



# FABLES IN LAW, CHAPTER 17

LEGAL LESSONS FROM  
FIELD, FOREST, AND GLEN

*D. Brock Hornby*



## FACE-TO-FACE IN COURT FOR THE FIRST TIME

Eventually the pandemic infection reached the forest glen. Hardest hit were the jails, due to the constant turnover of short-term, often unvaccinated, prisoners; cell-sharing because of overcrowding; and unavoidable close contact. The Hawks, who were responsible for bringing prisoners to and from court, resisted bringing prisoners to arbiter Owl for guilty pleas or sentencings on account of fear for their own safety and the necessary quarantine a prisoner must suffer upon returning to the jail. Owl, her staff, and the advocates likewise were not anxious to have close contact with the prisoners.

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*D. Brock Hornby is a Senior District Judge (inactive) on the U.S. District Court for the District of Maine. His "Fables in Law" have been appearing occasionally in the Green Bag for nearly a decade.*

So, like much of the outside world, the glen tribunal turned to video-conferencing for hearings and sentencings. The prisoners felt isolated. Although they were glad to avoid quarantine within the jail, there was no advocate to personally lay a hand on their shoulder or speak to them in person. Owl worried about the loss of humanity in the virtual process, where everyone was merely a voice and a face on a monitor.

But another dynamic emerged: Prosecutor Snake found himself looking directly at defendant Eagle and watching Eagle's facial reactions and emotions while arguing for a stiff sentence, whereas previously in court Snake had looked only at Owl and could not easily see a defendant's face. Defense counsel Fox looked head-on at the Badgers, the victims, as they voiced their pain, and directly at Eagle, rather than stealing only sideways glances as occurred in a courtroom. Eagle likewise saw the Badgers head-on, and the Badgers were able to look directly at Eagle. When Eagle or a Badger or the advocates spoke, Owl was torn. She wanted to look directly at the speaker to see facial expressions, but knew that if she did, she would not be looking at the camera and would appear to be looking elsewhere. Although she elected to look at the camera, she stole surreptitious glances at the speaker's video image.

*Moral: The social cues of a virtual courtroom require careful attention, and the perspectives they offer may be valuable.*

## FACING A FLOOD IN THE FOREST GLEN

Before the pandemic, forest glen legislators decided that prison officials were too stingy in granting compassionate release to prisoners on grounds of severe illness or family emergencies. So they gave arbiters parallel authority to order early release where there were "extraordinary and compelling reasons," although they required arbiters to assess factors like the risk of further crimes that an early-released prisoner might commit. When the pandemic settled in, hundreds of prisoners used the new law to ask Owl and Condor for early release. Mostly without the benefit of advocates' assistance, they claimed that their physical condition put them at extra risk of severe illness or death from the pandemic or that the pandemic had upended their families' ability to care for mates, progenitors, or offspring.



The sheer volume of petitions overwhelmed Owl and Condor. They found themselves hard-pressed to assess the accuracy and significance of the conditions or circumstances claimed by each prisoner. As it turned out, Owl and Condor also held different standards in their views of the seriousness of the prisoners' or their families' medical claims or other needs, as well as the risks to the community that early release of prisoners would entail. There were no guidelines to help them, and differences in treatment became obvious. The erratic administration of early release greatly impaired the goal of sentencing uniformity, and prison morale deteriorated as some inmates saw more lenient treatment accorded to other inmates but denied to them.

*Moral: Compassionate release decisions, especially during a flood, are slippery no matter who makes them.*

## PANDEMIC POLITENESS IN THE FOREST GLEN

Advocates in criminal cases generally liked the videoconferencing procedures the pandemic necessitated because they felt safer without having to visit the jails and endure close contact with their clients. Even in civil cases, the new procedures were more convenient because advocates could conduct their professional activity from home, and they felt less stress in virtual proceedings than they did in the physical courtroom.

But the need for law professors to alter how they taught trial practice to gophers at law school and the need for experienced advocates to alter how they mentored junior advocates had not yet taken hold. Instead, video courtroom behavior became more casual. Advocates could be seen looking out the window, drinking coffee or using water bottles; the video background was sometimes a bed or a family room; pets and offspring, toilets flushing, the clanking of jailhouse doors, or the shouts of guards or other prisoners could often be heard. Some witnesses attempted to testify from cars and breakfast nooks, often using only a cellular phone. Sometimes a witness appeared slouched on a couch wearing a baseball cap. Trials ground to a halt while advocates tried to send an exhibit to a witness testifying remotely from across the forest; and there were interminable delays between witnesses. Owl found herself subject to videoconference fatigue, staring at a video screen for hours, and enduring advocates who were insensitive to the length of examination and missed the cues advocates would notice in a physical courtroom. Owl's staff, and other participants in the virtual courtroom proceedings, also suffered.

*Moral: Easier for me is not necessarily easier for thee, and vice versa. In a video environment, great efforts are required to maintain both the dignity of legal proceedings and also the shared commitments to efficiency and mutual respect that come from everyone being in the same boat, or in the same courtroom, until a proceeding is completed.*



## HOW THE PANDEMIC PULLED IN THE CONDOR AND PUSHED OUT THE OWL

Although the Vultures regretted the lack of personal contact that video procedures entailed in their appellate court, they were mostly comfortable with the change in format by which advocates and each of the Vultures appeared remotely at oral arguments. It did not greatly affect the appellate process. But Owl, a trial arbiter in the forest glen, had become comfortable with conventional courtroom procedures and found the video changes disruptive. Owl learned to use videoconferencing, create a dignified background for her video appearance, and look directly at the camera. Nevertheless, she remained challenged by the new technology that had supplanted the courtroom, and thought it impaired the dignity and solemnity to which she was accustomed.

Condor, on the other hand, was a younger and more flexible trial arbiter. He loved experimenting with and improving on the new technology. He became convinced that it created efficiencies, savings, and opportunities that should outlast the pandemic. He experimented with using it for trials, even jury trials, and argued for its continued use after the pandemic ended; some thought he was infatuated with it, but a significant number of advocates supported his initiatives. Owl was aghast at the direction Condor was pursuing. The trend played a role in her decision, like some of the older advocates, to retire earlier than expected.

*Moral: Change is inevitable, but it can be harder on legal veterans.*

