

Wednesday, November 19, 2008

### **The illusion of "I want to get it over with" / Giving clients the confidence to be more patient than that.**

Â Â When someone says "I want to get it over with," is the person doing nothing but merely chasing after an illusion? Â Let us consider the ultimate effort to get it over with: suicide. My Â spiritual guru and friend Jun Yasuda told me that one day a man walked up to her teacher, the late Â Nichidatsu Fujii Guruji, and proclaimed that he was going to kill himself. Perhaps against the advice of those at suicide helplines, Fujii Guruji laughed, and said something along the lines of: "You think it is that easy to get away from your problems?" Of course, Fujii Guruji and Jun-san believe in reincarnation. I do not know whether this man ultimately decided not to kill himself; because of their belief in reincarnation, I do not know how much that question mattered to Jun-san and Fujii Guruji. Â Whatever the inclination might be for people to confess their suicidal plans to Â Nipponzan Myohoji clergy, on a separate occasion, a man approached Jun-san, telling her his plan to kill himself. Her verbal reaction was along the lines of: "Great. If you are going to kill yourself, you will no longer need food, so you might as well fast." He did fast, and he returned to Jun-san telling her that during his fast he decided not to kill himself after all. Â We are so cluttered up with excess junk, psychologically, physically, and spiritually. When a person fasts -- and the fast can be enhanced by Â a vacation from Â the Internet; phone; all other technology driven by electricity, batteries, and petroleum; Â and Â newspapers -- s/he has no choice but to slow down due to the reduced physical energy caused by the fast. With such slowing down comes the opportunity to empty the excess mind junk Â and spiritual Â junk. Competing with the benefit of slowing down is the tug-of-war often presented to -- but avoidable by -- trial lawyers with the constant demands to drive to Â all sorts of court appearances (and then often to wait and wait in court); Â to visit clients in jail and to meet with them in the office and offsite; Â to meet merciless court filing deadlines for motions, opposing motions, and appellate briefs; and to investigate and prepare for clients' cases, while still meeting the demands of the lawyer's personal life. Â The trial lawyer's time and personal challenges are well capture by my late friend John Johnson in his poem "A Meeting with Mother Earth," including this line: Â "The life of lawyering is filled with noise and turmoil. Peace is hard to find - even in seeking after justice. Modern mankind runs amok in anxious pursuit of an elusive technological happiness..." Â No matter how much stagefright a lawyer might have about a case -- and it is critical for lawyers to adjust their lives and relationships with the world and themselves to diminish those fears -- a criminal defense lawyer's client is likely to be more fearful than that. The more the lawyer earns the client's trust, confidence, and comfort, the more the lawyer will help not only to reduce the client's fears, but to help the client make decisions from a position of strength, patience, and full willingness to share all ideas, concerns, questions and fears with the lawyer. For a lawyer to reach such a quantum level with his or her client, nothing substitutes for spending quality time with the client, Â with the lawyer listening empathetically, actively, respectfully, Â and deeply, and responding empathetically and Â with the best and directly gentle of bedside manners while seeing the Â client as the lawyer's equal. Investing such time Â and energy is a commodity that too many lawyers fear investing, lest they have insufficient time left to do their other work and to earn a living. However, nobody ever said that being a criminal defense lawyer is an easy ticket to financial stability. Moreover, the lawyer who puts clients ahead of money will earn more money or other good fortune Â in the end than the lawyer who does the opposite. A key approach to earning a client's trust, confidence, and comfort is for the lawyer to admit his or her own weaknesses, concerns, and fears. Otherwise, the client will know the lawyer is hiding something, and will worry that the lawyer is hiding something more monumental than it is. Yes, opening up with clients in this way may lead the client to bolt to another attorney, or to need extra time to get the client to center. However, there really is no other good choice for the lawyer. This approach is different than the lawyer saying s/he feels like a loser or is a loser. It can start with just saying to the client something as simple as: "Because I have rarely been before this judge, I am going to talk with the lawyer over there -- who appears before this judge all the time -- to get that lawyer's thoughts on the approach I am inclined to suggest to you." If my client responds that s/he wants to reschedule the case to get a lawyer who knows what the hell s/he's doing, I might respond: "If you think you will be better served by a lawyer who knows this judge better than I, that is fine. Then again, if your case is postponed, you may have a different judge. It will take just one minute for me to get the information I need about the judge." Such a response keeps me on my client's side, so that the client does not get distracted about whether I am battling my client. Sometimes the client's stated doubts and questions come with more desperate-sounding words and a more shrill tone of voice. Remember, the client is not there for the lawyer, even though it is nice when a client shows some caring for the lawyer. The client is in disharmony and possibly some or much pain, and does not care who helps him or her dig out of a hole, just as long as the client has confidence that the lawyer will dig the client out of the hole, or at least get the client closer to a view of the sun. Â A lawyer should not presume to know how the client defines his or her hole, and the image of getting towards the exit from the hole. For some clients, the path may be to seek an acquittal. For others, the path may be to minimize the exposure to incarceration as much as possible. For others, the path might be to reduce the collateral fallout of the case on one's personal life, career, or immigration status. As simple as it may sound, a lawyer will not know what his or her client wants unless the lawyer gives the client trust, confidence and comfort in the lawyer to fully open up to the lawyer, and unless the client knows that the lawyer will

