



Case Western Reserve Journal of International Law

Volume 34 | Issue 2

2002

Teaching through Tragedy of 9/11: Crisis and Opportunity

Hiram E. Chodosh

Follow this and additional works at: <https://scholarlycommons.law.case.edu/jil>

 Part of the [International Law Commons](#)

Recommended Citation

Hiram E. Chodosh, *Teaching through Tragedy of 9/11: Crisis and Opportunity*, 34 Case W. Res. J. Int'l L. 189 (2002)

Available at: <https://scholarlycommons.law.case.edu/jil/vol34/iss2/4>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

TEACHING THROUGH THE TRAGEDY OF 9/11: CRISIS AND OPPORTUNITY

*Hiram E. Chodosh**

INTRODUCTION

Everyone has a personal story about the attacks of September 11. My physical location in Cleveland put me at a considerable distance from Logan Airport, the World Trade Center, and the Pentagon. Yet, like many others, I felt a special connection to the tragedy. My office window at One Liberty Plaza, when I was in practice, framed the twin towers across the street. My oldest brother and his family live, work, and go to school within blocks of Ground Zero. Many friends, including one lost, worked in and around the towers. So the attacks struck close to home for me.¹

On top of our personal experience, every law school has its own story about how it was affected by the attacks and the response it was able to muster under extraordinary circumstances. Recently, I heard a great deal about these stories at a panel sponsored by the American Association of Law Schools. I was moved by what I heard about my colleagues at other

* Professor of Law; Director, Frederick K. Cox International Law Center, Case Western Reserve University School of Law; J.D. 1990, Yale Law School; B.A. 1985, Wesleyan University. I would like to express my deepest appreciation for the leadership and generous assistance of many devoted colleagues, administrators, and students, in particular: Dean Gerald Korngold, Associate Dean Andrew P. Morris, and Assistant Dean Barbara Andelman; Professors David J. Carney, Leon Gabinet, Paul C. Giannelli, Jonathan Gordon, Lewis R. Katz, Henry T. King, Jr., Robert P. Lawry, Kevin C. McMunigal, Katherine Sords Mercer, Sidney I. Picker, Jr., and Calvin Sharpe; the Cox Center manager, Alice Simon, and my assistant, Nancy Pratt Kantor; and the student primarily responsible for putting this issue together, Carmen Morris Twyman. I would like to dedicate this essay to Andrew Kates, a college classmate, who died in the attack on the World Trade Center. See *Andrew Kates, A Life Enjoyed to the Fullest*, Profile published in the NEW YORK TIMES on September 22, 2001, at <http://www.legacy.com/nytimes/Sept11.asp?Page=TributeStory&PersonId=94767> (last visited July 6, 2002).

¹ My most pointed realization of the need to focus on the educational process occurred shortly after the 11th. My oldest brother and his family live in what used to be the shadows of the twin towers, and my nine-year old nieces attended P.S. 254, just a couple of blocks from Ground Zero. At one point in our conversation about how the attacks had ruined his business in Tribeca and upended their lives, he said: "I just really would like to understand more about what's going on." After that conversation, I would evaluate my day on the basis of whether I had advanced that understanding in any key respect, and that kept me going.

institutions: the courage and dignity with which they conducted themselves professionally; and the thoughtfulness of their administrative interventions to get in touch with students and alumni, to nourish students too stunned to feed themselves, to provide counseling services to those in need.

There was also something missing in these stories, perhaps because they are still incomplete. We need to be writing the next chapter in the longer narrative of how we should now think about our attempt to teach through the attacks (whether congratulatory or critical) and even more importantly but related to that, how we should proceed to address the repercussions of 9/11 for legal education in general.

In this essay, I would like to raise and briefly address several pressing institutional questions for law schools and legal educators. First, what do I mean by teaching through tragedy? Second, what impediments to the educational process did 9/11 pose? Third, how did we attempt to overcome these challenges at my law school, and to what effect? Finally, and most importantly, where should law schools go from here? Are there steps we should be taking *now* to address the long-term implications of the 9/11 attacks and the U.S. legal response to terrorism?

I. TEACHING THROUGH TRAGEDY

A. *Constructive Ambiguity: Obstacles and Inspiration*

The title of an AALS panel dedicated to these questions was Teaching through Tragedy, a wonderfully and constructively ambiguous heading. It invoked a dual, competing sense of the 11th as both an impediment *and* inspiration for the teaching and learning process.

Surely, the 11th posed immediate impediments to the educational process. These were both physical, as in lower Manhattan, and more universally emotional in nature. The emotional response ranged from paralysis to rage, and depended heavily on the nature of connection to places and people most directly affected by the horror of the attacks.

Even more importantly, the attacks created in their wake a series of special learning opportunities, an extraordinary educational moment, especially for those committed to global legal education, but even more generally for educators interested in cultivating civic leadership and public service values within our students.

By noting this ambiguity of impediment and opportunity, we can then raise two related questions. First, in the immediate aftermath of the attacks, how did we attempt to reduce, or at least contain, the impediments to the learning process? Second, how have we tried since the attacks to transform these obstacles into special learning opportunities, especially now in the longer term?

B. Impediments

The 9/11 attacks spurred a variety of overwhelming concerns, and the preparation and capacity for addressing them were limited.

Our students, faculty, and administrators experienced shock, helplessness, grief, worry, and fear for family and friends. Concerns emerged also from the threat of further terrorist attacks, as well as the real risk of racially motivated retaliation. These security and safety concerns were greatest for and within our Middle Eastern and South Asian communities. We were additionally worried that our students would drift into one of two extreme states of mind. Some (particularly those far away from home or new to the school), we feared, might become isolated and have difficulty engaging emotionally and intellectually in the social settings of law school. Others, we worried, might become so upset that they would not be able to monitor their emotions and thus become vulnerable to engaging in verbal, if not physical, conflict.

The traditional classroom setting (as the main source of interaction with and between students) seemed woefully inadequate to work through these concerns. Classes were generally too large to allow for the nature and variety of responsive counseling in these scenarios. Classroom teachers had varied understanding of the events and their implications. How many knew about the al-Qaeda network? How many had read of the Taliban? How many knew anything about Afghanistan, or the current status of domestic and international law on terrorism or the laws of war? Finally, faculty applied varied levels of expertise in identifying needs for professional counseling.

Lesson plans were dramatically eclipsed by the raw emotions and incalculable importance of these events. Classroom strategies varied widely. Reports came in of a few teachers who were simply unaware of the attacks and either did not mention them or dismissed them when students brought their attention to the story. Some tried to deal exclusively with the emotional aspects by polling students on whether they knew anyone directly hurt, lost, or at risk. Others tried to solicit student opinions and reactions on what the U.S. should do in response. A few pursued the 11th as just another hypothetical designed to discuss airline liability, civil engineering misrepresentations of the safety of high rises, or the appropriate form of criminal justice punishment (under different theories of deterrence or retribution) for bin Laden. This wide array of approaches reflected more about the individual faculty member, his or her reaction to the events, comfort level with discussing the emotional and political aspects, and familiarity with the wide array of primary and secondary legal issues, than about the community as a whole.

In part because of the diverse set of classroom approaches and widespread dissatisfaction with any particular one, institutions confronted a serious dilemma. Would the law school push forward in the pre-11th mode

or cancel everything and dedicate time to the process of dealing with the attacks and their ramifications?

At least two arguments supported pushing forward. First, some argued that this would minimize or mitigate the interruption-related damage of the attacks themselves. It seemed important to some to stand up and say, "let's not give in to the terrorists." Second, others argued that we should teach students that professionals frequently have emotional problems that they must contain and ultimately ignore to do the work of their clients. If surgeons can learn to put aside the emotional aspects of the tragic cases they work on, why shouldn't lawyers (and thus, law students) be held to the same standard?

Others who supported shutting the school down stressed that it was inappropriate to ignore the realities of the situation, insensitive to those students who were suffering emotionally, self-defeating to press forward given the profound nature of the derailment from our normal course of teaching and learning, and more affirmatively, that the attacks created a unique opportunity to teach and learn both about and from a defining moment in our day.

