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Judging Without Lawyers: Not Knowing Makes for Nightmares

Judges want more than anything to make the right decision in the case before them but can't be comfortable with their decision unless they can be confident they have all relevant information. Here's where lawyers' contribution to justice proves invaluable.

By Judge Jay Quam

When I became a lawyer over 20 years ago I believed in the goodness and worth of lawyers. I was eager to earn my place among those lawyers who used their skills to convince a judge to do the right thing.

But as I confronted the day-to-day demands of practicing law, I found that I rarely had time to reflect on my role in, and worth to, the legal system. I was simply too busy tending to the tasks necessary to survive. Although I lived for the occasional fair-and-just victory that came my way, I was generally satisfied if I could get through the day without having to deal with an upset client or judge. It didn't often occur to me that I played a vital role in our justice system.

My perspective on the legal system and role of lawyers in it changed dramatically when I was appointed a Hennepin County District Court judge in July of 2006. Being on the bench for over two years, but still remembering the many demands on the practicing lawyer, has allowed me to understand how deeply lawyers affect the judicial decision-making process. In fact, my experience over the past two years has led me to the conclusion that lawyers are even *more* critical to a fair and just result than I believed them to be 20 years ago.

It may be that you intuitively understand how critical your role as a lawyer is to the judge trying to make a decision on your case. If not, this article is written so that you can better understand the vital role you play in the judge's decision-making process.

Judicial Nightmares

Anyone who watches lawyers do their courtroom work understands that lawyers have an important role in the courtroom. The lawyers and the judge share center stage. In some ways, however, it is easier to illustrate how important lawyers are

to judges by describing what happens when lawyers are *not* in the courtroom.

To understand how valuable lawyers are to a judge's decision making, you have to understand the judge's perspective: Every judge wants to do the right thing. Every once in a while the law dictates what the "right thing" is (such as an otherwise meritorious claim being barred by a statute of limitations), but usually the law is permissive enough for the judge to rule for either party depending on what the facts are. So, in the very large majority of cases, the *facts* are what the judge needs to guide him or her to the right decision.

With the overriding desire being to do the right thing, one of the biggest nightmares a judge has is to make an uninformed decision. Judges are always afraid that there are important facts that the judge doesn't know, but which would change the judge's decision. And, not to be too dramatic, judges are generally very aware that their decisions almost always have some significant human or economic consequence, and, in the rare case, may mean life or death. A judge can be comfortable in making that type of decision only if confident that he or she knows all the relevant information.

Good lawyers take the judge's nightmares away. The reason is, as I mentioned, a judge's greatest need is to be fully informed; that need coincides, *exactly*, with what lawyers do.

What's the Story?

From the judge's perspective, lawyers perform two essential functions: Lawyers are professional story *gatherers*, and professional story *tellers*.

Judges know that the first task every lawyer undertakes is to gather the facts. So when a case has lawyers, the judge knows that trained professionals have spent hours, if not days or weeks, investigating and analyzing every fact that may affect the case. The judge doesn't have to wonder what else is out there that a party didn't know to tell because the lawyers have already looked. Stated simply, knowledge that the underlying facts have been fully developed by trained professionals is a great comfort to the judge.

The story-*telling* part is equally valuable. For starters, the lawyers know the important courtroom rules that the clients don't know, but which are critical to the judge's decision. The lawyers' knowledge of the rules of the courtroom keeps the proceeding from becoming akin to an episode of "Jerry Springer." The list of critical things that lawyers know, but others don't, is a really long list, but I'll name a few to illustrate the point:

- The law;
- The rules of evidence;
- The protocol for presenting evidence;
- When to speak;
- When *not* to speak;
- What is relevant, and what is not; and
- What is persuasive, and what is not.

The importance of relevance and effective presentation cannot be overstated. In a typical case, there are often weeks—if not months—of information that in some way relates to the dispute before a judge. The judge can't spend months, and rarely even weeks, hearing every little detail. With lawyers involved, the judge knows that trained professionals have sifted through the evidence and presented the judge only that evidence which is truly relevant to the dispute. If it were up to the clients, the judge would probably hear every single excruciating detail.

To top everything off, the lawyers put their cases together in a way that makes sense for the judge. Not to make the judge's job sound too easy (it's not), but the lawyers allow the judge to just sit there and listen. The judge knows what the lawyers want the judge to conclude, and why the lawyers think the judge should draw that conclusion. No decision maker could reasonably ask for more.

When there is a lawyer advocating for each party, the adversary system that is at the heart of our system of justice works. And the judge is confident that he or she is making a decision that is as good as it can be because the judge knows that all the relevant facts have been presented.

To put it simply, judges like lawyers because lawyers make the judge's job far easier than when there are no lawyers. Judges can sleep better at night because, with lawyers' help, judges are better able to make good decisions.

Pro Se Not Prosaic

With all that lawyers do, you may, very appropriately, ask: How in the world does our adversary system function when there are *not* trained advocates in it?

The answer, I have found, is “not very well.” Given the complexities of our court processes, as well as the difficult skill of advocating effectively for anything that matters, it is not hard to understand why it does not work well.

Think about some pretty highly functioning, well-educated person you have represented. Imagine how that person would perform if inserted into some important, emotional, and very personal proceeding. That person would have no clue what to say, when to talk, when to stop talking, and (in many cases) how to keep from crying. And they have more resources and skills to call on than most people who find their way into the courtroom.

If an educated, relatively high-functioning person fails in the courtroom, how can you expect more of people who have some of the challenges that judges see routinely—those with mental illness, chemical addiction, who don't speak English very well, or are challenged in some other way? You might just as well put them on a high wire and tell them to walk across it as tell them to effectively prepare and present their case—a case involving some important aspect of their *lives*—in court.

What to Do?

What is the judge to do? The judge, so badly, wants to do the right thing. But with dockets that are crammed, to ask the judge to do the work of the lawyer is to ask the impossible. And depending on the circumstances, it may be asking the judge

to do the unethical, as well.

Whether because of time constraints or ethical constraints, there are a number of things judges need to do, but *can't* do, to make a good decision that the judge can be comfortable with. For example:

- Educate the parties about the law that applies to their case so they know what claims they can make and what claims they can't make;
- Educate the parties about the procedures that need to be followed to present their case so they know what to present and how to present it;
- Teach them how to present themselves coherently and concisely; and
- Independently investigate the case to develop and understand all the important facts upon which to make the decision.

Being unable to do few of the essential tasks that need to be done, judges muddle through as best they can. But judges know, in their hearts and in their heads, that justice is really not being done. The judge always has a nagging feeling that the wrong decision was made because the judge didn't know what the judge needed to know. Worse is that innocent people may be suffering because of it.

In the back of the judge's mind is the feeling that the judge might have made the right decision if only a lawyer had been there to present the case. You, as lawyers representing clients, can help the judge make the right decision. And as I have learned, *only* lawyers can help the judge make the right decision.

JAY QUAM was appointed a Hennepin County District Court judge in July 2006. Prior to his appointment, he was a litigator for 17 years at Fredrikson & Byron. He graduated from the University of Minnesota Law School in 1988.