

Dear Jim,

1/24/80

It may very well be that 2/8 will be my last appearance in court in C.A. 75-1996. As of now, absent what I believe is impossible, I intend it to be.

Our conversation yesterday was ~~persuasive~~ persuasive in telling me that it must be. I'd taken some encouragement the day before when you assured me that your approach would be different, only yesterday you demonstrated that it isn't and won't be.

While I did not know of the practise of other judges in accepting sampling, once I saw this~~it~~ in what Cole wrote Green I assumed it. I did not think he invented it. The only response you conceived, at least expressed, is exactly what has needless and ruinously perpetuated this litigation.

You want to dangle on the DJ lawyers' strings.

Not intellectually ~~but~~ psychologically you are unable to take an initiative. As a result you spend all your time responding to what you could and should have dismissed long ago. You never stop responding, no response means anything and the case goes on. And on. And on. With absolutely nothing to show for it - literally. The only records we've gotten since what was promised the summer of 1976 are those I've gotten, aside from a few meaningless Fensterwald records that are inadequate and that are now not worth fighting over. I merely skimmed them night before last. What little reprocessing there has been I got. Same for the Long tickler, the Patterson records, etc. But in even those case you were incapable of any followup. You never pressed for the promised reprocessing when I got ~~through~~ through on my complaint and they promised it long enough to quiet us.

The only times I've insisted, and had to really fight on those occasions, it worked out well, only you dropped it once that hearing was over. Example, how I had to fight you to get you to say anything about Beckwith what I had that solid case for you. You understated it much to much, you accepted the judge's copout, of speaking severely to him, which meant nothing except that you gave her a chance to save her face, and you let that drop dead. So since July 1978 you have done nothing about the Judge's earlier directive that they prepare a response to "ila's memo. You let it stand the way it is. You made no use of my affidavit, which ~~destroys~~ destroys them on this and proves false swearing. (But then you have made no use of the many affidavits that prove false swearing, with the judge doing nothing about them and the transcripts of the status calls not even holding pro forma reference to them.

The judge issued an Order in 6/76 that FBI names not be withheld. So until I finally raised so much hell about it they had to change they got away with it merely because you did nothing. You were, instead of using this powerful thing, waiting for their next wasting of your time. Most of this case has been devoted to your awaiting their always successful steps devoted to wasting both of us.

When you did do what was right and necessary, like early on filing the Vaughn motion, you abandoned it. When at the outset I proved that they had violated the Stipulation, in which you let yourself be deceived, you abandoned that, too, so that since then they have been able to stall us over that and contrive a phoney, all-delaying issue over that. There are many such things. Your ~~own~~ answer was that you didn't have time. True. You have an almost psychological compulsion to permitting if not enticing situations in which you stay overly busy wasting your time in utilities you make possible for them merely because you absolutely refuse to fight like a courtroom lawyer fights. As I've told you often enough, they have you sized up correctly and as one lawyer passes the case to another pass the word along. Each one plays the same games with you, differing only in their manner.

I was aghast that the only response you could think of in response to Cole's sampling diversion was to file a B1 order. As you will see from what I wrote you earlier, I am not opposed to turning this back on him. I suggested it. But that is not the crux of the response that is required. You go his way once again, reacting only,

and if it works as well as you'd hope he will still have succeeded for the case will not have been advanced a single bit.

Cole felt you out in the depositions. He learned that it is not possible to throw too much shit in your face unless it gets into your mouth. You took anything. Finally I had to start cutting him off and making efforts to end his creating a false record. You took anything and as a result you got even more disorganized. He got to you and you couldn't even control your own papers. In response to their devices you ~~pretended~~ pretended you were a college professor not a lawyer. When we got Kilty to admit there were records we did not get you actually agreed to write Cole a letter (that you never found time for) instead of saying hell, no- we filed the request and you produce the records pronto or we go to the judge. On that she'd not have dared disagree with you. So we don't have those records that should have been produced in 1975 and Cole has his out, you promised to write him a letter and didn't. This happened several times.

By the time we had him over a barrel on the abstracts you found a way of letting him roll off and wasting our time - not arguing like a lawyer argues when he made his sample offer. If he loses, as it is not now certain he will because you let him get away with everything to now on this, he still wins because he will have wasted several more months for us, gotten the judge even more befuddled, and wasted more of my life. The obvious way to react was to behave like a lawyer, to argue. The argument is simple. The records are or are not within the request. Sampling is irrelevant. But you NEVER argue anything at all. You save yourself for being wasted and going along with anything, no matter how ridiculous. I suppose because you are afraid of many things none of which can possibly be as bad, if real, as the consequences of this permeating, dominating fear. Now you are afraid that the judge will go for the sampling diversion.

