University of Virginia::School of Law::Library::Special Collections//TEXT (US::ViU-L::viul00008::Papers of E. Barrett Prettyman, Jr.1944-1982)//EN" "viul00008.xml" converted from EAD 1.0 to 2002 by v1to02.xsl (sy2003-10-15).
- Feb 25, 2004** converted to conform to eadVIVA.dtd by vivastrict.xsl
- 2013-11-21** Converted to schema conforming EAD by dtd2schema.vh.xsl.
- 2015-09-21-04:00** PUBLIC "-//University of Virginia::School of Law::Library::Special Collections//TEXT (US::ViU-L::viul00008::Papers of E. Barrett Prettyman, Jr.1944-1982)//EN" "viul00008.xml"

Descriptive Summary

Unit ID

MSS.86.5

Unit ID

[Archival Resource Key](#)

Unit ID

[Previous Archival Resource Key](#)

Unit ID

/repositories/4/resources/100

Unit Date

1944-1989

Unit Date

1953-1955

Language

English

Creator

Prettyman, E. Barrett, 1891-1971

Extent

3 Linear Feet 4 boxes

Repository

Arthur J. Morris Law Library Special Collections

Administrative Information

Conditions Governing Access

There are no restrictions.

Conditions Governing Use

There are no restrictions.

Biographical / Historical

E. Barrett Prettyman Jr., a life-long resident of the Washington, DC, area, received his undergraduate degree from Yale University in 1949. He attended law school at the University of Virginia and served on the editorial board of the *Virginia Law Review*. In addition, he was active in the Student Legal Forum, on behalf of which he extended speaking invitations to Justices Robert H. Jackson and Felix Frankfurter, both of whom accepted. In late 1952, Prettyman was selected to clerk for Justice Jackson after his graduation the following June.

The Supreme Court was deeply involved in consideration of *Brown v. Board of Education* when Prettyman began his clerkship. In his history of *Brown* titled *Simple Justice* (New York: Alfred Knopf, 1975), Richard Kluger describes in detail the work of the justices in early 1954. "[Chief Justice Earl] Warren's highest hope, for a single unanimous opinion, did not look especially bright. It rested in large part on his overcoming the philosophical reservations of both Felix Frankfurter and Robert Jackson, men who could talk, write and think rings around the Chief Justice. Neither was likely to curl up at Warren's mere bidding."(683)

Justice Frankfurter circulated a memorandum outlining his thoughts in January, and in February Justice Jackson wrote out his ideas in a lengthy draft opinion. He began: "The race problem would be quickly solved if some way could be found to make us all live up to our hypocrisies." Jackson discussed the history of racism from the legislative and judicial perspective and found no acceptable justification for revising the pattern. He finally concluded that segregation should be forcefully put to rest simply because the black population, not the Constitution, had changed.

Barrett Prettyman read Jackson's memorandum and wrote a thoughtful reply. Of Prettyman's work, Kluger wrote: "It is doubtful if any of the many excellent young men who have come fresh out of the law schools or soon thereafter to serve the Justices of the Supreme Court ever served more faithfully or usefully than Barrett Prettyman served Justice Jackson. What part Prettyman's memo played will never be known, but it is a fact that Jackson, having written this much on the segregation cases, wrote no more."(691)

Justice Jackson had a heart attack about seven weeks before the decision in *Brown* was handed down in the

spring of 1954. During his subsequent extended hospitalization, Prettyman brought work for him to review, including Chief Justice Warren's draft opinion in *Brown* and Justice Frankfurter's colorful and verbose reports of the justices' conferences. Despite his poor health, Jackson was on the bench on May 17 when the unanimous *Brown* decision was handed down.

During the summer of 1954, Chief Justice Warren appointed six clerks to study and report ways that desegregation might be implemented. Prettyman, a member of this team, was assigned to map out Spartanburg, South Carolina, in terms of its black and white population and to suggest a prototypical plan for integrating its schools; other clerks were given similar assignments. They then pooled their ideas to formulate an approach the Supreme Court should take on implementation of integration, but could not agree on the important question of timing. Prettyman favored a compromise between forcing immediate desegregation and allowing communities an indefinite period of time to act.

Justice Jackson died in the fall of 1954, and Prettyman went to work for Justice Frankfurter, who had the highest praise for the young man's work and clearly took a personal interest in him. John Marshall Harlan, a judge on the U.S. Court of Appeals for the Second Circuit, was nominated in November 1954 to take Jackson's place on the Court. Harlan's mere name put Senate conservatives on guard because his grandfather had been the sole dissenter in *Plessy v. Ferguson*; consequently, his nomination was held up in the Senate for four months. In the interim he invited Prettyman to be one of his first two clerks, and Prettyman accepted.

At the conclusion of his clerkship in the early summer of 1955, Barrett Prettyman joined the Washington, D.C., firm of Hogan and Hartson, where he is now a partner.

