

GRIEVING AND LEARNING IN SOLITARY CONFINEMENT: SOME UNCANNY PARALLELS

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I lost my beloved mother on May 3, 2020, right in the heart of the COVID-19 crisis. My mother was 100 years old. She lived a long and eventful life. She was an amazing role model and inspiration. She left a wonderful legacy. Moreover, she died as she had always wanted to – at home, without a lingering illness. Perhaps most importantly for me, and unlike so many in these COVID times, I got to see her to say goodbye. In my darker moments, I force myself to focus on all these blessings and that sustains me. That is because what happened in the aftermath of her death, from her funeral to the mourning process, was, to say the least, less than ideal. In truth, it was brutal. Grieving in solitary confinement can be cruel. Grief is a time when we crave connection with others for comfort the most; yet during COVID times, it is denied to us. The COVID version of a funeral which is, let's be honest, really only a graveside burial, is restricted to a handful of people standing apart, appropriately socially-distanced, far from the bereaved, unable to touch, kiss, hug, or console. Out-of-town family members are not entitled to attend due to travel restrictions and quarantine requirements. They must rely on Zoom technology to give them a peek into the ritual of saying goodbye to a loved one. The ceremony is brief, almost perfunctory, with many of the usual sacraments pushed to the wayside. After all, there are so many to bury these days and because the service takes place outside, a damp and rainy day – the weather the day of my mother's funeral – does not bode well for a long service. As hard as all this was to bear, it is perhaps the image of men in hazmat suits, taking the place of pallbearers, who brought my mother's casket to the grave, that continues to haunt me.

Coming home after the funeral was among the strangest moments of my life. I was well accustomed to the ritual of walking into a house of shiva (shiva being a week-long mourning period in the Jewish religion), with mirrors draped, and the presence of low, hard chairs on which the mourners sit. There was none of that. But, more poignantly for me, there was not the familiar house full of friends, family, colleagues and

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neighbours all there to help me deal with my profound loss. For anyone who has experienced it, shiva is an incredibly cathartic ritual. Rather, the feeling I experienced at coming home to my empty house was that of being left to fall off a cliff. I felt loneliness and nothingness. This at a time when all I craved was community and connection.

What, you may ask, does all this have to do with law and learning in the time of pandemic. What relevance is all this to legal education, particularly the type of legal education we will be offering in these pandemic times? In reflecting on my experience of grieving in what I call solitary confinement, I find many uncanny parallels with the legal education we will be experiencing as teachers and students in the coming academic year.

The word we now use to describe the environment of legal education in pandemic times is “remote”, as opposed to “on-line”. And although remote seems a softer, more palatable way to describe a new way of delivering legal education, it is, like my situation of grieving, less than ideal. Most law professors are going to be spending considerable time this summer thinking about ways to adapt their courses to this remote environment. Regrettably, some will simply replicate over Zoom what they ordinarily do in the classroom. Others will be more imaginative and attempt to incorporate various modes of teaching remotely throughout their class periods, ranging from pre-recorded capsules, time for Q and A using the Zoom chat function, and small group work in Zoom break-out rooms. In all cases, however, there will be noticeable changes and a risk that much will be lost.

Teaching to the class as a whole, I know I will lose the ability to gauge my students’ interest, understanding and engagement. After all, with so many students reduced to small icons on my screen, I will not be able to follow their nodding heads, quizzical expressions or make the usual eye contact that enables me to tailor my lecture to their needs.

Moreover, while those in charge of remote learning try to show us that there are on-line equivalents to everything we do in the physical classroom, one need only look superficially at Zoom break-out rooms to see how this is not the case. Can a group of five students put randomly into a break-out room on a screen truly collaborate on a problem? Is this the same as working physically in the classroom, especially when some of the students do not turn on their video feed for reasons of privacy or

poor internet connection? And what of the students who are not following the course synchronistically? How do they work collaboratively with their classmates?

Perhaps most importantly, I fear we will lose precious moments of informal learning that come about in less conventional sites outside the classroom. Here, I reflect on the wise teachings of one of the greatest pedagogues I have ever known – Rod Macdonald. Macdonald rightly taught us that our view of legal education is too narrow if we think it occurs only in the classroom. Rather, he caused us to understand that it occurs both inside and outside the classroom, and indeed the faculty, formally and informally, in a variety of sites and often in implicit and inferential ways. In the world of remote teaching, it is this precious informal learning that I fear we will lose. I know I will lose the last-minute before-class chat with my colleague teaching the same course as me in the hallway outside of our respective classrooms. I will so miss the after-class cluster of students who stick around to ask questions, raise issues and, most importantly, listen to, and learn from, each other. What I will miss, and what I fear we will lose, are the precious connections that we traditionally make in all the informal and unlikely sites in which we learn. I fear we will lose our nature of a “community” of learners. I fear we will lose exactly what I lost in my grieving process – connection and community.

