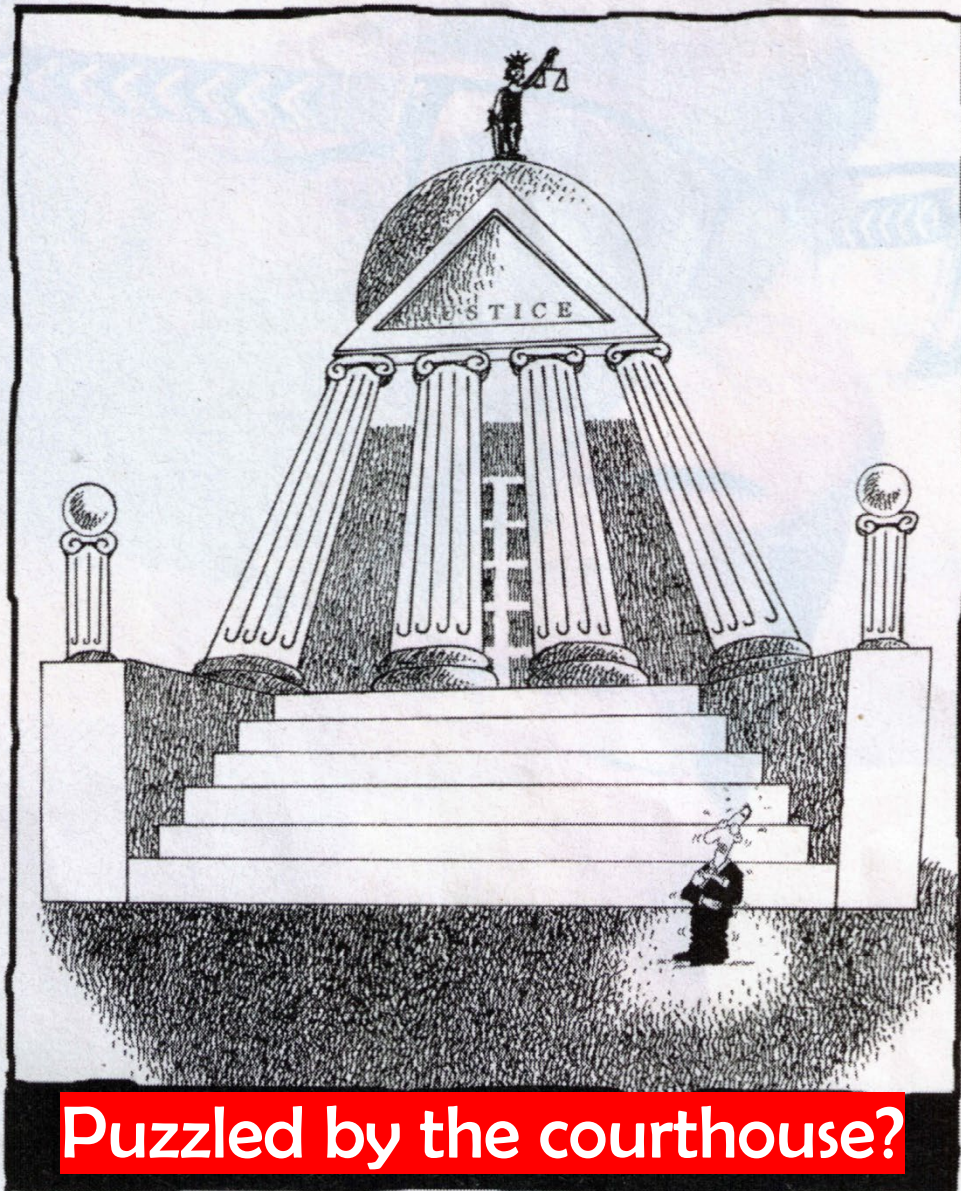


# LEGISLATION AND THE JUDICIARY: HOW COURTS INTERPRET THE LAW

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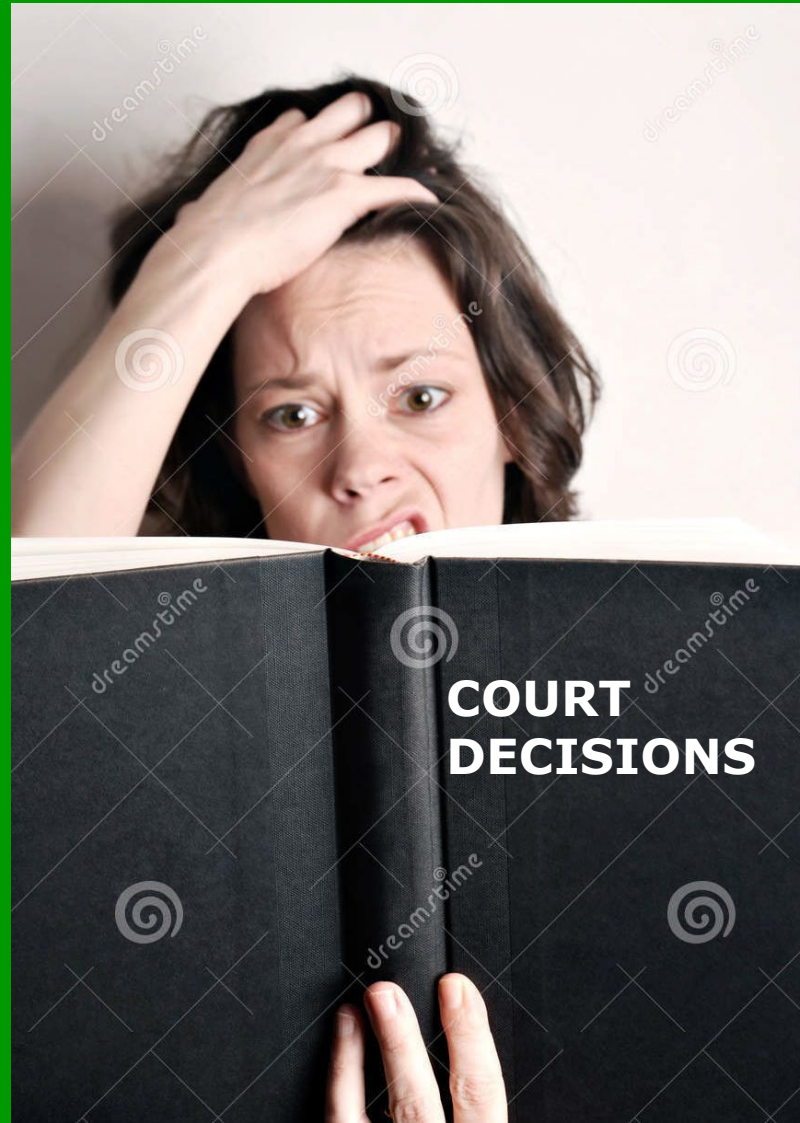
Midwestern Legislative Conference  
BILLD – August, 2025

Robert R. Cupp  
Former Justice, Supreme Court of Ohio



**Puzzled by the courthouse?**

# This is confusing!



It's baffling!



# Goals of Presentation

---

- Gain better understanding of –
    - Key differences between the legislative and judicial processes;
    - How judges decide cases when a statute's meaning is in dispute;
    - How legislators can improve court decisions through the “law-making process.”
-



*Result-*

**More understanding.  
Less confusion.**

# Query

---

- Which do you think is the more “mysterious” to the public:
    - Functioning of the legislature, or
    - Functioning of the judiciary?
    - Why?
-

Hmm. What are you?



# A Judge's View

---

“The problem is ... that the judiciary has to **rationalize policy-makers' work**, and **fit it all together** in a consistent manner.

It is the **quality that sticks in our craw** - the often **vague and discordant** way in which the statutes appear in cases before the courts.”

■ **ABNER MIKVA**

Federal Judge (1970-1994)

---

# A Judge's View

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---

■ **ABNER MIKVA**

Federal Judge (1970-1994)

# How Legislators Think Judges View Themselves?

Cool!

They all look like ants from up here!

I AM the Judge!



THE HIGH COURT POSITION EVERY JUDGE REALLY ASPIRES TO

# Cause Of The Problem.

---

- “The problem as often as not is the **unawareness** that the legislative branch and the judicial branch have **of each other's game rules.**”

