

# The Burger Court Opinion Writing Database

## *Steadman v. SEC*

450 U.S. 91 (1981)

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

February 20, 1981

RE: 79-1266 - Steadman v. S.E.C.

Dear Bill:

I join.

Regards,



Justice Brennan

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W-B  
P. J. [unclear] me  
2/11

The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Brennan  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens  
Mr. Justice Brennan  
FEB 3 1981

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1266

Charles W. Steadman, Petitioner, } On Writ for Certiorari to  
v. } the United States Court  
Securities and Exchange } of Appeals for the Fifth  
Commission. } Circuit.

[February —, 1981]

JUSTICE BRENNAN delivered the opinion of the Court.

In administrative proceedings, the Securities and Exchange Commission applies a preponderance of the evidence standard of proof in determining whether the antifraud provisions of the federal securities laws have been violated. The question presented is whether such violations must be proved by clear and convincing evidence rather than by a preponderance of the evidence.

I

In June 1971, the Commission initiated a disciplinary proceeding against petitioner and certain of his wholly-owned companies. The proceeding against petitioner was brought pursuant to § 9 (b) of the Investment Company Act of 1940<sup>1</sup> and § 203 (f) of the Investment Advisers Act of 1940.<sup>2</sup> The

<sup>1</sup> Section 9 (b) of the Investment Company Act of 1940, 15 U. S. C. § 80a-9 (b), empowers the Commission, in specified circumstances, "after notice and opportunity for hearing . . . [to] prohibit, conditionally or unconditionally, either permanently or for such period of time as it in its discretion shall deem appropriate in the public interest, any person from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter. . . ."

<sup>2</sup> Section 203 (f) of the Investment Advisers Act of 1940, 15 U. S. C. § 80b-3 (f), empowers the Commission, in specified circumstances, after

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 24, 1981

RE: No. 79-1266 Steadman v. SEC

The Conference:

A suggestion from the Office of the Solicitor General prompts me to suggest that I change footnote 13 in my opinion in the above case, which came down on February 25, 1981. The relevant language now reads: "Substantial evidence review by the courts of appeals requires a hearing on the record. ... Otherwise effective review by the courts of appeals would be frustrated." I suggest a change to: "Substantial evidence review by the Court of Appeals here required a hearing on the record. ... Otherwise effective review by the Court of Appeals would have been frustrated." I will assume there is no objection unless I hear to the contrary.

Sincerely,

The Conference

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OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 3, 1981

Re: No. 79-1266, Steadman v. SEC

Dear Lewis,

I suggest that we ask Bill Brennan to append the following at the foot of his opinion for the Court in this case:

Justice Stewart and Justice Powell dissent. They believe it was incumbent upon the Commission to prove violations of the antifraud provisions of the securities laws by clear and convincing evidence. The reasons for their view are substantially those stated by the Court of Appeals for the District of Columbia in Whitney v. Securities and Exchange Commission, 196 U.S. App. D.C. 12, 604 F.2d 676 (1979) and Collins Securities Corp. v. Securities and Exchange Commission, 183 U.S. App. D.C. 301, 562 F.2d 820 (1977).

Sincerely yours,

Justice Powell

Handwritten signature of Justice Powell, consisting of the initials 'P.S.' and a diagonal slash.

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

CHAMBERS OF  
JUSTICE POTTER STEWART

February 18, 1981

Re: No. 79-1266, Steadman v. SEC

Dear Lewis,

Please add my name to your dissenting  
opinion.

Sincerely yours,

PS.  
/

Justice Powell

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OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 6, 1981

Re: 79-1266 - Steadman v. SEC

Dear Bill,

I agree.

Sincerely yours,



Mr. Justice Brennan

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 3, 1981

Re: No. 79-1266 - Steadman v. Securities and  
Exchange Commission

Dear Bill:

Please join me.

Sincerely,

*T.M.*

T.M.

Justice Brennan

cc: The Conference

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U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 11, 1981

Re: No. 79-1266 - Steadman v. SEC

Dear Bill:

I agree.

