

29 December 1969

Dear Dan,

I have just returned from London where I learned from Lyn Mostyn of your replacing Dillard. Does this mean you are taking over his chair? To return to Charlottesville under any conditions gives me great pleasure as it means you will be more accessible. If you are taking over Dillard's chair, then this is truly splendid. You know my feeling that teachers should teach. There are so damn few of them as it is that when one runs off to administer or judge or practice or whatever it may be and understandable as it may be, it is a grievous loss for students, and from a public point of view a bad allocation of resources as administrators are more common than teachers. Alabama, because of its peculiar intellectual and cultural geography, is no doubt a special case in which simply to administer well probably requires promethean talents. I am sorry the new Alabama president did not come through for you. I presume that is what happened. It is sad but with Alabama what it is, hardly surprising. I take it you are following your "principle of maximum effectiveness" and the limit has been reached. I am glad you found the courage to leave.

The Haynsworth illness ran its course with no glory to anyone. I wrote him in August congratulating him on the appointment and then again more recently a letter of condolence and urging him not to resign. Since then I have been thinking, and my reflections are not yet ended. I have at least come to this: Once he admitted that part of what he did was a mistake (which he admitted before Committee), then he ought to have insisted his name be withdrawn, regardless of what the President said. Fortas showed more character. He accepted a legal fee while on the Court, in effect practicing law while on the bench. Though he was, to my knowledge, in no danger of impeachment, he recognized his error (after it had been pointed out to him) and resigned, thus re-establishing his own integrity and that of the court. He purged himself, but Haynsworth did not. There is a kind of moral insensitivity in the actions of both Fortas and Haynsworth which I daresay is widespread in American political life, certainly in the Congress at any rate. I don't know if it is any worse now than it has ever been. Darrow used to say, "the legislature is bad; it is always bad except in times of some great moral crisis when it is worse." Whether Haynsworth should have gone further and resigned from the 4th Circuit, I haven't yet decided. I suppose that is the logical extension of my position, but logic is not necessarily compelling. I lean towards a "charitable inconsistency" and think perhaps he was right not to resign. What do you think? On Haynsworth's judicial philosophy, to the extent that he has one, I found the whole debate ludicrous and delightful. While not an Arthur Goldberg, Haynsworth is a liberal judge. To see him next to Strom Thurmond and championed by the arch-conservatives whet my appetite to see what would happen once he was on the court. Disappointment there.

How was your trip through East Germany? Your "long-standing ambition to go travel through East Germany" mystifies me. Why should an Alabaman whose military experience was in Korea and whose historical interests I thought lay more in the Anglo-Saxon world have an ancient ambition to visit Eastern Europe? There must be influences and interests operating here of which I know nothing. But I am curious.

I value your comments on my "Federal Habeas Corpus." I did quote you extensively early in the book because of the pithiness of your Magna Carta essay. If I were not so lazy I would review the essay as it is really a jewel. The book has been selling well, but otherwise I think I have had just one letter from a law clerk saying he found the book very helpful. I have seen no reviews.

1969 is about through. During this year my celibate state ended, and I married a Japanese girl whom I met a little over two years ago in Tokyo. We have now been together in Paris one year, and Junko's French is pretty well along. By the end of 1970 she will be fluent. Then she will begin English. We shall probably divide that task between England and the United States. As you can deduce, I now speak Japanese and French. As there are 72,000 Japanese in Paris of which few speak French, this gives me a peculiar status and accounts for my stationery. I am not actively practicing law, but I find miscellaneous problems falling into my lap, mostly from impoverished Japanese students and artists. Once I collected a couple of portraits as a fee. Occasionally a solvent Japanese pays me for doing some odd task. I probably could develop a thriving practice if I were more ambitious, but at the moment I am not. I am also counsel for a charitable foundation in Wisconsin and am slowly developing some expertise in this field which is a rather interesting one and one with potential for fostering one's ideas on society. I rewrote this year "The Law-Abiding Policeman" for the second edition which appears this month. I wrote one non-legal piece which three publishers in their own inimitable fashion praised and then rejected. I read a magnificent biography of Tolstoi by Henri Troyat which I recommend and then proceeded to reread War and Peace and a couple of other Tolstoi novels and stories as well. I read two of DeGaulle's three volumes of memoirs. They were very interesting and clarified the war years in French history for me but also turned me from an admirer to an anti-Gaullist. He convicted himself. The other major book I read was Wm. McNeill's "The Rise of the West" (Mentor, 1963), a book written with great scope and imagination and historical insight. It is surely one of the major books I have read in the past five years. On my desk now a stack of books by and about Wittgenstein. I did read a few volumes on law, all bad. I thought Archibald Cox's little book on "The Warren Court" undistinguished and mediocre, and Levy's "Origins of the 5th Amendment," which won a Pulitzer prize, I found unreadable.

Your letter of early September comparing my musing on the futility of success and ambition to Lamar's just before he launched out on some worldly enterprise greatly amused me, no doubt because I was considering launching myself. From time to time I muse about a "re-entry" to use your term which somehow conjures up an image of some remote asteroid in outer space to which I have been confined. Yet Paris is hardly an asteroid in outer space, and from what I have seen of the world, what goes on here must indeed pass for civilization for want of anything better elsewhere. A re-entry would probably involve leaving Paris which is an immediate and heavy, though perhaps not fatal, strike against it. More importantly I can't seem to find my constellation. Here I am weightless in this remote spatial station from which even DeGaulle has disappeared, and whether I should be teaching (and if so, what?) or practicing (and if so, what sort of practice?), writing, studying, or something altogether unimagined is as mysterious to me now (perhaps more so) as it was three years ago. Much of the time I rest relatively easy with this uncertainty, comforting myself with the belief that time will straighten things out and with Gide's statement that anyone who sets out following his own compass must be content to lose sight of shore for awhile. Yet at other times like Walter Mitty I launch myself



imaginatively into vast projects which end always in a cloud of mist and musing about the folly and vanity of success and ambition. At one of which points your September letter arrived and gave me much pleasure.

Our present plans are to spend July and August in Wisconsin. There will thus be a fair possibility that I shall hop down to Charlottesville for a few days or more. When do you expect to be there?

Please accept my congratulations on your return to Virginia and warmest wishes to you and Jan and your family for the new year.

Sincerely,