

A Judge's Perspective

A colleague of mine who was being sworn in had the courage to tell a joke at his ceremony — a story about three judges in a duck blind: an appellate court judge, a Supreme Court justice, and a trial court judge. It was duck season, when, through the early morning mist, the appellate court judge could see what looked like a duck approaching. Before taking a shot, she wanted to look at a treatise to be sure it was a duck — by which time the bird was out of range. The Supreme Court justice saw the next bird, but he wanted to confer with his colleagues and research the available precedents before he'd shoot — unfortunately, by then the bird was long gone. When the trial court judge saw a bird he immediately aimed and fired. "I sure hope that was a duck!" he exclaimed.

We all laughed, for my new colleague's bravado at telling the joke — and because it contained much truth. Trial court judges often make important decisions without the time to contemplate, and without anyone's citation to legal precedent.

In the throes of trial, a judge can seldom take the time to seek guidance from law books, cases, or rules of evidence. In criminal cases, especially, lawyers often make motions on critical issues of constitutional law, or the admissibility of evidence, without citation to any authority. Decisions by a trial court judge may be based as much on his or her sense of the law as on specific knowledge of it.

Case review on the fly

I still recall a case I addressed as a new judge. Two lawyers came before me on a domestic assault case. There was a motion to suppress the woman's statement taken when she was still in her home. The question was whether she was in custody and therefore entitled to be advised of her right to remain silent. I asked the attorneys whether they had any cases to cite; they had none. But in the minutes between the time when I was assigned the case for hearing, and the actual hearing, I had the opportunity to refer to notes I had prepared from my review of new cases. I recalled a case addressing the issue, and quickly found a decision by the Minnesota Supreme Court that neatly laid out the factors a judge should consider in deciding when a person in their home is in custody tantamount to arrest. I applied the law to the facts and made my ruling.

The lawyers weren't bad lawyers. They were both well regarded in their profession. But in the press of time, they had overlooked one of the most important things a good attorney must do: find legal support for their position. While a judge should be able to rely on the attorneys as officers of the court to bring the most relevant cases to the judge's attention, in the final analysis it is the judge's responsibility to get it right, with or without the lawyers' help.

Of course, there are many cases where the judge has the time and resources to carefully consider the law. The lawyers in many cases do an excellent job at researching the law, and presenting cogent arguments in support of their positions. Reading cases, analyzing the facts and the law, and assessing how a prior case may help decide the controversy is an integral part of how a judge makes a decision. But sometimes there is no decision on point, or the cases simply do not contemplate the fact situation before the court for resolution.

When emergencies arise

It is hard enough to address some legal issues when the judge has the time and resources, but even harder when a case presents itself for emergency resolution. Parties sometimes come before

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the court on a motion for a temporary restraining order which requires immediate attention. A judge must then put other work aside in order to resolve the emergency matter.

At the end of last year, for example, I received a request for a temporary restraining order in litigation over whether the City of Minneapolis could proceed with its plans for a major downtown office, residential and park development. I received the case on a Wednesday, heard the parties on Thursday, and issued a 12-page order on Friday. Wednesday night I took home the parties' briefs, copies of the most important cases and statutes, and a thick volume containing the Minneapolis City Charter. I immersed myself in the materials so that I could question the lawyers and quickly come to a decision. I set everything else aside so that I could write an opinion and meet the deadlines involved. Like the trial judge in the duck blind, sometimes a judge has to make a decision with little time to contemplate and reflect.

Of course, it's not just making decisions that is important, but making good ones (and expressing them clearly and succinctly). In 2002 when I was interviewing for the position as a District Court judge, I ran into a retired judge who said he'd heard I was an applicant. "You can do it," he told me. "All you have to do is make a decision." But it's not just a decision that a judge must make — it's a measured decision, a reasonable one informed by the law.

Every decision is important

A part of the wonder at being a trial court judge is that decision-making is endless, and every decision is important. A judge decides if an accused gets out of jail pending trial, whether or not evidence is admissible, and how to instruct a jury regarding the law. Judges decide if someone should be sentenced to jail or prison, or placed on probation, and for how long. In civil cases, judges define our rights, privileges and responsibilities in our business and personal lives. These decisions don't involve headline-grabbing cases of murder, mayhem, or robbery. But civil-case decisions often affect how we do business, define our personal and corporate obligations, and control our interactions with one another.

Judges help mold the law, deciding issues never before addressed, or interpret and apply past decisions when the law is clear, but how it should be applied is in dispute. Ralph Waldo Emerson, in the "Conduct of Life" (1860) said it best: *The judge weighs the arguments and puts a brave face on the matter, and, since there must be a decision, decides as he can, and hopes he has done justice.*

Imagine how terrifying our system of justice would be if judges made decisions without explanation. In Family Court, judges would divide up property, and award child custody, without giving any reason for their choices. In civil cases, judges would resolve business disputes, and determine personal responsibility for accidents, without explanation. In criminal cases judges would make important rulings regarding a defendant's constitutional rights without stating a basis for the decision.

We wouldn't stand for such a system because we want to know that decisions are fairly reached. We want an explanation for how the judge reached his or her decision.

Explaining the rationale in a school-admission case

One day, early in my term as a civil judge, I was assigned a sensitive case. A private religious school with an excellent reputation was accused of discriminating against a disabled student. The

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school admitted one brother, an able-bodied athlete, but withdrew the admission for his fraternal twin, who was wheelchair-bound as a result of a debilitating muscle disease.

As in most cases, there was a fundamental disagreement between the parties about the facts. But the parents and the school also disagreed about what standards should be applied under the law to determine whether the school met its legal obligations. They disagreed about whether a private school has to make a reasonable accommodation to assist a disabled student, and whether the plaintiff must prove the school acted in bad faith.

I issued a lengthy opinion addressing the issues of law. The parties didn't necessarily agree with my conclusions; they both felt strongly that their position was right. But when parties feel that a judge has carefully considered all of the arguments, they are more likely to be satisfied with the process, even if they disagree with the result. This is the most important reason judges issue decisions, sometimes very long ones, which carefully explain how they reached their conclusion.

When a judge doesn't explain

The process doesn't work as well when judges don't explain their decisions. I once appeared before a judge in Indiana on a case that attracted lawyers from all over the country. It was a Superfund case to determine who would have to pay tens of millions of dollars for the cleanup of a polluted industrial site. I made a motion to dismiss my client from the case, and at the hearing, attended by a courtroom full of lawyers, the judge was clearly engaged. He'd obviously read the briefs, and he verbally interacted with the parties during the arguments. When he issued his opinion, however, there appeared only one line to his order: "Defendant's Motion for Summary Judgment is Granted." The order dismissed my client from the action.

We had no idea on what basis the judge made his decision — which arguments he accepted and which he rejected. It wasn't that the judge wasn't interested, or able, but rather that he didn't have the resources necessary to do his job properly. He had no law clerks to help him research the law, draft the results, nor even a secretary to help him type a decision. As a result, he simply didn't have the time to do all he was called upon to do, and consequently issued his one-line order.

This isn't the way a court system is supposed to work. When parties only know the result, but not the basis on which it was reached, they lack satisfaction with the process, and question if the decision was a considered one.

Another audience

While judges write their opinions for the parties, they aren't the only audience; judges also write for the Court of Appeals. When a local company with a national business sued its Canadian competitor for hiring its employees away and encouraging them to break their employment contracts, I knew the parties would fight over whether a Minnesota court had jurisdiction over the dispute — all of the employees and the Canadian competitor were from out of state.

I wrote my opinion not just for the parties, but also for the Court of Appeals. I wanted the Appeals Court to understand the consideration I had given the issues, and to provide a roadmap for the court to affirm my decision.

Equally important, writing an opinion helps a judge think through complex issues, forcing the judge to carefully consider the reasons for the judgment rendered. The truth is that judges often

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take pride in the decisions they render, and want affirmation that they were correct, although it doesn't always happen.

The finding — and the result

What I think is so wonderful about our system is that we come to a clear understanding of the law when opinions are well written and clearly expressed. A reader, following the arc of the decisions in this case, knows how the ultimate decision was made — what arguments were considered and accepted or rejected. It leads to a respect for the law, whether or not you agree with it. That's how our law develops, and one way we assure respect for the process — it's the reason we write legal decisions; sometimes very long ones.

Questions: *Use knowledge gained from the reading to answer the two questions below, but place answers in your own words.*

1. Why is writing an opinion an important part of the judicial decision-making process?

2. What considerations go into the judicial decision-making process?

Adapted from:

<https://www.minnpost.com/community-voices/2014/09/how-judges-make-decisions/>
<https://www.minnpost.com/community-voices/2014/10/why-judges-write-opinions/>