

CONFRONTING DEATH IN THE ACADEMY: A DIALOGUE

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Dean Fisher

AT a time in my career when I was more fully involved in teaching, I became familiar with some of Professor Thomas L. Shaffer's research published in his book, *Death, Property and Lawyers*.¹ Professor Shaffer was rightfully concerned that lawyers involved in drafting wills failed sufficiently to appreciate and understand the psychological needs of a client grappling with mortality. Professor Shaffer explained, "Counseling wills clients is a matter of human empathy for a man who is being forced to confront his own death."² I found the insight gained from Professor Shaffer's studies helpful information to share with my students as it related to what they should expect, both from clients as well as from themselves, when clients came to them seeking a will. I failed to appreciate the same insights may be helpful to a dean.

When I moved into the dean's office, I quickly became busy dealing with the multitude of issues that deans typically face. Contemplating a serious illness or death of a member of the faculty was simply something that I did not consider. If it had been suggested as something I should give thought to, I probably would have dismissed it as having too many variables to make meaningful planning feasible. Planning meant finding a substitute for a faculty colleague unable to teach. To plan, I would need to know which courses the person would be teaching, whether the person would need a reduced load or a leave of absence, whether the courses affected would be first year or required courses, large enrollment electives, etc. Besides this topic had not been mentioned at the New Dean's Workshop as one of the many things we, as new deans, may encounter. In fact, I suspect that the vast majority of law school deans who have not been confronted with this problem, have not given it much thought. I write this essay, with the assistance of Dr. Alvin H. Moss, to share my experience in dealing with the problems created by what proved to be terminal illnesses of two members of our faculty. Dr. Moss is a professor of medicine at West Virginia University. He serves as the Director of the Center for Health Ethics and Law and as the

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1. THOMAS L. SHAFFER, *DEATH, PROPERTY AND LAWYERS* (1970).

2. *Id.* at 94.

chairperson of the Ethics Committee. Dr. Moss is a practicing nephrologist and the medical director of the Palliative Care Consultation Service at West Virginia University Hospitals. He is nationally recognized as a leader on initiatives to improve end-of-life care.

We have a sense of community at our College of Law. Our faculty is accessible to colleagues and students, and there is a genuine concern for the well being of others who are a part of this community. With a student body of slightly more than 450 and a faculty of 28, including administrators who also teach, we are one of the smaller law schools. Given our size, it was a tragic coincidence when several years ago two tenured full professors were diagnosed with aggressive types of cancer within a month of each other during the fall semester. Their battles against the disease lasted less than one year. One was teaching a first year required course and he was diagnosed approximately two-thirds of the way through the fall semester. Because of medical tests and treatment, he did not meet classes for the remainder of the semester. The situation of a faculty member's not being able to finish a semester is not uncommon and the additional problems created when it occurs in the fall semester of a first year course simply adds to what is a difficult situation for all involved. The other professor was teaching upper level electives and her medical problem manifested itself as the first semester was ending. Since she was able to grade her final examinations, there was no disruption within the semester.

There was a genuine concern for our faculty colleagues and their families as they dealt with what was quickly diagnosed to be very serious illnesses. Fortunately, each had good health insurance and the continuation of income for the academic year was not an issue, so our attention focused on finding ways to be supportive and to meet our obligations to provide quality instructions for our students. The medical treatment for one of the professors involved major surgery, and because of the nature of the surgery and the anticipated recovery process she did not attempt to teach in the spring semester. Her courses were taught by well qualified adjuncts who practiced in the subject areas.

The treatment for the other faculty member, the one who had not finished the fall semester, would involve chemotherapy and radiation, and I had anticipated that our efforts to make arrangements for his courses in the spring semester would be a relief to him. However, he very much wanted to teach all the while realizing that he would not be able to teach a normal course load. Indeed, he knew that he would have difficulty in teaching even a reduced course load, but teaching as much as possible was very important to him. There were to have been two sections of one of his courses (a first year, second semester course) and the faculty member charged with the other section was an experienced, accomplished teacher. This fortunate circumstance permitted the two to team teach the course, a solution that worked well.

