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THE PROCESS OF DECISION—A LITIGANT'S CASE FROM ARGUMENT TO FINAL DECISION IN THE LOUSIANA SUPREME COURT†

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I want to talk to you today about the consideration of cases after submission to the Supreme Court of Louisiana, or what goes on behind the scenes in the Supreme Court, and also about the work of the court. I chose this subject, believing that it would be of interest to all of you to hear about the inner workings of the Supreme Court, which I understand are not generally known to all the lawyers in the state.

You are familiar with the provisions of the Constitution, the laws, and the rules governing cases in the court. However, from the inquiries which are constantly being made, it would seem that there are very few lawyers who know just how the judges handle the cases which are placed in their hands for consideration.

Let us assume that the judges have handed down all of their opinions and are starting their work anew on a Monday morning, at an opening session of the court.

The hearing of cases in open court continues for two weeks, and the court then recesses for three weeks in order that the opinions may be written and the applications for rehearing considered. For the purpose of writing the opinions of the court, the cases are allotted in rotation—to the Chief Justice first and then to each succeeding associate justice in rank according to length of time he has served on the court. For example, if at the prior sitting the last case was allotted to the Chief Justice, the first case argued or submitted would fall to the Senior Associate Justice, and so on.

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The Constitution requires that at least two judges shall read the record. Thus, in addition to the judge to whom the case is assigned for writing, the judge next in seniority to him reads the record, the Chief Justice reading behind the junior member of the court. The cases are called in regular order according to the docket, and are either argued or submitted on briefs. Arguments are heard each day on Monday through Friday, beginning at 11:00 a.m., and the court recesses at 4:00 p.m. until the next day. But the judges' work is not done.

From the time a judge leaves the bench, he starts reading the record, briefs, and authorities in the case which fell to him that day. If the case is not too involved and complicated, and has been argued and briefed well, a judge will be ready to make a tentative report on his case to the conference in a very short time, and also to check on the case in which he is acting as the second man.

In passing, I should like to say that a brief and an argument should be used only to inform and enlighten the members of the court on the facts and the law of the case, and not to confuse them. If the judge, after reading the record and the briefs and authorities, agrees with one counsel, he should have before him, in that counsel's brief, everything necessary to write a comprehensive and sound opinion.

The judge's report to the whole court in conference is made by stating the nature of the case, his finding of facts, the issues presented by the plaintiff, the defenses made to them, and the questions raised by the defendant or intervenor, or both of them, and the reasons, if any, assigned by the trial judge, and, if none, the judgment which was rendered. If the case has come to the Supreme Court on a writ of review from the Court of Appeal, the reasons for that court's conclusions and its judgment are recited. The judge reporting then gives his own explanation and appreciation of the evidence and an analysis of the law applicable to the facts, concluding by recommending affirmation, reversal, or modification of the judgment under consideration. The other judges express themselves on the subject, or simply vote thereon.

If the reporting judge obtains three other votes besides his own—a majority being necessary to render an opinion—the case is then assigned to him for writing, and his study and research into the problem presented by the case continue.

Everything goes smoothly and calmly until there comes along one of those highly controversial cases which are generally

referred to as "close cases," in which substantial and sound reasons and appropriate authorities have been supplied by both counsel, and in which the equities are very evenly divided. As to such cases, the judges may have widely divergent views.

While there is a feeling of friendship and good will among the judges, when they differ they do so in no uncertain terms. For this reason the judge reporting the case in consultation has to know the case thoroughly, for unsound ideas, theories, and views are quickly exploded. Frankly, sometimes the debates become very heated. When the battle is over, however, the usual calm and friendly atmosphere is quickly restored. It is reassuring to be able to say that the members of the court are not lacking in a fine sense of humor, and can appreciate a joke even when it is on themselves.

For instance, let me tell you about a little incident which the entire court enjoyed very much when I reported it in consultation:

One day while I was going from the clerk's office to the consultation room, I saw two members of the bar inspecting the portraits of the prior judges who had served on the court. I heard one of them say to the other:

"Those old boys back there really knew the law—then."

Apparently his companion did not catch the remark, for he asked him to repeat it. At that moment, the speaker looked up and recognized me. He gulped, saying:

"Hello, Judge." And then, turning to his companion, he said, "I was just saying those old boys really knew the law."

