

## BEYOND THE DISORIENTING MOMENT

JANE H. AIKEN<sup>1</sup>

These are overwhelming times for the law. Things that I have taken for granted as a lawyer—like facts, like principle, like truth and the adversary system—all seem to be in play. Lawyers have a special role in ensuring that the rule of law is supported.<sup>2</sup> Challenging rights deprivation is critical to a functioning democracy. Legal educators need to prepare our law students to enter this new legal arena with a skill set that will actually arm them to be effective and resilient. In order to do that, though, educators need to be prepared themselves by developing pedagogy responsive to the changing needs and disorienting and unpredictable landscape we all face.

There is a lot at stake here. Students are asking questions like, “What good is individual representation?” “What good is legislative action?” “How can it go anywhere in this climate?” The rules do not seem to be the rules anymore. Students wonder if they can just ignore the law for their client’s position; or assume the facts do not matter. Students who come from more marginalized populations often feel that they are unsafe and that, of course, affects how they can learn at the law school and how they see their future in law. At the same time, we are experiencing moments of powerful student leadership and quick collective action.<sup>3</sup>

I am not a lawyer in the trenches when it seems that the need for such trench warfare is greater than ever. I am involved with cases but not as my profession. I am a law professor. As such, my teaching has been grounded in the hope that my students will become outraged, will work to uncover lies and ferret out facts, and will gain a sense that they can actually make a difference. I want them to feel a sense of responsibility for justice. I want them to think of themselves as initia-

---

<sup>1</sup> Dean, Wake Forest Law School. This article is based on a speech I gave when installed as The Blume Professor of Law at Georgetown University Law Center in February 2019. Many thanks to Georgetown for all the support given to me while I was there and for its commitment to social justice.

<sup>2</sup> ABA MODEL RULES OF PROFESSIONAL CONDUCT: PREAMBLE AND SCOPE, PREAMBLE: A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

<sup>3</sup> Perhaps the best example of that was the rapid response by students to get to the airports during the Muslim ban. See Abed Ayoub & Khaled Beydoun, *Executive Disorder: The Muslim Ban, Emergency Advocacy and the Fires Next Time*, 22 MICH. J. RACE & L. 215, 233 (2016-2017).

tors and leaders. In this age of fake facts, and the law apparently suggestive more than prescriptive, I have a growing sense that the teaching strategies I have used in the past to help my students are not enough. All of this prompts me to rethink what it means to be a law professor now.

I often look to my first article in the *Clinical Law Review*, *Striving to Teach Justice, Fairness and Morality*,<sup>4</sup> to help me negotiate difficult teaching problems. That article described a teaching methodology for mining disorienting moments. This methodology builds on the concept of transformational learning articulated by Jack Mezirow in his book, *Transformative Dimensions of Adult Learning*.<sup>5</sup> Mezirow describes the process of transformation as involving:

1. A disorienting dilemma, usually one that upsets preconceived beliefs;
2. Self-examination with feelings of guilt or shame;
3. A critical assessment of epistemic, sociocultural, or psychic assumptions;
4. Reintegration based on conditions dictated by one's new perspective.<sup>6</sup>

I have written about how we might use disorientating moments to help students learn. The theory is that people feel disorientation when they experience something and find themselves surprised that it played out the way it did. Their schema about how the world worked was wrong and required rethinking and readjustment.<sup>7</sup> More often than not, that original schema is the result of privilege, largely the privilege not to see or anticipate oppression and harms.

When students find themselves disoriented, they are most able to learn and change. It is a moment in which they may become open to readjusting their worldview because what they thought was true, appears not to be true. It is a moment in which we can see that our view of the world is partial, that we recognize that we see through our own

---

<sup>4</sup> Jane H. Aiken, *Striving to Teach Justice, Fairness and Morality*, 4 *CLINICAL L. REV.* 615 (1997).

<sup>5</sup> JACK MEZIROW, *TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING* (1991).

<sup>6</sup> JACK MEZIROW et. al., *FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING* 168-69 (1990).

