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A Judicial Clerkship 24 Years After Graduation: Or, How I Spent My Spring Sabbatical

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The career path of many law professors includes a judicial clerkship—typically, right after graduation. Almost all law professors have extolled the clerkship experience and have written letters of recommendation for students applying for those positions. While I fall into the latter category, I did not fall into the former—at least not until my recent sabbatical.

When I was a law student, I gave no thought to a clerkship, and none of my teachers encouraged me to pursue that route. (In fact, graduating in 1969 at the height of the Vietnam War, I thought mainly—like most of my classmates—about avoiding the draft.) Instead I immediately went to work in the litigation department of a large New York law firm. Since I teach civil procedure, that experience proved valuable, but over the years I came increasingly to regret that I had never pursued a judicial clerkship. And, until about a year ago, I assumed that opportunity would not come again.

Although I had taught law at Notre Dame for nearly twenty years, I had never taken a sabbatical—for a variety of reasons. Then it occurred to me that it just might be possible to spend a semester, relieved of teaching responsibilities, working for a federal judge. But how to do it? Fortunately, there were two persons on the federal bench, both with chambers here in South Bend, whom I knew personally and respected professionally. I hoped one or both might be receptive.

Before his appointment to the U.S. Court of Appeals for the Seventh Circuit in 1985, Judge Kenneth F. Ripple was for almost ten years a full-time colleague of mine on the Notre Dame law faculty. (And he still teaches one course per semester, despite his incredibly heavy judicial schedule.) Although he maintains an office in Chicago, his principal chambers are in the federal courthouse in South Bend. Judge Robert L. Miller, Jr., of the U.S. District Court for the Northern District of Indiana has also been on the federal bench since 1985; I knew him as a friend and neighbor while he was still a state court judge.

When I asked Judge Ripple and Judge Miller if they would be willing to take me on as an extra law clerk for a few months each, they were both agreeable and were even willing to arrange for office space and secretarial support. But

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limited federal funds would not allow them to pay me. I suggested that we might overcome the financial obstacles if I could arrange for a sabbatical leave from Notre Dame. I learned from officials in the Administrative Office of the U.S. Courts that procedures do exist for persons to work in the judicial system as volunteers. And my dean, David Link, helped me to make the necessary arrangements with Notre Dame for a semester's leave of absence.

That hurdle overcome, Judges Miller and Ripple agreed to work with me, and with each other, to make my short tour of duty as a law clerk as meaningful as possible. They tried to expose me to the broadest possible range of work, both substantively and experientially. In the end, the experience surpassed my hopes and expectations.

It seemed sensible to start at the District Court. The first day, I met with Judge Miller and his two regular law clerks; we discussed the various responsibilities of a clerk and the range of cases on the court's docket. Since there was no vacant office in the courthouse, I was given a table and a computer in the former grand jury room, which proved more than adequate. Perhaps the best thing about it was the absence of a telephone.

Over the next two months my duties ranged from the mundane—pounding the gavel at the start of the court day and announcing "Hear ye, hear ye"—to drafting memoranda and opinions; sitting in on status conferences; taking notes at trials; attending summary judgment hearings, bail settings, entries of pleas, arraignments, detention reviews, and sentencing hearings; helping to draft and revise jury instructions; and participating in a settlement conference with the local judge magistrate.

The cases were both civil and criminal, and they ran the gamut, including a two-week-long mail fraud trial, a civil rights suit by a motorist against a police officer (visions of Rodney King), and a high-profile action for injunctive relief by a local shopping mall whose anchor tenant had announced plans to close the mall's major department store. Because the subject range of cases in the federal courts is so vast, I had to explore areas of the law that I had not visited since my student days more than twenty years ago. I drafted at least portions of opinions dealing with a Social Security claim, a civil rights action involving questions of qualified immunity, and a sentence imposed under the federal sentencing guidelines. I also was given responsibility for opinions in several other cases which raised civil procedure issues that I actually knew something about, including both federal claims and a state breach-of-contract dispute.

After about two months, I moved on to the Court of Appeals. The average caseload for a judge on the Seventh Circuit now runs to about thirty regular sitting days per year, as part of a three-judge panel, with six cases assigned for oral argument each day. (Judges on the Seventh Circuit must also decide hundreds of unargued cases each year, participate in panels to decide motions in pending cases, and pass in various degrees on cases decided by other panels of the court. More on this later.) Since each appellate judge is entitled to three regular law clerks, this means each clerk is responsible for about ten argument days a year.

On my first day in his chambers, Judge Ripple gave me the six sets of records, briefs, and accompanying papers for the cases set for argument about

three weeks later, on what would be "my day." By the luck of the draw, these cases turned out to represent a good cross-section of appellate litigation: one direct appeal from a criminal conviction, four appeals in civil cases—two involving different federal statutes, and two diversity actions—and one "hybrid" case, a habeas corpus petition by a state prisoner. The judge and I discussed the issues in these cases briefly. He told me which cases required "bench memoranda," and which ones needed other forms of preparation. Then I was off to the library. Poring over the records and briefs, working in one unfamiliar area after another, I could understand the puzzlement that my research assistants must feel when I send them off to help me with my antitrust treatise without ever having taken an antitrust course.

