Discipline and Focus in the Art of Judging

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Abstract: This article argues that the core virtues of good judgment writing are discipline, clarity, and focus. Rather than treating judgments as literary works, it presents them as practical decisions intended to resolve disputes clearly, efficiently, and without unnecessary delay. It emphasises the importance of controlling hearings, identifying the real issues in dispute, organising facts chronologically, applying settled legal principle, and giving intelligible reasons that lead to a definite result. Ultimately, the article suggests that when a case is properly managed and the essential question is kept in focus, the task of writing a judgment becomes more direct, disciplined, and effective.

Keywords: judgment writing, judicial reasoning, case management, clarity, discipline, fact-finding, court efficiency, precedent

Introduction

Discipline and focus are the essential attributes of the art of judgment writing. While Max Barrett's *The Art and Craft of Judgment Writing*[1] draws lessons from the beautiful judgments that great common law judges of the past have created, in this article, the attention is on the more mundane task of managing a court so that the point to be decided comes into focus. Achieve that and a judgment practically writes itself.

People who are litigating are drawing on a public service. They are entitled to an answer. For Hamlet, the troubles of the world that were unbearable included 'the law's delay,/ The insolence of office'.[2] Both ills may be avoided; but focus on the essence of what a case is about is inescapable. To borrow again from Shakespeare, if a judgment falls to be written 'then 'twere well/It were done quickly'.[3] Judges are public service

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[1] Max Barrett, *The Art and Craft of Judgment Writing* (Globe Law and Business 2022), and (2nd edn, Globe Law and Business 2025).

[2] William Shakespeare, *Hamlet*, act 3, scene 1.

[3] William Shakespeare, *Macbeth*, act 1, scene 7.

providers, and the public do not expect perfection, but they do, legitimately, expect a certain swiftness of action.

A caution

The task of judging is in giving decisions as between disputing parties, and offering clear and intelligible reasons that lead to a definite result. Judges are not creating masterpieces that will long outlast generations. As King Solomon observes in the Book of Ecclesiastes, 'One generation passeth away, and another generation cometh'.[4] Each new generation will have ideas and ideals of its own. Those will inform its judgments and those of the current generation of judges will soon gather dust on bookshelves, rarely read and almost entirely forgotten. This is reality. What matters is avoiding what is unclear, undisciplined, or unending.

Reserving decisions

The judicial oath requires judges to act without fear or favour, affection or ill-will towards any person. In truth, however, judges' responsibilities go far beyond that. Judges are tasked with making decisions that are always difficult; sometimes because both parties have evoked ordinary sympathy regarding their predicament, sometimes because the existing law is unclear, sometimes both. There is a reason cases come to court: there is often no easy or clear answer. So, judges may need time to think through where law and justice meet. But there is no excuse for putting off the evil day beyond what is reasonably required to arrive at a decision. It is always easier to write a judgment if one approaches it with a decision already made, at least tentatively. Judicial responsibility is to make a decision and, in doing so, to apply the law as it is. A judge may often be able to give an oral decision at the end of a hearing, just as she or he will give oral decisions on issues of procedure and evidence during a case. In general terms, a reserved judgment is only needed when encountering some or all of the following: a novel point of law that will operate as a precedent going forward; some uncertainty in the law that requires additional thought; or, some evidential issue that is particularly complex or so finely balanced that more time is required to consider it. Time for consideration also helps where a judge finds that they need to let things

[4] Ecclesiastes 1:4-11 (King James Version).

settle to arrive at a coldly logical decision away from the sometimes-fraught emotions at play in the courtroom.

For a lot of cases, a written judgment will be needed. There will also be many cases in which it is not. Everything should have already happened in court, and every authority should have been opened or referenced. So why wait? Delay may increase the burden of decision-making. When time intervenes between a hearing and writing a decision, the burden of formulating a result can weigh more heavily. A hearing is successful if it achieves clarity.

Between what counsel have said and what the stenographer and/or the digital audio recording have recorded, judges have a lot of material on which to construct a judgment at some speed. But that material can slow them down. Delay is not a necessary part of the legal system. Judges should solve people's problems; not add to them by extending their worries unnecessarily. Sometimes the answer to a case may not be to write a judgment, but to simply tell the parties that a little more time is needed to think matters through and that you will then respond with an oral judgment.

