Judgment Day

Career Development

With the exponential growth of technology, artificial intelligence, data, and sharing, knowledge will

continue to become easily and readily available to all. As this occurs, the value of knowledge will decrease in relative value compared to the analytics of information/data and judgment. One interview question I ask is, “What is the most important attribute for an attorney?” We often bang around for a while, and then I hear the word “judgment.” My follow-up is, “What is judgment?” All too often, I feel sorry to see the blank look on the face of the interviewee — it’s so important, but they have never thought about it. Then I ask, “Can judgment be taught?” Another blank look!

I have spent a lot of time thinking about what judgment is, and I believe it definitely can be improved and practiced. I have concluded that, in the corporate environment, “good judgment” is making effective, productive decisions or actions in multidimensional settings that are aligned with business objectives. With this in mind, the elements of a good decision can be identified and used as a checklist.

Elements of making a good decision are:

- Identify what is important in any particular issue or problem;
- Gather the appropriate information to understand the issue or problem;
- Determine if there is no need for additional data or inputs (not meeting just for the sake of meeting);
- Determine when you need more information or external input;
- Integrate information to identify trends, patterns, problems, and opportunities;
- See the connections between what appear to be different unrelated issues or facts and apply them to the question;
- Critically evaluate goals, obstacles, likely responses, and proportionality of risks, costs, and benefits of various actions;
- Understand the impact of actions on multiple constituencies;
- Listen to, evaluate, and integrate (often conflicting) views before taking actions;
- Determine if anyone else has been in a similar situation (had to make the same or similar decision), if so what did they do, why, and how did it turn out;
- Have the ability to avoid immediate reactions or impulses;
- Keep self-interest or recognition out of the equation;
- Know what is societally right and wrong, acceptable and not acceptable — the legal answer is not always the right answer;
- Know what weight to put on the facts and possibilities/potential outcomes; and,
- To whom and when to escalate a decision.

The decision needs to be timely, balancing the degree of uncertainty and ambiguity. The action taken must solve the issue with a solution that can be efficiently implemented (all implications have been thought through, etc.).

Keep in mind that a diverse and inclusive team will always make better decisions. A diverse team provides the opportunity to offer different perspectives and thoughts. I would always like to have 10 ideas, even if only one of them is good, as compared to no ideas or groupthink — encourage novel and innovative ideas. But diversity alone is not enough. You need to ensure an inclusive environment so team members’ views are valued and they are willing to speak up, present ideas, identify problems, and resolve disagreements.

One should keep in mind that a delay or a non-decision is often a decision in itself — and usually not the right one. As General Colin Powell has stated, “Part I: Use the formula P=40 to 70, in which P stands for the probability of success and the numbers indicate the percentage of information

acquired. Part II: Once the information is in the 40 to 70 range, go with your gut." If you wait to solve for every criticism, you will never make a decision. Or if you just keep gathering information or consider too many factors, you fall into analysis paralysis. During a board meeting, Alan Gilmour, one of our directors at US WEST cautioned management, "sometimes you have so many irons in the fire, all you have is hot irons!" Simplistically, "done" is better than perfect. And winning enterprises always act with "routine urgency" with decisions being made, not too late, based upon the analysis — not guesses or opinions. As Jim Barksdale, the American business executive, has said, "[i]f we have data, let's look at data. If all we have are opinions, let's go with mine."

For lawyers, a particular caution of a good decision is just because it is legal, doesn't mean it is right. For example, in the insurance industry, the life insurance policy (contract) is clear that it requires the beneficiary to give notice of the death to obtain the death benefit. Many life insurance companies also sell annuities, which continue to pay out until the annuitant is deceased. Thus, the insurance companies have an interest to obtain death information with respect to annuity policies and stop payments. But it may also have a benefit in delayed payments on life insurance. Some companies look to records on an "asymmetric" basis (scoured for deaths for annuitants, but not for their life insureds). Despite the fact a lawyer could say the contract was clear in the life insurance context — would this really hold up to public policy scrutiny as death records become more readily available? The better "judgment" or decision was to do what MassMutual did, and track and act on the death information symmetrically — despite what the letter of the contract required. This approach positioned us well as news articles began to appear, and insurance commissions and attorneys general began to question and penalize the asymmetric industry practices. Always ask: Is your decision the *right* decision?

Because I believe judgment can be improved based on practice, we need to share our learning. This must be purposeful and ongoing. We discuss together why certain decisions are made. Both the good ones, bad ones, and "near misses." The military has recognized through implementing After-action Reviews (AARs) that the debrief should go beyond just failure and near misses. The Army AAR manual notes that "[a]fter-action reviews identify how to correct deficiencies, sustain strengths, and focus on performance of specific mission essential task."

We have also held, as one of our internal education sessions, a "Judgment Day." For this, we retained Professor Connie Bagley of the Yale School of Management to use the business school case study approach to review a fact pattern. Then we discuss as a team the various factors we would consider and the decisions we would make and why. Instead of potentially making a bad judgment call that hurts our clients, we are practicing how to refine our decision-making and judgment together. As the actor Will Roger said, "Good judgment comes from experience, and a lot of that comes from bad judgment."

So, I am not certain that "judgment" can be taught. But it can be improved by considering the right elements in making a decision, working as a diverse and inclusive team, learning from each other and the past, and making decisions. Then it's time to practice, practice, practice and learn, learn, learn!

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