If the judge who reports on a case is unable to get three others to agree with him, the next ranking member who differs with his conclusion takes that case to write, and the member whose views have not prevailed takes in exchange one of the cases which had been regularly allotted to the other judge.

Now, after each judge completes his reports and is definitely assigned his cases, he begins to write his opinions. In each case there must be a thorough review of the record, the briefs, and the authorities within a relatively short period of time. When a judge is confronted with a voluminous record containing hopelessly conflicting testimony and evidence, and the briefs cite expressions from authorities and the jurisprudence which are hard to reconcile, the judge really has a difficult task, because the case must be decided and not adjusted. Moreover, all of his opinions

must be written within a period of a little over two weeks, or before the final consultation, which is held on the Friday preceding the Monday on which the court resumes its sitting—or the judge will have to carry over one or more cases, and thus will get hopelessly behind with his work.

When the opinions are finished, each judge delivers to the others a copy of each of the opinions which he has written. The judges then read and study them, and form their conclusions as to whether they agree with the opinions as written or whether they will concur or dissent.

On the Friday preceding the Monday when the opinions are to be handed down, the court again meets in the consultation room for the purpose of finally considering and passing on the written opinions. The judges who agree with an opinion as written simply place their initials thereon, and four must agree or concur in order that the opinion may become the opinion of the court.

At the same meeting of the court, applications for writs and rehearings, which have been assigned to each judge since the last opinion day, are also considered by the entire court. Each judge discusses the points raised in the applications for rehearings and the applications for writs which have been assigned to him, and reviews the judgments under attack. After considerable discussion and deliberation, the judges arrive at their conclusions as to the granting or the refusing of the various writs and rehearings, and it may be of interest to you to know that it also takes a majority, or four members of the court, to refuse an application for a writ or for a rehearing.

Remedial writs are handled in the same way, except that they are passed upon as quickly as possible after they are received by the court.

The applications for writs of certiorari, prohibition, and mandamus under our supervisory jurisdiction are filed with the clerk, and allotted in the same manner as the cases. These applications are received by the court at all times, both while the judges are sitting and while they are writing the opinions. When a remedial writ is assigned to a judge, he must drop all other work, and as soon as possible make his report to the consultation for action thereon.

As to the cases argued or submitted in the court, you can readily see from what I have said that each is considered by the

entire court always on two different occasions, and, when application for a rehearing is made, on three occasions. The application for rehearing is assigned to a different judge, and never to one who dissented or who wrote the original opinion of the court.

The efforts of a judge to solve a confusing case are not confined to his office; he takes the problem with him wherever he goes. At home while shaving, bathing, eating, or attempting to sleep, and while going to and from his office, he is pondering the matter in his mind and analyzing it from different points of view and searching for the light which will eventually give him, to his way of thinking, a satisfactory and sound answer to the question presented. Sometimes the situation appears to be almost hopeless, but, once the answer is found, the problem, although originally considered very befuddling, then appears to him clear and simple.

Even though such intensive and careful consideration is given to the cases, no one would contend that the court is infallible and immune from mistakes. However, when the results achieved by the members of the court are taken into consideration, and it is recalled that the Supreme Court of Louisiana has practically unlimited civil and criminal jurisdiction under which every phase of human existence and activity is brought before it in controversial matters, it is amazing that the court does not more often commit error.

On this point, I should like to say, as my own personal opinion, that the court's jurisdiction is too extensive. The appellate jurisdiction in all cases in which the amount in controversy exceeds $2000.00 was first fixed in the Constitution of 1879, over seventy years ago, and has not been changed to this date.

Of course you know that we also have appellate jurisdiction in all divorce matters, suits involving alimony, for the nullity of marriage, involving the tutorship of minors, custody of children, and, among other things, matters of adoption and emancipation, as well as appellate jurisdiction of other cases as set forth in Article 7, Section 10, of our present Constitution.

The Supreme Court recently considered an alimony case where the award was only $10.00 per month, and the right to alimony in this amount was the only question presented.

Over a period of years, our appellate jurisdiction, instead of being decreased, has been increased from time to time. For instance, the Constitution was amended in 1948 to give the court

jurisdiction on *questions of fact* (in addition to questions of law) where the judgment of a juvenile court affects the custody, care, and control of children under seventeen years of age.

