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Dear Dan,

I have been a negligent correspondent as I have both your note of July 2nd and your more recent letter of November 27th. I seem to be going through a period when events unfold at an ever-accelerated rate. I suspect it is related to the ages of my children, and I am anticipating a slowdown sometime in the midterm future.

I did get to Lake Lure this summer with my family. We spent nearly three weeks there, breaking up the visit with a drive to Charleston, S.C., a city which I had always wanted to visit. I was fascinated by Charleston and deeply regret now not having visited it long ago. I am thinking seriously in fact about returning there this summer for a month, renting a cottage near the ocean and going into Charleston to visit.

I apologize for not having phoned you, or anyone else for that matter. My four boys and wife are extremely talented in filling my time to the exclusion of everyone else.

I am glad you enjoyed my article on the law-making process in France.

I would like very much to see your book on the American courts. I am sure it will be of significant use to beginning law students. I am more sceptical of its use to foreigners. Looking at the American legal system from the perspective of someone who lives and practices outside of it, I wonder how any foreigner coming out of a non-English system can make any sense at all of our legal system. Understanding the legal system really requires at least a rudimentary understanding of how the society functions.

The power and independence of a federal judge <sup>are</sup> ~~is~~ inconceivable in French terms, and the result is that a Frenchman, even one with a reasonably good understanding of American life, is not apt to believe that the executive branch cannot determine the outcome of the judge's decision in a case of sufficient importance.

A French magistrate is under the hierarchy of the Ministry of Justice, much like a U.S. attorney in the U.S. If the AG tells a U.S. Atty. not to prosecute a case, I presume it is not prosecuted. That type of influence seems to operate here regularly in cases in which the government has even the vaguest interest. The judiciary is thus contaminated by the executive branch.

Of course our U.S. Attorneys have not yet, to my knowledge, gone on strike. Several times in 1990 the French magistracy has gone on strike for short periods to protest inadequate working conditions. That there conditions are inadequate, there can be no doubt. While one of the strikes was occurring I received my Wisconsin Bar Bulletin with an article about the poor working conditions of judges in many courts in Wisconsin - one photocopy machine for an entire courthouse, lack of staff, lack of basic materials, pencils, paper, etc. I found it ironic that this was happening in my home state while the French judges were striking about the same kinds of things. I feel confident, however, that things are a good deal worse here. It is a very odd feeling to call a clerk's office about an important case only to learn that the judges are on strike and nothing is happening.

After having spent 17 years practicing in this system, I find myself depressed by the quality of the judicial system. The range in quality is far less here than in the U.S. Here it is a uniform C- or D+. In the states I believe it varies from F to A. Curiously, the same thing can be said about the bar here. It is far more homogeneous than in the states. It is uniformly very mediocre. The best people don't go into law; the law teaching is bad, and the significant decisions within the culture are neither shaped nor made by lawyers or judges. However, the more I ponder these matters, the more I see that this is not strange. It is our system that is odd. We end up resolving within the legal system all kinds of problems that in other systems are decided totally outside the formal legal system.

I still hold to the observation I made to you many years ago: That the The French legal system is honest, not priced beyond the reach of the average person, and relatively quick, at least in comparison to other legal systems. Those seem to me to be such tremendous virtues that one is compelled to speak of the system with respect. And that despite its biggest fault which is the fact-finding process. The process is terribly primitive, and no serious fact-finding really takes place, at least not in American terms.

Of course this is the reverse side of the coin of the system being reasonably priced. Resolution of a factual dispute by litigation doesn't cost very much, but the product purchased isn't very much better as a system than flipping a coin. The system works reasonably well in applying the law to whatever the facts are determined to be. If one has a case with no factual issues, just legal ones, then the system is fairly reliable. However, such cases are few.

I look forward very much to reading the one-volume collection of Hardy's papers. As I recall, Hardy did not write a great deal so the volume should not be too thick. I have Hardy's picture on the wall of my office in his judge's uniform decorated with what he called "some silly Belgian lace". I occasionally turn to it and wonder how he would handle the problem I have on my desk and which particularly perplexes me.

I wish we had a complete video set of all of his contract lectures. Such a collection would be worth more than the discovery of a new star. I can still hear him describing the concept of consideration by contrasting it to a promise to give his overcoat to Tim the Beggar near Mincer's Pipe Shop.

My oldest son is now 18. He finished Winchester College last July and has been at Harvard since September taking a course in American literature and microeconomics. He returns to London this month and is scheduled to begin an English university, hopefully Cambridge, this Fall. He claims to want to go to law school in the States after completing his university studies in England. Lloyd Weinreb at Harvard whom I met here in Aix-en-Provence last summer has been extremely kind to him, and he has sat in on a few courses at HLS. Son Number 2, who carries your name, is now 12 and has returned to England this year and is working to try to get into Winchester College like his brother. He has not yet indicated his direction, but is a serious boy, and I am hopeful that he will do well.

I have made a New Year's Resolution to write and publish an article before the end of 1991. I have not published anything in about 5 years, and I do not want to lose whatever touch I had. You may recall last year the protests that swept through ~~several~~ England, France and a few other countries concerning the right of high school girls from fundamentalist Muslim families to wear a scarf known as a hijab while at school. I collected a fair amount of material on this, thinking that I would do an article on it. In fact, it is such a difficult subject. I may yet decide to drop it and do something else.

I am also tempted to do an essay of reflections of a comparative law type, kind of random insights. I suspect, though, that such an essay would be very difficult to publish.

I am glad to hear that Louisa Dixon is back working with you. Please give her my best regards. I enjoyed talking to her again last summer and meeting her when she came through Aix.

Please let me know both when your American courts book and Hardy's papers come out.

My very warmest wishes to you and your family for 1991.

A handwritten signature, possibly "Rus", is written in dark ink. A long, thin, curved line extends from the end of the signature across the middle of the page.