



9-9-2015

The Liberal Arts in Practice

Brian C. Murchison

Washington and Lee University School of Law, murchisonb@wlu.edu

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlufac>

 Part of the [Arts and Humanities Commons](#), and the [Law Commons](#)

Recommended Citation

Brian C. Murchison, Charles S. Rowe Professor of Law, The Liberal Arts in Practice, Opening Convocation at Washington and Lee University (Sept. 9, 2015).

This Speech is brought to you for free and open access by the Faculty Scholarship at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Scholarly Articles by an authorized administrator of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.



THE LIBERAL ARTS
IN PRACTICE

by

BRIAN C. MURCHISON
*Charles S. Rowe Professor of Law
Washington and Lee University*

OPENING CONVOCATION
SEPTEMBER 9, 2015



My wife, Ann, and I like to say that Convocation is a “moment in between” — in between summer and fall, in between the tasty gelato of vacation and the black coffee of the semester, in between the making of plans and the living out of plans. It is our chance to converge on this exceptional spot, to salute the students who are new and those who are beginning their final year, and to treasure the community that is Washington and Lee.

At the convocations that are clearest in my memory, the speakers always selected some tangible aspect of the university that reflected one of its traditions or values. A few years back, our late colleague, Professor Pam Simpson, chose the Colonnade — how that extraordinary façade and pathway came to be, how a physical campus emerged over time, the product of new visions building on old, so that it was seen finally as representing a disposition of mind, a commitment to knowledge and character. Two years ago, Professor Art Goldsmith talked about interdisciplinary explorations and scholarly collaboration of professors and students as key ingredients of the intellectual life of this campus. And last year, President Ruscio reflected on W&L history and then more broadly on the university’s role in a democracy, its participation in the search for truth, its protection of the spirit of free inquiry.

Today, like them, I have a specific object of attention that I hope can illustrate something larger about Washington and Lee. This academic year, we mark the 20th anniversary of a program in the Law School — the Black Lung Clinic, a fixture appropriately located in the basement of Lewis Hall, in which each year a band of students works with a professor to learn a body of law and represent clients, coal miners in the nearby area of Scarbro and Beckley, West Virginia. How did

this program come to be, and how has it lasted 20 years?

My story is about how study can open the mind, how vocation can arise from that opening, how collaboration can enrich service, and what these things say about the liberal arts at W&L. My theme is that the spirit of the liberal arts connects all three units of the university — the College, the Williams School and the Law School. It's a spirit that binds us together in energetic pursuit of knowledge, that age-old process of questioning and discovering "the meaning and worth of things,"¹ the process of considering what it means to be human, and what it can be like to hear a calling and begin to share responsibility for someone else's welfare.

The story begins when a longtime W&L professor, one who had gone to W&L both as an undergraduate and a law student, taught a class in the early 1990s called Lawyering for Social Change. This was Professor Andrew "Uncas" McThenia, who had grown up in West Virginia coal country and had witnessed its social upheaval in the late 1960s over safety and health in the mines. Much of the class was spent delving into that time and place, into the details that gave rise to vocal politics and uncertain change. As a young member of the faculty, I would slip into the back of Professor McThenia's classroom and take it in. Among much else, we studied a series of underground explosions in the mines near Farmington, West Virginia. Over 10 days in the late autumn of 1969, 78 miners died. In the months that followed, voices across the country asked how this could have happened. Soon

¹ Sidney M.B. Coulling, "What Are the Humanities?" typescript, speech delivered to W&L Institute for Executives, c. 1980s, p. 15.

enough, the press discovered other problems of Appalachian mining — especially lung disease caused by exposure to coal-mine dusts. It turned out that the risks of breathing dust — risks of fibrosis and emphysema — were far from unknown, but they had been pretty much ignored by a lot of people: by industry, by the union, and by state and federal public health authorities, since the turn of the century.

