

SO BE IT:

The art & science of decision-making in early childhood programs

Learning outcomes. By the end of this chapter, you can expect to:

- 1) Explain what a “letter of the law” or “legal” decision is.
- 2) Describe the history of how “spirit of the law” or “equitable” decisions came to be.
- 3) State your preferred way of decision-making: equitable, legal, or a combination of the 2.
- 4) Identify a decision-making dilemma shared by 80% of early childhood leaders.
- 5) State whether or not chronic depression is considered a disability covered by the ADA (Americans with disability act)
- 6) List and apply the 3 steps of rationally based, letter of the law decision-making.
- 7) Quote at least 3 equitable principles.
- 8) Describe and give an example of when you have used the decision-making process called: “thin-slicing”.

Imagine yourself, not as the busy professional you are today, but as a 12th century judge presiding over the Court of Law in the verdant countryside of feudal England. William, a tenant, who rents his farmland from a local lord, appears before you. The details of William’s case follow in the box below. What say you?

William’s case

The law says: Tenants, who rent property from the landlord, must pay their rent on time each season. Failure to pay on time will result in forfeiture of the land. William’s rent is due on the April 15th. William pays his rent on the 20th of April.

William appears before you, asking that he and his family be permitted to stay on the property.

As you consider what to do in William’s case, you may be reminded of similar situations you have faced. For example, you probably know Jasmine or someone much like her:

Jasmine, toddler teacher, is scheduled to start her day in the classroom at 6:30 am. On Monday, Jasmine arrived at 6:45, on Tuesday, she showed up at 7:05. Today, Jasmine appeared at 6:50. Jasmine’s team teacher, Rayneisha, is frazzled. Parents tire of waiting to talk with Jasmine. You would rather finish that grant application, than fill in for Jasmine to cover ratios for the 3rd time. As Jasmine breezes through the classroom door, she says: “Just change my starting time to 7 am. I can get here by 7, no problem!” What do you say?

As 21st century early childhood professionals, or 12th century judges, we are called on to make decisions as often as we take a breath. Decision-making is both a science and

an art. This article offers perspective on how to make decisions that we can live with, and move on.

Research on emotional intelligence (EQ) tells us that women, more than men, ruminate on decisions longer than necessary. A study of early childhood leaders reveals 80% are conflict avoidant. Taking a few moments to regain perspective on our decision-making processes may be helpful, given these findings. We all want to make decisions that “feel right” and will triumph over criticism. What constitutes a “fair” or “just” decision?

Would you like to hear the judge's decision in William's case? "Forfeit the property and quit the land", proclaimed the judge. William failed to obey the law. Breaking the law had a clearly articulated consequence: forfeiture. The judge did not take into account William's personal circumstances. He used a logical, legal, "scientific" approach.

What did it matter if William had paid on time for 5 years, was responsible for his wife and 11 children? So what if William traveled night and day to find a bridge still standing after the spring floods had washed out other bridges over which William traveled to deliver his rent? The "letter of the law" does not concern itself with individual circumstances. The "law is the law." Fairness is defined as applying the law the same way to every person. Administrator, Frances, confidently told me: "If I bend the rules for one person, I have to bend them for everyone. I don't bend the rules for anyone."

Try telling that to Jasmine: "Jasmine, arrive in time to be in the classroom with the children at 6:30 am." Jasmine is likely to fill your ears with all the burdens of her personal life: battery trouble with her 1991 Chevy, sick daughter, boyfriend problems, Mom with Alzheimer's. Jasmine will remind you how punctual she was before her husband divorced her, and she started feeling depressed.

ADA (Americans with Disabilities Act) alarm bells may ring so loudly, that their clanging overcomes your decision-making confidence. Reflection on the ADA reminds you that employees with chronic depression may need reasonable accommodations to perform essential job functions. Jasmine expects you to pay attention to all her personal concerns. Children, families, and team teachers need Jasmine to meet her professional responsibilities. What decision is fair?

With both William and Jasmine, making a decision in "the spirit of the law" may be more humane and appropriate than invoking the "letter of the law". When you make a "spirit of the law" decision, you take into account the "totality of the individual's circumstances". You look more deeply to find the root of the problem, to make a caring, compassionate decision. Whereas "letter of the law" decisions meet out impersonal and evenhanded justice, "spirit of the law" decisions, tailored to individual circumstances, are equitable. Making equitable decisions feels more like an art than a science.