Cardinal rules

As with any craft, there are guide points: 'dos and don'ts'. There are things to be borne in mind when writing a judgment. Some considerations for a judge might be:

1) your key responsibility is to make a decision;
2) use existing precedent;
3) state law as a principle;
4) do not self-refer;
5) do not cite so many cases that you obscure a decision;
6) make clear findings of fact.

Most usefully, a judge is not required to review law that is already settled, where they are not re-inventing the judgment-wheel. The maxim must be: find the principle and apply the principle. A judge writing a judgment might usefully ask himself or herself the following questions:

1) Have you told the reader what you are now going to decide?
2) Have you clearly stated the facts and the law?

3) Have you precisely stated the issue that arises for decision?
4) Have you said why there is a disagreement on the facts?
5) Have you concluded where the facts lie by reference to the evidence?
6) As between experts, have you given a reason to prefer one over the other?
7) Regarding legal principle, have you said how it bears on the facts?
8) Have you concluded who wins?
9) In more complex cases, after your more detailed reasoning, have you summarised where you are and why you are there?

When it comes to the last of these questions, a judge might ask, first, could they briefly say what has been decided in terms of fact and law and, secondly, if a friend who is not a lawyer were to ask what has been decided, could the judge briefly answer that question in ordinary language? The answers to these two questions can be useful to include at the outset of a judgment or at the end. Where there is a clear issue, or clear issues, whether of fact or of law, where the judgement poses what is to be decided and then gives the answer, clarity illuminates the decision.

Starting

A good first question is: what order do the respective parties seek from the court? The judge's task is then to explain why the court will grant the order or refuse it. If the judge is satisfied that he or she knows what the case is about – and sometimes it can help to ask counsel what they each consider to be the key issue/s of focus to be – then a judge may confidently grapple with defined issues. Everything is about focus. But a judge has to start writing the solution to the parties' problems with an initial sentence. Where does one start? Surely it is better to begin with the core issue, with what divides the parties? Legal language deploys a fog of obscurity over issues and it is better not to start with simply repeating that by a statement of claim the plaintiff sought a range of reliefs. Judges know that those drafting a legal claim are terrified of leaving out any tenuous argument. When it comes to the hearing, dozens of points can be reduced to an essence. The fear of the advocate in leaving out anything that might be argued on behalf of a litigant is reduced through face-to-face analysis of what really is being asserted. Hence, a scheme of repetition of what was in the pleadings is a scheme for sewing confusion as to the nature of what has to be decided. There should be a thread of logic which takes a judgment from the reality of a dispute to the conclusion. It is unhelpful to simply reproduce the arguments in their unrefined form and to cite the cases referred to by each side and then leave the actual decision in the form of a short paragraph or two that purports to be a discussion and decision.

The difficulty with this form of judgment is not just that it is a less than informative read. It also has the potential to cause difficulty in the future. This is because the lack of clarity in what is said yields a situation in which counsel in future cases can simply quote such elements of the judgment as it suits them to mention. The reason they are able to do so is because no one, perhaps not even the judge who wrote it, is entirely certain what the key points are and what the case decided and did not decide. Pages of reproduced arguments may become confused for judicial analysis.

Is there a solution? A summary at the end of such a judgment would likely not fully redeem it, but it would certainly go a long way. Another way of making clear what is being decided is to set out the key problem in the opening paragraph of the judgment. A model might be this approach:

> The Enniscorthy Fianna Fáil Cumann is the local branch of the Fianna Fáil Party. It decided to apply to the Enniscorthy District Court for a licence for the promotion of a series of periodic lotteries. It would have been entitled to such a licence if, *inter alia*, in compliance with the conditions laid down in section 28(2) of the Gaming and Lotteries Act 1956, it derived no personal profit from the lotteries and if the lotteries were 'for some charitable or philanthropic purpose'. It is the latter condition that has led to the present case ... [5]

Suppose that this imagined case came before the High Court as a case stated from a District Court judge. Judges will be aware that cases stated embody one or more questions and those questions can provide a useful skeleton on which to construct the meat of a judgment. A model might be as follows:

> What is a 'charitable and philanthropic purpose' for the purposes of the Gaming and Lotteries Act 1956? This issue arises as a result of a lottery that was operated by the Enniscorthy Cumann of the Fianna Fáil Party...

[5] This is an imagined case but the reader may have a clue as to the model used.

Then, because the writer already has the issues set out, he or she may know where to go. A useful focus is on first defining or describing unambiguously what a lottery is, what a 'charitable and philanthropic purpose' is; and why this is significant. If a lower court has made a finding of fact that some form of purpose is 'charitable and philanthropic' and the writer disagrees, then they explain why this is the case. The full result can be seen in the judgment of Henchy J in the real case on which the model is based: *Gurhy v Goff*.[6]

Where the issue is primarily one of fact, with law mixed in, with the result that a decision can only be made on the tramlines that the law allows you to drive on, a judge could for example commence as follows:

1) In a case where the Financial Services Ombudsman has adjudicated on a complaint and has ruled that the service provider acted in accordance with the terms of the underlying contract or otherwise did not act unfairly, can the complainant then subsequently sue the service provider for breach of contract directly in the High Court where no appeal has been taken against the decision of the Financial Services Ombudsman? That, in essence, is the principal issue which arises in this application brought by the financial service provider to have the proceedings struck out on the grounds that the matter is res judicata.

2) The issue arises in the following way: At some time in 2002, the plaintiff, Mr Digby, effected a 'Life and Serious Illness' policy with the first defendant's predecessor, ABC Ltd. This policy was subsequently taken over by XYZ Ltd, but nothing turns on this. There is no dispute but that the plaintiff discharged all premium payments under the policy thereafter.

3) The policy became due on the happening of certain critical events, including coronary catheter treatment. This was defined more formally as: The undergoing of any interventional technique on the advice of a cardiologist that has been appointed as a consultant physician that involves the use of transluminal coronary catheters. The procedure must be to correct at least

[6] [1980] ILRM 103.

50% diameter narrowing of two or more coronary arteries. Angiographic evidence to support the necessity for the above operations is required.

4) By early 2025, it was clear the plaintiff needed surgical treatment for a serious heart condition. In April 2025, he underwent coronary angiography. As a result of this procedure, it became clear that surgery was necessary, and he underwent an angioplasty stenting of the lower anterior descending artery ("the LAD artery"). It appears that three sequential lesions were stented. Although narrowing was found in a diagonal branch of the artery which was subtended by the stent, this was left alone and not stented. On 19 May 2025, Mr Digby completed a 'Serious Illness Claim Form' in the wake of this surgery and this was submitted to XYZ. Medical details were supplied by Dr John Murphy, Mr Digby's general practitioner, and by his consultant cardiologist, Dr Michael Brent. The application was considered by XYZ with the assistance of its Chief Medical Officer. On 8 July 2025, XYZ wrote to Mr Digby declining the claim. [7]

A litigant can like or dislike the result, a reader can disagree with the reasoning, newspapers can claim that judges like or do not like insurance companies, but everyone taking the trouble to read will know, at least, where the judgment is going and what has to be decided.

Self-indulgence

'Vanity of vanities, saith the Preacher, vanity of vanities; all is vanity. What profit hath a man of all his labour which he taketh under the sun?'[8] There is nothing wrong in human endeavour trying to reach a high point of excellence. Max Barrett's book on the ideals of judgment-writing (from which much of this exercise derives inspiration) while suggesting many things, never suggests that judges should be merely smart. There is the inevitable temptation to start a judgment in the punchy style of Lord Denning. But Lord Denning was in every way an exceptionally talented judge and his most memorable openings tend to come from a time when he had in every way established himself to possess an outstanding judicial intellect. Throughout a

[7] This, again, is an imagined case, not a real one.

[8] Ecclesiastes 1:2-11 (King James Version).

judgment the duty of a judge is to apply, and maintain the impression of bringing, a neutral mind to bear; and neutrality is easier to convey when a judgment is not painted in brash colours.

One judge used to offer this advice to newly-minted colleagues: the day after you have written your judgment, read through it again and cross out the best line. That was 30 years ago. Nowadays, the advice might be to cross out any personal observation that may bring a judge outside the realm of deciding fact and law and into the expression of a personal opinion.

Control of the hearing

There are many eminent books on advocacy which suggest writing everything down, highlighting points in red and green ink and using highlighters etc. Everyone works out their own system. Some judges rely primarily on a stenographic record, occasionally jotting down points of especial note; and perhaps noting the time when it was said to reference the digital audio recording. Using the margins of a notebook to highlight an issue or what it was that the witness was addressing can be useful; for example, 'the red light' or 'the December meeting'. These can be readily cross-checked at a later stage. When witnesses contradict, then perhaps 'John R x Pat McD' is useful shorthand. When, in a civil or criminal case a judge gets to the point where an actual defence is put to a witness, that can be written down and underlined with a big 'D': as the judge now knows the defendant claims that the goods were defective, or that the accused asserts that he was defending himself in killing the victim. Likewise, more for civil cases, a judge might note that 'John R's understanding was always that he might be cut in on the deal but there was no agreement as such.' It is in this way that a court builds up a real understanding of where the evidence is going.

If experience teaches anything it is that a judge should always search for fundamental reality, always ask herself or himself: has the case that the witness/party must meet been actually put? Central to this focus is the following question: are advocates challenging the witness on the core point. If they are, a judge's task is in putting whatever contradictions arise. Fundamentally, that enables the judge to actually write down what the case is. Advocates cannot, however, be allowed to stray into irrelevancies. While that is bad enough, it is worse still to allow them to shy away from putting the opposing facts that their instructions say contradict a witness's testimony.

Who is in charge?

The judge alone is in charge. Courts do not have to tolerate parties going down rabbit holes and asking the judge to follow. 'I almost wish I hadn't gone down that rabbit-hole—and yet—and yet—it's rather curious, you know, this sort of life!'[9] Alice was, after all, half in a dream and a court is far from a dreamlike experience. The rules of procedure and evidence are designed to get a court to the point where the judge is deciding the core issues.

A judge should constantly ask: what are the building blocks for each side of this case? There are never very many. The key to managing a case is to expose these, to make sure that the parties address them, and to keep focus. Questions as to credit may be limited to what is relevant and issues of credit can never be addressed by calling evidence, only by asking questions on a take-it-or-leave-it basis. Judges, whether operating under Commercial Court or Chancery rules, can also ask, at the start of an examination or cross-examination, for a time estimate and they are entitled to gently lead people into concision and focus. The principle stated in *Talbot v Hermitage Golf Club & Ors* ("*Talbot*")[10] is of general application to criminal and civil cases:

> As the Chief Justice points out ... the delivery of this judgment will constitute the 83rd day that the resources of the High Court and the Supreme Court have been directed towards this claim. This was, in essence, a very simple case: was it defamatory to say of an amateur golfer that he was "handicap building"; was that statement published to anyone other than the maker of the statement and the subject of it; and if yes was the answer to these two questions, was publication on an occasion of qualified privilege not undermined by malice? The conspiracy claim was also straightforward. Complication is perhaps inherent in the law of defamation .... Focus, however, is far from impossible even in the most difficult case ... Mr Talbot pleaded this case himself without legal counsel or assistance over 20 days in the High Court. Numerous motions were brought to the High Court ... Several appeals were heard by the Supreme Court. The

[9] Lewis Carroll, *Alice in Wonderland* (first published 1865, Walker Books 2009) 58.

[10] [2014] IESC 57 (Charleton J).

necessary observations which follow on what the Chief Justice has said are a criticism of no-one.

Among the unenumerated rights in Article 40.3 of the Constitution is the right to have access to the courts for the purpose of litigation ... Those resources are not, however, unlimited. No litigant is entitled to more than what is reasonably and necessarily required for the just disposal of a case within the context of the other demands on court time ... Courts are entitled, and indeed are required, to foster their resources. This is both a matter of public and private interest. Court resources used in litigation are funded by public money. In addition, the parties pay for legal representation. Litigants should not be faced with cases that are longer or more expensive than they need to be for a fair resolution. In many instances, costs if awarded against a losing party may not be recovered. In that regard, putting reasonable limits on submissions in terms of time and allowing a measured number of hours or days for each side to litigate their case is both right and appropriate. The calling of repetitive expert evidence may and should also be curtailed. Many motions can be brought in apparent aid of certainty as to nature of each side's case. This needs to be vigilantly watched by the courts. The Rules of the Superior Courts are there to aid in the just disposal of litigation and are not to be over-used in such a way as to overwhelm the central core of what a case is actually about. Clear focus on that is required from the start ...

There can be problems beyond what are usual in litigation. Where a lay litigant is involved, pleadings may be confused. Traditionally ... judges have done all that they can constitutionally do to assist. It would help in many cases, both with lay litigants and in complex cases where the parties are represented, for a case management hearing to take place before a judge who, after hearing the parties, can have the parties agree the issues for trial or can set these. This can avoid the unnecessary use of discovery and particularisation as the judge may then and there make such orders as are necessary for the just disposal of the case. The core purposes of case management are that it allows the court to focus on necessary issues and to set fair limits as to the resources of the courts that can be allocated to litigation.[11]

[11] ibid 7-8.

A judge is empowered to give people definite limits. A judge can allot, on a consideration of the papers, and with due flexibility and openness to listening to reasons for more or less time, 50 hours each. There is no reason for a three-week case to run for six. Judges are not just dealing with these parties, for whom costs double, but on the basis of the reasoning in *Talbot*, every other litigant who is waiting while a court is tied up. A judge can give litigants a fixed allocation and each side may use it as they wish, cross-examining, examining, making submissions. It may be useful for a judge to have *Defender Ltd v HSBC France*[12] to hand because this gives an analysis of the rules but, as *Talbot* makes clear, these rules merely express the powers that a judge already has. These are, in essence: to require an agreed set of issues (an issue paper); to set time limits within which each party may present its own case and challenge the opposing case; to guide examination and cross-examination to what is relevant; and to set the time within which submissions should be completed, whether orally or in writing. All these powers, however, must be used flexibly and as an aid to getting to the core of the case. They are not an end in themselves. We have moved from an adversarial system where parties can be left without guidance and enabled to effectively run the case as the mood takes them. In short, a judge has an entitlement to control a case, criminal or civil, in the interests of justice, and a wide measure of appreciation ought to be given to rational and reasonable attempts to rein in sprawling pleadings, pre-trial motions, examinations in court and to encourage focus on the issues; see *The People (DPP) v VE*.[13]

The point of control is this: if there is a focused hearing, a judge will know what the case for each side is, they will also know what is being asserted and what is being denied, they will be appraised of any counter-assertion that is made and, consequently, they can identify the pivotal points on which the case will turn. A judge will then know where to concentrate to make a decision. Let the case go out of control and the task of deciding matters becomes infinitely more challenging, perhaps even impossible, to do well.

Where notes are kept, these are best kept in a form that renders their translation into a judgment as seamless as possible. So, on the first day of the hearing, a judge might

[12] [2020] IESC 37, [2021] 1 IR 516.
[13] [2021] IECA 122, [2023] 1 IR 376.

have a document that approximates to a first draft of the non-contentious parts of the judgment. Where this is kept up day-by-day, a judgment builds up. This is not deciding matters in advance. It is helping a judge to decide matters when the case has ended and highlighting points that do and do not need to be included in an eventual judgment.

Assuming one is going the route of a written decision, the biggest thing that will speed matters up is to eschew perfection. A good decision is the ideal. A perfect decision is unattainable in a human system of justice. In this regard, there is something to be said for what might be described as a 'painting-by-numbers' approach. If a judge has a framework in mind for her or his judgment; facts, law, submissions of parties, application of law to facts, conclusion (commonly known as the 'FLAC' approach) – and what the template is may legitimately vary from judge to judge – then when he or she has populated the various sections, the judgment may well write itself. The parties can be asked during the hearing, if necessary, to prepare an agreed chronology of facts or anything else that the court thinks would be helpful, even after reserving judgment. But an ordered approach is essential, and chronology is of the essence for such an approach.

Chronology and order

Almost always, it is what happened yesterday, or in yesteryear that influences and informs what happens today. So, trying to sort facts into a chronology is important: from the first thing that happened to the last. In the appendix to the Maurice McCabe matter contained in the Disclosures Tribunal Report, there is a chronology of every relevant document relating to a fact and what was said in it.[14] That really helps. The more complex a case gets, the more crucial it is to have some kind of a map, by way of a note that puts one thing before another. That map may show a judge where they are going. During the hearing, build that chronology up with names, dates and

[14] Third interim report of the tribunal of inquiry into protected disclosures made under the Protected Disclosures Act 2014 and certain other matters, *Third Interim Report* (2018) 361 <https://www.disclosuretribunal.ie/third-interim-report-of-the-tribunal-of-inquiry-into-protected-disclosures-made-under-the-protected-disclosures-act-2014-and-certain-other-maters-dealing-with-the-conduct-of-the-health-service-executi/> accessed 29 October 2025.

occurrences. If a judge has that to hand in a marked part of his or her notebook, they will be unlikely to ever get a name or date wrong.

Judging facts

Judging facts is not an easy business. Reading demeanour has long been recognised as unwise. As Shakespeare wrote in *Macbeth*: 'There's no art/ To find the mind's construction in the face.'[15] Nor can truth be distinguished from falsehood just by looking at a document. Experience suggests that more certain tests for ascertaining the validity of an account include:

- how testimony fits into the background against which it is given;
- how what a witness says corresponds with what is likely or expected, or if unexpected, the reason behind such a twist of events;
- whether there are indisputable or highly reliable facts on the ground, such as forensic evidence, or basic circumstances such as the layout of a premises;
- how what is said sits with other facts;
- how likely/unlikely it is that people confide in each other based on their mutual experience;
- whether facts are reported as such at a time that would be appropriate.
- how memory can be fallible;
- considerations of the flow of conversation and how remarks rarely appear without context;
- whether, in reporting something, ordinary or sober language is used as opposed to indications of self-promotion;
- if detail is sparse or apparently constricted to events or conversations that are essential to a result sought, as against the normal experience that those who are genuine witnesses tend to report details beyond what is essential;
- whether a witness seems to be re-living an event, turning inwards for memory as opposed to stonewalling questions or blustering away from awkward issues;
- if there is appropriate affect at times where emotion may emerge, noting that people often approach a court hearing in as detached a frame of mind as can be summoned.

[15] *Macbeth* (n 3), act 1, scene 4.

These considerations apply to live testimony and are also useful in analysing documents. What a judge is looking for is what can be relied on. That can be built up slowly. For instance, a judge knows there was a traffic light, is aware that traffic lights are presumed to work, has experience that people often go through a light that has just gone red, has found out that a witness is not connected to any party, that they do not want to be there, and hence they likely have 'no axe to grind'. Or, the judge knows that cattle repeatedly died of unexplained illnesses, so asks 'is the farmer competent or incompetent?' Or, the court knows that before the accident the plaintiff had a number of other accidents, so could an underlying condition have been exacerbated? And so on.

A judge ideally starts from the facts that are certain. As a judge gets more and more facts, the background for a decision will emerge. For every fact a judge decides, the ideal, if not always the legal imperative, is to give a reason.

Repetition

It is not necessary to record the submissions of the parties. This has never been required as a matter of Irish law or practice. If a judge considers that it must be done, they might consider whether this is useful only as an *aide memoire* and does not need to appear in a judgment. If it must be included in the judgment, then it is best done precisely and in a clear way that highlights that this is what was asserted to the court and is not what the judge thinks. It does not help to have many pages of submissions covering all the issues on one side and then the other. If a judgment deals with a multi-issue case, the best approach is to headline the issue, state what each side contends on that issue within a sentence each, and then proceed to an analysis of the principle, setting out case law on each side. Putting the case citations as part of the submissions of the parties confuses the reader. If the submissions are to be included, a sometimes useful approach can be to insert a section heading in the judgment and begin that section with what each side says. By splitting up the issues, greater clarity ensues.

What should not be done is to recite arguments as if the judge is a note-taker. It is not necessary. It gives the impression that the judge does not understand the issues. Further, it is often unclear that the recitation of arguments over pages is not analysis of legal principles but a stenography job. What is important is for each argument to be precisely stated: the judge puts it in the form of 'The DPP contends that …' or 'The argument of the applicant is that …' or 'It is asserted by the plaintiff that the case of *Nook v MacMathúna* governs this point …'.

Never be long or late in a judgment

At the level of a trial court, a judge should not be tempted to try to write the ultimate word. If ever, that is for the Supreme Court or for the Court of Appeal when cases end up there. They should seek, instead, to draw on existing principle and authority. Is not everything already decided or set out in a textbook? Hence, they should make a decision that is based on principle and is backed up by reasons. A judge should seek to get a judgment out in weeks rather than months. If the production of a judgment has become protracted, a judge may reasonably ask why this has happened and seek to address it. A judge has a responsibility to give a decision to the parties in dispute. And, if there is one thing that all judges can take from the exceptional career of Lord Denning, it is this: he was never long or late in a judgment.[16] A discipline that can be useful is that when a case ends the judge announces that the decision will be given on a date perhaps a month hence.

The rule for judges is that once a decision is made, that is it. It is pointless to have second thoughts. It is not appropriate to issue a second judgment on an application for costs or for leave to appeal (where applicable) qualifying what has come before: 'What I really meant in paragraph [58] of my principal judgment was …'. A court should not change reasoning or explain extra-judicially that a judgment meant something that contradicts its text. What a judge can do is correct errors of grammar, spelling or expression in an unapproved judgment, but not substance.

Ending off

At the end it is imperative for a judge to say what the order of the court is because that is what a clearly-stated decision demands. That is the ultimate discipline. For some written judgments on criminal law, the challenge is to sum up the law in such a way as

[16] Michael Kirby, 'On the Writing of Judgments' (Australian Conference on Literature and the Law, Sydney, April 1990) <https://www.michaelkirby.com.au/images/stories/speeches/1980s/vol21/829-Aus_Conf_on_Literature_and_the_Law_-_On_the_Writing_of_Judgments.pdf> accessed 5 February 2024.

will enable a judge to take that judgment and read a passage to a jury as representing the law.

In civil cases, writing down a number of questions that a judge has to answer to complete a judgment assists that process.[17] That forces a judge to ask: what am I really deciding here? Is it really based on principle? In a judgment on criminal law, a judge should ask: can the principle be put in such a way as a judge can instruct a jury? In civil cases, by a judge forcing a summary on themselves at the end is to require the judge to state the logic of a decision. The end is about the end. And it is useful for a judge to self-interrogate:

- What principle of law have I divined, if there have been submissions that the law is unclear?
- Have I stated that principle of law clearly?
- Have I reached a clear conclusion on the facts?
- Have I applied that conclusion to the law?
- Has that conclusion led to a result?
- Can people understand that result?

If judges avoid that approach, the reality is that people will be left swimming around searching for a platform of ease on which to rest their weary minds. If there are four points in a case and a court decides the first so the second, third and fourth are not necessary of decision, it may help an appeal court to have a summary judgment on those points rendered redundant by your decision on the first point.

This is about clarity. Without clarity, a judgment is not precedent and it is not of use. While the ultimate aim is to give a decision, sometimes, but rarely, that decision requires legal analysis that leads to a decision on law as well as just applying law. If, at the end, a judge can say what has been decided and what legal principle has been applied they have achieved the ultimate aim. Is there a path towards that?

[17] Jack Healy, 'Route(s) to Verdict – The clear path forward in criminal jury trials' (2023) 7(1) IJSJ 40 <https://www.ijsj.ie/assets/uploads/documents/pdfs/2023%20edition%201/3.%20Routes%20to%20Verdict.pdf> accessed 29 October 2025.

Maybe this path should be followed: if a judge thinks of writing the summary first, or having written it at the end of a judgment by going back over what has been written, what is then unnecessary can be excised.