The class tried to grasp this neglect and what it meant. Farmington had been a turning point: In March 1969, some 40,000 miners across the state stopped working, insisting the conditions in the mines be changed. Suddenly the political world took note. A march on the state capital, Charleston, was unlike anything that the city had ever seen. By December 1969, Congress had enacted, and President Nixon was signing, a bill that created a national program to compensate miners who had dust disease from the mines and as a result were disabled from working. A miner would have to prove his disability and its source — if he did, he would receive workers' compensation from the coal company employer. The employer could challenge the claim, and administrative judges in the Department of Labor would decide each contested case. It seemed that the long years of hostility between workers and employers had been channeled into a system that could work.

But two of the professor's guest speakers were judges from the U.S. Department of Labor, and they made clear that the problem of lung disease in the coalfields remained unsolved 20 years later. How could that be? One reason stood out: The miners lacked the resources to prove their medical issues — to hire counsel and seek the help of lung specialists to document their claims. In contrast, the employers had the ability to assemble

a number of legal and medical professionals to dispute the claims. The stark reality was that miners were losing 90 percent of the time. Was this acceptable, was this what Congress had envisioned? No. The semester ended on this melancholy note, and for those of us who had experienced the class, it was hard not to feel that justice had not yet found its way to the coalfields.

Liberal arts learning can be like this. It can begin with an intensive study of facts or ideas, and the encounter with the reality of a time and place can stick in your mind. Sometimes when the class is done and the semester is over, it's not really done, it's not really over. A liberal arts experience can haunt a student whose mind has been opened, even a crack. We were definitely haunted.

*Sometimes when the class is done
and the semester is over, it's not
really done, it's not really over.*

The rest of the story is about how W&L created a legal clinic to help miners with their claims. Professor McThenia took a few of the faculty to coal country and introduced them to an inspiring group of miners who wanted to bring about change. That day, they also met a legendary doctor who had spent his career treating miners with breathing disorders, and they met a lay advocate who had come to Beckley as a young Vista volunteer and had never left. They met miners in their 40s, 50s and 60s who were proud of the years they spent working underground, but were now on supplemental oxygen and facing early medical retirement.

By the end of a long day, on the ride back to Lexington, the W&L group was talking about how a legal aid clinic could not only help the

miners but enhance the education of our own students. The group had picked up on one of Professor McThenia's favorite words — vocation. In doing this sort of work, might at least a few of the students get a taste of what a vocation — a calling — is? Professor McThenia defined a calling as something that happens when you realize your life is really not your own. Could students learn something more of the complexity and variety of life if they had to see the world, at least for a time, through the prism of the coalfields? Could they learn how to work positively within an imperfect system? Could they find the stamina and patience to work for change? Some remembered an ODK speech that Dr. James Leyburn had made years before, urging students towards “greatness of mind and heart,”² and others remembered a speech by Professor Sidney Coulling in the 1980s when he had discussed the “social mission” of the humanities.³

But setting up a legal office to handle such cases was not something that could happen overnight. The challenge would be immense. Ultimately it would be the integrative methodology of liberal arts education that provided a guiding light. An array of disciplines would need to lend a hand, uniting their different ways of knowing, thinking and acting.

First, historical and cultural grounding would be all-important. The students would have to know not only the raw history tracked by Professor McThenia's class but something of the daily life and culture of the mining community, even the economics that had helped create it.

² James G. Leyburn, “The W&L Ideal,” *Washington and Lee Alumni Magazine* (January 1979), p. 24.

³ Coulling, “What Are the Humanities?” p. 17.

Second, the students' legal knowledge would have to be exhaustive — they would have to grasp the details of the black lung laws, to master the legal precedents written by judges, to understand the role of the Labor Department and the right of appeal to courts.

Third, they would have to understand the biology of the lung, how it works when it is healthy and how it works after years of exposure to the dust of the mines.

*Putting all of this together is
one of the things that liberal
education makes possible.*

As if all this were not enough, the students would need to develop their ability to communicate with the miners, the doctors, the bureaucrats, the judges, the opposing attorneys. They would have to see the importance of clear expression in the courtroom and on the written page. They would have to learn to say “no” to miners who would not qualify for compensation, and to say “yes” and mean it to others whose cases they would take on.

