

## COVID-19 Essays

On April 27, 2019, Professor Stephen Miller, faculty advisor for the Idaho Law Review, sent out a call for essays on coronavirus related topics. He noted:

The novel coronavirus (Covid-19) pandemic has disrupted life in ways unimaginable just a few months ago. . . .The Review seeks submissions from law students, faculty and staff at the College of Law, as well as judges and practitioners in Idaho, about how the coronavirus pandemic affected legal education at the College of Law, the administration of justice, and legal practice in Idaho.

Students, judges, and professionals alike submitted the essays published below. These essays were published in an effort to create a snapshot of the unique challenges that were presented to the legal community in the year of 2019 due to COVID-19. These essays have been kept in a format that most closely resembles the authors' style and creative liberties.

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## **Idaho's Judicial Response to COVID-19: A View from "the Fog"**

**Gregory W. Moeller, Justice, Idaho Supreme Court  
June 26, 2020**

Having been asked to submit an essay outlining the impact that the COVID-19 pandemic has had on my professional life—especially as it concerns the administration of justice in my role as a member of the Idaho Supreme Court—I am taken aback by the challenge this topic presents. “The fog of war” is a phrase often used to describe the strategic uncertainties soldiers and generals face as they attempt to make tactical decisions in the midst of a fluid battle. Typically, such decisions are based on ambiguous information and diminished situational awareness. As I sit alone in my office in the Idaho Supreme Court typing this, overlooking a virtually empty parking lot, I feel a little bit like a soldier who has been asked to discuss his insights about a battle that is still being waged—one where the outcome is still far from certain. Inasmuch as the cases of COVID-19 in Idaho appear to have spiked, relented, and are currently spiking again, it is equally difficult to know whether we have made all the right calls so far in responding to the crisis, as it is to know how many more critical decisions we will have to make in the future.

On a personal level, the pandemic occurred at the confluence of several big events in my life. On Friday, March 13, 2020, I had taken a rare day off from work because my wife and I were moving into our new home. That was also the day I would find out whether I would be facing an opponent in the upcoming primary election because it was the final day to file a declaration of candidacy for state office. To add to the stress, the Chief Justice had scheduled an emergency meeting to discuss a statewide order that the Idaho Supreme Court was about to issue in anticipation of Idaho's Governor making an emergency declaration due to the pandemic emergency. This would be the first of many “Zoom” meetings that would take place among the five justices on a regular basis. As I loaded furniture into the moving van, I listened through my earbuds as we discussed now familiar terms that were new to most of us at the time, such as “social distancing” and “flattening the curve.” Earlier that morning, the President of the United States issued the national COVID-19 Emergency Declaration. After the Governor of Idaho issued a similar statewide proclamation declaring an emergency, we issued our order. Later that day, Idaho recorded its first confirmed case of COVID-19. As I attempted to process all that was happening around me, I remember turning to my wife as we unloaded the moving van and saying, “Remember how you used to tell me that ‘the world wouldn't come to an end if I took just ONE day off?’ Well, we may need to rethink that.”

As the crisis developed, the Idaho Supreme Court, acting as the presiding constitutional officers of a unified court system, issued a series of orders designed to keep the public, court personnel, litigants, witnesses, attorneys, jurors, and judges safe. Our guiding star was the recognition that, as a judiciary, we faced a unique challenge. Of course, we keenly felt the need to protect the courthouse

personnel and attorneys that worked in our facilities; however, unlike a grocery store, department store, or home improvement center, many of the people in our buildings—the public whom we serve—did not choose to be there. Since their attendance at court proceedings is typically required or even compelled, we realized that we had a responsibility to protect them and limit their risks as much as possible. The following paragraphs are a brief summary of our evolving approach to the crisis.

The first statewide order, issued March 13, was only intended to last for about four weeks. The order limited court proceedings to certain emergency matters and required judges to vacate and continue most scheduled civil proceedings that could not be held remotely. Access to court proceedings was limited to attorneys, parties, witnesses, and jurors. Protocols for entry into the courtroom consistent with CDC guidelines were to be posted on all doors. On March 24, when the scope of the pandemic became more apparent, and Blaine County was enduring a terrible outbreak, a new and more restrictive order was issued. All jury trials were postponed until June. Certain rules were amended allowing judges to postpone jury trials past speedy trial deadlines due to pandemic concerns. The rule permitting disqualification of a judge without cause was suspended. Clarifications were made to the earlier order to ensure media and public access to proceedings. This order had no termination date.

Just two days later, on March 26, a broader and more detailed statewide order was issued to deal with the worsening crisis. Reduced operations were ordered for all court facilities statewide. Minimum operating personnel for each courthouse was set at one front desk clerk and one security officer. If a hearing was scheduled, an additional in-court clerk and a judge were required. The type of emergency proceedings permitted to take place was further refined. Notably, routine evictions were not included. Provisions were made to conduct as many court proceedings as possible telephonically or through video conferencing. All filing deadlines set by court order or rule were extended until April 16, with the exception of child support, child custody, and discovery orders.

