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## WHEN THE TOWERS COLLAPSE OUTSIDE YOUR WINDOW: TEACHING LAW IN THE AFTERMATH OF 9-11

*Tanina Rostain\**

I now teach law in the shadow of death. Nine blocks from my law school several thousand people lie buried in a mass grave. Considering that so many of our students worked as interns in the World Trade Center, lived in close vicinity, commuted through the plaza, and serve as firefighters and police officers, we were extraordinarily lucky: We did not lose a single one. But there are missing family members, friends and at least three graduates. And hundreds of our students—and not a few of my colleagues and coworkers—witnessed the gruesome events of September 11 first hand on their way to the school that morning.

Our building was without power, water, telephone or other amenities for more than a week after the events. A month later, some services are still intermittent, despite the tireless round the clock efforts of providers in the City. As you look downtown from the corner where our law school stands, the shape of the enormous pile of debris has changed over the past weeks: Earlier, two jagged gothic shards of the Towers jutted hundreds of feet into the sky. Now it is harder to make out the disaster site, except when evening descends, and huge bright lights illuminate the area. Smoke still wafts up from the area, and sometimes, when the wind shifts, the air around and inside the school smells acrid. (When the smell drifts through, people around school exchange explanations about which building remnants are currently being demolished and removed.) Fire trucks, police cars, construction machinery, tow trucks, Con Ed trucks, AT&T trucks, temporary Verizon phone banks and emergency generators clutter the streets and sidewalks. Men wearing construction hats and facemasks are a routine sight, and work identification card necklaces have become a necessary fashion accessory for men and women. Walking from the subway station, it is difficult to leave the streets and enter the building. It is even more difficult, once inside the building, to go back outside. After a two-week hiatus, we were able to start teaching again.<sup>1</sup>

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<sup>1</sup> Tanina Rostain, Professional Commitments in a Changed World, 70 *Fordham L. Rev.* 1811 (2002).

The events of September 11 created a host of challenges for New York Law School. Most immediately, we were faced with communication and safety challenges. Given the practical disruptions that resulted from the attacks, including in particular the failure of our email servers, our first imperative was to find means of contacting our students and staff to determine whether they or their loved ones had been harmed and to provide them with information about the school. We also needed to ensure that our students felt safe coming back into our building. A second and equally pressing imperative was to mobilize resources to address the grief and trauma suffered by the members of our community. A third set of challenges were pedagogic: We needed to consider how we would get back to teaching. What should we say when we resumed our classes? What other forums could we create to teach and think about ongoing events? Finally we faced challenges—or better yet in this case, opportunities – that related to our commitment to public service. Like so many others, members of our community (students, staff and faculty) felt a powerful impulse to participate in relief efforts. Our aim was to channel these impulses into responses that tapped our professional expertise and would pave the way to longer-term commitments to public service.<sup>2</sup>

#### SAFETY AND COMMUNICATION CHALLENGES

In the hours and days immediately following the attack, communication and safety issues were, of course, the most pressings. With our building inaccessible and our server down, we had no systematic way of contacting staff, colleagues or students. Members of our deans' office spent countless hours in the first days tracking down phone numbers and alternative emails stored on home computers in an intensive effort to account for everybody. Many faculty and students—having little more to do than sit at home and watch the television news—also joined in these efforts. Within days, too, our administration had reestablished our Internet site on an off-premises server so we could coordinate and centralize communication with our students and each other.

During the first week, the administration's energies were focused on resuming classes quickly and getting as many students as possible to return to school. To that end, it was necessary to check that our building was structurally sound, get electrical power and other utilities functioning without interruption and assure ourselves, as best we could, that the air quality did not present health risks. When the doors reopened, we wanted to be able to convey a clear unequivocal message: The building was safe; we were glad to be back together; and we were ready to deal with the needs

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<sup>2</sup> In all these areas, we were fortunate to enjoy the strong leadership of Richard Matasar, our dean, who worked tirelessly from the moment the first Tower was hit to fashion an appropriate collective and institutional response to the attacks.

and concerns occasioned by the events. (Students' practical needs ran the gamut: Some had lost their books fleeing on September 11<sup>th</sup>. Some were not able to get into their apartments, which were in the affected zone. Many had lost part-time jobs and internships. Many also had transportation difficulties as a result of suspended services.)

During the subsequent months, we continued to deal with service interruptions, street barricades, air quality issues, and intense and disruptive street noise and activity. From one day to the next, we could never be confident that any of these problems had been permanently resolved. Throughout this period, the Dean and the administration instituted an expansive open door policy and made communication in every available venue (including town meetings, informational posters, emails and our website) a consistent priority so that all members of the community were regularly informed about issues as they arose.

#### GRIEF AND TRAUMA

It was all too obvious that the events of September 11 would create intense psychological challenges for the members of our community. When our faculty first reconvened in the building, mental health professionals were on hand to talk with us individually and collectively about our experiences and reactions and the issues we would likely face with our students. Throughout the semester, our student services office continued to offer onsite and offsite counseling services for students, faculty and staff. Thanks to the dedicated efforts of mental health professionals in the community, most of people who needed counseling or support were able to obtain assistance without charge. As members of the staff and faculty, we had as a central goal to help students and colleagues set aside inhibitions about taking advantage of available services. Our aim was also to address and cabin psychological issues so that we could return to teaching in the classroom.

At the risk of gross oversimplification, psychological reactions revolved around three basic feelings: trauma, grief and fear. Many members of our community, including, in particular, those who had witnessed events first-hand, were traumatized. It is fair to say that all of us experienced tremendous grief. We also suffered collectively from pervasive anxiety that similar events would occur again in our proximity.

By our own assessment, our efforts to address the practical and psychological needs of our students met with substantial success. Although we initially anticipated that upward of two hundred students were at risk of not returning to school after 9-11, only about twenty-five withdrew from school or took a leave of absence. Despite this high rate of retention, we recognize in hindsight that there were occasional lapses in coordinating needs with available services and situations in which we failed to make timely interventions.

## PEDAGOGIC CHALLENGES

For members of the faculty, some of the most fundamental issues were pedagogic: How did we resume teaching? How did we enable our students to return to the study of law? How did we focus on teaching ourselves? What did we say at the beginning of the first class session? During our initial collective discussion, three basic approaches emerged, which I loosely label the “stoic”, “empathetic” and “recommitment” approaches.

Several faculty members argued for taking the “stoic” approach. They suggested that the best way to start again was to acknowledge the recent events briefly at the outset of class and then move to a discussion of class materials. These colleagues emphasized that we were not equipped to address the psychological issues that might arise so that it would be best for all to return as quickly as possible to substance.

Others argued that the best approach was “empathetic” and suggested that the first session of class be devoted to open-ended discussion of the events. According to this view, students needed to share their feelings and experiences of that day before they dove back into their studies. Unstructured conversation would provide an opportunity for necessary catharsis.

A third approach, compellingly articulated by my colleague David Chang, was to focus on “recommitment.” This approach sought to place recent events within a framework of discussion that would allow the students (and faculty) to recommit themselves to the task of learning (and teaching) law. The aim was to engage in a collective exercise to remember why law still “mattered.” (It is easy to forget now, but at the time a deep feeling of irrelevance attached to everything and anything not bearing directly on the attacks.)

Each of these basic approaches was adopted by some of the faculty. Whether a particular approach turned out to be successful often turned on the individual teaching style of the faculty member, but the basic benefits and drawbacks emerged in our subsequent discussions.

The “stoic” approach had the important virtue of allowing students (and faculty) to stop focusing on 9-11. Shifting to a discussion of the substantive subject matter of the class offered welcome relief from the constant preoccupation with the attacks and their aftermath. A drawback, though, was that for some number of students it was impossible to set aside the recent events and focus on seemingly remote legal issues.

The empathetic approach proved to my surprise the most risky. I was initially drawn to this approach because it promised to provide an outlet for the intense desire, nearly universally felt, to talk about the events. As it turns out, this approach probably presented the greatest problems. While it accommodated some students’ urgent need to talk about their experiences and feelings, it required other students, who were similarly experiencing intense and complex emotions, to listen. Students who spoke might have

experienced the discussion as cathartic, but their auditors, a captive audience, were in danger of becoming, in the phrase of one mental health consultant, “re-traumatized” by the conversation. During a sustained period after 9-11 many of us – staff and students alike – had to expend significant psychological energy to manage our anxiety and not allow it to become overwhelming.<sup>3</sup> Listening to others express their worries and fears made this task all the more difficult.

