

To: Mr. Justice Blackmun

From: MR

Re: No. 78-1202 - Chiarella v. United States

Enclosed is a draft dissent in this case. It goes further than the Chief Justice's dissent and argues that petitioner's actions would have violated Rule 10b-5 even if he had obtained the blessing of his employer's principals before using their confidential information. I am persuaded that this view is correct, and that it has significant support in precedent. But I have tried to write the dissent in such a way that relatively little rewriting should be necessary if you decide you are unprepared to go that far. I do think, in any event, that it would be useful to demonstrate the importance in past cases of access to nonpublic information as a factor in determining the duty to disclose.

*5 March 80*