Scope and Contents

The papers of E. Barrett Prettyman Jr. consist of correspondence files dating from 1944 to 1982, as well as the working papers from his clerkship for Justices Robert H. Jackson, Felix Frankfurter, and John M. Harlan (1953-1955).

Prettyman had arranged the correspondence by name of the justice who was the correspondent/subject. For each man there is correspondence from Prettyman's clerkship period, and later correspondence with other former clerks about reunions. In addition, the Jackson correspondence contains a few letters from Jackson and a good many related to his death. In the Frankfurter file there are many short, handwritten notes from Frankfurter to his clerk commenting on cases before the Court as they were being heard, making requests, or expressing opinions about other justices' views. Frankfurter's notes are also sprinkled throughout the case materials. The Harlan letters date from the period just before he went on the Court until the time of his death, since Justice and Mrs. Harlan maintained their friendship with Prettyman and his wife Evelyn after the short clerkship ended.

The working papers contain one or more folders on a dozen specific cases, several folders on an assortment of cases, and twelve folders containing Prettyman's certiorari petition memoranda annotated by the three justices. Of the case material, the most significant concerns *Brown v. Board of Education* and includes drafts of Prettyman's memoranda to Jackson regarding the justice's draft opinion, the map of Spartanburg, Prettyman's memo concerning implementation, and signed copies of the opinion and the decree.

This collection documenting the work of a Supreme Court law clerk is significant because of the stature of the three justices Prettyman clerked for at such an important time in the Court's history. Furthermore, records of Supreme Court clerkships are rare. Legal historians of the *Brown* era will find these papers valuable and interesting. This collection has been digitized.

Keywords

letters (correspondence)

photographs

School integration -- Law and legislation

Segregation in education -- Law and legislation -- United States

United States. Supreme Court -- History -- 20th century

Prettyman, E. Barrett, 1891-1971

Burton, Harold H., 1888-1964

Clark, Tom C., 1899-1977

Douglas, William O., 1898-1980

Frankfurter, Felix, 1882-1965

Harlan, John M., 1899-1971

Jackson, Robert H., 1892-1954

Description of Subordinate Components

Justice Harold H. Burton: Letter and miscellaneous documents

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14705

Unit Date 1949, 1954

Mixed Materials [35007008144150] 1 (box)

Justice Tom C. Clark: Correspondence and miscellaneous documents

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14706

Unit Date 1954, 1967-68

Mixed Materials [35007008144150] 1 (box)

Justice William O. Douglas: Letters and memorandum

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14707

Unit Date 1947-53, n.d.

Mixed Materials [35007008144150] 1 (box)

Justice Felix Frankfurter: Correspondence

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14708

Unit Date 1944-1963, n.d.

Mixed Materials [35007008144150] 1 (box)

Justice Felix Frankfurter: Correspondence re reunion of former clerks

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14709

Unit Date 1956-82

Mixed Materials [35007008144150] 1 (box)

Justice Felix Frankfurter: Printed Materials and Memorabilia

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/59221

Unit Date 1954-1982

Mixed Materials [35007008144150] 1 (box)

Justice Robert H. Jackson: Correspondence re reunion of former clerks

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14715

Unit Date 1966-69

Mixed Materials [35007008144150] 1 (box)

Justice Felix Frankfurter: Printed material and memorabilia

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14710

Unit Date 1954-66

Mixed Materials [35007008144150] 1 (box)

Justice John M. Harlan: Correspondence

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14711

Unit Date 1954-66

Mixed Materials [35007008144150] 1 (box)

Justice John M. Harlan: Correspondence among former clerks

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14712

Unit Date 1955-81

Mixed Materials [35007008144150] 1 (box)

Justice John M. Harlan: Printed material and memorabilia

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14713

Unit Date 1955-65, n.d.

Mixed Materials [35007008144150] 1 (box)

Justice Robert H. Jackson: Correspondence

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14714

Unit Date 1944-56, n.d.

Mixed Materials [35007008144150] 1 (box)

Justice Robert H. Jackson: correspondence re reunion of clerks [correspondence re Jackson Lectures]

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/59220

Unit Date 1964-1965 1966-1969

Mixed Materials [35007008144150] 1 (box)

Scope and Contents

2 folders

Justice Robert H. Jackson: Memorabilia

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14716

Unit Date 1955, n.d.

