

5-15-1987

Consider Our Consumers

Thomas M. Reavley

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/plr>



Part of the [Dispute Resolution and Arbitration Commons](#)

Recommended Citation

Thomas M. Reavley *Consider Our Consumers*, 14 Pepp. L. Rev. Iss. 4 (1987)
Available at: <https://digitalcommons.pepperdine.edu/plr/vol14/iss4/6>

This Symposium is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized editor of Pepperdine Digital Commons. For more information, please contact Katrina.Gallardo@pepperdine.edu, anna.speth@pepperdine.edu, linhgavin.do@pepperdine.edu.

Consider Our Consumers

THE HONORABLE THOMAS M. REAVLEY*

Let us lay aside all of our worries about overhead and profits, suppress our love of the adversary game, and step over into the ranks of the potential consumers of legal services. As outsiders to the law and its institutions, we would surely be frustrated by the gnawing uncertainties and controversies for which there seem to be neither answer nor ending.

The public wants information, inexpensive advice and expeditious ways to resolve conflicts. Rarely does the citizen require a faithful adversary to root out the truth and defeat injustice. But constantly he needs information, advice and solutions.

If the explosion of law drives lawyers to specialization, it also heightens the public's confusion. The citizen does not know where to obtain information about government and law. Every political entity should afford some convenient means to meet this need. Persons in the information booth at the courthouse entrance should constitute more than building directories that talk; they should serve as ombudsmen to see that each caller is well served. When questions arise about property ownership or tort claims, small or large, a citizen should find at least the preliminary answer from a representative of the bar. And it ought to be available without charge. Where no quick answers are possible, the citizen should be told how to pursue the inquiry and, if legal counsel is required, whom to contact and what costs and information might be expected.

We are surrounded by people who are worried and angry about actual or imagined abuses. It is human nature, especially in our society, to be deeply offended by the notion that we have been unfairly treated. If society ignores us and our offended feelings, the toll is likely to be both personal unhappiness and animosity toward society. The sum total of these feelings of alienation is costly to the whole society. It may be that the answer is an interested adviser to summa-

* Circuit Judge, United States Court of Appeals for the Fifth Circuit

rize legal aspects and help offended persons to place matters in proper perspective. But there are abuses which occur among this selfish generation that cannot be treated so lightly. When these abuses affect a great part of the public, it sees access to legal services as beyond its means. And, too often, this is the case. The abused victim may view his alternatives as being either to harbor feelings of wrong toward another and animosity toward the system, or to strike back and avenge the wrong.

When the consumer brings his problem to a lawyer, he needs wholistic advice. He should be told the alternatives available and the probable consequences of each. He should be aided in weighing those consequences to choose his best option. What he probably does not need is a lawyer who knows only how to sue, who is ready to dispatch a demanding letter to the enemy and prepare for courthouse battle. That lawyer is like the doctor whose only answer to a pain is to operate.

Why should communication on behalf of a client to the other party to the dispute always be angry and threatening? Why cannot the letters at least be courteous? Why not invite dialogue and resolution of the problem rather than demand capitulation or litigation to the end? Somehow we have internalized the idea that reasonableness displays weakness. Lawyers must realize that we need not sacrifice any interest of the client by trying to obtain an early resolution of the dispute on mutually acceptable terms. Such an approach is in fact more often than not in the very best interest of the client.

How often have I seen that first signal from an attorney widen the breach. I recall a divorce lawyer who systematically sought a temporary restraining order with every petition for divorce he filed on behalf of a wife. He saw to it that a deputy sheriff presented to the husband the citation and an order to refrain from contacting the wife or visiting the home because the papers stated the husband was a danger to his wife. Not only did this action inflate the lawyer's fee, but it demonstrated his readiness for confrontation, and infuriated the husband. At the time of the most difficult of human relationships, when a family is fractured, the fracture was compounded by the actions of the attorney. This scenario is exemplary of the too common attitude of the lawyer who considers himself a legal gladiator, but this attitude is adverse to the interests of everyone, and especially those of the client.

Consider this gladiator from the consumer's perspective. There he sits, poised to grab a large retainer and begin billing hours for all that the war will require. Endless discovery and the full panoply of motions will be necessary. Nothing is to be conceded. Only the complete surrender of the enemy or the mandate of the court of last

resort can end this dispute. There sits a cannoneer, a warrior who is a threat to every unfortunate client who enters the office. He is a nuisance to the administration of justice and must be constrained. He is the dinosaur of our times.

Lawyers must exercise the art of negotiation and know how to employ all of the available means of dispute resolution, both private and court-annexed. Expenses must be monitored. The client's time and bother must be considered. The chances of resolving matters to the reasonable satisfaction of everyone concerned should be never out of mind. We all recognize that there will be cases where all of the adversary skills will have to be employed, but where there exists a bridge to harmonious and fair agreement, that is the way to go.

In our neighborhoods and institutions, and throughout the nation, we are a people desperately in need of cohesive bonds and community. The "me-grabbing," and the single-minded, zero sum campaigns for narrow issues must subside. It is not that we should expect to agree on everything, but we must agree to work together toward a common interest while we continue to discuss our differences—or simply accept them. Lawyers, substituting adversarialism for professionalism, have aggravated this problem.

Consider our criminal justice system. We are very proud of the lengths to which we go to ensure the protection of the rights of every individual. This is a laudable objective, and we have served it well. But what may well be the most significant need of a defendant under criminal indictment is a bonding to society and an acceptance of its rules. Will the defendant's experience in the criminal justice system lead him to a better understanding of authority or a sense of belonging? Colin Turnbull, the social anthropologist, conducted a study in which he interviewed nearly 200 prison inmates.¹ Turnbull reported that he could not find a single prisoner who "associate[d] a court or court procedure with either honor or justice."² We must question the system if it is increasing the alienation from society of almost every defendant it reaches. If "beating the rap" by defeating authority is the only objective, if the defendant exits the system without any bond to society or the authority that governs it, and if there remains no regret for having abused the rights of others, then it is time for us

1. Turnbull, *The Individual, Community and Society: Rights and Responsibilities From an Anthropological Perspective*, 41 WASH. & LEE L. REV., 77 (1984).

2. *Id.* at 81.

to ask where our single-minded advocacy of the rights of defendants went wrong. Lawyers must reconsider their objectives and roles.

It may be that no other sector of American society has demonstrated the unwise excess of self-seeking so much as has the legal profession. There is certainly a time and a place for the advocate and the adversary, but our profession should pride itself in knowing just when and where that time and place should be. If lawyers have demonstrated to society the excess of divisive combativeness, so are we best equipped to lead society toward community. We must continue to insist upon respect for the rights of individuals, and especially those unfairly treated. But at the same time, we must also be accountable to the totality of the interests of our clients and community.

Lawyers are forced to cope with the realities of their own overhead and living expenses and with the capacity for villainy of people, but we must never forget that we are blessed with the great opportunity in this noble profession to serve all of the consumers of the justice system. For their sake, we stand on a platform with the tools to broaden the reaches of social concord and community.