listen with full focus, with full empathy, with full clarity and understanding, and without any scolding, berating, or demeaning. For a lawyer to reach such a result, nothing substitutes for giving the client time and full attention, holding all phone calls, and, if the client is jailed, to get the most quiet, confidential, and comfortable meeting space available for as long as needed. Nobody said, either, that the lawyer and client cannot intersperse the conversation with such diversions as humor, playing Nerf basketball, or going for a walk on a beautiful day, and sometimes just taking time out for a few hours on a weekend morning or afternoon, or after hours, just to get to know each other more on a personal level without needing to discuss the case. A lawyer cannot obtain the full trust, comfort and confidence with a client if the lawyer does not try to do the same with everyone. That is not to suggest spending two hours extra with a cabdriver to hear the person's misery and woes. It does mean that if the lawyer yells his or her head off at the Internet company for passing the lawyer from one customer service representative to the next without returning the Internet connection, that negative energy will carry itself into the lawyer's dealings with the client, and the results will not be good. If I had a dollar for every time that a client told me "I want to get it over with," I would be able to take several years sabbatical canoeing, hiking, and playing in the magnificent wilderness. Getting it over with is an illusion, of course. If getting it over with amounts to a guilty plea for no jail that day, the danger looms of jail for any future probation violation, for a more severe sentence for any future convictions, and for extra hassling from any cops who happen upon the person and learn of his or her criminal record. In order for the lawyer effectively to paint for the client a picture of the illusion of getting it over with, the lawyer must start from the very beginning of the lawyer-client relationship, by earning the client's trust, confidence and comfort. This cannot be sufficiently achieved by meeting the client for the first time in the hallways of the courthouse on the trial date, which sometimes was an occupational hazard when I defended clients in misdemeanor court as a public defender lawyer. Recently, a client called me and insisted that I just tell the prosecutor that my client accepts the plea offer in a misdemeanor case, after he long before seemed to have accepted my recommendation that the case outcome was unlikely to be any worse by first coming to court and pleading guilty if the prosecutor turned out to have the necessary witnesses and evidence available to win the case, and if the client did not want to risk a trial. I suggested that my client come visit me, because such a decision is too grave to make merely through a phone call. By that time, my client and I had spent substantial quality time together, so he agreed first to come to my office, where we were able to focus on each other without the clutter of traffic, passing people, and cellphones ringing off the hook. He finally agreed to wait to go to court before deciding whether to plead innocent or guilty. On the court date, my client's first inclination was to plead guilty, but I encouraged him to wait for me to see which prosecution witnesses were actually available, because many of my cases get dismissed when essential prosecution witnesses do not show up in court. I reminded my client that the flat fee he paid me meant that my most profitable approach would be to finish with court as early as possible, but that my ethical duty was to try to get him the best result. I ultimately tracked down the prosecutors' witnesses, spoke with them, and learned they all had time for trial that day and that they would be credible witnesses to the judge (the alleged offense did not permit the right to a jury trial). Armed with this information, my client still entered a guilty plea, but this way he came from a position of strength of knowledge, and he received the best possible sentence available to a defendant convicted of such an offense. Once a client's case finishes in court, the matter might seem over for the lawyer, but the case continues for the rest of the client's life. When the client knows s/he came to court from a position of strength and continued with that strength, the client can get his or her life back to harmony more quickly. When the client insists "I want to get it over with," the client likely also is challenging the lawyer to reaffirm and underline the lawyer's commitment to the client and ability to achieve and maintain the necessary strength to represent the client, and the client perhaps is vocally challenging his or her ability to invest in the commodity of time and labor. Like the man who first threatened suicide but then changed his mind after fasting, the client who wants "just to get it over with" needs first to empty the clutter in his mind and spirit. Jon Katz

Posted by Jon Katz in Persuasion at 00:15