But you never talked about how to stop it or even try to other than the side issue of the b1 claims.

You don't like to fight but lawyers do nothing else. I don't like to fight either. My pacifism cost me my college degree, but I did not claim pacifism, with a clear record of it, in World War II. I'd rather do almost anything else but when I have to fight as you know I do. And even when by doing this I worked out good things with Shea you have yet to make any use of any of it. Even when I put it together for you in affidavits once you file them you forget them because that means fighting back and you have compulsions against that. An example is the reprocessing, which they all fear, but not nearly as much as you. You've made no use of it. We have these depositions, which are not as good as they could be but are of great usefulness. Only when you have a chance to use them you don't. We took depositions and the purpose of them, as of all my affidavits, is to forget them so you can get bogged down in what the Department lawyers want you to get bogged down in. The costs of these affidavits is great and burdensome and possibly dangerous for us, so you fail to use what good they can be. The only apparent reason that it would require you to be a courtroom lawyer and that is worse than the plague for you.

When you were in Singapore in 1976 and far away from the courtroom you saw and understood clearly how to fight this case, asked me to prepare, and I spent an enormous amount of wasted time making that preparation, only to find that when you got near the courtroom again you again got afraid of being a lawyer. And that is the only reason we are still in court in this case.

There is nothing you don't fear. When Lynne pulled that dirty trick on you on the consultancy you went along even though I have already said more and voiced more objection than you had warned me about. You didn't ask to be able to discuss this with me, you didn't follow my leads and above all you didn't do what a lawyer should have done, say that we had provided some of this and let them begin with that Lila's memo which, as you ultimately saw, they could not respond to.

A LAWYER, if something like this is going to happen, has the terms fixed in advance. So you didn't. And as a result I'm out all of that time, which was enough time for the writing of a book, as the time I wasted over your Singapore request was enough time for the writing of another book.

And you never learn from any of these things. They each lead to a repetition. This is not because you don't know better or can't do better. You can be brilliant and effective when you let yourself be.

I've just finished reading the Mitchell deposition transcript. I'll be sending you a few notes because much in it is quite useful. But the degree to which you back off in it is astounding. You would not join issue. An example is Mitchell's claim that what I provided was not accurate. I don't know what he was talking about. But I do recall passing you a note asking him to specify and whether he had asked me to clarify, neither of which he ever did with me. So you let them build a phoney record they will be able to use on the consultancy. There are other such instances.

Your determination not to change is reflected in the depositions. I don't know why you can't arrange your papers so that you have control over them and the copies but the solution was simple let Rae have the copies so you'd not have to be shuffling so many stacks endlessly. We offered that but you have the compulsion to be disorganized and to shuffle papers. Often enough not finding the, and giving Cole the kind of device he was looking for and used effectively. He used these things to keep you off balance and the transcript reflect the high degree of his success. Too many times you ~~never~~ never returned what you were into.

None of this is going to change until you want it to change enough for it to change. I am not going to fight with you. You will want it to change and will change it or you will not.

Each trip to Washington wastes a day for me and costs me over \$50. Paying Rae has had Lil and me worried for a long time, and it worries her. Some good comes of paying her. No good comes of my trips to Washington in 1996.

Whether I am ever in the courtroom in that case again depends on what happens and doesn't happen on the 8th. I'm not going to tell you again what I want or don't want. You will bootstrap yourself or you will not. This entire thing is psychological and only you can do something about that. Until you want to you can't and won't. And unless you do it is a certain loser for me and a waste of what I don't have, time and money.

If as the other cases proceed they proceed as 1996 has I will absent myself from them. Your abdications in 78-0322 have us in a similar situation. You have not done the things I asked you to do in it during the long period we have not been in court and you have made no use of the record I have made in it outside of court. Even the effective tool you had in this and I spelled out to "etcalfe" at our conference before the status call you have not used. Likewise when you spelled it out effectively in the Civil Division conference in 1996 and the in camera meeting you promptly forget it and didn't implement it. To a limited degree I have, after waiting two years.

There is no doubt that you have great time pressures because you go along with all the official games for wasting you. The result is that when there is something important you can't get to it. For example, what did you do about the Memphis index? Or when you did nothing with what I gave you, what use have you made of the means by which I worked it into the record, without any dispute, as none of my evidence has been disputed? So we have all those files not searched in 0322 and in my appeals and you haven't even spoken to "etcalfe", even though on a number of occasions and over a number of different issues I asked you to make him witting.

If you can bootstrap yourself into a different attitude I'm confident many of your other problems will be relieved. I hope you can bring yourself to want to because I'm sure if you do you will be able to do it. Sincerely,