The most current order was issued on April 22, the day before the Governor announced his four-step plan to reopen Idaho's businesses. Because of our growing confidence in the use of Zoom as a platform for conducting video teleconferences, we ordered the resumption of all court proceedings, but required that they presumptively be held remotely via video or audio conferencing technology. An exception was made for parental rights termination cases and felony sentencings in which the maximum possible sentence was life imprisonment or death. Trial judges were given discretion to hold some cases in person in order to avoid prejudice to the parties, provided they made findings on the record. Provisions were also made for keeping the record in remote proceedings. In light of the resumption of all court proceedings, this order required that all persons in the courthouse participating in a court proceeding or performing court business must wear a mask and maintain a social distance of at least six feet.

In addition to clarifying operations and procedures, the April 22 order further postponed all scheduled jury trials. This was a gut-wrenching decision for

the Court. We had received feedback from judges and members of the Idaho Bar that they preferred having a realistic date for the resumption of jury trials, rather than having us regularly moving back the date. Given the size and design of most of our state's forty-four courthouses, coupled with the social distancing protocols then in place, it was obvious that jury trials could not resume in June. The uncertainty caused by ongoing postponements would be expensive and create a scheduling nightmare for court personnel, attorneys, parties, and witnesses. After much discussion and debate, we decided to push back the resumption date for all jury trials to a more realistic date. However, to ensure that the speedy trial rights of criminal defendants were protected as much as possible, we set August 3 for the resumption of criminal jury trials and October 5 for civil jury trials. It was hoped that the two-month head start for criminal jury trials would help clear the backlog in criminal jury trials first. Additionally, it was hoped that the delay would make it possible for court personnel in Idaho's diverse counties to develop individualized plans for safely resuming jury trials in their courthouses or other approved venues.

To comply with our own order, and to maintain a constant judicial presence in the Idaho Supreme Court building, my colleagues kindly agreed to allow me to be the judicial officer on site. In the early days of the pandemic, it was surreal to drive to and from work on the eerily empty streets of Boise. While they worked diligently from their homes, I was typically alone on the second floor. I often went for days without seeing another person in the courthouse, and alternated between feeling like the "designated survivor" or the proverbial "red shirt" from Star Trek fame. Although my colleagues now frequently come to their offices as the need arises, by and large, our personal contact is almost entirely via Zoom. This has been a strange, yet highly productive time for me; I am amazed at how much work I can get done when there are virtually no interruptions for the entire day.

While there were frequent concerns, criticisms, and many helpful suggestions shared by various stakeholders in the court system, it was amazing to witness how our judges and their staff were able to rebound from the earlier shutdowns and begin ramping up court services again. In order to stay fully apprised of the operational challenges throughout the seven judicial districts of the state, I participated in a weekly Zoom conference for all Administrative District Judges and Trial Court Administrators. The meetings were led by Sara Omundson, the Administrative Director of the Courts. The Chief Justice, department heads, and other key personnel from the Administrative Office of the Courts (AOC) typically participated. It was a constant source of hope and inspiration for me to listen to these talented, creative, and dedicated public servants work through problems and offer helpful suggestions to the Supreme Court. Most importantly, their voices were heard. While progress is being made, the burdens on our state's trial judges and their support staff has been tremendous. It will likely take many months, if not years, to work through the backlog of cases. In some parts of the state, judges even volunteered to hold criminal proceedings on Saturdays in an effort to catch up.

Great leaders often emerge in times of crisis. None of this would have been possible on an operational level without the steady leadership of Sara Omundson. All of the AOC staff have had to adapt and rise to the challenge of a "new normal," so while there is not enough space to include all of their names, it must be

recognized that their dedication and inspired problem-solving ability were crucial to our success. Importantly, our response was only made possible by the herculean effort of our IT staff. Their efforts remind me of the famous observation by Winston Churchill during the battle of Britain: "Never ... was so much owed by so many to so few." Between March 1 and May 13, the Idaho Courts rapidly embraced new technological solutions to provide remote judicial services statewide. Zoom was deployed statewide to all courts; 835 new users were provisioned and 4,249 sessions were held by our trial courts. This includes the first ever fully remote oral arguments before the Idaho Supreme Court and the Court of Appeals. New hardware was acquired and installed, including 255 webcams, 202 laptops for the trial courts, and additional laptops for employees of the Supreme Court. Internet bandwidth was increased by 40%, remote access by Citrix increased by 100%, and cyber security enhancements were provided to upgrade security for remote users and Zoom meetings. Of course, all of this also required substantial training and resources for all court employees and judicial officers as we transitioned into a high tech judicial system almost overnight. Ongoing challenges continue to arise. For example, we will need to leverage that same "can-do attitude" from our AOC staff as we address anticipated budget cutbacks and their fiscal impact on judicial services as we strive to fulfill our constitutional duty to the people of Idaho.

Although this crisis continues, and is showing troubling signs of worsening, I have never been prouder to be a member of the Idaho judiciary. The capacity of all of our personnel to innovate and adapt in the midst of a state and national emergency has been nothing short of miraculous, and has helped us to stay ahead of the curve in our response to the crisis. While we are still experiencing the "fog of war," the passage of time will eventually bless us with the gift of clearer perspective. When that day comes, and we can fully assess the terrible costs of the pandemic, I hope all of us working in the judicial branch can also look back at these last months and realize that we were part of something rare and extraordinary. As I type this with my breath seeping through the top of my facemask and fogging my glasses, I am ever hopeful that day will not be too far in the future.



