

I SAY WE LET THE COURT DECIDE WHO'S RIGHT!

By

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“Whatever happened to justice?”

This is all too often what attorneys hear from clients who learn that their lawsuit did not turn out favorably. Jaws drop in disbelief, but not so much from having lost the case as more so from having lost despite truly being the innocent victims of another's wrongful conduct. Clients struggle to rationalize an outcome that seems contrary to common sense, but they cannot rationalize the irrational. The courts are the chambers to which people have historically travelled to seek redress for wrongs suffered. In the end, however, clients often feel so offended by the system that their trust turns to disdain and ultimately to apathy. Public polls show embarrassingly low levels of trust in government and those polls show that the judiciary, though once viewed with honor, is today viewed as simply another distrusted arm of the law.

Though many of us may never have involvement with the judicial system, when we do, it is a relationship unlike any other governmental connection. Once inside the halls of justice, the laws take on individual importance. The general now applies to the specific and the outcome may be life changing, and it is never predictable.

The judicial system is burdened beyond capacity and many whom have sought its protection have come to realize that even the protector can falter under increasing demand. The system is overwhelmed by the number of lawsuits yet so underfunded and understaffed that courts do not have the resources to give cases due consideration. Each court oversees hundreds of cases and keeping that caseload moving becomes an unintentional, but not surprising, priority. Although judges are to be commended for their service, it is inevitable that less than perfect results will be the yield of a less than a perfect system. Nevertheless, the need for a civilized dispute resolution process will be ever present and our judicial system provides that process. But we can assist in alleviating the pressures on the judiciary by taking simple steps as we engage in business and life transactions.

I cannot stress enough the importance of taking preventative and precautionary measures as part of your planning process. That business opportunity you discussed with a colleague may sound like the golden goose, and our inherent instinct is to leap into its void even without knowing how far it is to the bottom. But then we crash and profess failure to understand how it could have happened. It not need be as such if you follow sound advice.

Before engaging in any transaction, identify the issues that may arise. Educate yourself on legal matters before you accept the risks. Make decisions based on accurate information after receiving competent advice. Be proactive today rather than reactive tomorrow. Plan for the best, but be prepared for the worst. Through sufficient communication, through effective drafting of documents, and through taking preventative steps before you act, risk can be minimized and disputes may be resolved efficiently because if you accepted that disputes are inevitable, you planned for their resolution.

And when disputes do arise, be willing to consider that compromising now may result in greater gain than in pursuing litigation later. There is truth to the old adage that only the attorneys prevail when litigation ensues. However, this is more the result of clients being motivated by principal rather than in recognizing that their interests are best served by ridding themselves as quickly as possible of the negative influences and financial drain resulting from protracted proceedings. Litigation is, in a way, the legal form of Russian roulette differing only in that the number of bullets in the gun is just as uncertain as to whether the blast will occur when the trigger is pulled.

This is not to say that you should unconditionally relinquish your rights in favor of expedient resolution. However, prompt resolution may in fact be the best way to protect your rights. Few realize that obtaining a judgment does not guarantee collection of the amount awarded. Collection proceedings are separate and costly and still, there is no guarantee of return. Despite valiant effort, your only satisfaction may end up in being able to frame the judgment and hang it on your wall.

The truth - seeking judicial intervention provides no guarantees and should be your last resort for it presents the most costly and uncertain path that you can take. Instead, retain control over your situation and find common ground, if such exists, to settle disputes before you allow the court to settle them for you. If settlement is not possible, then do seek justice in the courts, but be willing to dedicate your time and your finances to a long-term endeavor and be prepared to protect your rights as you have never before.

But most importantly, do not allow "I say we let the Court decide who's right!" blind you from appreciating the possibility that you may later be asking "Whatever happened to justice?"