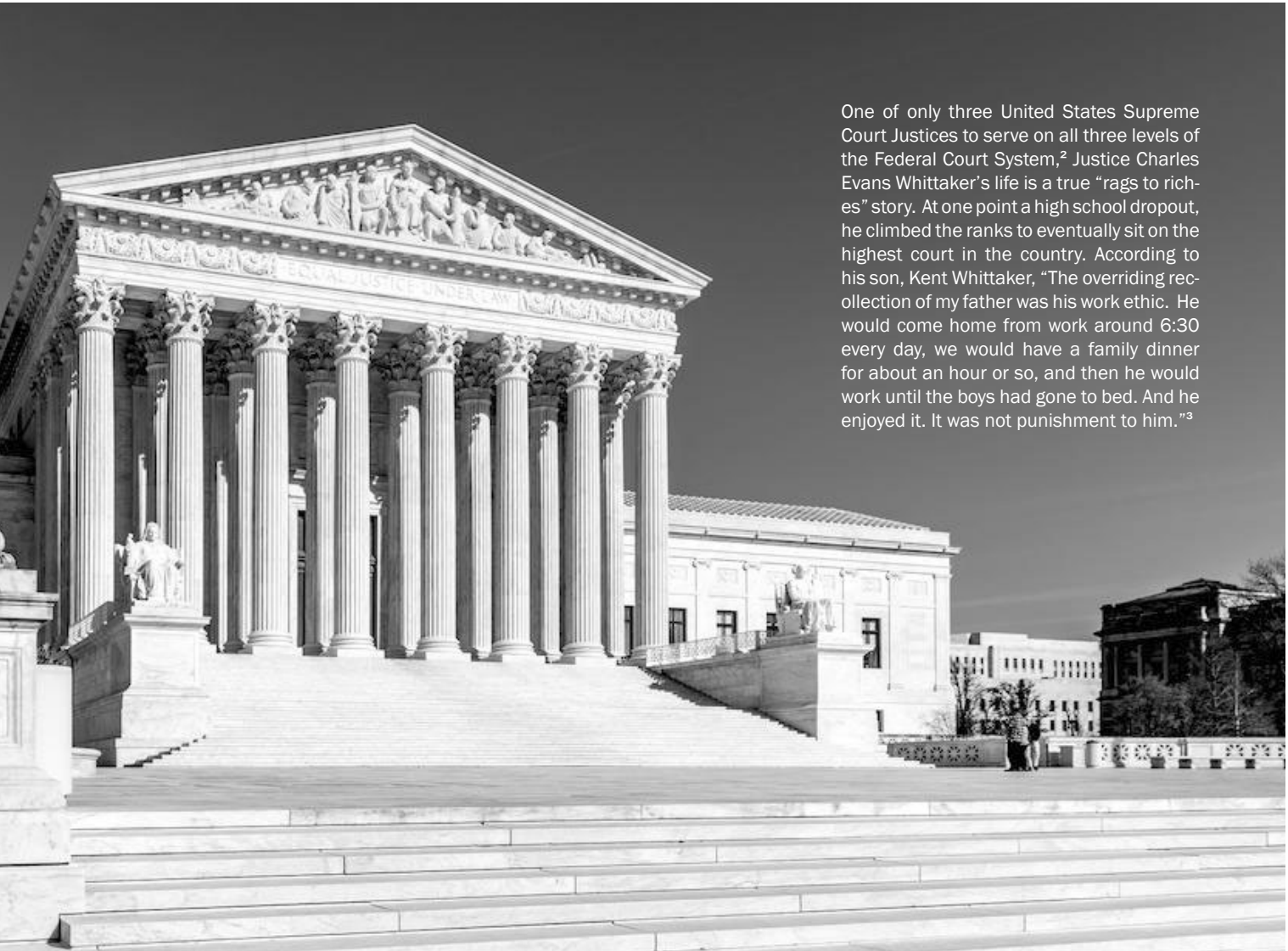


# The Honorable Charles Evans Whittaker, United States Supreme Court Justice, 1957-1962

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*By Stephen Ahal<sup>1</sup>*