By the time we reached the age that "qualifies" us to be deans, most of us have had family members or close friends who have faced terminal illnesses. In that capacity, our concern and involvement entails providing comfort and support for the one who is ill and to that person's loved ones. As a dean, in addition to our concern for our colleague and his/her family, there is also the decanal responsibility for the education of the students. The insight I seek to share is that

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at least in one important aspect, there are likely times that those two concerns become competing interests.

Dr. Moss

For law school deans to be able to respond appropriately to the situation posed by Dean Fisher, they need to understand the psychological responses of a patient newly diagnosed with cancer. Such a diagnosis is traumatic; it undermines one's sense of control in life. Cancer patients suffer as a result of the threat to the integrity of the person that the diagnosis entails. Life is never quite the same. They may experience anxiety and depression with its attendant feelings of helplessness and hopelessness. A normal response is to attempt to regain psychological stability by setting short-term achievable goals and by maintaining control over one's life. For a law school professor, hoping and planning that one will be able to continue to teach is one way to maintain one's identity and one's relationship with colleagues. It helps the law school professor to cope with his or her illness. Hope is essential if faculty members are to manage successfully and adapt to the threat to one's integrity that cancer poses.

Cancer patients are referred to oncologists, physicians who are expert in the diagnosis, treatment options, and prognosis for the disease. The oncologist's role is to establish the extent of the patient's cancer, i.e., what stage it is or how widely it has spread, and to recommend therapy. Patients with stage I or II cancer have more localized disease whereas stage IV disease is widely spread throughout the body. In general, patients with stage IV disease have a much worse prognosis. One role that the oncologist plays is to provide the patient with hope that there is a treatment that will cure the cancer. If it is incurable, the oncologist can provide hope of a possible remission with treatment and a further period of survival. The oncologist also offers control of pain and symptoms. As a rule, oncologists tend to be optimistic about the prospects with treatment. In the short run, this optimism buoys patients' spirits and helps them to persevere with a new diagnosis and an often complicated treatment regimen.

Dean Fisher

As the spring semester began, even to the untrained eye and with the limited information our colleagues had shared with us, there was reason to worry about their prognoses. While I believe we dealt with the mid-academic year crisis in what was probably the best way possible, there was a rapidly emerging consensus among the faculty that we would need to seek visiting professors to help with our course offerings for the next academic year. The AALS Statement of Good Practice deadline for visiting appointments necessitated decisions about our need for visitors early in the spring semester.

Even though our best guess was that it was unlikely that either of our colleagues would be able to teach in the next academic year, their conversations with us consistently included their plans to teach. They wanted to discuss the courses they would teach and to share with us which days of the week and times of the day would be best for them to meet classes. Since the physicians were not

at liberty to discuss their patient's medical situation with us, we faced the problem of having to make decision about our colleagues' probable health status in the fall semester without meaningful insight into their medical situation.

Dr. Moss

Even if an oncologist gives bad news with regard to limited chances of achieving cure or partial remission, the patient may cope by using the psychological defense mechanism of denial. Thus, a stricken faculty member may report a more positive outlook than prognosticated by the oncologist or may declare the determination to "beat" the cancer and that things will be fine. Law school deans and others may be able to detect that all is not going well, despite these optimistic reports if there is continued loss of weight and function. Being wheeled in to teach classes in a wheelchair is not a good sign for a previously ambulatory colleague diagnosed with cancer. Loss of functional ability is the most accurate predictor of a poor prognosis in cancer patients.

Dean Fisher

While I anticipated our colleagues would be focused on defeating their disease, I had not anticipated that part of their believing they would be successful in their struggle involved their plans to be back in the classroom. I had believed (assumed) that relieving them of a worry about how our law school would make sure their students would have qualified teachers would be reassuring to them and would help them to know that their illnesses were not going to hurt their students or the institution. This assumption proved erroneous.

Therefore, early in the spring semester, the faculty and I had to engage in the process of identifying possible visitors, without imparting to our stricken colleagues that we believed their plans to teach were not realistic.