## **Administering the Trial Courts in the Time of COVID-19**

**Melissa Moody, Administrative District Judge, Fourth Judicial District of Idaho**

On Friday, March 20, 2020, I was kicked out of Whole Foods in the middle of the day. For me, that was the beginning of it.

There were ten of us. I know that there were ten because there were more to begin with, but we had whittled our own numbers so as not to raise eyebrows. The guy who kicked us out did it in a nice way. He said: "hey, I know you guys are from the courthouse, and we know that you just had to evacuate because someone had the virus there, and so, um, it's kind of making people nervous that you're standing here, and, well, um, it's a really nice day outside so maybe you could go outside and, uh, enjoy the fresh air."

Of course we left.

This was not a group that was going to get into a scuffle with a Whole Foods employee, just trying to do his job. We were just trying to do our jobs too. Just twenty minutes before being unceremoniously dumped from a grocery store, we had indeed evacuated the courthouse upon learning that the husband of a courthouse employee had tested positive for COVID-19. Consulting with the Ada County Commissioners, I made the decision to evacuate because I didn't know what else to do. When you don't know what to do, you protect peoples' health as the first priority. That was the default then and continues to be the default as I write this.

So there we were, standing directly outside Whole Foods, yelling at each other to be heard over the wind and the traffic on Front Street. There was a sense of urgency: the courthouse group needed to meet, and we needed to meet right now, but where to do it? This simple challenge proved a bigger obstacle than it should have but was only the first of hundreds to come.

It was Friday afternoon, the courthouse was empty (having just been evacuated), and we had nowhere else to go. The impromptu meeting at Whole Foods had been a failure. We couldn't meet outside because the wind and traffic drowned out any conversation. We only saw one option: the mothership. The Ada County Courthouse. All of us --- the Trial Court Administrator, the top Ada County Clerks, the elected Ada County Prosecutor and her top deputies, the Chief Public Defender and his top deputy, the Chief Marshal, the Ada County Sheriff's deputy assigned to the courthouse -- returned to the building and hunkered down.

I don't remember what we talked about. Courthouse stuff. The C virus had descended into the courthouse and we were struggling to identify the repercussions. We wondered: How are we going to run this courthouse when we can't? What will happen to the hundreds of cases that we have on the docket for Monday? Will we even be open on Monday? (Yes). Who is going to reschedule everything, and how? How will we notify people that their court cases have been rescheduled? We don't have time to get written notices out; do we have the

manpower to make hundreds of phone calls? Which clerks and prosecutors and public defenders and marshals and judges need to be out of the building for health issues? Can we (should we) use senior judges to supplement our judicial workforce, or is that a health risk for those judges because of their age? What about court reporters? Can we get IT support to lift the court system into a virtual world? What would that even look like?

Like I said, I don't remember what we talked about exactly.

I remember that everyone worked collaboratively. I remember that the mood was both subdued and strangely energized. I remember thinking to myself: this is a tough group of leaders. We were sitting in a courtroom in a courthouse that had been evacuated less than an hour before and had yet to be cleaned, but what other choice was there? The sense of urgency kept us there. This group would not let the court system be taken down; not on our watch.

Although I don't remember what was said, I remember listening to the discussion with a sense of pride. No one interrupted – not once. No one monopolized the conversation. There were no egos in that room and I wished that the public could see it. Even then, I wished that everyone could see the inside workings of the courthouse; in the belly of the court system, the people in that room were the picture of what public service looks like.

Granted, it would not make for good reality TV. There was nothing glamorous about the soft-spoken disagreements, the measured counterarguments, the thoughtful objections, and the unifying question to which we returned again and again: *how do we make this work?*

After a lot of discussion, we agreed to end the day and meet again Saturday morning. Overnight the group doubled in size because the Ada County Courthouse is filled with problem-solvers. People wanted to be there. They wanted to be part of the solution. Saturday morning, the courthouse group showed up in casual clothes with paper coffee cups. They sat at a huge table and got down to the business of imagining and building a court system that didn't exist, with no blueprint in current statutes or Idaho Supreme Court rules. And we did it.

Because our Trial Court Administrator, IT group and the lead Ada County Clerks worked seven days a week and into the night, Ada County was able to lift most of its court hearings into a virtual world.

In a mere weekend, the Ada County Clerk's office organized a trailer and set up shop outside the courthouse. People who needed to come to court had a place to check in; they had a human they could speak with; they had a place to file paperwork. It wasn't perfect, but it worked. When we opened the courthouse for court on Monday, Chief Justice Burdick came over in person, wearing a facemask, to admire the effort and show support for the trial courts.

