

2/4/80

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

Dear Mark:

I read the Powell opinion (now the Court's opinion), and I do not believe I could join it. I share with you some discomfort with the Chief's dissenting opinion. It strikes me as somewhat disjointed, and I am not sure I like the blue-collar/white-collar comment. I suspect this comes rather close to his justified annoyance at the several leaks that have taken place with respect to the Court's work on several occasions since the abortion "scoop" of seven years ago. I agree with you that the case presents an opportunity for "a fairly elegant argument based on the Act and case law construing § 10(b)".

I suppose I could join the Chief if nothing better shows up. I shall be interested, however, in what may be forthcoming from the Brennan and Marshall chambers. If you have the time and inclination to try something yourself, I would not be adverse to it. In that case, however, it might be well to let clerks in the Brennan and Marshall chambers know that we shall be cooking something up.

I have asked Wanda to type up a suggested opening paragraph and to hand it to you. Please feel no obligation to use it. I just feel better getting it off my chest.

I think it advisable, also, to point out, if it is the case, that Justice Powell is giving a narrowing interpretation to Affiliated Ute Citizens. I wrote that opinion, and I certainly don't want it unduly narrowed.

H.A.B.

*Dictated as I  
left for lunch*