Dr. Moss

For law school faculty, teaching, no doubt, is one activity that provides meaning and identity to their lives. When people can see meaning in their lives, they can maintain hope. Thus, it is apparent why a faculty member might want to cling to the role of law school professor as a way of maintaining hope. Plans to return to work often play a central role in patients' ability to cope with their illness, but hope needs to be grounded in reality. Some have drawn the distinction between wishing and hoping. Because of the medical condition of these two faculty members, their plans to return to teaching in the fall semester may have been more wishful (magical as opposed to realistic) thinking than hope. When planning with patients with a potentially life-limiting illness, physicians have been advised to say, "Let's hope for the best, but plan for the worst." This approach allows the patient to remain optimistic but still get his/her affairs in order in case things do not go as hoped. Law school deans might want to consider using similar language with their ill colleagues to deal with the problem of ensuring that other faculty will be available in case the ill professor is

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unable to teach. The planning might entail scheduling ill faculty members to teach elective rather than required courses in the next semester or assigning them responsibilities other than teaching for the next semester or year until it is clear how treatment will progress. Over time physician and patient (and law school dean) will have a better idea of the likelihood that a faculty member will be able to resume full-time teaching responsibilities.

Dean Fisher

The scheduling of courses for the fall semester illustrates this problem. By mid-spring semester, we had made arrangements with visiting professors and needed to distribute a schedule so that students could prepare for fall registration. The schedule, including the visitors, was not consistent with our colleagues courageous but overly optimistic requests to teach. During my last visit with the faculty member who had undergone surgery, she reminded me of our earlier conversation about her fall semester courses and asked that the new schedule be revised. In less than a week, she was comatose and in a matter of days her battle with cancer was over. Her death came less than six months after her cancer was diagnosed. Our spring semester finals were not yet finished.

The physical condition of the faculty member who team taught in the spring semester deteriorated more rapidly than anticipated, and by the end of the semester he frequently needed a wheelchair to enter the building and he would be exhausted by the time he finished the class. By late June, he was bedfast. Early in July, he asked me to come to his house because he needed to talk with me. When I arrived, he told me he would not be able to teach in the fall semester and, in fact, the prognosis was that he would probably not make it to the beginning of classes in mid-August. He was right. Within two weeks, his battle was over. However, as I was leaving following our conversation, his wife told me that he was still having her clip articles from the *New York Times* that he might want to use in his courses.

Our colleagues were valued members of our faculty, successful and effective classroom teachers. They genuinely cared about their students and our College of Law as an institution. Before their illnesses they enjoyed life as law teachers and were actively involved in legal research and community projects. What I had failed to understand sufficiently was how the mind copes with a serious illness. From the outset each was determined to defeat the disease and for each that meant returning to the classroom. Until the very end, neither could consider the possibility of being unable to teach in the fall semester.

As I look back on the experience, what I failed to anticipate was a change in the way my unlucky colleagues would view their continued involvement in the daily activities of the College of Law. When first diagnosed with cancer, each sought “release” from teaching responsibilities to pursue medical treatment—one from finishing the semester, the other for the semester that was about to start. What I had not anticipated and, therefore, was not prepared for was that as the medical prognoses became more discouraging their planning for and commitment to teaching in the next semester increased.

Dr. Moss

Patients diagnosed with cancer have stages that they move through as they come to grips with their illness. No doubt, initially these patients felt a sense of loss and grieved their previous state of good health. The second stage has been described by cancer survivors as a state of emotional chaos in which they feel anger and depression and may try to deny the severity of the illness. The final stage is one in which patients accept the illness and its effect on their lives. Patients move back and forth through the stages until they reach the point of acceptance. It sounds like the faculty Dean Fisher describes were still wrestling with the diagnosis of cancer and its implications for their lives when they indicated that they planned to teach in the fall semester. The challenge for the law school dean is to be sensitive to the turmoil and life upheaval a faculty member feels while at the same time protecting the interests of the students and other faculty in the school.

Dean Fisher

It felt disingenuous on the one hand to discuss their plans to teach next semester as they battled their illness and, on the other hand, try to make the necessary plans for the College of Law to cover their absences. It would have helped to ease this sense of deceit to have said, "Let's hope for the best, but we need to plan for the possibility that you may not be able to teach in the fall."

What Dr. Moss has explained as a part of this essay is that the way my faculty colleagues coped with their serious illnesses is common. While I realize that a better understanding of how a person copes with a terminal illness would not have changed significantly our course coverage and scheduling decisions, it would have enabled me to be better prepared to provide support and comfort to my faculty colleagues.