

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 6, 1980

78-1202 Chiarella v. U.S.

Dear Bill:

Thank you for your memorandum of February 5
addressed to the Chief and me.

Who then?
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Although I welcome your concurrence in my view as
to what was submitted to the jury, I am afraid we remain in
disagreement - as we were at Conference - as to the necessity
for breach of some duty arising from an identifiable
relationship. No one has suggested, not even the SEC, that
any evidence exists of a congressional intent to extend
liability under §10(b) of the '34 Act to the universe of
people who buy and sell securities. The common
understanding, until fairly recent years, was to the
contrary.

But before imposing a criminal liability that
apparently was never considered by Congress - and
particularly before imposing it under language as imprecise
as §10(b) - I would think it desirable to have congressional
hearings and a carefully drafted statute that would afford
reasonable notice to criminal defendants.

I nevertheless am happy to have you aboard
concurring in the judgment.

Sincerely,

Lewis

Mr. Justice Brennan

cc: The Conference

lfp/ss