

Memorandum for the Conference

Nos. 81 and 82

It must be due to naivete that it never occurred to me that the simple statement of an obvious fact could ever be deemed a departure, however remote, from the Court's tradition, or that it would touch anybody's sensitiveness. To speak of the "unavoidable lateness [not belatedness] of a decision" handed down on June 23rd is merely to state a public fact. And to give that as the reason for not being able to write a full-dress dissent in a case involving far-reaching issues is to give the precise reason for filing such a dissent later. There is nothing out of harmony with the traditions of the Court in such an indication of the reasons for a future dissenting opinion.

I am sorry if even unwittingly I should have touched the sensibilities of any of my brethren. In any event, long before the memorandum by brother Murphy reached me, I sent a revised phrasing of my notice of dissent to the printer. It says precisely what I believe it is appropriate to say, and says it in a way that does not, sofar as I am able to judge, lend itself even to tortured misinterpretation.

F. F.

June 18, 1947