July 10, 1969

MEMORANDUM TO THE ATTORNEY GENERAL

Re: Judicial Selection

Harry Blackmun

Born November 12, 1908 in Nashville, Illinois. A.B. Harvard, summa cum laude, 1929; LL.B. Harvard 1932. Law clerk for Judge Sanburn of the Court of Appeals for the Eighth Circuit, 1932-33. Associate and then partner in the Minneapolis firm of Dorsey, Owen, Barker, Scott and Barber, 1934-50. One of the substantial clients of the Dorsey firm was the Mayo Clinic in Rochester, Minnesota, and Blackmun took the job of resident general counsel for the clinic in Rochester in 1950, holding that position until 1959, when he was appointed by President Eisenhower to the Court of Appeals for the Eighth Circuit.

Judicial Philosophy.
William H. Rehnquist
Assistant Attorney General
Office of Legal Counsel
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Judicial Philosophy. A necessarily fragmentary canvas of Judge Blackmun's opinions in the ten years that he has served as a judge of the Eighth Circuit leads me to conclude that he is a responsible, conservative judge, attuned to the President's desire that judges "interpret, not make the law". I would not say that he is a top notch writer, and his opinions seem on occasion longer than necessary; however, they do deal with the points in issue.

In Pope v. United States, 373 F. 2d 710, the Court of Appeals sat en banc to hear an appeal from the District Court which had imposed the death sentence on a bank robber who had shot and killed three employees of the bank in the process of robbing it. Judge Blackmun wrote the opinion for the court, a long and exhaustive one, ruling against all of the defendant's claims of error, and dealing at some length with the various views of insanity that have prevailed in the courts of appeals. He made the observation in this case that:

"We still entertain a deep suspicion that, despite the welter of legal, psychiatric and philosophic theory in verbiage, much of the legal problem is basically semantic and engulfed in words, and that a practical American jury in any given case . . . will reach the same conclusion . . . (regardless of what legal doctrine respecting insanity is followed by the court)."

He wrote the opinion for the Eighth Circuit in Jones v. Mayer, 379 F. 2d 33, holding that an old civil rights statute had not in effect enacted a nationwide open housing law; this decision was later reversed by the Supreme Court of the United States. However, he has not hesitated to enforce desegregation on local schools where he felt that the law required it. Smith v. Board of Education, 365 F. 2d 77.
Judge Blackmun joined in the majority opinion of the Court of Appeals in Spinelli v. United States, 382 F. 2d 871, authored by Judge Gibson, holding that the showing required for a search warrant under the Fourth Amendment had been met. This decision was later reversed by the Supreme Court of the United States earlier this year, in an opinion which itself bodes ill for law enforcement ( Solicitor General Griswold joins me in my dislike and fear of this Supreme Court opinion).

My impression is that Judge Blackmun is well qualified for consideration under the standards announced by the President. However, if any consideration is to be given to geographical balance, that factor is against the judge. He and Chief Justice Burger both hail from Minnesota, and both practiced extensively in the Twin Cities before ascending the bench. Indeed, as you will note from the biographical information, Judge Blackmun was house counsel for the Mayo Clinic for some years before his appointment to the Eighth Circuit, thus paralleling another strand of the Chief Justice’s career.

William H. Rehnquist
Assistant Attorney General
Office of Legal Counsel