Letter of the law (legal) decisions are expedient; spirit of the law (equitable) decisions take time and EQ. EQ, in a nutshell, is the ability to read people as well as we read books. Equitable decisions require us to use both EQ and IQ; legal decisions call more upon our IQ. Dr. Daniel Golman estimates that 80% of our decisions require EQ. This means that most of our administrative decisions utilize our skills of listening effectively and hearing non-verbal messages, while keeping our focus on the deeper goal: doing what is best for children and families.

Think how efficient your work would be if all your decisions could be made like a 12 c judge. Jasmine, like William, would be out the door without recourse. As emotionally intelligent 21st century professionals, we devote hours to accommodating individual needs. Is there a "middle path" between law and equity? Can equitable decisions take less time?

Come back to the 12th century with me to find some answers. In London, stood the Court of Chancery (later called the Court of Equity), where controversial cases like William's could be appealed. There, the ecclesiastical member of the king's cabinet decided cases using the spirit of the law. The Chancery Court was also called the "star chamber" because the ceiling paint in the hall was resplendent with stars. Under those stars, the Chancellor returned the property to William for having made a "good faith effort" in the face of an "act of God" (spring floods). As the Chancellor of Equity acted on William's claim, he used an artful decision-making process, drawing from an alternative definition of fairness.

Maxims, created in the Court of Equity, such as "making a good faith effort", are still in common parlance today. Equitable principles evolving from the Chancery Court include:

- ✓ Equity will not suffer a wrong to be without a remedy
- ✓ Equity regards substance rather than form
- ✓ One who seeks equity, must do equity
- ✓ Equity acts *in personam* (takes into account the individual's circumstances)
- ✓ Equity delights to do justice and not by halves

William, Jasmine and countless others over the centuries, have benefited from this "softer", more spiritual (Chancellors could call upon their theological understanding) decision-making process.

In the swirl of 21st century complexity, we stand, like the scales of justice, seeking to balance what is equitable with what is just. Often we feel blindfolded, unclear on the standards to use and troubled by unforeseen consequences of our decisions. We may yearn to be "back in the day" when decision-making was simpler., and the law was the law.

In fact, things were never simpler, nor were they ever difficult. We often must stand, holding 2 competing realities: fairness means taking individual circumstances into account, while upholding professional standards. In some situations, the objective, analytical decision-making process may be appropriate. In other situations, the compassionate, individualized process is more fitting.

How can we tell the difference? Traditionalists in decision-making theory counsel us to follow a 3-step process:

1. List pros and cons of the situation objectively.
2. Analyze the list: which side has the more substantial factors?
3. Make a logical decision in favor of the weightier side.

At times, this process still works. More than not, however, our decision will be challenged. We may hear that we failed to ask everyone's opinion before deciding, or we did not notify staff about an impending change. Letter of the law decisions often meet with resistance.

New research on decision-making invites us to take a 21st century approach to this age-old dilemma. According to Dr. Malcolm Gladwell, in [Blink: the power of thinking without thinking](#) (2005), our best decisions are made intuitively, in the "blink of an eye". Rumination,

according to Gladwell, can be counterproductive. Instinctively, we “know” what needs to be done. Our job is to trust our intuition, and take action without dilly-dallying.

Thin-slicing is not an exotic gift. It is a central part of what it means to be human. We thin-slice whenever we meet a new person or have to make sense of something quickly or encounter a novel situation. We thin-slice because we have to, and come to rely on that ability... (Gladwell)

Gladwell calls this decision-making process “thin-slicing”. We “thin-slice” when our “brain reaches conclusions without immediately telling us that it’s reaching conclusions.” The part of our brain that thin-slices is the “adaptive unconscious... the giant computer that quickly and quietly processes a lot of the data we need in order to keep functioning as human beings.” Another way of describing thin-slicing is the act of listening to our inner voice over the cacophony of self-doubt.

Of course, challenges emerge in applying Gladwell’s theory: How do I discern the sound of my inner voice over the thunder of other voices? Gladwell’s says we can: “Teach

ourselves to make better snap judgments”: get out there, expose ourselves to the things we do not know, to the people we have avoided, to the life experience we have yet to live. In the process, as we deepen our experience and bring light to our blind spots, we find the conviction of our inner voice. Perhaps, the spirit and letter of the can join hands at long last.

As early childhood professionals, we resolutely encourage children to value themselves and trust their own unique worth. What if we practice what we tell our children? Gavin de Becker, a security specialist, writing before the 9/11 tragedy counseled: “We have within us an intuitive power that stands ready to guide us through even the most difficult of circumstances.” So be it.

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