One of only three United States Supreme Court Justices to serve on all three levels of the Federal Court System,<sup>2</sup> Justice Charles Evans Whittaker's life is a true "rags to riches" story. At one point a high school dropout, he climbed the ranks to eventually sit on the highest court in the country. According to his son, Kent Whittaker, "The overriding recollection of my father was his work ethic. He would come home from work around 6:30 every day, we would have a family dinner for about an hour or so, and then he would work until the boys had gone to bed. And he enjoyed it. It was not punishment to him."<sup>3</sup>

## Early Life & Education

Born on February 22, 1901, Justice Whittaker was raised on a family farm in Doniphan County, Kansas. At a young age, Justice Whittaker would frequently travel with his father to Troy, Kansas, to purchase farming supplies. For entertainment during those trips, he would visit the local court. Justice Whittaker enjoyed listening to the lawyers argue, and these visits sparked his desire to one day leave the farm and pursue a legal career.<sup>4</sup>

Justice Whittaker's path to law school, however, was not easy. On his sixteenth birthday, Justice Whittaker's mother unexpectedly died. He left high school shortly after to provide extra help on the farm and to support his family. After a few years of saving money, Justice Whittaker applied to the Kansas City School of Law, now known as the University of Missouri-Kansas City ("UMKC") School of Law. The law school granted him part-time admission in 1920, on the condition that he simultaneously complete his high school education.<sup>5</sup>

While at law school, Justice Whittaker developed a reputation for public speaking and brought with him his farming work ethic. He worked for the law firm of Watson, Gage, and Ess as an office clerk while attending night classes. During law school he also met his future wife, Winifred. They eventually married in 1928 and, over the course of their marriage, had three sons: Keith, Kent, and Gary. Justice Whittaker eventually graduated from law school in 1924 and began working for Watson, Gage, and Ess full time.<sup>6</sup>

## Life as an Attorney

Justice Whittaker soon became an excellent trial lawyer. In the early days, his biggest clients were railroads, streetcars, and insurance companies. Justice Whittaker defended these clients in numerous personal injury lawsuits. At one point, Justice Whittaker won 26 trials over the course of 26 weeks. As Kent Whittaker remarked, "At that time, you would finish a trial, pick up the case files for the next one on Friday or Saturday, and spend the weekend preparing for the start of the next trial on Monday."

Joseph R. Stevens, Jr., who once served as a research assistant at Watson, Gage, and Ess under Justice Whittaker, eventually became a Federal District Judge for the Western and Eastern District Courts of Missouri. Judge Stevens respected and admired Justice Whittaker, who became his lifelong mentor and friend. As Judge Stevens once recalled, "Justice Whittaker was the hardest working person I have ever known. He was known to have been met by people going into the building at 7:30 in the morning—as he was going out of the building to go to breakfast. He had worked all night!"

By 1930, Watson, Gage, and Ess had doubled in size. The firm eventually grew to one of the three largest law firms in Kansas City. As the role of a lawyer changed during that time, Justice Whittaker became more corporate focused, spending the majority of his later years at the firm dealing with taxes and contracts.<sup>8</sup>

The *Kansas City Star* was a premier client of the firm, and firm partners became very close with its corporate leaders. One of the more famous cases in which the firm represented the *Star* was *Kansas City Star Co. v. United States*,<sup>9</sup> which charged the newspaper with violations of the Sherman Anti-Trust Act. Interestingly, this case followed Justice Whittaker's judicial path from the Western District of Missouri, to the United States Court of Appeals for the Eighth Circuit, to the decision to deny the petition for writ of certiorari in the United States Supreme Court.<sup>10</sup>



Hon. Charles Evans Whittaker

Over the course of his career in private practice, Justice Whittaker was a beloved attorney who made quite the mark on the Missouri legal community. One could often find him at his favorite lunch spots around Kansas City conducting a "Lawyer's Table," and prominent Kansas City leaders would often surround Justice Whittaker to discuss the important legal issues of the time.<sup>11</sup> In 1954, Justice Whittaker was elected by his peers to serve as president of The Missouri Bar.

