



**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF TENNESSEE**  
Joel W. Solomon United States Courthouse  
900 Georgia Avenue  
Chattanooga, Tennessee 37402

### **OPENNESS TO NEW IDEAS, AN ESSENTIAL ATTRIBUTE OF JUDGING**

In past columns, we have discussed how the judiciary functions, its importance in our democratic republic, and how federal judges are appointed. In this column we will discuss the importance of judges being open to new ideas, even challenging ideas. Because one aspect of judging that is necessary, even if not widely discussed, is that judges must not be so committed to preconceived thoughts or ideas that they have difficulty reaching a fair and impartial decision in a case.

#### **Judges have to resist preconceived notions about a case.**

When a judge is assigned a case, there are at least two parties, or sides. An experienced judge may be somewhat familiar with the law that pertains to the issues in the case and may even have a general idea from the parties' filings as to which side might have the better argument. The judge may even have presided over a case with apparently similar facts before. Judges, however, must put aside preconceptions and not only be open to new information and arguments, but also welcome them.

#### **Judges learn the facts in a case from the parties.**

It is the obligation of the parties to present the relevant facts to the judge, whether through written or oral presentations or the introduction of evidence through witness testimony or exhibits. This evidence will be new to the judge. And this evidence will be particular to the case and not the same as evidence in prior cases. The judge must be open to appreciating how the facts in this individual case differ from the facts in prior cases.

In addition, at the beginning of a case, the judge will be presented only with limited factual allegations. As the case develops, the judge will become aware of more facts through the parties' stipulations or agreements on certain facts, their written motions, various hearings, and perhaps even at trial. The judge must therefore keep an open mind throughout the development of a case, because things are not always as they may seem at first.

#### **Judges must determine pertinent law.**

While it is up to the parties to present the relevant facts, it is the responsibility of the judge to determine the relevant law. The parties must present their arguments to the judge as to their

positions on the law, but ultimately, it is the judge's responsibility to determine what the relevant law is. The judge has to approach this task with an open mind, appreciating that laws do change over time, and the applicable law may therefore be different in a new case than it had been in a similar case in the past. A judge must also recognize that a single different fact may call for a different decision on the applicable law. For example, the law may recognize justification for an action in certain circumstances that in other circumstances would be illegal. This occurs specifically with such subjects as self-defense, defense of others, or duress. A change of just a few facts will lead to a totally different decision. In sum, because of changes in the law or differences among facts, a judge may have handled a previous similar case, but the particular facts in a new case may call for a totally different result.

**Judges apply the correct law to the relevant facts to reach a decision.**

In reaching a decision, judges have to understand the specific relevant facts pertinent to the decision, and then apply the correct law to those facts. This is more complicated and more difficult for judges than it sounds. Judges are human beings, and our tendency as human beings is to jump to quick and easy assumptions about facts. As human beings, we also tend to assume that we already know the answer about something even before we hear the question. Judges must always resist this prevalent human tendency.

Thus, to judge effectively, judges must always be open to new information and new ideas.

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