Mixed Materials [35007008144150] 1 (box)

"The Exchange of Destroyers for Atlantic Bases" by Robert H. Jackson

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14717

Unit Date [1954]

Mixed Materials [35007008144150] 1 (box)

Extent Carbon copy

Correspondence concerning publication of destroyer articles by Robert H. Jackson

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14718

Unit Date 1955, 1957

Mixed Materials [35007008144150] 1 (box)

Justice Robert H. Jackson: Clippings primarily from the time of his death

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14719

Unit Date 1954

Mixed Materials [35007008144150] 1 (box)

Case Material: Accardi v. Shaughnessy

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14720

Unit Date 1954

Mixed Materials [35007008144168] 2 (box)

Case Material: Brown v. Board of Education

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14721

Unit Date 1954-56

Mixed Materials [35007008144168] 2 (box)

Scope and Contents

Correspondence primarily of E. Barrett Prettyman, Jr., Felix Frankfurter, and John M. Harlan

Brown v. Board of Education Working papers

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14722

Unit Date [1954-56]

Mixed Materials [35007008144168] 2 (box)

Brown v. Board of Education, Signed opinion and decree

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14723

Unit Date 1954, 1955

Mixed Materials [35007008144168] 2 (box)

Case Material: Ellis v. Dixon

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14724

Unit Date 1954-55

Mixed Materials [35007008144168] 2 (box)

Case Material: Garner v. Teamster, Chauffeurs, etc

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14725

Unit Date 1953

Mixed Materials [35007008144168] 2 (box)

Case Material: Irvine v. California

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14726

Unit Date 1953-54

Mixed Materials [35007008144168] 2 (box)

Case Material: Miller Brothers v. Maryland

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14727

Unit Date 1953-54

Mixed Materials [35007008144168] 2 (box)

Case Material: Net Worth Cases

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14728

Unit Date 1954-55

Mixed Materials [35007008144168] 2 (box)

Extent 2 folders

Case Material: Railway Express Agency v. Virginia

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14729

Unit Date 1953-54

Mixed Materials [35007008144168] 2 (box)

Case Material: Special List Conference

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14730

Unit Date 1953-54

Mixed Materials [35007008144168] 2 (box)

Case Material: U.S. v. Five Gambling Devices U.S. v. Denmark and Braun

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14731

Unit Date 1953

Mixed Materials [35007008144168] 2 (box)

Case Material: Weber v. Anheuser-Busch

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14732

Unit Date 1954-55

Mixed Materials [35007008144168] 2 (box)

Case Material: Westinghouse Employees v. Westinghouse

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14733

Unit Date 1954-55

Mixed Materials [35007008144168] 2 (box)

Case Material: Williams v. Georgia - Working Papers

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14734

Unit Date 1955

Mixed Materials [35007008144168] 2 (box)

Case Material: Loose pages of printed opinions annotated by Felix Frankfurter

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14735

Unit Date 1951, 1954, n.d.

Mixed Materials [35007008144168] 2 (box)

Case Material: Memoranda primarily by EBP

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14736

Unit Date 1953-55

Mixed Materials [35007008144176] 3 (box)

Extent 2 folders

Case Material: Miscellaneous printed Supreme Court documents

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14737

Unit Date 1953-54

Mixed Materials [35007008144176] 3 (box)

Certiorari Petition Memoranda

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14738

Unit Date 1953-55

Mixed Materials [35007008144176] 3 (box)

Mixed Materials [35007008144184] 4 (box)

Extent 12 folders

Envelopes

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/59312

Mixed Materials [35007008144184] 4 (box)

Ellis v. Dixon: Notes between FF, EBP and Hugo Black during oral argument; also letter from EBP explaining

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/59313

Unit Date 1955-04-20 1989-03-16

Mixed Materials [35007008144184] 4 (box)

Oversize Material:

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/59968

Hand-drawn map of Spartanburg, S.C. indicating homes of black and white residents and locations of schools

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14739

Unit Date 1955

Mixed Materials Law School, Basement, Special Collections Storage, Oversized Files Cabinet [Law Oversized Materials]

Physical Location Taken from Box 2, Brown v. Board of Education Folder

Photograph Collection:

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14740

Snapshot of Chief Justice Earl Warren with Simon Sobeloff, Solicitor General, and Justice Robert Jackson at the ABA convention

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14741

Unit Date 1954

Photographs Law Special Collections photographs cabinet

Physical Location Law Special Collections photographs cabinet

Formal portrait of the U.S. Supreme Court

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14742

Unit Date 1953

Photographs Law Special Collections photographs cabinet

Physical Location Law Special Collections photographs cabinet

Photo and photo of a sketch of Justice John M. Harlan

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14743

Unit Date 1970, n.d.

Photographs Law Special Collections photographs cabinet

Physical Location Law Special Collections photographs cabinet

Reunion of Harlan law clerks

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14744

Unit Date 1965

Photographs Law Special Collections photographs cabinet

Extent 6 group photos

Physical Location Law Special Collections photographs cabinet

Scope and Contents

Photographs of Justice John M. Harlan and Mrs. Harlan, former clerks and their wives

[Supreme Court office of Justice Robert H. Jackson?]

Unit ID [Archival Resource Key](#)

Unit ID /repositories/4/archival_objects/14745

Unit Date 1954

Photographs Law Special Collections photographs cabinet

Extent 2 photos

Physical Location Law Special Collections photographs cabinet