<sup>7</sup> So how do we expand our students' awareness that their worldview is partial, often reinforced by their privilege? Cognitive science tells us that in order to function, we all operate with schemas, mental platforms for processing and organizing our world. We tend to filter information through those schemas. Schemas come into being through experience. If one is white, or male, or wealthy or some combination of those, one is likely to have schemas that reflect that privilege. Because we process experience in such a way to reinforce those schemas, it is very difficult for us to change: particularly for adults: the students we teach. What can effect a change is when a person encounters a disorienting moment, a moment that disrupts the schemas.

eyes and have clear expectations, sometimes false, about how the world will respond to us. It is an amazing moment when we gain that insight. It is transformative, inviting us to create new habits of mind that require us to be aware of our privilege and frames. Such disorienting moments and the reflection that follows can enhance our ability to communicate across perceived difference. They also require us to be vigilant, to take our limitations seriously, to understand how our schemas may reinforce oppressive systems, and, perhaps most important of all, take responsibility for that.

I argue in my work that reflection and reintegration are not enough. It is our job as educators to mine that disorienting moment. As I said in that Clinical Law Review article so long ago:

Reflection and reorientation by themselves will not have a lasting impact on a learner's drive to champion justice. We must add a step in the reflection and reorientation phase. Not only should we help our students reflect carefully on the disorienting moments caused by the insights into "different" worlds, but we must help our students in reflecting on *why* those moments are disorienting. This requires students not only to analyze the world outside of them but also to turn inward and analyze themselves: They must seize the moment in their disorientation and deconstruct it. What is it about their own life experiences that allowed them to form their previous ideas about the law, the individual, the system? Why has their power and privilege allowed them to be oblivious to the realities of the lives of other people who do not share that privilege? How does their obliviousness reinforce their privilege and assist in maintaining a system that might have harmed their client?

In a second article in the Clinical Law Review, I described the role of the teacher who engages in this kind of teaching as "Provocateurs for Justice."<sup>8</sup> When we mine those disorienting moments with our students, we help the learners see how their own privilege may have affected how they thought the world worked and that, indeed, it often does not for the people we are serving.<sup>9</sup> In this mining process—which of course we must do ourselves before and along with our students—we need to be circumspect, to start with an appreciation of how our privilege has shaped our own vision of the world. We must then use the insights we gain from our disorientation to become better able to articulate harms in a way that is persuasive to courts and other decision-makers. To be effective as social justice lawyers, we need to be identifying our own privilege and its impact. When confronted with

---

<sup>8</sup> See generally, Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287 (Spring 2001).

<sup>9</sup> Id.

facts that are inconsistent with what we thought was true, the shock of learning that our vision is partial serves as a powerful way to inspire us to do justice.

When I wrote those articles, I reminded the reader that disorienting moments happen every day if you are paying attention. Part of the power of those moments is that they come as a surprise to the observer whose preconceived beliefs about how the world operates are not accurate and fail to confirm the way they assume the world will be. These days, I find the world disorienting almost all of the time. Those moments that have been, in the past, a source of such rich pedagogical intervention, no longer come as a surprise; they no longer prompt a desire to make sense of them and to reintegrate with this new understanding. This once powerful teaching methodology seems now to fall short. It seems too focused on helping individual students understand how their vision is partial and deeply influenced by their privilege.

The issues we are addressing now are playing out on a massive scale. We have to think about new paradigms, to open collective eyes. We understand how police brutality is supported by the idea that black people's lives do not deserve to be respected and protected, prompting the Black Lives Matter movement;<sup>10</sup> and how sexual assault is perpetuated by the idea that it is an isolated experience when it is actually ubiquitous, as revealed by the #MeToo movement.<sup>11</sup> These are bigger than a disorienting "moment." How does one take those insights and "reintegrate?"

At the same time, never in my teaching has the gap been so big between what we teach in law school about how the law works and how it actually operates on the ground. For example, I was teaching "sexual character evidence" in my evidence class when the Kavanaugh hearings aired. We had just learned what constitutes an appropriate examination question, what kind of inferences the Rules of Evidence prohibit, and how arguments to a jury cannot draw on those prohibited inferences. I was looking forward to the opportunity to explore these issues with my students as we watched the examinations in the Senate hearing. Of course, what transpired in reality on the Senate floor could not have been a more different approach to thinking through sexual character evidence than what I had suggested in the classroom.

