

Lawyering with “Social Distancing” in Mind

Remember those days when we used to hold meetings at your office, your colleague enters, you shake hands, you offer a hot cup of coffee, the clients arrive, and the ritual is repeated. A handshake. A smile. A cup of coffee. A thing of the past. Pre-COVID-19 past, not so remote yet... without the slightest spectre of any compulsory “social” distance. Not even a meter or two.

Just a few months ago, before anyone was thinking about =the possibility of a global pandemic, our protocols were clear. Our teams could work together being in the same space at the same time. We could get up and change the seating arrangement. We could see the nervousness of the parties as one of them fidgets in her chair and the other repeatedly moves his foot up and down. We could offer some empathy by a gentle touch on the shoulder. Observing these behaviours was helpful in pacing the process; perhaps there was time to take a break so we could stretch our legs or simply have a colleague become the scribe. Being in the same space at the same time...

Oh, what a difference a pandemic makes! Shall we take a quick trip back in time? Not much is being said about 1918-1919 influenza pandemic, or Spanish Flu, in which at least 150 million people worldwide perished. The 1968 flu pandemic, or “Mao flu”, was responsible, according to the *Encyclopaedia Britannica*, for approximately one to four million deaths globally yet, according to Mark Honigsbaum, a medical historian and author of “*The Pandemic Century: A History of Global Contagion from the Spanish Flu to COVID-19*” (published on June 4, 2020) at the peak of the outbreak in the winter of 1968 the schools remained opened and businesses, for the most part, continued to operate as normal. This is not the case now. Since mid-March, in the state of public health emergency in various states and provinces in North America, we have been advised to follow new guidelines, most frequently referred to as “social distancing”. What an unfortunate choice of words! We, human beings, are social creatures and we crave connections, closeness, togetherness and touch. Social contact is a very basic need. The imposed social isolation will make us ill. Not only ill, but ill and hungry. In case you wonder why, the answer lies in our brains.

Just at the end of March 2020 two neuroscientists at the MIT, Livia Tomova and Rebecca Saxe, published an article on *bioRxiv* demonstrating how loneliness operates in the brain entitled “The Need to Connect: Acute Social Isolation Causes Neural Craving Responses Similar to Hunger”. They sought an answer to a question: how are people affected by a period of forced social isolation? They used fMRI to measure neural responses in participants after 10 hours of mandated fasting or total social isolation. Their results confirmed “the intuitive idea that acute social isolation causes social cravings similar to hunger”. 10 hours?! How about months and months already?

While maintaining physical distance has been a recommended measure for a number of years in prevention of infectious diseases, the recommendation for “social distancing” (e.g. in workplaces, school closures, and cancelling large gatherings) has not met with global approval and some voices in the past, experienced by a previous flu outbreak, provide some insight to the adverse consequence of such measures; for example, Dr. D.A. Henderson in “Disease Mitigation Measures in the Control of Pandemic Influenza” (published in *Biosecurity and Bioterrorism: Biodefense Strategy, Practice, and Science*) comments on quarantine as follows: “The problems in implementing such measures are formidable and secondary effects of absenteeism and community disruption as well as possible adverse consequences, such as loss of public trust in government and stigmatization of quarantined people and groups, are likely to be considerable” (is it not what we currently begin to experience?).

Yet the unthinkable has happened! The measures emphasizing “social distancing” (not physical distancing) have been implemented and referred to religiously in numerous journals and newspapers. The pandemic is well under

way so what can be expected in near future? Let me get my crystal ball. Aha! Here it is! Gazing into it is not easy. Bleak, bleak future...

According to a Clio's survey (May 2020) 75% of legal professionals reported higher levels of stress and anxiety and almost 50% were worried more about their finances than their health. Clio's survey also found that 53% of legal professionals reported being significantly less busy, 57% were worried about making a living and 67% were concerned about the survival of their practice (except those bankruptcy attorneys who seem to be doing just fine).

Remember those days when we had meetings at your office? Remember the handshake? Remember the hot cup of coffee? Well, forget all of those days! Being in the same space at the same time is becoming a thing of the past. So, pick your path. You can go to "telelaw" or you can get "masked and distanced". If you choose the "telelaw" you will end up on Zoom or similar platform thus being in the same time but not the same space. Do not let your clients or your colleagues look up your nose! So many times I have been forced to look up some hairy nostrils of seasoned presenters as they did not address their minds to the placement of the camera! I will just mention three quick practical tips: first, keep your nose to yourself and place cameras in front of your face but not exaggerating the details that you don't want others to see in your face so maintain a distance between your body and the camera so your shoulders become visible and, finally, do not sit with your back against the window, as the light on a sunny day will be blinding to those interacting with you, not resulting in "the enlightenment" you might have intended.

Welcome to the future of our practice! Get your elbows ready, put your glasses on and, well, cover your mouth with an uncomfortable piece of fabric that impedes communication and hides your emotions... or does it? Ursula Hess, facial expressions and emotion researcher at Humboldt University of Berlin, was asked whether recognizing a smile was more difficult when the mouth is covered (*Scientific American*, June 1, 2020). She explains that she and her colleagues examined this question with scarves, niqabs and masks and concluded that a smile can still be recognized as the laugh lines pop up around the eyes. People tend to imitate the behaviors of others and through this imitation, she continues, we can evaluate an interaction in a positive way and feel closer to the other person. In her study the participants imitated the smile of another person even when that individual's mouth and nose were under the mask. She also believes that we can improve our social interaction with masks on if we perceive them as an "expression of mutual consideration for others" thus creating "a sense of community".

Better days are bound to come for us all. Let us all stretch our mirror neurons with imagination, interact with positivity and build a resilient legal community globally. Whichever path you choose to practice in, keep your physical (not social!) distance in mind and do not forget to smile! Remember, it can still be seen regardless...

(Excerpts from the article published in July 2020 in the American Bar Association Just Resolutions Newsletter.)



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