In the coming months, I got more email than usual from my colleagues. Judges wanted to know: can I get a secure connection on my laptop, so I can sign orders remotely? Who should I contact to get that done? Do you want me to come into the courthouse while it's locked down, and if so, when do you need me? How will I get my court schedule, if it's different from the one I've already worked out? When should I reschedule jury trials to start? Can I have summary judgment hearings over the telephone if both parties agree? How can the press get access to

the courts if we are holding hearings remotely? What are we supposed to do with hearings that are required by statute to be held within a certain amount of time, but we just can't get it done? Who is going to prepare documents and answer counsels' emails because my clerk is out for the next two months? Will the Department of Correction honor a transport order, if we issue one? How can we have a criminal defendant taken into custody, if he's not actually in the courthouse? Etc. Etc. Etc.

I have a folder on my desktop labelled coronavirus. It has word documents with titles like: Expo Idaho press release, evictions, domestic violence court, draft letter to all landlords, new prelim calendar, Saturday court, courthouse shutdown, courthouse reopen, message to civil bar from district judges, meeting with family law magistrates, meeting on child protection, meeting with criminal law magistrates, small claims, Sheriff's letter regarding jail, juvenile court, emergency transports, reduced operations order, draft administrative order for court reporters, meeting with district judges, priority of cases in event of closure, presentation to the county commissioners, and drug court meeting.

This snapshot of administering courts in the time of COVID-19 barely scratches the surface. Fortunately, I can't go into more detail because I have a word limit. I haven't even talked about Elmore County, Boise County, or Valley County, which are also part of the Fourth Judicial District. In general, the smaller counties had an easier time (not to say: easy time) because workarounds are more difficult for the larger counties. It's the difference between turning a houseboat and an aircraft carrier.

One of my colleagues sent me an email that said: "Experts agree that the best way to make decisions in an uncertain environment is to gather as many facts as possible, verify their accuracy and choose the best option available based on the information at hand from the most reliable resources." I recognized it as good counsel and have tried to make decisions based on that approach.

Right now, the courthouse is quiet because all the people are gone, working remotely. The hallways are dark and the courtrooms are mostly locked, but the emails keep coming. One day last week, a magistrate stopped by with a fancy dark chocolate bar, courtesy of his wife. He said: Tara is worried about you and thinks you must be drowning and could use some chocolate. She was definitely right about the fancy dark chocolate. I'm not sure Whole Foods wants me back any time soon.



## DEFACEMENT

Ritchie Eppink

Police officers executed George Floyd, and within a week I had stopped checking Instagram. At first it was because I was getting up before six a.m. and working straight through, no breaks, until the nightly untamed Capitol steps protests would disband around three in the morning. The Sunday New York Times still lay unread unopened out on

the settee

*SPREADING UNREST LEAVES A NATION ON  
EDGE*

its headline, big as a war. Its twin next to it, last Sunday's front page, with the list of a hundred thousand names ("*AN INCALCULABLE LOSS*"). That one a whole day innocent of George Floyd's murder.

14 hours at least every day in litigation against a recalcitrant state or else telling desperate people no and yet I would try to read the history of AIDS at midnight to relax.

“How to Survive a Plague.” I could never go more than a half chapter at a time, detoured remembering the carefree 2019 summer when the Guggenheim framed a swath from Keith Haring’s studio wall *Defacement* which Jean-Michel Basquiat formally titled *The Death of Michael Stewart*

¿ D E F A C ■ M E N T © ?

with a flyer in that same exhibition contemporary with Michael Stewart’s death September 28 1983 arrested for spray painting “RQS” on a train and strangled by police (“physical injury to the spinal cord in the upper neck” the Times reported), that flyer with its own list of names

REMEMBER                      MICHAEL  
 STEWART  
 & ARTHUR MILLER & EMMETT TILL &  
 FRED HAMPTON  
 & GEORGE JACKSON & SANDRA PRATT & ARTHUR  
 McDUFFY & LIL’ BOBBY HUTTON  
 & DOROTHY BROWN & KENNY GAMBLE & DONALD  
 KIZART & JAMES ROBERTS & NEVEL JOHNSON & WILLIAM  
 GREEN & ERNEST LACY & MALCOLM X  
 & EDMUND PERRY...

They connect us across twenty seven years from the cusp of one pandemic plague to the cusp of another.

Amidst the 2020 one, the Idaho legislative session never wound down. Propelled up against the pandemic's uncertainty by its own hate inertia the body instead collapsed in a dervish of merciless bigotry. Around this time at my actual desk in my actual office my gaze grasped across the still building, my staffmates receding into 2D until it was just me and then I was home too

“We won't know what the governor will do yet.

And the other unknown is the Coronavirus.”

I found out what the governor would do in the gravel lot next to a smokehouse in Challis, borrowing wifi for the price of a \$3 beer that I had to drink outside. An avalanche beyond Banner summit turned me back from hurtling to Boise to help mount a lawsuit over more reliable internet. From Challis again I swiped through road reports to chart a backup route when that huge earthquake shivered

her judgment from underneath me across the White Clouds to the Statehouse itself.

