

Clients as Teachers

Jane Harris Aiken *

I want to thank Joel Seligman; my parents for coming; Karen Tokarz, the Director of the clinical program, for bringing me to Washington University; Georgia Van Cleve for spending time with me and sharing so much about Bill; and my children for wearing their dress-up clothes.

I am deeply honored to have been selected to hold the William Van Cleve Chair. After the announcement several months ago, I have had the pleasure of having people tell me just how wonderful a man Bill Van Cleve was and how lucky I am to have this chair in honor of him. The picture that I have gotten of this man is truly that of the lawyer statesman. He took his profession very seriously. He approached his work with dedication and passion but, more significantly, he loved his profession in the broadest sense. He understood that the practice of law is about service—service to clients and service to the community. One of the qualities that I have consistently heard about Mr. Van Cleve is that he was a man who cared deeply about his clients. He himself said that his clients were his friends, and his friends his clients. He saw himself not as a particular kind of lawyer but as a lawyer who helped his clients in whatever ways they needed his help, a holistic lawyer, if you will. Bill Van Cleve took seriously his professional responsibility to be a counselor to his clients and he offered them his wisdom as well as his considerable legal skills. Bill honored his clients, he recognized them as complex, he appreciated the choices that they were making, and, because he understood the broader context of his client's environment, he was trusted to advise them as they made these choices. People said that he was a man who was always thinking ahead of his clients, as they struggled with the

* William Van Cleve Professor of Law, Washington University. The author delivered this address at her installation in the William Van Cleve chair, January 27, 2004.

day-to-day decisions, he was entrusted with being aware of potential long-range problems.

Bill also recognized the need to work with those less fortunate than he. As one person said, Bill remembered people who had less, as he served people who had more. His public service ranged from ensuring diverse representation on important civic boards to directly serving people at St. Patrick's Center. He devoted considerable time to work for disadvantaged youth. Bill Van Cleve was instrumental in ensuring that Parents as Teachers came into being. Many say that that organization is the most effective group in preventing child abuse. Once again, Bill Van Cleve focuses on the heading off the long-range problems all to the benefit of the youth of this city. We should be proud that Washington University educated such a lawyer.

As a teacher, my job is to figure out what made Bill Van Cleve so effective so that I can teach those skills to others. It occurred to me as I heard this praise of Bill Van Cleve, that we spend all too little time in law school teaching our students these lessons, molding future Bill Van Cleves. It would be great if we could figure out what made Bill Bill. I have talked to a lot of people about Bill Van Cleve, and they all say Bill was an excellent listener. I believe it is through listening to his clients that Bill gained perspective and insight, making him such a powerful lawyer and advisor. That suggest that the best way to teach students is through working with clients and that is why I choose to teach in a clinic: it is in the Clinic where law students encounter clients.

Washington University's clinical program is one of the best in the country. Through the clinic we strive to teach top-flight litigation skills, fact investigation, courtroom tactics, navigation through statutes, and effective negotiation. But we also imbue our instruction with a strong message that lawyers, as much as any profession in existence, shape the very fabric of society. We do this through working for our clients. They often end up being our best teachers.

As you all know, we are living in troubled times, reverberating from the Twin Towers attacks. We have declared a war against terror that appears to have no end. We are operating under the USA PATRIOT Act which allows for indefinite detention for certain individuals without identifying them or allowing them counsel or any access to court review. We are living in a time of roving wiretaps,

secret tribunals issuing search warrants that can be executed without any notice that they have occurred. We are fingerprinting and photographing individuals before we will allow them into this country—all in the name of safety. We are spending billions of dollars on all this. When I see my hungry, homeless clients desperately in need of care, it makes you reflect on those billions and, if you reflect, you might be a bit skeptical about the justness of it all.

If there ever were a time in which we need lawyers who are wise and offer a healthy dose of reflective skepticism, it is now. Everyday we are invited to engage in cognitive shortcuts to reinforce bias and pump up fear. As law professors, we have a choice: we are either complicit in ensuring that our students are good soldiers for the status quo or we develop teaching strategies to ensure that the future lawyers we are training have an appreciation of their roles in the preservation of justice. As teachers we can work to inspire students to use their legal skills to bring about a more just society.

