

# The Burger Court Opinion Writing Database

## *United States v. Tucker*

404 U.S. 443 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

November 15, 1971

Re: No. 70-86 - U. S. v. Tucker

Dear Bill:

You voted to remand for reconsideration of the sentence. Three others voted to affirm but without, so far as my records show, declaring for a remand for that purpose.

I could join a remand and from my notes Harry and possibly Byron would go for that result.

In the circumstances you should assign and if you write a remand treatment we conceivably could have a unanimous Court, unless my notes and recollection are in error.

Regards,

WSD

Mr. Justice Douglas

Oct 71

Wm D Douglas

G M

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

December 16, 1971

Re: No. 70-86 - U. S. v. Tucker

Dear Harry:

Please join me in your dissent in the above.

Regards,

W B B

Mr. Justice Blackmun

cc: The Conference

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November 15, 1971

Dear Chief:

I have your note about No. 70-86 -

U. S. v. Tucker.

I suggest that Potter write it.

W.O.D.

The Chief Justice

cc: Mr. Justice Stewart

Oct 71

Wm. Byrd

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 1, 1970 [1970]

Dear Potter:

In No. 70-86 - United States  
v. Tucker, please join me in your fine  
opinion.

William O. Douglas

Mr. Justice Stewart

CC: The Conference

9 M  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 1, 1971

RE: No. 70-86 - United States v. Tucker

Dear Potter:

I agree.

Sincerely,

*Bul*

Mr. Justice Stewart

cc: The Conference

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*Please join me  
AM*

- 10. Mr. Justice Black
- Mr. Justice Douglas
- Mr. Justice Harlan
- Mr. Justice Brennan
- Mr. Justice White
- ☒ Mr. Justice Marshall
- Mr. Justice Blackmun

1st DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated: NOV 30 1971  
Recirculated: \_\_\_\_\_

No. 70-86

United States, Petitioner,	}	On Writ of Certiorari to the
v.		United States Court of
Forrest S. Tucker.		Appeals for the Ninth Circuit.

[December —, 1971]

MR. JUSTICE STEWART delivered the opinion of the Court.

In 1953 the respondent, Forrest S. Tucker, was brought to trial in a federal district court in California upon a charge of armed bank robbery. He pleaded not guilty. Four female employees of the bank were called as witnesses for the prosecution, and they identified the respondent as the robber. He testified in his own behalf, denying participation in the robbery and offering an alibi defense. To impeach the credibility of his testimony, the prosecution was permitted on cross-examination to ask him whether he had previously been convicted of any felonies. He acknowledged three previous felony convictions, one in Florida in 1938, another in Louisiana in 1946, and a third in Florida in 1950. At the conclusion of the trial the jury returned a verdict of guilty. In the ensuing sentencing proceeding the District Judge conducted an inquiry into the respondent's background, and, the record shows, gave explicit attention to the three previous felony convictions the respondent had acknowledged.<sup>1</sup> The judge then sentenced him to serve 25

<sup>1</sup> An FBI Agent was present at the sentencing proceeding. The District Judge began the proceeding by stating, "I would like to

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To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun

2nd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: DEC 7 1971

No. 70-86

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
Forrest S. Tucker. } Appeals for the Ninth  
Circuit.

[December —, 1971]

MR. JUSTICE STEWART delivered the opinion of the Court.

In 1953 the respondent, Forrest S. Tucker, was brought to trial in a federal district court in California upon a charge of armed bank robbery. He pleaded not guilty. Four female employees of the bank were called as witnesses for the prosecution, and they identified the respondent as the robber. He testified in his own behalf, denying participation in the robbery and offering an alibi defense. To impeach the credibility of his testimony, the prosecution was permitted on cross-examination to ask him whether he had previously been convicted of any felonies. He acknowledged three previous felony convictions, one in Florida in 1938, another in Louisiana in 1946, and a third in Florida in 1950. At the conclusion of the trial the jury returned a verdict of guilty. In the ensuing sentencing proceeding the District Judge conducted an inquiry into the respondent's background, and, the record shows, gave explicit attention to the three previous felony convictions the respondent had acknowledged.<sup>1</sup> The judge then sentenced him to serve 25

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34M  
P 7

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Stewart, J.