ABNER MIKVA

*Former Congressman and Federal Judge.*

---

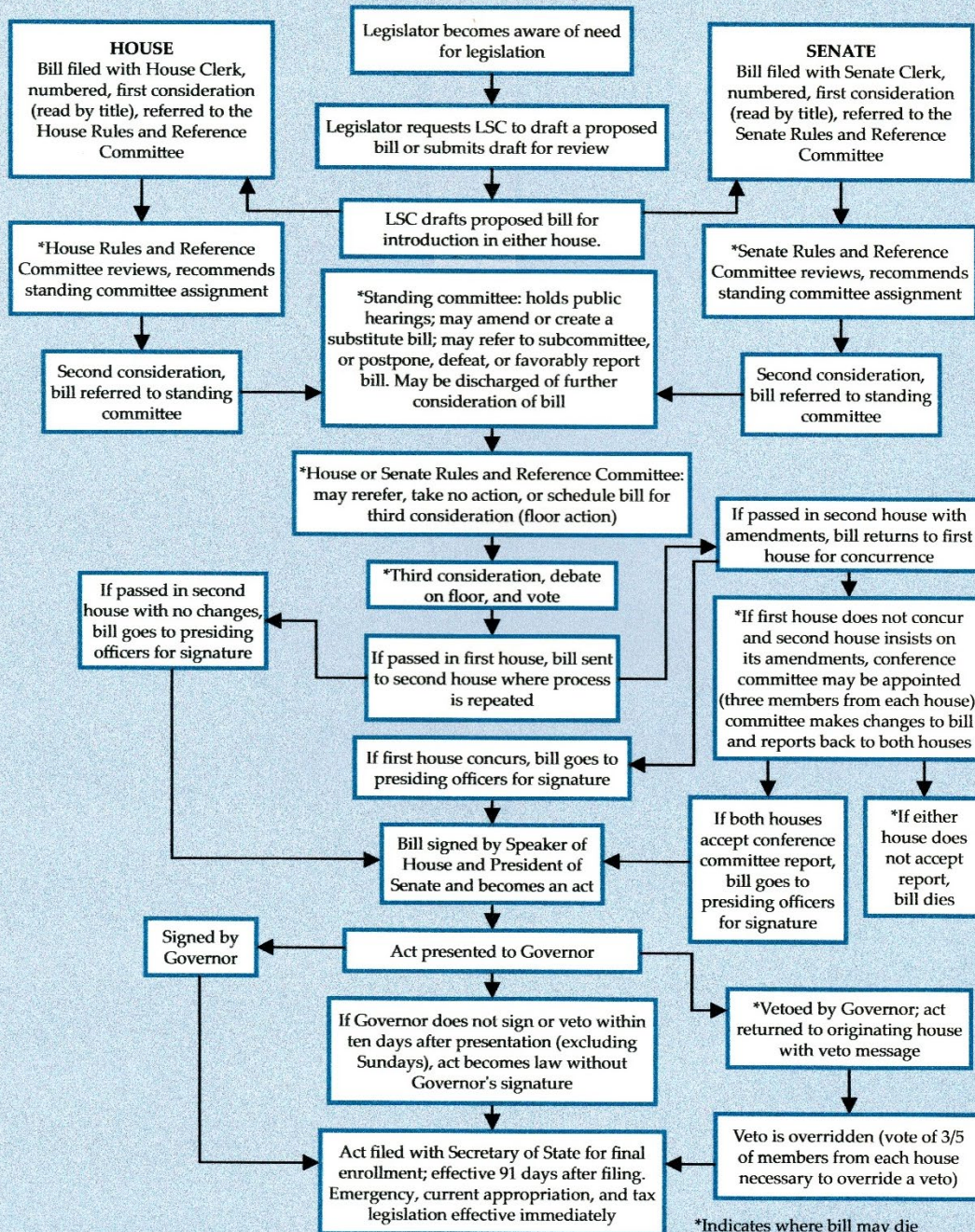
# QUIZ

---

Do you agree or disagree with each of the following statements?

- Judges sometimes misinterpret a statute's intended meaning.
- Legislators sometimes deliberately use ambiguous language in writing a statute.
- Statutes are easier to understand than judicial case law.

