

Dear Jim,

7/23/80

You are my ^{friend} friend, I love you. I don't want to fight with you. I want you to be happy and successful. I want you to escape from whatever the invisible captivity is, not forever be bound and limited by it. When I fight with you it is not for me, for anything that can do me any good. But you will not open your mind, a problem with which I am not unfamiliar, and in your own interest you must.

The last thing I need or want is contention. Of any kind, with anyone.

In the past I've been the most durable of men. For longer than anyone could hope. I'm not now. I'm weary, I'm weakening, I'm less able, and my body is making demands and complaints. I'm listening to some and to others it gives me no choice.

I don't want to tell you things you don't want to hear. It is no joy to me, I know you won't like it and it can't do me any good. But what else is friendship?

You have come to the point where you deceive yourself and with atypical anger you mix self-pity. But you have not yet assessed why you are in your present situation, why I select certain things on which to press while I ignore others, even why for so long I pressed you on nothing.

You find excuses for everything and you solve nothing. You repeat the same mistakes, each time telling yourself that what you do is right and proper. And, of course, in time you come up against real time pressures. This is inevitable. But you never ask yourself, is there something I could have done that could have avoided this? Did I do something wrong that led to this? Is there something I should have done that I didn't do? Have I learned from any mistakes? Have I changed with needs and situations that change?

You told me yesterday that what you are doing you do for me. I told you, much less pointedly than I could have, that you have refused to do what could be of benefit to me, what I wanted done. I also was angry, but I did not say what you should think of on your own, what did you do that was of personal interest to me - what did you not do - and what happened when you did not heed what my years have taught me. There is a past from which you have not learned. You must, in your own interest.

In 1996 you have been dangling and turning slowly on the yardstick since the first calendar call at first because of the usual federal lawyer trickery but very soon because they got an accurate reading on you and have been playing you correctly as a result of it. But in five years of dangling and suffering you have learned nothing, you have changed in no way, and as long as the judge puts up with it, you'll continue to dangle and suffer.

I can't be popular because of what I represent, but could have been and at first you were with Judge Green. You project a youthful, boyish ~~esoteric~~ appearance, you were young at the law, and thus she had you invited to the judicial conference. But you wore this off and she no longer has that attitude toward you.

You haven't even thought of what can you do to make this case work with this judge, with what she has made clear about herself.

Nor have you learned what you of all people should have had no trouble learning,

how to fight a political case. This is not because you lack the political understanding. It is part and parcel of a dislike for fighting. And the lawyer who can't or won't fight never succeeds because he is always opposed to those whose very life it is.

I'm not going to go over all the many mistakes you made and from which you haven't learned. It would do no good, based on the past, because you won't open your mind.

You have two basic problems, personality and psychological. If you are going to be a happy and successful lawyer you are going to have to overcome the liability (to a lawyer) of a beautiful personality because to succeed a lawyer must fight. He does not have to be dirty, like all the government lawyers we've been opposed by. He ought not and he need not. But you don't fight on anything or in any way - and they know it and expect it and succeed by the knowledge and the certainty.

I don't know what the psychological problem is and I won't do any guessing. But I can tell you unequivocally what one manifestation of it is: fear. Whatever it is that you fear, it is unreal. It doesn't exist. You have no reason for fear as a lawyer or in any of the cases in which we've been together, unless it is a subliminal perception of the personality inhibition. (It can't be entirely that.)

I will review only the recent past, but if you ever want to review in greater depth, if you ever come to the point where you can see some of these things and want to try to comprehend them and do something about it, I'll take the time and you'll have a specific chapter and detailed verse.

Your fear does not come from cowardice. We've been through too much together. You are not a coward, not in any way or sense. You have been and you can be brave. And where it was difficult to be. Cowardice is not your problem, not in any way.

The Stipulation was a misguided mistake because you lack the jugular instinct and because I listened to you. I listened to you for selfish reasons. I wanted out of this case that was foreclosing all else for me. While I did not get what I wanted in 1996 I got much more than enough for a zowie book. You may not realize it but without this case I had an important book already drafted. Until I got bogged down in this case illness did not end my productivity. An editor could have taken that book, made a good one of it, and I could have gone on to other work.

You throw up at me that you do these things for me. No so. You do them for what we both want and for going on three years against my interest and precluding other work I'd have done instead. You deceive yourself, as others, like Bud, have deceived themselves, in this. Bud made a mess of 2301-70, he can't face that, so I'm the villain and the impossible one. He forgets the times he told me I should have been a lawyer, and I'd have been a great one, and how sorry he was he didn't listen to me.

From the time of the Stipulation on I've been wanting to get out of this case. My one inhibition has been your getting paid. I've told you this, one way or another, often enough since then.

3. I'm not apposed to normal, lawyer practise in all cases and conditions. Sometimes they are right and effective. So if you want to review an simpler part of the record of performance, or non-performance, why don't you review what you did and didn't do once the Stipulation was violat^ed. I think your assessment should include what you were unwilling to consider two weeks ago, what it means for the present - even if there would not be the present - if you had gone the traditional way and been a lawyer about it.

I'm not criticising you for e gaging in the Stipulation. It was a judgement and your judgement was bad, but there were other considerations that had to be included. I do criticize you, in retrospect, with what I've learned of stipulations since, for accepting the formulations. And I am criticising you for accepting its violation.