I felt like an Ivory Tower law professor, with no room for duck

---

<sup>10</sup> See generally, Russell Rockford, *Black Lives Matter: Toward a Modern Practice of Mass Struggle*, 25 *NEW LAB. FOR.* 34 (2016).

<sup>11</sup> Elizabeth C. Tippet, *The Legal Implications of the MeToo Movement*, 103 *MINN. L. REV.* 229 (2018–2019).

and cover. It seemed too explosive to try to have a real conversation about this disconnect, and I was quite tempted to “let it speak for itself.” However, I struggled through it, pointing out how what we had learned in evidence did not seem to be controlling what happened in the Senate hearing. It was not satisfying — for the students or me. The moment called for a different response and I did not know how to get us there. But the students did, bringing the discussion to an analysis of “MeToo” and how the Senate process was used to reinforce the assumption of isolation. By the end, I was glad we had gone through the experience as a class

Nevertheless, it was unnerving to be the teacher at the front of the room. I realized that the volatility of the hearings and my impulse to avoid discussing them resulted in my own disorientating moment. I was not at all sure I could make sense of this moment, draw the lessons I wanted to draw, and come out the other side a better teacher for it. Now, I realize, it is time that I think about how I mine my own disorientation.

Increasingly I believe that the best way for me to improve how I teach is to examine how I learn. That is what I am attempting to do in this essay. How do I adapt the disorienting moment teaching methodology to cope with constant disorientation? What is missing? How do I negotiate my way through the chaos and my own existential crisis? I hope that by intentionally engaging in this process myself – as a learner — I can glean lessons that will prove useful when I return to the role of teacher.

This essay draws on a recent experience I had at the Southern border. It describes my own disorientation and the experiences that prompted it. It then moves to thinking about what we need to teach our students about how to recognize massive failures in the law, harness the deep sense of shame that inspires reflection and concomitant action, and to communicate across differences.

Our Southern border with Mexico as recently suffused throughout the news. I have practiced in a number of different areas but have only a little experience with immigration law. Because I had little understanding of the issues and wanted to learn more, I decided to go on a weeklong immersion trip to the Arizona/Mexico border in Nogales. I joined an immersion program designed by The Kino Border Initiative (KBI),<sup>12</sup> an organization that has been serving people at the bor-

---

<sup>12</sup> KINO BORDER INITIATIVE, <https://www.kinoborderinitiative.org>. KBI is a binational organization that works in the area of migration and is located in Nogales, Arizona and Nogales, Sonora, Mexico. Its mission includes: 1) Direct humanitarian assistance and accompaniment with migrants; 2) Social and pastoral education with communities on both sides of the border; 3) Participation in collaborative networks that engage in research and

der for years and is committed to ensuring that people gain a better understanding of the issues. I was traveling with 10 other people from Jesuit Universities all over the country.<sup>13</sup>

During my week in Nogales, I learned a lot, and reflected a lot on what I learned. The experience began in service: working primarily with deportees, but also a few asylum seekers. In the morning, we crossed the border and helped provide breakfast for people, some awaiting asylum interviews, others having been apprehended in the U.S. and brought to Nogales, Mexico, the day before. Most had spent some time in detention, others were in holding cells until the bus filled; some surrendered at the border and sought asylum but were waiting in Mexico to see an asylum officer.

Men and women with small children filled the room as we served a breakfast of coffee, tortillas, beans and eggs. Some carried all that they owned on their backs. Some were in prison blues, some in camouflaged pants, shirts and hats; some had no coats, some in maternity clothes. Many coughed. Some of the deepest coughs came from children under the age of two. All were hungry and many looked defeated. One group provided medical care where needed, another group helped with phone calls, cashing checks, getting clothing, finding shelter. Another provided legal counsel. There were so many families, many with very small children; most were fleeing violence from Central America or southern Mexico.

The beginning of the meal started with applause—something that startled both the family members and me. Why did the staff applaud these seekers? Because they were struggling against terrible odds and all the while demonstrating tremendous resilience. They felt failure or imminent failure, but all were trying to find a better life for themselves or their families. For that resilience and optimism, they deserved acknowledgment—the applause was for them. After serving them breakfast, we talked with them.