## The Western District of Missouri & Eighth Circuit Court of Appeals

In 1954, the Chief Judge of the Western District of Missouri, Judge Albert Reeves, decided to retire. Roy Roberts, the then-president of the *Kansas City Star*, had become one of President Eisenhower's most trusted political advisors and recommended Justice Whittaker

for the judgeship. Because of Roberts's recommendation, as well as fitting President Eisenhower's judicial criteria, Justice Whittaker was the natural choice to fill the vacancy. His nomination was unanimously approved by the United States Senate on July 7, 1954.<sup>12</sup>

Justice Whittaker was excited to be a District Court Judge and eager to be back in the courtroom. Bringing with him his notorious work ethic, Justice Whittaker quickly developed a reputation for being an extremely prepared and engaged judge. A strong believer in the doctrine of *stare decisis*, he would conduct an immense amount of research to find controlling law to guide his judicial decisions. Justice Whittaker also wanted cases to move quickly through the court system, often pushing the parties to reach an agreement instead of going to trial.<sup>13</sup>

Kent Whittaker said his father "absolutely loved being on the District Court. He enjoyed his time talking with lawyers." Echoing this sentiment, Judge Stevens recalled that when he had an opportunity to seek out a Missouri state court judgeship, Justice Whittaker advised him to wait for the chance to be nominated for a federal district court judgeship: "And when you get there, young man, stay there!" Judge Stevens found this advice, from someone who had served at all three levels of the federal judiciary, to be a testament that of his three federal appointments Justice Whittaker had enjoyed most his time on the District Court.

While Justice Whittaker served the Western District of Missouri for a relatively brief period, he presided over some significant cases. Undoubtedly, the most famous case involved the trial of Arthur Ross Brown. On August 4, 1955, Brown kidnapped and murdered Wilma Allen, a 34-year-old wife and mother of two, in Kansas City, sparking a nationwide search for the killer. Three months later, Brown was arrested on unrelated charges in San Francisco, California. While detained, he confessed to the murder.<sup>14</sup>

*United States v. Arthur Ross Brown* was not a legally complex case. Because Brown had already confessed, the only question left for the jury was his appropriate sentencing. After a two-day trial and only fifteen minutes of deliberation, the jury returned a death sentence. Brown never filed a motion for new trial or an appeal of his sentence. Justice Whittaker confirmed the sentence, and on February 24, 1956, Brown was executed. Despite the heinous nature of the crime, sentencing Brown to death was difficult for Justice Whittaker. The experience profoundly impacted him and forever influenced his views of criminal law.<sup>15</sup>

On December 5, 1955, Judge John Caskie Collet of the Eighth Circuit Court of Appeals died, creating a vacancy on the Court. Roy Roberts again recommended Justice Whittaker to fill the vacancy. Additional political pressures also

pushed President Eisenhower to swiftly appoint Justice Whittaker. United States Senator Thomas Hennings demanded that a Missourian fill the Eighth Circuit vacancy. Senator Hennings, the fourth ranking member of the Senate Judiciary Committee, had the power to block any nomination. Though originally a Kansan, Justice Whittaker met President Eisenhower's internal criteria, came highly recommended from Roberts, and was a fixture of the Missouri legal community, making him the perfect nominee.<sup>16</sup>

The decision happened so quickly that Justice Whittaker learned of his nomination by reading a St. Louis newspaper. Justice Whittaker knew he would miss the action of the District Court but considered the nomination a great honor. The Senate later confirmed his nomination on June 4, 1956.<sup>17</sup>

Justice Whittaker's time on the Eighth Circuit Court of Appeals was even shorter than his time at the Western District of Missouri. Only four of his circuit opinions were appealed to the United States Supreme Court; two were denied certiorari,<sup>18</sup> and the other two were affirmed.<sup>19</sup> Justice Whittaker's ascended to the Supreme Court so quickly, however, that he reached the Supreme Court before any of the cases he decided as an appellate judge. As Justice Frankfurter remarked, "We can get a judge from the district court quicker than we can get a case from that court."<sup>20</sup>

## The United States Supreme Court

Just over seven months into Justice Whittaker's role on the Court of Appeals, Supreme Court Justice Stanley Reed announced his retirement. Once again, Justice Whittaker fit the bill for promotion. Important to President Eisenhower's selection process was that the nominee have lower court experience. It did not hurt that that Justice Whittaker had already twice been approved by the Senate. On March 2, 1957, Justice Whittaker was nominated, and, on March 19, he received unanimous Senate approval.<sup>21</sup>

Justice Whittaker's three sons were all at different stages of their lives and did not follow him and Winifred to Washington D.C. Keith, the oldest, was in medical school. Kent had just started law school. And Gary, the youngest, was heading off to college. Justice Whittaker did, however, bring with him the hard work ethic that followed him wherever he went. While serving as a Supreme Court Justice, he largely conducted his own research and drafted his own opinions in contrast to many of the other Justices, who relied more heavily on their law clerks.

