

June 10, 1981

If PS is adamant, I of course am willing to yield (not to have your hands tied in answering JPS). But if the text change and footnote modification would satisfy him, that is Mr. Justice:

Re: No. 80-396, Fact Concerts, Printed Version. (My past experience, however, suggests that Re: No. 80-396, Fact Concerts, Printed Version. Would this be worth calling him on, prior to

(1) There are, as might be expected this time of year, lots of typos. I hope I caught almost all of them. The major ones (several words left out) are at 15 and 19.

(2) I have eliminated the sentence in the concluding paragraph of text, and also the specific example in n. 28, that disturbed PS. I would like to keep the rest of the footnote for two reasons. First, it seems disingenuous not to acknowledge that such an extreme possibility might arise in the future. If PS is troubled about equating taxpayers with voters (or even present taxpayers with past taxpayers, if prosecution is delayed several years), one might hypothesize a referendum in which only taxpayers vote (cf. Ball v. James!). I am content not to insert any hypothetical at all, but awareness of the general possibility seems important. The footnote's final sentence, by rejecting the need to include such an exception in the bright line rule, should allay PS's fears. The second reason for keeping the footnote is that JPS seems likely to snipe at its absence in his dissenting remarks, and I see no good reason for you to remove and then re-insert.



If PS is adamant, I of course am willing to yield (though not to have your hands tied in answering JPS). But if the text change and footnote modification would satisfy him, that is preferable from my point of view. If you agree, I could negotiate with PS's clerk. My past experience, however, suggests that PS is better approached directly (i.e., I never get anywhere with his clerks!). Would this be worth calling him on, prior to circulation of the printed version?

(3) At 21, I believe "not impervious" is clearer than simply "impervious," when read as modifying "at best uncertain." (i.e., if one assumed impervious-ness (ugh), the impact of deterrence-in-the-air would be non-existent).

JJB