These were the early and naïve times of it, the getting-to-know-you phase in our collective intimacy with a psychocultural upheaval we came to all call COVID. Craven officials at all levels of our state and local government and their bureaucrats in tow hadn't yet discerned, during these their chaotic pandemic debuts, how they would sophisticate their nonaction. So back then they sat and actually waited for someone else to do the right thing. The whole society drunk on the unknown they even invited our cooperation at first, as if there would be some collaborative breakthrough to justice where everyone would be allowed on the Ark, even the least among us. Then they stopped returning our calls and then our emails by April, burying their ostrich heads in the sands of a thousand meetings.

Mine went underwater.

Maintenance:      keep the dust off the pure  
individual  
                                 creation; preserve the new; sustain the change;  
                                 protect progress; defend and prolong the  
advance;

renew the excitement; repeat the flight.  
(Mierle Laderman Ukeles)

No running water at Cottonwood. A hundred and  
twenty prisoners jumbling into portable toilets.  
Handwashing outdoors from spigots that freeze overnight

It's especially important to wash:

- Before eating or preparing food
- Before touching your face
- After using the restroom
- After leaving a public place
- After blowing your nose, coughing,  
or sneezing

(Centers for Disease Control  
& Prevention)

All civil hearings suspended except emergency cases  
listed. Judicial bypasses, for teenagers who need a judge to  
approve their abortion, not on the list. Scramble to get a  
letter out. They promise the cases will go forward. No they  
will not make it clear in writing.

On May 5 Boise Police arrest a man for yelling inside his apartment about being put on hold while his father was abusing his mother. They jail him.

Prisoners in the jail could not and still cannot follow public health experts' instructions for preventing disease and death by COVID.

That week evictions resume. More than two dozen families haled to an Ada County courthouse that was closed. A destitute tenant stranded in the parking lot to haggle for one last week of shelter.

THE COURT: All right, all right.

We're dealing with really unusual circumstances. And we wanted at least -- these cases have been scheduled without, I don't know, a whole lot of thought about how best to handle them.

A law student was giving out the phone number for Idaho Legal Aid to families walking up to the building. A marshal commanded him to desist.

The State shuts down all polling places. A primary election entirely by mail, unprecedented and poorly planned.

The ballot request website goes down repeatedly, straining under record voter turnout.

# Error 520

Ray ID: 595f0d1d6c04e38a · 2020-

05-19 16:04:00 UTC

Web server is returning an unknown error.

Over the State's vigorous objection, a federal district judge extends the deadline. Public records reveal election officials did not even track the website's downtime. Their internal emails about it don't start until after the ACLU asks to see those records.

The next Friday a city attorney calls me after five pm from her car. The city will not issue Black Lives Matter a permit to rally because: the city's unconstitutional assembly ordinance, which is unconstitutional. The police chief urged the activists to wait to protest until after all this blows over. Whites with assault rifles will rally the same day across town unmolested. But no city official will issue any statement to reassure that the City will equally honor Black Lives Matter supporters' free speech. The city attorney texts me a

shrewdly worded promise that officers will not cite protesters just for showing up. We post the screenshots on Facebook.

Thank you. Can you confirm that all law enforcement officers in service during the event tomorrow will receive these instructions

June 24 2020 the first IDOC prisoner tests positive. Two more the next day. By the end of the next week, more than 120 have COVID.

\* \* \* \* \*

A Confederate cannon inexplicably sits aside the Idaho Capitol building, pointed out from the seat of government aimed at the people of Idaho. In the University of Idaho College of Law building next door, a mural showing two white colonizers lynching an Indigenous man has remained for 80 years. Before the College moved in, the Ada County court proudly displayed the mural for decades while so-called justice was done in the working courthouse. The crude mural was covered over briefly in the 1990s, then uncovered again when the Legislature temporarily took over the building a

dozen years ago. Only after extensive public comment and open debate, the mural is now covered yet again. With a banner bearing the University of Idaho's official seal.

There was, however, no public comment or open debate when the State quickly covered another crude but historic mural as the world even Idaho rose up against police violence, the pandemic looming into June.

A A A  
 C C C  
 A A A  
 B B B

BLM

Our system  
 is corrupt.

State officials hastily covered it up with tarps. They plan to remove it permanently. But the histories of Idaho will not forget 2020, of course. They will say:

They only hid their injustices. They did not end them.  
*i'm sick of calling your recklessness the law.*

–Danez Smith, “dear white  
 america,”

in DON'T CALL US  
 DEAD: POEMS (2017)



## **3L Year: Cancer and Coronavirus**

**Paola Aguilar, University of Idaho Law Student**

My 3L year was a year that I always imagined to be quite boring with everything going according to plan before I would spend a summer hunkering down to take the bar exam.

My fall 3L semester consisted of a semester in practice at the Ada County Prosecutor's office. I was excited to spend an entire semester working and doing the kind of work that I wanted to do after graduation. I enjoyed the work I was doing and had a comfortable routine consisting of indoor cycling classes every morning before work and spending my free time with my friends and family.

It was in October that I found myself perpetually tired. No amount of coffee could wake me up anymore. Cycling classes were getting more difficult instead of getting easier. One night before bed, I suddenly felt a sharp pain in my chest. I spent the next week getting short of breath and it got worse with every day that went by.

On November 5<sup>th</sup>, 2019, I had the most difficult time I had ever had walking from the parking lot to the courthouse. I had to take frequent breaks and was breathing heavily. In court, I would have to take breaks after each sentence because I was out of breath just from reading out loud. I left work early that day to go take my composite photo at the school. I was uncomfortable from the tightness in my chest but still took my photos. Afterwards I called my best friend and told her how tired I was and wondered out loud whether I should go to the doctor that night or wait until the next morning. I worried that it was nothing, but my friend insisted that I go that night, so I did. I walked into urgent care an hour before they closed. The nurse practitioner that helped me that night told me that all of my vitals were perfect but insisted on doing a chest x-ray before sending me home. The x-ray showed one normal lung and one that was opaque and white, likely indicating fluid that had built up in the pleura of my lung. The next day I was scheduled to get a CT scan to confirm that there was a pleural effusion in my lung and to proceed with draining the effusion. I was relieved that the problem had easily been identified and that I was going to be "fixed" soon.

I expected this is something that would happen, and I would be back to work by Monday and my routine would be back to normal. What I didn't expect was the phone call I would get in my apartment on the afternoon of November 6<sup>th</sup> telling me I had a large tumor on my right kidney and that I was immediately being referred to an oncologist.

I went to the ER the next day to get my first of many procedures done to drain my effusion and to have scans and labs done. I was given urgent referrals and spent dinner with my parents that evening calling my oncologist's office. With the panic

of what was happening to me setting in, I immediately spoke to our Director of Student Affairs and took an “Incomplete” for the semester.

Everything after that was a blur. I was in the hospital for every kind of scan, test, and appointment under the sun. At some point after words like chemo and oncology were thrown around, it was confirmed that I had Stage IV Clear Cell Renal Carcinoma, kidney cancer.

My parents live an hour away from Boise, so I stayed with them. I spent my days in bed and lost 20 pounds within a month. I suspect this was mostly because of the depression. I was too tired to stay awake for an entire movie but all I wanted to do was to go back to work and to be with my friends again. I yearned to be in a court room again, making an impact on lives instead of lying in bed watching Judge Judy. I wanted more than anything to be in my indoor cycling classes instead of being out of breath every time I walked down the stairs.

My “normal” routine had completely changed but by the time January came around, I wanted to take a chance at finishing law school.

Classes were not easy. I no longer had the energy to power through readings in the evenings after class without taking a nap. After my naps, I only had a limited amount of time before I became fatigued again. Not to mention the energy it took to cook, do laundry, go grocery shopping . . . all of the normal things I used to do just fine on my own. Not to mention, I was angry. I was angry that this was happening to me. I was so bitter that I had been diagnosed with cancer just as I was about to finish law school. I had spent so much time focused on finishing this one goal and the most unpredictable obstacle was in my way when I was so close to the end.

Slowly though, I got better. I got more energy to regain a somewhat normal routine. I regularly spoke to a social worker and worked through my anger and impatience with my body. More importantly, I learned very quickly how to be a lot nicer to myself and to appreciate the small things my body was allowing me to do. I decided to take the February 2021 bar exam and to spend the summer traveling to Europe like I had always dreamed of doing. I also planned trips in April and May to visit my friends and go see a concert.

By the time March had rolled around, graduating law school felt real again. It didn't feel make believe anymore. I ordered my cap and gown, I was preparing for a celebration with my family, and I was imagining what it would feel like to be hooded and walk across the stage in front of my family, my team, who helped me cross this last finish line all while managing to keep myself alive.

COVID-19 quickly shut everything down just as I was getting used to my new “normal”. The palliative care treatments that kept my medication side-effects mild were no longer available. Zoom classes went on even though my motivation to do schoolwork was at an all-time low. The quarantine was eerily similar to the two

months I spent at home after my diagnosis but better and worse all at the same time. Better because there was solidarity from everyone else who was at home. Worse because I was completely isolated for three weeks and the big milestone that had kept me going was no longer going to be the same celebration I imagined.

After three weeks alone, I was experiencing the most painful side effects I had ever had and was tired of being alone. I had spent those three weeks trying to be diligent with my schoolwork but mentally bogged down by the pain and suffering of the world. So, I drove home to stay with my family despite their efforts to keep me from getting COVID-19. I continued to login to my Zoom classes, paying attention about half the time, and also logged into telehealth appointments. To be honest, I didn't care much for school anymore. I was just happy to not be alone. Either way, I passed all of my classes and I graduated.

My European vacation dreams have been put on hold, but I have been fortunate with opportunities for the summer, including the opportunity to intern for the second summer with the Payette County Prosecutor's office. I'm back in courtrooms, albeit usually via Zoom and with face masks, but I am so happy to be in my element again.

Things are not back to normal and I don't expect that they'll ever be. Just like I'll never be the same person I was before cancer, our society won't be the same one it was before COVID-19. Especially now with the rise of Black Lives Matter protests, everyone's eyes have been opened to the injustices that black people face in our country every day. Although some choose to do something about it and others will choose to ignore it, it's clear that we can't go back to the world that existed before George Floyd's death.