In ascending to the Supreme Court, Justice Whittaker joined Justices William Douglas, William Brennan, Hugo Black, Tom Clark, John

Marshall Harlan II, Felix Frankfurter, Harold Burton, and Chief Justice Earl Warren. Justice Whittaker greatly admired all of his colleagues. According to Kent Whittaker, he was closest to, and most greatly influenced, by Justice Harlan. Justice Whittaker also became close with Chief Justice Warren and Justice Douglas. He also appreciated Justice Potter Stewart, the only junior Justice during Justice Whittaker's tenure, who joined the Supreme Court after Justice Burton's retirement in 1958.

Justice Whittaker joined the Supreme Court during a fairly controversial time in American history. The Court had issued a number of opinions regarding Communist Party membership or sympathizers. During his tenure, Justice Whittaker was often regarded as the swing vote, siding with the majority on many 5-4 decisions.<sup>22</sup>

Typical of new Justices on the Supreme Court, Justice Whittaker was mostly assigned to author less controversial opinions. Still, his opinions were impactful. For example, his opinion in *Aro Manufacturing Co., Inc. v. Convertible Top Replacement Co., Inc.*<sup>23</sup> simplified a previously muddled area of patent law concerning the repair or reconstruction in combination patents. He also wrote the majority opinion in *Staub v. City of Baxley*,<sup>24</sup> which held that a city ordinance prohibiting the solicitation of union members without a permit violated the First Amendment because the decision to issue a permit was within the mayor and city council's uncontrolled discretion.

In 1962, Justice Whittaker resigned from the Supreme Court due to health concerns. His last day was March 5, 1962, and his retirement was officially announced by then President John F. Kennedy on March 29, 1962.

## After the United States Supreme Court

Justice Whittaker quickly moved back to Kansas City, where he remained active in the legal community. He gave speeches to bar associations and wrote many articles for legal journals. In 1965, General Motors hired Justice Whittaker to preside over arbitration disputes between it and its dealers. In April 1966, he became a counsel consultant to the United States Senate Committee of Standard and Conduct, charged with handling ethical complaints against United States Senators.

In the fall of 1973, Justice Whittaker was hospitalized for an undiagnosed abdominal aneurysm. He died shortly thereafter on November 26, 1973, at the age of 72. In 1994, in large part because of Judge Stevens, the Western District of Missouri's Kansas City, Missouri courthouse was named the Charles Evans Whittaker United States Courthouse. This building remains a monument to his life, achievements, and commitment to justice.

## Conclusion

At the 1991 Baccalaureate delivered for the UMKC School of Law Convocation held at the Central United Methodist Church, Judge Stevens reflected on the type of person Justice Whittaker was:

*This church was the religious home of one of your law school's most distinguished alumni — Mr. Justice Charles Evans Whittaker — a graduate of your school by another name, the Kansas City School of Law, who used to sit up in that balcony every Sunday morning that he was in town. He was a critical listener. During the sermon he would often scowl, shake his head, whip out a notepad and pen, and quickly write a note later to be mentioned to the preacher. If I had been the preacher, I would have been intimidated — but then the preacher answered to a different authority than the Supreme Court of the United States so perhaps he was less intimidated than I would have been.*

Justice Whittaker, once a high school dropout who dreamed of becoming a lawyer, lived a remarkable life fueled by hard work and determination. Justice Whittaker made his way through the ranks of the legal community, and he was deeply respected and admired by his peers, colleagues, and the attorneys who practiced before him. His legacy continues to this day, including in the halls of the Western District of Missouri in the courthouse which bears his name. ■

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## About the Author



**Stephen Ahal** is a law clerk for the Honorable Stephen R. Bough, District Judge on the U.S. District Court for the Western District of Missouri. Ahal is a 2020 graduate of the University of Missouri-Kansas City School of Law. Prior to law school, Ahal earned his B.A. in Economics from William

Jewell College. For two years, Ahal was an analyst at the Federal Reserve Bank of Kansas City. After clerking, Ahal plans to begin private practice at Husch Blackwell in Kansas City, Missouri.