

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

CHAMBERS OF  
THE CHIEF JUSTICE

April 27, 1970

To Costume Club 4/27

Dear Harry:

These are and will be trying days and perhaps I failed to point up the enormous emotional -- and physiological -- impact of things which no one can know except by going through the experience. Neither of us had -- and I guess no nominee ever did have -- the kind of training given the astronauts for their kind of outer space. Few experience the "outer space" of May 1969 for me and April 1970 for you.

One thing I anticipated not simply weeks or months ago, but a year ago when this happy prospect began to take shape in my mind as being within the range of possible accomplishment, relates to the news media -- those favorites of the V. P. ! (I recall that day in the Courtyard on May 21, when Nancy and I talked and I said what the "next step" was. She opened those eyes of hers -- very wide -- and said something like, "Do you think it's possible!") I have watched the news people for 30 years plus on the periphery and now for 17 years in the real "snake pit" of Washington. There are virtually no objective reporters; there are only degrees of bias based on social and political philosophy and personal leanings. In short reporters are human and not always Krock and Lippmann brains. Overriding that is their almost psychotic passion for copy. Some of them will sell their souls for a story. Their modus operandi commences with "sweet talk" -- they want to "understand you" so they can do a "portrait", etc. etc. always "for the public". It ranges to baitings, for example, "How is your situation different from Fortas-or-Haynsworth's?"

This is the reason why no reporter and no photographer saw me after 7:15 p. m. May 21 until the day of the hearing. All this is only background of what will come, which as I say, I anticipated long ago. It is at work. The activist-liberal-avant-garde boys will spare nothing to create tension between Justices and they will especially go to work on us now because of our long friendship. It began last week. Questions submitted to me were aimed at creating tensions. They got no answer, no comment and not even a "no comment". Since they are not valid questions or issues they cannot live without the "water" of comment from one or the other of us to keep it viable.

This technique will not stop. I made the decision, obviously long ago, that it could be lived with but better by being aware of the incredible lengths to which these "birds" will go. This is why not one, literally, not one member of the Court trusts any reporter so far as I know. One of the Brethern periodically relaxes because he likes people and predictably gets burned. The old system of "rewards and punishments" prevails. It's like blackmail or heroin; once on the "hook" they try to keep the victim impaled.

In one of our earliest conversations weeks ago, you may recall, I said one problem was that we must not over-react to these tactics and the needles and knives. I should add that, true to history -- or is it biology -- the female of the species is the more deadly. Mrs. Warren briefed us on this carefully and her wise words were not lost on us. No female of the dozens who sought interviews on the "house, home, family" routine, has crossed our threshold. If ever one does it will be on a written exchange of conditions that we control the story after it is drafted and before publication. The St. Paul paper story on our gardening, etc. was an exception but with an understanding of no syndication to other publishers. It was, of course, all pabulum.

The wiles of the female reporters to get women to talk have led most Washington "official" wives to discuss nothing at parties except maybe favorite recipes. Most of the few who depart this sound rule live to rue the day. So far as I know this is the absolute and invariable rule of all members of this Court. Cathy Douglas has been exploited but not with her cooperation. Bill tried cooperating a few times and got burned and not without annoyance to the Brethern. Bill is an exception to all rules. Bill's image is not like the reality -- he is a warm, intensely human and sensitive person and very likeable. He is a good example of what the pen can do to a man -- his own and others!

I return to my main thesis, the need not to over-react to baiting. It will continue. There is no cure; prevention is the only safe course. I shall follow it for the same basic reasons which began with May 21, 1969. I have paid a price, as with Newsweek's false reports about "lobbying" for Haynsworth and Carswell; MacKenzie and Denniston constantly "needle" and one experience with Werheim fixed him with me -- even though I declined to talk to him. He then set out to demonstrate that Wolfson-Fortas and Mayo-Burger were parallels.

One episode here will illustrate the pitfalls and tactics. When Holmes v. Alexander came out the "liberal" press began the rewards-and-punishment ploy. Suddenly I was a "true liberal", I had cast off my sponsor, "cut the umbilical cord", a la Holmes and TR. This was supposed to give me a taste of what the Post, Newsweek and the Times could do for me and my "image" if I would "play ball". It was nauseous. But I had seen some good men "hooked" by this cynical technique and more important I never have and never will play to the Law Review galleries, the Post or anyone else. Neither have you. You did not have the Post to contend with but I survived 14 years of the worst it could hit me with. Unbelievably they courted me at one stage, pointing out how they would like to credit an "enlightened moderate" -- always, of course, if he minded his Ps and Qs and cooperated a bit with "David".

We will both get this now -- an effort to play one off against the other, to create tensions which can be exploited to serve the "liberal" cause -- liberal meaning theirs.

We are too old to be had. In fact, we were too old 20 years ago. (Not far from Sunny Slope it was tried on a tiny scale by very decent people! You put me on the Board -- then the small efforts to "lever" us.)

Yet this town is like the jungle in many respects and awareness of land mines, tree traps, snake pits, etc. is useful, and what little I know about it I got by osmosis over 17 years, mostly learning by other peoples' unhappy experiences -- Herb Brownell's included. We need never worry until and unless a pattern develops -- and it never will -- of frequency of our being alone against 7. It could happen occasionally -- as with an Ashe, because these marble halls do something to people -- unless one fights it. I see a dismaying sense of infallibility in otherwise splendid men when it comes to rewriting the Constitution to conform to "Anglo-Saxon-tradition, sense-of-basic-fairness or the shock-the-conscience" doctrine. I love to innovate and create and experiment. But for me I hope I can stick to weekend sculpture, organizing court administrators schools, studies to improve prisons and law schools. With Holmes and Hand, among others, (and the "elder" Frankfurter) I do not want to become a Platonic Guardian doing what Congresses and Presidents and Constitutional Conventions ought -- if only they had the wit and farsightedness of Justices.

This is over-long, especially when it requires my own manual labor. Come Wednesday you will perform with your usual sound judgment and come off with flying colors. Have no qualms or apprehension except the first hand knowledge that there is a slight strain waiting. After the hearing began I had fun.

Bon voyage, we are cleaning your chambers!

As ever,

*Dezman* [BURGER]

Honorable Harry A. Blackmun  
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Can I burden you to call me - or  
Miss Burns in "out" to get  
your Mother's address? I'd like to  
write her a note.