



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
900 Georgia Avenue
Chattanooga, Tennessee 37402

**JUDICIAL RESTRAINT: JUST BECAUSE YOU CAN
DOESN'T MEAN YOU SHOULD**

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One of the ways in which the courts reinforce public confidence in the judiciary and the rule of law is judicial restraint. Judicial restraint calls for modesty in judges' rulings, language, temperament, and official behavior. It requires the exercise of great discipline on the part of the judge.

JUDICIAL RESTRAINT IN DECISION MAKING.

The most important thing judges do is decide legal questions and cases. Judicial restraint in reaching decisions means deciding cases on the narrowest grounds possible and avoiding deciding, or even discussing, unnecessary issues. Judicial restraint preserves the democratic process by allowing the other two branches of the federal government to fulfill their obligations. For example, if a case presents constitutional issues, but the case can be decided on statutory grounds, then the case should be decided on the statutory grounds. Judicial restraint is one of the most effective ways for courts to earn and preserve public trust.

It may be tempting for a judge to write an "opinion for the ages" based on that judge's personal views of a constitutional question or social issue. But, if the case can be decided without delving into a constitutional question, it should be decided on nonconstitutional grounds. If legislators think that the decision was incorrect, they can pass or amend a law; however, a sweeping judicial decision on constitutional law takes this power away from the legislature. Judicial restraint thus preserves the role of the democratically elected legislature. Similarly, if the case does not require commentary on social issues or public policies, such matters should be left to the democratically elected branches.

Judicial restraint also means that if a case can be disposed of on procedural grounds and not on its substantive merits, then the case should be disposed of on those procedural grounds. A judge who delves into the merits of a case that should not be decided for some procedural reason simply invites the possibility of error.

Judicial restraint also counsels against unnecessary discussion in opinions or the resolution of issues not squarely before the court. *Dicta*—statements in a written opinion that go

beyond what is required to decide the case—may be intellectually satisfying for the judge to write, but such statements can undermine confidence in the judiciary.

The public is more likely to trust judges who speak carefully, say only what must be said, and resist the urge to address esoteric scenarios or broader social questions. Judges have the power to opine on just about anything in their opinions, but the principle of judicial restraint counsels against doing so.

JUDICIAL RESTRAINT IN LANGUAGE.

By the same token, public confidence is preserved when judges refrain from intemperate or provocative language. The goal of a judge’s written ruling is persuasion, both that the decision is well reasoned and that it is legally correct. Intemperate language in an opinion may give rise to a belief that the decision is based on emotions or personal reasons rather than legal reasons. So, while it can be tempting for a judge to wax eloquent on a topic and demonstrate his or her mastery, restraint is the better choice. Parties are looking for a resolution of their case and probably will not believe they are well served by a judge’s unrestrained or provocative language.

As human beings, judges will sometimes become angry or be irritated by attorneys, parties, or even issues. But public displays of hostility or annoyance detract from the dignity of the court. Demeaning or disrespectful language in an opinion or from the bench is inconsistent with the image judges should present to the public. Such language leads to resentment, not persuasion. A single disrespected litigant or attorney will share his or her ill-treatment with friends, family, and colleagues, causing a justifiably unfavorable view of the courts to circulate.

JUDICIAL RESTRAINT IN TEMPERAMENT.

Another application of judicial restraint is for judges to practice restraint in their temperament. Respect, fairness, patience, and understanding go a long way to inspire confidence in the particular judge and the judiciary as a whole.

Sound judicial temperament inspires confidence because the public sees a decision coming from a calm, impartial, patient, and compassionate person. The public will perceive such a person as more likely to render a fair and impartial decision than an ill-mannered, ill-tempered, angry person. And that perception is rational; when a judge gives rein to intemperate emotions, there is a risk his or her judgment will not only seem, but actually be, affected by those emotions.

CONCLUSION.

Courts exist to resolve concrete disputes between parties, not to announce broad theories of governance or give rein to the judges’ emotional reactions to a case or legal question. When judges adhere to this role, they reinforce the separation of powers, demonstrate respect for the democratic process, and bolster public confidence in the courts.

The public may not always agree with individual outcomes, but it is more likely to accept decisions that are modest in scope, carefully reasoned, and firmly grounded in existing law. Judicial restraint is not weakness. Judicial restraint is a form of institutional humility—one that reminds both judges and the public that judges are guardians of the law, not arbiters of social or

political wisdom. By deciding cases narrowly, relying on statutory or procedural grounds where possible, avoiding unnecessary or provocative language, and maintaining sound judicial temperament, the judiciary can continue to earn the confidence essential to its constitutional role.

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