On the day before oral argument, Judge Ripple and I drove together to Chicago, using the time to discuss not only the next day's caseload but a variety of other issues. We made final preparations for argument in the judge's Chicago chambers. At the arguments themselves, each judge's law clerk sits in the courtroom taking notes. The relative seniority of the three judges on the panel—at least this is true in the Seventh Circuit—determines which clerk gets certain special duties. The senior judge's clerk runs the tape recorder. As clerk to the middle judge on this particular panel, I kept time and signaled the expiration of time to counsel. (The junior judge's clerk has no special responsibilities.)

At the conclusion of the six arguments, the three judges met privately to discuss the cases and to reach a tentative decision on their disposition. By tradition, the senior judge assigns the responsibility for writing the majority opinion—two cases to each judge. After the judges' meeting, Judge Ripple and I met to discuss the two cases assigned to him, as well as a brief outline of the panel's reasoning for the disposition of the other four cases.

The next day, we talked in more detail about the contours of the draft opinions—their organization, the difficult issues raised, and so forth. Then it was back to the briefs, a close reading of the record, listening to the tape recording of the oral argument, and, of course, research in an unfamiliar subject area, to prepare a first draft of the opinion. After Judge Ripple had the chance to go over my draft, we met to discuss revisions; the document underwent several revisions and reviews until he was satisfied with it. It has always been Judge Ripple's practice to circulate that "final draft" among all the clerks. Afterwards, the clerks met—in what we called a "seance"—to discuss both substantive and technical changes. And then I met another time or two with the judge before a final version was finished. Now, almost a month after oral argument, his opinion was ready for circulation to the other two members of the panel, and I began work on the second case he had been assigned from "my" argument day. In the meantime, we received the other two judges' comments on the draft opinion in the first case. By the time we completed the drafting and revising process on the second opinion, my two-and-a-half-month appellate clerkship was over.

Like Judge Miller, Judge Ripple made an effort to show me—in a compressed period of time—the whole range of a law clerk's activities. It turned

out that one of the panels for the unargued cases was made up of three judges who maintained chambers in South Bend; Judge Ripple asked me to help him prepare for those cases, and then the panel invited me to sit in, along with two staff attorneys who normally participate in this process, while they discussed the disposition of one group of twelve cases.

Judge Ripple gave me drafts of opinions that other judges in earlier cases had circulated to him, and I helped write concurring or dissenting opinions. Since Judge Ripple was assigned as the chief judge of a motions panel during my stint with him, we also had the chance to discuss some of the particularly difficult cases that came to him in that capacity. Finally, I went with him and two of the other law clerks to Chicago for "their" argument days, so that I could see an even broader variety of cases and judges.

On those two trips to Chicago, Judge Ripple made arrangements for me to meet with the attorneys in the clerk's office and with the staff attorneys who work with the motions judges. Those looks behind the scenes taught me something about these frequently overlooked facets of appellate practice. I also enjoyed getting to know the other five law clerks in the two judges' chambers, including one who had been a student in my antitrust class at Notre Dame the year before. Talking with them about pending cases and other aspects of their duties helped to enrich my own experience.

Before I began my sabbatical, I had only a limited idea of the work that would be involved and what I would derive from the experience. I had no idea how much I would, in fact, learn. I gained not only a better understanding of the law clerks' role, some of which is described above, but also a better appreciation for the legal process and the nature of judicial decision making. If I had ever believed that court opinions were rendered like the pronouncements of the oracle at Delphi, I was disabused of that notion. Instead, I saw—and even shared in—the reflection and questioning and wrestling with competing values that eventually yield decisions on the difficult issues that judges must face. As a result of my experience, I have become the adviser to our school's clerkship placement program, and I intend to encourage as many of our students as I can to apply for these positions. And, naturally, I plan to share some of the specifics of the trial and appellate process with students in my civil procedure class.

A number of my friends and colleagues in the professoriat were skeptical when I described my sabbatical plans to them. Clerking is something one does at twenty-five, not at my midlife-crisis age. Perhaps they also thought the job would be somehow demeaning, or insufficiently challenging. But I can report that the experience was all plus and no minus; I could not think of any way to improve on it. Indeed, my own experience now leads me to encourage others—particularly those, like me, who have never done a clerkship—to consider a similar venture.

I don't know that it is important, much less necessary, to have a prior friendship with the judge you propose to clerk for. I suppose I would have felt somewhat diffident about "applying" to a stranger for a clerkship position. Similarly, I wonder whether a judge might be reluctant to take on a person

who is an unknown quantity; there has to be a careful balancing of personalities—both between judge and clerk and among the several law clerks—in judicial chambers. Before I began, it occurred to me that Judge Miller or Judge Ripple might be reluctant to bring in a more senior person who would come with more defined views than the typical law clerk, and who might not understand that—even though clerks talk about "writing" opinions—it is always the judge who makes decisions. In my case, this was never a problem. In my first week in his chambers, Judge Miller repeated to me a statement he makes to all his clerks: "I am the client, and my clerks work for me." I hope that other professors contemplating a similar venture can find a judge (or judges) with that much confidence, and with the willingness to cooperate in what is really an experiment for all concerned. For me, it was a wonderful experience, and I am truly grateful to Bob Miller and Ken Ripple for making it so successful.