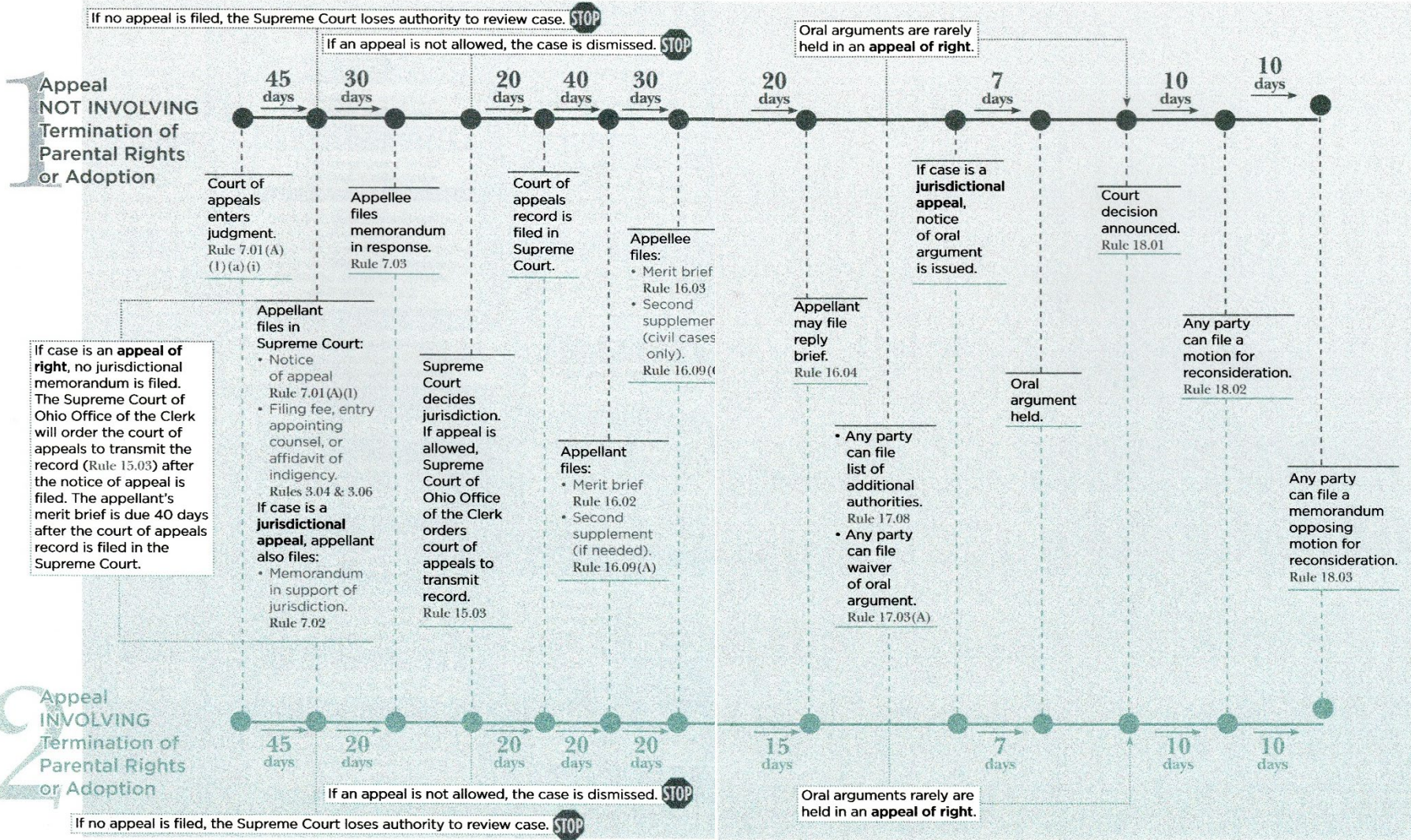
# How a Bill Becomes a Law in Ohio



\*Indicates where bill may die

# TIMELINES FOR COURT APPEALS

## SUPREME COURT OF OHIO - TIMELINES FOR APPEALS



# STATUTE

**“No person shall bring a pet into a state park.**

**Violation of this statute shall be a fine of up to \$500.”**

# FAMILY CIRCUS



6-21

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BIL  
and  
JEFF  
KEANE

**“if anybody wants me i’ll be out  
walking the fish”**

# STATUTE

**“No person shall bring a pet into a state park. Violation of this statute shall be a fine up to \$500.”**

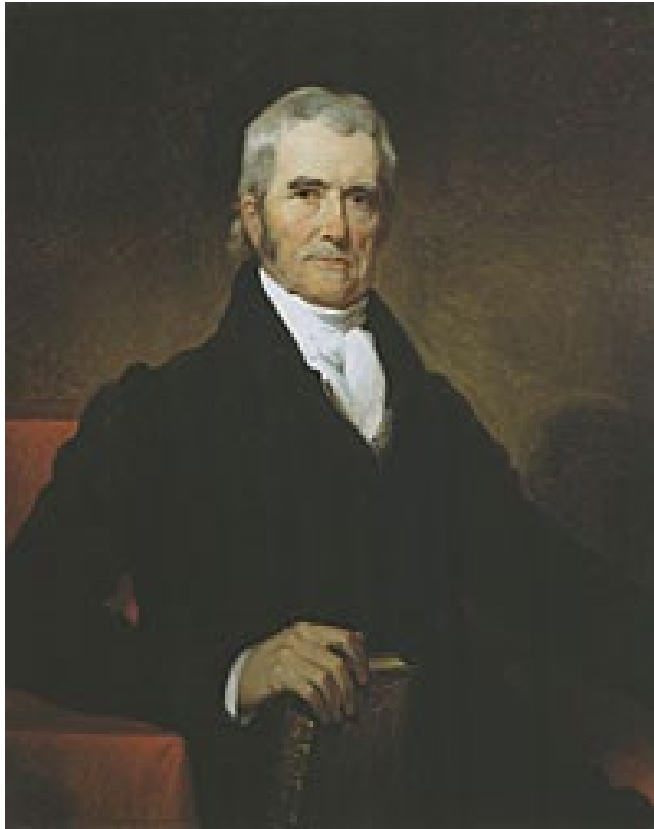


# STATUTE

**“No person shall bring a pet into a state park. Violation of this statute shall be a fine up to \$500.”**



# Statutory Interpretation



***Primary goal:***

**“give effect to  
the will of the  
legislature.”**

**--U.S. Chief Justice John Marshall**

# Interpretation Problems

---

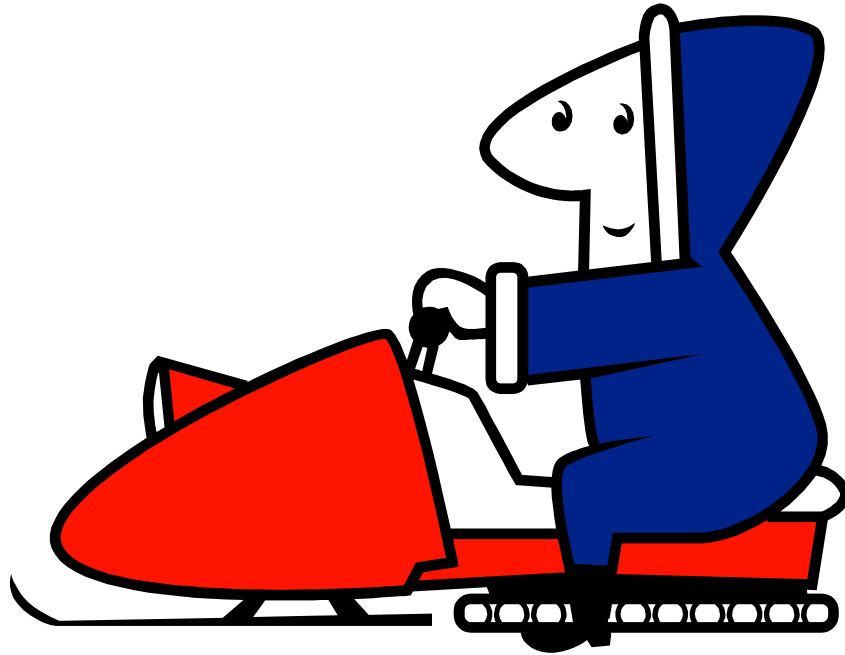
- Ambiguous Text**
  - Provisions Conflict**
  - Gaps - incomplete provisions or directions.**
-

# Case Discussion



# Case #1

Burg v. Zimmerman



# Case #2

State v. Cleary



# Case #2

State v. Cleary

