

Dear Les,

1/12/85

Can't remember a nicer rejection slip since 1965, when a fair number of editors told me that their publishers were crazy for not doing my first book.

Before I get to the real reason I'm writing on a day in which I can't be outside anyway, there is one thing I do not like and that is running yourself down, that "effete "astnein Shob" business. You've more than paid your dues, done more than even a diligent man's fair share and you have no call to think of yourself that way. You have a family, kids to educate, etc., and you can't remake the world. You've done your share at least to make it more honest and better in other ways. I can't say what I'd have done if I'd had kids. I can't believe I'd have dared what I have with such responsibilities. And hell, you want to jail. Me? I only dared them to try it.

What I sent you is a small part of a much larger and much more dangerous, I think subversive business. Newspapers are ducking it, save for one story in the Post a while back. There is an open fight between the Reagan majority (not all of whom he appointed) and the traditionalist majority minority. The Reaganites are engaged in even rewriting Supreme Court decisions, according to the minority in a recent case involving homosexuals in the military. It is wholesale and for some time Jim has been telling me that the cause and pro bono lawyers like Nader's and the ACLU are terrified. Mark Lynch almost said as much. (By phone. We've never met and we did not discuss this. Not directly. I wrote him at some length when he was sponsoring CIA exemption from FOIA, recalling what happened 50 or so years ago when the ACLU sought to compromise with reaction.)

Perhaps some time when you are bending an elbow with one who might get interested in the de facto court packing you might steer him to the overall story.

Most cases are never taken to the Supreme Court, and remarkably few of the petitions cert are granted. So the appeals decisions stand as the final word. The DC circuit handles most government cases, so with it packed most government cases are almost automatically favorable to the government. In addition, there is a disproportion of former DJ lawyers who get appointed to the courts. (And some are very good.)

I'm sorry I forgot to state that the two panels two days apart in Shaw's case and mine are identical in the petition and that I didn't know of the decision in Jack's case when I drafted it. In the event that you turn this over to Jack I'll enclose copies of what I sent others after I wrote you the second time.

When I was young and reporting this would have been a real natural, if not as a story as a feature. The papers have changed with the world. Alas.

I didn't send many copies to papers. I did send one to Gardner, only to see the New York dateline on his Dobovan story. I knew that if he got interested he'd have to fight his desk, which he can't do all the time, and might prefer to save that fight for something else. The I sent one to Rosenfeld after the understated treatment George gave the FBI's lying to the New York judge, and raised broader issues for editorial consideration. Because I thought I should, not because I thought he would.

Your favorable opinion leads me to a confession. I knew I was incubating additional illness and suspected correctly what it was. I therefore went with the retyped rough draft and then went to the doctor. That way I knew it would be done and filed, whatever its condition, and if nothing else would be on file and might reach the attention of the clerk to one of the traditional judges.

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I was too cautious. I began to realize that this morning. The only local person to whom I have a copy is a very conservative friend, former CO of Fort Petrick, career Navy man. He, too, has walking therapy at the mall I use and he, too, approved it. But all I could remember is two years ago when the respiratory illness and their then numerous complications lasted six months. I don't think I ever gave the FBI and DJ fink lawyers more hell at any other time. But I was afraid that if that happened again, and this has happened three years running now, I just might not have the energy.

Now I'm sorry I didn't take the time to edit and improve the draft.

I did not and do not expect any attention. Unless they try to collect from me, when I'll certainly resist and fight if that is at all possible. I'd like to hope, however, that at least one of the non-"eaganite" judges will make a little fuss. Success is not the only important thing. The decent judges also must fight. And make a record that can be used. But again, they can't fight on everything. And if I'd done better that would have been easier for them. I should have done more of the work they'll have to do if they want to fight over these issues.

I hope they do and not in personal interest. This is a real blow to the freedom of information, the Act and the fact.

If you don't give it to Jack, keep it. Maybe some day you'll want to use activist judges in a novel.

Thanks and best wishes,

Dear Hal,

1/10

It is well done, better than the lawyers do -- you'd have made one in the C. Darrow style. But I can't crank a column item out of it. And it's probably not much help to you for me to stand on the sidelines and cheer one who is hanging in there longer than the effete Eastern snob who is undersigned, Best™,

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*LeSmith*

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