Federal Standards of Review V.B

Federal Standards of Review: Review of District Court Decisions and Agency Actions
Database updated April 2013

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Part One. Review of District Court Decisions
Chapter V. Decisions Committed to a District Judge's Discretion:
Giving Meaning to the Variable Abuse of Discretion Standard

B. Assessing the Exercise of Broad or Undefined Discretion

Many discretionary decisions are not as narrowly confined as those at issue in *Albemarle* and *Taylor*. When it comes to questions of trial process, Congress rarely articulates legislative goals or decisional criteria that define a clear boundary between permissible and impermissible choices or mandate generally applicable presumptions in the weighing of relevant factors. Many of these questions, as well as a number governed by common-law doctrine, are said to be committed to the "sound discretion" of the trial judge. *See, e.g.*, Piper Aircraft Co. v. Reyno, 454 U.S. 235, 257 (1981) (determining *forum non conveniens*); Cornwell v. Electra Cent. Credit Union, 439 F.3d 1018, 1026–27 (9th Cir. 2006) (management of discovery).

When the bounds of discretion are broad, appellate scrutiny is "necessarily … limited," *Taylor*, 487 U.S. at 336, and reversal generally requires a "clear abuse of discretion," a "definite and firm conviction" that the court below committed a "clear error of judgment," or some similar finding evidencing substantial appellate deference. *See, e.g.*, Am. Dredging Co. v. Miller, 510 U.S. 443, 455 (1994) (*forum non conveniens* finding); Nystrom v. TREX Co., 424 F.3d 1136, 1150 (Fed. Cir. 2005) (imposition on counsel of 28 U.S.C. § 1927 liability for excessive costs); Taucher v. Brown-Hruska, 396 F.3d 1168, 1172–73 (D.C. Cir. 2005) ("substantial justification" finding in Equal Access to Justice Act context); *Frazier*, 387 F.3d at 1259 (exclusion of expert testimony); FDIC v. Rocket Oil Co., 865 F.2d 1158, 1160 n.1 (10th Cir. 1989) (per curiam) (prejudgment interest determination). Reasonableness and relevance, two fluid concepts that gain meaning from the factual context in which they are examined, become the touchstones of review. "[S]ubstantial deference" will be accorded a district judge's decision if she has "considered all relevant public and private interest factors" and the "balancing of [those] factors is reasonable." *Piper Aircraft*, 454 U.S. at 257; *see also Taylor*, 487 U.S. at 336.

Although highly deferential, this standard does not preclude reversal. The Supreme Court's opinion in Clinton v. Jones, 520 U.S. 681 (1997), illustrates the point. The question there was whether the district court had abused the "broad discretion" accorded it to stay trial proceedings. *Id.* at 706. The plaintiff had sued then-President Clinton while he was in office for actions allegedly taken before his term began. *Id.* at 684. Although the district court denied a motion to dismiss on immunity grounds, it nevertheless stayed the trial proceedings ruling that "the public interest in avoiding litigation that might hamper the President in conducting the duties of his office outweighed any demonstrated need for an immediate trial." *Id.* at 687. The district judge also relied, in part, on the fact that the plaintiff "had failed to bring her complaint until" two days before the statute of limitations ran. *Id.* On appeal, the appellate court described the discretionary stay as the functional equivalent of a temporary grant of immunity. *Id.* at 706. Because it found that the President was not entitled to such immunity, it reversed. *Id.*

Rejecting the court of appeals' characterization of the stay, the Supreme Court reviewed the district court's decision for abuse of discretion. Preliminarily, the Court explained that district courts, "as an incident to [their] power to control [their] own docket[s]," are accorded "broad discretion" in deciding motions to stay. *Id.* at 706. It cited an earlier opinion in which it had described a trial court's discretion to grant or deny a stay as "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and

for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." Landis v. N. Am. Co., 299 U.S. 248, 254–55 (1936). The Court then noted that, "especially in cases of extraordinary public moment, a plaintiff may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted." *Clinton*, 520 U.S. at 707.

