

November 23, 1947

Dear Stanley:

I prefer not to withhold from you that it pained me to hear you express agreement with the substance of Hugo's pronouncements as to the calamitous implications of the General Electric case and the prophecy of disaster for our free life, if the case were not strictly confined to its own facts – if, in short, it were not for all practical purposes gutted, even though nor formally overruled.

It is not merely that Hugo had ten years in the Senate during which he had an opportunity to do something about the awful disaster to our economy that the General Electric case is supposed to be – four of which were in the heyday of the New Deal, when measures against monopoly were being successfully fashioned and when the Senate contained such powerful leaders against monopolistic tendencies as Borah, LaFollette, Norris and Wheeler. If there be this great danger to our free life, Congress can change it in five minutes this afternoon. Hugo's reply to this is: "You know very well that Congress wouldn't pass the necessary legislation." What is that but a distrust of the democratic process and a utilization of the non-democratic feature of our Government, of this Court, to fashion a policy that the representatives of the people will not adopt.

All this is on the theory that we really know what is good for the country much better than the representatives of the people do. That's exactly what McReynolds and Co. in their day thought. All the "liberals" threw their hats in the air when Brandeis castigated the then majority for assuming to exercise the power of a "super-legislature". It would shock Holmes and Brandeis out of their boots to learn that the beauty of the Sherman Law is its vast vagueness, whereby five members of this Court are able to decide what is good or bad for "the economy" of

this country. Yes, I know, I am again invoking the names of Holmes and Brandeis. I am unashamed to be reverent of the great.

Faithfully yours,

Mr. Justice Reed