It is very tempting for us, as law professors, to resist taking responsibility for what our students take from our classes and do with their lives. Do teachers have any obligation to teach students to do good? I think we are obliged to take responsibility for what we produce. Indeed we do, when that student could turn out to be a lawyer like Bill Van Cleve. But too often the products of our classrooms do little to improve the world. If our teaching methods merely reproduce the status quo, we cannot sit back in our ivory towers and bemoan the state of the world. As educators we can make a significant difference in the ways in which our students engage in the critical value decisions that confront them as actors in the community.

After all, we teach *law* students. We know that they will exercise power in their relationships with clients, courts and the community. We are in the business of credentialing the elite. It's true that our students are adults, we cannot control our students; but, if we are honest, we know that we can have a deep effect on how they think about problems and solutions to those problems. Virtue, like proficiency in legal analysis and advocacy, comes from understanding, insight and practice. It must be incorporated into the educational process by which law students become lawyers.

Unfortunately, most of legal education is text-based, not client-based. The case method, which comprises only the opinions of appellate court judges, permits, perhaps requires, the student to be detached from the people involved. The opinions are displayed in an abstract way. The fact that the decision is a culmination of a controversy between human beings is played down and forgotten. The facts of the case are presented in a condensed form—just the minimum required to explain the doctrine. The parties to the dispute do not have names. They are called: “the plaintiff” and “the defendant.”

The difficult stories that form the basis of the cases are presented in a cold, indifferent way. It is rare to see a shocked response by the class to an instance of physical injury, or to a human tragedy of a person who has lost his liberty unjustly. This detachment creates the feeling that the class discussion is imaginary and the parties are merely actors who play their roles in front of the class for the purpose of demonstrating a doctrine. It removes from the discussion any emotion, pain, or sense of justice.

The student learns how to “think like a lawyer”: adopting an emotionally remote, morally neutral approach to human problems and social issues, distancing themselves from the feelings and suffering of others, avoiding emotional engagement with clients and their causes, and withholding moral judgment.

Objectivity is a lawyer’s tool, but all too often we graduate lawyers who are convinced that they are merely people who facilitate the even-handed application of process, who behave as if they will play on a level playing field. They believe they have little or no power or responsibility for ensuring substantive justice. But if lawyers have the power to shape the social fabric, they must be aware of their responsibility to shape it in positive ways. Lawyers can do this better and it will be clients who lead the way.

As a clinician, I see working with clients as a chance for students to learn how to reflect on their experiences; place them in a context of social justice; glimpse the strong relationships between knowledge, culture and power; and recognize the role they play in either perpetuating hierarchical and oppressive systems of power or challenging those structures.

It is true that my students are experienced human beings but they are novices at being lawyers with clients. That makes them more open to learning. I have written about teaching what I call “justice readiness,” that is priming students to be sensitive to issues of justice as they develop into lawyers. The theory that I promote is that we need to provide students with disorienting moments: moments in which their well-developed meaning schemes are challenged . . . where they have experiences that surprise them because they did not expect to experience what they experienced. This can be as simple as learning that the maximum monthly welfare benefit for a family of four is about \$350. Or they can read a recent Supreme Court case that upheld Charles Carlisle’s conviction because a lawyer missed a deadline by one day even though the district court found there was insufficient evidence to prove his guilt. These facts are often disorienting. They require the student to step back and examine why they thought that the benefit amount would be so much more, or that innocence would always result in release. That is an amazing teaching moment. It is at this moment that we can ask students to examine their own privilege, how it has made them assume that the world operated differently, allowing them to be oblivious to the indignities and injustices that occur every day. They can see how their privilege to look the other way, to not encounter these harsh realities, reinforces injustice. With that kind of insight they can begin to think of ways to confront the injustices that they now see.

