



A.E. Dick Howard

WHITEBURKETT MILLER PROFESSOR OF LAW AND PUBLIC AFFAIRS

April 1, 2019

Mayor Justin Wilson and
Members of City Council
City Hall
Alexandria, Virginia 22314

Re: No. 2018-00410 and 2018-00411, Appeals

Dear Mayor Justin Wilson and Members of the City Council:

I am A. E. Dick Howard. I am the Warner-Booker Distinguished Professor of Law at the University of Virginia, where I have taught since 1964.

From 1962 to 1964 (two Terms of Court), I served as a law clerk to Hugo L. Black, Associate Justice of the Supreme Court of the United States.

During my time as a law professor, I have focused in particular on Constitutional Law. Among the courses I teach are seminars on the Supreme Court, including a seminar, Supreme Court Justices and the Art of Judging.

I have briefed and argued cases in state and federal courts, including the Supreme Court of the United States. I am active in public affairs. In the process that produced the present Constitution of Virginia, I served as executive director of the Commission on Constitutional Review, was counsel to the General Assembly, and directed the successful campaign for ratification of the Constitution. I served as Counselor to the Governor during the tenure of Charles S. Robb and have advised numerous governors, attorneys general, and legislators on a range of constitutional issues. I also have consulted with drafters of constitutions in other countries, especially in post-communist Central and Eastern Europe.

I have written extensively about the Supreme Court and its Justices. Not long after I began teaching, I wrote an article for the *Virginia Law Review*, in which I sought to explore the contours of Justice Black's judicial philosophy. Justice Black was kind enough to say, in conversation with the reporter who covered the Court for the *Washington Post*, that my article came closer than anything yet written about him to capture the essence of what he was trying to accomplish in his opinions.

I take special pride in the fact that I took a leading hand in the inclusion in the Constitution of Virginia, for the first time in the Constitution's history, an environmental article. Article XI of the Constitution states that "it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings."

I am intimately familiar with Old Town Alexandria. During the time I was a law clerk to Justice Black, I lived at 315 S. Pitt Street – a few blocks from Justice Black’s house. My wife and I regularly attended services at St. Paul’s Episcopal Church (also on S. Pitt Street). I was active in community affairs, including the neighborhood association. All these years later, I still cherish the time I spent living in Old Town Alexandria.

I have vivid recollections of Justice Black’s house. I spent hours there (especially on weekends), where Justice Black and I compared notes on petitions for certiorari, worked on drafts of his opinions, and had long conversations about law and life. Sometimes we worked in his library. There, in moments of relaxation, I would pull books from his shelf. One of the best-read Justices in the history of the Supreme Court, Justice Black built an amazing library, especially rich in history – Polybius and Tacitus, Gibbon and Carlyle, the teachings of Whig history.

In good weather, we would sit in his garden. In a town where open space was at a premium, Justice Black took special pride and pleasure in the garden, tennis court, and greensward. When I was his clerk, he had not yet created an historic preservation easement (Virginia’s historic preservation law was not enacted until 1966). But, even when I clerked for him, he was already voicing his hope that the gracious environment he had created – house and garden – would be preserved as an important part of Alexandria’s historic heritage. “Dick,” he said, “this place is a little piece of Eden.”

The Hugo Black house is one of Alexandria’s most handsome residences. It is important in its own right. But it is important, above all, because of the Justice who lived there.

Hugo L. Black was one of the giants of the Supreme Court. In terms of his influence on the Court and its opinions, he ranks with a handful of the truly great Justices in the Court’s history. He stands with figures like John Marshall, Oliver Wendell Holmes, Louis Brandeis, and William Brennan who have genuinely shaped the Court’s jurisprudence.

No Justice in any period has been a greater defender of the First Amendment and freedom of expression. His concurring opinion in *New York Times v. United States*, the Pentagon Papers case, is a classic exposition of why the free flow of ideas and information is a staple of a free society.

Justice Black will always be remembered for his effort to have the guarantees of the Bill of Rights enforced against the states by way of the Fourteenth Amendment. He was never successful in persuading his colleagues to agree to wholesale “incorporation” of all of the Bill of Rights – he called them the “great thou shall nots” – to the states. But one by one, nearly all of those rights have now been applied to the states – eloquent testimony to Hugo Black’s influence.

Back in his home state of Alabama, Hugo Black had seen miscarriage of justice, especially against blacks, in the course of criminal law. A landmark of his Supreme Court opinions is *Gideon v. Wainwright*, holding that in felony cases a state must provide counsel to a defendant who is unable to hire one.

True to the markers laid down by Thomas Jefferson and James Madison, Justice Black enforced the constitutional separation of government and religion. In *Everson v. Board of Education*, he wrote the first opinion holding that the First Amendment’s Establishment Clause applied to the states. Then he went on to write such landmark opinions as *Torcaso v. Watkins*

(1961), holding that religious tests may not be used to decide who holds public office, and *Engel v. Vitale* (1962), declaring that the state may not compel the recitation of a state-composed prayer in schools.

