CIVIC CLUB PRESENTATION

The following are the notes that I used during a talk to a civic club that I made a number of years ago, which have been lightly edited to eliminate certain comments that related solely to the organization to which this presentation was made and to update the information contained in this presentation in light of certain changes in the jurisdiction of the appellate courts that were made since the date on which I spoke. On the occasion which caused me to prepare these notes, I was asked to explain the role of the appellate courts in the North Carolina judicial system. Since I was serving on the Court of Appeals at the time that I made this presentation, I spoke from the perspective of an intermediate appellate judge rather than the perspective of a member of the Supreme Court.

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Want to talk with you about the role of appellate courts in our judicial system

Much misunderstood subject, unfortunately

Have had the privilege of serving as an appellate judge for the last several years

Appeared before appellate courts regularly when was in private practice

Hope have at least some understanding of what appellate courts do at this point

Judicial system assumes that the principal place in which civil and criminal cases are resolved is in the trial courts

Handle the vast majority of the civil and criminal cases that are filed in this and every other jurisdiction of which I am aware

Only a relatively small percentage of the cases that are heard in the trial courts ever find their way to an appellate court

However, for the most part, the issues decided by appellate courts are more difficult than those that arise in the average case heard in the trial court

Require more time and study than is typically true of issues resolved in the trial courts

Decisions made at the appellate level are binding on all trial courts, so important that they be carefully made and described in the form of a written opinion

Work so different that it’s hard to compare the two with any degree of accuracy

Are two levels of federal courts in both the state and the federal systems

Both systems have an intermediate appellate court and a supreme court

In North Carolina,

-----the Court of Appeals, which consists of 15 members elected statewide, sits in panels of three

-----the Supreme Court, which consists of seven members elected statewide, decides all cases sitting as a seven-member group

All litigants have a right to appeal from the trial courts to the intermediate appellate court

Only cases that go directly to the Supreme Court in the North Carolina system are cases in which the death penalty is imposed, general rate cases emanating from the Utilities Commission, appeals from the Business Court, and appeals from orders of three judge panels of the Superior Court upholding facial challenges to the constitutionality of statutes passed by the General Assembly

Case load of Supreme Court consists of those few cases which can be appealed to directly to the Supreme Court and cases which are initially heard in the intermediate appellate court

In North Carolina, a case about which the judges of the intermediate court of appeals disagree automatically goes to the Supreme Court

In addition, the Supreme Court can decided, in the exercise of its discretion, that it wishes to hear a particular case because the case raises important legal issues, has substantial public importance, or is inconsistent with Supreme Court precedent

Since almost every case comes to an intermediate appellate court in the first instances, the case load of an intermediate appellate court is usually quite heavy

Believe experience of the North Carolina Court of Appeals is typical of the experience of intermediate appellate judges across the country

Authored more than 100 opinions last year

Has been true ever since I took office at the Court of Appeals

Case load also quite varied

About 50% of our case load involves criminal cases, ranging from cases in which the defendant was convicted of first degree murder and sentenced to life imprisonment without parole to cases in which the defendant was convicted of a minor misdemeanor

Other 50% of our case load involves civil and administrative matters, including

-----land use disputes, such as zoning controversies

-----contract disputes

-----business disputes

-----real estate disputes, such as the priority to be given to liens and whether instruments should be reformed to correct alleged errors

-----tax cases

-----controversies arising from the administration of decedent’s estates

-----personal injury cases, including automobile wrecks, medical negligence claims, and claims arising from injuries allegedly resulting from defective products

-----worker’s compensation cases

-----professional licensing issues

Huge variety in the nature of the cases which we are required to resolve

Ultimately touches in some way almost every citizen of the state

Nature of work done by appellate courts in order to resolve these cases is, on occasion, not intuitively obvious

In order to resolve any legal dispute, a court must generally do two things

First, the court must figure out what the facts are

Obviously, can’t make a decision unless know what actually happens

Secondly, decide how to apply applicable legal rules to the facts

Two major misconceptions about what an appeal actually is

First is that an appeal is not a chance to retry the case

All fact finding is done in the trial courts

Hear witnesses and make decisions, either by jury verdict or judicial decision, as to what the facts are