Our clients in the clinic are devastatingly poor. Yet every semester I find myself amazed at their resilience. They cope with homelessness, incarceration, not knowing where they are going to get the money to feed their children, waiting in lines for everything. They are denied health care for even the most basic of needs. They are beaten and abused while others turn a blind eye. They experience injustice first hand and expect it, it’s a way of life. I cannot imagine dealing with the things my clients deal with on a day-to-day basis. The reason I can’t imagine it is because I am privileged not to have to deal with those kinds of problems. They are real, they are constant and they are scandalous. Exposure to the lives of the poor helps me and my students learn the ways in which legal power is distributed and exercised in American society—to what ends and in whose interests.

Let me give you an example of what I mean: how providing legal services to a client can result in larger lessons about justice. Our clinic handles clemency petitions for women who have been convicted of killing their batterers. Many of these women have gotten extremely long sentences, some even will never leave prison unless clemency is granted because they have been sentenced to life without parole. One of my students was beginning to prepare a clemency petition for a woman who had been imprisoned for killing her husband. She had been identified as a victim of domestic violence. The student interviewed the client and had her recount the murder of her husband. The woman had used a gun to shoot him. She described how he had been sitting in a chair, unarmed, at the time of the killing. She had pled guilty to the murder. When we interviewed her, she began to cry and said she “just didn’t know why [she] did it.” When the student probed the client about domestic violence, the woman described the violence as minor. The student left the interview puzzled by why the clinic was taking this woman’s case and argued that we shouldn’t take it. She then made the trip to the client’s hometown, where she interviewed neighbors, family members, and the sheriff who had arrested her. She was “surprised” to learn that people in this small town all knew that her husband beat her regularly. Our client had not been allowed by her husband to seek medical care but the few times she had been seen the doctor, she was treated for “mysteriously” broken bones and the doctor had noted fading bruises and burns in the medical record. The sheriff even said that “she did us all a favor” because this man had been responsible for so much evil in the community. Despite all of this, our client accepted a plea of guilty with a twenty-year sentence when her attorney told her she had to come up with \$6000 more if she wanted to go to trial. When examining the court file, the student learned that the pre-sentence report prepared by the state for sentencing purposes after trial had recommended no time. The student could not believe what she was learning: she was disoriented by these facts. That opened the door to probe her assumptions. There were many. The student had well-developed meaning schemes about people convicted of crimes, assuming that if she was convicted, she had to be culpable; about victims of violence, assuming that if she suffered violence at the hands of her husband she would complain; and even about

lawyers who plead their clients, assuming that any plea would be based on the merits of the case, not on the money. She learned that ultimately justice costs money in our society and our client had paid with many years of her life. Clearly she learned a great deal about how some of her assumptions were quite wrong. But it was not enough to leave that student with those limited insights. This is where we join our clients as teachers. She needed faculty intervention to focus on the experience, analyze its implications for her case handling, and, perhaps most important, analyze the value choices she made at each point in the process. Ultimately this learning was a result of her encounter with a client. No law text could have prompted her insights. I venture to say that the student who handled this case is forever changed. Her experience in the clinic with this client required her to reflect on how her own life experience had facilitated the formation of her ideas about the law, the individual, and the system. She examined how her life experience had shielded her from the realities that she confronted and how that shield had reinforced injustice. As she walked with her client out of the prison walls, she also learned the role she could play in dismantling injustice.

This chair installation has given me a platform and I appreciate your willingness to listen. I am not just making a pitch for giving our students more opportunities to engage in social justice work while here at the law school. I am reminding myself and all my fellow teachers that the experience is not enough . . . we must recognize that we, too, have clients whether we are practicing law or not . . . they are our students. We have obligation to them. This means that we must determine what skills and content will make our students more likely to be able to identify injustice and must develop teaching interventions that will increase the probability that our students will acquire those skills. We need to work together to discuss appropriate projects for students, to develop teaching interventions that move us closer to the goal of inspiring students to embrace the justice role they can play as lawyers, and to support and affirm one another in this difficult endeavor. We can assist our students to make a commitment to justice in their lives as lawyers. Perhaps, if we embrace this mission, in the future we will be able to claim more Bill Van Cleves. Thank you.