Recalling the promise of *Brown v. Board of Education* (1954), Justice Black wrote the majority opinion in *Griffin v. School Board of Prince Edward County* (1964), ordering the County to reopen and fund public schools which had been closed during the era of "Massive Resistance" in Virginia.

American democracy has been strengthened by Hugo Black's opinion in *Wesberry v. Sanders* (1961), holding the Constitution's command that the House of Representatives be elected "by the People" requires that congressional districts be equal in population. The Court soon thereafter held that the principle of one person, one vote applied as well to state legislative districts, opinions in which Justice Black joined.

One could add other examples, but you get the point. Here was a Justice who left his imprint across the board in important areas of the law, especially in cases interpreting and applying the Constitution. Hugo Black read the kinds of books the nation's founders read. He practiced law at the grass roots back in Alabama. He served in the United States Senate, where he was one of the leaders in shaping the New Deal. He understood human nature. Finally, he brought all this experience and these strengths to his long service on the Supreme Court.

The house in Alexandria is more than simply the house where a Supreme Court Justice lived. It was the home, for years, of one of the most influential figures in American history. Moreover, it is a house in which Hugo Black took a personal interest, especially in its conservation and preservation.

Not many American cities are blessed with a house like the house on South Lee Street. I join others in Alexandria and elsewhere in hoping that you will act to preserve that heritage.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. E. Dick Howard".

A. E. Dick Howard

A. E. Dick Howard is the White Burkett Miller Professor of Law and Public Affairs at the University of Virginia. Born and raised in Richmond, Virginia, Professor Howard is a graduate of the University of Richmond and received his law degree from the University of Virginia. He was a Rhodes Scholar at Oxford University, where he read philosophy, politics, and economics. After graduating from law school, he was a law clerk to Mr. Justice Hugo L. Black of the Supreme Court of the United States.

Active in public affairs, Professor Howard was executive director of the commission that wrote Virginia's new Constitution and directed the successful referendum campaign for ratification of that constitution. He has been counsel to the General Assembly of Virginia and a consultant to state and federal bodies, including the United States Senate Judiciary Committee. From 1982 to 1986 he served as Counselor to the Governor of Virginia, and he chaired Virginia's Commission on the Bicentennial of the United States Constitution.

Professor Howard has been twice a fellow of the Woodrow Wilson International Center for Scholars, in Washington, D.C. His recognitions have included election as president of the Virginia Academy of Laureates and his having received the University of Virginia's Distinguished Professor Award for excellence in teaching. James Madison University, the University of Richmond, Campbell University, the College of William and Mary, and Wake Forest University have conferred upon him the honorary degree of Doctor of Laws. In the fall of 2001, he was the first Distinguished Visiting Scholar in Residence at Rhodes House, Oxford.

An authority in constitutional law, Professor Howard is the author of a number of books, articles, and monographs. These include The Road from Runnymede: Magna Carta and Constitutionalism in America and Commentaries on the Constitution of Virginia, which won a Phi Beta Kappa prize. More recent works include Democracy's Dawn and Constitution-making in Eastern Europe.

Professor Howard has briefed and argued cases before state and federal courts, including the Supreme Court of the United States. He is a regular guest on television news programs; during the Senate Judiciary Committee's hearings on the nomination of Robert Bork to the Supreme Court, Professor Howard did gavel-to-gavel coverage for the McNeil-Lehrer News Program. He did the interviews with the justices for the film being shown to visitors to the Supreme Court's building in Washington.

Often consulted by constitutional draftsmen in other states and abroad, Professor Howard has compared notes with revisors at work on new constitutions in such places as Brazil, Hong Kong, the Philippines, Hungary, Czechoslovakia, Poland, Romania, Russia, Albania, Malawi, South Africa, and Zimbabwe. In 1996, the Union of Czech Lawyers, citing Professor Howard's "promotion of the idea of a civil society in Central Europe," awarded him their Randa Medal -- the first time this honor has been conferred upon anyone but a Czech citizen. In 2004, the Greater Richmond Chapter of the World Affairs Council conferred on him their George C. Marshall Award in International Law and Diplomacy. The National Constitution Center and the University of Pennsylvania Law School appointed Professor Howard as their visiting scholar for 2009-10, the theme for the year being global constitutionalism.

In January 1994, Washingtonian magazine named Professor Howard as "one of the most respected educators in the nation." In 2007, the Library of Virginia and the Richmond Times-Dispatch included Professor Howard on their list of the "greatest Virginians" of the 20th century. In 2013 the University of Virginia conferred on Professor Howard its Thomas Jefferson Award—the highest honor the University confers upon a member of the faculty.