Sincerely,

*H.A.B.*

Mr. Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTED MANUSCRIPT DIVISION OF THE SUPREME COURT OF THE UNITED STATES

February 12, 1981

79-1266 Steadman v. SEC

Dear Potter:

Here is the short dissent that I mentioned yesterday.

I have a preference for something along these lines because the two CADC cases do not answer Bill Brennan's reliance on the APA. Also, it seems worthwhile to make the contrast between the care with which sanctions are imposed under the criminal law with an administrative sanction that in many respects is far more severe. To bar a middle aged professional investment adviser from pursuing his vocation for life, and at the same time stigmatize him with a judgment of fraud, is more serious than most criminal penalties.

I must say, however, that "our" petitioner is not exactly the fellow who merits one's sympathy!

Sincerely,

Mr. Justice Stewart

lfp/ss

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

2-17-81

From: Mr. Justice Powell  
FEB 17 1981

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SUPREME COURT OF THE UNITED STATES

No. 79-1266

Charles W. Steadman, Petitioner, }  
v. } On Writ for Certiorari to  
Securities and Exchange } the United States Court  
Commission. } of Appeals for the Fifth

[February —, 1981]

JUSTICE POWELL, dissenting.

The Securities and Exchange Commission (SEC), acting under the antifraud provisions of the Investment Company Act of 1940 and the Investment Advisers Act of 1940, has imposed severe sanctions on petitioner. He has been barred permanently from practicing his profession and also forced to divest himself of an investment at a substantial loss. In making its findings of fraud and imposing these penalties, the SEC applied the "preponderance of the evidence" standard of proof.

The Court today sustains the action of the SEC, holding that § 7 (c) of the Administrative Procedure Act (APA), 5 U. S. C. § 556 (d), commands the use of this standard in disciplinary proceedings brought under the securities laws. The Court recognizes, however, *ante*, at 4-5, that the general provisions of the APA are applicable only when Congress has not intended that a different standard be used in the administration of a specific statute. The critical inquiry thus is the identification of the standard of proof desired by Congress.

The SEC acted in this case under § 9 (b) of the Investment Company Act of 1940, 15 U. S. C. § 80a-9 (b), and § 203 (f) of the Investment Advisers Act of 1940, 15 U. S. C. § 80b-3 (f). Sanctions imposed under these sections are the functional equivalent of penalties for fraud. At common law,

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

2-20-81

From: Mr. Justice Powell

2nd DRAFT

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**SUPREME COURT OF THE UNITED STATES**

Circulated: FEB 20 1981

No. 79-1266

Charles W. Steadman, Petitioner, }  
v. } On Writ for Certiorari to  
Securities and Exchange } the United States Court  
Commission. } of Appeals for the Fifth

[February —, 1981]

JUSTICE POWELL, with whom JUSTICE STEWART joins, dissenting.

The Securities and Exchange Commission (SEC), acting under the antifraud provisions of the Investment Company Act of 1940 and the Investment Advisers Act of 1940, has imposed severe sanctions on petitioner. He has been barred permanently from practicing his profession and also forced to divest himself of an investment at a substantial loss. In making its findings of fraud and imposing these penalties, the SEC applied the "preponderance of the evidence" standard of proof.

The Court today sustains the action of the SEC, holding that § 7 (c) of the Administrative Procedure Act (APA), 5 U. S. C. § 556 (d), commands the use of this standard in disciplinary proceedings brought under the securities laws. The Court recognizes, however, *ante*, at 4-5, that the general provisions of the APA are applicable only when Congress has not intended that a different standard be used in the administration of a specific statute. The critical inquiry thus is the identification of the standard of proof desired by Congress.

The SEC acted in this case under § 9 (b) of the Investment Company Act of 1940, 15 U. S. C. § 80a-9 (b), and § 203 (f) of the Investment Advisers Act of 1940, 15 U. S. C. § 80b-3 (f). Sanctions imposed under these sections are the functional equivalent of penalties for fraud. At common law,

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 4, 1981

Re: No. 79-1266 Steadman v. SEC

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 9, 1981

Re: 79-1266 - Steadman v. SEC

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 13, 1981

Re: 79-1266 - Steadman v. SEC

Dear Bill:

Please join me.

Respectfully,

*John (w)*

Justice Brennan

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