Putting all of this together is one of the things that liberal education makes possible. And the good news is that a number of people on this campus, from different disciplines, helped to make this integration a reality and to bring the clinic alive.

To learn the workings of the lung, for example, the students were assisted by Professor Maryanne Simurda of the Biology Department, who shared her knowledge of the lung in all its facets. Every fall, she crossed the bridge to Lewis Hall to instruct the law students in how dust lodges in the lungs and can cause serious harm.

Professor Simurda also began to supervise one undergraduate each academic year to review the latest medical literature on the lung, and to present that research to the law students and their supervising professor. And not simply to present it — but to probe any vulnerabilities that the new research might have. Over the years, these sessions of critical analysis proved to be rich moments in the history of the Law School’s partnership with the sciences at W&L. Physics Professor Tom Williams was also involved, consulting on technical questions of comparing X-ray images to autopsy evidence.

The legal precedents were put to the same deep analysis. Under the supervision of Professor Mary Natkin and those of us, including Professor Jim Phemister, who were her fellow teachers, the students discovered what had concerned those judges in Professor McThenia’s class — that the existing system was not what one would call “due process.” The challenge was not just getting lawyers for the miners, it was also about leveling the playing field in the contest of each case. Could the claims process be considered fair when one side could afford to produce a mound of evidence and the other side could afford far less? In researching the law, the students realized that one of the leading decisions of the latter part of the 20th century on due process had been written by our own alumnus, Justice Lewis Powell. The case was about what constitutes a fair process in a similar disability setting. W&L librarian and archivist John Jacob facilitated the students’ access to Powell’s files in that case, which gave them ideas for trying to convince the Labor Department that the amount of evidence each party could produce should be roughly equalized. There was trenchant discussion of what a constitutional phrase like “due process of law” should rightly mean in the setting of black lung disease.

The art of advocacy was also essential. The then dean of the law school, Barry Sullivan, enthusiastically helped us. Sullivan had come to Washington and Lee from a major law firm in Chicago, after years with the U.S. Solicitor General, the office that represents the U.S. before the Supreme Court. Dean Sullivan's focus was the ethics of advocacy — which he defined as “a process that aims to elicit honest judgment.”⁴ He often fled the confines of the dean's office and joined the students in the clinic to ask about their cases, always stressing the importance of clarity, preparation and building a reputation for honesty and careful judgment. Also how to rebound from mistakes, how to deal with defeat, how to keep learning and perfecting skills through good times and bad.

But, even with all of this, sometimes we asked ourselves if we knew enough about the Appalachian culture itself. After all, didn't Harper Lee write, “You never really understand a person until you consider things from his point of view . . . until you climb into his skin and walk around in it.”⁵ One way of climbing into the skin of a place and a people is through literature, and part of our education involved delving into some of the imaginative writing of the coalfields. Professor McThenia memorably brought to campus Denise Giardina, from Bluefield, West Virginia, whose novels explored lives caught up in the moral struggle of resistance in the coalfields. And Professor Suzanne Keen of the English Department recommended an American poet, Muriel Rukeyser, who wrote in “The Book of

⁴Barry Sullivan, “The Humanity of Advocacy,” *Loyola University Chicago Law Journal*, Vol. 42, No. 1 (2010), p. xxviii.

⁵Harper Lee, “*To Kill a Mockingbird*” (Hachette Book Group Grand Central Publishing, 2010), p. 39.

the Dead” of witnessing the plight of the miners and being taken out of her comfort zone into a new space of thought. “These roads will take you into your own country./ Seasons and maps coming where this road comes/ into a landscape mirrored in these men./ Past all your influences, your home river,/ constellations of cities, mottoes of childhood/ parents and easy cures, war, all evasion’s wishes.”

Perhaps Rukeyser meant that contact with the coalfields had awakened a sense of urgency in her, past all previous influences and easy options. What could a poem like this mean for the clinic? It could give words to the newness of the experience, but it could also give courage and resolve when we felt we couldn’t win a case and that all of our ingenuity and idealism were for naught. We never quoted Rukeyser in a brief, but she was a constant, invisible companion.

But for me, the central virtue of a liberal education is that it teaches you how to write, and writing makes you think.

Which brings me to a final thought. The clinical experience was very much an engagement with writing — not just things we had to read, but sentences we had to write. Lawyers are primarily writers, and writing is, we’ll all agree, the most difficult of tasks. In his recent book in defense of liberal arts education, CNN’s commentator Fareed Zakaria writes, “When you hear someone extol the benefits of a liberal education, you will probably hear him or her say that it teaches you how to think. I’m sure that’s true. But for me, the central virtue of a liberal education is that it teaches

you how to write, and writing makes you think. Whatever you do in life, the ability to write clearly, cleanly, and reasonably quickly will prove to be an invaluable skill.”⁶

For almost each of our clients, there was a brief to be written, sometimes 20 pages, sometimes 50, bringing together the relevant facts, the medical data and the law, shaped with force but not melodrama, providing the judge a reasoned but not exaggerated roadmap to rule for the miner. A legal brief is an art form, one that takes years to master, and the clinic’s lights burned far into the night when a brief was due.

When it comes to writing, in some corner of my soul is the voice of a man I learned from in college, William Zinsser. You may have heard of him — he died last spring, and The New York Times, The New Yorker and The Huffington Post all posted tributes to him as a teacher of writing. He was the author of a slim volume entitled “On Writing Well,” which some of you may know. He was a newsman and critic for the New York Herald, and editor of the Yale Alumni Magazine, and author of numerous books. When I read “On Writing Well” years ago, I recognized a lot of it because I had heard him talk about writing when I was a senior at Yale College. At Yale, undergraduates live on campus in residential colleges, and each residential college has a master, an academic figure who lives among the students and gets to know them well. Bill Zinsser was the master of the college where I lived. He thought of writing as linked to character. Writing was an expression of self, and sloppy, unfocused writing meant that you really hadn’t thought through your topic, you really hadn’t

⁶Fareed Zakaria, “In Defense of a Liberal Education” (W.W. Norton & Co., 2015), p. 72.

come to grips with your own thinking, and often, with your own values, your own set of priorities.

And of course that is what writing does — to write a sensible sentence requires understanding your topic, asking questions about it until you’ve asked the right one to get started.

Late in my senior year, I knocked on Bill Zinsser’s door. He was a slight man with a very open face, and he could make you feel welcome just by opening a door and saying hello. I went to him with a small dilemma — what should I do with my life? I was a month away from graduating, and I had at least three possible roads to take. I was all torn up about what to do, sort of like that sloppy writer who hadn’t come to grips with the topic. This gentle man heard me out and answered me with a question, “Which of these things would present the most challenge?” — which I suppose is always the question of the liberal arts: where can you best enlarge your mind, how can you best expand the community you’re a member of, how can you get beyond what you already know? I credit Zinsser in large part with helping me ask the right question. And of course that is what writing does — to write a sensible sentence requires understanding your topic, asking questions about it until you’ve asked the right one to get started. And in the Black Lung Clinic, that act of writing is the vehicle for bringing everything together in coherent, persuasive words.

So this evening at Convocation for the year 2015–16, we look forward to the 20th birthday of the clinic, which I think of as a product of liberal arts collaboration at its best. If you come over to Lewis

Hall, you will see eight or nine students, superbly supervised by Professor Tim McDonnell, with outstanding support from his assistant, Sheryl Salm. You may hear the students talking about the workings of the alveoli of the lung, or about dust-induced emphysema. Or you might hear them arguing about whether a recent court decision is good for our cases or bad. You might witness a run-through of the next day's appearance in court, or even a discussion about finding one's calling — what to do about that realization that your life really isn't just your own.

If you come across any of these things, I suggest that what you hear is the liberal arts in action. You might also be hearing an echo of the poet, who invites us to think independently, to think creatively, and even an echo of Mr. Zinsser, who counseled: Look for the challenge, embrace it, participate, go beyond what you know.

Thank you.



WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia