

HARRY A. BLACKMUN

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-FIRST CONGRESS
SECOND SESSION
ON
NOMINATION OF HARRY A. BLACKMUN, OF MINNESOTA,
TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF
THE UNITED STATES

APRIL 29, 1970



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NOMINATION OF HARRY A. BLACKMUN

WEDNESDAY, APRIL 29, 1970

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to call, at 10:45 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, McClellan, Ervin, Hart, Kennedy, Bayh, Burdick, Tydings, Byrd of West Virginia, Hruska, Fong, Scott, Thurmond, Cook, Mathias, and Griffin.

Also present: John H. Holloman, chief counsel, Peter M. Stockett and Francis C. Rosenberger.

The CHAIRMAN. The committee will come to order.

No more pictures.

Senator McCarthy, I am not going to swear you. You may proceed.

STATEMENT OF HON. EUGENE J. McCARTHY, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator McCarthy. Thank you very much for your confidence, Mr. Chairman. I appreciate that and also—

The CHAIRMAN. Speak a little louder.

Senator McCarthy. I am pleased to be here with my colleague of the Senate, Senator Mondale, and two members of the House of Representatives from Minnesota, to introduce to the Senate Judiciary Committee Harry Blackmun, who has been nominated for the Supreme Court.

I would say I am pleased he was nominated for a number of reasons, those affecting his person, what I know of him. I am also glad to have a nominee whom I can vote for. This will be the third nominee—no, the fourth—I voted against three. I am afraid I would be accused of general prejudice against the Supreme Court. That has never been the case.

Judge Blackmun has a record which is familiar to, I am sure, most of the members of this committee. I suppose half of you were on the committee when he appeared here in 1959 as the nominee for the circuit court. He was approved then after adequate examination and, as I remember, without any objection.

He has served well as a lawyer in my State and on the circuit court has made a record which is open to everyone's admiration.

I have objection to only one decision, not very serious objection. My delegation in Minnesota took a case before him on the principle of one man, one vote, in 1968 and he as a member of the panel decided that

the time was not right to carry the one man, one vote principle back to the level of the Democratic-Farmer-Labor caucuses. I hope that when he is on the court and has more time to reflect, if that same issue comes before him, that that principle may be extended to the beginning of democracy.

Mr. Chairman, I will now yield to my colleagues with a recommendation to the committee that they approve Judge Blackmun.

The CHAIRMAN. Senator Mondale.

STATEMENT OF HON. WALTER F. MONDALE, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator MONDALE. Thank you, Mr. Chairman, members of the committee. I am pleased to appear before this Committee for the purpose of introducing Judge Harry A. Blackmun, the President's nominee to be an Associate Justice of the Supreme Court.

I gladly support this nomination, and I commend the President for choosing such a distinguished jurist.

The word "scholarly" has most often been used to describe Judge Blackmun, and I think it is an apt description. He left Minnesota to attend Harvard College on a scholarship, where he graduated Summa Cum Laude and as a member of Phi Beta Kappa. He then went on to the Harvard Law School, working his way through school by tutoring in mathematics and by holding a variety of other jobs.

After graduating from law school in 1932, Judge Blackmun returned to Minnesota and served as a law clerk to Judge John Sanborn, one of the most distinguished judges in the history of that circuit court.

He then began a long career as a member of one of Minnesota's most prestigious law firms. While in private practice, he taught law part time, first at the St. Paul College of Law in St. Paul and then at the University of Minnesota. In 1950 he became the resident counsel of Mayo Clinic and the other Mayo organizations.

By 1959 when he was appointed to the U.S. Circuit Court, Judge Blackmun had established a reputation as one of Minnesota's most brilliant attorneys. In his 11 years on the court of appeals, he has served with great distinction.

Judge Blackmun is highly regarded by lawyers practicing before his court, and he is known particularly for his expert opinions on complex taxation matters.

He has established a record as an able, fair, and understanding judge. His opinions are carefully written, and they demonstrate a clear respect for judicial precedents.

Judge Blackmun's character is perhaps best described by his home-town paper, the Rochester Post-Bulletin, which said:

We know of no man in Rochester, or indeed in Minnesota, who is more respected by close friends and casual acquaintances alike; who has a higher reputation for integrity; whose judgment is more respected.

While his academic and professional record is "a matter of record," so to speak, let it be added that just as a man—a man of personal integrity—none can rate higher.

For the record, I am submitting a copy of this editorial, as well as a subsequent editorial from the same paper discussing the merits of this nomination.

(The editorials referred to follow:)

[From the Rochester (Minn.) Post-Bulletin, Apr. 11, 1970]

JUDGE BLACKMUN FOR HIGH COURT? HE'D BE SUPERB!

When a baseball pitcher goes into the late innings of a game with a no-hitter in progress, the radio-TV broadcasters are sometimes reluctant to even mention that fact on the air, for fear of "slaxing" the pitcher's chances of reaching baseball's charmed circle.

We feel a bit that way in trying to editorialize on the news that U.S. Circuit Judge Harry A. Blackmun of Rochester is one of evidently only two or three jurists being considered by President Nixon for appointment to the U.S. Supreme Court.

We know nothing of the qualifications of the other men being considered. No doubt either or all of them would be outstanding nominees, particularly since Mr. Nixon's last two nominees were rejected by the Senate and the President simply must do a lot better the third time around.

We do know a good deal about Harry A. Blackmun. Not first-hand about his legal and judicial competence, of course, since editorial writers are seldom lawyers or judges. But on that score there is a mountain of testimony from lawyers and judges, who do know, that Blackmun is a superb legal scholar. We are confident his professional record will stand tall in any investigation.

But, in these days when a Supreme Court nominee's personal and community life is also important, an editorial writer who has known Harry Blackmun for 20 years is qualified to say a few things on that score.

First of all, he will be embarrassed by words of praise, for he is a very modest and unassuming man. So we'll keep it short. We know of no man in Rochester, or indeed in Minnesota, who is more respected by close friends and casual acquaintances alike; who has a higher reputation for integrity; whose judgment is more respected.

While his academic and professional record is "a matter of record," so to speak, let it be added that just as a man—a man of personal integrity—none can rate higher.

It is hardly a secret that when Richard Nixon was elected in 1968 many Minnesotans had high hopes that Judge Blackmun might be elevated to the Supreme Court. But when another outstanding Minnesotan, Warren Burger, was named Chief Justice, those hopes seemed to be extinguished since as a practical political matter two Minnesotans (who are close personal friends) are unlikely to be named to the High Court virtually at the same time.

This is still a drawback to Judge Blackmun's chances, of course. But the usual "rules" no longer apply in the wake of the rejection of two straight Southern nominees. Now Harry Blackmun is very much in the running.

Those in a position to know far better than we, say Judge Blackmun qualifies as a "strict constructionist" of the Constitution. We know him to be a man of moderate, commonsense views. If nominated, we believe he would be confirmed by an overwhelming margin in the Senate.

For Judge Blackmun, such nomination would be the highest honor that can be accorded a jurist; for Rochester and Minnesota it would be a "feather in the cap." But most important, we believe, he would serve with real distinction on the Supreme Court and thereby benefit all Americans.

Needless to say, we sincerely hope that President Nixon does select Judge Harry A. Blackmun for nomination to the U.S. Supreme Court.

[From the Rochester (Minn.) Post-Bulletin, Apr. 15, 1970]

LABELS DECEIVING IN ASSESSMENT OF "JUSTICE" BLACKMUN

Some people, particularly in other regions of the nation, will think that Judge Harry A. Blackmun was "third choice" to fill the vacancy on the U.S. Supreme Court. And, technically, they are right, since the Senate had indeed previously rejected Clement Haynsworth and G. Harrold Carswell.

But that is a mere technically since, as a practical matter, President Nixon simply could not have first selected Minnesotan Blackmun for the Supreme Court vacancy only a few months after naming former longtime Minnesotan Warren Burger as Chief Justice.

In fact, as a practical matter, just about the only way that Blackmun could be nominated to immediately follow Burger onto the High Court was through the process that actually happened—the bitter rejection of two Southern nominees.

But all that's water over the dam. Judge Blackmun has been nominated and we believe the Senate will find his academic, professional, judicial and personal qualifications eminently suited for the Supreme Court.

There is, of course, much speculation about what kind of a justice Blackmun will be. The White House press secretary said President Nixon considers him to be a strict constructionist. Judge Blackmun himself commented to reporters: "I've been called liberal and conservative. Labels are deceiving. I call them (judicial decisions) as I see them."

Only history will tell what kind of a label fits him. But, as he said, labels are deceiving. We're confident that the kind of Supreme Court Justice Harry Blackmun will be, will be a damned good one.

Senator MONDALE. As a Minnesotan, I am proud of the fact that such a qualified nominee is a resident of my State. I am sure that all Minnesotans share this pride.

Based on his past career, there is little doubt that Judge Blackmun will become a distinguished Associate Justice of the Supreme Court. I hope that this Committee will recommend his confirmation.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Congressman Quie.

STATEMENT OF HON. ALBERT H. QUIE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. QUIE. Thank you, Mr. Chairman and members of the Committee.

I appreciate the Committee's courtesy in permitting me to appear today on behalf of my friend and constituent, the Honorable Harry Blackmun, a judge of the 8th Circuit Court of Appeals. When I first brought Judge Blackmun's qualifications to the attention of President-elect Nixon on November 26, 1968, I wrote as follows:

In my opinion, the superior talents and scholarly attainments and judicial accomplishments of Judge Blackmun attest to his eminent suitability to serve on the Nation's highest court. I believe Judge Blackmun's sound judgment coupled with his scholarly approach will provide a partial solution at least to many of the problems our Nation faces.

Mr. Chairman, I am glad that President Nixon has agreed with that assessment and has now nominated Judge Blackmun as an Associate Justice of the Supreme Court. He comes before you with a distinguished record of fair-minded justice, a record open for all to study.

In my years of association with him, I have never known the faintest suggestion of bias or prejudice toward any man or toward any principle of law or justice. Likewise, his personal affairs, his conduct on the bench and his philosophical views are an open book.

He is here to respond fully and frankly to this distinguished Committee in carrying out its constitutional responsibilities to the President. And I give to Judge Blackmun my unqualified endorsement and urge this Committee to recommend his confirmation to the full Senate without delay.

The CHAIRMAN. Senator Mondale.

STATEMENT OF HON. CLARK MacGREGOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. MACGREGOR. Thank you very much, Mr. Chairman and members of the Committee on the Judiciary of the Senate.

Thank you for the privilege accorded by as a Minnesota lawyer, and as a Congressman from Minnesota serving on the Judiciary Committee of the House, to appear briefly in support of Judge Harry A. Blackmun of Rochester, Minn.

Judge Blackmun is superior in every respect, in character, in integrity, in ability and in industry.

I first became acquainted with Judge Blackmun when he was a practicing attorney in the city of Minneapolis and I was in my senior year in the School of Law at the University of Minnesota. Following my graduation from the University of Minnesota Law School in 1948 I had the privilege of practicing law in the city of Minneapolis for a period of some 2 years when Judge Blackmun was also practicing in the city. We were associated together in Bar Association activities and I had an opportunity to observe the way in which his fellow lawyers regarded him. I think it is fair to say, as has been said by those preceding me, that no Minnesota lawyer stood higher in the evaluation of his professional colleagues than Harry Blackmun.

Following his move from Minneapolis to Rochester in 1950, I think it is significant to note that he continued that standard of excellence in the practice of law and that he also moved to positions of leadership in the community and in his church. I have been interested in his decisions since he became a member of the circuit court of appeals in 1959 in our Eighth Circuit, and I find no jurist who has the intellectual equipment, the ability, the industry and the fairmindedness of Judge Harry A. Blackmun.

Like my colleague, Congressman Quie, I was pleased to urge the President of the United States and the Attorney General to consider his appointment to the U.S. Supreme Court. I am delighted that the President has done so, and that he shares our opinion of Judge Blackmun.

I am privileged to recommend to this committee that it recommend to the Senate his prompt confirmation as Associate Justice of the U.S. Supreme Court.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Burdick.

STATEMENT OF HON. QUENTIN N. BURDICK, A U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator BURDICK. Mr. Chairman, my colleagues, you have heard from the Minnesota department of the Eighth Circuit. I think you should hear from a neighboring State, North Dakota, which is also a member of the Eighth Circuit. I would like to give the committee the benefit of comments made by the two North Dakota members of the circuit court. One is the recently retired senior judge Charles J. Vogel and the other is the acting judge, Judge Myron Bright.

Here is what Charles Vogel has to say. He said:

The nomination of Blackmun is tremendous. I think President Nixon could not make a finer choice than Judge Blackmun. I think he is highly qualified. He is one of the finest persons I could think of for the Supreme Court.

And Judge Bright says:

He has a fine legal mind. He is an exceptional scholar. Any opinion of his is well written. I think that anyone who has read his opinions will agree that this man is certainly an outstanding judge.

So, here are the opinions of two circuit court judges who have served with Judge Harry Blackmun. I think they testify as to his competence and high qualifications.

The CHAIRMAN. Mr. Paul R. Hamerston, president, Minnesota Bar Association.

STATEMENT OF PAUL R. HAMERSTON, PRESIDENT, MINNESOTA BAR ASSOCIATION

Mr. HAMERSTON. Mr. Chairman, members of the committee, as announced I am president of the Minnesota State Bar Association. I would like to present to this committee a resolution of the board of governors of the Minnesota State Bar Association as follows:

Whereas the Honorable Harry A. Blackmun, Judge of the United States Circuit Court of Appeals for the Eighth Circuit, has been nominated for appointment as Associate Justice of the United States Supreme Court; and

Whereas, Judge Blackmun has been a resident of this state and a member of its organized bar and particularly of this Minnesota State Bar Association for many years; and

Whereas, Judge Blackmun, prior to being appointed United States Circuit Judge, was a practicing lawyer known to the Minnesota State Bar Association as possessing in the highest degree, the qualities of learning in the law, legal ability, industry and reputation for character and ethics; and

Whereas, this Association finds Judge Blackmun to possess all qualities needed to maintain the finest traditions of the United States Supreme Court;

Now, therefore, be it resolved, that the Board of Governors of the Minnesota State Bar Association does hereby:

I. Grant its highest endorsement to and recommendation of the nomination and appointment of Judge Blackmun as Associate Justice of the Supreme Court;

II. Urge the American Bar Association which, of course, as you know, has already done so, urge the American Bar Association and the Federal Judiciary Committee thereof to issue its highest recommendation respecting the nomination and appointment of Judge Blackmun; and

III. Respectfully request that the United States Senate give its consent to such nomination and appointment.

In addition, Mr. Chairman, I have a resolution of the Hennepin County Bar Association, which is substantially the Minneapolis, Minn., Bar Association.

The CHAIRMAN. It will be admitted into the record.

Mr. HAMERSTON. I am not going to read that. Could I just submit it?

The CHAIRMAN. It will be admitted into the record.

Mr. HAMERSTON. Thank you very much.

(The resolution referred to follows:)

RESOLUTION OF HENNEPIN COUNTY BAR ASSOCIATION ADOPTED BY EXECUTIVE COMMITTEE APRIL 21, 1970

Whereas, the Honorable Harry A. Blackmun, Judge of the United States Circuit Court of Appeals for the Eighth Circuit, has been nominated for appointment as Associate Justice of the United States Supreme Court; and

Whereas, Judge Blackmun has been a resident of this state and a member of its organized bar and was for a long period of time a member of this Hennepin County Bar Association (Greater Minneapolis), consisting of 2,200 lawyers, now an independent affiliate of the American Bar Association; and

Whereas, Judge Blackmun, prior to being appointed United States Circuit Judge, was a practicing lawyer in Hennepin County and elsewhere in the state

and is well known to this Association as possessing in the highest degree, the qualities of learning in the law, legal ability, industry and reputation for character and ethics; and

Whereas, Judge Blackmun has demonstrated in the highest degree, the judicial qualities of learning, consideration for the equality of all parties, industry, wisdom and judgment; and

Whereas, this Association finds Judge Blackmun to possess all qualities needed to maintain the finest traditions of the United States Supreme Court: Now, therefore, be it

Resolved, that the Hennepin County Bar Association does hereby:

I. Grant its highest endorsement to and recommendation of the nomination and appointment of Judge Blackmun as Associate Justice of the Supreme Court;

II. Urge the American Bar Association and the Federal Judiciary Committee thereof to issue its highest recommendation respecting the nomination and appointment of Judge Blackmun; and

III. Respectfully request that the United States Senate give its consent to such nomination and appointment.

The CHAIRMAN. Now, there will be admitted into the record:

A biographical sketch of Judge Harry A. Blackmun,

A letter of April 28, 1970, from the American Bar Association endorsing the nomination,

A letter of April 15, 1970, from Richard G. Kleindienst, Deputy Attorney General,

A letter of April 24, 1970, from Senator Philip A. Hart, Senator Edward M. Kennedy, Senator Birch Bayh and Senator Joseph D. Tydings,

A letter of April 28, 1970 from Richard Kleindienst, Deputy Attorney General,

A letter of April 17, 1970, from Judge Martin Van Oosterhout, and several other letters.

(The items referred to follow:)

BIOGRAPHICAL SKETCH—H. A. BLACKMUN

Born: Nashville, Illinois, November 12, 1908.

Parents: Corwin M. Blackmun (who died February 5, 1947) and Theo H. Blackmun, 3701 Bryant Avenue South, Minneapolis, Minnesota.

Residence:

Saint Paul, Minnesota (1910-1941).

Minneapolis, Minnesota (1941 to September 30, 1950).

Rochester, Minnesota (October 1, 1950, to date).

Education:

Van Buren Grade School, Saint Paul, Minnesota.

Mechanical Arts High School, Saint Paul, Minnesota, Class of 1925.

Harvard College, Cambridge, Massachusetts, Class of 1929 (A.B. summa cum laude in Mathematics).

Phi Beta Kappa.

Harvard Law School, Cambridge, Massachusetts (LL.B., 1932).

Member of law group winning Ames Competition.

Employment and teaching:

Miscellaneous jobs, clerking, driving launches for crew, tutoring, correcting Math papers, janitor work, milk driver, et cetera, during high school, college and law school years.

Law Clerk to Honorable John B. Sanborn, United States Circuit Judge for Court of Appeals of the Eighth Circuit, Saint Paul, Minnesota (August 1, 1932, through December 1933).

Instructor, Saint Paul College of Law (now William Mitchell College of Law), Saint Paul, Minnesota (1935-1941).

Instructor, University of Minnesota Law School (1945-1947).

Associate (1934-1938), junior partner (1939-1942) and general partner (1943-September 30, 1950), Dorsey, Colman, Barker, Scott & Barber, attorneys, Minneapolis, Minnesota, and predecessor firms.

Resident counsel, Mayo Clinic and Mayo Association (October 1, 1950 to November 3, 1959).

Member of the Section of Administration, Mayo Clinic (October 1, 1950 to November 3, 1959).

Member Investment Committee, Mayo Association (October 1, 1950 to November 3, 1959).

Judge of the United States Court of Appeals for the Eighth Circuit (November 4, 1959, to date).

Activities:

Minnesota National Guard (1927-1930).

Member, Ramsey County Bar Association (1932-1933).

Member, Hennepin County Bar Association (1934-1950).

Member, Olmsted County and Third Judicial District Bar Associations (1950 to date).

Member, Minnesota State Bar Association (1932 to date).

Member, American Bar Association (1940 to date).

Past chairman, Junior Bar Section, and past secretary and chairman, Administrative Law Section, Hennepin County Bar Association.

Member and secretary (1952-1961) of the Board of Members of Mayo Association.

Member of the Board of Publication of The Methodist Church (1960 to date) and of its Executive Committee (1964 to date).

Director, Rochester Airport Company (1952 to 1960).

Director of Rochester Methodist Hospital and member of its Executive Committee (1954 to date) and Secretary (1954 to 1961).

Director, The Kahler Corporation (1958 to 1961).

Trustee, William Mitchell College of Law, Saint Paul, Minnesota (1959 to date).

Member, Board of Trustees Hamline University (1964 to date).

Director, Charles D. Gilfillan Memorial, Inc. (1951 to date, and now a vice-president).

Director, Fanny S. Gilfillan Memorial, Inc. (1951 to date, and now secretary).

Member, Board of Kahler Corporation Foundation (1962 to date).

Participant in various legal and medicolegal seminars.

Chairman of the Advisory Committee on Research to The Federal Judicial Center (1968 to date).

Member of the Advisory Committee on the Judge's Function to the American Bar Association Special Committee on Standards for the Administration of Criminal Justice (1969 to date).

Member of Interim Advisory Committee on Judicial Activities (1969 to date).

Club memberships:

Minneapolis Club, Minneapolis, Minnesota (honorary).

The Minnesota Club, Saint Paul, Minnesota (honorary).

Harvard Club of Minnesota (past president).

Rotary Club of Rochester, Minnesota (past president 1955-56) (honorary).

University Club, Rochester, Minnesota.

Cosmos Club, Washington, D.C.

Church affiliation:

Christ United Methodist Church.

Member (1957-1960, 1961-1964, 1965-1967) and chairman (1961-1964) of its Board of Trustees.

Family:

Married Dorothy E. Clark, June 21, 1941.

Children:

Nancy Clark, born July 8, 1943.

Sally Ann (now Mrs. D. R. Funk), born July 7, 1947.

Susan Manning (now Mrs. Roger M. Karl), born July 1, 1949.

Publications:

"The Marital Deduction and Its Use in Minnesota", *Minnesota Law Review*, December 1951.

"The Physician and His Estate", *Minnesota Medicine*, October 1953.

"Allowance of In Forma Pauperis Appeals in Section 2255 and Habeas Corpus Cases", 43 *Federal Rules Decisions* 343 (1968).

"Legal Problems Attendant Upon the Late Effects of Head Injuries" (part of symposium reported in *The Late Effect of Head Injury* (A. Walker, W. Caveness and M. Critchley, eds.) Charles C. Thomas 1969).

**AMERICAN BAR ASSOCIATION,
STANDING COMMITTEE ON FEDERAL JUDICIARY,
New York, N.Y., April 28, 1970.**

HON. JAMES O. EASTLAND,
*Chairman, Senate Committee on the Judiciary,
Washington, D.C.*

DEAR SENATOR: This letter is submitted in response to your telegram of April 16, 1970 inviting the Standing Committee on the Federal Judiciary of the American Bar Association to submit its opinion regarding Honorable Harry A. Blackmun of Minnesota who has been nominated to be an Associate Justice of the Supreme Court of the United States.

Based on its investigation to date our Committee is of the opinion that Judge Blackmun meets high standards of professional competence, temperament and integrity. Our investigation is continuing and we should like the privilege of submitting a further report to your Committee after the conclusion of its hearings. Rather than making this report unduly long, we state our conclusions and shall be happy to supply further detail upon request.

Our Committee does not express any opinion as to political or ideological matters. Its opinion is limited to the professional competence, temperament and integrity of the nominee.

The investigation of the Committee as presently expanded, has included the following steps:

1. It has interviewed Judge Blackmun.
2. It has made its own survey of Judge Blackmun's opinions.
3. It has interviewed all members of the Eighth Circuit Court of Appeals.
4. It has interviewed the Chief Judges of each of the District Courts within the Eighth Circuit and a number of other federal and state judges within that Circuit.
5. It has interviewed and had reports from over 100 lawyers within the Eighth Circuit who are in active practice and who would be most likely to be familiar with Judge Blackmun's reputation in the Circuit.

It has interviewed the deans of four law schools within the Eighth Circuit.

7. It has interviewed a substantial number of judges and some lawyers outside the Eighth Circuit.

8. It has interviewed the deans of more than 25 law schools outside the Eighth Circuit.

9. It has carefully considered the sixteen page letter dated April 15, 1970 to you from Deputy Attorney General Richard G. Kleindienst.

Except for two instances hereafter related, none of the scores of persons interviewed commented adversely regarding Judge Blackmun and all those who knew him or who were familiar with his work state that he is highly qualified.

PROFESSIONAL BACKGROUND

Judge Blackmun has had broad general experience in law and business which gives him an excellent background for judicial work. He has served as a Judge of the Court of Appeals for the Eighth Circuit for some eleven years. He worked as the law clerk to Judge Sanborn of that Court in 1933. He practiced law in a leading Minneapolis firm for sixteen years. For five years he engaged intensively in tax work, for two years in general litigation and for ten years he specialized in wills, trusts, estate planning and taxes and bank work. For nine years, he was engaged as business manager and general counsel of the Mayo Clinic. He taught law school for eight years, six of them at William Mitchell College of Law night school during the 1930's and two of them at the University of Minnesota during the faculty shortage following World War II. Judge Blackmun has done considerable committee work in the Federal Court system by serving on the Advisory Committee on Research to the Federal Judicial Center, and the ABA Criminal Justice Standards Project's Advisory Committee on the Judges' Function. He has participated in numerous community activities.

1. Judge Blackmun Interview.—Judge Blackmun was interviewed and impressed us as a judge who is sincere, frank, understanding and cooperative, one who conscientiously and with open mind weighs every reasonable argument with careful knowledge of the record, the arguments and the law.

2. Survey of Judge Blackmun's Opinions.—Our survey included opinions written by him in various fields of law. They are scholarly and well written, with a consciousness of broad social policies involved and with a perception of current trends of the law. They may be characterized as lengthy but they have indicated

to losing counsel and to the Supreme Court on review that all arguments have been considered and weighed in a fair manner by the court.

The substantive areas covered by Judge Blackmun's opinions include a wide range of subjects. He is particularly familiar with tax law. He has written frequently with respect to criminal cases. He has also written a number of opinions in the field of labor relations. Other than that his opinions run the usual wide variety of the Federal courts, including matters of administrative law, patents and trademarks, bankruptcy, and the questions of tort and contract law which come before the Federal court because of the diversity of citizenship of the parties. He has written some civil rights opinions and some of his criminal cases present civil rights issues and basic constitutional issues. He has written few antitrust opinions.

3. Members of the Eighth Circuit Court of Appeals.—His colleagues have unanimously endorsed him as well qualified. Judge Blackmun is described by a former Chief Judge of this court as "the best qualified man in the Eighth Circuit *** a conscientious hard worker and a good scholar."

4. Other Federal and State Judges Within the Eighth Circuit.—These judges include the judges whose decisions are reviewed by the Court of Appeals of which Judge Blackmun is a member.

The former Chief Judge of the District of Minnesota, one of the most respected trial judges in the country, writes of him in the following terms: "He is a gifted, scholarly judge who has an unusual capacity for the production of opinions in the cases assigned to him on that court which present learned treatises of the factual and legal questions involved. And coupled with all of his erudition, he is unassuming, kind and considerate in all of his associations with the Bar and the public. He has been an ideal Appellate Judge. I recommend him unreservedly to the Senate for the approval of his appointment."

The other federal judges support this view as do state court judges in the Circuit.

5. Lawyers of the Eighth Circuit.—The lawyers interviewed practice in Minnesota, North Dakota, South Dakota, Nebraska, Iowa, Missouri and Arkansas. They include black lawyers and white lawyers, lawyers for labor unions, for plaintiffs in personal injury cases, for railroads, and for corporations and insurance companies, civil rights lawyers, president and past presidents of State Bar Associations, in short a fair cross section of the Bar. With a single exception, their comments were substantially the same as those of the judges, that Judge Blackmun is an excellent judge, one of the best in the Circuit, and that they had never heard anything derogatory about him. The exception believed that Judge Blackmun had a bias against labor unions. Several other lawyers representing labor unions stated that Judge Blackmun was an exceptionally fine judge, that he was open minded and that they favored his appointment.

6. Deans of Eighth Circuit Law Schools.—With the exception of one dean who was just appointed and who did not know Judge Blackmun, all spoke strongly in his favor. Among those who knew Judge Blackmun best was Dean William B. Lockhardt of the University of Minnesota, immediate past President of the Association of American Law Schools. He considered the appointment to be an excellent one. He spoke of Judge Blackmun as a "legal scholar and a very careful lawyer." He said further "his opinions are those of a first class legal craftsman. They would reflect high credit upon the Supreme Court."

7. Judges and Lawyers Outside the Eighth Circuit.—Outside the Eighth Circuit Judge Blackmun is less well known but he is well regarded by those who know him. He is known by the chief judges of most circuits and by other judges who have served on Committees with him. Those who know him all speak well of him both as a man and as a judge.

8. Faculty Members of Law Schools Outside the Eighth Circuit.—The deans of a substantial number of representative law schools throughout the country were interviewed, as were some professors in those law schools. Judge Blackmun is best known in the Mid-West. However, in many of the law schools his name has been discussed by faculty and students. None of the faculty members interviewed had any unfavorable comments. Those who had had occasion to examine his opinions believed them well written. The Law Journal Editors of one law school expressed some concern that Judge Blackmun might be too subservient to precedent and lack sympathy for the defendant in criminal cases.

9. Judge Blackmun's "Financial Holdings and Off-Bench Activities" as Described in the Klindienst Letter at Pages 8 through 15.—The Committee studied this letter and discussed these matters with Judge Blackmun. The

information had been voluntarily given by Judge Blackmun. In our discussion he added another similar case and explained the circumstances.

In the opinion of the Committee none of the instances including stock holdings, executor's fees, directorships in charitable or business corporations, changes our favorable conclusion. Judge Blackmun has previously resigned his directorships in business corporations and he has stated that he will resign his charitable directorships if confirmed. His stock holdings are so small that in our opinion he violated no statute or Canon.

In the personal interview, Judge Blackmun thoroughly explained the matters mentioned to the Senate Committee by Mr. Kleindienst in his letter. As to the stock in Ford Motor Company, even though his stock interest was not substantial, he immediately recognized the possible existence of an ethical problem, and took appropriate action by discussing it with the Chief Judge of his court. After being told that he should participate and not disqualify himself, he also followed that advice in the second Ford case and a later case involving Northwestern Bell Telephone. Judge Blackmun's action in recently disqualifying himself in a case involving a Ford subsidiary reflects an awareness of the controversy and publicity which had occurred regarding judicial stockholdings within the last year.

In the course of our interview we learned that Judge Blackmun had further reviewed the decisions in which he had participated in order to ascertain if there were any other instances. Checking some 700 cases in the limited time available, the only comparable case he discovered involved Minnesota Mining and Manufacturing Company in which he had bought some 30 shares of stock for approximately \$2,250 on December 28, 1960 after having been a member of the court which decided a patent case against that company on December 1, 1960. Thereafter the panel of the court of which he was a member denied the company's petition for rehearing.

Judge Blackmun also detailed to the Committee his services as an executor and the receipt of fees from two estates as described by Mr. Kleindienst on page 15 of his letter. He said that these had been quickly discerned because they were reported on his income tax returns. He subsequently recalled there was a third case in which he acted as a co-executor for the estate of Dr. Donald C. Balfour, the son-in-law of Dr. Fill Mayo, whose will was drawn in June, 1959. Dr. Balfour died in July, 1963 and Judge Blackmun acted as co-executor at the insistence of the widow. He received no fee.

We assured ourselves that in all of these cases the wills had been drawn before he became a judge and he did no legal work regarding the estate. In each of the cases the estate was represented by counsel, a bank was a co-executor and the decedents and surviving relatives had been close personal friends of Judge Blackmun and associated with the Mayo Clinic to such a degree that he felt obligated to serve. We also learned that Judge Blackmun had declined many other requests to act as executor.

Our interview also included discussions of directorships and trusteeships held by Judge Blackmun as related in Mr. Kleindienst's letter to you on page 14 and confirmed that Judge Blackmun had resigned as an active director of the Kahler Corporation which operated a chain of hotels shortly after the Judicial Conference indicated that such directorships were not advisable.

He presented serves without compensation as a member of the Kahler Corporation Foundation which is a charitable corporation. He still serves as a director of the Charles O. Gilfillan Foundation and the Fanny S. Gilfillan Foundation, both of which were established by benefactors of the Mayo Clinic to provide anonymous charitable assistance to the poor people who needed medical help. He is a trustee of William Mitchell College of Law, the Rochester Methodist Hospital and the Board of Publications of the Methodist Church. He was a trustee of Hamline University until his recent resignation. Judge Blackmun stated that if he should be confirmed he intends to terminate all these relationships.

CONCLUSION

In the course of our investigation some persons commented that Judge Blackmun was not nationally known and that some of his opinions were unduly extended and that he was accordingly slower than others in the disposition of his cases. Lack of national reputation is not unusual for highly competent federal judges whose work is primarily in their own circuit and we do not consider this an impediment. We were reassured in our interview that Judge Blackmun recognizes the need for an Associate Justice of the Supreme Court to work rapidly and

deal with an enormous volume of work under great time pressure and we believe that he would be able to meet the challenge.

Accordingly, upon the basis of our investigation to date, our Committee is unanimously of the view that Judge Blackmun meets high standards of professional competence, temperament and integrity.

Respectfully submitted,

LAWRENCE E. WALSH, *Chairman.*

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., April 15, 1970.

TON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Justice Department has reviewed with Judge Blackmun his financial holdings and biographical data, and has made its own review of opinions he has written while a Judge of the United States Court of Appeals for the Eighth Circuit. My purpose in writing this letter is to make available to you and the members of your Committee the results of this examination.

1. *Biographical Information.* Harry A. Blackmun was born November 12, 1908, in Nashville, Illinois, a small town located about thirty miles west of St. Louis. While still an infant his family moved to St. Paul, Minnesota, where he grew up. He attended the same elementary school as Chief Justice Warren E. Burger, and the two have remained friends ever since.

Blackmun attended Harvard College, and received his A.B. degree from that institution in 1929, summa cum laude in mathematics. He was elected a member of Phi Beta Kappa while an undergraduate at Harvard. He received his law degree from Harvard Law School in 1932, and was a member of the law group winning the Ames Competition for his class.

Following graduation from law school, he was a law clerk to Judge John B. Sanborn of the United States Court of Appeals for the Eighth Circuit. He was then employed by the Minneapolis law firm of Dorsey, Colman, Barker, Scott and Barber, being made a junior partner in 1939, and a general partner in 1943. During his sixteen years with the firm, he concentrated in the fields of taxation, estates, and general litigation. In his spare time, he was an instructor in what is now William Mitchell College of Law, St. Paul, and at the University of Minnesota Law School. He also participated in the following professional and charitable activities:

Member, Olmsted County and Third Judicial District Bar Associations (1950 to date).

Member, Minnesota State Bar Association (1932 to date).

Member, American Bar Association (1940 to date).

Past Chairman, Junior Bar Section, and past Secretary and Chairman, Administrative Law Section, Hennepin County Bar Association.

Member of the Board of Publication of The Methodist Church (1960 to date) and of its Executive Committee (1964 to date).

Director of Rochester Methodist Hospital and member of its Executive Committee (1954 to date).

Trustee, William Mitchell College of Law, St. Paul, Minnesota (1959 to date).

Member, Board of Trustees, Hamline University (1964 to date).

In the latter part of 1950, Judge Blackmun became resident counsel to the Mayo Clinic and Mayo Association in Rochester, Minnesota, a position which he retained until he was appointed to the Court of Appeals for the Eighth Circuit by President Eisenhower in 1959.

He married Dorothy E. Clark on June 21, 1941, and they have three daughters: Nancy Clark, 26; Sally Ann, 22; and Susan Manning, 20.

Judge Blackmun has authored the following articles: "The Marital Deduction and Its Use in Minnesota", Minnesota Law Review, December, 1951; "The Physician and His Estate", Minnesota Medicine, October, 1953; "Allowance of In Forma Pauperis Appeals in Section 2255 and Habeas Corpus Cases", 43 FRD 343 (1968).

Judge Blackmun is presently Chairman of the Advisory Committee on Research to the Federal Judiciary Center.¹ He is also a member of the Advisory Committee

¹ The Advisory Committee on Research is charged with establishing and overseeing the research function of the Federal Judiciary Center.

on the Judge's Function of the American Bar Association Special Committee on Standards for the Administration of Criminal Justice.²

2. Opinions for the Court of Appeals. Because of Judge Blackmun's experience in tax law, he has written a number of opinions dealing with federal taxation for the Court of Appeals. In areas of greater public interest and controversy, such as criminal law, civil rights, and civil liberties, the following paragraphs summarize representative opinions written by Judge Blackmun.

In *Bailey v. Henslee*, 287 F. 2d 936 (1961), Judge Blackmun wrote for the court in reversing a decision of the federal district court and holding that a Negro defendant had made a *prima facie* case that Negroes had been systematically excluded from the state court jury which tried him. In *Neal v. System Board of Adjustment*, 348 F. 2d 722 (1965), Blackmun wrote for the court in upholding the contention of a railway labor union that Negroes claiming racial discrimination against them on the part of their union were not entitled to prosecute their claim in the federal courts, because they had not exhausted their remedies within the union.

In two cases involving claims by Negro faculty members of discrimination against them, Judge Blackmun wrote opinions for the Court of Appeals for the Eighth Circuit reversing district court judgments against the teachers. *Smith v. Board of Education of Morrilton School District No. 32*, 303 F. 2d 770 (1966); *Yarbrough v. Hulbert-West Memphis School District*, 380 F. 2d 962 (1967).

In *Jones v. Mayer*, 379 F. 2d 33 (1967), Judge Blackmun wrote for the court in holding that a civil rights statute passed during reconstruction days was not a nationwide open-housing law which prohibited private, as well as public, discrimination. The Supreme Court reversed the Eighth Circuit, 392 U.S. 409, holding that the old civil rights statute prohibited even private discrimination in the sale or rental of property. The majority opinion was written by Justice Stewart; Justices Harlan and White dissented.

Kemp v. Beasley, No. 19,782 (March 17, 1970), was the third round of school desegregation litigation concerning an Arkansas school district. Judge Blackmun wrote for the court upholding part of the district court's judgment, but remanding that portion which had permitted continuation of four "racially identifiable and completely black" elementary schools.

Criminal Law Decisions. In two cases involving federal habeas corpus claims by Negroes who had been convicted of raping white women in Arkansas, the issue has been raised as to whether such defendants were discriminated against in that they allegedly received the death penalty in circumstances in which a white rape defendant would not have received it. In *Mitchell v. Stephens*, 353 F. 2d 129 (1965), Judge Blackmun wrote for the court in rejecting the constitutional claim, although remanding the case because of an error with respect to the admission of the defendant's confession. In *Maxwell v. Bishop*, 398 F. 2d 138 (1968), Blackmun wrote for the court in affirming a district court judgment denying habeas corpus relief and overruling a similar constitutional contention. He said: "We are not yet ready to condemn and upset the result reached in every case of a Negro rape defendant in the State of Arkansas on the basis of broad theories of social and statistical injustice. This is particularly so on a record so specific as this one. And we are not yet ready to nullify this petitioner's Garland County trial on the basis of results generally, but elsewhere, throughout the South." 398 F. 2d at 147.

Maxwell v. Bishop is presently under submission in the Supreme Court of the United States.

Pope v. United States, 372 F. 2d 710 (1967), was an appeal from a judgment of a district court imposing the death sentence on a bank robber who killed three employees of a bank in the process of robbing it. It was heard en banc by the Court of Appeals, and Judge Blackmun wrote a long opinion upholding the judgment of conviction. The opinion contains an exhaustive discussion of the defense of insanity. The Supreme Court later vacated the sentence and remanded the case for resentencing after the Solicitor General conceded that this death penalty provision suffered from the same constitutional infirmity as the Supreme Court had found to exist in *United States v. Jackson*; Justices Black and White dissented for reasons expressed in their dissenting opinions in *Jackson*. 392 U.S. 651 (1968).

²The Committee on the Judge's Function, chaired by District Judge Frank Murray of Massachusetts, is the most recently established of a series of committees dealing with various aspects of the definition and implementation of minimum standards in the administration of criminal justice.

In *Deckard v. United States*, 381 F. 2d 77 (1967), Judge Blackmun wrote for the Court of Appeals in reversing a conviction under the National Firearms Act, on the ground that the registration provision was unconstitutional because it required self-incrimination in violation of the Fifth Amendment. The Supreme Court a few months later reached the same result by a vote of seven to one in *Haynes v. United States*, 390 U.S. 85 (1968).

In *Jackson v. Bishop*, 404 F. 2d 571 (1968), Judge Blackmun wrote for the Court of Appeals in holding that any use of a strap on convicts in the Arkansas State Penitentiary was a cruel and unusual punishment under the Constitution. His opinion pointed out that only two states still permitted the use of a strap.

In *Ashe v. Sicenson*, Judge Blackmun's opinion upheld the conviction of a defendant against a claim of double jeopardy arising out of two successive trials for the robbery of two different victims who had been playing in the same poker game. He relied on two Supreme Court precedents that were of obviously uncertain weight because of the turnover in the Justices of the Court, and stated: "This court is not the Supreme Court of the United States. We therefore are not free to disregard an existing flat and still live holding of the Supreme Court even though that holding is one by a sharply divided tribunal and even though only one of the Justices who participated in the majority decision remains active. A change in constitutional concept and the overruling of an existing decision, if indicated at all, is for the Supreme Court and is not for us. Firmness of precedent otherwise could not exist." *Ashe v. Sicenson*, 399 F. 2d 40 at 45 (1968).

The Supreme Court reversed the judgment of the Court of Appeals in an opinion handed down on April 6, 1970. Justice Stewart spoke for the majority, and Chief Justice Burger dissented. The majority opinion noted that the operative facts in the case were virtually identical to the facts in the earlier case of *Hoag v. New Jersey*, 356 U.S. 404, in which the Supreme Court had twelve years earlier upheld a conviction under similar circumstances.

In *Slieck v. United States*, No. 19,462 (July 28, 1969), Judge Blackmun wrote for the court in upholding a federal criminal conviction against a collateral attack by the defendant. One of the prisoner's claims was that the denial of the right to subpoena witnesses at government expense deprived him of the equal protection of the laws, even though it had been earlier determined that such witnesses would not have been able to testify to any relevant fact. Judge Blackmun's response to this point was: "In any event a rich defendant may have the right to waste his money on unnecessary and foolish steps, but that does not, in the name of necessary constitutional equality, give the indulgent the right to squander government funds merely for the asking."

In *United States v. Bonds*, Judge Blackmun dissented from a majority holding of the Eighth Circuit which reversed a federal conviction on the ground that evidence should have been suppressed. He expressed the view that the search in question had been reasonable under the rules prevailing prior to the Supreme Court's decision in *Chimel v. California*, 395 U.S. 752 (1969), and that the rule adopted by the Fifth Circuit that *Chimel* was not retroactive should be likewise applied by the Eighth Circuit.

Civil Liberties Decisions. In *Esteban v. Central Missouri State College*, No. 19,565 (Aug. 28, 1969), the Court of Appeals for the Eighth Circuit divided as to whether the constitutional rights of students at a publicly supported college in Missouri had been violated in the course of their expulsion. Judge Blackmun wrote for the majority affirming the judgment of the district court holding that the students had been properly expelled, and expressing disagreement with an apparently contrary ruling of Judge Doyle in the Western District of Wisconsin (*Soglin v. Kauffman*, 295 F. Supp. 978, in which the latter had struck down university regulations for "overbreadth"). The majority of the court held that the finding by the university officials that one of the expelled students had participated in the demonstration was supported by evidence. Certiorari has been sought in the Supreme Court, but the Court has not yet acted on the petition (No. 1026 OT 1959). *In re Weltzman* (No. 19,446, April 7, 1970) was a naturalization case in which the three-judge panel of the Court of Appeals produced three different opinions. Judge Blackmun dissented from the holding of the majority of the court that petitioner was entitled to naturalization, since he felt that there was no constitutional objection to denying naturalization to an alien because conscientious objection to war was based on a personal moral code, rather than on religious training and belief. In the final paragraph of his opinion, he said: "If Mrs. Weltzman's constitutional arguments are to prevail our concepts of constitutionality have progressed far beyond the Hughes-Holmes-

Brandeis days when enunciated allegiance and devotion to the country had primary and significant meaning. As a member of an inferior federal court, I feel that we cannot go that far even in this permissive day."

3. *Financial Holdings and Off-Bench Activities.* Judge Blackmun reviewed with the Department of Justice, prior to the submission of his nomination to be an Associate Justice of the Supreme Court, his financial holdings, his practice respecting disqualification because of interest or relationship, and his off-bench activities. He is entirely agreeable to making available to the Committee any detail financial information which it desires at the appropriate time. Judge Blackmun's net worth is in the neighborhood of \$125,000 consisting of approximately \$75,000 in stocks, bonds, and bank accounts, and approximately \$50,000 represented by his equity in his family home in Rochester, Minnesota.

In the light of the extended debates over the confirmation of Judge Haynsworth, Judge Blackmun requested the advice of the Department, and requested the Department to call to the attention of the Judiciary Committee, the following specific situations.

Stock in Ford Motor Co. & American Tel. & Tel. In October, 1957, prior to assuming the bench, Judge Blackmun purchased fifty shares of stock in Ford Motor Company, at a total purchase price slightly in excess of \$2,500. Approximately six months after becoming a circuit judge, he participated in the decision of the case of *Hanson v. Ford Motor Company*, 278 F.2d 580 (1960). Prior to doing so, Judge Blackmun recalls discussing the matter with then Chief Judge Johnsen of the Court of Appeals for the Eighth Circuit, and concluding that his interest in the case was *de minimis* and that he should not disqualify himself. He wrote the opinion of the Court of Appeals, directing the district court to reinstate a jury verdict in the amount of \$24,500 which had been rendered against the Ford Motor Company, but which the district court had set aside.

Four years later Judge Blackmun was a member of a panel of the Court of Appeals which heard and decided the case of *Kotula v. Ford Motor Company*, 338 F. 2d 732. In that case, Judge Matthes wrote the opinion of the court, upholding a judgment of the district court which had set aside a jury verdict of \$12,500 in favor of the plaintiff.

In January, 1970, Judge Blackmun received notice of his assignment to a case in which a wholly owned subsidiary of Ford Motor Company, Gateway Ford Truck Sales, was a party. In view of the national attention that had focused on the issue of disqualification as a result of the debates over the confirmation of Judge Haynsworth, Judge Blackmun advised Chief Judge Van Oosterhout that he regarded himself as disqualified, and the case was assigned by the Chief Judge to another panel. *Bridgeman v. Gateway Ford Truck Sales*, Docket No. 19,749 (Feb. 4, 1970).

During 1963 and 1964, Judge Blackmun acquired 22 shares of American Telephone and Telegraph Company stock, at a total cost of approximately \$1,350. In 1967, he participated in the decision by the Court of Appeals of *Mahoney v. Northwestern Bell Telephone Company*, 377 F. 2d 540 (1967). In that case, the Court of Appeals in a brief *per curiam* opinion upheld the judgment of the court below which dismissed the plaintiff's complaint for lack of diversity jurisdiction as required by statute. The plaintiff had prayed for \$35,000 damages, alleging that he was a citizen of Nebraska and that the defendant Northwestern Bell Telephone Company was, for jurisdictional purposes, an Iowa corporation. The Court of Appeals upheld the district judge's ruling that the defendant was a Nebraska corporation, and therefore both the plaintiff and the defendant were citizens and residents of the same state.

The statute governing disqualification for federal judges is 28 U.S.C. 455, which provides in pertinent part as follows: "Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest,"

The Department of Justice has advised Judge Blackmun that in its opinion he did not have in any of these three cases such a "substantial interest" as would require him to disqualify himself. By any quantitative standards, Judge Blackmun's interest in the two *Ford* cases can only be described as microscopic. In 1960, he owned fifty shares out of more than 10,000,000 issued and outstanding. In 1964, he owned 100 out of more than 52,000,000 shares issued and outstanding common stock. The \$24,500 jury award involved in *Hanson* is likewise but a tiny fraction of Ford's 1960 net income of approximately \$427,000,000, and the \$12,500 award involved in *Kotula* is an even tinier fraction of Ford's 1964 net income of approximately \$505,000,000.

Judge Blackmun's holding of 22 shares of American Telephone and Telegraph Company stock in 1967 must be related to the nearly 540,000,000 shares outstanding in 1967. The \$35,000 prayed for by the plaintiff in *Mahoney* is an infinitesimal portion of American Telephone and Telegraph Company's 1967 net income of approximately one and one-half billion dollars.

In short, if the word "substantial" in 28 U.S.C. 455 is to be given any meaning at all, Judge Blackmun was not required to disqualify himself in any of these three cases.

On facts which can be described as virtually identical, Chief Judge Brown, speaking for the Court of Appeals for the Fifth Circuit sitting en banc, held that a federal district judge was not disqualified under the statute, stating: "The ownership of 100 shares of Humble stock is not, and was not, either as a matter of law or fact or both a disqualifying factor. The record shows without contradiction that the 100 shares owned by the trial judge were an infinitesimal portion of the 36 million shares outstanding when the case was tried . . . This tiny fractional interest in the equity ownership of this huge industrial enterprise does not amount, either as a matter of fact, or law, or both, to a substantial interest by the trial judge in the case or a prohibited connection with the litigant." *Kinnear-Wood Corp. v. Humble Oil and Refining Co.*, 5th Cir., 403 F. 2d 437 (1948).

The Court of Appeals for the Fifth Circuit has expressed similar views in the case of somewhat larger stockholdings, in an order handed down in October, 1969, in the South Louisiana area rate cases. The United States District Court for the Eastern District of New York came to a similar conclusion with respect to a small number of shares in a large public corporation in *Lampert v. Hollis Music, Inc.*, 165 F. Supp. 3 (1952).

Canon 29, American Bar Association Canons of Judicial Ethics, provides that "a Judge should abstain from performing or taking part in any judicial act in which his personal interests are involved." The term "personal interests" is not defined, though Formal Opinion No. 170 states that a Judge who is a stockholder in a corporation which is a party to litigation pending in his court should not perform any judicial function with respect to that law suit which involves an exercise of discretion.

The relationship between the federal statute pertaining to disqualification, 28 U.S.C. 455, and Canon 29 is far from clear. Different language is used in each, and the absence of the adjective "substantial" in the Canon suggests that it may impose a stricter test than the statute. However, in the light of the extremely small amount, both absolutely and proportionately, of Judge Blackmun's holdings in the corporations involved, this would appear to be an appropriate case for the application of the rule of "*de minimis non curat lex*" in interpreting Canon 29 and Formal Opinion 170. The *de minimis* principle in no way impairs the safeguarding of both the fact and appearance of impartiality which the Canon rightfully demands of our judges, and yet it permits a common-sense application of the rule where a Judge's interest is genuinely insignificant. The underlying question under the Canons is whether Judge Blackmun either acted with partiality or created an appearance of partiality in the above-entitled cases. In the opinion of the Department, he did neither.

In *Commonwealth Coatings Corporation v. Continental Casualty Co.*, 393 U.S. 145 (1968), the Supreme Court of the United States held that an arbitrator was disqualified under the Federal Arbitration Act because of his "close business connections" with one of the parties to the arbitration. The facts of *Commonwealth*, however, show that the arbitrator's relationship with one of the parties to the arbitration was both a good deal more personal and a good deal more substantial than was the relationship between Judge Blackmun and the Ford Motor Company which resulted from his owning fifty shares of its common stock.

The Supreme Court in *Tumey v. Ohio*, 273 U.S. 510 (1927), held that it was a denial of constitutional due process for a criminal defendant to be tried before the local mayor whose income would be directly and measurably increased if he convicted, rather than acquitted, the defendant. While the amount of increment to the Judge's income from any particular conviction might be small, the directness of that relationship contrasts markedly with the extremely remote relationship between any decision by Judge Blackmun in one of these three cases, and any possible benefit that might accrue to him as a result of such a decision. The court in *Tumey* said: "But it certainly violates the Fourteenth Amendment, and deprives the defendant in the criminal case of due process of law, to subject his liberty or property to the judgment of a court the judge

of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in this case."

Nor does the Department believe Judge Blackmun committed any impropriety in recusing himself from the *Gatcicay* case in February 1970. The intervening Senate debate over the confirmation of Judge Haynsworth had focused critical attention on the language of the statute, the provisions of the applicable Canons of Ethics, and the interrelationship between the two. The vote by a majority of the Senate to refuse to advise and consent to the Haynsworth nomination could fairly be deemed an interpretation of the relevant provisions regarding disqualification which suggested a stricter standard than had obtained previously.

Canon 28 of the American Bar Association's Canons of Judicial Ethics states: "A Judge should abstain from making personal investments in enterprises which are *apt to be involved in litigation* in the courts . . ." (Emphasis added.)

If this Canon were intended to preclude a judge from owning any stock in a corporation which might "possibly" be involved in litigation, then it would prevent a judge from owning any stock since every corporation might "possibly" be involved in litigation. If the drafters of this Canon had intended this result, they could easily have provided for such an outright prohibition. Instead, they only stated that it was improper for a judge to invest in enterprises which are "apt" to be involved in litigation. Webster's Dictionary defines "apt" as "having an habitual tendency or inclination."

Directorship of the Kahler Corporation. For slightly more than four years following his taking the bench, Judge Blackmun was a director of the Kahler Corporation, which operated a hotel in Rochester, Minnesota. While serving as a director, he received annual director's fees from the corporation in the amount of \$1,500. Following the adoption by the Judicial Conference of the United States of a resolution in the fall of 1963 recommending that federal judges not hold offices or directorships in corporations organized for profit, Judge Blackmun submitted his resignation as a director of the Kahler Corporation. His resignation was accepted in January, 1964.

Judge Blackmun has advised the Department that he participated in deciding no cases involving the Kahler Corporation at any time since his appointment to the bench.

Executor's Fees. Following his accession to the bench, Judge Blackmun received executor's fees from two estates in which he served as co-executor.

During the calendar year 1962, he received an executor's fee of \$3,500 from the estate of Mabel F. C. Kahler. Mrs. Kahler's will was executed on March 22, 1958, and named Judge Blackmun as one of four co-executors. Mrs. Kahler died on September 20, 1958, and left an estate of approximately one-half million dollars.

Judge Blackmun also served as co-executor for the estate of Charles Gilfillan, having been designated as such in the Gilfillan will. Mr. Gilfillan executed his will in October, 1955, and died in December 1962, leaving an estate valued in excess of one and one-half million dollars. During calendar year 1961, Judge Blackmun received \$3,500 as an executor's fee from this estate, and during the calendar year 1965 he received \$1,500 from the same source.

Canon 27, American Bar Association Canons of Judicial Ethics, provides as follows: "While a judge is not disqualified from holding executorships or trusteeships, he should not accept or continue to hold any fiduciary or other position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises that are apt to come before him judicially, or to be involved in questions of law to be determined by him."

Informal Opinion No. 640 of the American Bar Association Committee on Professional Ethics is summarized as follows on page 217, American Bar Association Opinions of the Committee on Professional Ethics (1967 edition): "A judge should accept fiduciary appointments after taking the bench only where a family relationship is involved or the judge is specifically nominated or appointed by the terms of the will or trust document."

Since Judge Blackmun was named in the will of each of these decedents, and since there is no indication that the holding of the executorship either interfered or seemed to interfere with the proper performance of his duties as a federal appellate judge, Judge Blackmun's serving as executor in these two estates, appears to have been entirely consistent with the provisions of this Canon.

The Department of Justice will, as it has in the past, assist the Committee in obtaining such additional information as it may desire. In view of the

widespread public interest in this type of information, I believe it appropriate to make it generally available, and propose to do so.

Yours very truly,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., April 24, 1970.

Hon. JAMES EASTLAND
Chairman, Committee on Judiciary

DEAR MR. CHAIRMAN: In anticipation of the forthcoming hearings on the nomination of Judge Harry A. Blackmun to the Supreme Court, the April 15, 1970, letter from the Deputy Attorney General to the Committee indicated certain of Judge Blackmun's holdings with reference to cases before his court. The letter also indicated that the Department of Justice stood ready to "assist the Committee in obtaining such additional information as it may desire."

Accordingly, we respectfully request that you ask the Department to provide a complete list of Judge Blackmun's holdings when he took the bench and a chronological list of acquisitions and disposals of such assets thereafter to date.

We also request a list of all cases before Judge Blackmun involving:

1. any corporation or other entity for which he was then serving as an officer, director, or in a similar capacity, and any corporation or other entity in which he held a financial interest;
2. any corporation or other entity which Judge Blackmun had represented as an attorney or which was a client of his law firm; or
3. any parent, subsidiary, affiliate, and any major supplier or customer of such corporations or other entities enumerated in the above requests.

We appreciate that this is not a simple task, but we also assume that the Deputy Attorney General's letter indicates that research of this kind has already been undertaken. Moreover, it is our judgment that the availability of such information, in the above form, would enable the Committee to review fully and fairly all aspects of the nomination.

Sincerely,

PHILIP A. HART,
EDWARD M. KENNEDY,
BIRCH BAYH,
JOSEPH D. TYDINGS.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., April 28, 1970.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On Monday, April 27, you advised me that several members of the Judiciary Committee had requested that I supply additional information in connection with the hearings before the Committee on the confirmation of Judge Harry A. Blackmun to be an Associate Justice of the Supreme Court of the United States. As you will recall, on April 15, the day on which the Senate received Judge Blackmun's nomination, I furnished to you and other members of the Committee such information as I had then obtained from Judge Blackmun which I thought the Committee might deem relevant. The purpose of this letter is to comply to the extent possible with your request of Monday.

1. *Securities Holdings.* Attached to this letter is a complete list of securities owned by Judge Blackmun at the time he became a judge of the Court of Appeals for the Eighth Circuit in 1959. A second attached schedule shows all disposals and acquisitions between 1959 and 1970. A third such schedule lists his present holdings and the respective dates on which they were acquired. Mrs. Blackmun has never owned any security.

2. *Cases Involving "Any Corporation or Other Entity" for which Judge Blackmun Was Then "Serving as an Officer, Director, or in a Similar Capacity."* Judge Blackmun has never sat in any case involving "any corporation or other entity for which he was then serving as an officer, director, or in a similar capacity".

3. *Cases in Which Judge Blackmun Sat Involving "Any Corporation or Other Entity in Which He Held a Financial Interest."* In my letter of April 15, I advised you in detail as to the cases of *Hanson v. Ford Motor Company*, 278 F. 2d 586

(1960); *Kotula v. Ford Motor Company*, 338 F. 2d 732 (1964); and *Mahoney v. Northwestern Bell Telephone Company*, 377 F. 2d 549 (1967).

Judge Blackmun has called to my attention a fourth case, which might conceivably be included within the broad language of this request. *Minnesota Mining and Manufacturing Company v. Superior Insulating Tape Co.*, 284 F. 2d 478 (1960), was decided adversely to 3M by a decision of the Court of Appeals handed down on December 1, 1960. Judge Blackmun purchased thirty shares of 3M on December 28, 1960, after the expiration of the period provided by the rules of the court for any party to petition for rehearing. However, the clerk had granted an extension of time for filing of the petition in this case, and one was filed in January, 1961. The panel which had heard the case, consisting of Chief Judge Johnson, Judge Van Oosterhout, and Judge Blackmun denied the petition for rehearing shortly after it was filed.

4. *Cases in Which Judge Blackmun Sat Involving Clients Whom He Had Represented as an Attorney.* Judge Blackmun sat in no cases involving parties whom he had represented as an attorney.

5. *Cases in Which Judge Blackmun Sat in Which His Former Law Firm Represented One of the Parties.* Judge Blackmun has sat in the following six cases in which his former law firm represented one of the litigants:

Cohen v. Time, Inc., 312 F. 2d 747 (1963). The Dorsey firm represented Time, Inc., in successfully upholding a motion for summary judgment granted by the district court. Time, Inc. was not a regular client of the Dorsey firm at the time of Judge Blackmun's membership in that firm.

NLRB v. L. G. Everist, Inc., 334 F. 2d 312 (1964). The Dorsey firm represented Everist in opposing enforcement of a board order, which the court ordered enforced in part. Everist was not a regular client of the firm at the time of Judge Blackmun's membership in the firm.

State of South Dakota v. National Bank of South Dakota, 335 F. 2d 444 (1964). The Dorsey firm represented the defendant bank in successfully upholding a grant of summary judgment by the district court. The National Bank of South Dakota was not a regular client of the Dorsey firm at the time Judge Blackmun was a member.

United States v. S & A Co., 338 F. 2d 629 (1964), in which the Dorsey firm represented a taxpayer in successfully defending against the government's appeal from a judgment in favor of the taxpayer. S & A Co. was not a regular client of the Dorsey firm at the time Judge Blackmun was a member.

Northwest Airlines, Inc. v. Airline Pilots Association, 373 F. 2d 136 (1967), in which the Dorsey firm unsuccessfully sought reversal of an order of the district court in favor of the Airline Pilots Association. Northwest was not a regular client of the Dorsey firm at the time Judge Blackmun was a member; Judge Blackmun advises us that during his nine years as General Counsel for the Mayo Clinic, during most of which time he was a director of the Rochester Airport Company, his position was adverse to that of Northwest.

General Mills, Inc. v. Pillsbury Co., 378 F. 2d 666 (1967), in which the Dorsey firm served as local counsel for General Mills in defending an action for patent infringement. A judgment in favor of Pillsbury in the district court was reversed by the Court of Appeals on the ground that the patent was invalid because of obviousness. General Mills was not a regular client of the Dorsey firm at the time Judge Blackmun was a member.

Judge Blackmun became a judge of the Court of Appeals in 1959, nine years after he had left the Minneapolis firm of Dorsey, Colman, Barker, Scott and Barber. Neither the Federal Disqualification statute, 28 U.S.C. 455, nor the Canons of Judicial Ethics of the American Bar Association specifically discusses the situations in which a judge should disqualify himself because of connection between the case before him and his former law practice. However, in Informal Decision 504, rendered in 1962, the ABA Standing Committee on Professional Ethics stated: "There is no Canon of Judicial Ethics which would preclude a judge from sitting in a case merely because his former firm is counsel in such case. However, the Committee feels that good taste and a desire to avoid any seeming impropriety might cause a judge to decline to sit in the following classes of cases where his former firm is counsel:

- (a) Where the case was in the firm at the time he was a member, or
- (b) Where a regular client of the firm at the time he was a member is a party to the cause, or
- (c) Where a son or other near relative, employed by the firm, had actively participated in the case, either in the trial court or on appeal.

* * * * *

"Our Committee also feels that there would be no seeming impropriety or lack of good taste in your sitting in other cases, particularly after the lapse of several years. Your former firm and its clients, just as in the case of other clients, are entitled to the benefit of your judgment on the court on the cases presented, unless there is disqualification or some consideration of the character indicated above which would cause you to decline to sit."

Because these informal decisions are not generally available, I am attaching a copy of the entire opinion. As you will note, in none of the six cases described above was the party then represented by the Dorsey firm a regular client of the firm at the time that Judge Blackmun was a member. It would seem obvious in view of the lapse of time involved that the cases themselves were not "in the firm" at the time he was a member, even on some basis other than regular representation. Therefore, in my opinion, Judge Blackmun's sitting in these cases was entirely consistent with the language of Informal Decision 594, quoted above.

6. Cases in Which Judge Blackmun Sat Involving a Client of His Former Firm Which Was Represented by Other Counsel in the Litigation Before Him. Judge Blackmun has sat in the following five cases of this description:

United States ex rel General Electric Co. v. Gunnar I. Johnson and Son, Inc., 310 F. 2d 899 (1962). General Electric, which became a client of the Dorsey firm subsequent to Judge Blackmun's departure, was in this case represented by counsel from St. Paul, Minnesota.

Weissner v. Otter Tail Power Co., 318 F. 2d 375 (1963). Otter Tail Power Co., which was a client of the Dorsey firm, was represented in this action by J. Gerald Nilles of Fargo, North Dakota.

Leveis v. Super Valu Stores, Inc., 364 F. 2d 555 (1966). Super Valu, a client of the Dorsey firm, was in this litigation represented by J. Rudolph Hansen of Des Moines.

Cargill, Inc. v. Zimmer, 374 F. 2d 924 (1967). Cargill, Inc., a client of the Dorsey firm, was in this action represented by Francis M. Smith of Sioux Falls, South Dakota.

Otter Tail Power Co. v. Federal Power Commission (submitted to the Court of Appeals for the Eighth Circuit in October, 1969 but not yet decided). Otter Tail, a client of the Dorsey firm, was in this action represented by Cyrus A. Field of Fergus Falls, Minnesota.

Informal Decision 594, quoted above, addresses itself to those situations in which a judge should disqualify himself because his former firm is counsel for one of the parties in the case. Such disqualification is suggested where the party represented by the former firm was a regular client of the firm at the time the judge was a member. I do not believe if by any means follows from this, however, that the Committee would advise disqualification in a case where one of the parties, though a client of the judge's former firm, is in that case represented not by the former firm but by a wholly different firm. Where the nexus between the judge and his former firm is lacking, I would think that disqualification would be required only where the connection between the client of the former firm and the judge is sufficiently close and personal as to be required either under the applicable language of the Canons 4, 13, and 20, or of 28 U.S.C. 455. In none of these five cases listed above, Judge Blackmun advises me, was there that sort of a relationship, or anything remotely approaching it.

7. Cases in Which Judge Blackmun Sat Involving "Any Parent, Subsidiary, Affiliate, and Any Major Supplier or Customer of Such Corporations or Other Entities Enumerated in the Above Request." Judge Blackmun has advised the Department, and I have transmitted to the Committee by letter of April 15, advice with respect to his sitting in the Mahoney case at a time that he owned 22 shares of stock in American Telephone and Telegraph Company. This case was called to the Committee's attention because of Judge Blackmun's and the Department's belief that Northwestern Bell Telephone Company is a subsidiary of American Telephone and Telegraph Company. Judge Blackmun's stockholdings in other corporations have included Ford Motor Company, IBM, J. C. Penney, and Royal Dutch Petroleum, among others. Neither Judge Blackmun nor the Department of Justice knows who are the major suppliers or customers of these corporations, or of other corporations listed above. Nor do either know what subsidiaries or affiliates are associated with these corporations. While it may be possible to determine the question of affiliates and subsidiaries through an extensive examination of a corporate work such as Moody's or Standard & Poor's, I should think that knowledge as to customers and suppliers could be obtained only by comprehensive inquiries addressed to the corporate executives themselves.

8. Cases in Which Judge Blackmun Has Either Disqualified Himself or Requested the Clerk of the Court Not to Allocate a Case to His Division. Judge Blackmun advises us that in the following cases, he requested the Clerk to assign the case to a panel other than his, or disqualified himself, for the reason indicated:

Zirlinsky v. Sheehan, 413 F. 2d 481 (1969). Former law clerk was on the brief.
Rochester Circle Theatre, Inc. v. Ramsay, 368 F. 2d 748 (1966). Another former law clerk was on the brief and argued the case. In addition, the parties were a civic theater located in Rochester, Minnesota, and a former resident of Rochester.

Bridgeman v. Gateway Ford Truck Sales (Docket No. 19,749), argued in January, 1970. As indicated in my letter of April 15, Judge Blackmun disqualified himself in this case because of his ownership of Ford Motor Company stock, after having learned that Gateway Ford Truck Sales was a subsidiary of Ford Motor Company.

I trust that this submission is of assistance to the Committee in its deliberation.

Yours very truly,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

[Enclosure]

HARRY A. BLACKMUN—INVESTMENT LIST, NOVEMBER 4, 1959

	<i>Amount</i>
50 shares Atlantic Coast Line common stock. Cert. No. 32745 purchased April 1, 1959 at 57-7/8-----	\$2,916.30
53 shares Chemical Bank New York Trust Co. capital stock. Cert. No. E8500, dated Oct. 21, 1959. This replaced 30 shares New York Trust Co. \$25 par capital stock, represented by Cert. No. F37832, purchased Dec. 18, 1958 at 93-1/2, or \$2,805. On the merger, the 30 shares of New York Trust became 52-1/2 shares of the new bank. The additional half share was purchased in Oct. 1959 for \$20.88-----	2,834.88
50 shares Ford Motor Co. \$5.00 par common stock. Cert. No. NC0312337 purchased Oct. 3, 1957 at 50-3/8-----	2,544.52
100 shares The Kahler Corporation, \$25 par capital stock. Cert. No. 3513 for 50 shares purchased Feb. 4, 1958 at 27-1/2 for a total of \$1,375, and Cert. No. 4215 for 50 shares purchased June 26, 1958 at 31, for a total of \$1,550-----	2,925.00
30 shares Morgan-Guaranty Trust Co. of New York capital stock. Cert. No. 55038 purchased Sept. 2, 1959 at 102-1/4-----	3,067.50
70 shares Panhandle Eastern Pipeline Co., no par common stock. Cert. No. NC071090 for 35 shares, purchased Jan. 5, 1954, and Cert. No. NC090859 for 35 shares, issued as a 100% stock dividend Dec. 27, 1956; original cost, 70-1/2-----	2,490.34
\$2,000 United States Treasury 3-3/4% C/I due February 15, 1960: Nos. M2794/5 with 8-15-59 sen-----	2,000.00
 Total -----	 18,784.54
Plus savings account at Farmers and Mechanics Savings Bank, Minneapolis. Balance, November 4, 1959-----	\$9,959.92

Harry A. Blackmun
Purchases and Sales, November 4, 1959 to April 29, 1970

	Purchase		Sale	
			Feb. 15, 1960 2M U.S. Treasury 3-3/4% C/I due 2/15/60 (matured)	\$2,000.00
			Mar. 21, 1960 30 shares Morgan Guaranty Trust Co. of N.Y.	3,028.80
Feb. 5, 1960	25 shares J.C. Penney common at 119.75 (see current sheet for stock splits)	\$3,013.31		
Feb. 5, 1960	5M Banks for Coops. 5-3/8% due 4/4/60	5,007.81	Apr. 4, 1960 matured	5,000.00
Mar. 21, 1960	60 shares The Hanover Bank (see current sheet for stock dividends & fractional pur- chases)	2,985.00 (now 3,045.03)		
Apr. 4, 1960	50 shares Alico Land Develop- ment Co. (distribution from Atlantic Coast Line), cost allocation	471.15	Dec. 29, 1960 sold Dec. 29, 1960 50 shares Atlantic Coast Line]]]] 2,517.94
Apr. 4, 1960	5M Federal Intermediate Credit Banks 4.40% due 1/3 /61		Jan. 3, 1961 matured	
Dec. 28, 1960	30 Florida Power & Lt.	1,857.34		
Dec. 28, 1960	30 Minnesota Mining	2,247.45		
Jan. 6, 1961	Farmers & Mechanics Savings C/D	5,000.00	July 11, 1968 redeemed	

	Purchase		Date	
Mar. 6, 1962	Farmers & Mechanics Savings C/D	\$2,000.00		
Apr. 10, 1963	Farmers & Mechanics Savings C/D	3,000.00		
Apr. 3, 1963	20 units American Security & Trust Co. & American Security Corp. (see current sheet for stock dividends & fractional share purchases)	2,730.75 (now 2,783.14)		
Apr. 3, 1963	5 shares I.B.M. (see current sheet for additions)	2,122.75 (now 3,299.38)		
Apr. 3, 1963	50 shares Royal Dutch 20 guilders shares	2,441.81	Nov.] 1968 sold Dec.]	\$3,878.87
			Apr. 3, 1963 70 shares Panhandle Eastern	5,185.03
			Apr. 3, 1963 53 shares Chemical Bank N.Y. Trust	4,568.86
Apr. 3, 1963	10 shares ATT (see current sheet for additions)	1,240.25 (now 1,360.55)		
Jan. 18, 1966	5M Mankato, Minn., Fire Station 3.60% due Feb. 1981	5,069.70 (now 5,000 by ad- justment of premium)		
July 15, 1968	5M Federal Land Bank 6.3% due 2/20/70	5,025.00	Feb. 20, 1970 matured	
Apr. 23, 1969	10M Treas. Bills due 6/23/69 at 98.9579167	9,898.29	June 23, 1969 matured	

Purchase	Sale
June 25, 1969 10M Treas. Bills due 9/25/69 at 98.4072	\$9,840.72
	Sept. 25, 1969 matured
Aug. 15, 1969 4M Treas. Bills due 11/13/69 at 98.2179167	3,936.22
	Nov. 13, 1969 matured
Sept. 25, 1969 5M Treas. Bills due 3/26/70 at 98.278	4,821.40
	Mar. 26, 1970 matured
Nov. 13, 1969 10M Treas. Bills due 5/14/70 at 96.241	9,631.60
Feb. 20, 1970 5M Fed. Land Bank 8.5% bond due 4/20/71	5,012.50
Mar. 26, 1970 5M Treas. Bills due 5/14/70 at 99.1901389	4,972.01

PRESENT HOLDINGS AND DATES ON WHICH ACQUIRED

68 units American Security & Trust Co., Certificates No. A18457 for 20 shares, No. A21239 for 40 shares, No. A32251 for 3 shares, No. A36027 for 1 share, Certificate No. A48777 for 3 shares, and Certificate No. A54904 for 1 share, \$3.33 $\frac{1}{3}$ par capital stock, together with American Security Corporation Certificates No. A18457 for 20 shares, No. A21239 for 40 shares, No. A32251 for 3 shares, No. A36027 for 1 share, Certificate No. A48777 for 3 shares, and Certificate No. A54904 for 1 share, 66 $\frac{2}{3}\%$ par common stock. These are stapled shares. They were purchased April 3, 1963, at a combined cost of 135 (stock split 3 for 1 January 28, 1964; stock dividend of 6.0608% or 3.6364 shares December 28, 1965, plus \$18.73 paid 2/7/66 to make up full share; 5% stock dividend January 2, 1969, or 3 $\frac{1}{2}$ shares plus \$33.66 paid to make up full share).

22 shares American Telephone & Telegraph Company \$10 $\frac{1}{2}$ par capital stock, Certificate No. C 375117 for 10 shares purchased April 3, 1963, at 122 $\frac{1}{2}$; Certificate No. 64R709181 for 1 share, 5% stock dividend March 18, 1964, plus \$100 cash plus \$20.30 for purchase of 10 additional rights; Certificate No. 644A604835 for 11 shares received as stock dividend June 1, 1964. Average cost about \$61.85.

30 shares Florida Power & Light Company no par common stock purchased December 28, 1960, at 01 $\frac{1}{2}$, Certificate No. 0198694.

100 shares Ford Motor Company \$2.50 par common stock, Certificate No. NC0312537 for 50 shares purchased Oct. 1, 1957, at 50%; Certificate No. FC0243393 for 50 shares issued on a 2 for 1 split June 1, 1962.

26 shares International Business Machines Corporation \$5 par capital stock:

5 shares purchased April 3, 1963, at 423, Certificate No. K461726;

25% stock dividend May 5, 1964, Certificate No. B002411 for 1 share;

$\frac{1}{4}$ share dividend (as above) plus \$325.76 cash on August 25, 1964, Certificate No. L163395 for 1 share;

50% split May 3, 1966, Certificate No. AA015157, for 3 shares; $\frac{1}{2}$ share (as above) plus \$171 cash May 3, 1966, Certificate No. Q140139 for one share;

Stock rights for $\frac{1}{4}$ share plus \$285 plus \$37.17 cash June 8, 1966, Certificate No. Ad0016990 for 1 share;

Stock dividend 12/40 share plus \$357.70 cash June 27, 1967, Certificate No. V220585 for 1 share;

100% split May 9, 1968, Certificate No. CA 238388 for 13 shares Average cost about \$127.

240 shares The Kahler Corporation \$25 par capital stock, Certificate No. 3513 for 50 shares purchased January 27, 1958, at 27 $\frac{1}{2}$ for a total of \$1,375; Certificate No. 4215 for 50 shares purchased June 25, 1958, at 31 for a total of \$1,550; Certificate No. 7391 for 20 shares received January 31, 1968, at 20% stock dividend; and Certificate No. S013 for 120 shares received August 30, 1968, as a 100% stock dividend. Average cost about \$12.10.

81 shares Manufacturers Hanover Corporation common stock, Certificate No. 9605 exchanged (tax free) May 1969 for 81 shares Manufacturers Hanover Trust Company \$15 par capital stock. (These had been represented by Certificate No. 019690, issued Oct. 6, 1961, for 67 shares (this in turn had replaced 60 shares The Hanover Bank capital stock purchased March 21, 1960, at 49 $\frac{1}{4}$ (Certificate No. H148733); 6 $\frac{1}{2}$ shares stock dividend Feb. 28, 1961 (Certificate No. H191664 for 6 shares); $\frac{1}{3}$ share by purchase Mar. 20, 1961, for \$16.71 (Certificate No. H212309 for 1 share)); 4-4672/10,000 shares stock shares stock dividend Mar. 17, 1965 (Certificate No. 0110930 for 4 shares); 5328/10,000 by purchase Apr. 12, 1965, for \$20.31 (Certificate No. 0190216 for 1 share); 8-84/100 shares stock dividend May 5, 1967, plus 36/100 share by purchase for \$17.01 (Certificate No. 0243999 for 9 shares)). Average cost \$37.30.

Cost
\$2,783.14

1,360.55

1,857.34

2,544.52

3,209.38

2,925.00

3,045.03

	<i>Cost</i>
30 shares Minnesota Mining and Manufacturing Company no par common stock purchased Dec. 28, 1960, at 74, Certificate No. SPL 193053-----	\$2,247.45
150 shares J. C. Penney Company common stock, 50¢ par value, 25 purchased Feb. 5, 1960, at 119½, Certificate No. C010190 for 25 shares; 50 share stock dividend received May 27, 1960, Certificate No. U2030; 2 for 1 stock split Oct. 17, 1968, Certificate No. N0204 for 75 shares. Average cost \$20.09-----	3,013.31
\$5,000 City of Mankato, Minnesota, Fire Station Bonds, Series A, 3.60%, due Feb. 1, 1981—74, Nos. 206/10, interest FA1, purchased Jan. 18, 1966, on 3.10 basis at 101.394. Amortized fully 8/66-----	5,000.00
Farmers & Mechanics Savings Bank deposit certificates:	
\$2,000 No. 10,478, issued March 6, 1962-----	2,000.00
\$3,000 No. 28,287, issued April 10, 1963-----	3,000.00
\$10,000 U.S. Treasury bills due May 14, 1970, purchased Nov. 13, 1969 at 98.241+7.50 to yield 7.435%-----	9,631.60
\$5,000 U.S. Treasury bills due May 14, 1970, purchased March 26, 1970, at 99.1901389+12.50 to yield 5.95-----	4,972.01
\$5,000 Federal Land Bank 8.5% bonds due Apr. 20, 1971, interest Oct. 20, 1970, and Apr. 20, 1971, purchased Feb. 20, 1970, at par plus \$12.50 to yield 8.49-----	5,012.50
	52,691.83

Farms & Mechanics Savings Bank Account No. A-5311, 4½ to December 31, 1965; 4½ November 1-16, 1966; 4.65 January 17, 1966; now 5%.

[Enclosure]

**AMERICAN BAR ASSOCIATION,
Standing Committee on Professional Ethics.**

Re Informal decision 594 October 22, 1962, judge sitting in case where former firm is counsel:

With your letter of September 12 you advise that ever since you were elected Associate Justice of the Supreme Court of Arkansas in 1948, it has been your practice not to take part in cases wherein the law firm of which you were a former member appears as counsel; that even though not actually disqualified in such cases, you have felt that the losing lawyer or litigant might not think the Court was wholly unbiased, particularly in a case where the Court was divided and you might cast the deciding vote in favor of your former partner's client. You indicate that you have been considering changing this practice and taking part in all cases, unless you are actually disqualified or have some special reason not to participate; but before doing so you would like to have the opinion of our committee as to whether any question of judicial ethics is involved. The following Canons of Judicial Ethics might appropriately be referred to:

No. 4 "A Judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his every day life, should be beyond reproach."

No. 13 "A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person."

No. 20 ". . . It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties."

In Formal Opinion 200 this Committee held that a Judge should, when feasible, avoid sitting without colleagues in a case in which a near relative is counsel. In Informal Opinion C-383, involving the same question, we said, in part: "It would appear from the Judicial Canons quoted above and from the former opinion of this Committee that a Judge is not required to rescind himself merely because the firm employing his son was of counsel in a given case. Even where the son is active in the case the Canons do not preclude a Judge from sitting in the case; but good taste and the desire to avoid any seeming impropriety dictate that the particular Judge not actually participate in the decision in a case where the

son had actively participated in the decision in a case where the son had actively participated in the case, either in the trial court or on appeal."

We give you this background of the opinions of the Committee so that you will know our approach to these problems.

There is no Canon of Judicial Ethics which would preclude a judge from sitting in a case merely because his former firm is counsel in such case. However, the Committee feels that good taste and a desire to avoid any seeming impropriety might cause a judge to decline to sit in the following classes of cases where his former firm is counsel:

- (a) Where the case was in the firm at the time he was a member; or
- (b) Where a regular client of the firm at the time he was a member is a party to the case; or
- (c) Where a son or other near relative, employed by the firm, had actively participated in the case, either in the trial court or on appeal.

(One member of the Committee would omit item (b) from our opinion, and expresses the view that there is no more reason for a judge to recuse himself in such a situation than where a personal friend is involved.

Our Committee also feels that there would be no seeming impropriety or lack of good taste in your sitting in other cases, particularly after the lapse of several years. Your former firm and its clients, just as in the case of other clients, are entitled to the benefit of your judgment on the court on the cases presented, unless there is disqualification or some consideration of the character indicated above which would cause you to decline to sit. In the final analysis it must be left to the good judgment and conscience of the individual judge.

U.S. COURT OF APPEALS,
EIGHTH CIRCUIT,
Sioux City, Iowa, April 17, 1970.

Senator JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: The United States Court of Appeals for the Eighth Circuit was in session at St. Louis on April 14 when the good news arrived that President Nixon had submitted the nomination of Judge Harry A. Blackmun as a Justice of the Supreme Court to the Senate for its advice and consent. A meeting was held of all of the active judges of the circuit, excluding Judge Blackmun. Each judge expressed the unqualified opinion that Judge Blackmun is exceptionally well qualified to serve as a Justice of the Supreme Court.

The judges directed me to submit to you and your committee the consensus of all of the judges that Judge Blackmun is in every respect eminently fitted to serve as a Supreme Court Justice. Our active Senior Judges Charles J. Vogel and Harvey N. Johnson have advised me that they desire to join in this endorsement. If the committee should so desire, each judge is most willing to personally express his views to the committee. It was the thought that this joint expression would avoid the reading of many letters in which the information would be substantially duplicated.

I have received direct word without solicitation from many of the district judges in our circuit that they enthusiastically support Judge Blackmun's nomination. To my knowledge, there is no judge in this circuit who has any contrary view.

Some of us have served with Judge Blackmun during the entire period that he has served upon the Court of Appeals. This has given us an exceptional opportunity to evaluate his qualifications. He has given full and fair consideration to all issues raised by the parties. Judge Blackmun is a man of great ability. The scholastic record he has made in pursuit of his education, including his work at Harvard, establishes his exceptional mental qualifications and the fact that he has received the full benefit of his schooling. He has been familiar with the operation of the federal courts since shortly after graduation he served as law clerk for the late John B. Sanborn, one of the greatest jurists that has served upon the Eighth Circuit. I have frequently heard Judge Sanborn express praise for Judge Blackmun's judicial qualifications and I know that he enthusiastically supported Judge Blackmun's appointment to the Court of Appeals. His legal teaching experience at the St. Paul and University of Minnesota law schools, his practice of law as a member of a prominent law firm, his services as resident counsel to the Mayo Clinic from 1950 to 1959 and his

services upon many boards connected with the Clinic, all serve as an excellent background to a judicial career.

Judge Blackmun is a man of excellent character and possesses unquestioned integrity. He arrives at his own decisions upon the basis of the facts and applicable law in each case. While he will give careful consideration to the views expressed by counsel and the views expressed by his colleagues on the bench, he makes his own decisions. On the cases assigned to him for opinion, his many reported opinions reflect that his decisions are based upon sound legal reasoning and upon established precedents.

Many members of the Bar have appeared before panels of our court upon which Judge Blackmun has been a member. It is our view that the members of the Bar who are familiar with Judge Blackmun's opinions consider him to be an able and outstanding judge.

If there is any further information which your committee might desire, any member of our court upon request would be happy to furnish you with such information to the best of his ability.

In summary, without hesitation the active and senior members of the Court of Appeals for the Eighth Circuit enthusiastically and without qualification support the nomination of Judge Blackmun for the position of Justice of the Supreme Court. It is our hope that your committee will give full consideration to Judge Blackmun's ability and background and will vote to confirm his appointment.

Respectfully yours,

MARTIN D. VAN OOSTERHOUT.

SUPREME COURT OF THE UNITED STATES,
Washington, D.C., April 20, 1970.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I note from the press that Judge Harry Blackmun of the Eighth Circuit has been nominated for Associate Justice of the Supreme Court and that you will soon be having hearings concerning the same. Having known Judge Blackmun for several years and being a former Circuit Justice to the Eighth Circuit, I felt that I should advise you as to my views concerning Judge Blackmun.

I have known Judge Blackmun ever since he came to the Eighth Circuit in 1959. He is a very dedicated and able judge as is indicated by his opinions. His personal conduct is of the highest order and his integrity without question. Some three years ago he was appointed Chairman of the Research Committee of the Federal Judicial Center, of which I was Director. He worked closely with the Center and rendered it great service not only in the area of research, but in other activities as well. His committee met three or four times at my office and I worked with them very closely. I found Judge Blackmun to be a very personable and effective chairman of a distinguished committee composed of such men as: Judge Carl McGowan; Judge Hubert L. Will; Dr. George Graham (Director, National Academy of Public Administration); Dr. Stanley F. Yolles (Director, National Institute of Mental Health); Dean Phil Neal (University of Chicago Law School) and Professor Maurice Rosenberg (Columbia University Law School).

It is a pleasure for me to give him my unqualified endorsement and I trust that the Committee will find it possible to report his name out favorably in the near future so that the Court may have a full complement of its membership.

With high regard and best wishes, I am

Faithfully,

TOM C. CLARK.

U.S. DISTRICT COURT,
DISTRICT OF NEBRASKA,
Lincoln, Nebr., April 17, 1970.

Hon. JAMES O. EASTLAND,
Chairman, Committee on Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: I have known Judge Harry A. Blackmun since his appointment to the Court of Appeals of the Eighth Circuit. In view of recent events I feel constrained to write on his behalf. I have met him at various circuit

conferences and as a district judge have sat with him on several cases in the Court of Appeals. I am presently serving with him on the Interim Advisory Committee on Judicial Conduct.

We have visited together many times and I have found that we have mutual friends, particularly in Rochester. I have learned from such persons his excellent reputation in his home community. He is a pleasant companion and understanding in his approach to all problems. As a judge he is conscientious and scholarly, yet possessed of what is frequently called good common sense. His standards of excellence and high scholarship will be a credit to any court.

I observe from the press that a digest of his opinions has been furnished to you and to your Committee. Although I analyzed certain of his opinions when first interviewed by the FBI prior to his nomination, at the request of the interviewing agent, I will not prolong this letter by repetition. An examination of his opinions will reveal his ability to read intelligently, to think coherently, to write clearly, and will disclose his capacity for thorough research and for critical thought and will show his faculty for dispassionate judgment. These qualities in an honest and industrious lawyer can produce nothing other than a sound judge. I can truly state that within my acquaintance there is no other Judge whom I could recommend so unreservedly for the position of Justice of the United States Supreme Court as Judge Blackmun.

Respectfully,

ROBERT VAN PELT.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF IOWA,
Des Moines, Iowa, April 27, 1970.

Hon. JAMES O. EASTLAND,
Chairman of the Senate Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: I wish to indicate my unqualified support of the confirmation of the Honorable Harry A. Blackmun as Associate Justice of the Supreme Court of the United States.

Judge Blackmun is one of the finest legal scholars I have ever known. He has rendered distinguished service on the United States Court of Appeals for the Eighth Circuit and without a doubt will serve with the same distinction as Associate Justice of the Supreme Court.

Sincerely yours,

ROY L. STEPHENSON.

U.S. DISTRICT COURTS,
EASTERN AND WESTERN DISTRICTS OF ARKANSAS,
Little Rock, Ark., April 17, 1970.

Hon. JAMES O. EASTLAND,
Chairman, Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: Word has come that shortly your Committee will hold hearings on the nomination of Judge Harry A. Blackmun to the Supreme Court.

Through the years in which Judge Blackmun has been on the Court of Appeals for the Eighth Circuit I have had opportunities to work with him and, of course, as a district Judge I undertake to read all of his opinions.

Judge Blackmun displays a keen and perceptive legal talent which he employs with reason and understanding. I regard him as one of the finer judges in America and hope he will receive the same wholehearted and enthusiastic approval of your Committee as I believe he has received at the bench and bar.

If I can be of any assistance to the Committee in its consideration of Judge Blackmun's nomination, please feel free to call upon me.

Sincerely,

J. SMITH HENLEY,
U.S. District Judge.

**U.S. COURT OF APPEALS,
EIGHTH CIRCUIT,
Topeka City, Topeka, April 28, 1970.**

Senator JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: It has come to my attention that some question has been raised with respect to the propriety of Judge Blackmun sitting on a few cases while on the Court of Appeals in which he held a very minor stock interest in one of the corporate parties. Judge Blackmun has disclosed such participation to the Justice Department and this information has in turn been given to your committee.

During the fifteen years that I have served on the Court of Appeals many of the judges who served on the court during such period as a part of their investment portfolio, like many private individuals and public officials, have included some blue chip common stock hopefully as a hedge against inflation. In most situations, such holdings have been one hundred shares or less. I personally own some stocks. When the matter of sitting on a case in which a judge owns a trivial stock interest arose, I took up the problem with Chief Judge Gardner, who also owned a number of stocks. It was his firm view that it was inconceivable that a minor stock interest should disqualify a judge. The same view was taken by Harvey Johnson during his term as chief judge of our court and so far as I know prior to recent developments in connection with the Haynsworth nomination, no judge dissented from that view.

To the best of my knowledge, any judge holding a minor stock interest in one of the litigants made such interest known to the chief judge and his colleagues on the panel. I know of no instance where a judge's views were warped or biased by a nominal stock interest.

The cases on which Judge Blackmun sat in which he had a small stock interest, to the best of my knowledge, are *Hanson v. Ford Motor Co.*, 278 F.2d 588 (1960); *Kotula v. Ford Motor Co.*, 338 F.2d 732 (1964); and *Mahoney v. Northwestern Bell Telephone Co.*, 377 F.2d 549 (1967). Judge Blackmun disclosed his stock interest to the chief judge and to the panel with whom he sat and all were of the view that he was not disqualified to sit. His interest in Ford I believe was fifty shares of stock and his interest in American Telephone & Telegraph was somewhat smaller. The two Ford cases did not involve any large amounts and the decision adverse to Ford would not have affected the market value of Ford stock at all and would have decreased the book value of Judge Blackmun's interest in the stock only a fraction of a dollar. Certainly no one qualified to serve as a judge would have been prejudiced or biased in such a situation.

It is also noteworthy that Judge Blackmun wrote the opinion in the *Hanson* case upsetting a judgment n.o.v. made in favor of Ford and reinstating the jury verdict. In *Kotula*, Judge Matthes wrote the opinion in which Judge Blackmun and Judge Ridge concurred. On the basis of the sound reasoning set forth in the opinion, the judgment in favor of Ford was upheld. In *Mahoney*, the three judges who heard the case unanimously upheld the district judge's determination that Northwestern Bell's principal place of business is Nebraska and since the plaintiff was also a resident of Nebraska, it was held that diversity jurisdiction did not exist. This of course did not prevent the plaintiff from asserting his rights in the state court if he so chose.

I felt that it was my duty to write this letter in fairness to Judge Blackmun as he was only conforming to the policy of the court in sitting in the cases above discussed. I realize that a serious difference of opinion now exists whether a judge should sit in any case in which he has a stock interest, however trivial his interest may be. Since this controversy has developed, our judges have been uniformly disqualifying themselves from sitting in any case in which they hold stock ownership in one of the litigants and Judge Blackmun has followed this policy.

I am certain that no judge has any desire to sit in any case in which he holds stock in one of the litigants and a judge by disqualifying himself places a burden upon the other judges requiring them to take over some work allotted to him. In a court such as ours where the judges do not reside at the seat of the court, it is often inconvenient to call in another judge to sit on a particular case. If it is necessary that this be done, of course it can be done and is being done on an interim basis until the standards in this respect are set down by the appropriate committee of the American Bar Association who has this problem under consideration in connection with its revision of the rules of judicial ethics.

Very truly yours,

MARTIN D. VAN OOSTERHOUT.

U.S. DISTRICT COURT,
DISTRICT OF MINNESOTA,
Minneapolis, Minn., April 29, 1970.

HON. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: At this time when you and your Committee are considering the confirmation of the President's appointment of Judge Harry A. Blackmun to the Supreme Court of the United States, I would like to express my support of this confirmation.

Judge Harry Blackmun is, in my mind, the finest appellate judge in America. His scholastic credentials are impeccable. The late Judge John Sanborn, of the Eighth Circuit Court of Appeals, at the age of 80 and after approximately forty years as a federal judge, talked to me concerning Judge Blackmun who had once been his law clerk. Judge Sanborn said, "Harry is the best legal scholar I have ever known. Every opinion or memorandum is a treatise in itself. He is deliberate, courageous and moderate. He is the single person who, I believe, would be the ideal appellate judge." In the years since that statement was made, I have often reflected upon those words. Of my own knowledge, I believe they were prophetic and have been proven to be true.

I wholeheartedly express my support of the appointment of Judge Blackmun to the Supreme Court of the United States.

Sincerely yours,

MILES W. LORD.

The CHAIRMAN. Judge Blackmun, will you stand up?

Do you solemnly swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Judge BLACKMUN. I do.

TESTIMONY OF HON. HARRY A. BLACKMUN, NOMINEE TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The CHAIRMAN. I wish you would state for the record what your outside income has been since you have been on the bench.

Judge BLACKMUN. This takes me back, Mr. Chairman, to 1959, down through 1970. My primary source of income has been the salary paid to me as a judge of the U.S. Court of Appeals for the Eighth Circuit.

In addition there has been approximately \$1,500 a year received from interest and dividends on such securities which I owned as an investment. There have been executive's fees in two estates. There have been some capital gains on securities disposed of, and through 1963 there was \$1,500 a year, that is, for—of course, for 1959, most of which was before I went on the bench—1959, 1960, 1961, 1962, 1963, the sum of \$1,500 annually as a fee as director of the Kahler Corp.

The CHAIRMAN. Now, that is really an affiliate of the hospital, is it not?

Judge BLACKMUN. The Kahler Corp. was originally organized through the insistence and leadership of Dr. William J. Mayo, who was one of the two famous brothers. I do not know whether the members of the committee know Rochester, Minn., but it is a small crossroads town or was in those days. It is in the southeastern part of the State. This was at the time when the Mayo name had become magic. Patients were coming there from all over. There was no place to stay except boarding houses. Dr. Will, as he did in so many other ways, felt that one way to protect the patients was to create for them acceptable, clean hotel accommodations.

He brought Arthur Roberts to town—this is long before my time—and then John H. Kahler. The Mayo organizations invested a substantial amount in the organization of the Kahler Corporation and that investment has been held to this day, increased somewhat by bequests to the Mayo Association, now Mayo Foundation.

Over the years, certainly in my time and for a decade before, there were three or four members from the business end of the Mayo organizations who served as Directors of the Kahler Corp. This was part of our business assignments and in due course after I was brought to Rochester, I was asked to take one of those directorates, and held it until the fall of 1963.

The Mayos do not own the controlling interest in Kahler. They own approximately 10 to 1 percent, but that interest with the Kahler family interests together create a practical controlling interest in the Kahler Corp.

It was largely as a service to the Mayo organizations that, of course, prompted me to go on originally and suggested that I stay on until 1963.

The CHAIRMAN. I believe you own 25 shares of stock in the Ford Motor Co., is that correct, or you did own it?

Judge BLACKMUN. I did own 50 shares originally and this has been increased, as I recall, to 100 shares by stock splits.

The CHAIRMAN. How many million shares are outstanding, do you recall?

Judge BLACKMUN. I do not personally recall, Mr. Chairman, but it is set forth, I think, in the Deputy's letter. It is some 15 million originally and has been increased to a much larger figure.

The CHAIRMAN. Now, what other stock do you own?

Judge BLACKMUN. I believe that the committee has in its files a list which I personally prepared of the investment portfolio, small though it was, which I possessed when I took my oath on November 4, 1959. Specifically, at that time, Atlantic Coast Line, Chemical Bank New York Trust, then the Ford shares, 100 shares of Kahler, some stock in Morgan-Guaranty Trust Co., Panhandle Eastern, U.S. Treasury C.I.'s, a small amount, plus a savings account.

Since then, as other information submitted to the committee which I prepared discloses, such purchases and sales that have been made during my period on the bench and then finally, my current investment list which, just to name the securities, shares of American Security and Trust Co., unit shares with American Securities Corporation—.

The CHAIRMAN. I do not think all that is necessary to put in.

Judge BLACKMUN. All right. It is all there in the—in other words, in summary, what I have given to the Committee is a true and correct statement.

The CHAIRMAN. It will be printed in the record.

Now, I am requested by a member of the Senate to ask you two questions.

Judge Blackmun, do you believe that the only proper function of a Justice of the Supreme Court is to interpret the Constitution and laws of the United States?

Judge BLACKMUN. Of course, the answer to that question, Mr. Chairman, most definitely be in the affirmative.

The CHAIRMAN. Yes.

If you do so believe, to what extent, if at all, do you think it proper for a Justice of the Supreme Court in interpreting the Constitution and laws of the United States to take into account his own personal idea of what constitutes enlightened social, economic or political policy?

Judge BLACKMUN. Of course, this is a changing world. It has been this way since the founding of our Nation. I personally feel that the Constitution is a document of specified words and construction. I would do my best not to have my decision affected by my personal ideas and philosophy, but would attempt to construe that instrument in the light of what I feel is its definite and determined meaning. Of course, many times this is obscure.

The CHAIRMAN. Senator McClellan.

Senator McCLELLAN. Mr. Chairman, I do not think I have any questions at this time. I pretty well satisfied myself through channels available to me regarding the nominee's qualifications, his general philosophy of the law and our system of jurisprudence, and also as to his judicial temperament. I have examined the material that has been submitted through the Department of Justice with respect to his personal affairs or financial affairs and I have also taken into account that he comes highly recommended from most creditable and authoritative sources.

I have learned nothing of substance that militates against his character or against his qualifications. I therefore, so far as I know now—unless there should be some unforeseen developments of which I am not aware and do not anticipate—I am prepared to support the confirmation.

I want to congratulate you, Judge, upon receiving this great distinction and recognition and I trust that you will be confirmed promptly and assume your duties at an early date and that you will have a very successful and rewarding career as a member of the highest court of our land.

Judge BLACKMUN. Thank you. That means a great deal coming from the Senator from a State in the Eighth Circuit.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. Judge, Chief Justice Marshall stated in substance in his famous opinion in Gibbons versus Ogden that the patriots who framed the Constitution and the people who ratified it must be understood to have intended what they have said. I would be glad to have your comments on that statement of Chief Justice Marshall.

Judge BLACKMUN. Senator Ervin, I think that is a very definite, easily understood statement. It is one which for me is the starting point of constitutional interpretation and construction. Mr. Chief Justice Marshall's statements, of course, almost deserve an attitude of sanctity. But I certainly would assume that the Constitution means what it says.

Senator ERVIN. I will ask you if you agree with me that the reason the Constitution has been able to endure so well arises out of the fact that the grants of the power which the Constitution makes extends into the future?

Judge BLACKMUN. This is the way it has to be, Senator, and this is what occasions now and then amendments to the Constitution, to meet new needs that were not foreseen years ago.

Senator ERVIN. Chief Justice Marshall also stated in substance in probably his greatest opinion, *Marbury versus Madison*, after pointing out that the Constitution requires each Supreme Court Justice to take an oath to support it, that this oath imposes upon the Supreme Court Justice the obligation to accept the Constitution as a rule for the governing of his official actions. I would like to have your comments on that statement.

Judge BLACKMUN. Of course, Senator Ervin, 10, going on 11 years ago, I took that rather awesome oath. It was administered to me by Judge John B. Sanborn, a man whom I revere in memory. I know what he thought of that oath and I hope that I have been able to fulfill its obligations in much the same measure as he did.

I would regard any new oath which were to come my way as one deserving the same seriousness of attention and obligation as before. So, my answer to you is definitely in the affirmative.

Senator ERVIN. I would like to make this observation. So far as I have been able to do so, in the limited time at my disposal, I have tried to familiarize myself with your actions as a member of the U.S. Court of Appeals and I have reached the conclusion that you are able and willing to exercise what the Chief Justices of the States described in their resolution in Pasadena, Calif., in 1958 as the highest judicial attribute; that is, the judicial attribute of self-restraint. On the basis of your past personal and judicial conduct I expect to vote for your confirmation.

Judge BLACKMUN. Thank you, Senator Ervin. I personally feel this is very important in a Federal judge. And I would hope that in the future, whatever it may be for me, I would continue in that vein.

The CHAIRMAN. Senator Hart.

Senator HART. Mr. Chairman, I think in fairness I should address to Judge Blackmun a question that I directed to earlier nominees. The President indicated first when he accepted his party's nomination, and then later in a press conference, some of the elements that he would seek in those he would nominate to the Supreme Court. Putting them in capsule, one is a man with a mark of excellence. And the second, a strict constructionist. And then in his Miami acceptance speech, a man devoted to the great principles of civil rights.

With respect to the first, when I addressed that question to an earlier nominee I acknowledged that he could not express an opinion about his distinction or excellence. But all the information that has been made available to us would suggest that indeed you do possess in full measure the excellence which I think, whether we always required it before, now and hereafter we should require of a nominee to the Supreme Court, that the selection of a nominee should be made from among those on the list of the best.

Distinction can be earned in many ways, not necessarily as a sitting Federal judge, but by every standard, beginning with summa cum laude graduation, you do have many marks of excellence.

What do you think the President means when he says he is looking for a strict constructionist? I did address that question—

Judge BLACKMUN. Senator Hart, I suppose—I do not mean to sound facetious—I suppose the President would be the best man to answer that. I think, in my own view, that perhaps the answer lies in the questions which the Chairman and Senator McClellan and Senator Ervin

have asked me and the answers I have tried to give to those general questions.

In a moment of great weakness when the press caught me in St. Louis some short time ago, the same question was asked and my answer was that some of these things, of course, are labels.

All I can say is when one has been on the Federal bench for a decade, his record is there. It is in the open. This is the discipline of appellate judicial work, of course. Every decision is by writing and there for the public to see.

Now, how some would interpret that as a strict constructionist or as a loose one I do not know. I can say no more than that.

Senator HART. On that point, you exchanged observations with Senator McClellan—no, perhaps it was to the question that the Chairman had been asked to address to you—that the Founding Fathers put something on paper and they meant what they said, and you agreed that your obligation was to identify and interpret what the founders said. You concluded your answer by saying that sometimes it is obscure as to their meaning.

Judge BLACKMUN. Of course, times are different in 1970 than they were 200 years ago. No body of men 200 years ago could determine what our problems are today. That is, I suppose, what we have courts for, Federal courts for, to construe the Constitution in the light of current problems. But I think as a beginning point the Founding Fathers must have intended what they said.

Senator HART. But that document frequently, I suppose, occasionally certainly, does not specifically address itself to the concrete question that is brought before the court. Do you agree that the work of a member of the Supreme Court by its very nature requires some interpretation beyond the words of the Constitution and this interpretation requires an understanding of the contemporary society which gives rise to the concrete problem that is presented?

Judge BLACKMUN. Of course, I think this is saying the same thing perhaps in better language than I was able to produce. This again is why we have courts. Conditions are different today than they were even 10 years ago. I see this in cases that come to us. This is one reason the Constitution has endured, that it is in a way a rigid instrument and in a way a very flexible one. We search for its meaning. Sometimes it is easy, sometimes it is very, very difficult.

Senator HART. Judge, two men whom I respect highly, both judges, one a former Chief Justice of the Michigan Supreme Court, still a Justice of that court, John Dethmers, and a member of the Sixth Federal Circuit, Judge McCree, know your work. Both expressed to me their very highest regard for you. I appreciate their interest and willingness to express themselves and I share their feeling that the President has selected from among the best.

Lastly, Mr. Chairman, I think that we should acknowledge the American Bar Association's more full and complete report on the nomination. You put it in the record. It describes a survey the Judicial Selection Committee made in full detail. They have inquired of the deans of all of the law schools in the eighth circuit, they have inquired of a number of law faculty members outside the eighth circuit. This is all to the good. I note also that they indicate in a sense that it is an interim report and that the investigation is continuing and that they would like the privilege of submitting a further report

after the conclusion of the Judiciary Committee hearing. But based on the much fuller inquiry so far, as they spell it out, than they made in earlier nominations, they endorse the nomination.

I would anticipate that I would vote to report favorably the nomination.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. I want to extend a word of welcome to you, Judge Blackmun, as extended by my colleagues here this morning. I believe that your nomination vindicates what the Senate did on the prior two nominations. In those two instances the important thing was not so much that we rejected a particular man, but that we reestablished a very high standard of excellence in terms of Supreme Court nominations, and certainly it would appear to me that you meet this standard of quality, and I am pleased to welcome you.

Last evening I had an opportunity to participate in a ceremony which honored the distinguished Chief Justice, retired, of the U.S. Supreme Court, Justice Warren, in which he received, for his service on the Supreme Court, what is called the Profile in Courage Award given by B'nai B'rith here in Washington. And though I know the chief purpose and function of today's hearings is to hear from you, I did make some observations last night at that ceremony, in terms of defining what I think was Justice Warren's very unique contribution to the court and to our society in the monumental decisions he participated in as the Chief Justice which reestablished our sense of freedoms and our sense of liberty, and I spoke of my fears about the present period in national life, and I would like just to repeat a very brief part of that statement of what I said and then to get your reaction to it, in a general way insofar as you feel comfortable in commenting or as specific as you feel that you could comment.

And so with your indulgence I will just read a rather brief part of this speech:

I fear that we are entering another era of crisis, an era of inaction and regression and repression easily matching that which faced Chief Justice Warren when he arrived in Washington, an era which will demand frequent profiles in courage if we are to survive as a free people. Many of the signs are small, but they are ominous. Taken separately, some may not seem unbearable or worth fighting about. But taken together they suggest a trend and a pattern which could lead to an ever faster circle of repression and reaction with no conceivable end. They are gnawing at the precious foundations of our freedom, chipping away piece by piece the barriers against tyranny and oppression which the framers of the Constitution erected.

Even to recite calmly a list of the symptoms is to give the impression that 1984 may be less than 14 years away, and that "Z" could happen here:

More wiretapping in more kinds of cases, and assertion of the absolute power to bug dissenters without court orders.

Pressures for no-knock searches and for detention without bail.

The use of scare tactics to discourage attendance at protest gatherings, and the obsessive focus on the few lawbreakers in peaceful crowds of ten of thousands.

Growing use of domestic spys—in schools, in political groups, at public meetings, of informants who sometimes help to foment the very acts they are supposed to be investigating.

Verbal harassment of dissenters by political leaders, not on the merits of the issues involved, but through guilt by association and exaggerated codewords.

The new application form for Washington demonstration permits with blanks for everything from philosophy to arrest records.

A new attempt to prevent disagreeable protests near the White House altogether.

The installation in the White House of a journalist with carte blanche to fish through Federal tax files and other confidential materials.

Executive resistance to a bill to eliminate an anachronistic and frightening provision for Federal detention camps, resistance which melted only when it became publicly embarrassing.

Serious consideration being given to a proposal to remove five and six year old children from their homes into correctional camps on the basis of tests of their potential for later criminality.

Sharp curtailment of the availability of Federal parole, the best incentive known to give prisoners hope and a goal as they are rehabilitated.

Refusal to support extension of the Voting Rights Act of 1965, the most successful contribution to universal suffrage since the 19th Amendment.

Federal encouragement of continued resistance to Constitutionally required school desegregation.

Past court nominees chosen for their willingness to resist Constitutional mandates, rather than for eminence or leadership.

Official solicitation of letters of endorsement of a court nominee from Federal employees and judges, but investigating and threatening of government funded lawyers who write letters opposing the nominee.

Inspection of incoming foreign mail by Federal authorities.

A concerted effort to interfere with the freedom of the press, led by the number 2 man in the Administration.

Harassing calls to the networks by the Chairman of the Federal Communications Commission, and to local media by a member of the Subversive Activities Control Board and by our Nation's first information czar.

Harassment of the national educational TV network by the Internal Revenue Service.

A constant effort to blame the Nation's ills on scapegoats such as the previous Attorney General.

It is a shocking and terrifying list, I believe. It betrays a total lack of respect for our heritage of freedom and constitutes an immediate threat to our system. The most disturbing element is perhaps the rhetoric which accompanies these symptoms of incipient Constitutional retrograde. The innuendoes are those of the fifties. The implication is that anyone who believes in the principles of the Bill of Rights or the 14th Amendment is somehow unpatriotic, that the 20th Century cannot afford the luxury of liberty, that we should go on a diet that dispenses with the frosting of freedom on America's cake.

I believe, Mr. Nominee, that this is the kind of atmosphere we are entering and the challenge which will be posed to the Supreme Court during the immediate future. So, what I would be interested in is in your views of the Supreme Court as the protector of our basic liberties and our basic freedoms in the face of this challenge.

Judge BLACKMUN, Senator Kennedy, that, of course, is a most impressive list that you have compiled so very well.

Mr. Chief Justice Warren came here and guided the Court through a very difficult period. I, as a Federal judge, should not and would not be qualified to comment on those items which you listed which are essentially political or economic. I am not well versed in those fields.

I suppose there are some others there that you have listed where perhaps a measure of restraint on my part would be indicated because I think some of those things are certain to come before the Court before too long.

I dislike to sound evasive to that degree. I like to feel, however, that my record and the opinions that I have written and which are spread upon the law books will show, particularly in the civil rights area and in the labor area and in the treatment of little people, what I hope is a sensitivity to their problems. I think I am fully aware of most of the matters you mentioned. I am concerned about many of them. I am not concerned that the issues exist, concerned in the sense

of worrying that the issues exist, because this country has passed through many a crisis before and it will weather those that are before us.

I think the fact that the issues are there means we are on the way to resolving many of them. It is my earnest hope and prayer that this is so.

If I may make one comment, somewhere in that list I think was something about the solicitation of letters from Federal employees. I must give you assurance that I have not indulged in that practice during the present emergency in my life, and I hope you will accept my statement.

On a more personal level I could not be the parent, I was going to say father, but maybe I have not qualified much more than a general parent to three daughters who have now attained age 20 and a little beyond, without being aware of these things which you have mentioned. These are difficult times. I do not despair. I think they are exciting times in which to live.

This does not mean that I view with any sense of security or excessive calmness whatever lies ahead for me in the next few years, be it on the court on which I am presently sitting or on another court. All I can say and plead in answer to your question is that insofar as these matters confront me as a member of the judiciary, and not as a Member of the Congress, I am aware of them and concerned about them in the sense that I am aware of them, but I am basically optimistic that these can be properly resolved. I shall do my best.

Senator KENNEDY. From your conversations and contacts with your three daughters, one of whom I realize is living up in Massachusetts now, and other young people, could you give us any kind of a feeling as to what you believe are some of their reservations in terms of alienation from the system? This is one of the real crisis areas, I believe, in our country and our society today.

One of the things that I have been interested in, and I have asked past nominees about, is their view about some of the chief challenges which are facing our society today, because I think, as all of us know, there are completely discretionary matters which come before the court, for example, in extending certiorari to particular cases, or sitting on emergency petitions as circuit justice where actions of the Supreme Court Justices are almost totally discretionary and they must bring forth all of their own experience, sensitivities and sense of priorities. So I would be interested, to the extent that you feel comfortable, in hearing from you on some of the challenges which are before us in terms of our society today.

Judge BLACKMUN. These little daughters of ours, I call them little even though the two younger ones are now married and the oldest of whom is a constituent of yours—they have been in my view able, intelligent, questioning individuals. There have been times, I know, when they have regarded me as perhaps, to use the vernacular and the expression that one of them used, as an old crock, but, in self-defense, I believe and feel that Mrs. Blackmun and I have tried to communicate with these young people. Mrs. Blackmun has been more successful than I have as a matter of consistency, but I think we have broken through whatever barrier there is. Nancy, who lives in Massachusetts, and I have had many long talks about, in particular, things that have hap-

pened at Harvard Square and the environs in the last 2 or 3 years because she lives still in Cambridge, and I respect her opinion. I respect her attitude toward some of these problems. I do not always agree, but she thinks and she has two degrees from institutions in your State.

I will say this, that the emotional and traumatic days of the past 2 weeks have brought us closer together as a family than ever before, and when Susan, our youngest daughter, who is on the surface the most slip—I will not tell you what she calls me when she wants to insult me—but she told me this. She said: "Daddy, I think I understand you better now than I ever have before."

I have no problem with the girls. I think they are good citizens. One has to work at it and sometimes go a little farther than half away but I believe that they feel that maybe the old man could be a lot worse than he is.

They do represent the younger thinking but I am gratified that in the case of each one of them they are thinking and they are talking about issues. That, to me, is one of the most encouraging things.

If I may add one other thing, on a personal basis, I have never lived through an experience of this kind before. The outpouring of letters, most of them favorable, some not, from friends and acquaintances whose lives have brushed mine 20, 30, 40 years ago, from utter strangers, what comes through to me most clearly is the utter respect which the little person has for the Supreme Court of the United States and I think that the little person feels this is the real bastion of freedom and protection of strength in this Nation. It was a lesson that was taught to me very vividly in the last two weeks and one which I think I shall never forget.

I am sorry to answer you on a personal plane but perhaps your question was so directed.

Senator KENNEDY. Certainly, I think your response in terms of the alienation of the youth has been extremely helpful. Some of the other kinds of challenges that I think are of great importance and significance are the problems involving poverty and equality between the races. I am just wondering if there is anything in a general way that you would like to say in terms of your own sensitivity and understanding on the broad nature of these problems.

Judge BLACKMUN. Senator Kennedy, I think there is very little more I can say. I am aware of these problems. One could not sit on the bench of a circuit which runs from the Canadian border to the northern boundary of Louisiana without being aware of all kinds of problems in the North and in the South. And I think perhaps my best answer is to rely again on the record of my decisions in these problems.

In fairness to myself I think I have never avoided taking on the preparation of an opinion in a case which is sensitive. Sometimes this is done on the Federal bench. It is not done in our circuit. I have not done it.

Senator KENNEDY. If I could move into a different area, this is a point that has been raised in the press and I think you probably want to respond to it. There has been a great deal of discussion about your relationship with the Chief Justice. Could you tell us a little bit about this to the extent you think it would be useful and helpful?

I think what I am getting at is, will you feel completely comfortable in disagreeing with the Chief Justice? I know you have been longtime

friends and have had a good deal of mutual respect for each other, but could you for the sake of this record perhaps describe in some way the nature of that relationship, and how you would view that relationship were you to be approved?

Judge BLACKMUN. Yes. I think your question, Senator Kennedy, of course, is an appropriate and fair one. I have known the Chief Justice all of my life that I can recollect. I think our paths crossed first when our respective mothers packed us off to Sunday school at age 4 or 5.

As has been reported in the press, we went through grade school together and there our school paths separated. He and I went to different high schools. In those days in St. Paul one could select the school to which he desired to go.

I was the lucky recipient of a scholarship to your alma mater and took advantage of it. I question my wisdom in retrospect in some respects because I did not have anything else to go with it.

He did not go East. I went East. I was there all year, I did not get home at Christmas, and our association necessarily was one of very limited relationship during much of those years, seven in number.

Our association really was that of childhood and adolescence. Our professional lives have been separated. He practiced in the city of St. Paul and I practiced in the city of Minneapolis. I suppose to those who are not familiar with the Twin Cities this does not seem like much of a distinction but there is generally a barrier between the two so far as the practice of law is concerned. Ramsey County, St. Paul, lawyers on occasion appear in Minneapolis and the other way around, but not too frequently.

Never have we associated in a case. Never have we been opposed in a case. He has served on the board of the William Mitchell College of Law, the old St. Paul College of Law, as I have, but until the last year we have never served together as I recall.

The Chief Justice—well, I left Minneapolis in 1950. That is almost 20 years ago. He came to Washington in 1953, more than 17 years ago. That is a separation of 1,500 miles. I have been in Washington many times when I have not seen him or talked with him. He has been in Minnesota many times when he has not seen or talked with me.

You are aware, I think, of the fact that he did me the honor of asking me to stand up at his side when he was married to Mrs. Berger, the then Elvara Stromberg, a very small wedding in her home. She had one attendant and I was his only attendant.

I regard him as a good friend. As we grew up together I think we indulged more in arguments than we did in agreement. This was good for us.

I would have no hesitation whatsoever, and he is the first person to be aware of this, in disagreeing with him, or, if I may speak for him, and this is presumptuous so to do, in his disagreeing with me. I think we respect each other.

There will be times undoubtedly, if this nomination were to be confirmed, when our friendship of the past were to be strained mightily because of disagreement. I do not fear this. But I would not wish to conceal in any way the fact that he and I have been friends a long time, in our childhood and adolescent years particularly. I think it is true

that half of his adult, certainly half of his professional life almost, has been in Washington and not in Minnesota.

Senator KENNEDY. A very good answer.

Has there ever been a point where you thought your relationship with the Mayo Clinic might raise a question as to whether you could properly sit in the doctor versus patient or hospital versus doctor or hospital versus patient cases?

Judge BLACKMUN. If I ever felt that way, Senator Kennedy, I would immediately disqualify. We, of course, have had some malpractice cases. We have had some cigarette cases and the like. I find myself confronted with the fact that my colleagues say, I am glad you are sitting on this kind of a case because you know medical problems better than I do. I think most of those cases—I have not listed this area—have been resolved in favor of the complaining patient rather than the defending doctor, whoever it might have been.

I would, of course, never sit on a case involving the Mayo Clinic—ever. I think my answer is that my experience there has fortified me, made me somewhat better educated and more knowledgeable in medical fields than I otherwise would be.

I might say in Rochester to the little children everybody is a doctor, whether he is a lawyer or cutting the grass. He is still doctor to the little kids. So if some of them were to call me doctor, I am afraid I would answer that.

Senator KENNEDY. The suggestion was made on Monday by a Member of the House of Representatives that when a judge withdraws from a later case involving a party with whom he has had some relationship, that is proof that he erred in not withdrawing from an earlier case involving the same party. Would you agree with that? Would you conclude from your own experience that evolving standards can alter a judge's decision in this regard?

Judge BLACKMUN. This may well have reference to one case in which I was involved. I would hope that that is not indicative of any feelings of failure or guilt on my part. I think, Senator Kennedy, the times have changed.

Senator KENNEDY. That suggestion by a Member of the House of Representatives was in no way directed toward you.

Judge BLACKMUN. I think the times have changed a great deal in the past 5 years and I would not say for the worse by any means. I know today, in view of events over the past 5 years, that I am much more careful about disqualifying.

On the other hand, I venture to say this. Our court operates differently than does the U.S. Court of Appeals here in Washington, in Chicago, or the one in New York, where the judges are all present. We live in the field. Our calendars are fixed a month in advance. One cannot always tell from those calendars just who the parties are and when we get to St. Louis and review the records and briefs prior to argument, and disqualify, it is always a disruptive move because then we must get in a district judge or transfer cases between divisions.

Perhaps our tendency has been too much the other way and not disqualifying in our court. But I have nothing, in my own view, to apologize for, in what has been done.

On the other hand, I am perhaps the last one with an objective judgment on what I have done.

Senator KENNEDY. Mr. Nominee, in response to an earlier question by Senator Hart on the questions of "strict construction" and what label one might bear, do I understand from your earlier responses that when you go on to the Supreme Court, that you will not be attempting to represent any philosophical approach, but will only be representing your own best judgment in terms of the particular factual situation that is represented by the case which is before you?

Judge BLACKMUN. Senator Kennedy, I would hope and pray that that is indeed the case. I think all of us must recognize, however, that we are what we are because of background and upbringing, and to the extent one has developed his personal philosophy, that enters into it, too. I can only say I shall do my best. I like to feel I have been fairly successful at that so far.

Senator KENNEDY. I would like just to read two quotations from a speech you gave and see if there is anything that you would like to elaborate on. This is included in *Federal Rules Decisions*, volume 34 at page 343. This is a very short paragraph in which you say:

Judicial attitudes change. Court personnel changes. We progress, we hope, in legal and even in constitutional interpretation. As in medicine, with which I am somewhat familiar, so with law, although more slowly, there is constant movement. We should be aware of this, anticipate it, not resent it. We would not wish the situation to be otherwise.

Does that represent fairly your view in terms of the role you will play?

Judge BLACKMUN. I think so, Senator. That paper was given at our circuit conference a few years ago. It was on a subject that I felt myself not very well qualified to give. The program committee asked me to give it because the district judges were confused, were varying in their results, particularly in postconviction matters, habeas corpus, 2255's and the like, and the assignment compelled me to get into this area.

I am not at all certain it is a very good paper, although it has been cited a number of times. What I was trying to get across was that the law does develop, particularly in procedural matters, and that what was true in 1950 procedurally is not necessarily true as of the date of that paper, whenever it was, particularly in the light of currently decided Supreme Court cases, and that the district judge who is on the firing line in these matters must be aware of them and accept what the Supreme Court says as, in effect, our guiding precedent.

Senator KENNEDY. Later on in that same speech you said:

Our professional satisfaction lies in a job performed responsibly and not avoiding responsibility.

Would you say that this is a fair summation of your judicial philosophy?

Judge BLACKMUN. Well, you embarrass me somewhat, Senator Kennedy, because I repeat what I said a little while ago, that I feel, and I do not resent it, I feel that I have had slightly more than my share of the sensitive cases, for a number of reasons. I ask you to accept my statement that I have never avoided a sensitive case and hence, what I perhaps said in that paper long ago, it does represent my continuing philosophy.

Senator KENNEDY. Thank you very much. You have been extremely responsive to my questions. I want to thank you for your comments.

The CHAIRMAN, Senator Bayh.

Senator BAYH. Thank you, Mr. Chairman.

Judge Blackmun, I listened with great interest to questions asked by my distinguished colleagues and your responses which impressed me as straightforward, open and candid.

I do have a few questions I would like to ask.

Before doing so, I would like to add my commendations to those of Senator Hart to the American Bar Association for the different approach which they have taken with this nomination.

I also think, inasmuch as I have not been totally laudatory toward the Justice Department as a result of their past investigations, I may say that it is my judgment that they have approached your nomination, sir, with a greater degree of care, and the information which they have given us, which is to your credit, has been presented in a more orderly fashion in which the appearance of candor is obvious.

It is my judgment, as facts are available now, that the fact that a man of your caliber, of your excellence, is before us today may indeed give some salve for the wounds which have been incurred because of past confrontations and very distasteful disagreements. Perhaps these old battles have been worth while.

Let me just touch very quickly on some of the points that have been raised earlier to clarify my own mind.

You have expressed, I think, very appropriately in the cases of *Nash v. Swanson* and *Young v. Mayer*, to recall two that I read about, the role of the circuit court judge in looking at a case and comparing it to what the Supreme Court has said. It is fair to say, is it not, from what I have heard here today and what I have read attributed to you, I hope accurately, that you would view your role as a Supreme Court Justice in a different capacity from that as a circuit court judge? Perhaps I should refine that by asking if you feel irrevocably bound to past Supreme Court precedents? In the cases that I mentioned and in some of your statements you stressed precedent and stressed the role of the Supreme Court, but now as a prospective Supreme Court Justice yourself, you will be in a different role. You might comment a bit further on this different capacity. I would appreciate it.

Judge BLACKMUN. Of course, I have not been without criticism for my attitude as a judge of an inferior Federal court on Supreme Court opinions, but I suppose it comes about because of the training I have had and the attitude of sanctity toward the supreme tribunal of our land. Undoubtedly sitting on that court is a different assignment. To a lawyer and to a judge, well, to any lawyer, this, of course, is the—this is the terrible end of the line of litigation. There is no further place to go. The decision had better be right.

This is an awesome realization.

Precedent, I think, is a very valuable thing in the law.

A lawyer has to say, however, that it is not an absolute. Judges, even Justices of the Supreme Court, are humans and I suppose attitudes change as we go along.

I have made statements before that the overruling by the Supreme Court of a prior precedent is not a matter always of great alarm. I think this has happened throughout its history. As times have changed, Justices have changed. People take a second look.

I think my answer, Senator Bayh, is that I would have to start with precedent which has been established by Justices of experience, most of them with far greater intellect than I could hope to conjure up. I take it from there and do the best I can. But as I tried to answer Senator Kennedy, I shall endeavor to do what I have always done as a judge, having the privilege of serving on the Federal court of this land, to decide the case as I think it should be decided.

Senator BAYH. I appreciate that fact, that one of legal training recognizes the importance of precedent.

Judge BLACKMUN. These are the rules by which we all try to live together.

Senator BAYH. I concur. Although precedent is strong, nevertheless it is not the kind of think we worship and I appreciate your explaining that.

In a New York Times article of April 20th, I think it was, you were quoted as saying man is a social being and law is in part social. I suppose this is in line with your answer to Senator Kennedy in regard to looking at the whole picture and recognizing that times change?

Judge BLACKMUN. Well, despite the fact that the press was on me at a very climatic, critical moment of my life, and I hardly know what I said, I think I would agree with that statement still.

Senator BAYH. Would you care to offer an observation—this goes to the point raised by Senator Kennedy in the speech he made last evening. One of the news media conducted a poll on the Bill of Rights and between two-thirds and three-fourths of the people who were polled responded that they would not look with disfavor on repealing portions of the Bill of Rights. Would you care to comment on the role of those amendments?

Judge BLACKMUN. Well, I doubt if it is appropriate for a Federal judge to comment on this. These are the tools with which we work. There they are and they are very precious to me.

This is more of a political problem for which you, Senator Bayh, are better trained than I ever could be. As long as that Bill of Rights is there, this is—well, I accept it and I am not qualified to state that certain portions of it ought to be changed or repealed. I think it is a magnificent instrument.

Senator BAYH. Well, I am not surprised to get this response but I think it is important for us not to ignore the opportunity we have on occasions such as this to say to some of our citizens who might be swayed by temporary passions or emotions that they are treading on very thin ice if they get involved in tampering with those freedoms, those rights that have been so important to us.

Let me, if I may, get into another area that I am sure will come as no surprise to you, an area that has been the subject of some discussion and concern in regard to one of the previous nominations, this whole business of ethical standards and conflict of interest.

I have expressed publicly and I express to you, sir, a great reluctance as a human being to judge another human being. Our system calls for some of us to judge others. We may or may not like it, but if we are participating in carrying forth our responsibilities we must accept this.

You have had a distinguished role in judging. Certainly those of us on the Senate Judiciary Committee are called to judge the competence and qualifications of others as we do our duty.

I think particularly today, and I notice you stress this, with the changing times the people are looking at our system, are asking us to pay more attention, to examine more closely some of the things which we may have passed off, not intentionally, but rather cavalierly before, and it is because of this continuing concern that I have, that I want to pose some questions, if I may, sir, to you relative to financial interest.

Is it accurate to suggest that the information which was included in response to Senator Eastland's questions covered all of the outside income and all of the financial interest that you have held while you have been on the bench? The material provided to us by the Justice Department and incorporated in Mr. Kleindienst's letter?

Judge BLACKMUN. This is correct, sir.

Senator BAYH. I think I should say before going further, as I have said in previous hearings, I am not nearly so concerned as to what you or I may have done or may have thought yesterday as I am about what we intend to do or we think today and tomorrow. As I understand Mr. Kleindienst's letter to the chairman of our committee, you have never sat on any cases involving any corporation or other entity for which you were then serving as an officer, director, or in any similar capacity. Is that accurate?

Judge BLACKMUN. That is accurate.

Senator BAYH. Is it correct that you never sat on a case involving a party whom you represented as an attorney?

Judge BLACKMUN. That is also correct, with the understanding that I did sit on some cases which were clients of my old office pre-1950 but which I have myself never represented.

Senator BAYH. That is the question I was raising. And you say that is accurate.

Judge BLACKMUN. That is accurate.

Senator BAYH. Is it correct that you have never sat in any case involving a party represented by your former law firm if the party had been a client at the time you were a member of the firm? Not prior, but I think you just answered that question, did you not?

Judge BLACKMUN. I thought the word regular was in there. Regular client.

Senator BAYH. Yes.

Judge BLACKMUN. The answer to that is correct.

Senator BAYH. Now, there has been some notice in the newspapers in regard to a few cases in which you did sit and you did at the same time have financial interests in one of the parties. It was as I recall, a relatively insignificant interest, but that you did in fact sit on some of these cases. I know that it has been some time since 1960 and I do not want to ask questions unless your memory has been properly refreshed, but it has been brought to my attention that the cases of *Hanson v. Ford Motor Co.* in 1960, *Kotula v. Ford Motor Co.* in 1964, *Mahoney v. Northwestern Bell Telephone Co.*, and *Minnesota Mining v. Superior Insulating Tape*, were four cases in which you did own some stock in one of the corporations involved. Is that accurate?

Judge BLACKMUN. It is accurate as to the first three. The fourth case is one that I dug up in my search last week. The case was heard and decided before I acquired my little holding.

Senator BAYH. But the opinion had not been written, is that accurate?

Judge BLACKMUN. Oh, indeed, it had been. The opinion was filed on December 1, 1960. I acquired my stock in 3M on December 28th. What happened was that a petition for rehearing was filed by 3M which was the losing party. I cannot give you the exact date because it was filed after the 10 days which I am sure was the period then allowed by our rules. Our clerk automatically grants extensions of time. It came in sometime in January. We promptly denied it and adhered to our decision adverse to 3M. So, if there is any possible consequence to me as an individual in this very small holding it was an adverse consequence.

Senator BAYH. I understand that you did rule against Minnesota and I also understand in the first Ford case you ruled against Ford. I do not ask the question suggesting, and I tried to make this very clear so far as one of the previous nominees was concerned, that he or you in any way were influenced in the final decision by your holdings.

I would like to proceed out of these questions to try to see where we go from here relative to standards for the Federal judiciary. If you feel, as a judge who will be sitting on the Supreme Court, that this would put you in an adverse position, then I certainly will accept your refusal to comment.

Those are, to your judgment, the only four cases that you were in any way involved with financially that came before you?

Judge BLACKMUN. I certainly have tried hard to review the over 900 cases with which I have had something to do in my 10 plus years. These are the only four that I have uncovered. Two of them were adverse to my so-called interests. Two were the other way. The third one, the Northwestern Bell, of course, was a step removed because I assume Northwestern Bell is a controlled subsidiary of A.T. & T.

It was a foolish little case anyway, should never have been in Federal court. There was not any question of the decision. There was no real problem to it. But those are the only ones, Senator Bayh.

Senator BAYH. I understand that there was one other, *Bridgeman v. Gateway Ford Truck Sales* this year, in which you removed yourself from the case, is that accurate?

Judge BLACKMUN. This is correct.

Senator BAYH. Now, in these cases that you did have the relatively insignificant financial interest in, did any of them involve a major legal issue or social issue that had an impact on the company or the industry involved or was the impact of the case confined to the amount of money involved in the immediate case?

Judge BLACKMUN. I think the answer to that is definitely the latter. The *Hanson* case was an alleged—was a situation of alleged fraudulent representations made to a prospective dealer. The *Kotula* case was a case under the Automobile Dealers Franchise Act for an alleged wrongful termination of a particular dealership in Minnesota. The *Northwestern Bell* case, I cannot even tell you the merits because we never got to the merits. It was a procedural issue. It was not very important. Obviously, there was not a great deal that was requested.

The *Minnesota Mining* case was a typical patent action instituted

by 3M for patent infringement. We held for the—we granted the defendant's motion for summary judgment. That, too, was a procedural matter.

I think clearly none of these involved any social issues and nothing more than—none of them was more than a private controversy between the parties to the litigation.

Senator BAYH. The only one that I can see any possible broader implication in would be the *Kotula* case, where you have the conflict between the dealer and the motor company, Ford Motor Co. itself. Would there have been any possibility that if the court had ruled favorably for the dealer in that case that this might have prompted other dealers to bring cases elsewhere outside of this immediate case?

Judge BLACKMUN. That would be hard for me to measure. I can see the need for the legislation which is on the books. As I recall, this was one of the early cases. There have not been too many. It gets down usually to a question of the efficiency of the dealer according to the manufacturer's standpoint. We had no trouble with this case at all, no difference of opinion.

Senator KENNEDY. Would the Senator yield for a question? I think that as Senator Bayh develops these points it might be useful, in fairness to the nominee, to review the procedures which he took before sitting on the case. As I understand, you did, did you not, consult with the chief of the circuit in terms—

Judge BLACKMUN. Thank you, Senator Kennedy. The first time I sat on the court was at the November 1959 session. It was on that calendar that the *Hanson* case appeared. And Ford Motor was involved.

Prior to my sitting I visited privately with Judge Jolinsen, who was then chief judge of the Eighth circuit, and Judge Sanborn, who was sitting in a senior capacity, about my ownership of these few shares of Ford stock. We also discussed the more general problem of what was I to do if and when a case came into the court represented by my old office.

Chief Judge Jolinsen advised me at the time that my holding of Ford was so small that I should not disrupt the court's calendar by disqualifying. In fact, he gave me a lecture about the integrity of the court and the fact that I as a junior was to act as a judge and not as somebody who is supersensitive to some of these outside influences.

I am gratified by the fact that he has recently written me repeating this advice. The letter is here. I could—

Senator BAYH. If you have no objection, I would like to ask that we put it in the record.

Judge BLACKMUN. May I ask this, Senator Bayh? I am happy to do this. It is largely a personal congratulatory letter. There is a paragraph here which is directed toward this conversation that we had. I do have a copy of that paragraph. I can either put the full letter in or the paragraph as you wish.

Senator BAYH. Whichever you prefer. I do not think you need to suffer any embarrassment because a fellow judge compliments you and this goes in the public record.

Judge BLACKMUN. I would prefer to put in just the one paragraph. It is a short one. I will be glad to read it if you like.

Senator BAYH. That is all right. I think you have been very forthright and I am glad Senator Kennedy brought this out.

(The excerpt from the letter referred to follows:)

Excerpt from letter dated April 16, 1970, from Senior Circuit Judge Harvey M. Johnsen: "In our telephone conversation the other day, I did not offhand recall whether in our talk a number of years ago about stock interests there had been mention of any particular stock or whether we had merely dealt with the subject in general. I had had no occasion to give the incident any particular thought since its occurrence. I have since allowed my mind to go back into its archives to recapture the setting of the event. You are right—there was specific mention by you of your Ford stock. What has pulled the thing into focus for me was one of those irrelevancies in which the human mind so often engages. I remember the instinctive reaction which my mind had (although this was none of my business) of why your broker had sold you on Ford stock as an investment instead of General Motors. You are free to state before the Senate Judiciary Committee and anywhere else that I expressed the view that you should not disqualify yourself from sitting on the basis of this trifling Ford-stock interest."

Senator BAYH. I want to explore with you, if I may, the three general areas of ethical standards.

One, the standards followed by a majority of the circuits, says that any pecuniary interest requires disqualification.

Two, in the fifth circuit, which the eighth circuit must follow, unless there is a substantial interest there need be no disqualification—and certainly the fact that you brought this to the attention of your fellow judges is to your credit.

Three, the fourth circuit permits the judge to disclose his interests in a case and then sit if the parties waive any objection.

Now, have you given any thought in the light of all you have gone through in the last few weeks as to what standard should be the standard of the Supreme Court of the United States?

I might just share one or two thoughts that have been brought to our attention in the past few months. One has to weight the inconvenience so far as the docket and this type of thing is concerned and the fact that a judge must give no appearance of impropriety. This is important.

Professor Mellinkoff of the University of Southern California Law School wrote what I thought was a very pertinent letter during the consideration of a previous nomination in which he pointed out that a seaman suing a shipping line who was turned down by an appellate court judge would have great difficulty understanding even if the judge had only a small interest in the company. He felt personally aggrieved or he would not have brought the suit, he would not have appealed it to the circuit, and he would have difficulty explaining to himself, his friends, his neighbors, and to his fellow seamen, when he found out that one of the judges had even a small piece of the action of the corporation he was suing.

The *Commonwealth Coatings* case is the latest word on this area that I have been able to find from the Supreme Court, 393 U.S. 145, a 1968 case. I do not know how familiar you are with that, but I want to read a portion of that opinion because it accurately reflects the standards at least the Senator from Indiana feels we should strive toward.

The opinion was written by Justice Black and he quotes from the Canons of Legal Ethics, No. 33, which says:

The Judge should, however, in pending or prospective litigation before him, be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct.

Then, Justice Black goes on to say:

This rule of arbitration and this canon of judicial ethics rests on the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased but must also avoid even the appearance of bias.

Now, could you just generally give us your thoughts in this case as to what standards we need to prescribe for the court?

Judge BLACKMUN. Yes, of course, I would be glad to, Senator Bayh. That case, I believe, is the arbitration case.

Senator BAYH. That is accurate. And it does involve an arbitration ruling, but the court in quoting that ruling says that it is highly significant but is not binding and then brings in the Canons of Ethics and states, as I quoted, what really is a higher principle. I do not want to give you only part of the horse. I want you to look at the whole animal. But the last part of the opinion, the part that I quoted, seems to me is the most significant.

Judge BLACKMUN. I have no hesitation whatsoever in saying that today I agree fully with what Mr. Justice Black said. I think this is essential. Certainly, on the Supreme Court it is in my view, which may not be the best one, it is very definitely essential. This is why I ask you to accept this as a fact. This is why I disqualified in February of this year from the little very insignificant case seemingly involving the Ford agency. It discomfited the court because another judge disqualified with me. He remembered he had some Ford stock, so we both went out. This is—

Senator BAYH. Did the case get tried despite this?

Judge BLACKMUN. Sir?

Senator BAYH. Did the case get—

Judge BLACKMUN. Yes, we assigned it to another panel and they had to adjust but finally found a panel which did not have any automobile stock at all, tried it, and reversed—the result of the case was very obvious. It was a very easy case, if that has any significance.

I would suspect that if this confirmation were to go through, the thing for me to do is to dispose of these securities forthwith and take the risk of further inflation, but I do state that these little securities of mine have been tucked away—I think the record does demonstrate I have not been in and out of the market. I put them away, really forgot about them, and maybe that is the way it should be.

Senator BAYH. Then I suggest that is it fair to describe under U.S.C. 28-455, substantial interest means any pecuniary interest in the circumstances surrounding—

Judge BLACKMUN. If your question is whether I would so construe it in a litigated case, then I would have to try to figure out what the words "substantial interest" in section 455 meant as applied to me of late years, I hope, and in the future, I most sincerely hope, I would interpret it as you have just described it.

Senator BAYH. Hopefully we will be successful in amending the statutes some of us are considering to apply the Blackmun standard to U.S. Code 28, 455.

Senator Scott. And to the Congress.

Senator BAYH. I heartily concur with what my friend from Pennsylvania says.

Judge BLACKMUN. Senator, I wish to say again my response is only in judgment of myself under 455. Today it reads "substantial inter-

est." But if I were ever called to pass upon what that meant regarding someone else then I would try to interpret the statute in light of its history and meaning. For me, I repeat, your description is the applicable standard.

Senator BAYH. I think perhaps of greater significance considering your soon to be assumed position is not so much my description but Justice Black's description in which you said you concurred.

Let me ask one other point that has been brought to public attention in this area. Could you give us some general information on two estates from which you received executor fees in 1962, 1964, 1965? Is this accurate, that you did receive these fees? Would you give us some general idea of what these estates were that there may be possible conflict of interest?

Judge BLACKMUN. I am looking for my records. I can remember it accurately enough. I would be happy to answer your question.

There were three estates that I know of in which I served as an executor since November 4, 1959. I will take the most recent one first. This is the estate of Donald C. Balfour.

The CHAIRMAN. Before we go into that, let us recess until 2:30.

Senator BAYH. Mr. Chairman, this is the last question—

The CHAIRMAN. OK.

Senator BAYH. I intend to direct, unless something develops out of it.

Judge BLACKMUN. The first is the estate of Donald C. Balfour. Dr. Balfour was a son-in-law of Dr. William J. Mayo. I had known him for years, antedating my going to Rochester, Minn. His will was drawn in 1959, before I went on the bench. I was one of three named executors. He died in 1963.

I served with another individual and the corporate executor, mainly because, except for one daughter, his family lived away from Minnesota. I took no fee in that estate.

The second one is the estate of Mabel Van Campen Kahler, the widow of Mr. Kahler, to whom I made reference before. She died in September 1958, more than a year before I was appointed to the bench. Her estate was well underway before I went on the bench. I was one of four executors.

The CHAIRMAN. Let us have order.

Judge BLACKMUN. And the estate was concluded after I was on the bench. In this estate, I was given a fee of \$3,500. The estate was in excess of a half million dollars. The attorneys' fees were \$12,000. The corporate executor's fee was \$12,000.

I say in all candor I was reluctant to take that fee but did so largely on the insistence of the decedent's only daughter, who was the wife of Dr. Hench, Nobel prize winner for the clinical application of cortisone.

The third one was that of Charles O. Gilfillan. His will was drawn in 1955, 4 years before I went on the bench. The residue of his estate went to the Mayo Association and thus was eleemosynary in disposition. I was one of the three named individual executors, among which was the widow. We were given the privilege to nominate a bank as corporate executor. This was done. The bank served in that capacity with us. The estate was somewhat in excess of a million dollars. I have known it well because I had known Mr. Gilfillan for a long time. And the fees there for the bank were \$18,000, for the attorneys, \$22,000, and

a fee of \$5,000 came to me, again at the insistence of the widow, who is a close, I hope, personal friend of mine.

In each of these three estates, Senator Bayh, the wills were drawn prior to my going on the bench. I was specifically named in each will. In my judgment, they did not interfere in any way with my judicial duties. I performed no legal services in any of them. The decedents were friends of mine, close and good friends, people who had been nice to me over the years and people whom I deeply respected as good citizens, charitably inclined.

Senator BAYH. They were all initiated before you went on the bench?

Judge BLACKMUN. They were indeed, yes. Senator, perhaps you—you mean the estate was?

Senator BAYH. The will.

Judge BLACKMUN. The wills were drawn before I went on the bench. In two of them, the deaths took place after I was on the bench.

Senator BAYH. Thank you, Judge.

The CHAIRMAN. We will recess until 2:30.

(Whereupon, at 12:35 p.m., the hearings was recessed, to reconvene at 2:30 p.m., this day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Senator Burdick is next.

Senator BURDICK. Mr. Chairman, I have no questions. I simply want to compliment Judge Blackmun upon his nomination. I will of course support him and wish him well.

TESTIMONY OF HON. HARRY A. BLACKMUN—Resumed

Judge BLACKMUN. Thank you, Senator Burdick.

The CHAIRMAN. Senator Bayh?

Senator BAYH. Mr. Chairman, may I make one observation, please.

The CHAIRMAN. You are limited to one. [Laughter.]

Go ahead.

Senator BAYH. It proves one lesson that a very junior Senator learned early in his career. Do not argue with the chairman. But I do not argue, Mr. Chairman. I just want to make one observation, Judge, in regard to your discussion, your very candid presentation of your financial interests and how you dealt with these and how you anticipate dealing with them in the future. And at one point I think I did say that I would like to see the country or the Supreme Court or all judges adopt the Blackmun standard relative to ethical conflicts of interest. That statement on my part apparently was in reasonable proximity to a statement that you had made in regard to your thought that perhaps it would be best for you to sell your stocks and take a chance on inflation. I do not want my remarks in regard to conflicts of interest to suggest that all judges ought to sell all their stocks. I do not think that that should be the rule at all, but that we should be very careful not to have a conflict of interest where we do own stock and sit on a case. And you suggested that this is the way you feel now and you by your own personal example did do this in this case, this last case in

1970. I salute you for it. I just wanted to make the record clear on that.

Judge BLACKMUN. Thank you, Senator.

The CHAIRMAN. Judge, Senator Tydings has a Conference Committee. He has requested that I read you five questions that he intended to ask.

No. 1. One of the serious problems affecting the Federal Judiciary are rising case loads and backlogs. Do you see a need for court administrators trained in management techniques to assist judges in eliminating that problem?

Judge BLACKMUN. Of course, Mr. Chairman, this is a matter of basic policy upon which I am not really qualified to act. I certainly have felt on occasion that administrative problems consume time better spent on judicial activity. I can see a great deal of help coming from trained administrators, particularly in multiple-judge courts. I am sure in our circuit there are many things of which we as sitting judges could be relieved to devote our time to better advantage on judicial matters. It is hard to make a categorical statement about this kind of thing, but generally I am in favor of what seems to be a trend in this direction.

The CHAIRMAN. Number 2: For the past 4 years the Subcommittee on Improvements in Judicial Machinery has been studying the few cases of the physically disabled Federal judge staying on the bench when he should retire, or the very rare occasion the unfit judge. The subcommittee drafted a judicial reform proposal. The essential part of the proposal is the establishment of a Judicial Commission on Tenure and Disability which would be composed of five Federal judges assigned to the Commission by the Chief Justice. The Commission would investigate all claims of judicial disability or unfitness and make recommendations for involuntary retirement or removal by the Judicial Conference. The decision of the Judicial Conference could be appealed to the Supreme Court.

Do you think this would interfere with the independence of the Judiciary or be inconsistent with the doctrine of separation of powers?

Judge BLACKMUN. I will try to answer the latter part first. I see no great danger of interference with the independence of the Judiciary. The incapacitated judge is, can be a distinct problem. It is the other side of the coin of life tenure. On the other hand, I think it is section 332 which in my view gives the Judicial Council of a circuit a great deal of discretion in administering the problems of the circuit. We have used it, utilized it on occasion with respect to district judges who are somewhat incapacitated. It has fallen to my lot to do some of this. It is not a pleasant assignment. I think we have carried it off successfully.

What I am saying is that there are ways and means in my view on the statute books today. I would not want to comment because I am not qualified on methods of improving existing statutes. That to which Senator Tydings refers is an alternative. Perhaps it is a better way, but again I come to where I started that I see no great danger of interfering with the independence of the Judiciary in such a provision.

The CHAIRMAN. No. 3: Pending before the Judiciary Committee is a bill that calls for mandatory senior judge status at age seventy. This would not apply to sitting judges. What is your opinion on this proposal?

Judge BLACKMUN. This of course is also a tender subject. As I got older I question the objectiveness of my own judgment on it. I have run into it in the medical field. There we established—we—it was established before my time, but we have adhered to a 65-year limitation in the Mayo organizations. I am convinced of its propriety on the surgical side. I am not at all convinced of its propriety on the medical side. An arbitrary age limit can lead to some unfortunate consequences. I think of Mr. Justice Holmes and many others who have performed great service for the country after age 70. So much depends on the individual. I think some of us are old at a younger age than others are. I would not want to—I am not qualified to pass on a specific age.

The CHAIRMAN. On June 10, 1969 the Judicial Conference adopted a resolution that provided that each judge shall file annually with the Judicial Conference of the United States a statement of his investments and other assets held by him at any time during the year as well as a statement of income, including gifts and bequests from other sources, identifying the source, and a statement of liability. Subsequently, this disclosure provision was suspended and in its place less comprehensive disclosures were called for by the Judicial Conference. What is your opinion of the June 10 disclosure provision?

Judge BLACKMUN. Well, I dislike to get into the pros and cons of this. I think my own position on disclosure has been already indicated today. Judging from notification already received by me from the Administrative Office of the U.S. Courts and by all Federal judges, I was under the impression that there would be due shortly, I think specifically in July, a statement that essentially equated with what Senator Tydings has described as the action of June 10, 1969. In any event I for one would have no objection whatsoever to doing as a Federal judge what I have done during the last 2 weeks for this committee.

The CHAIRMAN. No. 5: Would you agree that justices of the Supreme Court should be subject to the same reporting requirements as that imposed upon lower Federal court judges?

Judge BLACKMUN. This catches me in the middle of course. I know that this attitude is shared by many Federal judges. The Supreme Court has always stood alone and apart, not subject to the Judicial Conference of the United States. I for one would be perfectly willing to do what is required of other Federal judges. I do not want to speak for the sitting Justices who may well have opposing views and very valid ones.

The CHAIRMAN. Senator Byrd?

Senator BYRD. Mr. Chairman, reference was made this morning to the "alienation" of the youth and to critical questions that youth are asking regarding "the system," and the nominee was asked to comment. I do not think that there is any question but that there is ferment among some of our young people and that the so-called "system" is subjected to criticism by various groups and individuals.

However, I am one who believes that the great majority of our young people believe in our form of constitutional government and in our democratic institutions. They believe in the "system."

I do not go along with those persons who appear to feel that all of our young people are revolting against the system. I believe, on the other hand, that the feelings of the majority of our young people are not correctly expressed by those who have been participating in

takeovers of administration buildings and college campuses, and who have otherwise protested loudly against what we often hear referred to as the "system."

Of course, the voices of those who participate in rebellious activities are heard and are given much fanfare, but the average student who goes to college or to a university to get an education is busy working in the laboratories, in the libraries, and in the classrooms and he is not heard or seen on television.

There is a generation gap. There always has been. There was one when I was in my 'teens, and there will always be a generation gap to overcome.

But it can be done because children will always respond, as they have in the past, to understanding and to discipline and to love—which in the final analysis must start with the home.

So I would want the record to show, Mr. Chairman, that when reference is made to the highly touted alienation of youth and to the criticism of the so-called "system"—and I say this most respectfully—there are many people in this country who do not feel that such alienation and criticism are the norm, but rather are made to appear as the prevailing mood among our young people.

Some personal references were made to your children, Judge Blackmun, as a result of questions that were asked of you—quite properly so—and perhaps I would, therefore, be forgiven likewise for a personal reference. I have two daughters whom I consider to be young people, naturally, and they like the system. They like the system. One of these daughters has married a young man who came to this country from what was once known as Persia—now called Iran. He came to this country about 12 years ago and despite the disadvantages that confront an individual in a strange land, he pursued an education and just 2 weeks ago received his doctorate in physics. Only yesterday he became an American citizen. Here was a young man, therefore, who was encumbered in the beginning with the disadvantage of having to learn a most difficult language—the English language. But he mastered it, and today he speaks more flawless English than I speak. He has also studied the German and French languages, and, as I said has secured a doctorate in a complex field.

I have not helped him to achieve his goal. He has not asked me for any assistance. While studying for his doctorate he has paid his own way and has been able to sustain his family by teaching physics at George Washington University.

I, of course, have made this personal reference, and I hope I will not be misunderstood. Naturally, I speak of this young man with pride. I speak of him almost daily. But I have only alluded today to his accomplishments in order to make a point which I think ought to be made for the record—in view of some of the references that have been made to the so-called system. My point is that there must be something good about a system under which a person can lift himself and can progress to a better and more meaningful life if he but has the drive and the ambition to do so.

As I said, my son-in-law came from Persia to America. He came here because of the system and because of the opportunities that are inherent in the system. Other peoples have come to this country because of the system. We have not seen young men leaving this country

and going to Persia and to other countries because of some system preferred to our own. They are not traveling in that direction. They have come here. They have come to America.

Of course there are inequities in the system. There always have been. There always will be. Some are real. Some are imagined. But there are inequities in any system.

So, I would merely want to express the hope, having said this, that there are many things about the so-called system that the Supreme Court and the distinguished nominee to that Court would want to preserve and uphold and defend.

The nominee may wish to comment.

Judge BLACKMUN. Senator Byrd, I am too much a product of that same kind of thing to disagree with your comment. I dislike to talk about it, but I did not have very much to start with either, and this is the only system I have ever known. It has been good to me. I do not know of a better one.

I apologize for the personal reference to that extent, but of course one has a lot of luck on the way. I do not know where else in this world of ours—luck is readily available to one who is ready for it, I guess.

Senator BYRD. I thank you, Judge Blackmun, for that response. I apologize likewise for the personal reference. But what I said I said most respectfully. I realize there are those who see things one way. I may see things another way. They have a right to express their views and I have a right to express mine. They have done so, and I have done so. I just want the record to show, as far as I am concerned, I am proud of the system, I have much to be grateful for, and I can attribute much to the kind of system we have. I think I speak for many Americans—including young people—in saying this.

Judge BLACKMUN. I can fully understand, sir, your pride in this young man. I hope one day to be able to say the same thing about my sons-in-law. They are working at it.

Senator BYRD. Mr. Chairman, on the basis of my own investigations, I am satisfied as to the integrity of the nominee and his ability, as well as with the correctness of his philosophy concerning the proper functions of Supreme Court Justices.

His opinions appear to reflect judicial restraint, a clear respect for judicial precedent, and a recognition of the constitutional demarcation of authority between the judicial and the legislative branches. His opinions also reflect, I believe, a proper respect for that line of demarcation, and I believe, therefore, that we can correctly assume and hope that in his future actions in the high office to which he has been nominated he will not contribute to a further usurpation of the functions of the legislative branch. I, therefore, compliment Judge Blackmun on his record, on his nomination, and on his appearance before this committee, and I expect to support the nomination.

The CHAIRMAN. Senator Hruska?

Senator HRUSKA. Mr. Chairman, the nominee before us is no stranger to this room. He sat here 11 years ago in the same position—it may even have been the same chair—when this committee conducted its hearing into his qualifications for the judgeship in the Eighth Circuit Court of Appeals. It was this Senator who presided over that hearing, and I recall it with a great deal of pleasure. It was a real honor to

have served in that capacity in lieu of the chairman who was absent on official business.

There is another reason why Judge Blackmun does not sit here as a stranger to me. Nebraska is in the eighth circuit, and of the many judges whose work I have followed since becoming a member of this committee I have observed Judge Blackmun's decisions and his actions a little closer than most because of the relationship between Nebraska and the eighth circuit.

I have read many of his decisions, and I am in frequent contact with some of his fellow judges, notably the two who live in my home city, former chief judge of the eighth circuit, Harvey Johnsen, and Don Lay. Don Lay, I note, when he was approved by the Senate was confirmed at an earlier age than most of the circuit or the district court judges on the bench today. Judge Richard Robinson, the district court judge in Omaha, was especially laudatory in a recent conversation about the part that the judge plays and works at in his present official capacity. Judge Van Pelt in Lincoln, only 50 miles away, feels much the same.

There is no better way to judge a man than by his work and the appraisal of those who have worked with him in the same business. That, of course, is the profession of law and the administration of a court of justice.

My own personal survey demonstrates to me that this nominee, Mr. Chairman, is held in the highest regard by his contemporaries at the bar and on the bench. This attitude is widespread and it should not be a source of surprise.

I join with my colleagues in commending the American Bar Association for the report they have rendered in this particular instance. It is a new system, a new approach, I think perhaps more detailed and in greater depth than before, and it has been reported in splendid shape.

This committee has never abdicated its responsibility in favor of the American Bar Association or the Judicial Conference, or any other body, individual, or group. We like to get advice from them, but of course we have to use our own judgment in making our final decision.

But I want to say that it is comforting to get men like those who are serving with Judge Walsh on the Federal judiciary, the Committee on Federal Judiciary of the American Bar Association, and have them give their opinion as they have. It is comforting and it is of very high value.

So I commend the American Bar Association for its willingness to have joined in this effort, and I commend them particularly for reserving the opportunity to supplement their report after these hearings are completed so that they will be able to make a final judgment on the basis of the same material and evidence which is before this committee.

Now, Judge Blackmun, during the hearing this morning you were asked certain questions designed to elicit your awareness and your concern about certain social problems, and other maladjustments in our society. I thought your answer to that question was very forthright and very good. I recall that you indicated you were aware of them and that you had concern for them. Isn't it true however, that there will be a different response from different people in regard to such a concern?

Institutions under our constitutions perform different functions in solving these social ills. Not all are given the same power. Isn't it true, Judge Blackmun, that a Supreme Court and the members thereof are bound pretty much by the record of the case before them and by the Constitution of the United States. They cannot and should not venture beyond the record and beyond the Constitution or beyond the state of the law and violate and distort the Constitution in an effort to try to achieve an alleviation of certain well-known evils. The same would be true of people in a legislative field such as the members of this committee. We have our limitations. We can legislate to be sure, but it is always subject to the limitations placed on us by the Constitution and of course by the courts.

Now, I can understand how one would be concerned with the social and the economic problems, and yet at the same time just because there is an awareness then and a great concern about it does not indicate, does it, that he can do almost anything and everything to try to rectify those problems?

Judge BLACKMUN. Senator Hruska, I think there were several questions there. As I went along of course the answer to all except the last is in the definite affirmative. I strongly believe in our system of checks and balances and in our three-branch system of government. As you point out, the Constitution in Federal cases is always part of the record. I firmly believe in deciding cases on the record. I hope I have never done otherwise.

I firmly believe that change, if change comes, must come within the framework of the law as we understand it. And not outside the law. Now, the very last part of your statement has escaped me because I think the answer to that was in the negative.

Could I ask you to repeat that last part?

Senator HRUSKA. It had to do with the power of public officials to do something about any concern that they might have about the inadequacy of our present system and the shortcomings and the threats to its liberties.

Judge BLACKMUN. I think I have already answered that.

Senator HRUSKA. I think so.

Judge BLACKMUN. Each of the three parts has its own sphere, and each is limited by the Constitution. Together we survive, I think. And I am a firm believer in this tripartite system of government that has blessed us over the many years.

Senator HRUSKA. Now, questions have been asked on the general subject of conflict of interest and of loyalties once held. That is not a new question, we have it before us constantly. After all, when one accepts a position or an appointment to the bench he divorces himself from past loyalties. In the instance of your representation, for example, of the Mayo Clinic there was a loyalty that you gave to that client as best you could. You rendered, from all reports, a very splendid service there, and yet that loyalty must be thrust to one side and behind one, is that not true?

Judge BLACKMUN. Of course this is true. There can be no question about this.

Senator HRUSKA. And the same is true of the position of an advocate, a lawyer. He represents only one party, and he has to set those loyalties aside when he becomes the man who sits in front of opposing counsel

and rule upon both stories, and perhaps the third story which is the right one. Certainly those of us who have served in State legislatures and then we come to the Congress, assume different loyalties. We have to. And it would be inherent, I presume, in the instance of a man assuming a judgeship, wouldn't that be true?

Judge BLACKMUN. True of course, I fully agree.

Senator HRUSKA. Now, as to the immediacy of the loyalty, or conflict, this is something that we are guided in by the statute. We can refer to the canons of ethics. Nobody ever codified those into law yet. They are good to go by. I think that has been done in your instance. Up to this time there has been no intimation of any kind whatsoever of any conflict of interest or any basis for it, or any appearance of it in your record.

We have had on previous occasions before this committee men who had been in the practice of law and who exceeded in one or another of particular causes. We had an illustrious jurist and a fine citizen who spent most of his practice of law in the field of representing labor unions. He later went on to be ambassador to the United Nations where he served very, very well. We had another one here who was a lifetime follower and advocate in the cause of the black minority and their litigation before the Supreme Court particularly. The question arose at that time whether or not they could set aside those prejudices and those biases and that feeling of advocacy and the philosophy which surrounds a person who deals exclusively in a subject or in a field of that kind.

I felt that our chairman or another members of the committee pretty much approximated the situation in its truest sense when they squarely put the question to each of those candidates—I know it was the case in the instance of Justice Marshall—"If you become a member of the Supreme Court will you be able to render a fair and just decision in disputes put before you and act solely upon the law and the evidence of the case and render such a fair and just decision regardless of the color of the man's skin in front of you, or his wealth, or his poverty, or the part of the country from which he comes, or whether he is a member of management, of labor union management or a worker himself." And in the instance of Justice Marshall, he answered, Yes, I believe I can. And I will. The same answer was forthcoming from others who are sitting in a position as you are today, and the same answer has been given.

Would you care to respond to a question of that nature and of that scope?

Judge BLACKMUN. Well, I feel that this question, of course, is basic, essential, properly asked. This is the test of a true and a genuine judge. I would like to think that my past 10½ years on the court of appeals fulfills that standard. I think it does.

I think that those who have looked at me and my record think it does.

In answer to your inquiry, I can only give the same answer which you tell me was forthcoming from the other nominees. I am almost positive I can act in that way. This would be my sincere aim, and I would attempt to do so within the limits of my human and hence fallible limitations. I think I can. I can almost say I know I can, but I cannot be categorical except to say I shall do my very best.

Senator Hruska. Mr. Chairman, I should like to say from my readings and observation of the record and the conduct of this nominee that he has given an answer like that in his decisions and in his action. It works on the various committees for the betterment of the judicial system and the bar and the profession of law. It is gratifying, and I congratulate you, Judge Blackmun, and wish you the very, very best of luck. And I will pledge the 1-17th of the vote of this committee on my own behalf to see that you get a chance to have your name placed before the Senate Chamber.

Judge BLACKMUN. Thank you, Senator Hruska.

Senator McCLELLAN (presiding). Very well.

Senator Fong?

Senator Fong. Yes, Mr. Chairman.

Judge Blackmun, you are a graduate of the Harvard law school class of 1932; is that correct?

Judge BLACKMUN. That is correct.

Senator Fong. You left the law school that summer, and I came in that fall, and so as an alumnus of the class of 1935 I want to commend you, a member of the class of 1932, for the President's nomination.

Judge BLACKMUN. Thank you, Senator Fong.

Senator Fong. I only have one question, Judge Blackmun, to ask you, and that relates to the question of capital punishment. In the case of *Pope v. the United States*, 372 Fed., 2d 710, decided in 1967 from an appeal of a judgment in the district court imposing the death sentence on a bank robber who killed three employees of a bank in the process of robbing it, you wrote the opinion of the court of appeals affirming the decision of capital punishment; is that correct?

Judge BLACKMUN. That is correct. We sat en banc in that case.

Senator Fong. Yet, as I understand, reading from the newspapers the other day, you did mention something about capital punishment when that question was put to you. I believe you stated that it might well be that the Supreme Court might say that the imposition of capital punishment would be a very cruel thing; is that correct? It would be cruel and unusual punishment, under the Constitution. Did you make that statement?

Judge BLACKMUN. This is the chronology after the *Pope* case. The *Pope* case, of course, was a very celebrated case out in our part of the country. This was a young man graduated with honors from his college on Sunday and on Friday committed these crimes. In a later case of *Maxwell v. Stephens* and a still later case of *Maxwell v. Bishop* which is now before the Supreme Court of the United States, we were also confronted with the issue of capital punishment. In all of those cases the eighth amendment argument was made. In each and all of those cases we upheld the penalty against the eighth amendment argument.

In the last one, in *Maxwell v. Bishop*, I made the gratuitous observation which has caused so much furor, that it was particularly excruciating for one who is not convinced of the rightness of capital punishment as a deterrent in crime. This, Senator Fong, is a personal conclusion on my part. It is a part of personal philosophy. I think the other question of the rightness of legislation, be it by a State legislature, or by Congress in dealing with Federal crimes, to impose the death penalty is an entirely different question. It hap-

pens that I grew up in a State, Minnesota, which has not had the death penalty since 1911. In my entire lifetime within my memory it has not been an issue. And when I came on the court there were immediately three or four instances where we were asked to stay executions scheduled for the next day. In none of those cases did we enter a stay order. In each of them as I recall the eighth amendment issue was raised.

And I stated in connection with the observation which the press has latched onto, I think I can quote it verbatim. I also stated that ordinarily the imposition of the death penalty is a matter for the discretion of the legislature. I firmly believe this. One of course can imagine if a Legislature were to impose the death penalty on a pedestrian for crossing the street against a red light this might be something else again.

Senator FONG. That would be very unreasonable?

Judge BLACKMUN. Sir?

Senator FONG. That would be very unreasonable?

Judge BLACKMUN. I would think so.

Senator FONG. Yes.

Judge BLACKMUN. But my other observation to which you make reference about the three justices, this is the case of *Rudolph v. Alabama*, certiorari denied, with three justices in dissent, stating that they would like to hear argument on the issue whether the imposition of the death penalty for the crime of rape where the victim is not harmed would be in violation of the eighth amendment. For me this is not really a very difficult matter in the context of our cases because in every one of them the victim was not left unharmed. And so even in the view of the three dissenting justices, it seemed to me there was no real problem. I merely sensed in *Rudolph v. Alabama*, the first instance in recent years in any event, of justices of the Supreme Court being concerned basically with the eighth amendment argument. It has caused me no problem personally. My personal feeling about it is on one side, it could change tomorrow.

My attitude toward the legislative aspect is another thing. I have stated what my initial approach to it is, and certainly I would never want to decide that question without its being frequently briefed and adequately argued.

Senator FONG. So you feel that at the present time there really is not definitive attitude as far as you are concerned, no very definite attitude that capital punishment should be abolished?

Judge BLACKMUN. This is my personal philosophy. If I were a legislator and it came up, probably this is the way I would initially feel depending in part on any overwhelming attitude on the part of my constituents. But otherwise, apart from that, I start with the premise that this is basically a legislative discretionary matter.

Senator FONG. And if the Legislature says that capital punishment should be imposed you would follow that?

Judge BLACKMUN. Certainly, with an exception perhaps in my pedestrian illustration.

Senator FONG. Yes. I can understand. Many people feel that with the abolition of capital punishment, for example, a convict in the penitentiary may continue to kill, and there have been cases in many jurisdictions in which a convict has killed other convicts in the peni-

tentiary knowing that he will not be subjected to capital punishment. Would you like to comment on that?

Judge BLACKMUN. Yes, indeed. We have had similar cases rise in our circuit, and I have learned how explosive this issue is in the public mind the last few weeks. I am not a legislator.

Well, I have stated my attitude toward it. I respect the legislative mind, and this is where I start and I think probably that is where I finish.

Senator FONG. Well, I am satisfied with your answer to my question. Thank you. And in conjunction with my colleague, Senator Hruska, you can count on two-seventeenths now rather than one-seventeenth.

Judge BLACKMUN. Thank you, Senator.

Senator McCLELLAN. Senator Thurmond?

Senator THURMOND. Thank you, Mr. Chairman.

Judge Blackmun, I congratulate you upon your appointment as an associate justice of the U.S. Supreme Court.

This is a high honor indeed, and I am sure that you are aware of the significance of it and the responsibilities faced by the highest judicial body in our Government. I have carefully studied your personal record and it appears that you are a man of high ethical conduct, as was Judge Haynsworth, and a man of competence, as was Judge Carswell. The labor and civil rights leaders vigorously fought and defeated the nominations of Judge Haynsworth and Judge Carswell and vented their spleen against them, but I predict that they no longer have the gall to engage in another round of defamation of character and that you will be confirmed forthwith. I am glad that President Nixon has characterized you as a strict constructionist, because even a Supreme Court justice is narrowly constrained by the intent of the framers of the Constitution and by the intent of Congress in making our laws. If this were adhered to in every case, there would be no need to worry about balancing the Court since the question of liberalism and conservatism would not arise.

Judge Blackmun, after you are confirmed, I trust and believe that you will accept the Constitution of the United States as the rule for your decisions. I have no questions. I shall support your nomination.

Judge BLACKMUN. Thank you, Senator Thurmond.

Senator McCLELLAN. Senator Cook?

Senator COOK. Thank you, Mr. Chairman.

Judge Blackmun, it is a pleasure to have you here. As you know, I enjoyed my meeting with you yesterday, and I might say when the question arose by the Senator from Massachusetts whether you and the Chief Justice of the Supreme Court could disagree, I was compelled to write down that lawyers feel free to disagree with any other lawyer based on the strong conviction he has for the point which is involved. And I think that between lawyers and between people, I do not believe that will ever change.

I am interested in one of the papers that you have written. As the record shows, you have prepared three papers, two of which unless you are from Minnesota, or unless you represent a great many doctors and tax clients not very many people would be interested in, but I think your third one, "The Allowance of In Forma Pauperis Appeals in Section 2255 and Habeas Corpus Cases" is most interesting.

And, Mr. Chairman, when I finish, I would like to put this article in the record if I may.

Senator McCLELLAN. It may follow your interrogation of the nominee.

Senator COOK. I think that two of the remarks that you make in your conclusion are most interesting, and I would like to read them purely and simply because I think it shows the type of strict constructionist that I in fact believe that you are. It also shows the compassion that every man who attains the judicial robes must also have, and that starts out first of all in item 3 of your conclusions when you said, and I quote:

The concept that *in forma pauperis* procedure is a privilege, rather than a right, is perhaps somewhat suspect today despite continuing lip service to it. In one sense, it may be a privilege, but the sovereign has chosen to grant it and it thereby assumes certain characteristics of right.

And obviously you are talking in terms of the section of the Constitution that allows *habeas corpus* in the first place regardless of its apparent limitations under 2255?

Judge BLACKMUN. Correct.

Senator COOK. And your last one, which I think speaks a great deal of you as a judge, as a practitioner, is item 15, and I quote:

Let us in this entire area, until the Supreme Court instructs us otherwise, be willing to act as responsible judges, to evaluate each case, and to make a considered judgment. If we are reversed occasionally, what does it matter? Our professional satisfaction lies in a job performed responsibly and not in avoiding responsibility.

Now, there are two other things I would like to read in the record, Judge, for your benefit, and that is in regard to the questions asked by Senator Hart in regard to what is a strict constructionist. And I believe that you have set forth your principles very well in a paragraph from *Ashe v. Swenson* when you said:

This court is not the Supreme Court of the United States. We, therefore, are not free to disregard an existing national and still live holding of the Supreme Court even though that holding is one by a sharply divided tribunal, and even though only one of the Justices who participated in the majority decision remained active. A change in constitutional concept and the overruling of an existing decision, if indicated at all, is for the Supreme Court and is not for us. Firmness of precedent otherwise could not exist.

And one other quote that I would like to make, Judge, is in the case that was decided in your court in April of 1970 in *re Weitzman*, and you said:

If Mrs. Weitzman's constitutional arguments are to prevail, our concepts of constitutionality have progressed far beyond the Hughes-Holmes-Brandeis days when enunciated allegiance and devotion to the country had primary and significant meaning. As a member of an inferior Federal court, I feel that we cannot go that far even in this permissive day.

To me, Judge, this is what a strict constructionist means. I think it not only shows his respect and love for the law but his respect and love for precedent, his respect in his consideration of stare decisis, and I would only conclude, Judge Blackmun, with your confirmation, which I confidently predict, we come to the end, in my opinion, of a significant era in Supreme Court history and in fact senatorial history. All of us must determine what it has meant, what standards have evolved which the Senate shall apply to Supreme Court nominees and how many of us have been consistent to our standards even with the era which your confirmation will end.

And I might say that I would like to have more to say about this era and what lessons should have been learned by the Senate, but I do not think this is the proper place and I would like to take advantage of that opportunity later.

I must say to you that it will be my privilege to support your nomination. It will be my privilege to support it as a strict constructionist, as a man who not only loves the law but has a tremendous compassion for it.

Thank you.

Judge BLACKMUN. Thank you, Senator Cook.

(The articles referred to by Senator Cook and accepted by the chairman for inclusion in the record at this point, follow:)

ALLOWANCE OF IN FORMA PAUPERIS APPEALS IN § 2255 AND HABEAS CORPUS CASES¹

(By Harry A. Blackmun, United States Circuit Judge, Eighth Circuit)

On April 10, 1967, the Supreme Court of the United States decided *Nowakowski v. Maroney*, 386 U.S. 542, 87 S.Ct. 1197, 18 L.Ed.2d 282 (1967). This is a two page unanimous per curiam opinion. As you might expect from its brevity, the opinion is direct and to the point. Nowakowski was a Pennsylvania state prisoner. He alleged the denial of the assistance of counsel in his state criminal trial and sought a federal writ of habeas corpus. The habeas court appointed a lawyer for him, held a hearing, and concluded that there had not been a denial of his constitutional right to counsel. But the district judge issued the certificate of probable cause which is necessary under 28 U.S.C. § 2253, for any state prisoner to appeal a denial of federal habeas corpus.

Court-appointed counsel were then permitted to withdraw. Nowakowski petitioned the Third Circuit to allow his appeal in forma pauperis and to appoint new counsel for him. Both aspects of this motion were denied by the court of appeals in a brief order without a hearing. Certiorari was granted as was leave to proceed as a poor person. 384 U.S. 984, 86 S.Ct. 1893, 16 L.Ed.2d 1003.

The Supreme Court held that this denial by the Third Circuit was error. While the Court recognized that "weighty consideration" should be given a district judge's prior denial of an application for a certificate of probable cause, it ruled, on the other hand, that when the judge issues the certificate, "the court of appeals must grant an appeal *in forma pauperis* (assuming the requisite showing of poverty), and proceed to a disposition of the appeal in accord with its ordinary procedure."

That is all there is to *Nowakowski*. Once a district judge issues that certificate of probable cause in a state prisoner's federal habeas case, he binds his appellate court to accept the appeal, whether paid or in forma pauperis, in its ordinary routine. When the trial court issues the certificate, the court of appeals has no discretion to second-guess the district judge on the issue of probable cause. The Eighth Circuit, of course, has recognized *Nowakowski*. *Gross v. Bishop*, 377 F.2d 492 (8 Cir. 1967).

It is this decision, I understand, which prompted your program committee to place on the agenda of this conference the subject, "Allowances of In Forma Pauperis Appeals in § 2255 and Habeas Corpus Cases." Does your committee thereby possibly suggest that each district Judge who is here should bear in mind that perhaps a probable cause certificate is not necessarily to be granted as a matter of course without some earnest consideration of the underlying substance of the applicant's case? Does it possibly suggest, also, that each appellate court Judge who is here bear in mind that perhaps a probable cause certificate is not necessarily to be issued by him as a matter of course, whenever the district Judge has denied it, without some earnest consideration of the underlying substance of the applicant's case?

We must, of course, examine the statutes. Because we are concerned with in forma pauperis appeals, we look at four statutes in the following order: first, 28 U.S.C. § 1915, which governs proceedings and appeals in forma pauperis gener-

¹Delivered at the Eighth Circuit Judicial Conference, Sept. 18, 1967.

ally; then § 2253, which has to do with habeas appeals; then § 2255; and finally § 753(f), the Court Reporter Act.

I. Section 1915

A. Its general nature.

28 U.S.C. § 1915. Proceedings in forma pauperis

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs. * * *

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith. * * *

It is at once apparent that this statute is very broad in its application and reach.

1. It is broad because it vests the power to authorize in forma pauperis procedure in "any court", trial or appellate. It would appear that in forma pauperis appellate relief is not dependent upon the existence of in forma pauperis procedure in the district court.

2. It is broad because the procedure is available at any stage of the litigation. The statute refers to commencement, prosecution or defense, or appeal.

3. It is broad because it applies to either side of the litigation, to "prosecution or defense".

4. It is broad because it applies to civil as well as to criminal matters.

5. It is broad in other respects. Thus, by subsection (b), if a printed record is required by an appellate court, the court may direct the expense of even that printing to be paid by the United States.

We therefore have a statute which is comprehensive as to court as to the stage of the proceeding, as to prosecution or defense, as to the nature, criminal or civil, of the litigation, and as to other monetary detail. Seemingly, it makes available to the indigent person, in a deserving situation, the same access to the federal court, trial or appellate, as is possessed by the paying litigant. This very accessibility, as you know, has been emphasized again and again by the Supreme Court.

Despite all this, the general wording of the entire statute is not mandatory but is permissive. For the most part, it reads in terms of "may", not of "shall". "Any court of the United States may authorize"; the court "may * * * direct"; the court "may request an attorney to represent. * * *"

Presumably because of this permissive language, there are a number of cases in which courts of appeals have said that in forma pauperis procedure is a privilege and not a right. The District of Columbia, Fifth, Ninth and Tenth Circuits all said so in cases decided before 1957. Dorsey v. Gill, 80 U.S.App.D.C. 9, 148 F.2d 857, 877 (1945), cert. denied 325 U.S. 890, 65 S.Ct. 1580, 89 L.Ed. 2003; Parsell v. United States, 218 F.2d 232, 235 (5 Cir. 1955); Barkelj v. Ford Motor Co., 230 F.2d 729, 731 (9 Cir. 1956); Clough v. Hunter, 191 F.2d 516, 518 (10 Cir. 1951).

This privilege characterization, for the most part, antedates Johnson v. United States, 352 U.S. 565, 77 S.Ct. 550, 1 L.Ed.2d 593, decided March 4, 1957. The Supreme Court there held (1) that the district Judge's certification that the appeal is not taken in good faith "is not final in the sense that the convicted defendant is barred from showing that it was unwarranted"; (2) that the trial Judge's certificate "carries great weight but, necessarily, it cannot be conclusive"; (3) that "Upon a proper showing a Court of Appeals has a duty to displace a District Court's certification"; (4) that the defendant or his assigned counsel "must be enabled to show that the grounds for seeking an appeal * * * are not frivolous and do not justify the finding that the appeal is not sought in good faith"; and (5) that it is essential that the defendant be assured some appropriate means, such as the court's notes, or an agreed statement by trial counsel, for showing the basis of his claim that the court committed error in the certificate. This holding would seem to cast a clear and definite shadow on any rigid concept that in forma pauperis procedure is a privilege and not a right.

Nevertheless, even since the 1957 decision in *Johnson*, courts of appeals on occasion have still characterized the procedure as an privilege. Gomez v. United States, 245 F.2d 346, 347 (5 Cir. 1957); Weller v. Dickson, 314 F.2d 598, 600 (9 Cir. 1963), cert. denied 375 U.S. 845, 84 S.Ct. 97, 11 L.Ed.2d 72; Smart v. Helzner, 347 F.2d 114, 116 (9 Cir. 1965), cert. denied 382 U.S. 896, 86 S.Ct. 192, 15 L.Ed.2d 153; Moore v. Taylor, 289 F.2d 450 (10 Cir. 1961), cert. denied 368 U.S. 853, 82 S.Ct. 90, 7 L.Ed.2d 102.

The Eighth Circuit, too, has described in *forma pauperis* procedure as "entirely statutory" and as a privilege and not a right. This was done in 1950 in an opinion by Judge Dewey, *Willis v. Utecht*, 185 F.2d 210, 212 (8 Cir. 1950), cert. denied 340 U.S. 915, 71 S.Ct. 286, 95 L.Ed. 651, and in 1952 in an opinion by Judge Sanborn, *Higgins v. Steele*, 195 F.2d 366, 368 (8 Cir. 1952). Later, however, in 1958, the court, in a per curiam opinion, obviously written by Judge Sanborn, specifically questioned this. *Weber v. United States*, 254 F.2d 713, 714-715 (8 Cir. 1958).

B. The standards of § 1915(a).

A reading of the statute reveals immediately that it projects two standards. The first is in § 1915(a), which provides that an appeal may not be taken in *forma pauperis* if the trial court certifies in writing that it is not taken "in good faith". The second is in § 1915(d), which provides that the court may dismiss the case if it "is satisfied that the action is frivolous or malicious".

Are these two standards identical? What does good faith mean? Does absence of good faith equate with frivolity or maliciousness? Does § 1915(d) apply only to the district court and not at all to the appellate court? Does the double feature of the statute suggest that a trial court should only rarely certify that an appeal is not taken in good faith because the appeal is subject to dismissal anyway by the appellate court?

Five Supreme Court cases decided in the last decade provide answers or indications of answers to some of these questions which so obviously arise upon a cursory reading of § 1915. The cases are *Johnson v. United States*, 352 U.S. 565, 77 S.Ct. 550, 1 L.Ed.2d 593 (1957), which has already been referred to; *Farley v. United States*, 354 U.S. 521, 77 S.Ct. 1371, 1 L.Ed.2d 1529 (1957); *Ellis v. United States*, 356 U.S. 674, 78 S.Ct. 974, 2 L.Ed.2d 1060 (1958); *Coppedge v. United States*, 369 U.S. 438, 82 S.Ct. 917, 8 L.Ed.2d 21 (1962); and *Hardy v. United States*, 375 U.S. 277, 84 S.Ct. 424, 11 L.Ed.2d 331 (1964). Not all of these were unanimous and there are significant observations in concurrence as well as in dissent. All five were direct appeals from federal criminal convictions.

We do not have the time here carefully to analyze these five opinions. One may fairly say, however, that these cases clearly disclose the attitude of the Supreme Court toward the *in forma pauperis* § 1915. The impoverished applicant is to be afforded procedural protection equating with that possessed by the more affluent applicant. If counsel is requested and provided, as now required on direct appeals, that representation must be truly adequate, that is, counsel must be an advocate and not merely an amicus. And, if a record is necessary, an adequate record, even, in certain situations, a complete record, must be provided. "Good faith" in the statute is the presentation of any issue "not plainly frivolous". No particular degree of merit or probability of success need be shown. Good faith is to be measured by an objective, not a subjective, standard. Equal treatment is emphasized. The government has the burden. The possibility of a rational argument on either the law or the facts is enough. In other words, doubt is to be resolved in favor of the applicant. Looking at it from another point of view, one may appropriately say that the *in forma pauperis* appeal is not to be denied simply because the trial judge is of the opinion that the appeal has no merit. The test is not whether the appeal has merit but whether there is an issue which is not plainly frivolous in the situation. *Page v. United States*, 272 F.2d 816 (8 Cir. 1959), or whether the applicant can make some rational argument. Naturally, the application of this standard is not always easy.

One may, of course, argue that these five Supreme Court opinions pronounce rules applicable only to direct criminal appeals. Are these same rules and the reasoning which produces them equally applicable as a general proposition to *in forma pauperis* appeals in civil cases and in habeas corpus and § 2255 appeals, both of which are civil in nature, even though they attempt to overcome criminal convictions? See, for example, *Baker v. United States*, 334 F.2d 444, 447 (8 Cir. 1964).

One finds, first of all, that there are civil damage cases where the courts say the same *in forma pauperis* standards are applicable. Thus, in *John v. Gibson*, 270 F.2d 36 (9 Cir. 1959), cert. denied 361 U.S. 970, 80 S.Ct. 601, 4 L.Ed.2d 549, the court held that the test to be applied is that stated in *Ellis*, but that the appeal may be dismissed if it would also be dismissed in the case of a non-indigent litigant. This Ninth Circuit view, however, finds one dissenter from it on the present court, for Judge Duniway, concurring in *Weller v. Dickson*, supra, p. 603 of 314 F.2d, states that the rules may not be the same in civil cases.

The Eighth Circuit touched upon this question in *Cohen v. Curtis Publishing Co.*, 333 F.2d 974, 978-979 (8 Cir. 1964), cert. denied 380 U.S. 921, 85 S.Ct. 923, 13 L.Ed.2d 808. In that private antitrust action the district court denied the

plaintiff's motion for leave to appeal in forma pauperis and certified that the appeal was not taken in good faith. The defendants, pursuant to then civil Rule 75(j) [now, essentially, Rule 75(g)], moved to docket and dismiss. The Eighth Circuit granted that motion although it recognized that a motion to dismiss on grounds of frivolity or lack of good faith "should be granted only in extreme cases". Our court made no reference to the in forma pauperis standards enunciated in the direct criminal appeal cases. The Ninth Circuit has a similar recent case where relief was afforded in civil rights litigation but without mention of the direct criminal appeal standards. *Stiltner v. Rhay*, 322 F.2d 314 (9 Cir. 1963), cert. denied *Stiltner v. Washington*, 376 U.S. 920, 84 S.Ct. 678, 11 L.Ed.2d 615.

In federal habeas cases one finds similar comment. The Tenth Circuit has flatly held, in cases concerning in forma pauperis procedure generally (and not the specific issues of appointment of counsel, cost-free record, and the like), that the standards enunciated in the cases involving direct criminal appeals are to be applied to habeas matters. The primary case is *Ragan v. Cox*, 305 F.2d 58 (10 Cir. 1962). There the court cited both *Ellis* and *Coppedge* and acknowledged that those decisions were direct appeals. Nevertheless, the standards were applied. In addition, the court stated that the phraseology difference between the provisions for appeal in § 1915(a), that is, "not taken in good faith," and the provision for dismissal in § 1915(d), that is, "frivolous or malicious," are "not material." I am not sure that this last observation was essential for the decision but its presence is of interest. Another Tenth Circuit case is *Tidmore v. Taylor*, 323 F.2d 88, 90 (10 Cir. 1963).

The Ninth Circuit, in habeas matters, has cited the Tenth Circuit cases and has used the Supreme Court phraseology specifically. "It is frivolous only if the applicant can make no rational argument on the law or facts in support of his claim for relief." *Blair v. People of State of California*, 340 F.2d 741, 742 (9 Cir. 1965); *Pembrook v. Wilson*, 370 F.2d 37, 39 (9 Cir. 1966).

Parenthetically we may note here that some of these cases make the observation that the proper procedure in the district court is to grant the petition to proceed in forma pauperis and then, if it appears that the matter is frivolous, to dismiss under § 1915(d). This statement has been made in a federal habeas case, *Oughton v. United States*, 310 F.2d 803, 804 (10 Cir. 1962), cert. denied 373 U.S. 937, 83 S. Ct. 1542, 10 L. Ed. 2d 683; in a civil action, *Stiltner v. Rhay*, *supra*, 322 F.2d 314, 317 (9 Cir. 1963); *Cole v. Smith*, 344 F.2d 721, 723 (8 Cir. 1963); and in a § 2255 proceeding, *Foster v. United States*, 344 F.2d 698, 699 (8 Cir. 1965). I have seen no statement to this effect regarding appellate procedure.

There are, however, intimations that limits do exist and that not everything guaranteed by the five cited Supreme Court cases is applicable on the civil side. The lower federal courts, on occasion, seem purposely to observe and suggest that there is a difference between a criminal case and a civil one. Thus, in *King v. Carmichael*, 268 F.2d 305, 306 (6 Cir. 1959), cert. denied 361 U.S. 968, 80 S. Ct. 597, 4 L. Ed. 2d 548, a civil rights case, the court, in considering the issue of a free transcript, said, "This is not a criminal case," and that the information sought was otherwise available. In *Anderson v. Helinze*, 258 F.2d 470, 481 (9 Cir. 1958), cert. denied 358 U.S. 889, 79 S. Ct. 131, 3 L. Ed. 2d 116, a federal habeas proceeding by a state prisoner, the court observed, in passing upon the issue of right to counsel, that the appeal "is not a step in a federal criminal proceeding, but is a step in a federal civil proceeding," and held that the Sixth Amendment has no application and that the rule of the *Johnson* case was not controlling. The court went on, however, meticulously to consider the issue in the light, instead, of the due process clause. In a series of four § 2255 cases, the Eighth Circuit has drawn the same distinction between criminal and civil and has observed, "Surely, no court is required to grant leave to a defendant to appeal in forma pauperis where it is obvious that this appeal is doomed to futility." *Gershon v. United States*, 243 F.2d 527, 530 (8 Cir. 1957), cert. denied 355 U.S. 873, 78 S. Ct. 124, 2 L. Ed. 2d 78; *Hill v. Settle*, 244 F.2d 311, 312 (8 Cir. 1957); *Young v. United States*, 246 F.2d 901, 902 (8 Cir. 1957), cert. denied 355 U.S. 917, 78 S. Ct. 348, 2 L. Ed. 2d 277, where it refused a cost-free record "in cases which are without merit and doomed from their inception"; *Taylor v. United States*, 308 F.2d 770, 779 (8 Cir. 1962). These four cases were requests for in forma pauperis procedure generally but *Young* involved, as well, a specific request for a free record.

The First Circuit similarly has flatly held that the requirement of *Coppedge* that counsel be appointed in a direct criminal appeal does not apply in a § 2255 case. *Fleming v. United States*, 365 F.2d 587, 588, footnote (1 Cir. 1966). This

was inherent in earlier First Circuit § 2255 cases, *Joyce v. United States*, 327 F. 2d 531 (1 Cir. 1964); *Suarez v. United States*, 328 F. 2d 473, 474 (1 Cir. 1964), and in a case of questionable ancestry, *Keenan v. McGrath*, 328 F. 2d 610, 611 (1 Cir. 1964), even though these cases did not make specific reference to *Coppedge* or its companions.

Thus, one can find clear expressions in the cases that the *in forma pauperis* standards which the Supreme Court has evolved for direct criminal appeals, do have positive application to pure civil cases and to the hybrid habeas and § 2255 proceedings, but one can also find clear expressions to the effect that there is a significant distinction between a criminal case and a civil one and that these direct appeal standards are not fully applicable to civil proceedings.

I suspect that this difference is more apparent than real. I believe that on analysis—which in the long run may or may not prove sound—the free expressions of full application on the civil side have appeared in those cases in which the applicant merely seeks *in forma pauperis* relief generally. Presumably, he already has counsel or is willing to be his own counsel and presumably there is no burning question about a transcript. It is in cases where a specific request for appointed counsel is made, or where there is a request for a transcript at government expense, that the courts have been hesitant. As is so often the case, it is easier to be free with announcement of basic principles and their application where relief flows easily; it is harder to be that free when a lawyer's time, without compensation, or government costs are consequences. Perhaps the Eighth Circuit cases are not so easily separated into the two categories.

One day the Supreme Court will tell us whether the direct appeal requirements do have full application on the civil side. In the meantime, the Eighth Circuit, and certainly the First, and perhaps the Ninth, have stopped short of unlimited application. Thus far, the process has been a selective one. So far as I can tell, this has not resulted in injustice.

So much for § 1915, the general *in forma pauperis* statute.

II. Habeas corpus.

The great writ, of course, is guaranteed by the Constitution, Article I, § 9, clause 2, and in federal courts by Chapter 153 of the present Judicial code, 28 U.S.C. §§ 2241-2255. But, as you know, § 2255, by its terms, severely limits the availability of the writ for federal prisoners. If a federal prisoner has a remedy under § 2255, that is the route he must follow. *Weber v. Settle*, 185 F.2d 799, 800 (8 Cir. 1950); *Smith v. Settle*, 302 F. 2d 142 (8 Cir. 1962); *Haynes v. Harris*, 344 F.2d 463, 466 (8 Cir. 1965); *Cagle v. Ciccone*, 368 F.2d 183, 184 (8 Cir. 1966). As a practical consequence, therefore, federal habeas corpus is important for us primarily with respect to state prisoners. It reads:

28 U.S.C. § 2253. Appeal

In a habeas corpus proceeding before a circuit or district judge, the final order shall be subject to review, on appeal. * * *

An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the Justice or Judge who rendered the order or a circuit Justice or Judge issues a certificate of probable cause.

Here, we obviously have a standard. But is it a standard of probable cause. And a certificate of probable cause is a requisite to an appeal. *Madison v. Tahash*, 359 F.2d 60, 61 (8 Cir. 1966); *Curtis v. Bennett*, 351 F.2d 931, 933 (8 Cir. 1965).

One should initially observe that this probable cause requirement of § 2253 at least does not have the equal protection difficulties which have emerged as to paupers' appeals in general. The probable cause certificate of § 2253 is required of both the indigent and the nonindigent.

One may initially observe, also, that *Nojarkowski* did not go so far as to say that a certificate of probable cause should be routinely issued in all cases. It merely held that when the district court issued the certificate the appellate court must indulge in a full review. *Nojarkowski* leaves open the basic question of issuance or nonissuance. If any case were to hold that a certificate should routinely issue, we could all agree that the appellate paragraph of § 2253 would thereby be reduced to nothing more than a procedural formality, and a rather useless one at that.

But what is probable cause? Does it equate with the standards of "good faith" and "frivolous or malicious," which are present in § 1915?

As is perhaps to be expected, one finds varying expressions in the cases. Some seem to apply an interpretation of "without merit, and therefore, frivolous." *Nolan v. Nash*, 316 F.2d 776 (8 Cir. 1963), cert. denied 375 U.S. 924, 84 S.Ct. 269,

11 L.Ed.2d 166; *Nally v. Scott*, 114 F.2d 562 (8 Cir. 1940); *Simpson v. Teets*, 248 F.2d 465, 466 (9 Cir. 1957); *Tate v. United States*, 123 U.S.App. D.C. 261, 359 F.2d 245, 250 (1966). In other decisions probable cause seems to be related to a lack of substance. *Chessman v. Dickson*, 275 F.2d 604, 606 (9 Cir. 1960) ("any substance at all"); *Gay v. Graham*, 269 F.2d 482, 487 (10 Cir. 1959) ("no substantial question"); *United States ex rel. Stewart v. Ragen*, 231 F.2d 312, 313 (7 Cir. 1956) ("some substantial question worthy of consideration"); *ex parte Farrell*, 189 F.2d 540, 543 (1 Cir. 1951), cert. denied *Farrell v. O'Brien*, 342 U.S. 839, 72 S.Ct. 84, 96 L.Ed. 634 ("unsubstantial, or clearly without merit"); *Knuppe v. Lainson*, 148 F.Supp. 731, 733 (S.D. Iowa 1956) ("substantial question for review"). In a recent district court decision, this distinction was emphasized; it was there noted that the statute does not define probable cause but that, generally, this is "something more than a frivolous assertion * * * but something less than the imperatives of 28 U.S.C. § 1292," which, as you recall, in subsection (b), provides for an interlocutory appeal on a certificate as to "substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." *United States ex rel. Rivera v. Reeves*, 246 F.Supp. 599, 601 (S.D.N.Y. 1965).

If there is a difference in these expressions I suspect that it is of no significance. In most of these cases relief is denied. Certainly, if a matter is frivolous, it is clearly without probable cause. Thus, the cases which speak of frivolity, such as those from our own circuit, would arrive at the same conclusion on a more substantive standard.

My own reaction is that the cases, taken as a whole, do indicate that the standard of probable cause requires something more than the absence of frivolity and that the standard is a higher one than the "good faith" requirement of § 1915. Undoubtedly, this conclusion is not shared in all quarters. Yet, the decision in *Nozakowski* itself, I think, suggests that this is inherently so when it requires full dress treatment by the court of appeals once the district court has issued a certificate of probable cause.

All this adds up, in my mind, to the conclusions that there is something definitely to be gained by having the district court, in the first instance, give very careful consideration to the question whether the state prisoner federal habeas applicant has something of substance going for him, and that there is something definitely to be lost when the district court routinely issues a certificate of probable cause without this careful consideration. If the case is legally frivolous the application ought to be denied. When the case then comes to the court of appeals, as it inevitably does, that court will take another look at it and, on occasion, might issue the certificate itself. The court, however, under *Nozakowski*, does not have this discretion if the district court has issued the certificate. If an appellate judge issues the certificate where a district judge has denied it, that should not be regarded by the district judge as a rebuff. It does mean that the appellate judge entertains some doubt. That is his problem.

All this, after all, takes us right back to the philosophy that this, as with all other matters, is an issue for decision by the court of general jurisdiction, the district judge, in the first instance. This, I think, for reasons which are obvious to all of us, is where the best considered and important decision is to be made. This is the normal situation, for the routine case the district judge is there to decide and not to bypass the responsibility of decision. This is the dignified thing for him to do. This is the approach, I submit, which for so long was so forcefully presented and believed in by Judges Sanborn and Gardner and others of the Eighth Circuit. In *Higgins v. Steele*, supra, 195 F.2d 366, 369, a federal prisoner habeas corpus case decided in 1952, a long time ago so far as this area of the criminal law is concerned, Judge John B. Sanborn said:

"Although no district judge likes to pass upon the correctness of his own decisions, it is his duty, if he is thoroughly convinced that there is no substantial question for review and that an appeal will be futile, to certify that the appeal sought to be taken in *forma pauperis* is not taken in good faith * * *. We say this not to relieve ourselves of the burden of reviewing cases which have no merit, but to relieve those who are required to resist such appeals of unnecessary trouble and expense."

"We realize that the serious consideration which this Court has given to appeals in *forma pauperis* in hopeless cases may have led the District Judges in this Circuit to believe that such appeals should be allowed with extreme liberality. We are now of the opinion that much greater care should be taken in screening such cases, in order to separate those which are clearly without

merit from those which are meritorious or which at least present some substantial question worthy of consideration."

One might ask whether a district court could, with logic, allow an appeal to be taken *in forma pauperis* and yet refuse to issue a certificate of probable cause and, if so, with what result. One might say that this partial granting and partial denial is inconsistent. Yet, allowing *in forma pauperis* procedure may indicate only that the court finds the applicant is indigent and is acting in good faith. This may not be inconsistent with a determination of lack of probable cause.

III. Section 2255.

Here, as you know, the statute, so far as appeals are concerned, reads: § 2255. Federal custody; remedies on motion attacking sentence

* * * * *

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment as application for a writ of habeas corpus. * * *

On its face, therefore, § 2255 refers us back to the habeas corpus situation. However, since the petitioner is not complaining of detention arising out of process issued by a state court, the probable cause requirement of the habeas statute § 2253 has no application. Thus for the *in forma pauperis* § 2255 appeal, the only limitation is that of § 1915 centering in "good faith". All that we have said before as to this statute presumably applies here.

Thus, if there is a distinction between "probable cause" (§ 2253) and "good faith" (§ 1915), a § 2255 matter rests on the lower standard of mere good faith.

The Eighth Circuit, contrary perhaps to the impression of some of you, does not routinely override, in a § 2255 case, a district court's certificate that an appeal is not taken in good faith. See *Taylor v. United States*, 308 F.2d 776 (8 Cir. 1962); *Franano v. United States*, 303 F.2d 470 (8 Cir. 1962), cert denied 371 U.S. 805, 83 S.Ct. 125, 9 L.Ed.2d 102; *Turner v. United States*, 325 F.2d 988 (8 Cir. 1964), cert denied 377 U.S. 946, 84 S.Ct. 1354, 12 L.Ed.2d 308; *Peckham v. United States* (August 1967) (unreported). *Franano*, incidentally, was a paid appeal and yet was dismissed on the ground of frivolity. And *Turner* paid his docket fee because he felt he might thereby avoid a denial for frivolity; he was unsuccessful. Even in a recent direct appeal, despite the holding in *Coppedge*, Chief Judge Vogel and I, presently constituting what we call the administrative panel, recently denied *in forma pauperis* procedure in Misc. No. 476, *Bishop v. United States*, where the complaint was a general and non-specific one directed to claimed instructional error.

There is a recent First Circuit case which may be of some interest. *Halliday v. United States*, 380 F.2d 270 (1 Cir. 1967). This was a § 2255 proceeding which challenged the voluntariness of pleas of guilty originally accepted without appropriate inquiry under criminal Rule 11. The First Circuit held that it was not proper for the same district Judge to take new evidence and review the correctness of his own determination. Chief Judge Aldrich recognized that there are cases which look the other way. He stated that the court reached its conclusion, not from any feeling of constitutional compulsion, "but from a conviction that the best practice dictates such a policy". He observed that this did not mean that a sentencing Judge cannot review a § 2255 petition to conclude, if appropriate, that no evidentiary hearing is required. He recognized that the ruling could entail complications in a one Judge district. One can also envision complications if the case is to be followed in a multiple Judge district.

IV. Section 753(f).

Judge Heaney has suggested that a comment about cost-free transcripts would be in order. Here two statutes are pertinent. The first is § 1915(b), mentioned above, which provides that in any civil or criminal case the court may "direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States". This, of course, seems to relate to printing as such, but often printing the record first requires a typed transcript of oral testimony. The second is the Court Reporter Act, 28 U.S.C. § 753(f). As last amended in 1965, this provides in part:

28 U.S.C. § 753. Reporters

* * * * *

(f) * * * Fees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to sue, defend, or appeal *in forma pauperis* shall be paid by the United States out of money appropriated for that purpose. Fees for transcripts furnished in proceedings brought under section

2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal. Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). * * *

Section 753(f) obviously separates the cases into three categories:

1. Criminal or habeas corpus proceedings.
2. Section 2255 proceedings.
3. Other proceedings.

As to criminal or habeas corpus proceedings the statute merely says that transcript fees shall be paid by the United States out of money appropriated for that purpose. No condition is imposed.

For a § 2255 proceeding a fee for a transcript shall be paid by the United States only on condition. That condition is that the trial judge or a circuit judge certify both that the suit or appeal is not frivolous and that the transcript is needed for decision. Here we need a certification of no frivolity and of necessity. This smacks partially of § 1915(d)'s reference to frivolity but does not seem to relate to the good faith of § 1915(a), or to the probable cause of § 2253. Perhaps the statute is clear enough.

For "other proceedings" a transcript fee shall be paid by the United States again only on condition. This time the condition is that the appeal is not frivolous but presents a substantial question and, for what significance, if any, it may have, the latter phrase is in parentheses.

Thus, to repeat, for § 2255, we need a certificate as to non-frivolity and necessity. For "other proceedings" we need a certificate as to non-frivolity and, parenthetically, as to substantialness. Why do we have these distinctions in the statute? Are they merely careless draftsmanship, or the product, so often confusing, of amendment or compromise during the legislative process, or are the differences intentional and of significance?

One sidelight is perhaps of interest. Section 753(f) was amended in 1965 in order to provide cost-free transcripts for use in § 2255 proceedings. Prior thereto, such transcripts were not authorized. Mr. Ramsey Clark, then Deputy Attorney General, wrote the Chairman of the Committee on the Judiciary on May 27, 1965, recommending the amendment. He suggested that the Committee give consideration to the fact that, in a habeas corpus matter, there is no requirement for certification that the proceeding is not frivolous and the transcript is needed. He said, "The reason for this distinction is not apparent if the motion remedy under section 2255 is to be a remedy commensurate with a writ of habeas corpus". 2 U.S. Code Cong. & Ad. News, 89th Cong., 1 sess. 1965, pp. 2920-2921. The Committee apparently did not give much consideration to the distinction.

In one district court civil case the judge observed that he had no difficulty in determining that the appeal was not frivolous but that he did have difficulty in determining whether it presented a substantial question. He then related substance to something "reasonably debatable" on a purely objective standard. *Ortiz v. Greyhound Corp.*, 192 F. Supp. 903, 905 (D. Md. 1959). Actually, he conditioned his relief by requiring that the expense to the government be taxed as costs in the case and ultimately recovered from the party found to be liable. This condition, as a practical matter, probably did not work out for the defendant ultimately prevailed on a judgment n.o.v. *Ortiz v. Greyhound Corp.*, 275 F. 2d 770 (4 Cir 1960).

Of possible significance is the Fourth Circuit's decision in *United States v. Shoaf*, 341 F. 2d 832 (4 Cir. 1964), issued prior to the 1965 amendment of § 753(f). This was a § 2255 proceeding where the petitioner requested free transcripts of two trials. Judge Haynsworth observed that "the right to a transcript at government expense arises only in response to need of it"; that need on a direct appeal with new appellate counsel is a situation different from collateral attack where "most of the trial errors warranting attention in direct appeals are not reviewable"; that it is rare where the defendant needs a transcript "to become aware of the events or occurrences which constitute a ground for collateral attack"; and that the Supreme Court has not yet gone so far as to require the furnishing of a transcript to a § 2255 indigent applicant "who has undertaken to show neither specific nor general need" for it.

A special question, and this is the one Judge Heaney is interested in, is whether a court has the power to order a transcript at government expense before it allows an appeal in *forma pauperis*.

The cases are few. *Whitt v. United States*, 101 U.S. App. D.C. 1, 259 F. 2d 158 (1958), cert. denied 359 U.S. 937, 79 S. Ct. 652, 3 L. Ed. 2d 637, concerned a direct criminal appeal. Judge Washington, in writing for the court, held that § 753(f) gives the trial court and the court of appeals authority to direct the preparation of a transcript at government expense prior to the allowance of *in forma pauperis* appellate relief. He went on to observe, however, that a petitioner is not entitled to a transcript as of right. Judges Fahy and Bazelon, who sat with him, in concurrence added that the ordering of a transcript at government expense "is an essential incident to our power to allow appeals in *forma pauperis*". This meant, I suppose, that they felt they did not have to be concerned with § 753(f).

As noted, *Whitt* was a direct appeal. Its holding, applicable to such an appeal and to a habeas matter, may seem clear enough under § 753(f). But what of a § 2255 proceeding? *Whitt*, as to this, is not strictly in point for it rests on that part of § 753(f) which is not conditioned by non-frivolity and necessity. Can frivolity and necessity usually be determined by the very nature of the issues raised so that a transcript is not necessary, within the requirement of the statute? And if a judge certifies that an appeal is not frivolous in order to get a transcript, is he thereby determining non-frivolity for all purposes, that is, for purposes of allowing the *in forma pauperis* § 2255 appeal which, you recall, relates back to § 1915 and its standard of good faith? Judge Learned Hand noted this dilemma when he said, "We are of course aware that a thorough decision whether there was a substantial question would depend upon a scrutiny of the whole record; so that, speaking literally, we could not adequately decide the motion until after we had granted it." *Jaffe v. United States*, 246 F. 2d 760, 762 (2 Cir. 1957).

Here, again, I suggest that this dilemma in most cases may prove to be more apparent than real and that often frivolity and necessity can and will be determined to exist or to be absent by the inherent nature of the issues raised, rather than by a review of the contents of the transcript. This is not to say, of course, that, once the appeal has been allowed, a transcript may not be needed for purposes of appellate review.

All this may be hairsplitting. Certainly, I personally incline toward the view that a court does have power to order transcript fees paid in appropriate situations.

Now, some personal observations, some by way of apology, some with conviction:

1. The law in this area is still developing. Some aspects of the reach and of the limitations of the statutes are yet to be determined.

2. Some of the older cases, on both the trial and appellate levels, are perhaps of questionable precedent today and should be employed gingerly and with caution.

3. All through this area—in the statutes themselves, as you have seen, and certainly in the published opinions—are words which seem to be phrases of art. "Probable cause," "good faith," and "frivolous," are the primary ones. Do these have like or significantly different meanings and do they imply the presence of like or different standards for judicial action? Certainly, all of them are used with respect to issues which are fundamentally similar.

4. We must appreciate the practical aspects. Judicial attitudes change. Court personnel changes. We progress, we hope. In legal and even in constitutional interpretation. As in medicine, with which I am somewhat familiar, so in law, although more slowly, there is constant movement. We should be aware of this, anticipate it, and not resent it. We would not wish the situation to be otherwise.

5. I have worked into all this a good bit of my own attitude and my own approach. My judgment may be good but it also may be very bad. Certainly, yours is just as reliable as mine.

However, and for what they are worth, I end this overlong presentation with a series of conclusions, which I submit to you for your consideration:

CONCLUSIONS

1. Our primary and initial concern is not with § 2253 or with § 2255 but with the *in forma pauperis* statute § 1915. This is the statute which sets the tone.

2. Section 1915 is broad and comprehensive in terms and in application. It is not restricted to criminal matters or to habeas or to § 2255 proceedings.

3. The concept that *in forma pauperis* procedure is a privilege, rather than a right, is perhaps somewhat suspect today, despite continuing lip service to it. In one sense, it may be a privilege, but the sovereign has chosen to grant it and it thereby assumes certain characteristics of a right.

4. Still, the procedure at least on the statute's face, is within the area of discretion. A federal court "may authorize" the procedure.

5. In a direct appeal from a criminal conviction the indigent is to have the same rights of review possessed by the non-indigent. This means counsel who is an advocate. This means only an issue which is not plainly frivolous. This means only an argument which is rational. This does not mean any particular degree of probability of success.

6. On a direct appeal from a criminal conviction there remains only a very little elbow room, despite the good faith requirement of § 1915(a), for denial of *in forma pauperis* appellate procedure. This is a practical fact which, as practical judges, we must recognize. Concededly, the Eighth Circuit has not indulged in the practice of specially screening non-indigent appeals from convictions in order to ascertain frivolity prior to full hearing on the merits. It follows that it is not permissible to do this on indigent appeals.

7. Whether, in a civil case, the *in forma pauperis* standards for direct criminal appeals are to apply is as yet unsettled. The Supreme Court has not spoken. There is authority that the standards are fully applicable in civil cases. There is authority, where specific relief is requested, that there are limitations. The trend, I suspect, is toward full application. I also suspect, however, that complete justice can be effected on a case-by-case approach.

8. If, in a state prisoner's federal habeas corpus proceeding, a district judge grants a certificate of probable cause, the court of appeals must review "with its ordinary procedure." *Noeakowski*.

9. No uniformly accepted definition of probable cause has as yet evolved. A standard higher than "good faith" seems to be implied. Some decisions, in denying relief, speak of frivolity. This apparent difference, however, is not important and it is understandable. If a case is frivolous, it certainly lacks probable cause. It seems reasonable to conclude that the standard of § 2253 demands something of possible substance before the applicant is legally entitled to his certificate.

10. This being so, a district judge should not routinely issue the certificate in every case. His is the first and primary decision to be made. The right of appeal has been known to be abused. If he feels that no probable cause exists, it is his responsibility and his duty to deny the certificate.

11. The appellate Judge has corresponding responsibility not routinely to issue the certificate in every case, even though, when issued, the appeal may still be dismissed for frivolity under civil Rule 75(g) or perhaps under § 1915(d).

12. In a § 2255 appeal *in forma pauperis*, the applicable standard is that inherent in § 1915, namely, "good faith". This may be a standard lower than probable cause. But, as a practical matter, is it?

13. A judge, district or appellate, does have the power to order a transcript, or a partial one, at government expense, not only after an appeal has been allowed, but also before such allowance in order to enable him to pass upon the existence of grounds for appeal, specified by the statute, for the particular type of proceeding.

14. A judge, however, should exercise this power realistically and not incur this expense for the government if he can determine the satisfaction or non-satisfaction of the statutory standard from another source as, for example the motion papers themselves.

15. Let us, in this entire area, until the Supreme Court instructs us otherwise, be willing to act as responsible judges, to evaluate each case, and to make a considered judgment. If we are reversed occasionally, what does it matter? Our professional satisfaction lies in a job performed responsibly and not in avoiding responsibility.

Senator McCLELLAN. Senator Mathias?

Senator MATHIAS. Thank you, Mr. Chairman.

Judge Blackmun, I have been a member of several legislative bodies, participated in a great many hearings, heard a lot of witnesses. I must say to you, sir, that I do not believe that I have heard testimony that I think is more poignant or more revealing of a man's character than your testimony before this committee today.

I think the way in which you introduced us into your own family circle and revealed your understanding of the mood of young people through your understanding of your own daughters, the confidence in the youth of America which you expressed, as you expressed confidence in your own daughters, were all very relevant, very important. I think that your testimony here amply justifies the statement which appears on page 3 of the report of the Standing Committee on Federal Judiciary of the American Bar Association, which refers to your opinions as having been written "with a consciousness of broad social policies involved and with a perception of current trends of the law."

Mr. Chairman, I would like to refer at this time to the Justice Department's letter of April 15 addressed to the chairman of the committee where on page 12 in reference to possible conflict of interest problems the statement is made that "the underlying question under the canons is whether Judge Blackmun either acted with partiality or created the appearance of partiality in the above-entitled cases."

I think perhaps the Department without being inaccurate has stated the problem of conflict of interest a little obtusely. I think there is the further question of personal sensitivity of a judge to the questions of conflict of interest. And in weighing this question in my own mind I not only consider what Judge Blackmun has said in this committee today but I refer to the Department of Justice letter of April 28 where on page 2 and at other places in the same letter the Deputy Attorney General says:

"Judge Blackmun has called to my attention"

In my personal conversation with Judge Blackmun prior to this hearing I had the same experience, that it was not I who had to dig but Judge Blackmun who volunteered the information which might be pertinent to this particular subject. The concept of judicial ethics has progressed in the country and Judge Blackmun was sensitive enough to the progress so that in the Gateway case he did disqualify himself notwithstanding his previous conversations with the chief judge of his circuit. All of this is very reassuring and when we come down to the test as it has been prescribed in the American Bar Association's informal decision of October 22, 1962, in which it was concluded that "in the final analysis it must be left to the good judgment and conscience of the individual judge," when we come to that test I have a great deal of personal confidence that Judge Blackmun knows what the test is and how to apply it.

Judge, as Senator Hart suggested this morning, in the interest of being fair in conducting these hearings we must apply the same standards and tests to all the nominees who come before us. One of these questions which has been raised in the past of previous nominees is a question of "batting average," or in general terms, the way your opinions have survived the test of appeal.

Do you have any statistics at all on that subject?

Judge BLACKMUN. First of all, Senator Mathias, thank you for your comments.

I have not kept score. I like to think that when we are right usually certiorari is not granted, and so it does not enter into the batting average in the Supreme Court building.

I have, of course, been reversed a number of times, often by a divided court, and I have been affirmed with that unsatisfactory

result of being right for the wrong reason, which happens, I suppose, to all of us.

Senator MATILAS. Even here, Judge Blackmun.

Judge BLACKMUN. I would assume that I had been reversed more times in those cases where certiorari has been granted than I have been affirmed.

I take comfort only in the fact that I think certiorari is granted when the case is of a sensitive and particular nature or where there is a conflict among the circuits. I am not bothered by it, because I have, as I stated before, no apology whatsoever to make for the decision that has been made, even though we are proved wrong by the Supreme Court.

I know of instances where we have been affirmed. I know of instances where we have been reversed.

Senator MATILAS. I think my distinguished colleague on my right, Judge Cook, Senator Cook, is exactly correct when he says that your presence here in this hearing marks a historic point in the history of the Supreme Court. I think this day has helped to define in better terms than we ourselves have been able to express the kind of standards for which we have been groping and which we believe the country wanted. I personally feel, Judge Blackmun, that you meet that standard, that we have set a new bench mark for the bench, and it will be my privilege to support your nomination.

The CHAIRMAN. Senator McClellan?

Senator McCLELLAN. Thank you, Mr. Chairman. This morning I did not ask any questions. In the course of the examination of the nominee today it occurred to me I would like to ask one question, if I may be indulged.

The 10th amendment of the Constitution with which we are all familiar provides that the powers not delegated to the United States by the Constitution or prohibited by it to the States are reserved in the States respectively or in the people. That is a part of this document, this great Constitution of ours, and I have the feeling, and I know many others do, that sometimes that article of the Constitution, or that amendment to the Constitution is either ignored or forgotten. I would like to ask if in the examination of a constitutional issue that may be pending before the Court, if you find the powers attempted to be invoked have in fact not been delegated to the Federal Government by the Constitution, do you believe that the Supreme Court has either the duty or the right to usurp, attempt to confer or apply such powers by court decision or edict which would have the effect of or be tantamount to amending the Constitution of the United States?

Judge BLACKMUN. Senator McClellan, the answer to that is definitely in the negative, of course.

Senator McCLELLAN. Well, I believe one who takes the oath to uphold and support the Constitution has to answer in the negative. I do not believe there is the right or the duty or that a practice can be tolerated of the Supreme Court supplying a delegation of power to the Federal Government which the Constitution as written does not confer. I do not believe that it is a document of such elasticity that it should be stretched by any kind of a process of logic or illogic simply to adopt it so as to meet any situation which may arise, however desirable the remedy may be. The Constitution provides how it shall be amended,

and it does not delegate to the Court the power to amend it. And I think it is important in this time, in these changing times when there are many who are taking the attitude, they do not have time to amend the Constitution, so we should let the Court place an interpretation on it that will meet the situation. That kind of an expediency is dangerous, dangerous to the preservation of constitutional government. And I am glad to have your answer in the negative.

Thank you.

The CHAIRMAN. This will close the hearings. There will be an executive session of the committee.

Judge BLACKMUN. Mr. Chairman, may I express my appreciation for the kindness of the committee. This is a time in one's life when he is entirely stripped of his actions for the past 61 years. You have been very kind and attentive and I am grateful to each and all of you, and particularly to you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

(Whereupon, at 3:45 p.m., the U.S. Senate Judiciary Committee adjourned, to reconvene subject to the call of the Chair.)

(Material made a part of the record by the Chairman follows:)



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JUDGE HARRY ANDREW BLACKMUN

1. A chronological compilation of decisions of the United States Court of Appeals for the Eighth Circuit in which Judge Blackmun participated, with an indication of the subject matter of the case, action on appeal, if any, and whether Judge Blackmun wrote the opinion for the court. Dissenting or concurring opinions by Judge Blackmun, if any, are also noted; and per curiam opinions are designated as such.
2. A similar list of Three-Judge U. S. District Court opinions in which Judge Blackmun participated while a member of the Court of Appeals.

By

American Law Division
April 21, 1970

Judge Harry A. Blackmun

- Turner, J. v. United States, 271 F. 2d 855 (1959).
Criminal law. (Per curiam)
- Arkansas Valley Feed Mills, Inc. v. Fox Deluxe Foods, Inc., 273 F. 2d 804 (1960). Contracts.
- Richardson v. United States, 273 F. 2d 144 (1959).
Criminal contempt.
- Peterson v. Sunshine Mutual Ins. Co., 273 F. 2d 53 (1959).
Insurance.
- Straf v. Colonial Factors Corp., 273 F. 2d 554 (1960).
Banking.
- Weiby v. Farmer's Mutual Automobile Insurance Co., 273 F. 2d 327 (1960). Insurance.
- Brotherhood of Locomotive Firemen and Enginemen v. Northern Pacific Railway Co., 274 F. 2d 641 (1960). Labor Relations.
Blackmun wrote opinion.
- C.S. Foreman & Co. v. Great Lakes Pipeline Co., 274 F. 2d 61 (1960). Contract.
- Johnson v. Hill, 274 F. 2d 110 (1960).
Tort- auto collision.
- United States v. Stutsman County Implement Co.; United States v. Midwest Motors 274 F. 2d 733 (1960). Tax Lien.
- Greene v. Nerven, 275 F. 2d 134 (1960). Tort-auto collision.
Blackmun wrote the opinion.
- Review Committee, Venue VII, Commodity Stabilization Service, United States Department of Agriculture v. Willey, 275 F. 2d 264, (1960)(Cert. den. 363 U.S. 827.) Administrative Law. Blackmun wrote the opinion.

- Byrd v. Sexton, 277 F. 2d 418 (1960).
(Certiorari Denied 364 U.S. 818) Civil Rights. Schools.
Blackmun wrote the opinion.
- Hjelm v. United States, 277 F. 2d 393 (1960).
Criminal Law - Appeal in forma pauperis. (Per curiam).
- Lewis v. Nelson, 277 F. 2d 207 (1960).
Wrongful death, Federal Procedure.
- Midland Ford Tractor Co. v. Commissioner, IRS, 277 F. 2d 111
(1960). (Certiorari Denied 364 U.S. 881). Tax.
- Northern Natural Gas Co. v. O'Malley; Northern Natural Gas Co. v. McCrory, 277 F. 2d 128 (1960). Tax.
Blackmun wrote concurring opinion.
- Quirke v. St. Louis - San Francisco RR., 277 F. 2d 705 (1960).
(Certiorari Denied 363 U.S. 845) Corporations.
- Travelers Indemnity Co. v. Nielson, 277 F. 2d 455 (1960).
Affirmed 174 F. Supp. 648.
Insurance.
- Garner v. United States; Weddle v. United States, 277 F. 2d 242,
(1960). Criminal Law, Evidence, White Slave Traffic Act.
- Brandt v. Renfield Importers, Ltd., 278 F. 2d 904 (1960).
(Certiorari Denied 364 U.S. 911) Corporations.
- Hanson v. Ford Motor Co., 278 F. 2d 586 (1960).
Bankruptcy.
Blackmun wrote the opinion.
- Kozak v. Wells, 278 F. 2d 104 (1960).
Federal Procedure. Blackmun wrote the opinion.
- Mitchell v. Goodyear Tire & Rubber Co., 278 F. 2d 562 (1960).
Labor
- Wood v. United States; Gurney v. United States, 279 F. 2d 359
(1960). Criminal Law, Confession.

- Homan v. United States; 279 F. 2d 767 (1960). (Certiorari Denied 364 U.S. 866) Criminal Law - Witness.
- Massachusetts Bonding & Insurance Co. v. Julius Seidel Lumber Co., 279 F. 2d 861 (1960). Insurance.
- N.L.R.B. v. International Union of Operating Engineers, Little Rock Local, 279 F. 2d 951 (1960). Labor.
- Arkansas Missouri Power Co. v. Carl, 280 F. 2d 7 (1960). Negligence.
- Chicago, Rock Island & Pacific RR. v. Chicago and North Western RR.; Chicago & North Western RR. v. Chicago, Rock Island & Pacific RR., 280 F. 2d 110 (1960). (Certiorari Denied 364 U.S. 931) Contribution and Indemnity.
- James Realty Co. v. United States, 280 F. 2d 394 (1960). Tax.
- Knapp v. Styer, 280 F. 2d 384 (1960). Negligence.
- Kroger Co. v. Doane, 280 F. 2d 1 (1960). Negligence. Blackmun wrote dissent.
- United States Machinery Movers v. Beller, 280 F. 2d 91 (1960). (Certiorari Denied 364 U.S. 903) Bankruptcy.
- United States for use of Archer Corp. v. Bradley-Dodson Co., 281 F. 2d 676 (1960). Contracts. Blackmun wrote the opinion.
- Bituminous Material & Supply Co. v. N.L.R.B., 281 F. 2d 365. (1960). Labor. Blackmun wrote the opinion.
- Carlberg v. United States, 281 F. 2d 507 (1960). Tax. Blackmun wrote the opinion.
- Chicago Copper & Chemical Co. v. Apex Mining Co., 281 F. 2d 530 (1960). Sales.
- Foster v. United States, 281 F. 2d 310 (1960). Criminal Law - Search & Seizure.

- Janko v. United States, 281 F. 2d 156 (1960).
Tax. Blackmun wrote the opinion.
- Jefferson Ins. Co. v. Hirschert, 281 F. 2d 396 (1960).
Insurance.
- Thomas v. United States, 281 F. 2d 132 (1960). (Certiorari Denied 361 U.S. 904). Criminal Law. Evidence.
- Holdridge v. United States, 282 F. 2d 302 (1960).
Criminal Law - Free Speech. Blackmun wrote the opinion.
- Tinon v. Missouri Pacific RR., 282 F. 2d 773 (1960).
Labor. Blackmun wrote the opinion.
- Brown v. United States, 283 F. 2d 792 (1960).
Criminal Law - Auto Theft. Blackmun wrote the opinion.
- Gunn v. United States, 283 F. 2d 358 (1960)
Tax. Blackmun wrote the opinion.
- Homan v. Commissioner, IRS, 283 F. 2d 227 (1960).
Tax.
- Hjelm v. United States, 283 F. 2d 666 (1960).
Criminal Law. Appeal in forma pauperis. (Per Curiam).
- Maritz, Inc., v. ACF Wrigley Stores, Inc., 283 F. 2d 75 (1960).
Contract.
- National Bank of Eastern Ark., v. General Mills, Inc., 283 F. 2d 574 (1960). Trust Deeds.
- Roemhild v. Jones, 283 F. 2d 70 (1960).
Trusts.
- Tyson v. Iowa; Schroeder v. Tyson, 283 F. 2d 802 (1960).
Eminent Domain.
- United States v. Rainwater; United States v. Citizens Nat'l Bank.
283 F. 2d 386 (1960). Witnesses.
- Cox v. United States, 284 F. 2d 704 (1961).
(Certiorari Denied 365 U.S. 863)
Criminal Law. Evidence.

- Industrial Aggregate Co. v. United States, 284 F. 2d 639 (1960).
Tax. Blackmun wrote the opinion.
- 3 M Co. v. Superior Insulating Tape Co., 284 F. 2d 478 (1960).
Fed. Civil Procedure. Patents.
- Florida v. United States, 285 F. 2d 596 (1960).
Tax.
- United States v. Mississippi Valley Barge Line, 385 F. 2d 381 (1960).
Admiralty. Blackmun wrote the opinion.
- New York Central Railroad v. Chernew, 285 F. 2d 189 (1960).
Wrongful Death.
- Parmalee Pharmaceutical Co., v. Zink, 285 F. 2d 465 (1961).
Patents. Blackmun wrote the opinion.
- Bartholomew v. United States, 286 F. 2d 779 (1961).
Criminal Law. (Per Curiam).
- Glover v. United States, 286 F. 2d 84 (1961).
Criminal Law. Armed Services.
- Kenner v. United States, 286 F. 2d 208 (1960).
Criminal Law - Mentally incompetent to stand trial.
- Meredith v. Van Oosterhout, 286 F. 2d 216 (1960).
Removal. (Per Curiam)
- Potter Electric Signal Mfg. Co. v. United States, 286 F. 2d 200
(1961). Tax.
- Siemer v. Midwest Mower Co., 286 F. 2d 381 (1961).
Negligence.
- Stone v. United States, 286 F. 2d 56 (1961).
Estoppel.
- Bailey v. Henslee, 287 F. 2d 936 (1961)
(Certiorari Denied 368 U.S. 877)
Habeas Corpus. Blackmun wrote the opinion.

- Dyer v. SEC., 287 F. 2d 773 (1961).
Corporations.
- Wilkins v. Kendall, 287 F. 2d 201 (1961).
Contract.
- United States v. Turner, 287 F. 2d 821 (1961).
Tax. Blackmun wrote the opinion.
- Goldberg v. Kickapoo Prairie Broadcasting Co., 288 F. 2d 778 (1961). Labor.
- Ashbach v. Kirtley, 289 F. 2d 159 (1961).
Bankruptcy.
- Dyer v. SEC., 289 F. 2d 242 (1961).
Corporations.
- State Bank of Poplar Bluff v. Maryland Casualty Co., 289 F. 2d 544 (1961). Insurance.
Blackmun wrote the opinion.
- Swanson v. United States, 289 F. 2d 166 (1961).
(Certiorari Denied 369 U.S. 812)
Criminal Law - Sentencing.
- Gellman v. FTC, 290 F. 2d 666 (1961).
Trade Regulations.
- Goldberg v. Wade Lahar Construction Co., 290 F. 2d 408 (1961). Certiorari Denied 368 U.S. 902). Labor.
Blackmun wrote the opinion.
- Taub v. Ingraham, 290 F. 2d 288 (1961).
Mortgage.
- Village of Brooten v. Cudahy Packing Co., 291 F. 2d 284 (1961).
Intoxicating Liquor. Blackmun wrote the opinion.
- Dyer v. SEC., 291 F. 2d 774 (1961).
Corporations.

- Johnson v. United States, 291 F. 2d 908 (1961).
(Certiorari Denied 368 U.S. 969)
Tax. (Per Curiam)
- Schroeder v. Commissioner, IRS, 291 F. 2d 649 (1961).
(Certiorari Denied 368 U.S. 985). Tax.
- Tollett v. Mashburn, 291 F. 2d 89 (1961).
Assault & Battery.
- United States v. Ekberg, 291 F. 2d 913 (1961).
(Certiorari Denied 368 U.S. 920)
Tax. Blackmun wrote the opinion.
- United States v. United Marketing Association, 291 F. 2d 851 (1961).
Federal Civil Procedure.
- Arkansas - Louisiana Feed & Fertilizer Co. v. Marco Chemical Co., 292 F. 2d 197 (1961).
Corporations. Blackmun wrote concurring opinion.
- Hardy v. United States, 292 F. 2d 192 (1961).
Criminal Law - Sentencing.
- United States v. Quivey, 292 F. 2d 252 (1961).
Tax. Blackmun wrote concurring opinion.
- Williams v. United States, 292 F. 2d 157 (1961).
Criminal Law - Narcotics.
- Robert J. Blauner v. United States of America, 293 F. 2d 723 (1961);
(Certiorari Denied 368 U.S. 931)
Income Tax Evasion.
- Gulf, Mobile and Ohio Railroad Company, v. T.A. Thornton, 294 F. 2d 104 (1961) Diversity Action Arising out of a Train-Car Collision.
- Solomon Dehydrating Company v. Clarence R. Guyton, Central Greyhound Lines, Inc., and the Greyhound Corporation, 294 F. 2d 439 (1961);
(Certiorari Denied 368 U.S. 929) Diversity Action Arising out of
a Bus-Truck Collision. Blackmun wrote the opinion.
- Yoder v. Nutrena Mills, Inc., 294 F. 2d 505 (1961), Contracts and
Promissory Notes.

- Dusky v. United States of America, 295 F. 2d 743 (1961).
(Certiorari Denied 368 U.S. 998)
Criminal Law - Kidnapping Prosecution.
Blackmun wrote the opinion.
- Gendron v. United States of America, 295 F. 2d 897 (1961).
Criminal Law - Violation of Statute proscribing knowing receipt and concealment of goods stolen in interstate commerce.
- Van Kappel Company v. Commissioner of Internal Revenue,
295 F. 2d 767 (1961)
Internal Revenue.
- McAfee v. Felts, 295 F. 2d 716 (1961)
Negligence.
- Strickland v. United States of America, 295 F. 2d 186 (1961)
(Certiorari Denied 370 U.S. 949)
Criminal Law - Sentencing (Per Curiam).
- United States v. Wiley's Cove Ranch, 295 F. 2d 436 (1961).
Action to Recover Government Payments made by mistake.
Blackmun dissented.
- Bandy v. United States, 296 F. 2d 882 (1961)
(Certiorari Denied 369 U.S. 831)
Federal Procedure.
- Burdette v. Settle, 296 F. 2d 687 (1961), Habeas Corpus (Per Curiam)
- Koop v. United States, 296 F. 2d 53 (1961),
Criminal Law - Wild Game
- Long v. United States, 296 F. 2d 149 (1961),
Criminal Law - Assisting Escape of Federal Prisoner
(Per Curiam)
- Larson v. United States, 296 F. 2d 167 (1961), Bail
- Verdon v. United States, 296 F. 2d 549 (1961).
(Certiorari Denied 370 U.S. 945)
Criminal Law - Escape from Federal Prison.
Blackmun wrote the opinion.

- Dixon v. United States, 296 F. 2d 556 (1961).
Wrongful Death Action.
- Phoenix Assurance Company of New York v. Appleton City, Mo.,
296 F. 2d 787 (1961).
Contracts.
- Masinia v. United States, 296 F. 2d 871 (1961).
Perjury.
- O'Rieley v. Endicott-Johnson Corporation, 297 F. 2d 1 (1961).
Bankruptcy.
Blackmun wrote the opinion.
- County of Todd, Minn. v. Loegering, 297 F. 2d 470 (1961).
Wrongful Death Action.
- Harris v. United States, 297 F. 2d 491 (1961).
Criminal Law - Failure to Pay Special Tax.
(Per Curiam)
- Pan American Petroleum Corporation v. Kansas-Nebraska Natural Gas Company, 297 F. 2d 561 (1962).
(Certiorari Denied 370 U.S. 937)
Payment for Natural Gas.
- Long v. Victor Products Corporation, 297 F. 2d 577 (1962).
Jurisdiction.
Blackmun wrote the opinion.
- Tsai v. Rosenthal, 297 F. 2d 614 (1961).
Federal Procedure.
- Moses v. United States, 297 F. 2d 621 (1961).
Criminal Law - Fraud.
- Page v. Commissioner of Internal Revenue,
297 F. 2d 733 (1962).
Internal Revenue
(Per Curiam).
- Johnson Machine Works, Inc., v. Chicago Burlington and Quincy Railroad Co., 297 F. 2d 793 (1962).
To Recover Payments Due.

Siegfried v. The Kansas City Star Company, 298 F. 2d 1 (1962).
(Certiorari Denied 369 U.S. 819)
Civil Anti-Trust Action.

- Nebraska Department of Aeronautics v. Civil Aeronautics Board,
298 F. 2d 286 (1962)
Review of CAB order.
Blackmun wrote the opinion.
- Wash v. Western Empire Life Insurance Company, 298 F. 2d 374 (1962)
Insurance.
- Hanson v. Commissioner of Internal Revenue, 298 F. 2d 391 (1962)
Internal Revenue
- McClenaghan v. Union Stock Yards Co. of Omaha, 298 F. 2d 659 (1962)
Private Anti-trust Action.
Blackmun wrote the opinion.
- Travelers Health Association v. Federal Trade Commission,
298 F. 2d 820 (1962)
Review of FTA Order
- Minnesota Amusement Company v. Larkin, 299 F. 2d 142 (1962),
Action for Damages - Master-Servant.
- Sears, Roebuck and Co. v. Daniels, 299 F. 2d 154 (1962).
Negligence.
- Gravois Planing Mill Company v. Commissioner of Internal Revenue,
299 F. 2d 199 (1962)
Internal Revenue,
Blackmun wrote the opinion.
- Duff v. Kansas City Star Company, 299 F. 2d 320 (1962).
Monopolies.
- Engelhardt v. Bell & Howell Company,
299 F. 2d 400 (1962).
Federal Civil Procedure.
- Honebein v. McDonald, 299 F. 2d 493 (1962)
Federal Civil Procedure.
- World Publishing Company v. Commissioner of Internal Revenue,
299 F. 2d 614 (1962)
Internal Revenue. Blackmun wrote the opinion.

- Crome & Company v. The Vendo Company, 299 F. 2d 852 (1962).
Patents. Blackmun wrote the opinion.
- National Labor Relations Board v. Local 490, International Hod Carriers Building and Construction Laborers Union, AFL-CIO, 300 F. 2d 328 (1962)
Labor Relations.
- Weil v. Keshner, 300 F. 2d 500 (1962)
. Fraud.
- Chicago and North Western Railway Company v. Strand, 300 F. 2d 521 (1962)
Federal Civil Procedure- Wrongful Death Action.
- Barryhill v. United States, 300 F. 2d 690 (1962).
Negligence Action.
- National Trade Publications Service, Inc. v. Federal Trade Commission, 300 F. 2d 790 (1962)
Review of FTC Order
- Falstaff Brewers v. NLRB; Brewers & Malters Union v. NLRB, 301 F. 2d 216 (1962) Labor.
- Eastmount Construction Company v. Transport Manufacturing and Equipment Company, 301 F. 2d 34 (1962).
Contracts.
- Wardwell v. Commissioner, IRS, 301 F. 2d 632 (1962).
Internal Revenue.
- Clayton v. United States, 302 F. 2d 31 (1962).
(Rehearing Denied May 4, 1962).
Criminal Law - Procedure.
- Smith v. Settle, 302 F. 2d 142 (1962).
Habeas Corpus. (Per Curiam)
- Geer-Melkus Construction Company v. United States, 302 F. 2d 181 (1962).
- Feguer v. United States, 302 F. 2d 214 (1962). (Certiorari Denied 371 U.S. 872) Criminal Law - Competency to Stand Trial.
Blackmun wrote the opinion.

- Sutton v. Settle, 302 F. 2d 287 (1962).
(Certiorari Denied 372 U.S. 930)
Habeas Corpus. (Per Curiam).
- Republic Carloading and Distributing Company v. Missouri Pacific Railroad Company, 302 F. 2d 381 (1962). Freight Carriers. Blackmun wrote the opinion.
- Schoenberg v. Commissioner of Internal Revenue, 302 F. 2d 416 (1962). Internal Revenue.
- Janzen v. Goos, 302 F. 2d 421 (1962). Wrongful Death. Blackmun wrote the opinion.
- James Talcott Inc. v. Associates Discount Corporation, 302 F. 2d 443 (1962). (Rehearing Denied May 9, 1962). Replevin. Blackmun wrote the opinion.
- Franano v. United States, 303 F. 2d 470 (1962). (Certiorari Denied 371 U.S. 865). Criminal Law - Right of Review (Per Curiam).
- Freeman v. Comm. IRS., 303 F. 2d 580 (1962). Tax.
- Lofton v. Agee, 303 F. 2d 287 (1962). Tort.
- National Food Stores v. Utley, 303 F. 2d 284 (1962). False Imprisonment.
- Northwest Bancorporation v. Board of Governors, Federal Reserve System, 303 F. 2d 832 (1962). Administrative Law - Banking.
- Pike v. CAB., 303 F. 2d 353 (1962). Aviation. Blackmun wrote the opinion.
- Hartman v. Lanchli, 304 F. 2d 431 (1962). Federal Civil Procedure.
- Hartman Corp. of America v. United States, 304 F. 2d 429 (1962). Bankruptcy.

- Hobbs v. Renick, 304 F. 2d 856 (1962).
Negligence.
Blackmun wrote the opinion.
- Jackson v. United States, 304 F. 2d 243 (1962).
(Certiorari Denied 371 U.S. 895)
Criminal Law -- Guilty Plea (Per Curiam).
- N.L.R.B. v. Clegg, 304 F. 2d 168 (1962).
Labor. Blackmun wrote the opinion.
- N.L.R.B. v. Wilson Concrete Co., 304 F. 2d 1 (1962).
Labor.
- Pellon v. United States, 304 F. 2d 447 (1962).
(Certiorari Denied 371 U.S. 914)
Criminal Law - Motion to Vacate Sentence.
- Riss v. Anderson, 304 F. 2d 188 (1962).
Libel & Slander. Blackmun wrote the opinion.
- Robinson v. United States, 304 F. 2d 805 (1962).
(Judgment vacated 372 U.S. 527)
Criminal Law - Evidence=Sentencing.
- Buchanan v. United States, 305 F. 2d 738 (1962).
Federal Tort Claims. Blackmun wrote the opinion.
- Continental Casualty Co. v. United States, 305 F. 2d 794 (1962).
Certiorari Denied 371 U.S. 922.
U.S. Contracts. Blackmun wrote concurring opinion.
- Haberman v. United States, 305 F. 2d 787 (1962).
Tax- Corporation. Blackmun wrote the opinion.
- Hoffman v. Ribicoff, 305 F. 2d 1 (1962).
Administrative Law, Social Security
- Phoenix Assurance Corp. of New York v. City of Buckner, Mo.,
305 F. 2d 54 (1962).
(Certiorari Denied 371 U.S. 903).
Surety.

- Apex Mining Co. v. Chicago Copper & Chemical Co., 306 F. 2d 725 (1962). Sales.
- Tilton, Beck, & McClearn v. Missouri Pacific RR., 306 F. 2d 870 (1962). Armed Services. Blackmun wrote the opinion. Reversed 376 U.S. 169.
- Blumenfield v. United States; Berman v. United States; Brownstein v. United States; Bloom v. United States; Bloom v. United States; 306 F. 2d 892 (1962). Tax, Criminal Law.
- Loco Realty Co. v. Conn. IRS., 306 F. 2d 207 (1962). Tax. Blackmun wrote the opinion.
- Bartlett & Co. v. Commodity Credit Corp., 307 F. 2d 401 (1962). Trust.
- Dranow v. United States, 307 F. 2d 545 (1962). Criminal Law, - Bankruptcy.
- Duke v. Durfee, 308 F. 2d 209 (1962). (Reversed 375 U.S. 106) Judgments. Blackmun wrote the opinion.
- Land O'Lakes Creameries v. Commodity Credit Corp., 308 F. 2d 604 (1962). Sales.
- N.L.R.B. v. Twin Table & Furniture Co., 308 F. 2d 686 (1962). Labor. (Per Curiam).
- Rhodes v. Greenholtz, 308 F. 2d 234 (1962). Habeas Corpus. (Per Curiam).
- Shain v. Washington National Insurance Co., 308 F. 2d 611 (1962). Insurance. Blackmun wrote the opinion.
- State Securities Co. v. Federal Mutual Implement & Hardware Insurance Co., 308 F. 2d 452 (1962). Courts. (Per Curiam).
- Taylor v. United States, 308 F. 2d 776 (1962). Criminal Law - Appeals.
- Bailey v. Henslee, 309 F. 2d 840 (1962). Habeas Corpus. (Per Curiam).

- Billings v. Investment Trust of Boston, 309 F. 2d 681 (1962).
Corporations, Courts.
- Black v. United States, 309 F. 2d 331 (1962).
(Certiorari Denied 372 U.S. 934)
Criminal Law. - Tax.
- Bronzin v. United States, 309 F. 2d 158 (1962).
Criminal Law - Mail Fraud.
- Great American Insurance Co. v. Horah, 309 F. 2d 262 (1962).
Evidence. - Federal Civil Procedure. Blackmun wrote the opinion.
- Mihitol v. Crow, 309 F. 2d 777 (1962).
Copyright.
- Kelly v. Layton, 309 F. 2d 611 (1962).
Insurance.
- St. Paul Fire & Marine Insurance Co. v. United States,
309 F. 2d 22. (Certiorari Denied 372 U.S. 936)
Miller Act. Blackmun wrote the opinion.
- Stadin v. Union Electric Co., 309 F. 2d 912 (1962).
(Certiorari Denied 373 U.S. 915)
Federal Civil Procedure. Blackmun wrote the opinion.
- Collins v. Owen, 310 F. 2d 884 (1962).
Patents.
- United States v. Gunnar I. Johnson & Son, Inc., 310 F. 2d 899
(1962). Miller Act.
- Henslee v. Stewart, 311 F. 2d 691 (1963).
(Certiorari denied 373 U.S. 902).
Habeas Corpus (Per Curiam).
- N.L.R.B. v. Brown & Root, Inc., 311 F. 2d 447 (1963).
(Motion to Modify Denied - 318 F. 2d 543)
(Motion for Clarification Denied) 327 F. 2d 958.
Labor.
- Warren v. United States, 311 F. 2d 673 (1963).
Criminal Law - Appeals.

- Sawyer v. United States, 312 F. 2d 24 (1963).
(Certiorari Denied 374 U.S. 837)
Criminal Law - Robbery
- Beatrice Foods Co. v. United States, 312 F. 2d 29 (1963)
"Certiorari Denied 373 U.S. 904)
Criminal Law - Monopolies.
Blackmun wrote the opinion.
- Cohen v. Newsweek, Inc., 312 F. 2d 76 (1963)
Corporations
- Southern Farm Bureau Casualty Insurance Company v. Mitchell,
312 F. 2d 485 (1963).
Insurance.
- ASA v. United States, 312 U.S. 637 (1963).
Criminal Law - Sentencing.
- Cohen v. Time and Life Circulation Co., 312 U.S. 747 (1963).
Anti-Trust. (Per Curiam)
- United States v. Strehler, 313 F. 2d 402 (1963).
Internal Revenue.
- Lethert v. Culbertson's Cafe, Inc.,
313 F. 2d 506 (1963)
Internal Revenue. Blackmun wrote the opinion.
- Thogmartin v. United States, 313 F. 2d 589 (1963).
Criminal Law - Transporting Stolen Securities In
Interstate Commerce. Blackburn wrote the opinion.
- Peterson Produce Company v. United States, 313 F. 2d 609 (1963).
Internal Revenue.
- Paull v. Archer-Daniels-Midland Company, 313 F. 2d 612 (1963)
Action to Recover on Promissory Notes.
- Smith v. Missouri Pacific Transportation Company,
313 F. 2d 676 (1963)
Armed Services. Blackmun wrote the opinion.
- Republic Rice Mill, Inc., v. Empire Rice Mills, Inc.,
313 F. 2d 717 (1963). Liability of Warehouseman.

- Hudson v. John Hancock Mutual Life Insurance Company, 314 F. 2d 16 (1963). Master-Servant. Blackmun wrote the opinion.
- Celebreeze, Secretary of HEM v. Wifstad, 314 F. 2d 208 (1963). Social Security.
- Celebreeze, Secretary of HEM v. Benson, 314 F. 2d 219 (1963). Social Security.
- Doza v. American National Insurance Company, 314 F. 2d 230 (1963) Federal Civil Procedure - Insurance (Per Curiam)
- Cannon v. The Travelers Indemnity Company, 314 F. 2d 657 (1963). Insurance.
- Jones and Laughlin Steel Corporation v. Sedalia Industrial Loan and Investment Company, 315 F. 2d 58 (1963). Fraud.
- Fearing v. Commissioner of Internal Revenue, 315 F. 2d 495 (1963). Internal Revenue. Blackmun wrote the opinion.
- Campbell v. Village of Silver Bay, Minnesota, 315 F. 2d 568 (1963). Action under the Minnesota Dram Shop Act. Black wrote the opinion.
- Travis v. The Motor Vessel Rapids Cities, 315 F. 2d 805 (1963). Libel in Admiralty.
- Oliphant v. United States, 315 F. 2d 814 (1963). (Certiorari Denied 375 U.S. 859) Criminal Law - Kidnapping.
- Hutcheson v. Frito-Lay, Inc., 315 F. 2d 818 (1963). Personal Injury Action, Blackmun concurred in part and dissented in part.
- St. Paul Fire and Marine Insurance Company v. Coleman, 316 F. 2d 77 (1963). (Certiorari Denied 375 U.S. 903). Insurance.
- National Labor Relations Board v. Lee-Rowan Company, 316 F. 2d 209 (1963). (Certiorari Denied 375 U.S. 827) Labor Relations.
- Bouschor v. United States, 316 F. 2d 451 (1963). Internal Revenue. Blackmun wrote the opinion.
- Mee v. United States, 316 F. 2d 467 (1963). (Certiorari Denied 377 U.S. 997) Criminal Law - Conspiracy.

- Celebreeze, Secretary of HEM v. Bolas, 316 F. 2d 498 (1963).
Social Security. Blackmun wrote the opinion.
- Nolan v. Nash, 316 F. 2d 776 (1963). (Certiorari Denied 375 U.S. 924) Criminal Law - Habeas Corpus.
- Bros. Incorporated v. Browning Manufacturing Co., 317 F. 2d 413 (1963). (Certiorari Denied 375 U.S. 825) Patents.
- Willmark Service System, Inc., v. Wirtz, Secretary of Labor, 316 F. 2d 486 (1963). (Certiorari Denied 375 U.S. 897) Labor Relations.
- National Labor Relations Board v. Parkhurst Manufacturing Company, 317 F. 2d 513 (1963).
Labor Relations. Blackmun wrote the opinion.
- Wheeler v. United States, 317 F. 2d 615 (1963).
Criminal Law - Robbery.
- American Surety Company of New York v. United States, 317 F. 2d 652 (1963).
Contract. Blackmun wrote the opinion.
- Dangbar v. United States, 317 F. 2d 660 (1963).
Criminal Law - Interstate Transportation of Firearms.
(Per Curiam)
- Yeargain v. National Dairy Products Corporation, 317 F. 2d 779 (1963).
Personal Injury.
- Reamer v. United States, 318 F. 2d 43 (1963). (Certiorari Denied 375 U.S. 869) Criminal Law - Prosecution under the Mann Act.
Blackmun wrote the opinion.
- Hanover Insurance Company, Massachusetts Bonding Department v. The Travelers Indemnity Company, 318 F. 2d 306 (1963)
Insurance. Blackmun wrote the opinion.
- Weisser v. Otter Tail Power Company, 318 F. 2d 375 (1963) Negligence.

- National Labor Relations Board v. Brown & Root, Inc., 318 F. 2d 543 (1963). Labor Relations (Per Curiam)
- Johnson v. United States, 318 F. 2d 855 (1963). (Certiorari Denied 375 U.S. 987) Criminal Law - Escape from Federal Custody.
- Site Oil Company of Missouri v. National Labor Relations Board, 319 F. 2d 86 (1963). Labor Relations.
- Barnett v. United States, 319 F. 2d 340 (1963). Review of SEC Order.
- United States Rubber Company v. Bauer, 319 F. 2d 463 (1963). Negligence. Blackmun wrote the opinion.
- Green v. E.O. Bookwalter, 319 F. 2d 631 (1963). Internal Revenue.
- Idol v. Commissioner of Internal Revenue, 319 F. 2d 647 (1963). Internal Revenue. Blackmun wrote the opinion.
- Jennings v. McCall Corporation, 320 F. 2d 61 (1963). Corporation.
- United States v. Weber Paper Company, 320 F. 2d 199 (1963). Internal Revenue.
- Cox v. City of Freeman, Mo., 321 F. 2d 887 (1963). Tort.
- Filler v. Comm., IRS, 321 F. 2d 900 (1963). Tax.
- Frank v. Comm., IRS, 321 F. 2d 143 (1963). Tax. Blackmun wrote the opinion.
- N.L.R.B. v. International Brotherhood of Boilermakers, 321 F. 2d 807 (1963). Labor.
- Sipes v. United States, 321 F. 2d 174 (1963). (Certiorari Denied 375 U.S. 913) Tax. Blackmun wrote the opinion.
- Bacon v. United States, 321 F. 2d 880 (1963). Federal Tort Claims.
- Carunica v. United Hatters, Cap, & Millinery Workers Local, 321 F. 2d 764 (1963). Labor. Blackmun wrote the opinion.
- Burns v. United States, 321 F. 2d 893 (1963). (Certiorari Denied 375 U.S. 959) Criminal Law - Coram nobis.
- Banks v. Comm., IRS, 322 F. 2d 530 (1963). Tax. Blackmun wrote the opinion.
- Harris v. Settle, 322 F. 2d 908 (1963). (Certiorari Denied 377 U.S. 910) (Per Curiam) Habeas Corpus.

- Blake v. United States, 323 F. 2d 245 (1963).
Criminal Law - Fraud.
- Crow v. United States, 323 F. 2d 888 (1963).
Criminal Law, Habeas Corpus.
- Local Joint Board, Hotel & Restaurant Employees and Bartenders International Union v. Sperry, 323 F. 2d 75 (1963).
Labor.
- Minneapolis, St. Paul, & Sault Ste. Marie RR v. Metal-Matic, Inc., 323 F. 2d 903 (1963). Action against carrier for damage to goods.
- Northern Natural Gas Co. v. Roth Packing Co., 323 F. 2d 922 (1963).
Negligence.
- Estate of Peyton v. Commissioner, IRS, 323 F. 2d 438.
Estate Tax. Blackmun wrote the opinion.
- S & L Co. of Des Moines v. Wood, 323 F. 2d 322 (1963).
Negligence.
- Chicago, Milwaukee, St. Paul & Pacific RR v. Famous Brands, Inc., 324 F. 2d 137 (1963). Indemnity.
- Consolidated Underwriters v. Pennsylvania Threshermen & Farmers Mutual Casualty Ins. Co., 324 F. 2d 21 (1963). Insurance.
- N.L.R.B. v. Byrds Mfg. Co., 324 F. 2d 329 (1963).
Labor. Blackmun wrote the opinion.
- United States v. Bohachevsky, 324 F. 2d 120 (1963).
Negligence. Blackmun wrote opinion.
- Bookwalter v. Phelps, 325 F. 2d 186 (1963).
Tax. Blackmun wrote dissenting opinion.
- Fidelity & Casualty Co. of New York v. J.A. Jones Const. Co., 325 F. 2d 605 (1963). Indemnity.
- Figge Auto Co., v. Taylor, 325 F. 2d 899 (1964).
Automobile Negligence.
- Gold Bond Stamp Co. v. United States, 325 F. 2d 1018 (1964).
Antitrust. (Per Curiam)

- Hamm v. Commissioner, IRS., 325 F. 2d 934 (1963). (Certiorari Denied 377 U.S. 993) Tax. Blackmun wrote the opinion.
- Kansas City Luggage & Novelty Workers Union, Local No. 66, AFL-CIO v. Neeval Luggage Mfg. Co., 325 F. 2d 992 (1964). Labor.
- LaBarge Water Well Supply Co. v. United States, 325 F. 2d 798 (1964). Tax. Blackmun wrote the opinion.
- McIntosh v. Eagle Fire Co. of New York, 325 F. 2d 99 (1963). Insurance.
- Potter v. State of Missouri, 325 F. 2d 525 (1963). Criminal Law - Armed Robbery (Per Curiam)
- Roe v. United States, 325 F. 2d 556 (1963). Criminal Law - Mental incompetence to stand trial (Per Curiam)
- A.P. Green Fire Brick Co., v. N.L.R.B., 326 F. 2d 910 (1964). Labor
- Bass v. United States, 326 F. 2d 884 (1964). (Certiorari Denied 377 U.S. 905). Criminal Law - Possession of marijuana.
- Builders Ass'n of Kansas City v. Greater Kansas City Laborers District Council of the International Hod Carriers Building and Common Laborers Union of America of Greater Kansas City and Vicinity 326 F. 2d 867 (1964). (Certiorari Denied 377 U.S. 917). Labor.
- Cass Bank & Trust Co. v. National Indemnity Co., 326 F. 2d 308 (1964). Insurance.
- Chicago North Western RR v. Rieger, 326 F. 2d 329 (1964). (Certiorari Denied 377 U.S. 917) FBLA recovery.
- Evans v. United States; Parker v. United States, 326 F. 2d 827 (1964). Eminent Domain.
- General Bancshares Corp. v. Comm. IRS., 326 F. 2d 712 (1964). (Certiorari Denied 379 U.S. 832) Tax. Blackmun wrote the opinion.

- James M. Pierce Corp. v. Comm., IRS., 326 F. 2d 67 (1964). Tax. Blackmun wrote the opinion.
- Stearns v. Hertz Corp., 326 F. 2d 405 (1964). (Certiorari Denied 377 U.S. 934). Tort. Blackmun wrote the opinion.
- Swisher v. United States, 326 F. 2d 97 (1964). Habeas Corpus. (Per Curiam)
- Aetna Casualty & Surety Co. v. Stover, 327 F. 2d 288 (1964). Insurance.
- Engelhardt v. Bell & Howell Corp., 327 F. 2d 30 (1964). Federal Antitrust.
- Highland Supply Corp. v. Reynolds Metal Co., 327 F. 2d 725 (1964). (On remand - 238 F. Supp. 581. Motion Denied in part. Granted in part, 245 F. Supp. 510). Private Antitrust.
- Hurt v. United States, 327 F. 2d 978 (1964). Criminal Law - Mental Competency.
- N.L.R.B. v. Brown & Root Co., 327 F. 2d 958 (1964). Labor (Per Curiam)
- N.L.R.B. v. Trumbull Asphalt Co. of Delaware, 327 F. 2d 841 (1964). Labor. Blackmun wrote the opinion.
- Payne v. Nash, 327 F. 2d 197 (1964). Criminal Law - Habeas Corpus.
- Robinson v. United States, 327 F. 2d 618 (1964). Criminal Law - Searches & Seizure. Blackmun wrote the opinoin.
- Schwab v. United States, 327 F. 2d 11 (1964). Criminal Law - Auto Theft. Blackmun wrote the opinion.
- Solomon v. Northwestern State Bank, 327 F. 2d 720 (1964). Bankruptcy.
- Breen v. Commissioner, IRS., 328 F. 2d 58 (1964). (Certiorari Denied 379 U.S. 823) Tax. Blackmun wrote the opinion.

- Shoppers Fair of Arkansas, Inc., v. Sanders Co., 328 F. 2d 496 (1964).
Trade regulation.
- United States v. Great Lakes Pipeline Co., 328 F. 2d 79 (1964).
Tax.
- Dupeck v. Union Insurance Company of America, 329 F. 2d 548 (1964).
(As Amended on Denial of Rehearing May 15, 1964).
Insurance.
- Boeing Airplane Company v. O'Malley, 329 F. 2d 585 (1964). Sales.
- Johnson v. United States, 329 F. 2d 600 (1964). Criminal Law -
Sale of Heroin.
- United States v. State of South Dakota Game, Fish and Parks Department
329 F. 2d 665 (1964). (Certiorari Denied 379 U.S. 900).
(Rehearing Denied May 19, 1964).
Eminent Domain.
- Born v. Osendorf, 329 F. 2d 669 (1964). (Rehearing Denied
April 28, 1964). Negligence.
- Berrington & Basile Wholesalers, Inc. v. Local Union No. 46
of the International Union of United Brewery, Flour, Cereal,
Soft Drink and Distillery Workers of America, AFL-CIO.
330 F. 2d 202 (1964). Labor.
- Bistram v. People of the State of Minnesota, 330 F. 2d 450 (1964).
Criminal Law - Speedy Trial. Blackmun wrote the opinion.
- Estate of Buder v. Commissioner, IRS, 330 F. 2d
441 (1964). Estate Tax. (Per Curiam)
- Drake and Beemont Mutual Aid Society Against Fire and Lightning v.
United States, 330 F. 2d 548 (1964). Insurance.
- Jackson v. United States, 330 F. 2d 679 (1964).
(Certiorari Denied 379 U.S. 855).
Criminal Law - Narcotics.
- Standard Oil Co. v. Kurtz, 330 F. 2d 178 (1964).
Bankruptcy. Blackmun wrote the opinion.

- Truck Drivers & Helpers Union Local 784 v. Ulry-Talbert Co.,
330 F. 2d 562 (1964).
Labor.
- Bonnot v. Congress of Independent Unions Local # 14, 331 F. 2d 355
(1964). Labor. Blackmun wrote the opinion.
- Grunewald v. Missouri Pacific RR, 331 F. 2d 983,
(1964). Failure to Prosecute Trial. Blackmun
wrote the opinion.
- Hagen Supply Corp. v. Iowa National Mutual Insurance Co.
331 F. 2d 199 (1964). Insurance.
- Iowa Beef Packers, Inc. v. N.L.R.B., 331 F. 2d 176 (1964).
Labor.
- N.L.R.B. v. Upholsterers Frame & Bedding Workers Twin City Local
61, 331 F. 2d 561 (1964).
Labor.
- Sanitary Systems Inc. v. American Surety Co. of New York,
331 F. 2d 438 (1964). Contracts.
- Smith v. United States. 331 F. 2d 265 (1964).
(Certiorari Denied 379 U.S. 824) Criminal Law - Witnesses.
- United States v. Mehrheim. 332 F. 2d 469 (1964). Factors.
- Peacock & Peacock, Inc., v. Stuyvesant Insurance Company.
332 F. 2d 499 (1964).
Insurance. Blackmun wrote the opinion.
- Ramsey v. United States, 332 F. 2d 875 (1964).
Criminal Law - Evidence.
- Roberts v. United States, 332 F. 2d 892 (1964).
(Certiorari Denied 380 U.S. 980).
Criminal Law - Searches and Seizures.
- John Deere Company of Kansas City v. Graham,
333 F. 2d 529 (1964). Patent.
- Adams v. United States, 333 F. 2d 766 (1964). (Certiorari Denied
379 U.S. 974) Narcotics.(Per Curiam)

- Pellon v. United States, 333 F. 2d 766 (1964). Motion for vacation of Sentence.(Per Curiam)
- American National Bank and Trust Company of Chicago v. Bone, 333 F. 2d 984 (1964). Bankruptcy.
- Chicago Rock Island and Pacific Railroad Company v. Breckenridge, 333 F. 2d 990 (1964). Negligence.
- Southern Fireproofing Company v. R. F. Ball Construction Company, 334 F. 2d 122 (1964). Contract.
Blackmun wrote the opinion.
- National Labor Relations Board v. Council Manufacturing Corporation, 334 F. 2d 161 (1964). Labor Relations. Blackmun wrote the opinion.
- Sansone v. United States, 334 F. 2d 287 (1964). (Affirmed 380 U.S. 343) (Certiorari granted 85 Sup. Ct. 159) Internal Revenue.
Blackmun wrote the opinion.
- National Labor Relations Board v. L.G. Everist, Inc., 334 F. 2d 312 (1964). Labor Relations.
- Cole v. Neaf, 334 F. 2d 326 (1964). Malicious Prosecution.
- Rhodes v. Meyer; Rhodes v. Steenberg, 334 F. 2d 709 (1964). (Certiorari Denied 379 U.S. 915)
Civil Rights - Prosecution for contempt.
- Frank Sullivan Company v. Midwest Sheet Metal Works, 335 F. 2d 33 (1964). Contracts. Blackmun wrote the opinion.
- State of South Dakota v. The National Bank of South Dakota, Sioux Falls, 335 F. 2d 441 (1964). (Certiorari Denied 379 U.S. 970). Bank Merger.
- Consolidated Sun Ray, Inc. v. Oppenstein, 335 F. 2d 801 (1964). Landlord-Tenant.
- Standard Electronics Corporation v. Edward R. Kenneally, 336 F. 2d 394 (1964). Bankruptcy.

- Continental Casualty Company v. Allsop Lumber Company, 336 F. 2d 445 (1964). (Certiorari Denied 379 U.S. 968) Contracts. Blackmun wrote the opinion.
- Rock Island Millwork Co. v. Hedges-Gough Lumber Company, 337 F. 2d 24 (1964). Action for money due for goods sold and delivered.
- LaRocca v. United States, 337 F. 2d 39 (1964). Perjury.
- Harding v. United States, 337 F. 2d 254 (1964). Criminal Law - Interstate Transportation of Stolen Automobile.
- Koppers Company v. Continental Casualty Company, Inc., 337 F. 2d 499 (1964). Federal Procedure - Jurisdiction. Blackmun wrote the opinion.
- Missouri-Illinois Tractor & Equipment Co. v. D. & L. Construction Co., 337 F. 2d 507 (1964). Contracts. Blackmun wrote the opinion.
- Schook v. United States, 337 F. 2d 563 (1964). Criminal Law - Interstate Transportation of Firearms.
- Murphy Oil Corporation v. United States, 337 F. 2d 677 (1964). (Certiorari Denied 380 U.S. 979) Internal Revenue. (Per Curiam).
- Patsis v. Immigration and Naturalization Service, 337 F. 2d 733 (1964). (Certiorari Denied 380 U.S. 952; Rehearing Denied 381 U.S. 921). Deportation Case. Blackmun wrote the opinion.
- Kelly Tire Service, Inc. v. Kelly-Springfield Tire Company, 338 F. 2d 248 (1964). Fraud.
- Zervas v. Zervas; Welchior v. Zervas, 338 F. 2d 299 (1964). Insurance.
- United States v. S & A Company, 338 F. 2d 629 (1964). (Certiorari Denied 383 U.S. 942). Internal Revenue. Blackmun wrote the opinion.
- Kotula v. Ford Motor Company, 338 F. 2d 732 (1964). (Certiorari Denied 380 U.S. 979) Trade Regulation.

- Cheyenne River Sioux Tribe of Indians v. United States, 338 F. 2d 906 (1964) (Certiorari Denied 382 U.S. 815). Eminent Domain.
- Weir v. United States, 339 F. 2d 82 (1965). Execution sale of land.
- Jones v. Harris, 339 F. 2d 585 (1964). Habeas Corpus. (Per Curiam)
- Thorndal v. Smith, Wilde, Beebe and Cades, 339 F. 2d 676 (1965). Bankruptcy.
- Connolly v. Sigler, 339 F. 2d 705 (1965). Habeas Corpus. (Per Curiam)
- Reserve Rural High School District No. 4, Brown County, Kansas 339 F. 2d 788 (1964). High School Tuition.
- Hawaiian Investors v. Thorndal, 339 F. 2d 807 (1965). Bankruptcy.
- McCroskey v. United States, 339 F. 2d 895 (1965). Criminal Law - Interstate Transportation of Forged Check. (Per Curiam).
- Butler v. United States, 340 F. 2d 63 (1965). (Certiorari Denied 382 U.S. 847) Criminal Law - Mail Fraud.
- Hansen v. United States, 340 F. 2d 142 (1965). Trusts.
- David Sherman Corporation v. Heublein, Inc., 340 F. 2d 377 (1965). Trade Regulation. Blackmun wrote the opinion.
- Burns v. Harris, 340 F. 2d 383 (1965). (Certiorari Denied 382 U.S. 960). Habeas Corpus. (Per Curiam).
- Burleson v. United States, 340 F. 2d 387 (1965). Criminal Law - Coerced Confession (Per Curiam).
- Brasher v. Celebrezze, Secretary of H.E.W., 340 F. 2d 413 (1965). Social Security. Blackmun wrote the opinion.
- Glouser v. United States, 340 F. 2d 436 (1965). (Certiorari Denied 381 U.S. 940). Criminal Law - Probation (Per Curiam).

- Lewis v. United States, 340 F. 2d 678 (1965). Criminal Law - Narcotics.
- Bent v. United States, 340 F. 2d 703 (1965). (Certiorari Denied 382 U.S. 869). Criminal Law - Robbery.
- Springer v. United States, 340 F. 2d 950 (1965). Criminal Law - Search and Seizure.(Per Curiam)
- Apex Mining Company v. Chicago Copper and Chemical Company, 340 F. 2d 985 (1965). Contract.
- United States v. Crance, 341 F. 2d 161 (1965). (Certiorari Denied 382 U.S. 815). Eminent Domain.
- Greif Bros. Cooperage Corporation v. United States Gypsum Company, 341 F. 2d 167 (1965) Action to Quiet Title.
- Stanford v. Utley, 341 F. 2d 265 (1965). Federal Civil Procedure. Blackmun wrote the opinion.
- United States v. Western Contracting Corporation, 341 F. 2d 383 (1965). Contracts.
- The Municipal Bond Corporation v. Commissioner of Internal Revenue, 341 F. 2d 683 (1965). Internal Revenue.
- National Bond Finance Company v. General Motors Corporation, 341 F. 2d 1022 (1965). Corporations. (Per Curiam)
- Wood v. United States, 342 F. 2d 708 (1965). Criminal Law - Larceny.
- Syverson v. United States, 342 F. 2d 780 (1965). (Certiorari Denied 382 U.S. 961; Rehearing Denied 382 U.S. 1021) Fraud. Blackmun wrote the opinion.
- McDonnell Aircraft Corporation v. United States, 342 F. 2d 943 (1965). Internal Revenue. Blackmun wrote the opinion.
- Aftanase v. Economy Baler Company, 343 F. 2d 187 (1965). Corporations. Blackmun wrote the opinion.
- Baker v. United States, 343 F. 2d 222 (1965). Action under the Federal Tort Claims Act.

- Coil v. United States, 343 F. 2d 573 (1965). (Certiorari Denied 382 U.S. 821) Criminal Law - Self Incrimination.
- Glick v. Ballentine Produce, Inc., 343 F. 2d 839 (1965). (Certiorari Denied 382 U.S. 891) Wrongful Death Action.
- Hopkins v. United States, 344 F. 2d 229 (1965). Criminal Law - Rights of Accused.
- Palmentere v. Campbell, 344 F. 2d 234 (1965). False Imprisonment.
- Haynes v. Harris, 344 F. 2d 463 (1965). Habeas Corpus.
- National Labor Relations Board v. Johnnie's Poultry Co., 344 F. 2d 617 (1965). Labor Relations.
- Hulsenbusch v. The Davidson Rubber Company, 344 F. 2d 730 (1965). (Certiorari Denied, 382 U.S. 977) Master-Servant.
- Young v. United States, 344 F. 2d 1006 (1965). (Certiorari Denied 382 U.S. 867). Transporting Stolen Vehicle in Interstate Commerce.
- Blassie v. Kroger Company, 345 F. 2d 59 (1965). Labor Relations. Blackmun wrote the opinion.
- Local No. 688, International Brotherhood of Teamsters v. Townsend, 345 F. 2d 77 (1965). Labor Relations. Blackmun wrote the opinion.
- Burnside v. State of Nebraska, 346 F. 2d 88 (1965). Habeas Corpus. (Per Curiam)
- Carlile Corporation v. Farmers Liquid Fertilizer, Inc., 346 F. 2d 91 (1965). Federal Civil Procedure.
- Ivey v. Frost, 346 F. 2d 115 (1965). Federal Civil Procedure. (Per Curiam)
- Siebring v. Hansen and Afsco, 346 F. 2d 474 (1965). (Certiorari Denied 382 U.S. 943). Patents.
- National Labor Relations Board v. William J. Burns International Detective Agency, 346 F. 2d 897 (1965). Labor Relations.

- Gajewski v. L.B. Stevens, 346 F. 2d 1000 (1965). Habeas Corpus (Per Curiam)
- Bradley v. United States, 347 F. 2d 121 (1965) (Certiorari Denied 382 U.S. 1016). Criminal Law - Competency to Stand Trial.
- Colson Corporation v. National Labor Relations Board, 347 F. 2d 128 (1965) (Certiorari Denied 382 U.S. 904). Labor Relations.
- Cross v. United States, 347 F. 2d 327 (1965). Criminal Law - Narcotics.
- Hayes v. United States, 347 F. 2d 668 (1965). Criminal Law - Confessions (Per Curiam)
- Friedman v. United States, 347 F. 2d 697 (1965). (Certiorari Denied 382 U.S. 946). Criminal Law - Mail Fraud.
- Moore Company of Sikeston, Missouri v. Sid Richardson Carbon & Gasoline Company, 347 F. 2d 921 (1965). (Certiorari Denied 383 U.S. 925; Rehearing Denied 384 U.S. 914). Antitrust.
- Parnes v. United States, 347 F. 2d 925 (1965). Criminal Law - Rights of Accused.
- Lowery v. Clouse, 348 F. 2d 252 (1965). Federal Civil Procedure. Blackmun wrote the opinion.
- Journal-Tribune Publishing Company v. Commissioner of Internal Revenue, 348 F. 2d 266 (1965). Internal Revenue.
- Maxwell v. Stephens, 348 F. 2d 325 (1965). (Certiorari Denied 382 U.S. 944) Habeas Corpus. Blackmun wrote the opinion.
- United States v. National Furnityre Company, 348 F. 2d 390 (1965). Bankruptcy.
- Neal v. System of Board of Adjustment (Missouri Pacific Railroad), 348 F. 2d 722 (1965). Labor Relations. Blackmun wrote the opinion.
- Western Auto Supply Company v. Gamble-Skogmo, Inc., 348 F. 2d 736 (1965). (Certiorari Denied, 382 U.S. 987). Corporations.
- McClennahan v. Union Stock Yards of Omaha, 349 F. 2d 53 (1965). Monopolies.

- Neff v. World Publishing Company, 349 F. 2d 235 (1965). Federal Civil Procedure- Contracts.
- Merrick v. Allstate Insurance Company, 349 F. 2d 279 (1965). (Certiorari Denied 382 U.S. 957). Insurance. Blackmun wrote the opinion.
- Bern v. Evans, 349 F. 2d 282 (1965). Federal Civil Procedure - Action for Personal Injuries.
- Lesser v. William Holliday Cord Associates, Inc., 349 F. 2d 490 (1965). Contracts. Blackmun wrote the opinion.
- Standard Title Insurance Company v. Roberts, 349 F. 2d 613 (1965). Federal Civil Procedure - Title INsurer's Action.
- Hammerstein v. Kelley, 349 F. 2d 928 (1965). Internal Revenue.
- United States Fire Insurance Co. v. Cannon 349 F. 2d 941 (1965). Insurance.
- Smith v. American Guild of Variety Artists, 349 F. 2d 975 (1965). Judgment vacated, 384 U.S. 30; Certiorari Denied 387 U.S. 931) Labor Relations.
- McGraw-Edison Company v. Van Pelt, 350 F. 2d 361 (1965). Mandamus. (Per Curiam)
- Kaufman v. United States, 350 F. 2d 408 (1965). (Certiorari Denied 383 U.S. 951) Criminal Law - Rights of the Accused. Blackmun wrote the opinion.
- St. Louis Mailers' Union Local No. 3 v. Globe-Democrat Publishing Company, 350 F. 2d 879 (1965). (Certiorari Denied 382 U.S. 979) Labor Relations. Blackmun wrote the opinion.
- Hedberg v. State Farm Mutual Automobile Insurance, 350 F. 2d 924 (1965). Employment Contracts. Blackmun wrote the opinion.
- Drummond v. United States 350 F. 2d 983 (1965). (Certiorari Denied 384 U.S. 944). Criminal Law. Searches & Seizure. Blackmun wrote the opinion.
- Osborne v. United States, 351 F. 2d 111 (1965). Criminal Law - Rights of the Accused.

- Carey v. Settle, 351 F. 2d 483 (1965). Federal Civil Procedure.
- Babb v. United States, 351 F. 2d 863 (1965). Criminal Law
Concealing and Transporting Stolen Automobile in Interstate Commerce.
- Ozark Air Lines v. Larimer, 352 F. 2d 9 (1965). Negligence.
- Link v. United States, 352 F. 2d 207 (1965). (Certiorari Denied
383 U.S. 915). Criminal Law - Robbery.
- Greiger's Estate v. Commissioner of Internal Revenue, 352 F. 2d 221
(1966). (Certiorari Denied 382 U.S. 1012). Internal Revenue.
Blackmun wrote the opinion.
- Dyer v. Commissioner of Internal Revenue, 352 F. 2d 948 (1965).
Internal Revenue. Blackmun wrote the opinion.
- Shultz v. State of Nebraska, 353 F. 2d 81 (1965). Habeas Corpus.
(Per Curiam)
- Mitchell v. Stephens, 353 F. 2d 129 (1965). (Certiorari Denied
384 U.S. 1019). Habeas Corpus. Blackmun wrote the opinion.
- McNeely v. United States, 353 F. 2d 913 (1965). Criminal Law -
Burglary.
- Walton v. Eckhart, 354 F. 2d 35 (1965). Negligence.
- Bliss v. United States, 354 F. 2d 456 (1965). (Certiorari Denied
384 U.S. 963) Mail Fraud. Blackmun wrote the opinion.
- United States v. Mernentin, 354 F. 2d 757 (1965). Internal Revenue.
Blackmun wrote the opinion.
- Miller v. United States, 354 F. 2d 801 (1966). Income Tax Evasion.
- Buder v. United States, 354 F. 2d 941 (1966). Internal Revenue.
Blackmun wrote the opinion.
- Johnston v. Cartwright, 355 F. 2d 32 (1966). Malicious Defamation.
Blackmun wrote the opinion.
- Wirtz, Secretary of Labor v. Tyson's Poultry, Inc., 355 F. 2d 255 (1966).
Labor Relations.
- Whatoff v. United States, 355 F. 2d 473 (1966). (As amended
on Denial of Rehearing February 4, 1966). Internal Revenue.

- National Labor Relations Board v. Southern Transport, Inc.,
355 F. 2d 978 (1966). Labor Relations.
- Morgan v. United States, 356 F. 2d 17 (1966). Eminent Domain.
Blackmun wrote the opinion.
- Dean Rubber Manufacturing Company v. United States, 356 F. 2d 161
(1966). Prosecution for Interstate Shipment of Adulterated and
Misbranded Prophylactics.
- United States v. Morelan, 356 F. 2d 199 (1966). Internal Revenue.
- Beister v. John Hancock Mutual Life Insurance Co., 356 F. 2d 634 (1966).
Insurance.

- Rice v. United States, 356 F. 2d 709 (1966). Conspiracy to Intimidate Witnesses.
- Banner Biscuit Company v. National Labor Relations Board, 356 F. 2d 765 (1966) Labor Relations.
- Birnbaum v. United States, 356 F. 2d 856 (1966). Criminal Law -- Kidnapping.
- Bolling v. Commissioner of Internal Revenue, 357 F. 2d 3 (1966). Internal Revenue. Blackmun wrote the opinion.
- Barber-Greene Company v. Bruning Company, 357 F. 2d 31 (1966). Indemnity. Blackmun wrote the opinion.
- Jenkins v. Macy, 357 F. 2d 62 (1966). Dismissal of Federal Government Employee.
- Reed v. Ciccone, 357 F. 2d 926 (1966). Habeas Corpus.
- Davis v. United States, 358 F. 2d 360 (1966). Criminal Law -- Rights of Accused.
- Jones v. United States, 358 F. 2d 383 (1966). Criminal Law -- Voluntary Confession.
- Matthews v. McGee, 358 F. 2d 516 (1966). Action to Quiet Title. Blackmun wrote the opinion.
- Mulligan v. United States, 358 F. 2d 604 (1966). Searches and Seizure.
- Appalachian Insurance Company v. Knutson, 358 F. 2d 679 (1966), Negligence. (Per Curiam)
- Bauer Welding and Metal Fabricators, Inc. v. National Labor Relations Board, 358 F. 2d 766 (1966). Labor Relations.
- Cravens v. McKinnell, 359 F. 2d 24 (1966). Corporations. (Re-hearing Denied May 9, 1966).
- Mississippi River Fuel Corporation v. Slayton, 359 F. 2d 106 (1966). Corporations. Blackmun wrote the opinion.

- Marion v. Gardner, Secretary of HEW, 359 F. 2d 175 (1966). Social Security. Blackmun wrote the opinion.
- Anheuser-Busch, Inc. v. Federal Trade Commission, 359 F. 2d 487 (1966). Trade Regulation. Blackmun wrote the opinion.
- Foster v. United States, 359 F. 2d 497 (1966). Habeas Corpus.
- Commercial Union Assurance Company v. Berry, 359 F. 2d 510 (1966). Insurance.
- Layton v. Selb Manufacturing Company, 359 F. 2d 715 (1966). Federal Civil Procedure. (Certiorari Denied 385 U.S. 929)
- Arco v. Ciccone, 359 F. 2d 796 (1966). Habeas Corpus. (Per Curiam)
- Jacobs v. United States, 359 F. 2d 960 (1966). Fraud. Blackmun wrote the opinion.
- Maples v. United States, 360 F. 2d 155 (1966). Pardon and Parole (Per Curiam)
- American Infra-Red Radiant Co. v. Lambert Industries, 360 F. 2d 977 (1966). Patents. (Rehearing Denied in No. 18055, June 20, 1966). (Certiorari denied 385 US 920)
- Cloud v. United States, 361 F. 2d 627 (1966). Criminal Law -- Receiving Stolen Goods.
- Patterson v. United States, 361 F. 2d 632 (1966). Criminal Law -- Prostitution.
- Guziak v. Federal Trade Commission, 361 F. 2d 700 (1966). Trade Regulation. (Certiorari denied 385 US 1007)
- Edwards v. United States, 361 F. 2d 732 (1966). Criminal Law -- Malicious Mischief.
- Pegram v. United States, 361 F. 2d 820 (1966). Criminal Law -- Procedure. (Per Curiam)
- Nichols v. Gardner, Secretary of HEW, 361 F. 2d 963 (1966). Social Security.

- Johnson v. United States, 362 F. 2d 43 (1966). Criminal Law -- Rights of Accused.
- Pauling v. Globe-Democrat Publishing Company, 362 F. 2d 188 (1966). Civil Libel Action. Blackmun wrote the opinion. (Certiorari denied 388 US 909)
- Rodgers v. United States, 362 F. 2d 358 (1966). Criminal Law -- Searches and Seizure. Blackmun wrote the opinion. (Rehearing Denied July 26, 1966). (Certiorari denied 385 US 993)
- McIntosh v. United States, 362 F. 2d 636 (1966). Criminal Law -- Procedure. Blackmun wrote the opinion.
- Automated Building Components v. Hydro-Air Engineering, 362 F. 2d 989 (1966). Patent.
- Foss v. Gardner, Secretary of H.E.W., 363 F. 2d 25 (1966). Social Security.
- Mills v. United States, 363 F. 2d 78 (1966). Eminent Domain. Blackmun wrote the opinion.
- United States v. Bell, 363 F. 2d 94 (1966). Eminent Domain. (Per Curiam)
- Lee v. United States, 363 F. 2d 469 (1966). Criminal Law -- Searches and Seizure. (Certiorari denied 385 US 947)
- Sullivan v. United States, 363 F. 2d 724 (1966). Internal Revenue. (Certiorari denied 387 US 905)
- Arthur Murray, Inc., v. Oliver, 364 F. 2d 28 (1966). Federal Civil Procedure. On remand - Reserve Plan, Inc. v. Arthur Murray, Inc., 262 F. Supp. 565. Vacated 406 F. 2d 1138.
- Holt v. Commissioner of Internal Revenue, 364 F. 2d 38 (1966). Internal Revenue -- Indians. (Certiorari denied 386 US 931)
- Standard Title Insurance Company v. United Pacific Insurance Company, 364 F. 2d 287 (1966). Contracts.
- Easttam v. Secretary of Health, Education, and Welfare, 364 F. 2d 509 (1966). Social Security and Public Welfare. Blackmun wrote the opinion.

- National Maritime Union of America, AFL-CIO v. National Labor Relations Board, 367 F. 2d 171. Labor Relations. Blackmun wrote the opinion. (Rehearing denied November 3, 1966). (Certiorari denied 386 US 959)
- Petteys v. Butler, 367 F. 2d 528 (1966). Corporations. (Rehearing denied December 6, 1966; Certiorari denied January 9, 1967, 385 U.S. 1006)
- Cherry-Burrell Corporation v. United States, 367 F. 2d 669 (1966). Internal Revenue. Blackmun wrote the opinion. (Rehearing denied December 7, 1966)
- Gillespie v. United States, 368 F. 2d 1 (1966). Criminal Law -- Searches and Seizure.
- Bennett v. United States, 368 F. 2d 7 (1966). Bail.
- Smith v. American Guild of Variety Artists, 368 F. 2d 511 (1966). Labor Relations. (Rehearing denied December 13, 1966; Certiorari denied 387 US 931).
- Sanitary Milk Products v. Bergians Farm Dairy, Inc., 368 F. 2d 679 (1966). Antitrust. Blackmun wrote the opinion.
- Great Central Insurance Company v. Marble, 369 F. 2d 615 (1966). Insurance. Blackmun wrote the opinion.
- National Labor Relations Board v. The Lord Baltimore Press, Inc., 370 F. 2d 397 (1966). Labor Relations.
- Associated Engineers, Inc. v. Job, 370 F. 2d 633 (1967). Negligence. Blackmun wrote the opinion. (Rehearing denied February 21, 1967). (Certiorari denied 389 US 823).
- Hughes v. United States, 371 F. 2d 694 (1967). Criminal Law -- Narcotics.
- Brest v. Ciccone, 371 F. 2d 981 (1967). Habeas Corpus. (Per Curiam)
- United States v. Ulvedal, 372 F. 2d 31 (1967). Contracts. Blackmun wrote the opinion.

- Lewis v. Super Valu Store, Inc., 364 F. 2d 555 (1966). Wrongful Death Action.
- Towle v. Boeing Airplane Company, 364 F. 2d 590 (1966). Federal Civil Procedure.
- State of Minnesota v. Tahash, 364 F. 2d 922 (1966). Habeas Corpus. Blackmun wrote the opinion.
- Raftis v. United States, 364 F. 2d 948 (1966). Criminal Law -- Rights of Accused. Blackmun wrote the opinion.
- L & A Products v. Britt Tech Corporation, 365 F. 2d 83 (1966). Patents. Blackmun wrote the opinion. (Rehearing Denied September 27, 1966).
- Billingsley v. Westrac Company, 365 F. 2d 619 (1966). Wrongful Death Action. Blackmun wrote the opinion.
- Brown v. Sterling Aluminum Products Corporation, 365 F. 2d 651 (1966). Labor Relations. (Rehearing denied October 7, 1966). (Certiorari denied 386 US 957; Rehearing denied 386 US 1027)
- Smith v. Board of Education of Morrilton School District No. 32 (Arkansas), 365 F. 2d 770 (1966). Civil Rights -- School Desegregation.
- Parker v. Commissioner of Internal Revenue, 365 F. 2d 792 (1966). Internal Revenue. (Certiorari denied 385 US 1026)
- Aetna Casualty and Surety Company v. United States, 365 F. 2d 997 (1966). Contracts.
- Farmers Elevator Mutual Insurance Company v. Carl J. Austad & Sons, Inc., 366 F. 2d 555 (1966). Insurance.
- American Boiler Manufacturers Association v. N.L.R.B., 366 F. 2d 815 (1966). Labor Relations.
- American Boiler Manufacturers Association v. N.L.R.B., 366 F. 2d 823 (1966). Labor Relations.

- Pope v. United States, 372 F. 2d 710 (1967). Criminal Law -- Procedure. Blackmun wrote the opinion. (Rehearing denied March 14, 1967). Judgment vacated 92 US 651; on remand 397 F. 2d 812.
- Northwest Airlines, Inc. v. Air Line Pilots Association, International, 373 F. 2d 136 (1967). Labor Relations. (Rehearing denied March 30, 1967; Certiorari denied 389 US 827)
- Cox v. United States, 373 F. 2d 500 (1967). Criminal Law -- Rights of Accused. Blackmun wrote the opinion.
- Rabiner v. Bacon, 373 F. 2d 537 (1967). Internal Revenue.
- Rural Electrification Administration v. Northern States Power Co., 373 F. 2d 686 (1967). Administrative Law and Procedure. (Certiorari denied 387 US 945)
- Whaley v. Gardner, Secretary of HEW, 374 F. 2d 9 (1967). Social Security.
- Ross v. United States, 374 F. 2d 97 (1967). Forgery. Blackmun wrote the opinion. (Certiorari denied 389 US 882)
- Rimerman v. United States, 374 F. 2d 251 (1967). Criminal Law -- Counterfeiting. (Certiorari Denied 387 US 931)
- Gresham v. United States, 374 F. 2d 389 (1967). Criminal Law -- Evidence. (Per Curiam).
- St. Louis Union Trust Company v. United States, 374 F. 2d 427 (1967). Internal Revenue. Blackmun wrote the opinion.
- Cargill, Incorporated v. Zimmer, 374 F. 2d 924 (1967). Negligence.
- Hampton v. Blair Manufacturing Company, 374 F. 2d 969 (1967). Trade Regulation. (Rehearing denied May 3, 1967; Certiorari denied 389 US 829)
- St. Louis Testing Laboratories v. Mississippi Valley Structural Steel Company, 375 F. 2d 565 (1967). Work and Labor.

- Moore v. United States, 375 F. 2d 877 (1967). Counterfeiting Prosecution. (Rehearing denied May 16, 1967; Certiorari denied 389 US 844)
- Armco Steel Corporation v. State of North Dakota, 376 F. 2d 206 (1967). Monopolies.
- Armco Steel Corporation v. Adams County, North Dakota, 376 F. 2d 212 (1967). Monopolies.
- Armco Steel Corporation v. Burleigh County, North Dakota, 376 F. 2d 215 (1967). Monopolies. (Per Curiam).
- Ozark Real Estate Company v. United States, 377 F. 2d 88 (1967). Eminent Domain.
- United States v. Ford, 377 F. 2d 93 (1967). Internal Revenue. Blackmun wrote the opinion.
- Gillen v. Globe Indemnity Company, 377 F. 2d 328 (1967). Insurance.
- Compton v. United States, 377 F. 2d 408 (1967). Forfeitures.
- Gross v. Bishop, 377 F. 2d 492 (1967). Habeas Corpus. Blackmun wrote the opinion.
- Mahoney v. Northwestern Bell Telephone, 377 F. 2d 549 (1967). Diversity Jurisdiction. (Per Curiam).
- Hardy Salt Company v. State of Illinois, 377 F. 2d 769 (1967). Monopolies. (Certiorari denied 389 US 912)
- National Labor Relations Board v. Huttig Sash & Door Co., Inc., 377 F. 2d 964 (1967). Labor Relations. Blackmun wrote the opinion.
- General Mills, Inc., v. The Pillsbury Company, 378 F. 2d 666 (1967). Patents.
- The Greater Iowa Corporation v. Frank McLendon, 376 F. 2d 783 (1967). Federal Securities Law.

- Dinkins v. Commissioner of Internal Revenue, 378 F. 2d 825 (1967). Internal Revenue.
- Burnside v. State of Nebraska, 378 F. 2d 915 (1967). Habeas Corpus.
- National Labor Relations Board v. Morris Novelty Co., 378 F. 2d 1000 (1967). Labor Relations.
- Murphy v. Gardner, Secretary of HEW, 379 F. 2d 1 (1967). Social Security.
- United States v. Kopf, 379 F. 2d 8 (1967). Administrative Law and Procedure -- Agriculture.
- United States v. Shock, 379 F. 2d 29 (1967). Proceedings under the Federal Food, Drug, and Cosmetics Act.
- Jones v. Alfred H. Mayer Company, 379 F. 2d 33 (1967). Civil Rights. Blackmun wrote the opinion. (Reversed 392 US 409)
- Robinson v. The Willitsville School District, 379 F. 2d 289 (1967). Civil Rights -- Schools.
- National Labor Relations Board v. Ralph Printing and Lithographing Company, 379 F. 2d 687 (1967). Labor Relations.
- Booker v. State of Arkansas, 380 F. 2d 240 (1967). Federal Civil Procedure. (Per Curiam).
- Frohmann v. United States, 380 F. 2d 832 (1967). Criminal Law -- Rights of Accused. Blackmun wrote the opinion. (Rehearing denied August 24, 1967; Certiorari denied 389 US 976)
- Yarbrough v. Hulbert-West Memphis School District No. 4 of Crittenden County, Arkansas, 380 F. 2d 962 (1967). Civil Rights -- School Desegregation. Blackmun wrote the opinion.
- Neagle v. Johnson, 381 F. 2d 9 (1967). Federal Civil Procedure. (Per Curiam) (Rehearing denied August 21, 1967).
- Deckard v. United States, 381 F. 2d 77 (1967). Criminal Law -- Self-Incrimination. Blackmun wrote the opinion.
- Bohms v. Gardner, Secretary of HEW, 381 F. 2d 283 (1967). Social Security. Blackmun wrote the opinion. (Certiorari denied 390 US 964)

- Stanfield v. Swenson, 381 F. 2d 755 (1967). Criminal Law -- Sentencing. (Rehearing denied September 26, 1967).
- Bryan v. The Aetna Casualty and Surety Company, 381 F. 2d 872 (1967). Federal Civil Procedure. Blackmun wrote the opinion.
- Maddux v. Cox, 382 F. 2d 119 (1967). Wrongful Death.
- Municipal Bond Corporation v. Commissioner of Internal Revenue, 382 F. 2d 184 (1967). Internal Revenue.
- Telex Corporation v. Balch, 382 F. 2d 211 (1967). Master-Servant.
- Farmers Co-Operative Elevator Association Non-Stock of Big Springs, Nebraska v. Strand, 382 F. 2d 224 (1967). Negligence. (Rehearing denied August 23, 1967; Certiorari denied December 18, 1967, 389 US 1014)
- Lewis v. United States, 382 F. 2d 232 (1967). Criminal Law -- Counterfeiting. (Rehearing denied October 6, 1967).
- Swenson v. Donnell, 383 F. 2d 248 (1967). Criminal Law -- Habeas Corpus.
- Bradley v. Maryland Casualty Company, 382 F. 2d 415 (1967). Federal Civil Procedure.
- Spinelli v. United States, 382 F. 2d 871 (1967). Criminal Law -- Searches and Seizures. (Rehearing denied September 12, 1967; Reversed 393 US 410)
- Gerner v. Moog Industries, Inc., 383 F. 2d 56 (1967). Patents. (Rehearing denied November 6, 1967; Certiorari denied 390 US 922).
- National Labor Relations Board v. Carpenters District Council of Kansas City and Vicinity, AFL-CIO, 383 F. 2d 89 (1967). Labor Relations. Blackmun wrote the opinion.
- Meyer v. Commissioner of Internal Revenue, 383 F. 2d 883 (1967). Internal Revenue, Blackmun wrote the opinion.
- Tinker v. Des Moines Independent Community School District, 383 F. 2d 988 (1967). Freedom of Expression. (Per Curiam) (Reversed, 393 US 503)
- Patterson v. United States, 385 F. 2d 728 (1967). Criminal Law--Post-Conviction Relief. Blackmun wrote the opinion.
- Harris v. Charles Pfizer & Co., Inc., 385 F. 2d 766 (1967). Mines and Minerals.
- National Labor Relations Board v. St. Louis Printing Pressmen and Assistants Union No. 6, Inc., 385 F. 2d 956 (1967). Labor Relations. Blackmun wrote the opinion.

- Love v. United States, 386 F. 2d 260 (1968). Criminal Law--Auto Theft.
(Certiorari Denied 390 U.S. 905).
- Pattiz v. Schwartz, 386 F. 2d 300 (1968). Federal Civil Procedure.
Blackmun wrote the opinion.
- McClard v. United States, 386 F. 2d 495 (1968). Criminal Law--Evidence.
(Rehearing Denied January 8, 1958. Motion denied 399 F. 2d 159,
certiorari denied 393 U.S. 866, rehearing denied 393 U.S. 1045.)
- Holland v. Ciccone, 386 F. 2d 825 (1967). Habeas Corpus. (Per Curiam)
(Rehearing Denied January 23, 1968. Certiorari denied 390 U.S.
1045.)
- Raney v. Piedmont Southern Life Insurance Company, 387 F. 2d 75 (1967).
Insurance.
- Pepper v. Bankers Life and Casualty Company, 387 F. 2d 248 (1968).
Insurance
- Beardslee v. United States, 387 F. 2d 280 (1967). Criminal Law--Indians.
Blackmun wrote the opinion.
- Gullett v. United States, 387 F. 2d 307 (1967). Criminal Law--Searches
and Seizures. (Certiorari Denied 390 U.S. 1044.)
- Cheek v. Swenson, 387 F. 2d 339 (1967). Habeas Corpus. (Per Curiam)
- Churder v. United States, 387 F. 2d 825 (1968). Criminal Law--Searches
and Seizures. Blackmun wrote the opinion.
- United States v. General Bancshares Corporation, 388 F. 2d 184 (1968).
Internal Revenue.
- Burke v. United States, 388 F. 2d 286 (1968). Criminal Law--Evidence.
- Cone v. Beneficial Standard Life Insurance Company, 388 F. 2d 456
(1968). Federal Civil Procedure.
- Industrial Credit Company v. Berg, 388 F. 2d 835 (1968). Diversity
Action to Replevin Property.
- Rich v. United States, 389 F. 2d 334 (1968). Criminal Law--Possession
and Sale of Depressant or Stimulant Drugs.
- Jackson v. Marvell School District, 389 F. 2d 740 (1968). Civil Rights--
School Desegregation.
- Dixie Furniture Company v. Commissioner of Internal Revenue, 390 F. 2d
139 (1968) Internal Revenue. Blackmun wrote the opinion.

- Taylor v. United States, 390 F. 2d 278 (1968). Internal Revenue. Blackmun wrote the opinion. (Certiorari Denied 393 U.S. 869.)
- Federal Trade Commission v. Guignon, 390 F. 2d 323 (1968). Trade Regulation (Rehearing Denied March 6, 1968).
- Manley Transfer Company v. NLRB, 390 F. 2d 777 (1968). Labor Relations.
- Grand Island Grain Company v. Roush Mobile Home Sales, Inc., 391 F. 2d 35 (1968). Negligence. Blackmun wrote the opinion.
- Segal v. United States, 391 F. 2d 266 (1968). Criminal Law--Self-Incrimination. (Per Curiam)
- Larsen v. General Motors Corporation, 391 F. 2d 495 (1968). Negligence.
- Itasca Lodge 2029 v. Railway Express Agency, Inc., 391 F. 2d 657 (1968). Labor Relations.
- Carlton v. United States, 391 F. 2d 684 (1968). Criminal Law--Admissible Evidence. (Certiorari Denied 394 U.S. 1014.)
- Sterling Aluminum Company v. National Labor Relations Board, 391 F. 2d 713 (1968). Labor Relations.
- Estate of Goodall v. Commissioner of Internal Revenue, 391 F. 2d 775 (1968). Internal Revenue. Blackmun wrote the opinion. (Certiorari Denied 393 U.S. 829.)
- Cross v. United States, 392 F. 2d 360 (1968). Criminal Law--Counterfeiting.
- Looney v. Allstate Insurance Company, 392 F. 2d 401 (1968). Insurance. Blackmun wrote the opinion.
- Aetna Insurance Company v. Hellmuth Orate and Kassabaum, Inc., 392 F. 2d 472 (1968). Negligence. (Rehearing Denied May 7, 1968).
- Sykes v. United States, 392 F. 2d 735 (1968). Eminent Domain.
- National Connector Corporation v. Malco Manufacturing Co., 392 F. 2d 766 (1968). Patents. (Certiorari Denied 393 U.S. 923.)
- Drennon v. United States, 393 F. 2d 342 (1968). Criminal Law--Self-Incrimination.
- American Casualty Company of Reading, Pennsylvania v. Mitchell, 393 F. 2d 452 (1968). Insurance. Blackmun wrote the opinion.

- Baggett Transportation Company v. Hughes, 393 F. 2d 710 (1968).
Administrative Law--Commerce. (Rehearing Denied May 28, 1968,
Certiorari Denied 393 U.S. 936.)
- Southern Agency Company v. LaSalle Casualty Company, 393 F. 2d 907
(1968). Trusts. (Rehearing Denied May 7, 1968).
- Gross v. United States, 394 F. 2d 216 (1968). Criminal Law--Procedure.
- Walker v. Pulitzer Publishing Company, 394 F. 2d 800 (1968). Libel
and Slander. Blackmun wrote the opinion. (As Modified on Denial
of Rehearing, June 19, 1968).
- Cline v. United States, 395 F. 2d 138 (1968). Criminal Law--Procedure.
- Baker v. United States, 395 F. 2d 368 (1968). Criminal Law--Prosecution
for violation of the Dyer Act. Blackmun wrote dissenting opinion.
- Jacobs v. United States, 395 F. 2d 469 (1968). Criminal Law--Conspiracy.
- Hart v. United States, 396 F. 2d 243 (1968). Criminal Law--Counterfeiting.
(Rehearing Denied July 29, 1968, Certiorari Denied 393 U.S. 1033).
- United States Fidelity and Guaranty Company v. The Millers Mutual Fire
Insurance Company of Texas, 396 F. 2d 569 (1968). Insurance.
- Townsend v. Ross, 396 F. 2d 573 (1968). Criminal Law--Procedure.
- Kennedy v. Sigler, 397 F. 2d 556 (1968). Habeas Corpus. Blackmun
wrote the opinion.
- Glick v. Ballentine Produce, Inc., 397 F. 2d 590 (1968). Wrongful
Death Action.
- Pope v. United States, 397 F. 2d 812 (1968). (Per Curiam)
- Stump v. Bennett, 398 F. 2d 111 (1968). Habeas Corpus. (Certiorari
Denied 393 U.S. 1001.)
- Benderoff v. United States, 398 F. 2d 133 (1968). Internal Revenue.
- Maxwell v. Bishop, 398 F. 2d 138 (1968). Criminal Law--Rape. Blackmun
wrote the opinion. (Certiorari Granted December 16, 1968, 393
U.S. 997.)
- Caplinger v. Patty, 398 F. 2d 471 (1968). Bankruptcy.

- Hanson v. Hunt Oil Company, 398 F. 2d 578 (1968). Federal Civil Procedure.
- Wirtz, Secretary of Labor v. Barnes Grocery Co., 398 F. 2d 718 (1968). Labor Relations.
- Ashe v. Swenson, 399 F. 2d 40 (1968). Criminal Law--Habeas Corpus Proceeding. Blackmun wrote the opinion. (Certiorari Granted 393 U.S. 1115.)
- Irish v. Democratic-Farmer-Labor Party of Minnesota, 399 F. 2d 119 (1968). Elections. (Per Curiam)
- McClard v. United States, 399 F. 2d 159 (1968). (Per Curiam) (Certiorari Denied 393 U.S. 866, Rehearing Denied 393 U.S. 1045.)
- Safeco Insurance Company of America v. Robey, 399 F. 2d 330 (1968). Insurance.
- National Labor Relations Board v. Bardahl Oil Company, 399 F. 2d 365 (1968). Labor Relations.
- White v. United States, 399 F. 2d 813 (1968). Criminal Law--Selling and Delivering Depressant Drugs.
- Peterson v. Peterson, 400 F. 2d 336 (1968). Bankruptcy. Blackmun wrote the opinion.
- United States v. Righter, 400 F. 2d 344 (1968). Internal Revenue. Blackmun wrote the opinion.
- United States v. Birnbach, 400 F. 2d 378 (1968). Eminent Domain.
- Century "21" Shows v. Owens, 400 F. 2d 603 (1968). Federal Civil Procedure--Negligence.
- Universal Fiberglass Corporation v. United States, 400 F. 2d 926 (1968). Federal Civil Procedure.
- Theriault v. United States, 401 F. 2d 79 (1968). Criminal Law--Arrest. Blackmun wrote the opinion. (Certiorari Denied February 24, 1969, 393 U.S. 1100.)
- Walton v. Nashville, Arkansas Special School District No. 1, 401 F. 2d 137 (1968). Civil Rights--School Desegregation.
- Hooper v. Swenson, 401 F. 2d 352 (1968). Criminal Law--Habeas Corpus.

- Schneider v. Chrysler Motors Corporation, 401 F. 2d 549 (1968). Federal Civil Procedure--Negligence.
- National Labor Relations Board v. Newberry Equipment Company, 401 F. 2d 604 (1968). Labor Relations. Blackmun wrote the opinion.
- Inman v. Milwhite Co., 402 F. 2d 122 (1968). Mines and Minerals. (Per Curiam)
- Williams v. United States, 402 F. 2d 548 (1968). Criminal Law--Assistance of Counsel.
- National Labor Relations Board v. Ozark Motor Lines, 403 F. 2d 356 (1968). Labor Relations.
- Shaw v. United States, 403 F. 2d 528 (1968). Criminal Law--Assistance of Counsel. (Per Curiam)
- Stewart v. Bishop, 403 F. 2d 674 (1968). Habeas Corpus.
- Ashton v. United States, 404 F. 2d 95 (1968). Armed Services. (Rehearing Denied December 24, 1968; Certiorari Denied April 7, 1969, 394 US 960).
- Chicago, Rock Island and Pacific Railroad Company v. Speth, 404 F. 2d 291 (1968). Federal Civil Procedure.
- Jackson v. Bishop, 404 F. 2d 571 (1968). Criminal Law--Treatment of Prisoners. Blackmun wrote the opinion.
- The Leisure Group, Inc. v. Edwin F. Armstrong & Company, 404 F. 2d 610 (1968). Brokers. (Per Curiam)
- Peterson v. United States, 405 F. 2d 102 (1968). Criminal Law--Indictment and Information. (Rehearings Denied En Banc January 21, 1969; Rehearings Denied January 23, 1969; Certiorari Denied 395 U.S. 938.)
- State Farm Mutual Automobile Insurance Company v. Worthington, 405 F. 2d 683 (1968). Insurance.
- Humble Oil & Refining Company v. American Oil Company, 405 F. 2d 803 (1969). Trade Regulations. Blackmun wrote the opinion. (Certiorari Denied 395 U.S. 905.)
- Hoffman v. Celebreeze, Secretary of H.E.W., 405 F. 2d 833 (1969). Social Security. Blackmun wrote dissenting opinion.

- Shock v. Tester, 405 F. 2d 852 (1969). Civil Rights--Equal Protection.
(Certiorari Denied 394 U.S. 1020; Rehearing Denied 395 U.S. 941.)
- Picker X-Ray Corporation v. Frerker, 405 F. 2d 916 (1969). Sales.
- Nash v. United States, 405 F. 2d 1047 (1969). Criminal Law--Arrest.
- Freeman v. Gould Special School District of Lincoln County, Arkansas,
405 F. 2d 1153 (1969). Civil Rights--Schools.

- Gallagher v. United States, 406 F. 2d 102 (1969). Criminal Law - Searches and Seizures.
- National Labor Relations Board v. Harry F. Berggren & Sons, 406 F. 2d 239 (1969). Labor Relations
- Anderson v. United States, 406 F. 2d 529 (1969). Criminal Law - Receiving Stolen Goods. Blackmun wrote the opinion.
- Johns v. Redeker, 406 F. 2d 878 (1969). Tuition Rates at Iowa Institutions of Higher Education.
- Clarke v. Redeker, 406 F. 2d 883 (1969). Non-resident Tuition Rates at Iowa Institutions of Higher Education.
- Underwood v. Woods, 406 F. 2d 910 (1969). Negligence. Blackmun wrote the opinion.
- Thorne v. United States, 406 F. 2d 995 (1969). Criminal Law - Evidence. Blackmun wrote the opinion.
- Ping v. United States, 407 F. 2d 157 (1969). (Certiorari Denied May 26, 1969, 395 U.S. 926) Criminal Law - Rights of Accused.
- Hodges v. United States, 408 F. 2d 543 (1969). Criminal Law - Rights of Accused. Blackmun wrote the opinion.
- Sharp v. Sigler, 408 F. 2d 966 (1969). Religious Rights of Prisoners. Blackmun wrote the opinion.
- Herges v. Western Casualty and Surety Company, 408 F. 2d 1157 (1969). Insurance.
- Jackson v. United States, 408 F. 2d 1165 (1969). (Rehearing Denied April 18, 1969). Criminal Law - Arrest. Blackmun wrote the opinion.
- Leffler v. United States, 409 F. 2d 44 (1969). Criminal Law - Arrest.
- Nathan Construction Company v. Fenestra, Incorporated, 409 F. 2d 131 (1969). Contracts. Blackmun wrote the opinion.
- Bradley v. Ciccone, 409 F. 2d 217 (1969). Habeas Corpus. (Per Curiam)
- Kercher v. United States, 409 F. 2d 814 (1969). Criminal Law - Procedure. Blackmun wrote the opinion.
- Johnson v. United States, 410 F. 2d 38 (1969). Criminal Law - Fraud.

- United States v. Kye, 411 F. 2d 120 (1969). Criminal Law - Evidence. Blackmun wrote the opinion.
- Mead and Mount Construction v. National Labor Relations Board, 411 F. 2d 1154 (1969).
(Rehearing Denied July 14, 1969).
Labor Relations.
- Ames Ready-Mix Concrete, Inc. v. National Labor Relations Board, 411 F. 2d 1159 (1969). Labor Relations.
- Merchants-Produce Bank v. Mack Trucks, Inc., 411 F. 2d 1174 (1969). Conversion.
- Parke-Davis and Company v. Stronsodt, 411 F. 2d 1390 (1969). Products Liability.
- United States v. Hilliard, 412 F. 2d 174 (1969). Eminent Domain.
- Lumbermens Mutual Insurance Company v. Edmister, 412 F. 2d 351 (1969). Insurance.
- Sachs v. United States, 412 F. 2d 357 (1969). (Certiorari Denied 384 U.S. 3173). Criminal Law - Evidence.
- United States v. Brown, 412 F. 2d 381 (1969). Criminal Law - Robbery.
- United States v. Funk, 412 F. 2d 452 (1969). Criminal Law - Indictment and Information.
- Doe v. Department of Transportation, Federal Aviation Administration, 312 F. 2d 674 (1969). Aviation. Blackmun wrote the opinion.
- Becton v. United States, 412 F. 2d 1005 (1969).
Criminal Law - Narcotics. Blackmun wrote the opinion.
- Miller v. United States, 412 F. 2d 1008 (1969). (Certiorari Denied 384 U.S. 3128) Criminal Law - Narcotics. (Per Curiam)
- Walther v. Omaha Public Power District, 412 F. 2d 1164 (1969). Wrongful Death.

- Agrashell, Inc. v. Hammons Products Company, 413 F. 2d 89 (1969).
(Rehearing Denied September 3, 1969). Patents.
Blackmun wrote the opinion.
- United States v. Leeper, 413 F. 2d 123 (1969). Criminal Law - Indictment and Information.
- Ruderer v. Meyer, 413 F. 2d 175 (1969). (Rehearing Denied July 28, 1969; Certiorari Denied November 17, 1969, 90 S. Ct. 280) Libel and Slander, Blackmun wrote the opinion.
- United States v. Rundle, 413 F. 2d 329 (1969). Armed Services.
Blackmun wrote concurring opinion.
- Erving v. Sigler, 413 F. 2d 593 (1969). Criminal Law - Habeas Corpus.
- Cantrell v. United States, 413 F. 2d 629 (1969). (Rehearing Denied August 19, 1969). Criminal Law - Procedure. (Per Curiam)
- Slawek v. United States, 413 F. 2d 957 (1969). Criminal Law - Competency of Counsel. Blackmun wrote the opinion.
- Crosby v. Hardeman, 414 F. 2d 1 (1969). Right of Removal.
- Johnson v. Bennett, 414 F. 2d 50 (1969). (Remand 37 L.W. 4062) Habeas Corpus. Blackmun wrote the opinion.
- Norman v. Missouri Pacific Railroad, 414 F. 2d 73 (1969). Civil Rights.
Discrimination in Employment.
- Siegrist v. Blaw-Know Company, 414 F. 2d 375 (1969). Trade Regulation.
- Sellars v. Logan Towing Company, Inc., 414 F. 2d 852 (1969).
(Certiorari Denied 38 L.W. 3320) Negligence.
- United States v. Bruton, 414 F. 2d 905 (1969). Fraud.
- United Benefit Life Insurance Company v. McCrory, 414 F. 2d 928 (1969).
(Certiorari Denied 38 L.W. 3267). Internal Revenue.
- International Association of Machinists and Aerospace Workers, District No. 9 v. National Labor Relations Board, 415 F. 2d 113 (1969). (Rehearing Denied October 13, 1969). Labor Relations.

- Williams v. Ciccone, 415 F. 2d 331 (1969). Armed Services. (Per Curiam)
- Mercantile Bank and Trust Company v. The Western Casualty and Surety Company, 415 F. 2d 606 (1969). Insurance.
- Hatridge v. Aeina Casualty & Surety Company, 415 F. 2d 809 (1969). Jurisdiction. Blackmun wrote the opinion.
- Esteban v. Central Missouri State College, 415 F. 2d 1077 (1969). (Rehearing Denied October 3, 1969). Students' Rights. Blackmun wrote the opinion.
- Davis v. Sigler, 415 F. 2d 1159 (1969). Habeas Corpus. Blackmun wrote the opinion.
- Gnotta v. United States, 415 F. 2d 1271 (1969). (Certiorari Denied 38 LW 3338) Discrimination in Employment. Blackmun wrote the opinion.
- United States v. The Sheet Metal Workers International Association, AFL-CIO, 416 F. 2d 123 (1969). Civil Rights - Racial Discrimination.
- Arrow Equipment, Inc., v. M--R-S Manufacturing Company, 416 F. 2d 152 (1969). (Rehearing Denied October 30, 1969). Sales.
- Ralston Purina Company v. Parsons Feed & Farm Supply, 416 F. 2d 207 (1969). Judgment Creditor's Rights. Blackmun wrote the opinion.
- Pepsico, Inc., v. The Grapette Company, 416 F. 2d 284 (1969). Trade Regulation.
- Jackson v. Marvell School District No. 22, 416 F. 2d 381 (1969). Civil Rights - School Desegregation. (Per Curiam)
- United States v. Lovett, 416 F. 2d 386 (1969). (Rehearing Denied October 31, 1969). Civil Rights - School Desegregation. (Per Curiam)
- United States v. Gross, 416 F. 2d 1205 (1969). (Rehearing Denied October 30, 1969) Mail and Wire Fraud. Blackmun wrote the opinion.

- Electro-Craft Corporation v. Maxwell Electronics Corporation, 416 F. 2d 365 (1969). Fraud.
- Harris v. Ciccone, 417 F. 2d 479 (1969). Habeas Corpus. Blackmun wrote the opinion.
- United States v. Lemear, 417 F. 2d 626 (1969). Possession and Sale of Depressant or Stimulant Drugs. (Per Curiam)
- United States v. Mooney, 417 F. 2d 936 (1969). Criminal Law - Indictment and Information.
- United States v. Meyer, 418 F. 2d 201 (1969). Criminal Law - Evidence.
- United States v. Jones, 418 F. 2d 818 (1969). Criminal Law - Robbery. Blackmun wrote dissenting opinion.
- Euge v. Smith, 418 F. 2d 1296 (1969). Injunction. Blackmun wrote the opinion.
- Rhodes v. Houston, 418 F. 2d 1309 (1969). Federal Civil Procedure. (Per Curiam)
- Atkinson v. United States, 418 F. 2d 1311 (1969). Criminal Law - Motion to Vacate or Reduce Sentence. (Per Curiam)
- McGraw-Edison Company v. National Labor Relations Board, 419 F. 2d 67 (1969). Labor Relations. Blackmun wrote the opinion.
- United States v. Levy, 419 F. 2d 360 (1969). Armed Services.
- Crowder v. Gordons Transports, Inc., 419 F. 2d 480 (1969). Wrongful Death. Blackmun wrote the opinion.
- United States v. May, 419 F. 2d 553 (1969). (Rehearing Denied January 28, 1970; Rehearing En Banc Denied February 3, 1970). Criminal Law - Evidence.
- United States v. Giordano, 419 F. 2d 564 (1969). (Rehearing Denied January 5, 1970; Rehearing Denied En Banc January 7, 1970). Internal Revenue.
- Jones v. United States, 419 F. 2d 593 (1969). (Certiorari Denied 38 L.W. 3364). Criminal Law - Pardon and Parole. Blackmun wrote the opinion.

- National Labor Relations Board v. Century Broadcasting Corporation, 419 F. 2d 771 (1969). (Rehearing Denied January 30, 1970). Labor Relations.
- United States v. Robinson, 419 F. 2d 1109 (1969). Criminal Law - Evidence.
- Stribling v. United States, 419 F. 2d 1350 (1969). Armed Services.
- Brenneman v. Bennett, 420 F. 2d 19 (1970). Trusts. Blackmun wrote concurring opinion.
- United States v. 339.77 Acres of Land, Etc., Arkansas, 420 F. 2d 324 (1970). (Rehearing Denied February 13, 1970). Eminent Domain.
- Sun Oil Company v. The Vickers Refining Company, No. 19,422 (August 5, 1969). Contracts.
- City of North Kansas City, Missouri v. Sharp, No. 19,206 (August 8, 1969). Contract. Blackmun wrote the opinion.
- United States v. Giordano, No. 19, 862 (December 12, 1969). Internal Revenue.
- Oliver v. Hallett Construction Company, No. 19,591 (January 28, 1970). Wrongful Death.
- Lamb v. Midwest Mutual Insurance Company, No. 19,717 (February 2, 1970) Insurance. (Per Curiam)
- United States v. Surgeon, No. 19,676. (February 5, 1970). Criminal Law - Prisoners. Blackmun wrote the opinion.
- Losleau v. Sigler, No. 19,693 (February 6, 1970). (Certiorari Denied 38 L.W. 3223) Habeas Corpus.
- National Labor Relations Board v. Twin City Carpenters District Council, No. 19,561 (February 6, 1970). Labor Relations.
- United States v. Bandy, No. 19,729 (February 11, 1970). Criminal Law - Procedure.
- United States v. McWilliams, No. 19,727 (February 12, 1970). Criminal Law - Narcotics.

- Securities and Exchange Commission v. Bartlett, No. 19,622 (February 17, 1970). Corporations.
- Central Savings and Loan Association of Chariton, Iowa v. Federal Home Loan Bank Board, No. 19,614 (February 25, 1970). Banks.
- United States v. Bonds, No. 19,770 (February 27, 1970). Criminal Law - Evidence. Blackmun wrote dissenting opinion.
- Jones v. Sciacia, No. 19,721 (March 9, 1970). Civil Rights - Discrimination in Housing. (Per Curiam)
- Diamond Shamrock Oil and Gas Corporation v. Commissioner of Revenue, State of Arkansas, No. 19,751 (March 10, 1970). Jurisdiction.
- Jackson v. Hartford Accident and Indemnity Company, No. 19,671 (March 10, 1970) Civil Rights - Prisoners.
- Rubber Research Inc. v. Commission of Internal Revenue, No. 19,748 (March 16, 1970). Internal Revenue. Blackmun wrote the opinion.
- United States v. Jarrett, No. 19,686 (March 16, 1970). Criminal Law - Procedure. Blackmun wrote the opinion.
- Sweetarts v. Sunline, Inc., No. 19,765 (March 17, 1970) Trademark.
- Kemp v. Beasley, No. 19,782 (March 17, 1970). Civil Rights - School Desegregation. Blackmun wrote the opinion.
- United States v. Clemas, No. 19,738 (March 19, 1970). Criminal Law - Larceny. Blackmun wrote the opinion.
- Cates v. Ciccone, No. 19,849 (March 19, 1970). Habeas Corpus.
- Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union 576 v. Allen, No. 19,755 (March 19, 1970). Labor Relations.
- United States v. Pyrtle, No. 19,767 (March 30, 1970). Selective Service.
- Schenebeck v. Sterling Drug, Inc., No. 19,576 (April 1, 1970). Products Liability.

- In the Matter of the Petition for Naturalization of Brenda Barbara Weitzman, No. 19,446 (April 7, 1970). Naturalization.(Per Curiam)
- Jackson v. United States, No. 19,790 (April 7, 1970). Criminal Law - Prisoners.
- United States v. Smiley, No. 19,772 (April 8, 1970). Interstate Transportation of Stolen Goods.
- Brooks v. United States, No. 19,965 (April 8, 1970). (certiorari Denied 38 LW 3341) Criminal Law - Rights of the Accused.



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LEGISLATIVE REFERENCE SERVICE

Judge Harry Andrew Blackmun

Three-Judge U.S. District Court Opinions in which Judge Blackmun participated.

- Great Northern Railway Co. v. United States, 209 F. Supp. 230 (1962); Commerce - Review of Interstate Commerce Commission Orders; Before Blackmun, Devitt, and Larson; opinion by Devitt.
- Great Northern Railway Co. v. United States, 209 F. Supp. 234 (1962); Commerce- Review of Interstate Commerce Commission Orders; Before Blackmun, Devitt, and Larson; opinion by Devitt.
- Great Northern Railway Co. v. United States, 209 F. Supp. 238 (1962); Commerce - Review of Interstate Commerce Commission Orders; Before Blackmun, Devitt, and Larson; opinion by Devitt.
- Hart v. I. C. C., 226 F. Supp. 635 (1964); Commerce - Review of Interstate Commerce Commission Orders; Before Blackmun, Devitt, and Larson; opinion by Larson.
- Guy v. Rolvaag, 233 F. Supp. 301 (1964); Commerce - State Interference With Interstate Commerce; Before Blackmun, Donovan, and Larson; opinion by Donovan.
- Middlewest Motor Freight Bureau v. United States, 234 F. Supp. 151 (1964); Commerce - Motor Carrier Rates; Before Blackmun, Donovan, and Larson; opinion by Larson.
- Honsey v. Donovan, 236 F. Supp. 8 (1964); Elections - State Apportionment; Before Blackmun, Devitt, and Nordbye; opinion by Blackmun.
- Motor Truck Supply Co. v. United States, 238 F. Supp. 645 (1965); Commerce - Review of Interstate Commerce Commission Orders; Before Blackmun, Devitt, and Nordbye; opinion by Devitt.

- Northern Pacific Railway Co. v. United States, 241 F. Supp. 816 (1965); Commerce - Review of Interstate Commerce Commission Orders; Before Blackmun, Donovan, and Larson; opinion by Donovan.
- Honsey v. Donovan, 249 F. Supp. 987 (1966); Elections - State Apportionment; Before Blackmun, Devitt, and Nordbye; Per Curiam.
- Indianhead Truck Line, Inc. v. United States, 253 F. Supp. 186 (1966); Commerce - Review of Interstate Commerce Commission Orders; Before Blackmun, Devitt, and Nordbye; opinion by Devitt.
- Rock Island Motor Transit Co. v. United States, 256 F. Supp. 812 (1966); Commerce - Review of Interstate Commerce Commission Orders; Before Blackmun, Van Oosterhout, and Stephenson; opinion by Stephenson.
- Soo Line Railroad Co. v. United States, 271 F. Supp. 869 (1967); Commerce - Review of Interstate Commerce Commission Orders; Before Blackmun, Devitt, and Lord; opinion by Lord.
- Chamber of Commerce of Fargo, N. D. v. United States, 276 F. Supp. 301 (1967); Commerce - Review of Interstate Commerce Commission Orders; Before Blackmun, Devitt, and Register; opinion by Register.
- Pollard v. Roberts, 283 F. Supp. 248 (1968); Civil Rights - First Amendment; Before Blackmun, Henley, and Harris; opinion by Henley, aff'd. 393 U.S. 14 (1968).
- Mitchell v. Donovan, 290 F. Supp. 642 (1968); Elections - Placement of Communist Party Candidates on Ballot; Before Blackmun, Devitt, and Neville, opinion by Devitt.
- Mitchell v. Donovan, 300 F. Supp. 1145 (1969); Elections - Placement of Communist Party Candidates on Ballot; Before Blackmun, Devitt, and Neville; opinion by Devitt. U.S. Appeal Pending.