- **4511.01 Traffic Laws - Operation of Motor Vehicles Definitions.**

“As used in this chapter..of the Revised Code . . . .

**“Operate” means to cause or have caused movement of a vehicle . . . .”**


# Case #2

## State v. Cleary

**New Offense of Physical Control Enacted**



**“No person shall be in physical control of a vehicle if, at the time of the physical control, the person is under the influence of alcohol....”**



**“Physical control” means being in the driver’s position of the front seat of a vehicle ... and having possession of the vehicle’s ... ignition key or other ignition device.”**

# Let's explore . . .

---

**Significant differences  
in each institution's  
“rules of the game”**

---

# Differing Institutional Roles

- **Legislature**



Seth Perlmán / AP

**Policy-Making**

- **Judiciary**



**Dispute Resolution**

# Differing Institutional Roles

## LEGISLATURE'S ROLE



Seth Perlman / AP

**Policy-Making**

# Differing Institutional Roles

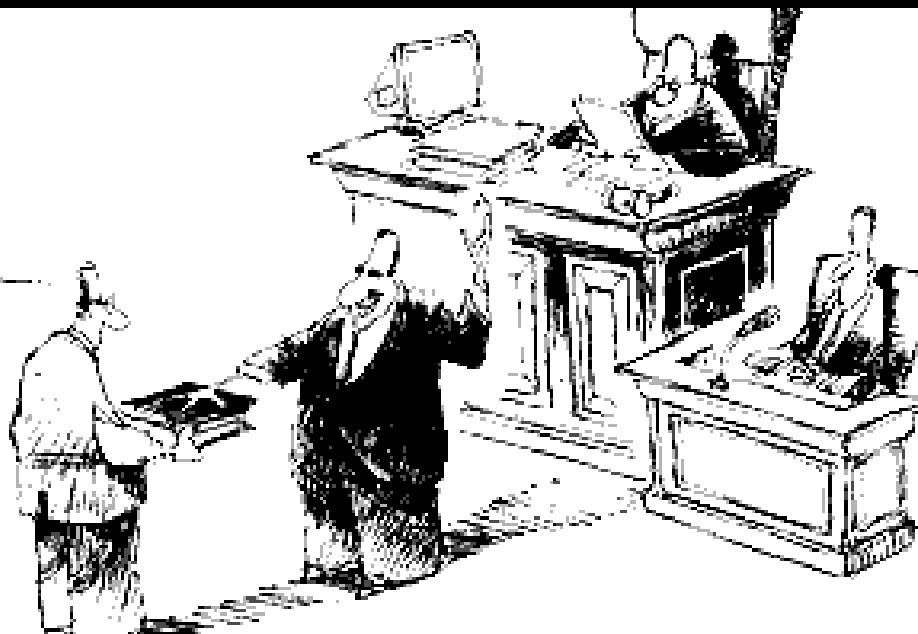
## JUDICIARY'S ROLE



**Dispute Resolution**

# The Judicial Process?

DO YOU SWEAR TO MISINTERPRET THE TESTIMONY, MISSTATE THE FACTS, AND CAST ASPERSIONS ON THE CHARACTER OF THE WITNESS, REGARDLESS OF THE TRUTH?



