

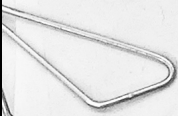
Ex Ante

Supreme Court of the United States.

Memorandum.

Macclesfield Education Finance Sub-committee allowed pay to a male teacher for one day's absence to attend the funeral of his mother-in-law.

They refused it to a woman teacher who attended the funeral of her father-in-law.—*Daily Telegraph*.
(T. W. Brown.)



It makes a difference!

*Bob, can't you somehow
weave this into your
day - Write dissent!*

WHAT'S THE DIFFERENCE, JUSTICE FRANKFURTER?

On January 10, 1952, the Supreme Court of the United States heard argument in a case presenting a constitutional challenge to a Missouri statute requiring employers to give employees four hours of paid leave on election day. On March 3, the Court upheld the statute. Justice Robert Jackson drafted a solo dissent:

The discriminatory character of this statute is flagrant. It is obvious that not everybody will be paid for voting and the "rational basis" on which the State has ordered that some be paid while others are not eludes me. If there is a need for a subsidy to get out the vote, no reason is apparent to me why it should go to one who lives 200 feet from his polling place but not to a self-employed farmer who may have to lay down his work and let his equipment idle for several hours while he travels several miles over bad fall roads to do his duty as a citizen. If he has a hired man, he must also lose his hand's time and his pay. Perhaps some plan will be forthcoming to pay the farmer by requiring his mortgagee to rebate some proportion of the interest on the farm mortgage if he will vote. It would not differ in principle. But no way occurs to me by which the doctor can charge some patient or the lawyer some client for the call he could not receive while he was voting.

Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 427 (1952) (Jackson, J. dissenting).

While Jackson was drafting his dissent, Justice Felix Frankfurter sent him the note on the facing page (the original is at the Library of Congress, Manuscript Division, in box 229 of Jackson's papers), with a handwritten note:

It makes a difference!

Bob, can't you somehow work this into your *Day-Brite* dissent!

Is Frankfurter really saying that "it" – seemingly the sex of the beneficiary of pay for hours not worked – should make a difference? Or is he saying that it should not, and that Jackson should acknowledge as much in his dissent? If so, Frankfurter was disappointed.