

120 7th St. S.E.
Washington, D.C.
July 28, 1966

Dear Friends:

My apologies for sending a xerox copy of something instead of a letter. By now the various expressions of sympathy, despair, etc., have reached a number which precludes individual reply at any length. And since there are some common themes in the letters, I choose this means to express the view that making a cause celebre of the "Tigar affair" is unwise.

First, and rather irrelevantly, a Tigar affair without a participating Tigar is rather difficult to think about. However, Zola is reputed to have said of Dreyfus that "he is the one who has not understood it at all. He is completely unworthy of the Dreyfus affair."

Second, I gather that by now the news and various details are all over Berkeley. However, I think we have an obligation to protect the Court at this point, and not to fuel the attacks upon it. This we do by (especially in light of one proposal to circularize professors and leading attorneys) not adding to the (to my mind rather arid) criticism that comes from the academic world and from the organized bar. This is quite aside from the fact that the organized bar, at any rate, thinks in a rather antediluvian fashion on civil liberties issues. Related to this point, I do not want to get involved in spreading my political views and associations around to see if we can get people to approve of them enough to think that they do not disqualify one from being a clerk. One of the central issues in this controversy has been disclosure of these views and associations to those who, in my view, are entitled to them only under a McCarthy-type view of the first amendment. I would like to retain my personal satisfaction at having kept the political faith in the sense of not having made disclosures of the type I just referred to. (The above may be a bit cryptic to those who do not know the facts of this affair in full. I hope that they will accept my word that the rationale rests on an adequate basis in the record.)

Third, and most emphatically to some who have been most voluble, Justice Brennan is not an evil man. That was shown when he hired me, when he reaffirmed that he would have hired me had he been given the choice again, and finally by the situation in which we found ourselves when I no longer had the job. Justice Brennan may have been wrong about what was required to save the Court; many of you think he was (indeed, all who have written so far think he was)* But Justice Brennan is not a man without courage; he attacked McCarthy when his political fortunes would have dictated that he should not, and he faced the Senator with calm ~~him~~ during his confirmation hearing and lectured the Senator on the independence of the judiciary. But the oaths, disclosures under pressure, security apparatus, suspicion and hatred of the McCarthy heyday are still with us; the lesson of this affair is that we must be cognizant of forces which great men find they must bow to, and not that we must think men small who bow to these forces.

There is a related point: I feel a sense of obligation to the Justice at this point which is rather hard to define. He has had no comment about this affair when asked by the Press and others. He has not by word or deed intimated that my conduct is other than honorable. He might have done otherwise, and it ~~in~~ speaks well of him that he has not. Perhaps that courtesy deserves repayment in kind.

* For the record, I think that he was egregiously mistaken....