Once that decision is made, it’s final unless there is simply no evidence to support it

I don’t know how many clients I had who thought that, on appeal, we would be entitled to reargue the facts and attempt to persuade the appellate court that the jury had simply believed the wrong person

Appellate courts simply don’t do things like that

Don’t have a witness chair

Don’t have witness examinations

Instead, take the factual decisions reached in the trial courts as a given and attempt to determine the legal significance of those decisions

Focus solely on whether the presiding judge made an error of law

What sort of thing is an error of law

-----did the trial court allow the admission of evidence that should have been excluded

-----did the trial court exclude evidence that should have been admitted

-----was the evidence, if believed, sufficient to support the factual determination that the jury or the judge made

-----did the trial court include or omit something from his or her jury instructions that should have been included

-----did the trial court make a misstatement of the law in his or her instructions to the jury

-----did the trial court grant a motion that should have been denied or deny a motion that should have been granted

-----did the trial court make some other sort of procedural mistake

Not enough, however, for there to simply be an error of law

Instead, an error of law must also be prejudicial in order for the appellate court to grant relief

Keeps us from having to reverse trial court judgments based on minor legal errors

Are different standards for determining when an error is or is not harmless

-----for errors of constitutional dimension, error is prejudicial unless the State shows that the error was harmless beyond a reasonable doubt

-----for errors in criminal cases in which no objection was lodged at trial, the appealing party must show that it is reasonably probable that the outcome at trial would have been different had the error not been committed

-----for other errors, appealing party must show that there is a reasonable possibility that the outcome at trial would have been different if the error had not been committed

Second common misconception is that appellate judges are not given what my father, who served as both a trial and an appellate court judge for many years, used to describe as a “roving commission to do justice”

Aren’t there to ensure that what we subjectively think is a just outcome occurs

Instead, are there to determine whether the trial court properly applied the law to the facts

Content of the law comes from several sources

-----proper understanding of basic common law principles which have been developed by English and American courts over the centuries

-----statutory provisions enacted by Congress and the General Assembly, with the operative question being what the legislative bodies that drafted those statutory provisions intended

-----proper understanding of any applicable constitutional provisions in light of the intent of the famers and the rules for constitutional interpretation laid down by the United States or North Carolina Supreme Courts

All courts in the common law universe, which North Carolina inhabits, place strong reliance on a legal doctrine known as stare decisis

Stare decisis means that, in the absence of an extraordinary reason to do differently, the appellate court should follow prior judicial decisions even if it disagrees with them

Practice helps ensure certainty in the application of the law

Impossible for individuals and businesses to comply with the law if judges constantly change their minds as to what the law actually is

Legal inquiry not intended to be subjective

Content of the law does not come from the subjective beliefs of the individual judge as to the fairness of a particular outcome or whether the legal principles involved do or do not, in the judge’s opinion, reflect considerations of sound public policy

Judging should not be treated as a political or ideological undertaking

Only way that members of the public can have any confidence in the outcome of a particular judicial decision is if they believe that the decision in question does not hinge on a particular judge’s personal, political, or ideological beliefs

Taking political and ideological considerations into account is perfectly appropriate in making a legislative or executive decision

Such considerations have no place in the judicial arena

At conclusion of the decision making process, one judge writes an opinion and sends it to the other judges responsible for deciding that case

Opinion consists of

-----a description of the case

-----a statement of the outcome reached by the appellate court

-----a discussion of the reasons that the court believes that outcome to be appropriate

After receiving it, the other judges decide whether to join in the opinion or not

If the recipient decides to join it, he or she sends it on to the remaining judge on the panel

If the recipient disagrees with the draft opinion, he or she writes a dissent, which is sent along to the other judges, who then get to choose which position they agree with

Once a particular opinion has received majority support, it then becomes the decision of the Court and is issued as such

Hope this helps you gain some better understanding of how our appellate courts operate

Have been privileged to serve as an appellate court judge and appreciate the confidence that the people of North Carolina have shown in me by allowing me to work in that capacity