**[Brennan Conference Notes 11-04-78 WJB692F100003-4][[1]](#footnote-1)**

**[1st Page – Image WJB692F100003]**

**No. 84-1160 , Pembaur v. Cincinnati**

**The Chief Justice**

Is prosecutor a policy making authority?

If there was frequent practice, it would add up to policy. Steagald have to be applied retroactively here? Not preserved by City?

Is there *presence* of *conscious* and deliberate choice to apply for future?

Don’t see it here.

**White J.**

Not hard to find a county policy in this case – but wouldn’t say this was true in every case where *by its[[2]](#footnote-2)* staff and official makes a mistake.

**Marshall, J.**

I’d affirm – this is bench warrant and they can[[3]](#footnote-3) break down door even though I joined Steagald

**Blackmun, J.**

Activity and not repetition is the focus.

Officer acted on authority of persons entitled to act – and that’s policy**[2nd Page – Image WJB692F100004]**

**Powell, J.**

Would not apply Steagald retroactively so don’t have to reach policy question. If I had to reach it, I’d say no policy in this episode. I’d never have joined Monell if “policy” there means what WJB now says.

**Rehnquist, J.**

Wrong to apply Steagald retroactively.

Anyway can’t find a policy here.

**Stevens, J.**

Don’t think can \*\*\* county – policy often made by single official

**O’Connor, J.**

Ohio law gives prosecutor authority to give these instructions.

*All[[4]](#footnote-4)* Steagald *could* say wrong but not raised

1. Words added by the editor for clarity are enclosed in brackets as are editor comments. Interpretations of which the editor is particularly uncertain are indicated in italics and alternative interpretations may be indicated in footnotes. Items in small caps were printed or typed in the original rather than handwritten. [↑](#footnote-ref-1)
2. This is very unclear could be one word or two. It could be “brite” used colloquially and sarcastically. [↑](#footnote-ref-2)
3. This pretty clearly looks like “can” but logically should be “can’t.” [↑](#footnote-ref-3)
4. This word looks like “All” but doesn’t make much sense in context. [↑](#footnote-ref-4)