No doubt you all remember Huey Long's story about the farmer and the jackass. The farmer bought the animal for $2500.00 at a stock sale and had it shipped by truck to his home. In transit the truck collided with a bus, and the jackass was killed. Later the same day, the automobile in which the farmer was driving home was struck by a train, and he also was killed. The widow's suit for damages for the death of her husband in the sum of $15,000.00 was appealable to the Court of Appeal, which has appellate jurisdiction of such suits. On the other hand, her cause of action for the death of the jackass was appealable to the Supreme Court. The jackass suit to the Supreme Court; the husband suit to the Court of Appeal! Frankly, does this make sense?

During the term of the court which began on the first Monday of October, 1948, and ended on June 30, 1949, 204 written opinions were handed down; 82 applications for rehearing were considered, of which eight were granted; and 193 applications for writs were considered, of which 37 were granted—a total of 479 cases considered by the court during its last term. As only six judges were sitting most of the time, each judge did the principal work on 80 cases.

To add to this load, from 1945 until last fall, we had the practical problem of working a large part of the time as a six-member court due to illness and death. During this period Justices Higgins, Rogers, and Bond died, and Chief Justice O'Niell retired. Since no fewer cases were placed on the docket, this meant that at each session each judge usually had an additional case to write, and over a long period of time this was indeed an added burden.

There is another great disadvantage to working as a six-member court. It takes four votes to refuse a writ or a rehearing as well as to decide a case. When the judges are divided three and three on a controversial issue, a writ or a rehearing is automatically granted (which possibly should not be); and, when the judges are divided three and three on a case which has been argued or submitted, no opinion can be handed down, and it is necessary to call in a judge ad hoc and have the case reargued so that he may cast the deciding vote. It can easily be seen how such a situation crowds the docket, takes up time, delays the hearing of other cases, and puts additional burdens on the court.

I have in mind a case which, due to this situation, was argued three times before the court could even secure a sufficient number of votes to render an opinion. Incidentally, the first argument of that case was made nearly two years ago. After an opinion, written by a judge ad hoc and signed by three other judges, was finally handed down, a rehearing was granted; the case was argued again and is still pending before the court.

As of the first of this year, there were pending on appeal in the Supreme Court a total of 615 cases, of which 444 were on the ordinary docket and 171 on the preference docket. In this connection, there is a matter which is of interest to you and your clients, and of which you may not be aware—that is, cases which are placed on the ordinary docket never get assigned for argument by the clerk unless a motion is made by one or both counsel to advance the case to the preference docket. The reason for this is that the preference docket is so heavy that the cases on the ordinary docket are never reached. Rule IX, Section 2, of the court rules enumerates the kinds of cases which may be assigned by preference, but this rule is not strictly followed now, so that a motion to advance to the preference docket must be made in every case. This may be done by the appellee by simple motion, or by both appellant and appellee by such motion; but, if the motion is made by the appellant alone, it must be accompanied by his brief. If such motion is made, the case will be placed on the preference docket and reached within a period of about one year.

The litigants whose cases are pending on appeal before the Supreme Court are entitled to have their cases decided and final judgments rendered without undue delay, but because of the crowded and congested condition of our docket we cannot finally decide the appeals in many instances until years after the district court has rendered judgment. As experienced attorneys, you well know what can happen to a case which starts out by being a good one but which is dragged through the courts so long that, after final judgment on appeal, the claim is uncollectible and the judgment, for all practical purposes, is worthless. Some remedy should be found for this situation, in justice to your clients. I am not suggesting what steps you should take in this matter. Perhaps the limits of the jurisdiction of the Supreme Court should be narrowed, or the number of judges increased, or perhaps we should review cases on the law alone, as is done in many other states. I cannot say. I know that you, as attorneys who have the interests of your clients at heart, and as officers of the courts of

this state, would be happy if the wheels of justice could be made to move faster. In all events, you can, I am sure, find the remedy, and I sincerely hope that you will.

In behalf of the entire court, let me say that we are indebted to the able, conscientious, and diligent members of the bar, who present and brief their cases in a manner which is both satisfactory and helpful to the court.