June 18, 1947

Memorandum to the Conference:

Nos. 81 & 82 – S.E.C. v. Chenery Corp.

I am asking Justice Frankfurter to delete all reference in his remarks to the "unavoidable lateness of the decision in this case." So far as the public is concerned, any decision rendered in the same term as that in which the case is argued is not "unavoidably" late. It is not unknown for cases to be argued early and decided late in the term. To say that such a decision is "unavoidably" late is thus to stir up needless speculation and comment by the public.

As we all know, this case was given to me but a short time ago. But whether the case was assigned late or circulated late are matters which lie solely within the private corridors of this Court; the public has no legitimate concern with them. And any explicit or veiled reference (such as here proposed) is not in harmony with the Court's traditions.

I have no objection to the Court remaining in session until an adequate dissent is written, even though it means cancelling my previous arrangements. Nor have I any opposition to the filing of a dissent next fall. But if the latter course is followed, I suggest that it be done in the unobtrusive manner followed last term in R.F.C. v. Denver, R.G.W.R.Co., 328 U.S. 495, 536.

Frank Murphy