If I learned anything from my mother, it is that we need to view the cup as half full and not half empty. In that vein, there are surely good things that will come out of remote teaching, some of which will endure even after we return to the physical classroom. History shows us that humankind often uses crises as opportunities. COVID-19 will be no exception. I am willing to accept that remote learning has many benefits. For instance, since we will be recording our remote teaching sessions, it will allow students a second look, an ability to go back, re-listen and review what was taught which will, it is hoped, lessen misapprehensions. The asynchronistic aspect of remote learning will also allow those with time constraints, due to childcare responsibilities for example, to learn at times more convenient to their schedules. Moreover, some early studies show that in a Zoom environment, there is greater “participation” from students via the chat function and that students, who would have been too shy to have raised their hand in class to ask a question orally, which for some is a highly anxiety-laden exercise, are chatting away, writing questions and

comments in the class chat. Finally, getting students used to listening to pre-recorded capsules might help pave the way for many of us to institute some form of a flipped classroom when we return to the physical lecture hall, where class time is used more for applying knowledge rather than just acquiring it.

Moving beyond the classroom to the broader legal profession and judicial system, some are touting the pandemic as the push our antiquated and sluggish court system needed. On May 20, 2020, the Canadian Institute for the Advancement of Justice (CIAJ) featured a special webcast by the Chief Justice of Canada, the Right Honourable Richard Wagner, and Professor Richard Susskind entitled, "Will COVID-19 Be the Catalyst We Were Waiting for to Modernize the Courts?" In a nutshell, the thesis is that the pandemic could push the courts to become more on-line which would, in turn, transform litigation, the legal system and offer the public better access to justice. At a time when the Supreme Court of Canada, in its 2014 decision of *Hyrniak v. Mauldin*, proclaimed that, "[e]nsuring access to justice is the greatest challenge to the rule of law in Canada today", better access to justice would be a wonderful fall-out of this crisis.

Even for those who are not religious, it is at times of life cycle events, such as birth, marriage and death, that we often turn to religious ritual and custom for comfort and community. In the Jewish religion to which I belong, kaddish is the mourner's prayer that one recites at the graveside to conclude the burial ceremony. It is the also the prayer that is recited nightly during the week of shiva that follows the funeral. However, the kaddish prayer requires a minyan to be recited, namely, a quorum made up of a gathering of ten men in the orthodox tradition (or ten men and women in conservative and reform traditions). Because there was not the requisite quorum at my mother's funeral, the mourners were denied the privilege of saying kaddish for her.

At first, I was quite upset that my Congregation was not seemingly able to "pivot", as we have all been expected to do during the COVID crisis, in order to recognize the existence of a minyan over Zoom so that mourners could say kaddish. When I demanded to know why this was the case, I was told that a minyan requires all ten people to be in one and the same place. And with Zoom, we are not in that same place. While I would have greatly appreciated the ability to recognize a Zoom minyan so that I could have recited kaddish for my mother, after a time of reflection, I have been

able to rethink my position. If we recognized a Zoom minyan, I realize that we would be acquiescing to the view that everything we used to do in person can now be replicated via remote platforms. While that may be true for some things, I think that would be propagating the wrong message. Universities cannot assume that we will be able to do remotely what we did face to face. Yes, as pointed out earlier, some things will be better and we need to hold on to those things. But we must also recognize that in a remote environment, some things risk being lost. While students will not lose out on information, they risk losing a necessary sense of connection. And while they might not lose out on the acquisition of the skills of legal research, writing and analysis, they will likely lose out on a sense of community. Prayers that require a minyan do so precisely because we recognize that we need community. For the same reason, classrooms exist so we can be what we are meant to be – a community of learners.

When I lost my mother, I grieved not only her loss, but the loss of connection and community COVID foisted upon me. We must all be conscious of the loss of this very same connection and community that remote teaching risks entailing. Both law professors and law students must use all the imagination and energy they have to mitigate those risks until one day, we may be together again, learning formally and informally the great lessons of the law.