My first day, I sat down to talk with a man who looked dazed. He had been living in Los Angeles for over 20 years, had a job, an American wife and children. He had been working toward a green card. In fact, he had an appointment with immigration services to move forward on that green card in a couple of weeks. His mistake? He went to Phoenix for work and, while he was there, the police stopped him and asked for his papers.<sup>14</sup> He had his Mexican passport, but no ade-

---

advocacy to transform local, regional and national immigration policies.

<sup>13</sup> Weirdly, the trip was planned over a year before I went: who knew that I would be at the border at the same time President Trump was there while we were in a government shutdown totally focused on “The Wall”?

<sup>14</sup> See Randal C. Archibald, *Arizona Enacts Stringent Law on Immigration, U.S., NEW*

quate visa for his particular immigration status. The police arrested and charged him with unlawful entry, and they put him on the bus to Mexico. He had arrived in Nogales that morning. He could not understand why this was happening when he had an appointment to get a green card just two weeks hence.

Neither could I. Where was the justice in this? It was disorienting. This was not how I thought the system worked. Little did I know, this was just the beginning of my disorientation.

Over the next days, I learned more about the border experience — the level of violence in Mexico, the control by the cartels, the devastating impact on small farmers after NAFTA and the maquiladoras.<sup>15</sup> I learned about the factories that paid workers in Nogales, Mexico, \$5.10 PER DAY (as the result of a recent *raise*). I learned about the massive amounts of produce brought across the border every day, and all the consumer goods produced in companies built just on the other side of the border. I learned about changes in the immigration laws that made it very difficult to get work in the U.S. and return to Mexico as a migrant worker; and the new interpretation of old asylum laws that made it very difficult to get into the U.S. to flee violence and torture. Finally, to my surprise, I learned that the numbers of people coming from Mexico had hit an all-time low over the last 20 years. The hoards I kept hearing about just did not exist.<sup>16</sup>

My second day, we went to a shelter in Mexico for women who had been deported from the U.S. but who had no destination home or family outside the U.S. I talked with one young woman who had fled violence in Southern Mexico with her parents and two siblings. I will call her Nina. On the way to the U.S. border, Nina had turned 18. When the family arrived at the border, officials separated Nina from her parents and siblings because she was now an adult. Her mother, father and younger siblings went to a detention center together, as a family, while she was sent to an adult detention center far away. Nina and her family had never before been separated. After three months of detention, Nina's family members sought asylum and were granted the right to come into the U.S. and apply for permanent status. Nina was not part of that petition, and instead had to file her own applica-

---

YORK TIMES, April 24, 2010, at A1; Sonny Behrends, *Immigration Reform: A Reflection on Arizona Bill 1070 and Beyond*, 9 REGENTS J. INT'L L. 75 (2012-2013).

<sup>15</sup> See Carol Pauli, *Whole Other Story: Applying Narrative Mediation to the Immigration Beat*, 18 CARDOZO J. CONFLICT RESOL. 23, 39 (2016-2017); Kim, Caralho, Davis & Mullins, *The View of the Border: News Framing of the Definition, Causes and Solutions to Illegal Immigration*, 14 MASS COMM. & SOC'Y 292, 304 (2011).

<sup>16</sup> Ana Gonzalez-Barrera & Jens Manuel Krogstad, *What we know about illegal immigration from Mexico*, *FactTank: News in the Numbers*, (June 28, 2019, 9:00 AM) PEW RESEARCH CENTER, <https://www.pewresearch.org/fact-tank/2019/06/28>.

tion for asylum. Even though Nina had experienced the same violence that her siblings and parents had experienced in their home community, and even though a lawyer represented Nina, ICE denied Nina's application for asylum, placed Nina on a bus from the detention center where she had been held and delivered to Nogales. Once there, she found her way to the women's shelter. When I met her, she was overwhelmingly unsure of what her next steps would be.

Since 1990, over 8,000 migrants have died attempting to come across our southern border.<sup>17</sup> KBI took us to the point on the border where such migrants cross. We walked this terrain, so rough and difficult to traverse that a physical wall could not be constructed here. And this is where migrants cross, on foot. Carrying everything they can, and surviving on the food and water they can carry, they hide from the border patrol while advancing only at the mercy of the people who have brought them to this point, usually cartel members. The cartels have taken everything from them and control their every movement in that part of Mexico.