My 3L year was much more difficult than I could have expected it to be, but I got through it just fine. I came out on the other side of it a stronger person, and I have faith that although our world is going through a painful time right now, it will also come out much better after we've gone back to our new normal.



## Law in the Time of COVID

Kyle Slominski, University of Idaho Law Student<sup>1</sup>  
June 26, 2020

When I originally received the call for essays about life as a law student in the midst of a pandemic, I glanced at it with mild curiosity before quickly moving on. I did not and still do not think I have anything particularly insightful or novel to add to the discussion. Upon reflection, however, I determined it would be a disservice to the community I am currently so enamored to be a part of to not at least try to document their behavior during these strange times. Moreover, I have always preferred the insight gleaned from, and personal touch of, primary historical sources such as diaries and letters to the often-mechanical retelling of history found in textbooks; I hope this can serve as some semblance of that.

As Spring break began and I left the Idaho Law and Justice Learning Center for what was fated to be the last time during my first year of law school, I was flooded with feelings of both relief and consternation. While elated at the prospect of a temporary break from the obligations of school, I had been watching the academic response to COVID-19 across the nation and knew we may not be returning to campus. I struggle a great deal with depression and PTSD, and it was not uncommon for the highlight of my week to be a passing interaction with a faculty member or fellow student in the hallway. Though I tend to be a solitary person for large swaths of time, the idea of uninterrupted weeks or months of it on end was a daunting one. My mind was also awash with reservations about the idea of continuing my education remotely. It is extremely difficult for me to concentrate when surrounded by the myriad distractions available in my house, and I knew it would be easy to fall prey to the siren song of feigning technical difficulties in order to return to the comfort of bed, pound a brewski, or run off to play guitar.

The first two weeks were rough. I was bogged down in a morass of depression and left the house only once to buy groceries. I wanted nothing more than to go see my mom, but was stopped by the combination of a slew of health issues on her part and what was then an even more uncertain knowledge of the factors which contributed to the spread of SARS-CoV-2. When classes began anew, though, I realized that most of my fears were unfounded. My professors without exception did a remarkable job of adapting to the online environment and taught classes through different but equally engaging approaches. Faculty members and colleagues alike reached out to me in a sincere fashion, for which I will be forever grateful. Mutual aid networks were established, and we began using the Zoom platform to have social gatherings in addition to classes. There may have even been a clandestine in-person gathering or two, in

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<sup>1</sup> Writing from the home office of two law school friends in Boise, ID who generously granted me access despite not being home as I told them it was difficult for me to concentrate at my own house, further emphasizing how fantastic our community is.

celebration of birthdays which may or may not have occurred during lockdown. Counterintuitively enough, I believe I actually forged stronger bonds with many people during the quarantine than I would have without it. While it was admittedly difficult to be overly passionate about the twin aims of the Erie doctrine when I would rather be checking for the latest pre-print paper on the pandemic, I ended up with a wealth of new knowledge and finished all my classes feeling quite competent and well-versed. I truly am lacking the words to express how indebted I am to everyone with whom I kept contact and who offered me support during that time. It's become a bit of a hackneyed cliché, but there is no way I could have done it without them. I could wax poetic for pages about how genuinely appreciative I am of the Vandal Law community, but in the interest of brevity I will move on.

What has impressed me most over the past few months is the nature and quality of discourse fostered among my peers. It is uncontroverted that we are living in a contentious time, and contentious times can lead to vicious argument and conflict. All too often, one side of a debate completely ignores what the other is saying and resorts to petty ad hominem attacks as first recourse. Perhaps even more nefarious, though, are those who pay lip-service to the ideals of good faith argumentation and intellectual honesty while, in actuality, lashing out with bitter vitriol masked under a thin façade of civility. We as a community have had several difficult discussions lately, running the gamut from the relatively trivial (i.e. the merits or lack thereof of switching to pass/no pass grading) to more substantial subjects such as the realities of the Coronavirus pandemic and lockdown to the idea of nationwide systemic racism. The overwhelming majority of these conversations have been bereft of the deleterious style of argumentation previously mentioned. I have seen people respectfully disagree, concede points, engage in meaningful rhetoric, carefully consider and respond to what another person is saying, and be willing to have their minds changed with pleasantly alarming frequency. I am quite a bit older than most of my fellow students, and have been a member of many communities over the years; I cannot stress enough how pleased I am with the open minded yet passionate nature of the one in which I currently find myself.

I am writing this on a whim with no pretense of editing or structure, and it is proving difficult to formulate and encapsulate my ultimate thoughts on the times in which we find ourselves. Volumes could be penned on the conspicuous educational, economic, health, and justice issues presented by pandemics and nationwide uprisings and calls for equality without even taking into consideration the numerous Nth order effects. There is no obvious end in sight, and this situation could last in perpetuity. Despite this, I think it is safe to say that on some personal selfish level I am glad to have experienced this. I believe it will serve as an important formative experience for myself and many others, and both underscores the importance of the legal education I am currently receiving as well as renewing my vigor for it. Hope springs eternal, and we are part of a generation that has the potential to make meaningful and lasting change both nationally and globally. Winston Churchill is purported to have said that he has gotten more out of alcohol than alcohol has taken out of him – while mentioning that was largely an excuse for me to bring up beer, I feel confident in saying that I have gotten more out of our current situation than it has taken from me. On that note, I am off to research any salient law I can find which will help breweries stay open until this all blows over.

## **How Not To Go To Law School and Other Musings From a Non-Traditional Student During a Pandemic**

**Heather Van Mullem, University of Idaho Law Student**

I am a non-traditional first year law student on the adjusted curriculum pathway, a Professor at a small, public college located about 45-minutes away from the University of Idaho College of Law, and a mother of three active, school-aged children. My days are full of classes I teach, classes I take, my research, and the experiences of my children.

My life is chaotic, as I knew it would be going into law school. But I chose to take this path because my time as an athlete, coach, teacher, and researcher of gender issues in sports shaped and influenced my goal to work as a legal consultant with college athletic departments focusing on issues including Title IX, gender equity, sexual harassment, and sexual violence.

In my dual role as professor and student, before COVID-19, I believed that college can be a great equalizer. While law school is unabashedly and undeniably competitive, the University of Idaho provides resources to support success for all students. For example, in Menard, all students have access to computers, books, legal journals, and the internet. Additionally, all students have access to assistance to help troubleshoot challenges we face with technology, scheduling, and mental health. As I teach, I am constantly considering the best way to create a positive, supportive, and equitable learning environment. When students come to my classes, for those 60-75 minutes, we are learning together.

After schools closed campuses due to COVID-19, I worked from home like my colleagues, while homeschooling children, and completing the spring semester of coursework remotely. Balancing already teetering demands from my multiple roles became even more challenging. While time spent engaged in my usual 45-minute commute between the college I teach at and U of I was regained, shifting the coursework I teach to remote delivery while managing the educational needs of my children quickly consumed that time and much, much more.

COVID-19 exposed how fragile the equity of learning at colleges and universities has become. Forced to work and learn from home, all students now no longer have access to the same things in the same ways. Internet reliability, time, and space has been dramatically impacted. Trying to attend and participate in synchronous, remote learning is a challenge if one's internet connection is unreliable. It's hard to meaningfully participate in a class discussion when you lose the internet connection repeatedly. How many times will a student try to rejoin a class session before they give up? What does that mean for a student's understanding of the material and their retention in a program? As a teacher, this is what keeps me up at night. As a student in a highly competitive program, this, too, makes me lose sleep. How many times am I willing to reconnect? What are the ramifications for my answer?

At home, my family responded to this new reality by being organized. We made a chart with times for daily activities noted and checked in with one another daily to make sure we were keeping up with our responsibilities and deadlines. I consider myself lucky. My kids are old enough (and tall enough) to get their food and only twice did one of my children make an unannounced appearance during a Zoom meeting or classroom session.

But for my students and colleagues who have young children or are caring for elderly family members, reality is dramatically different. I now see how their opportunities to learn and engage are inherently different from mine. Some of my students are now the primary caregivers for younger siblings while their parents are at work or had to secure full-time employment to help their family pay bills. Some of my students have family members who have become ill from this virus. Some of my students who are gay or lesbian had to return to homes that aren't welcoming.

Before I participated in my final oral argument for the Legal Writing and Analysis class, I had a Zoom call with a student. This was a student that would not smile for the first 10 weeks of the class, but who I made smile in the last face-to-face class we had before COVID-19 shifted us to remote learning. I practically skipped out of the classroom with happiness. During our Zoom call, he told me that his family member was sick and likely to die from the virus. He and I cried together over Zoom. I didn't see his emotion, or mine, coming. When we concluded our call, I realized I had only 5-minutes before I had to give my final oral argument. I splashed some water on my face and cued up another Zoom call while my puppy gleefully grabbed a hold of my phone cord and bounded out of my bedroom dragging my partially plugged in iPhone down the hall. During this oral argument, my classmate did and said all the right things. Dressed in a suit and tie, he staged his home office to look like a court room and looked and sounded like a lawyer. He was impressive. I learned from him and am grateful for his effort. In comparison, I made sure the camera didn't show the pile of clothes yet to be folded on my bed and moved the camera further from my face to try to minimize the puffiness left over around my eyes from mourning my students' pain. The virus made its presence known again.

A colleague recently asked me, "So, how's it going?" And, at the time, we laughed. But if I were to answer seriously, I'd say, "Well...this is how NOT to go to law school," but then I'd tell her I'm going to do it anyway. I'd tell her that we can no longer hide from the inequalities that exist in society and we can no longer ignore the realities this causes for our students and colleagues. It is uncertain how this virus will change how we live, work, and learn though it is expected that we will have a new normal. I'd tell her that we have to remember to extend grace to one another, like my colleagues and classmates did for me, even when this pandemic subsides. We face different challenges daily and have access to different mechanisms to navigate the realities of life. Not understanding or appreciating this means we fail one another. As we work to exist in the competitive realities of law school, it's imperative we reevaluate our understanding of true competition. A true competitor must give her best and expect the best from her competition. I know this as a former college athlete and college coach. If we do not address inequality, we are not a part of the solution, we are a part of the problem.