Turning to the public and private interest factors cited by the district court, the Supreme Court determined that the district judge "may have given undue weight to the concern that a trial might generate unrelated civil actions that could conceivably hamper the President in conducting the duties of his office." *Id.* at 708. This conclusion, the Court found, was premature. *Id.* At the time the stay was granted, there was "nothing in the record," "[o]ther than the fact that a trial may consume some of the President's time and attention," "to enable a judge to assess the potential harm that may [have] ensue[d] from scheduling the trial promptly after discovery [was] concluded." *Id.* The Court also noted that the lengthy stay took "no account whatever of the [plaintiff's] interest in bringing the case to trial." *Id.* at 707. Although noting that the suit was filed just short of the running of the statute of limitations, the Court nevertheless concluded that "delaying trial would increase the danger of prejudice resulting from the loss of evidence." *Id.* at 707–08.

Of course, in the process of reviewing a particular exercise of discretion, appellate courts often identify factors relevant to that decision. However, unless such factors are held to be exclusive or mandatory, they generally do not bind the lower courts. Rather, they merely provide "useful guidance." *See, e.g.*, Wilton v. Seven Falls Co., 515 U.S. 277, 282–83, 288–90 (1995) (describing nonexclusive factors guiding district court dismissals of federal declaratory injunction actions in favor of parallel state litigation).

Moreover, because trial courts often are granted broad discretion so that they can address "fact-intensive, close calls" that "utterly resist generalization," *Cooter & Gell*, 496 U.S. at 404, presumptions regarding the weight to be given a particular factor or set of factors over others are generally disfavored. Thus, for example, the Supreme Court in *Piper Aircraft* rejected the use of a rule of presumption, noting that "[i]f central emphasis were placed on any one factor, the *forum non conveniens* doctrine would lose much of the very flexibility that makes it so valuable." 454 U.S. at 249–50. This is not to say that courts of appeals are prohibited from articulating controlling presumptions based on the consistent practice of lower courts under their supervision, *see, e.g.*, Noonan v. Cunard S.S. Co., 375 F.2d 69, 70 (2d Cir. 1967), the perceived importance of the right at issue, *see, e.g.*, Daniel Int'l Corp. v. Fischbach & Moore, Inc., 916 F.2d 1061, 1064 (5th Cir. 1990), or some other principle of reason. However, such presumptions may well lead to the narrowing of discretion in opposite directions in different circuits. *See, e.g.*, Rowlett v. Anheuser-Busch, Inc., 832 F.2d 194, 199–200 (1st Cir. 1987), *overruled on other grounds by* Iacobucci v. Boulter, 193 F.3d 14 (1st Cir. 1999) (comparing the ways in which discretion to grant late requests for jury trials pursuant to Federal Rule of Civil Procedure 39(b) has been narrowed in opposite directions in different circuits).

In addition, discretionary issues that are unconfined by congressional intent or legislatively defined criteria may nevertheless be subject to more or less appellate scrutiny as a result of constitutional considerations implicit in the posture of the case on appeal. Review of rulings on motions for new trials in civil jury cases provides one example. Although it is generally understood that "motions for a new trial are committed to the discretion of the district court," McDonough Power Equip., Inc. v. Greenwood, 464 U.S. 548, 556 (1984), the actual degree of scrutiny exercised by some appellate courts varies significantly with whether the rulings are in keeping with or contrary to the jury's verdict. Thus, when a district court denies a motion for a new trial, appellate review may be "especially deferential because in that instance deference to the district court operates in harmony with deference to the jury's determination of the weight of the evidence and the constitutional allocation to the jury of questions of fact." Diaz v. Methodist Hosp., 46 F.3d 492, 495 (5th Cir. 1995); *see also* Baker v. Dorfman, 239 F.3d 415, 422 (2d Cir. 2000). In contrast, when a district judge, contrary to the finding of the jury, grants a motion for a new trial, appellate review often will be calibrated to ensure that "a judge's nullification of the jury's verdict" did not "encroach on the jury's important fact-finding function." Vander Zee v. Karabatsos, 589 F.2d 723, 729 (D.C. Cir. 1978). "Such … close scrutiny is required in order to protect the litigants' right

to jury trial." Lind v. Schenley Indus. Inc., 278 F.2d 79, 90 (3d Cir. 1960) (en banc); *see also* McNeal v. Hi-Lo Powered Scaffolding, Inc., 836 F.2d 637, 646–47 (D.C. Cir. 1988).

Footnotes

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