The same is true of the consultancy. I made it was clear as I possibly could that I was opposed to it. You should have asked to confer with me if you were not prepared to reject it outright, which I clearly indicated was my desire. Remember, I did what you told me not to do to signal this. You told me I was to be a churchmouse but I had much to say. But once you accepted the consultancy, a lawyer should have insisted that all the conditⁱons be explicit, from what I was to do to what and when I'd get paid. You didn't, and I don't think it is because you didn't know. You avoid any contention, and the lawyer's life is of contention. After that, when the judge was on the one hand outraged and on the other personally embarrassed, you followed up on nothing. You failed to do what the lawyer should have done - until mucy too late and then with too little.

With regard to t e letters to Cole, all of which represent matters about which you should have done things in the past, last month we reached an agreement on this. You knew that I had reason to believe they were going to do a number on me -us. You knew that the Cole letters were an immediate means of taking steps in advance, of taking initiatives so that we might overcome whatever they would be up to and of avoiding the needlessness of having to defend what ought not come up, with all the time that takes - and wastes. You did agree. It began with merely a few suggestions. You failed to respond. So I then sent you drafts and told you'D pay for having them retyped after you corrected them. You did nothing and you did not respond in any way. Then I sent you letters I asked you to forward, even with drafts of covering letters. And you still did nothing. Finally, about three weeks ago, I told you that absent some hard reason to believe that this should not be done I was getting out of the case and would write the judge and explain why, that I would leave it all up to you. (How long has it been since I told you I'd prepare no more affidavits and would not go to any more calendar calls?) So you then promised that you'd get a couple of the done, that you'd be free in a few days and that by the following ~~Tuesday~~ ^{Tuesday} you'd get them all done. Then we spoke and you said it would be by the end of the week. You did neither. You the told me that you'd get more done and would have them in

in the mail this past Friday, and I've received nothing from you that you mailed ~~by~~ this past Friday.

A weekend ago, ~~hey~~ you had not kept your word, I wrote you and decided not to mail it.

Forgetting that you told me you'd be free and would have time - what disasters this has meant in the past when you said you'd have time and never got around to what was put off because there would be time there wasn't!!-yesterday you undertook to flagellate me again because you are pressed for time on other things that came up. Don't they always?

On this question of time, if you want I'll go over the past, a long and wasted past, and show you where you could have had time and how. But the real question is of today. That you don't have time is not the answer when I give you letters you can forward. If you see anything wrong in those letters you can tell me and I can make necessary changes and send them to you again. But instead you imagine all sorts of contingencies and upopularities. We are not in a popularity contest. It boils down to a simple question, if all these things you see and I say imagine are true, are we better off running those risks than doing nothing or is it better to make the effort, despite any possible risks?

I am without doubt and when you look back with regret you also will be.

You also have not yet learned a sense of timing and that is quintessential. You have forever and put off forever and create time binds for yourself, as you have from the beginning in this case.

Now we have an impossible situation because you are going away and because there is always a new development. You have not yet learned that this is what they assure because you enable it and have enabled it. In this long vase you have not yet learned the importance of initiative or in any meaningful way, in which you followed up. taken any initiatives. You sit back and wait to react to their initiatives and it goes on and on.

It is no threat to me when you tell me all, I have to do is write you a letter and fire you. It is self-destructive, for all that I can now hope to get out of this, absent what I might be able to do, is getting you paid. And on this I tell you again that how you have conducted this case provides a real basis for the judge to reduce the rate at which you'll be paid. You have not been effective or efficient and she can easily say inefficiency ~~xxx~~ not to be compensated.

You may not think so but I've been patient, for years in which nothing was produced. We've gotten little since the Stipulation and most of that I've been responsible for.

My memory is not what it was. I've been telling you this for a long time and trying to indicate what it can mean in what I may yet do. But on the matter of the Cole letters it is accurate because Raw has been nearby for most of the conversations, heard my end, looked for an gotten records responsive to what we discussed, and has been asking me if I'd gotten what you said you'd do and send.

My memory is not all that is failing, as y u should recognize other than academically. What does it mean? What will it mean?

Excuses, even if real rather than unjustified, mean nothing and accomplish nothing. There is always and there always has been an alternative.

You just have to recognize that whatever your problems and whatever causes them, I also have problems and there are fewer options for me.

This dawdling has just got to stop.

Your making promises and then not keeping them and then claiming you didn't make them also has to stop.

Sp also the diversions and self-justifications, like making on that I expected you to file letters you had not yet received. You did agree to file and I asked no more than that you file those you had in hand and hell, you couldn't even find some of them.

Every thing I do is at the cost of something I will never do. Do you want to look back and say to yourself that you kept your friend from doing what he wanted to do, what you wanted him to do, what others wanted him to do?

For months I've asked you to make Metcalfe witting. The need was there and the timing was then. Now, with the developments you never anticipate, it is probably too late and the consequences will be serious. There was nothing to lose by doing as I asked and the time required was negligible. He has not reacted to your offer of compromises. Yet I held that prospect out to him the day of the first and cancelled calendar call. I did more than a year ago from your office, and you never followed up on that.

When the women lawyers were sporting with you and talking summary judgement, I told you get it over with, lose the summary judgement motion, get paid and I'll get the other records administratively. You told me I still can yesterday. First of all I can't and second, I now can't pay for them.

It is not just me and these cases. It is your future that is involved and as long as you are inflexible and unlearning and unchanging it will not be a promising future. You can't succeed in law the way you've been conducting these cases. That, I'm sure, is the only reason people have not been battering on your down with all the significant court victories we have.

I'm not going to continue this way. If you are incapable of thinking this through without resorting to attempts to justify the past, I'm not going to fire you and justify reducing your fee. But I will drop out and I will write the judge and explain why, without criticizing you. I am not going to spend what remains of my life locked into utilities. Please make the effort to think this through without self-pity or self-justification.

Sincerely,