But the physical difficulty I imagined was minor compared to the emotional toll suffered by these travelers as evidenced by abandoned back packs, baby bottles and children's coats likely strewn on the ground while fleeing border agents. I saw women's underwear hung as trophies underneath what are called "rape trees," often the cost of passage for women seeking to cross the border. It was the photographs that had been abandoned that really brought home how dire the circumstances must have been to motivate someone to take such a risk. The pictures, as expected, showed loved ones, but they also included people's homes, their furniture, their curtains, their gardens.

Our walk through the desert culminated in a visit with ranchers whose lands come right up against this wall-less border. Some talked about finding people dying from thirst and exposure on their property. Their decision to care for them and leave water and food for the people who entered their property subjected them to possible prosecution for such acts. Others complained of the destruction of their fences as migrants came onto their property; they commented on the resulting loss of cattle at \$3,000 a head. They complained about debris left by fleeing migrants. Others described their fear that those migrants carrying drugs, or otherwise desperate, might invade their homes or attack them.

These conversations made my experience of the border more complicated. I needed to think about the different interests. I knew

---

<sup>17</sup> Julia Black, *Migrant Deaths Remain High Despite Sharp Fall in U.S.-Mexico Crossings in 2017*, World Immigration Report 2018, IOM, The UN Migration Agency, <https://www.10m.int/news/migrant-death>. Posted 02/06/18.

that the government had no plans to build the wall across the ranchers' properties because the terrain made such construction impossible. I also knew that trucks coming through the designated border crossings carried the preponderance of the illegal drugs entering the U.S.<sup>18</sup> I knew also, though, that it has been hard to measure the total volume of drugs coming through.<sup>19</sup>

Many of the ranchers' descriptions of the migrants were troubling. They suggested that claims for asylum were lies, made up just to get into the U.S. However, I had met those migrants the day before, caught crossing that border. They were families, people seeking safety, people who were fearful, desperate. But violent? I did not see that. These facts were available to both the ranchers and me. The lenses through which we viewed those facts were different.

How do we communicate across these different realities? How do we talk to people who have such different frames of reference? How do we climb out of the silos that confirm our own, set vision of the world? How do we expand our scope to see a broader justice, common to all? It struck me that many of the ranchers and the migrants I had spoken to just the day before shared the same fear: feeling unsafe in their homes. Yet that was not a part of this border conversation. It needed to be. I realized the power of communication and the power of deconstructing frames. How do I translate that into my teaching?

Near the end of my time at the border, we traveled to Tucson to see "Operation Streamline" in action.<sup>20</sup> In 2005, George W. Bush instituted this new program, thus terminating the "catch and release" approach to finding migrants illegally entering our country. With the new approach, the U.S. charged them with a criminal offense of unlawful entry. Prior to Operation Streamline, federal criminal prosecution was reserved for the most serious immigration-related crimes and for people apprehended reentering the country after previously having been deported. With the new program, hearings on cases requiring an expedited process for prosecuting these migrants clogged the federal courts. Operation Streamline ensured that the cases could

---

<sup>18</sup> In fact, the border patrol in Nogales had seized 258 pounds of fentanyl from a truck the same week I was at the border. *CBP Officers Seize Largest Amount of Fentanyl in CBP History*, U.S. CUSTOMS AND BORDER PROTECTION NEWSROOM, Jan. 31, 2019, <https://www.cbp.gov/newsroom/local-media-release/cbp-officers-seize-largest-amount-fentanyl-cbp-history>.

<sup>19</sup> There are so many trucks carrying consumer goods and produce for the U.S., it is impossible to fully examine each truck. Border security can only screen 70% of trucks or they create an enormous delay. Nicole Ludden, *At Nogales ports of entry, CBP uses technology, and instincts, to detect drugs*, ARIZONA PBS CRONKITE NEWS, (Feb. 25, 2019), <https://cronkitenews.azpbs.org/2019/02/25/cbp-drug-detection/>.

<sup>20</sup> See Joanna Jacobbi Lydgate, *Assembly-Line Justice: A Review of Operation Streamline*, 98 CALIF. L. REV. 481, 484 (2010).

move through the criminal justice system quickly, the migrants summarily sentenced and imprisoned. Attorney General Jeff Sessions expanded the girth of criminalization when he enacted a zero tolerance policy requiring every person apprehended to be charged with the criminal offense.

