

A Rose by any other Name Would Smell as Sweet

The title of this column comes from Shakespeare's *Romeo and Juliet* where Juliet is arguing that it doesn't matter her love Romeo was born into the rival house of Montague. Put another way, Juliet's argument was that the name of something does not affect what it *truly* is.

And so with that, I open my first column as President of Consumer Attorneys of San Diego by asking, what is a "consumer attorney"? This has been an on-going discussion – often times raising more questions than answers – within our organization, amongst its board of directors, its membership, and the community at large. Having been involved in many such discussions I've learned quite a bit about the history of our name, its genesis from "trial lawyer" to "consumer attorney", how we got here, and where we're headed. Accordingly, I felt it right to start off the new year with a brief history on the moniker of "consumer attorney" and to engage a dialogue on whether a consumer attorney "by any other name would smell as sweet".



by: Brett Schreiber, CASD President

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Why the Name Change?

In the early 1990s, corporate America was spending billions of dollars to define "trial lawyer" as a pejorative, negative stereotype. There were no limits to how far they'd go to distort, claiming our cases were nothing but cash cows, our widowed and orphaned clients were winning lawsuit lotteries, and that we drove up the costs of medical care by thousands of dollars per year for every American. Full-page magazine and newspaper ads, along with television and radio spots, flooded the airwaves with images of greed, sharks circling chummed water, and stacks of cash being lit on fire. Usual suspects like the Chamber of Commerce, AARP and other transnational corporations - hiding behind AstroTurf grass-roots labels like the "Consumer Freedom Coalition" - described a scourge of trial lawyers who deserved to be banished from the earth. Some went so far as to claim trial lawyers were "attacking Christian values" and fostered an "anti-Christian agenda". While it's apparent these anti-trial-lawyer campaigns didn't rely on facts or reality in their messaging, the simple truth was that it was working to sway the public consciousness.

With over three-quarters of the membership of the national trial lawyers' associations feeling they were in "hard times" and a public sentiment growing more and more weary and mistrusting of trial lawyers daily, something needed to be done. Leadership at every level – from the national, state and local trial lawyer associations – began to research in earnest ways to improve our brand and our messaging in the media and with the public at large.

Polling and focus groups performed nationally and in California confirmed an interesting dichotomy of perception. On the one hand, nearly three-quarters of people polled had a favorable response to the core message or mission statement of the respective trial lawyers' association (e.g. protecting the injured, promoting the right to jury trial, providing access to justice, etc.). On the other hand, nearly three-quarters of that same cohort had an *unfavorable* response to the term "trial lawyer". In fact, more than three times as many people thought trial lawyers only represented criminals. When asked to name a trial lawyer, over 70% of respondents named Robert Shapiro (mind you, this was on the heels of the first ever wire to wire

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broadcast of the Trial of the Century, but it's telling nonetheless). Moreover, amongst the three-quarters of respondents who felt favorably towards our core message/mission statement, only 13% felt that "trial lawyer" accurately described the law that we practiced or the people we represented.

At the same time, "consumer attorney" was widely considered a far more favorable label with over two-thirds of respondents confirming it gave them a good, confident feeling. Consumer attorney resonated with a sense of civil justice and equality. In fact, when asked to describe what a consumer attorney did, most believed they engaged in pro bono cases taking on large environmental, public health, and dangerous product cases for the benefit of the community as a whole. When asked to name a consumer attorney, most respondents named Ralph Nader (who in his pre-presidential campaigning era rode a tide of [well-deserved] public good will and support).

And so it was in the months and years to follow, trial lawyer associations across the country began vigorous debate and earnest dialogue on the "trial lawyer" vs. "consumer attorney" moniker. ATLA became the American Association of Justice. In California and San Diego, we became "Consumer Attorneys of ...". In the years leading up to and through this name change, we watched as the plaintiff's personal injury practice expanded from being largely one of car crashes and slip and falls to the current broad spectrum of products liability, professional malpractice, insurance bad faith, employment discrimination, elder abuse, government liability, police misconduct, workplace injuries, consumer fraud and toxic and environmental torts. When looking at the people we represented, the kind of cases we handled and hear-

ing the public perception, it became obvious to many that we were "consumer attorneys".

What's in a Name?

Since the rollout of the name change there has been a small, but vocal minority who felt that we've cow-towed to public pressure and skulked away from who we truly are – trial lawyers. While I've heard and appreciate those arguments, and respect those lawyers who make them, I think the reality is more complex. After all, what's in a name? I trust we can all agree that the People's Democratic Republic of North Korea is neither *democratic* nor for the *people*. I was recently reading with some dismay about the Heritage Foundation, a rightwing propaganda group whose primary mission is to oppress and take away the rights of same sex couples and their families. Whose "heritage" are they protecting? Certainly not mine and presumably not yours.

In the end, I'm left to feel that the trial lawyer vs. consumer attorney debate, in many respects, misses the mark. It doesn't matter what you call us. What matters is what we *do* and who we *are*. The public perception of our organization, and trial lawyer associations across the country, is no more defined by our label than Kim Jung Un's dictatorship is by calling itself "democratic". What matters more is our good deeds, our work on behalf of the injured, the marginalized and the damned. What matters more is the music that we make, the poetry of our voices and not the label we give it. Miles Davis's *Birth of Cool* is not one the seminal works of the musical canon because it was called "jazz" but rather because it contained unusual instrumentation, innovative arrangements and marked a major departure from the post-bebop era. Put simply, Miles' music was cool, because it *was*.

When I think of the "jazz" that comes out of CASD, I think of last year's *Trial Stars* dinner honoring the amazing work of our fellow brothers and sisters who stood up for consumers by fighting corporations and insurance companies holding them accountable for acts of bad faith and corporate crimes against our community. I'm reminded of the work of our outreach committees, building homes in underprivileged neighborhoods and manning food banks to serve a hot meal to those in need. I think of our educational and networking events where lawyers – young and old, rich and poor – get together to share ideas, strategize cases and freely give away their time and work product to help each other. For me, it doesn't really matter what label you give that. From where I sit, that's just being *cool* - or in the words of the Bard - that's a rose that will *always* smell sweet. **TBN**