In my assessment, the “recommitment” approach turned out to be most effective. The aim, under this approach, was to structure a conversation so that students could incorporate recent events within the broader framework of their life experiences and long-term goals, thereby allowing them to “recommit” to the career paths they had previously chosen. We asked our students to consider whether their desire to be law students, learn about law and practice law had changed since September 11<sup>th</sup>.<sup>4</sup> Pursuing this line of questions allowed students to reflect on how their earlier choices and aspirations continued to be important even after 9-11.

In my class, I posed the problem in terms of my own experience: I told my students that as I had sat watching rescue workers converge on Ground Zero, I began to entertain serious doubts about my career choice. Perhaps my mother had been right all along in insisting that I should have become a doctor. Medical personnel and rescue workers were certainly what were needed now, not lawyers—or so it seemed. In response, several hands shot up, as students eagerly sought to argue to me that being a lawyer was more important than ever. One student pointed to the centrality of law in our democratic institutions, another to the importance of law in international responses, a third to the anticipated legal needs the victims. We were back into a discussion of the different roles of lawyers and the legal profession, and it was not difficult to effect a transition from this discussion to the duty of confidentiality owed by lawyers to their clients (which is where we had left off in the syllabus).

While I used my own reactions as a pedagogic device, the discussion also helped me to recommit to professional choices I had made. As I stood before my class for the first time after 9-11, I had to struggle not to be overcome by emotion. Intense grief, which was still very near the surface, was mixed with a surge of relief that my students – some ninety of them – were sitting before me, apparently unharmed. As the discussion progressed, and students articulated the reasons why the study and practice of law continued to be relevant, I was reminded (as were the students listening in the class) of the importance of our shared work. In the early

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<sup>3</sup> I often felt that my job during this period was to try to absorb more anxiety from my students than I projected.

<sup>4</sup> See “9-11 – Excerpts from Faculty Messages to Students at <http://nys.edu/content.php?ID=858> (message from Professor David Chang) (last visited on May 10, 2002).

days it was difficult to see past the immediate devastation of the attacks, but the students' visions of the role of lawyers over the longer term allowed us all to feel some measure of hope for our institutions and society.<sup>5</sup>

In addition to pedagogic issues inside the classroom, we were faced with other practical dilemmas. One issue involved scheduling: Should we postpone exams until after the winter break or try to cram make-up classes into our already full schedule? As a consequence of the attacks, we had lost six class days. The Dean decided almost immediately that our students were best served if we adhered to our original exam schedule. As he emphasized, it was important to the extent possible to fulfill students' initial expectations; the winter break would provide much needed un-pressured time with family and friends; and we would be able to return for the spring semester having obtained some closure on the fall. In hindsight, the decision to adhere to our original exam schedule was the right one. While the additional required make-up classes proved something of a burden on students (and finding time and space for the sessions a logistical nightmare for our administration), we profited from a real break during the winter holidays and the opportunity to start anew in mid-January, consistent with our original pre-9-11 timetable.

A second question the faculty had to consider was whether to provide grade relief to our students, as our mental health consultants advised. After some exploration, the faculty concluded that it should be provided to all students. (Adjudicating claims for grade relief on a case-by-case basis was obviously out of the question.) Under the system we devised, every student was permitted at the end of the semester to convert one passing grade into a "pass." (We also shared an informal understanding that whatever necessary accommodations would be made for our part-time students in the uniformed services involved in relief efforts and crime investigation so that they would be able to remain in school.)

#### PRO BONO RESPONSE

The need to re-commit emerged as well in various initiatives that were not purely pedagogic. On September 21<sup>st</sup>, even before classes had resumed, the school hosted a meeting to coordinate pro bono responses to the legal needs created by the disaster. The meeting, convened by Associate Dean Stephen Ellmann, was attended by numerous representatives from other law schools, public interest law organizations, law firms, and the city bar.<sup>6</sup> In the subsequent weeks, New York Law School participated in various institutional and individual efforts to offer assistance. The school offered

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<sup>5</sup> The recommitment process was furthered through vehicles outside the classroom as well. Over the course of the semester, we held several "teach-ins" to address the various domestic and international dimensions of the attacks.

