

# The Burger Court Opinion Writing Database

*United States v. Naftalin*  
441 U.S. 768 (1979)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

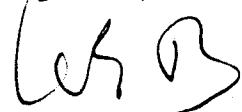
May 16, 1979

Dear Bill:

Re: 78-561 U.S. v. Naftalin

I join.

Regards,



Mr. Justice Brennan

cc: The Conference

WB  
we  
AM

10. The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Justice Stevens

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-561

United States, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Appeals  
Neil T. Naftalin. | for the Eighth Circuit.

[May —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question presented in this case is whether § 17 (a)(1) of the Securities Act of 1933, 15 U. S. C. § 77q (a)(1), prohibits frauds against brokers as well as investors. We hold that it does.

Respondent, Neil Naftalin, was the president of a registered broker-dealer firm and a professional investor. Between July and August of 1969, Naftalin engaged in a fraudulent "short selling" scheme. He selected stocks that, in his judgment, had peaked in price and were entering into a period of market decline. He then placed with five brokers orders to sell shares of these stocks, although he did not own the shares he purported to sell. Gambling that the price of the securities would decline substantially before he was required to deliver them, respondent planned to make offsetting purchases through other brokers at lower prices. He intended to take as profit the difference between the price at which he sold and the price at which he covered. Respondent was aware, however, that had the brokers who executed his sell orders known that he did not own the securities, they either would not have accepted the orders, or would have required a margin deposit. He therefore falsely represented that he owned the shares he directed them to sell.<sup>1</sup>

<sup>1</sup> A broker may mark an order to sell a customer's shares "long" if he

PP 2, 3, 5, 6, 7, 8, 10

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

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

Recirculated: 11 MAY 1979

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-561

United States, Petitioner, | On Writ of Certiorari to the  
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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 9, 1979

Re: No. 78-561, United States v. Naftalin

Dear Bill,

I am glad to join your opinion for  
the Court.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 9, 1979

Re: No. 78-561 - United States v. Naftalin

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Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan  
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cmc

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 9, 1979

Re: No. 78-561 - United States v. Naftalin

Dear Bill:

Please join me,

Sincerely,

*T.M.*  
T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 8, 1979

Re: 78-561 - United States v. Naftalin

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 8, 1979

78-561 U.S. v. Naftalin

Dear Bill:

Please show on the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 11, 1979

Re: No. 78-561 - United States v. Naftalin

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 9, 1979

RE: No. 78-561 - United States v. Naftalin

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference