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Forum Juridicum: A Brief (?) Opinion on Brief Opinions

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gratitude — qualities of character too often smothered by ambition and aggressiveness.

Do I have to say more than that with a continuing procession of new students, new teachers, new lawyers, new judges, better trained and equipped than their predecessors for the new environment and new problem — the litigation process their laboratory — the regenerative process in law cannot be stopped. And may I ask, with all its implications of courage and opportunities to expand your own lives to their uttermost, would you have it otherwise?

A Brief (?) Opinion on Brief Opinions

*George W. Hardy, Jr.**

As this article is written I have before me an opinion of the highest court of another state, which occupies almost *eighteen pages* of the Reporter volume in which it is printed and bound. By the side of this exhaustive pronouncement there lies a single sheet of legal size paper upon which is mimeographed a suggested redraft of the printed opinion, which would occupy much *less than one printed page.* Careful examination discloses that all the substantial pronouncements of both fact and law necessary to a resolution of the case have been adequately set forth in the redraft.

This illustration serves as substantial justification of the increasingly frequent criticism of the unnecessary length and complexity of judicial opinions. It is quite understandable that members of the Bar are often irritated by the loss of both time and patience in the necessity of wading through innumerable details of irrelevant and immaterial matter which encumber many of our judicial pronouncements. In view of this conclusion, it appears to be high time for appellate judges to engage in a critical examination of the style, manner, and form of writing opinions, with the hope that they may be enabled to reduce the length thereof without sacrificing either necessary or desirable reasons and conclusions.

In the course of this examination it will be helpful to establish

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the principal factors that contribute to the undue length of opinions without adding to their value.

There appears to be an almost irresistible inclination on the part of a judge to take note of every issue of both fact and law which is presented, no matter how remotely, in a given case. Ordinarily, there are comparatively few cases which involve an extensive multiplicity of issues, all of which are related to the determination of an appeal. Not infrequently a single issue, either of fact or law, is sufficient to resolve a particular case. Nevertheless, time after time, we engage in the pursuit of somewhat tenuous ramifications of factual circumstances, in the meticulous and detailed consideration of extraneous and irrevelant principles of law, overcome with the exhilaration of the chase, and finally running to ground a vast number of factual circumstances and legal principles which add nothing except surplusage to our ultimate conclusions.

In all fairness, it must be considered that this activity is sometimes responsive to the zeal and ingenuity of counsel for the parties litigant. Out of deference to the insistence and effort of counsel judges are somewhat hesistant in avoiding a discussion of points raised by such astute and assiduous members of the Bar, even though they may have no substantial bearing upon the determination of the controlling issue.

In this connection it may be suggested that our first efforts should be directed to a reduction of the questions presented in each case to the essential and determinative issue or issues involved. If this procedure disappoints members of the Bar by failing to take note of all of their earnest and sincere arguments, it is to be hoped they may be compensated in other ways.

Another element which substantially contributes to the excessive word-output of opinions is found in our addiction to extensive and exhaustive quotations from pleadings, documentary exhibits, transcripts of evidence, statutes, and cited cases. Reference to my own opinions discloses numerous instances of this predilection. We are judges of both fact and law and it should not ordinarily be regarded as necessary for us to bulwark our conclusions of fact with extensive quotations from the testimony of witnesses, nor to fortify our conclusions of law by detailed repetition of the reasons advanced for the formulation of such principles in specific cases which we have already cited.

Nor should it be regarded as necessary that we reiterate, on every occasion, those principles of law which are known and accepted even by those who have barely begun their formal education as members of the freshmen classes of our law schools. Yet, time after time, we make a solemn pronouncement, not infrequently supported by a wealth of citations, on some long established, well known and completely accepted principle, e.g.:

> "In the consideration of an exception of no cause or no right of action the well pleaded allegations of plaintiff's petition must be accepted as true."

In connection with our re-enunciation of legal principles, it further appears that we are much given to supporting such pronouncements by reference to unnecessarily numerous citation of cases. It would not seem to be desirable to cite every case, or even a large number of cases, which simply repeat the principle announced. A so-called landmark case or the citation of a recent case or cases which constitute jurisprudential authority should ordinarily be deemed adequate.

With reference to factual findings, it may be noted that we are inclined to incorporate numerous factual circumstances in a sort of narrative form in our opinions, most of which are entirely superfluous. Let me illustrate by reference to a recent opinion of my own which, unfortunately, does not stand alone as a horrible example. The tort action involved an automobile collision and my opinion set forth the actual occurrence with meticulous detail as to date, time, place, course of travel of the cars involved, identification of the drivers, atmospheric conditions, etc., etc., *not one of which factors was in dispute or had even the remotest bearing upon the determination of the case.*

In a number of instances our efforts disclose results more in the nature of advocates' briefs than judicial opinions. Searching self-analysis may reveal that this type of opinion, which is almost invariably burdened with unnecessary detail and exhaustive complexity of reasoning, is perhaps attributable to a subconscious desire to persuade or convince (a) ourselves, (b) our colleagues, (c) counsel, or (d) a higher court. Efforts of this nature are almost uniformly unavailing. In the first instance, if we are not ourselves convinced in mind and conscience as to the correctness of our ultimate conclusions, it is questionable if we are justified in writing an opinion. As for the other categories,

long experience indicates that such purposes have infinitely little chance of success, for members of both Bench and Bar are living illustrations of the aphorism that

> "- - a man convinced against his will is of the same opinion still."

Concededly, much of the blame for unnecessarily long opinions must be attributed to our individual faults of style and form in writing. Most of us have come to the Bench at a time when our habits and manners of thinking, speaking, and writing are more or less fixed, and few of us are willing to undertake the task of reforming individual idiosyncrasies. It is not advocated that a judge discard his individuality with respect to style, but, to the contrary, it might be recommended that we temper our individual characteristics in the fashion and manner best designed to achieve brevity and clarity of expression. Literary contributions are invariably individualistic, and particular personal characteristics cannot be molded into sterotyped forms. It must be regarded that the annual output of thousands of printed judicial opinions is a contribution not solely to the body of American jurisprudence but to American literature. It follows that it is unseemly and slovenly for us to neglect any opportunity to improve the literary worth of our judicial writing. However, it is not necessary for us, in the pursuit of the desirability of producing brief opinions, to write in the form and style of McGuffey's First Reader. We can, if we will, make our opinions good reading as well as good law.

Finally, it may be regarded as an uncontroverted fact that it is more difficult to write a brief opinion than one which is long and involved. This difficulty is not insurmountable, but, on the contrary, may be readily overcome by persevering application to the achievement of our worthy purpose.

As and when the author of this article is charged with the commission of some, if not all, of the offenses which have been above noted, perforce, he must plead "Nolo Contendere."