



Decisions, decisions, decisions...

Deciding how to make decisions, and what decisions to make



Cooper

BY MILES B. COOPER

The lawyers finished trial for the day. As the lawyers headed to the motel, one of them asked the other, “What about dinner?” The first lawyer responded, “I don’t care – I just don’t want to have to decide.” The lawyer had heard somewhere that a trial lawyer makes an average of 2,500 decisions during a trial day, many split-second. Ask another question or sit down? Request a document get admitted or not? Object or not? There was a reason the trial lawyer’s head felt like it had engaged in epic mental gymnastics.

They went to Outback Steakhouse, yet again. One less decision to make.

The Decider

The comedian, Jon Stewart, ridiculed George W. Bush when Bush described himself as The Decider. But Bush was on to something. The president appoints trusted individuals, listens to their input, and makes a decision – hopefully with attention and insight. Trial lawyers take on a similar role. Listen to witnesses, experts, staff, colleagues, friends, and make strategy decisions. Some decisions are critical. Others less so. One way to streamline decision making is to classify the types of decisions, and thus how to approach them.

Alpha, Bravo, Charlie and Delta decisions

Classify decisions by impact. Alpha decisions have major impact and require significant consideration. Accept or reject the mediator’s proposal? Dismiss a defendant? These decisions require a deliberator and time. What’s a deliberator? Read on.

Bravo decisions are significant but not life-altering. Contact a potential witness directly or use an investigator as intermediary? Use photo A or photo B with a particular witness at deposition? Charlie decisions are decisions that one may want to be involved in but can be delegated. Sleep at the Hampton Inn or Holiday Inn the night before the deposition? Delta decisions are pure delegation. Should the potential case meeting be at 10 or 10:30? It doesn’t really matter.

Once one determines a decision’s significance, one can then delegate the majority of Charlie and Delta decisions. A productivity expert describes tasks like these as working in the shallows. Shallows work typically takes up 80 percent of a professional’s time. But the professional’s value is in the depths – evaluating the information necessary to make informed Alpha

and Bravo decisions. One way to maintain value is to avoid “being productive” by storming through tons of Charlie and Delta decisions (common when trying to empty the email inbox). This is the decision-making equivalent of eating a large bag of chips instead of a real meal. Momentarily satisfying, but largely unfulfilling.

Systematize

Employing systems to reduce decision-making also helps. When I first started trying cases, I worried tremendously about the day’s outfit. Would wearing that orange tie unintentionally imply something to the jury since I also wore it during opening? After years of talking to jurors post-verdict, I determined I was overthinking things. I now wear the same black suit, black tie, white shirt combination. Every damned suit day. No one cares. It is one less decision to make. And it simplifies packing. This was not my invention – google “Obama suit” and you’ll find the inspiration.

Decisive versus deliberative personalities

People lean toward being deliberative or decisive. Figure out where you fall on that spectrum. Does it take you five minutes and several samples to decide on an ice cream flavor? You’re a deliberator. For Alpha and Beta decisions, find a trusted opposite. A decider needs a deliberator, and vice versa. Engage that person in the decision-making process. Deciders must acknowledge the deciders’ weakness – they feel compelled to make a decision and move on. Listen to the deliberator. Alpha and Beta decisions are important and need more than pure gut instinct. But don’t underestimate gut instinct’s value. Having a gut instinct and then testing it against the deliberative process is one way to determine whether that gut may be onto something.

Deliberators must also acknowledge the deliberators’ weakness – the unwillingness to decide. Many a deliberator’s decision gets made for the deliberator due to indecision. Think too long about whether to accept a case and that client or referring lawyer will have gone elsewhere due to inaction.

Decision accomplished!

Once a decision is made, have faith in it. Avoid the temptation to revisit it. Rethinking it is distracting. Changing a decision is probably the wrong choice. People who go back through tests and change their answers are likely to be changing correct answers into incorrect answers most of the time.

Except... if you have a nagging worry, a weight pressing on you, and you wake up in a sweat from dreams about a decision already made, you might want to re-deliberate it if there’s a possibility of changing the outcome.



Outro

Back to our two trial lawyers, now at Outback. After a salad and a steak, they made a weighty decision. They would indeed have a Chocolate Thunder from Down Under Sundae (trademarked, of course).

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