3rd DRAFT

Circulated: \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES  
Circulated: DEC 30 1971

No. 70-86

United States, Petitioner,	} On Writ of Certiorari to the	
v.		United States Court of
Forrest S. Tucker.		Appeals for the Ninth Circuit.

[January —, 1972]

MR. JUSTICE STEWART delivered the opinion of the Court.

In 1953 the respondent, Forrest S. Tucker, was brought to trial in a federal district court in California upon a charge of armed bank robbery. He pleaded not guilty. Four female employees of the bank were called as witnesses for the prosecution, and they identified the respondent as the robber. He testified in his own behalf, denying participation in the robbery and offering an alibi defense. To impeach the credibility of his testimony, the prosecution was permitted on cross-examination to ask him whether he had previously been convicted of any felonies. He acknowledged three previous felony convictions, one in Florida in 1938, another in Louisiana in 1946, and a third in Florida in 1950. At the conclusion of the trial the jury returned a verdict of guilty. In the ensuing sentencing proceeding the District Judge conducted an inquiry into the respondent's background, and, the record shows, gave explicit attention to the three previous felony convictions the respondent had acknowledged.<sup>1</sup> The judge then sentenced him to serve 25

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

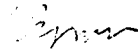
December 3, 1971

Re: No. 70-86 - U. S. v. Tucker

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 1, 1971

Re: No. 70-86 - United States v. Tucker

Dear Potter:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Stewart

cc: The Conference

9 17  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 6, 1971

Re: No. 70-86 - U.S. v. Tucker

Dear Potter:

You have already received votes from almost the entire Court. Nevertheless, I shall write a short dissent.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference

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1/2

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

No. 70-86

Circulated: 12/6/71

Recirculated: \_\_\_\_\_

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
Forrest S. Tucker. } Appeals for the Ninth  
Circuit.

[December —, 1971]

MR. JUSTICE BLACKMUN, dissenting.

The Court's opinion, of course, is a fine and acceptable exposition of abstract law. If I felt that it fit Tucker's case, I would join it. The Court, however, fails to mention and to give effect to certain facts that, for me, are controlling:

1. At his armed bank robbery trial in May 1953 Tucker was no juvenile. He was 32 years of age and was represented by counsel. A reading of his trial testimony discloses that he was very knowledgeable indeed. Tucker testified on cross-examination at that trial not only as to the fact of three prior state felony convictions, but, as well, as to his engaging in the proscribed conduct underlying two of those convictions. He stated flatly (a) that in 1938 he broke into a garage and took a man's automobile, and (b) that in 1946 he broke into a jewelry store at night.<sup>1</sup> He also acknowledged that, while waiting for

"Q. . . . You were convicted in Florida, were you not?

"A. Yes, I was.

"Q. For what?

"A. Automobile theft, breaking and entering.

"Q. What do you mean 'automobile theft, breaking and entering'?

"A. It boils down to this, I was 17 years old, broke into a man's

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓

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SUPREME COURT OF THE UNITED STATES

No. 70-86

Circulated: \_\_\_\_\_

Recirculated: 12/16/71

United States, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
Forrest S. Tucker. } Appeals for the Ninth  
Circuit.

[December 20, 1971]

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE joins, dissenting.

The Court's opinion, of course, is a fine and acceptable exposition of abstract law. If I felt that it fit Tucker's case, I would join it. The Court, however, fails to mention and to give effect to certain facts that, for me, are controlling:

1. At his armed bank robbery trial in May 1953 Tucker was no juvenile. He was 32 years of age and was represented by counsel. A reading of his trial testimony discloses that he was very knowledgeable indeed. Tucker testified on cross-examination at that trial not only as to the fact of three prior state felony convictions, but, as well, as to his engaging in the proscribed conduct underlying two of those convictions. He stated flatly (a) that in 1938 he broke into a garage and took a man's automobile, and (b) that in 1946 he broke into a jewelry store at night.<sup>1</sup> He also acknowledged that, while waiting for

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"A. Yes, I was.

"Q. For what?"

"A. Automobile theft, breaking and entering.

"Q. What do you mean 'automobile theft, breaking and entering'?"

"A. It boils down to this. I was 17 years old, broke into a man's