

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

CHAMBERS OF
THE CHIEF JUSTICE

March 3, 1980

Re: 79-66 - Aaron v. S.E.C.

Dear Potter:

I find here, as with a half dozen of this week's cases, that there are wide disparities in the basis of a majority even when five or more agree on the result.

In this case you may recall my view that the Court of Appeals decided the issue of scienter when it was not necessary to do so. (a) The District Court found scienter but gratuitously went on to say "negligence of one may suffice . . ."; (b) the Court of Appeals did not disturb the finding and indeed relied on it in part. (See page 21a, App. to Pet. For Cert.)

As I stated at Conference, the Court of Appeals opinion goes beyond the need for a holding that negligence alone is enough. For me, the issue I thought we had is not here. I therefore conclude to take that position, in which I am joined by no one as of now. ~~In these circumstances, I would remand to require the Court of Appeals to reconsider its holding in light of there being no need to pass on the scienter issue on this record.~~

Bill Brennan would affirm across the board; five votes (without mine) were to vacate and remand but not on the same basis as I think we should do so. In light of this, I would prefer to have you assign and my narrower ground for remanding can be stated in concurrence.

Regards,



Mr. Justice Stewart

Copies to the Conference