C. Our Response: Intermediate Strategies

Given what I believe is a commonly shared lack of preparedness for this kind of challenge and the dilemmas it created, everything we did seemed to be one improvisation after another within a range of what in retrospect appear to be a series of intermediate strategies. We neither ignored the 11th nor did we dedicate to it our full attention. Our strategies seemed to fall into two categories. In the short term, these interventions attempted to contain and at best reduce the impediments through special programs. In the longer term, our interventions have sought to use the tragedy to advance and reaffirm our core mission as educators primarily through separate programs but over time towards more pervasive approaches.

1. Short-Term Containment

After calling off classes following the attacks on the 11th, we only cancelled one late afternoon timeslot of classes on the 13th. We created new expertise, space, time, and formats for addressing the impediments (and incapacities for dealing with them) and simultaneously created special learning opportunities for our students. We did this fairly quickly, (although it seemed too slow to me at the time).

On the 11th at noon, having cancelled classes for the rest of the day, the Dean held a forum on the 11th in which he addressed the school. After observing a moment of silence, he admonished us to maintain our civility and reaffirmed the value of the rule of law, noting the special responsibilities we have as lawyers and law students.

Earlier that morning, the Director of our LL.M. program met with the foreign lawyers enrolled in that program to counsel them on safety precautions and to create a network of support through mentors and law school administrators.

On the 12th, the faculty held an emergency meeting to share classroom experiences and approaches and develop an institutional response. The faculty created a special Ad Hoc Committee on 9/11 (the "Committee"). Within twenty-four hours, the Committee organized a full day of events and meetings for the 13th.

At noon we conducted a school-wide forum. After introductions by the Dean and me, several colleagues offered their personal reflections from a wide variety of perspectives: a Pearl Harbor survivor, a federal prosecutor, the spouse of a Lebanese-American, a veteran of the Vietnam war, and a mother of two small children.

We invited a university counselor to come and meet with faculty to increase our institutional awareness of specific counseling needs and interventions, including the wide range of "normal" responses from anger to withdrawal, what to look for, and what to do when we encounter emotional disturbances.

In order to enhance our capacity for dealing with conflicts in the classroom or other settings in the school, we conducted an informal discussion within the faculty on the process of facilitation.

This was specifically directed at assisting with a late afternoon program for student discussions (limited to no more than twenty students in each group). Over twenty faculty members volunteered to facilitate these sessions.

In the early evening, we held an interfaith vigil at one of the two wonderful chapels on campus. Each major religious community was represented, and many people came to observe and offer their thoughts and reflections.

We also initiated an informal weekly gathering of foreign LL.M. and J.D. students to share perspectives on the attacks and their ramifications and to discuss what responsive programming we should design.

Aside from containing the immediate emotional harms produced by the attacks, these short-term programs produced some special learning opportunities for our students, faculty, and the broader community. The early forums, security measures and special get-togethers with LL.M. students helped us to feel safer and part of an integrated, diverse community in which students gained more from their interactions than they did in front of CNN.

The meeting with professional counselors increased the faculty's capacity for dealing with emotional disturbances of every kind (not just derived from the 11th). The facilitated student discussions deepened our sense of trust in our students to work through heated issues in honest and

constructive ways. Finally, the interfaith vigil helped us to develop deeper emotional connections to one another and to pose difficult ethical questions about our response to the attacks.

2. Long-Term Opportunities

Beyond these shorter-term responses, we organized two large forums in early October, involving ten experts on the ramifications of the attacks and the U.S. response. Invited experts included a former Ambassador who was in charge of the U.S. Embassy in Afghanistan in the early 80s, a journalist who wrote a best selling book on the CIA, an expert in Islam, a leading financial analyst, and several law professors and lawyers with expertise in public international law, international criminal law, the 4th Amendment, immigration, and other issues.

This also inspired us to add what we call Project 911 to our four multi-year symposia sponsored by the Cox International Law Center and published by the Journal of International Law. Our immigration lab was able to work on some controversial detention issues, including the detention of 11 Israelis in Cleveland in defiance of a judicial order releasing them. It moved us to add an additional discussion oriented session to our spring semester elective in Global Perspectives, which attracted the pre-registration of nearly 40% of our first-year class. It has also helped establish greater ties to the university, while attracting more people than usual to attend our programs and gaining the attention of the university community.