When I learned about Operation Streamline, it sounded bad but nothing could have prepared me for what I witnessed. As I sat in the gallery of a beautiful federal courtroom, the bailiff called the gathering to order and a bustle of lawyers came forward. The judge entered, and almost immediately seven men and women shackled by their legs and arms shuffled in to stand before the court. The judge said something that sounded similar to a mantra, and then he read from a list of names, eliciting a “yes” from each person. I realized this was a plea hearing: each “yes” was a defendant’s guilty plea. Then the prosecutor suggested the appropriate punishment and the judge passed sentence. The whole process for each person could not have lasted more than a minute and a half. Each person had a lawyer standing behind him, but it was clear to me that most of them seemed to be meeting each other for the first time. After about ten minutes, these — prisoners? detainees?—were led out, and the next seven shackled men and women shuffled in to experience the same procedure: mantra, name, “yes” and sentence. I saw 75 people prosecuted and sent to prison in less than 85 minutes.

I was horrified. This was justice? This was due process? How had I not fully appreciated the facts of Operation Streamline? These prosecutions were being done in my name. Studies have shown that this process is not a deterrent to migrants coming across the border. But Operation Streamline does clog federal courts at the border, undermine due process of individual migrants, and add thousands of people to our prison population. What could possibly justify this approach? Who benefits from this system? Who has an incentive to stop it?

I was shaken by these experiences, struggling with competing thoughts and feelings: I felt naïve to have thought that “the system” would not let this happen. I realized that these stories were yet more permutations in the horrific narrative about separating children from their families. I kept thinking, “they had lawyers!” I kept thinking, “Didn’t the facts matter?” I felt like an idiot for thinking that.

In other words, I was disoriented. My established schema—that the system is fundamentally fair and works as it should; that a lawyer would make a difference; that decision-makers are concerned with facts—were ill fitting. What had become clear for me, though, was that my previously generalized concern for the migrants who sought

entry into this country had become specific and personal. I wanted to do something.

I was not the only one. Some of my colleagues were saying that they wanted to take leaves of absences and work on the border for a while. Some even mentioned that they might change jobs. Wow. What is the secret to this learning experience that would make a bunch of academics consider changing jobs?

I wondered how I could take what I had learned on the border as a student and translate it into a way of teaching. As a law professor, I am in the business of providing credentials to the elite. By doing so I reinforce the ideological justification for entrenched social orders. I cannot just stand by when existing systems oppress the less powerful. I have an opportunity to do something different.

Being at the border disoriented me daily, giving me insights into how my pedagogy of disorientation had worked in the past and how it might work today. It just was not enough. The problem is that just reading the paper these days is disorienting, so much so that I have become numb to the injustice I see. Disorienting moments are supposed to be just that, “moments.” This approach to teaching students does not work when being shocked and disoriented about what is happening in the world is a regular occurrence.

So I thought, “Why am I learning so much here at the border?” I talked with the people from the Kino Border Initiative to understand what their hopes were for this immersion and what their pedagogical goals were for structuring it this way. They talked about the importance of having experiences that *humanize* the Border; they encourage visitors to think of *accompanying* (rather than “saving”) the migrants we encountered; and they invited us to intentionally *complicate* the story so that the experience would be more nuanced and thoughtful.

Certainly, that happened. We admired the enduring humanity of those with whom we had recently interacted and we felt inspired to do something for them. It was a good reminder that even though I had been teaching for 30 years, I could still be surprised. I had thought of myself as not very naïve. I have had substantial experience with poor and marginalized people. But I was horrified when I watched seven migrants stand in shackles in front of a judge in federal court and all be sent to prison in a matter of minutes.

