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06-21-1971 Correspondence from Harlan to Stewart

John Harlan
US Supreme Court Justice

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

June 21, 1971

Re: No. 783 - Clay v. United States

Dear Potter:

I must confess to finding myself a little uncomfortable with your proposed per curiam. I am not convinced that the passages from the Department of Justice advice letter have the same import in context as they do in the order in which they appear on page four of your opinion. In addition, I am inclined to think that the opinion pushes the Government's concessions before us further than they were intended to reach.

On the assumption that a majority of the Court may not share these viewpoints, I would appreciate your adding at the foot of your opinion the following:

"MR. JUSTICE HARLAN, concurring.

I concur in the result on the following ground. The Department of Justice advice letter was at least susceptible to the reading that petitioner's proof of sincerity was insufficient as a matter of law because his conscientious objector claim had not been timely asserted. This would have been erroneous advice had the Department's letter been so read. Since the Appeals Board might have acted on such an interpretation of the letter, reversal is required under Sicurella v. United States, 348 U.S. 385 (1955)."

Sincerely,

J. M. H.

Mr. Justice Stewart
CC: The Conference