To meet a rapidly increasing demand for more programming, like many other schools, we are pursuing plans for more courses in international criminal justice, Islamic law, and a university-wide program on the ramifications of the attacks and the U.S. response. We are also exploring ways in which our preexisting curriculum can make the necessary adjustments to harness student interest in the legal ramifications of the war on terrorism and transform that interest into greater learning and professional training.

II. LESSONS AND PREPARING FOR NEW CHALLENGES

In moving forward, it is important to try to draw lessons from what we have been through and to exploit these lessons in attempting to address long-term needs.

A. *Lessons*

From the experience of our response to the 11th, I have drawn four lessons.

First, I believe that our response to the attacks was extremely important for our students, and that suggests investing time in thinking about how to be prepared for similar challenges in the future. I am never

quite sure what students will remember from law school, but I am confident they will remember how we handled the situation this past fall.

Second, our ability to respond well was in part a function of the strength and flexibility of our international and curricular programming prior to the attacks. I cannot imagine even coming close to the response we engineered if the attacks had occurred, say, four years ago before these changes had taken place.

Third, in retrospect, the pursuit of two useful intermediate strategies, (located between the extremes of pushing on without taking cognizance of the attacks or dropping everything to do nothing more than focus on them) were particularly fruitful. In the shorter term, we created a separate space for containing the immediate harms, and in the longer term, we fused our pre-September 11th programs with the issues arising from the attacks and the U.S. response.

Fourth, in relation to the sequence of containment and fusion strategies, timing proved to be critical. Containment of harms must be pursued immediately. It is hard to imagine having done this too quickly. On the other hand, early fusion strategies can easily backfire. Substantive discussions before students have had time to process the emotional impact of the events can be insensitive. Efforts to relate the profound tragedy to more pedestrian topics of airline liability or criminal law deterrence theory can appear insensitive in their reductionism or legalism. It appears that seizing learning opportunities from tragedies of this nature must be done over time, and after sufficient attention has been invested in the emotional repercussions confronting students, faculty, and administrators.

B. Future Initiatives

What do these observations then suggest about the ways in which we should be prepared for similar or related tragedies or attacks?

Given the importance of the ways in which we responded and the intimate relationship between that response and pre-existing capacities, we should not rest on the conclusion that we have taught or administered our way through the 11th. If anything, the 11th should urge us to work harder, faster, more aggressively to build in these capacities as a kind of educational civil defense aimed at reducing risk and mitigating harms.

First, law schools should review and bolster security measures to minimize disruptions, develop a rapid response, and reduce direct and indirect harms. Second, law schools should create a mechanism for delivering immediate services to meet the emotional needs of the entire population. Third, our faculties need greater guidance on counseling and facilitation, from how to detect a serious emotional problem to how to deal with an emotionally charged conflict or fight. Fourth, law schools need to engage in more pervasive global and interdisciplinary expertise and programs that provide a sufficiently broad background and sophistication

about the world. I have seen ways in which this sophistication can serve as an antidote to the extreme forms of paralysis and rage about which we were most worried. Fifth, because of the limits of large classroom venues, law schools would benefit from more flexibility and variability in approach to the curriculum. At the very least, these should include emergency plans for putting students in small groups for discussion in the immediate aftermath of a tragedy.

Finally, administrators should review each of their core responsibilities in light of the 11th. What impact did the response of the law school have on student life and the satisfaction of students with an environment conducive to their personal and professional growth? What signals will applicants be looking for in how law schools have responded? What are the effects on career placement, ranging from fewer jobs to more students committed to public service? How will law schools compete for philanthropic dollars in light of the compelling alternatives directed at ameliorating suffering after a tragedy of this kind? These are the questions that administrators and faculty should be confronting and none too soon. Otherwise, we will fall victim to the strong tendencies of institutional narcolepsy, only to be awakened by events (now foreseeable) for which we will be less prepared than we need to be.