However, more than humanizing the issue and motivating us to take action, my trip to the border revealed a darker and more powerful motivator. To tell you the truth, the overwhelming feeling I had at the border was shame—shame that this was all being done in my name. I had known something about the situation, and yet, I had done

little about it for a very long time. My trip to the border reminds me that I do not have the privilege to separate myself from the acts. I am responsible because my country wants to exploit the cheap labor in Mexico to create low priced consumer products in this country; my desire for fresh food year round creates the demand for the fresh vegetables that are brought across the border every day; my willingness to look the other way supports policies that treat the threat of torture as of no concern as we change policies that require people in fear to stay outside our country to apply for asylum here, even though it violates international law and due process. It is my shame that children are separated from their families at the border to create callous disincentives to come to the U.S. It is my shame that the American demand for drugs fuels cartels and the exploitation of desperate people to cross the border illegally. It is my shame that economic incentives of private prison providers and the thirst for criminalizing all social problems results in a kangaroo court that makes a mockery of due process. It is my shame that I was shocked when I saw this injustice when it has existed for so long.

The Oxford English Dictionary defines shame as: “A painful feeling of humiliation or distress caused by the consciousness of wrong or foolish behavior.”<sup>21</sup> For me, shame is the feeling I have when I fail at something I was responsible for, and I find that it is a powerful motivator. Maybe that is because I am from the more traditional South; maybe it is because that was the way my family decided to discipline me. Who knows? I am very motivated by a desire *not* to feel it. And I think I am not alone in this.

So how can I harness shame in my teaching? Alternatively, how do I inspire a sense in my students that when they see injustice perpetrated in their name, they feel responsible? I am not abandoning my disorientating moment pedagogy. On the contrary, I am suggesting that we, as law professors, have a responsibility to mine more deeply, what has become an almost perpetual state of disorientation. Specifically, we must teach with an eye toward helping our students (and ourselves) feel the measure of their (our) complicity, and their (our) power.

Traditional disorienting moment pedagogy relies on insights about how our own personal privilege blinds us to how the world operates for people who do not have access to the same privilege. It requires us to reorient with a broader understanding of the world.

The world I encountered at the border did not require me to examine a potentially disorienting moment to gain insight. It was in my

---

<sup>21</sup> “*Shame*, n.” OED Online. June 2019, <https://www.oed.com/view/Entry/177406> (accessed August 01, 2019).

face right away. It challenged me to act, not just understand. I realized as I was leaving that I did not want my students merely to have insight into their privilege and a strategy for seeing through others' eyes. I wanted them to feel a sense of responsibility to act.

So perhaps the next step in disorienting moment pedagogy is to really bear down on the part that invites learners to feel responsible and inspired to reflect and act. So I started digging more deeply with my students.

I asked them to think about how, by not seeing, they may be reinforcing injustice. I asked them to really analyze who benefits from their initial vision of how the world would work.

I noticed that when they examined their own complicity in injustice, they did develop a sense of personal responsibility. They talked about how they did not want to be a part of the oppression they had "discovered." They felt the need to act to pay back for their own, albeit unintentional, support for these oppressive structures. They were eager to develop a strategy for understanding the ways in which oppression has been supported by our own unwillingness to take responsibility. This is not guilt. It is power: they are better lawyers because they are gaining an understanding of the operation of privilege and they become more able to make visible the harms associated with privileged assumptions.

The border also reminded me concretely about the danger of the partial view without reflection. Instead of having the insight that one's views are partial and using that insight to expand understanding, the relaxed acceptance of partiality is used to suggest there is no real truth to be found. This results in a lack of shared reality, making communication across social and sectarian lines even more challenging than it has been in the past. We need to provoke students to question and challenge internalized images of ways of life, their institutional systems and consequences, and their customs and traditions. We want our students (and us) to reflect on, and transcend, the silos that consumption of modern day media causes to grow around us.

In the past, I would have said mining the disorienting moment would unearth those differences, challenge schemas and reveal the impact of privilege as one began to see, for the first time, facts emerging contrary to what one expected. Now that bias is increasingly tolerated and there is a growing sense that facts do not matter. That critical component of the pedagogy of disorienting moments—that facts matter—is being undermined in the current media environment. Facts and law seem increasingly irrelevant, justice seems more random. This erosion of a sense that there are facts that are provable joined with this rise of cynicism and doubt have real significance for the law and social

justice. So many of our disorienting moments raise the question, what is true? We believed one thing but the experience suggests that that belief was not well founded.