SWEARING IN FOR THE CROSS-EXAMINATION

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# Legislators At Work



*I don't care how much more exciting you think it would be, Rep. Stromski.*

*We are going to keep calling them committees, not splinter groups.*



WILEY 2003 6-8

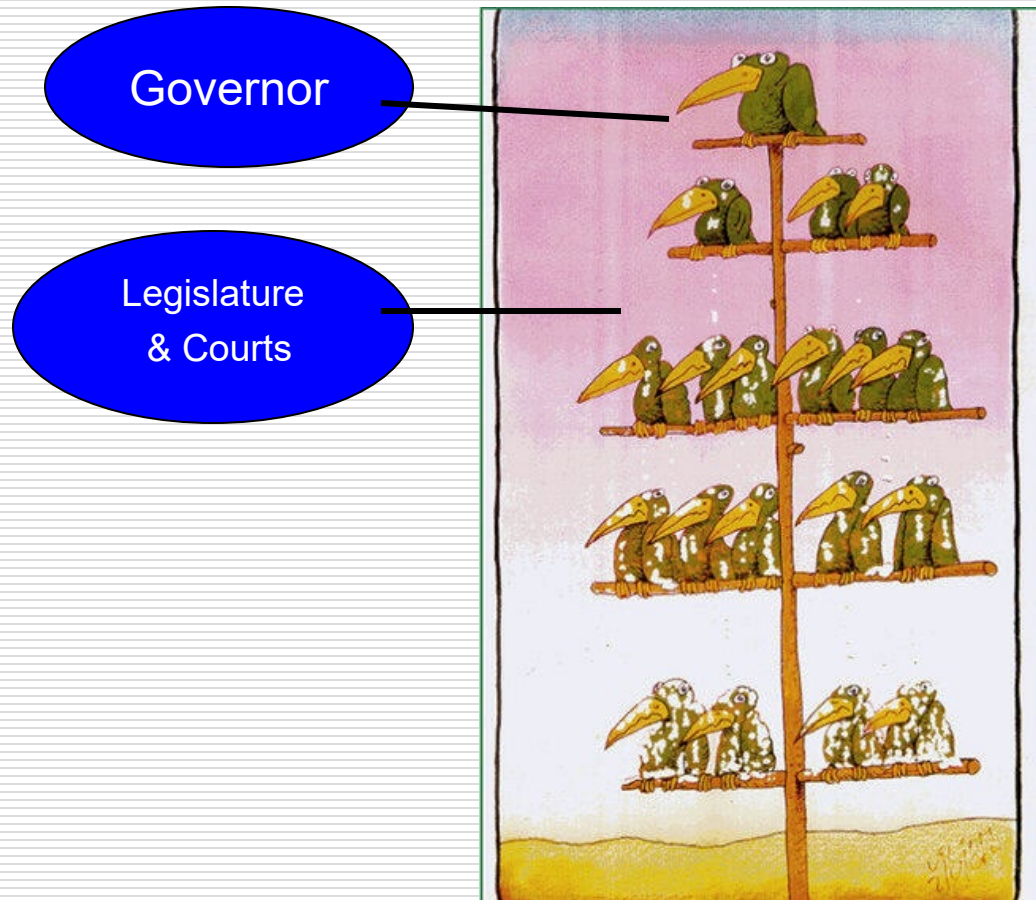
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# How Executive Branch views the Legislature and the Courts.

---



# Differing Institutional Roles

- **Legislature**  
-- Pro-active



Seth Perlmán / AP

- **Judiciary**  
-- Re-active



# Case #3

Seider v. O'Connell



# Sources of Law

Hierarchical order

---

- ❑ **Constitutional Law** - fundamental or higher law.
  - ❑ **Statutory Law** - legislative enactments.  
(including those of political subdivisions).
  - ❑ **Administrative Law** - rules and regulations made by administrative agencies.
  - ❑ **Common Law** – judge-made law.
-

# Institutional Differences

---

How do legislators get the *information* needed to draft or vote on a bill or an amendment?

---

# Institutional Differences

---

How do **JUDGES** get the information needed to decide a case?

---

# Case #4

State v. Maxon

Statute:

“No person, eighteen years of age or older, shall engage in sexual conduct with another, not the spouse of the offender, when the offender knows such other person is over twelve but **not over fifteen years of age ....”**

# Case #4

State v. Maxon

Minimum age

Maximum age

	<u>Minimum age</u>	<u>Maximum age</u>
<b><u>Original</u> wording</b>	<b>“over twelve” years</b>	<b>“not over 15 years”</b>
<b><u>Amended</u> wording</b>	<b>“thirteen years” or older</b>	<b>“Less than 16 years”</b>

# Differing Institutional Roles

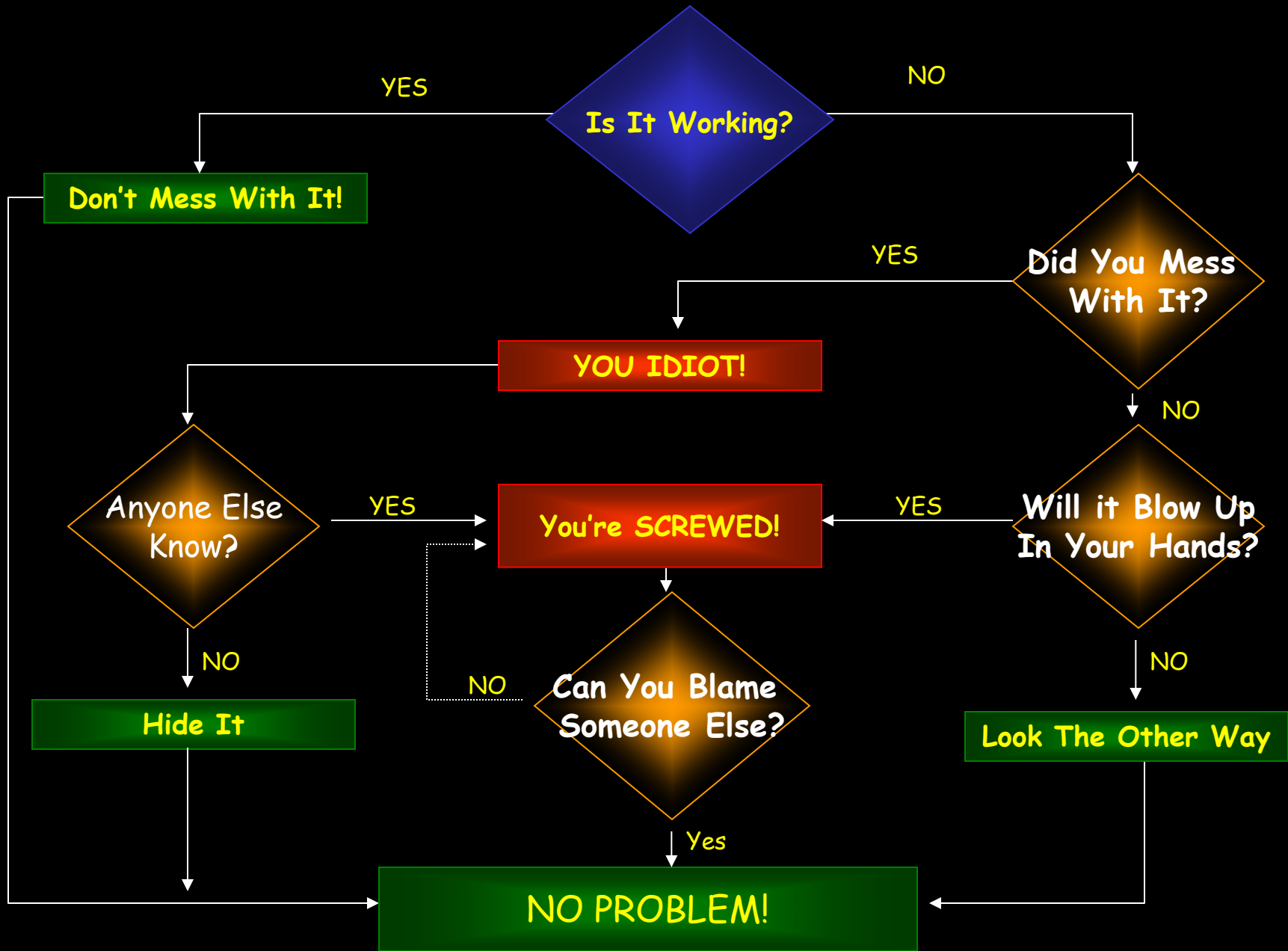
- Legislature –  
permissive  
decision-making



- Judiciary --  
mandatory  
decision-making



# Flowchart For Problem Resolution



# Differing Institutional Roles

- Legislature –  
permissive  
decision-making



Seth Perlman / AP

- Judiciary --  
mandatory  
decision-making



# Case #5

Hyle v. Porter

## STATUTE:

“No person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to either a sexually oriented offense or a child-victim oriented offense shall establish a residence or occupy residential premises within one thousand feet of any school premises.”

