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ESSAY

CLERKS IN THE TIME OF CORONAVIRUS
(WITH APOLOGIES TO GABRIEL GARCÍA MÁRQUEZ*)

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I. THE “OLD” NORMAL

The relationship between judges and clerks is both close and critical. Clerks come to chambers as essentially strangers to one another, the staff, and the judge. Communicating with each other, learning on the fly, and having the ability to adjust to short attention spans are essential. Clerks quickly adapt to the pace of the work of chambers. If done right, the unit becomes cohesive as a small law firm, where the firm members constantly bounce ideas off one another and have the judge available for consultation. They learn that the judge’s assistant is the Mother Superior/First Sergeant, the keeper of chambers protocol and history, someone who never forgets their names or that of their children long after they

* The Nobel Prize laureate author of *LOVE IN THE TIME OF CHOLERA*, first published as *EL AMOR EN LOS TIEMPOS DEL CÓLERA* (1985), then released in English by Knopf in 1988 and made into a 2007 movie of the same name. Gabriel García Márquez, *LOVE IN THE TIME OF CHOLERA* (Alfred A. Knopf trans., 1988).

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have left the nest. This would describe the pre-pandemic work atmosphere of most, if not all, appellate chambers.

II. THE “DOG” DAYS OF ISOLATION

All of this changed dramatically in mid-March 2020, with the impact of COVID-19. Shutdown orders put our chambers group suddenly at a considerable distance. Three of my clerks are married, live in the area, and could shelter at home. My fourth clerk was living alone in an apartment. My initial concern for her situation was alleviated when she adopted a beautiful Husky mix from a local shelter. At that point, none of us knew how long our isolation from each other would last. It soon became apparent that this was not a week-long, or even month-long, hiatus. With my encouragement, the clerk with the new dog moved home to the Midwest and continued to work remotely from there. Two other clerks followed the canine acquisition process, leaving the last clerk with the two she already had.¹

A. *What Is Lost*

Individual chambers will lose the mentoring relationship between judge and clerks, and the ability among clerks to bounce ideas off one another and with the clerks in other chambers in the same building. This will be a long-term problem if the pandemic persists. Because the chamber shutdown occurred in March, this year’s clerks at least worked roughly half the year under normal conditions. Future clerks may start and even finish their clerkships physically distant from both judge and fellow clerks. The lack of contact with other clerks and judges can lead to impressions based solely on panel email exchanges, impressions that may not reflect the actual

1. Pet adoptions and fostering skyrocketed across the country during the shutdowns. See Cameron Oaks, *‘The call has been answered’: Animal shelters across the U.S. are emptying amid coronavirus pandemic*, NBC NEWS (Apr. 19, 2020, 7:00 AM) <https://www.nbcnews.com/health/health-news/call-has-been-answered-animal-shelters-across-u-s-are-n1186351>.

collegiality that exists between other judges and their clerks that would ordinarily result from personal contact. Remote contact also means there are no common spaces where clerks can gather and share ideas and concerns.

B. The Gift of Technology

Thanks to the remarkable efforts of our central court staff, we adjusted to life with videoconferencing. Judges were able to Zoom in or Google Meet with clerks on a regular basis. Appellate courts that livestream their oral argument sessions give clerks the ability to watch arguments in the cases they have worked on. Technology allows us to hold video arguments with counsel in their offices and judges at separate locations. A recent panel of our court included an out-of-state visiting judge who, sequestered in New York, feared she would only be able to participate by telephone. Not to worry—staff shipped a video camera, and she was able to join the panel on equal footing with the other members of the panel. All judges miss live arguments and the ease of interchange, particularly with well-prepared counsel. Counsel should employ the best technology available and not argue by telephone when the other side is on crystal-clear video. We are fortunate in the timing of the pandemic. It is difficult to imagine how this would have played out twenty years ago.

C. The Reverse Parental Lecture

Depending on our age, many of us have experienced having our children caution us about maintaining social distancing and sheltering at home—the reverse of the conversation we had with our own children the first time they took the car out for a date. At least one of my colleagues experienced this with clerks. Worried about their judge's age, they did not feel comfortable with the judge being in chambers. Fortunately, clerks seem perfectly comfortable working remotely. Some judges prefer to go

into chambers for video arguments for panels. The video equipment works better there, and there is no danger counsel will become fixated on the content of the judge's bookshelves or be distracted by a child wandering by into view.

III. THE NEW NORMAL?

Now several months into this new reality, we are left to wonder whether this may, in some fashion, turn out to be the new normal. The interviewing and hiring of clerks, a process that, virus or not, goes on from year to year, is likely to be done remotely for the duration. At this writing in late 2020, a committee of our judges is studying this possibility. A benefit of this for clerk applicants will mean they avoid the annual travel routine for interviews. I recently hired a clerk following a video interview who will work remotely for her entire clerkship. Unless air travel becomes much safer, I may never see her in person until clerk reunion time.

A. The Benefits

The necessity of remote work brought about some benefits. Dressing for office work, long commutes, searching for parking spaces, and expensive urban apartments were replaced by home workstations, and casual clothes. Judges and clerks who, pre-pandemic, faced long, stressful commutes now savor the time saved by working remotely. When off-camera, the hardest decision is often whether, or when, to move to shorts and flip-flops.

B. The Long-Term Normal

If living with this novel coronavirus has taught us anything, it is the peril of underestimating its strength and persistence. This virus is as stealthy as the slyest criminal, as nasty as the best NFL linebacker, and as potentially deadly as a rattlesnake on a remote hiking trail.

It may be with us for some time, which leads to considering the impact it could have on the nature of our physical arrangements. Judges and clerks might choose to make home their principal place of business. This, in turn, may affect the future buildout of courthouse chambers. One commentator described the post-pandemic office this way:

One-way corridors, buffer zones around desks, and clear plastic screens to guard against colleagues' coughs and sneezes may become office standards after coronavirus stay-at-home orders are lifted.²

C. *The Patience to Wait*

Dr. Florentino Ariza, the romantic protagonist of *Love in the Time of Cholera*, was passionately in love with Fermina Daza in their youth. When Fermina marries a wealthy, well-born doctor, Florentino is devastated. After many years, Fermina's husband dies, and Florentino shows up at the funeral to tell her he has waited "fifty-one years, nine months and four days" for her. Our wait to return to normal won't be nearly as long as Florentino's, but it will require much more patience than most of us are used to. The hope is that we, as the late-life love of Florentino and Fermina did, will get through to the other side with the knowledge that our relationships with one another will survive and may, with this experience, be even richer.

2. Jane Ross, *The End of the Open Plan Office?* REUTERS WIRE SERVICE, (May 5, 2020).