In doctrinal classes, I always ask the students what additional fact investigation they might have made, what they would be looking for and why. Students often merely look for additional witnesses. I try to bring home to them how powerful it is to find things that through logic confirm or deny the fact they are seeking to prove. In other words, not merely another assertion of fact, but something that does not rely on another witness statement that asserts that it is the truth. I want the students to ask, "If this fact is true, what else must be true, and what else cannot be true?" We then engage in brain storming, and that leads to a fact investigation plan to look for those facts that support the truth of the assertion. Despite living through the current assault on facts, I think there is considerable room for much more rigorous analysis.

Let me give you an example of how this teaching technique might work. How do I prove that the ranchers may be wrong in their perception that the migrants crossing into their land are not fleeing their home country out of fear? What facts might make them reassess their views? I start thinking, "If someone is fleeing violence, what else must be true?" Some of the ranchers insisted that the people crossing the border who said they were fleeing violence or persecution were actually merely seeking economic advantage in the United States. One way to combat that belief/fact was to point out that any attempt to cross the border near their ranch was extremely dangerous. A person seeking economic advantage surely would not take on so much danger unless the threat of violence back home were real. Of course, that does not prove the fact that they are asylum seekers. What other things would have to be true if the migrant was fleeing her homeland?

If the migrant were not fleeing violence, she must be eager to leave her home for another reason. Among those items abandoned in the desert in a hurry were photographs. These offered insight into the necessity to leave. The pictures as expected were of loved ones but also included nostalgic photographs of people's homes, their furniture, their curtains, their garden. . . a keepsake of their pasts. Their departures were forced. . .they were not leaving their homes voluntarily. In a world where facts seem to be mattering less and less, we need to be able to appeal to logic and reason to help people come to their own conclusions. This is fact investigation. It is careful and detailed and we need to help our students learn how to do it well.

Coping with the chaos of these times requires us to help our students develop skills to manage that chaos. We must also help them

build resilience. This day-to-day disorientation takes a toll on all of us and we need the capacity to persevere in communicating effectively and building relationships actively. Incivility is modeled every day. We have now created social media and news sources that are built around our own interests and our own individual vision of the world. We struggle to find our way out of silos built from hysteria inducing feedback loops. This creates a market for people who actually have the ability to communicate in a non-violent and non-defensive way. Like fact investigation, this requires that we teach our students to listen well and assume people are coming from a place that is at least real to them. We need to teach our students how to identify the frames they themselves bring to facts. . . and how to step back from them. Furthermore, we must teach our students to identify frames others bring to issues. It is only then that our students can communicate through others. Finally, if we are truly going to teach our students about how to think about structural change, we need to make sure that they always examine the conclusions they draw by asking whose experience shapes this outcome or remedy, and who benefits from it?

We are well positioned to inspire students to help lead the way through this period in which we have lost faith in facts. We can help them recognize that they see through their own eyes and that their vision is most certainly partial. Due to modern media, all of us may have become even more committed to our own individualized versions of the world. This makes the hunt for objective justice an even bigger challenge.

Our border with Mexico is a microcosm of a larger challenge facing all of our students. One can see myriad larger issues when thinking through the difficulties we face on the border. What is the harm of abandoning our neighbors to violence? What are the ethical and societal violations in separating families? What is the long-term cost in privatizing detention facilities in any scenario involving the power of some to restrict the freedom of others? If you deny due process to a few, how long will it take for that practice to pervade our larger society? We need students who can facilitate the conversations between migrants and ranchers to see that their interests are the same: both fear violence in their homes. We need to be able to transfer these insights about how our view of social problems is shaped and reinforced, to the day-to-day cases we handle. We must help our students learn how to speak out, to not be satisfied with random justice and to develop the skill to distinguish truth from lies. We need to hone these skills and serve as mentors who act courageously in the face of injustice.

The border was my disorienting moment. It gave me insight into

how to be a better law professor, teacher and mentor. Through my continued vivid memories of the experience, it has reminded me to focus on the skills we need to be justice-ready teachers. The methodology, however, is based in a notion that revealed facts, thoroughly vetted, can be trusted. . .and a willingness to accept that one's view may be partial. Those concepts are in crisis now. We need to go beyond disorienting moments. As a teacher, I am still committed to trying to create opportunities for learners to break through those schemas that reinforce oppressive structures that hamper our ability to tell the stories of people meaningfully and ignore the important question of who benefits from our partial understanding.