# Case #5

Hyle v. Porter

- **Rule of statutory construction:**

“A statute is presumed to be prospective in its operation unless expressly made retrospective.”

# Case #5

Hyle v. Porter

- **Constitutional limitation (Ohio):**

“The general assembly shall have no power to pass retroactive laws.”

# Case #5

Hyle v. Porter

## Possible Clarification

“This section **shall apply** to those persons who were convicted of [offenses] **prior to the effective date** of this section **and** to those persons who are convicted of [offenses] **on or after the effective date** of this section.”

# Case #6

State v. Kenmore



# Case #6

State v. Kenmore

- ORC §1.02(F) provides:

**'And'** may be read **'or,'** and **'or'** may be read **'and'** if the sense requires it.

# Case #6

State v. Kenmore

## Possible Clarification

Sec. 29.

(A) **Dumping** of refuse or waste matter in existing excavations or quarries shall be prohibited \* \* \* .

(B) **Burning** refuse or waste matter in existing excavations or quarries shall be prohibited \* \* \* .

# Case #7

State v. Futral



# Case #7

## State v. Futral

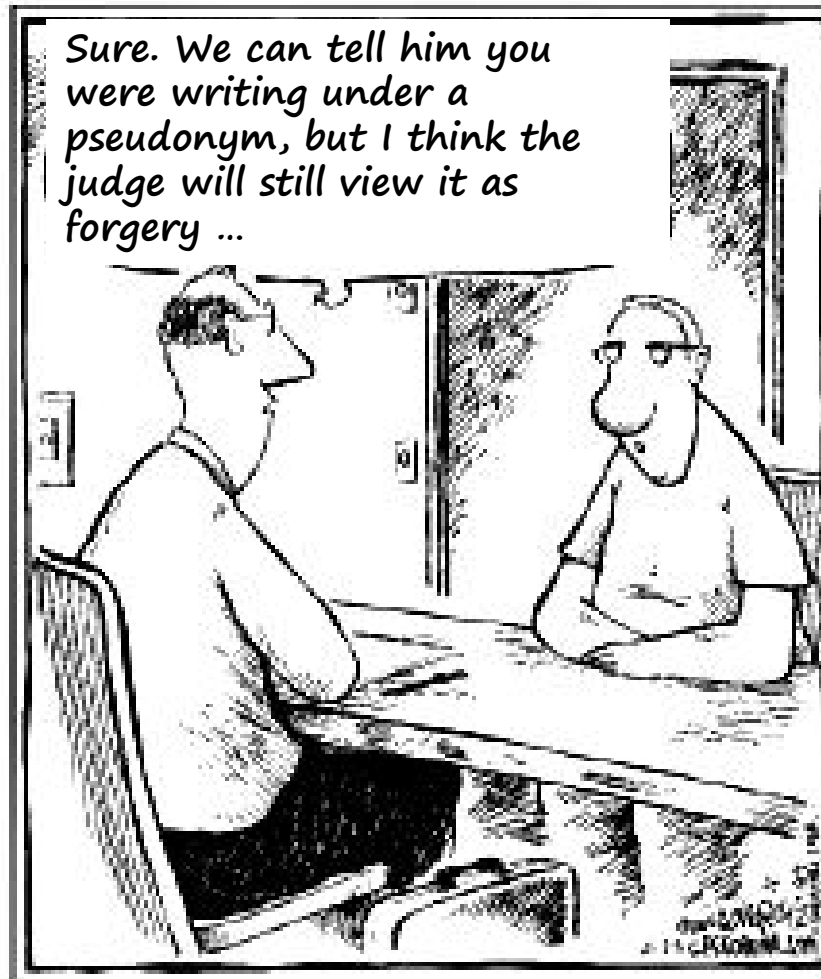
- “[O]ur path in this case is dimly lit by the existing statutory framework. No Ohio statute directly answers the question before us.
- For that reason, we have been required to fashion interstitial law, covering the gap between the existing law and the issue in this case by tugging at the edges of several closely related statutes.
- Therefore, I write separately to **urge the General Assembly to address the issues posed in this case.**”

# Goals of Presentation

---

- Gain better understanding of –
    - Key differences between legislative and judicial processes;
    - How judges decide cases when statutes must be interpreted;
    - How legislators can improve the “court-decision process” through the “law-making process.”
-

# *A Final Thought –* **Plain Meaning of Words.**



SPEED BUMP

# LEGISLATION AND THE JUDICIARY: HOW COURTS INTERPRET THE LAW

---

END

Midwestern Legislative Conference  
BILLD Program – August, 2025.

Robert R. Cupp  
Former Justice, Supreme Court of Ohio