<sup>6</sup> See Minutes of September 21, 2001, Meeting of the September 11 Law School Pro Bono Coordinating Committee at [www.nyls.edu/content.php?ID=753](http://www.nyls.edu/content.php?ID=753).

space and library access to lawyers and legal services organizations that had been displaced from their offices. It also created a clearinghouse for legal and non-legal volunteer opportunities through its Office for Public Interest and Community Service. In addition, individual faculty, students, and alumni pursued various pro bono initiatives.<sup>7</sup>

We have also sought to translate these responses into more sustained pedagogic opportunities. In particular, we have added a new clinical offering this spring, "Civil Legal Services in a Time of Critical Need," that provides students the occasion to assist in providing legal services to financially needy victims of the attacks. In addition, we have launched a project to provide corporate legal services to distressed small businesses in the neighborhood,<sup>8</sup> with the expectation of turning the project into a curricular offering.<sup>8</sup> Our hope is that by integrating these various efforts into the pedagogic mission and institutional framework of the school, we can help students locate generative possibilities in the gruesome events of September 11.

#### CONCLUSION

Looking back some eight months later, the attacks seem almost remote. Downtown New York has taken on a semblance of normality, as has our law school, which is back full swing in the business of writing about and teaching law. Formally, the attacks and their aftermath have been incorporated into our scholarship and curriculum. Papers presented at our weekly faculty scholarship luncheon have regularly dealt with the legal ramifications of the events. During a recent day devoted to faculty presentations, many of the talks focused on the implications of September 11<sup>th</sup> for international law, civil rights, family law, criminal law and law practice (among other areas). Changes in our syllabi and new additions to our curriculum also reflect recent events.<sup>9</sup> As is likely true for law schools around the country, 9-11 has become woven into the fabric of our work and the rituals of our institutional life.

Informally, no one talks very much anymore about the events. The immediate grief and anxiety has, for most of us, dissipated. We are relieved to be able to indulge in the unstated collective assumption that we are again safe. These are good coping strategies: We would not have been

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<sup>7</sup> For a detailed description of the pro bono response see Matthew Wilkes, "Teaching Through Tragedy – The NYLS Response" in this issue.

<sup>8</sup> Other projects that seek to address civil legal needs of 9-11 victims include an economic literacy project, sponsored by the school's Justice Action Center, and an employment law project, in which a number of NYLS students are involved, initiated by the National Employment Law Project. *See id.*

<sup>9</sup> For example, in the fall my colleague Stephen Ellmann is offering a course entitled "The Constitution and Terrorism."



able to return to work without translating events into grist for the intellectual mill and letting go of the emotional intensity of our experiences.

But a complete recovery has its drawbacks. The horrible events of 9-11 offered a potentially transformative occasion. In a brief moment, the everyday verities of law teaching and practice were in doubt. With so many dead nearby, what we stood for and what we cared about were topics very much on the table. For us as teachers, it was not that difficult to locate and reaffirm the value in what we do. Wherever we stand on the ideological, political or methodological spectrum, we wear our commitments to legal processes, legal institutions, and the rule of law on our sleeves.

For our students, though, it is a different matter. In law school, we hope to offer them various paths and formulations to identify and begin to internalize the normative commitments reflected in law. When they enter practice, however, sustaining a view of law as a meaningful enterprise is difficult. Law practice involves great amounts of drudgery – long hours of boring and difficult work in the furtherance of objectives with no obvious redeeming moral worth. As observers of the legal profession have often noted, success in law practice is no longer measured by the intrinsic merit of the work but by external rewards, particularly money.<sup>10</sup> The desire to engage meaningfully in law work, through pro bono or law reform initiatives, is denigrated in the reigning practice ethos. If 9-11 opened up possibilities for revisiting normative commitments, the current conditions of law practice tend emphatically to close these possibilities off.

What can we as teachers do to counter these tendencies? There is little we can do to address directly the conditions our students meet when they enter practice, but we can try to resist in our teaching the impulse toward normalization. September 11<sup>th</sup> not only changed the legal landscape, it offered us—as lawyers, law teachers, and law students – the occasion to reshape our interior landscapes. The tragic attacks invited us to reconsider who we were, and to revisit and articulate the values that drew us to law in the first place. In teaching, our purpose should be to keep these questions alive for our students. We should aim not only to understand the legal import of September 11<sup>th</sup>, but also to invite our students to continue to explore its significance for their life choices. Recommitment, in this view, is not just a helpful pedagogic device to effect a transition from a collectively traumatic event to the study of law; it is an approach that we should strive to incorporate in our teaching from hereon.

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<sup>10</sup> See generally DEBORAH RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* (2000)