INTRODUCTION

In The School of Giorgione, Walter Pater proclaimed that "[a]ll art constantly aspires toward the condition of music." He continued:

For while in all other kinds of art it is possible to distinguish the matter from the form, and the understanding can always make this distinction, yet it is the constant effort of art to obliterate it. That the mere matter of a poem for instance, its subject, namely its given incidents of situation—that the mere matter of a picture, the actual circumstances of an event, the actual topography of a landscape—should be nothing without the form, the spirit, of the handling, that this form, this mode of handling, should become an end in itself, should penetrate every part of the matter: this is what all art constantly strives after, and achieves in different degrees.

Music, as the "ideally consummate art," fuses matter and form. It does not invite the excision of import from its expression. Each composition, moreover, is not particularly amenable to the dichotomization of theory and practice. What I submit is that an in-
house appellate clinic is to legal education as what Pater suggests music is to art.

Most law teachers and commentators would acquiesce in the proposition that both theory and practice are components of legal education. They would, however, define theory and practice differently and express diverse views on how and to what degree academia can and should accommodate both. One problem with


The in-house clinic further supplements the definition of clinical education by adding the requirement that the supervision and review of the student's actual case (or matter) experience be undertaken by clinical teachers rather than by practitioners outside the law school. Although the clinical movement began with practitioners used as supervisors, many clinical teachers came to believe that student supervision by practitioners was problematic for a methodology in which teaching was not incidental to the enterprise, but rather its primary function. While a practitioner might be a superb lawyer, she would be unlikely to have the training, experience, or time to devote to the teaching role that a full-time clinical teacher would.

Id. For a fine defense of "practice supervised clinical programs," conducted by practitioners outside of the law school, or "externships," see generally Stephen T. Maher, The Praise of Folly: A Defense of Practice Supervision in Clinical Legal Education, 69 NEB. L. REV. 537, 542 (1990) (arguing that such practice supervised clinical programs benefit students by providing cost-effective ways to bridge gap between law school and law practice, clarify career choices, and introduce professional responsibility to law students).


6. Compare Baker, supra note 5, at 292 (arguing that "we overturn the hegemony of educator-centric views about legal education and that we undertake a radical shift, a paradigmatic shift, in our understanding of the role to be played by practice-based experiences
trying to attach meanings to concepts like theory and practice and with analyzing their respective roles in legal education is that such tasks tend to engender a perspective—even if it is only fleeting—on theory and practice as antipodal. By way of example, Professor Mark Spiegel, who provides some of the most workable definitions of theory and practice, inevitably portrays them as opposites. In describing theory as "a set of general propositions used as an explanation" and practice as "the doing of something," Professor Spiegel implicitly resurrects the perceived apartheid of thought and action.

This Essay's broad thesis is that legal education should strive toward not only an obliteration of the seeming partition between theory and practice, but also a complete coalescence of thought and action. In-house clinics are *sui generis* because they can best effectuate such objectives.

Lamentably, many legal educators still equate clinics with the purely "practical" or relegate them to the genre of courses designed to cultivate the skills for "the doing" of the practice of law. Even some advocates of clinical education unknowingly undermine their

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during law school") with Goldsmith, supra note 5, at 415 (welcoming clinics, but arguing that they should "include a *theoretical* component, directed to encouraging law students to critically examine, understand, and evaluate the activities comprising legal practice").

7. See Spiegel, supra note 5, at 577 (referring to clinical education as skills training and case method as *theoretical* or otherwise characterized as "the main tent and the sideshow").

8. Spiegel, supra note 5, at 580.

9. It, however, took clinical legal education some time to evolve into the sphere that can potentially fuse theory and practice. In the 1960s, many clinical programs began with the primary goal of providing legal representation to individuals who were traditionally underrepresented. See ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s, at 215-16 (1983) (analogizing first clinical programs to legal aid); Edgar S. Cahn & Jean C. Cahn, Power to the People or the Profession?—The Public Interest in Public Interest Law, 79 YALE L.J. 1005, 1029 (1970) (suggesting that law schools use clinics to meet growing need for public interest practitioners). While clinics can indeed accomplish this salutary goal, they are much more than academic legal aid offices. See Goldfarb, Beyond Cut Flowers, supra note 5, at 723 (suggesting that clinic participants learn to challenge societal hierarchy to achieve substantive justice).

10. Even commentators that view clinics as doing more than "practice" or "skills" training usually describe the clinic as a "practice" or "skills" place. See Baker, supra note 5, at 289-90 (stating that although clinic education is generally available to only 30% of students for minimal course credit, "practical experience in the clinic is the only 'live' experience of lawyering by law students that is significantly validated by *The MacCrate Report*"); Arthur B. LaFrance, Clinical Education: "To Turn Ideals into Effective Vision," 44 S. CAL. L. REV. 624, 625 (1971) (noting that practitioners, who once advocated for apprenticeships, should support clinical education because it "prepare[s] new attorneys for such practical tasks as drafting wills, using forms, working under pressure and finding the courthouse"); Spiegel, supra note 5, at 590 (explaining that original purpose for clinical education was "skills training" and concluding that "this equating of clinical education with skills training further reinforced the idea that clinical education is inherently practical"). But see Goldfarb, A Theory-Practice Spiral, supra note 5, at 1605 (theorizing that feminists, in addition to clinical educators, recognize "the interlacing of theory and practice" and, therefore, understand that inquiring "whether law school classes should cultivate professional skills or advance a broad intellectual agenda" is unintelligible).
own cause through not only their incantation of words like "skills" and "practice," but also their historical renditions of legal education as comprised of distinct practical and theoretical eras, with the latter born impugning the former.

Also, legal education critics, who discuss the need to put more of the practical in the curriculum, typically season their articles with snippets from *Legal Education and Professional Development—An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (The MacCrate Report). Many such commentators, however, either omit or downplay the fact that one of the progenitors of some central MacCrate motifs was King Edward I of England.

It was Edward I who helped activate the creation of the Inns of Court at the end of the thirteenth century, which was the method for preparing young men for the English legal profession for more than

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11. Some law professors have actually confronted the mind-set that the association between clinics and skills is denigrating. See Leonard D. Pertnoy, *Skills Is Not a Dirty Word*, 59 MO. L. REV. 169, 169 (1994) (arguing that association of skills with clinical training should not be considered denigrating and urging integration of skills training with socratic methodology and analytical doctrine). But see Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 HOW. L.J. 51, 55 (1993) (arguing that by referring to clinical education as "skills training" in order to make it more appealing to legal academics, some positive aspects of clinical education, including its political underpinnings, are diminished).

12. See Pertnoy, supra note 11, at 174-75 (using competition between apprenticeships and law schools in late 18th century as illustration of traditional distinction between theory and practice); Linda F. Smith, *The Judicial Clinic: Theory and Method in a Live Laboratory of Law*, 1993 UTAH L. REV. 429, 430-35 (discussing change in focus of clinical programs from emphasis on simulating courtroom experience to focusing on changing social policy to current focus of gaining practical experience in criminal, juvenile, and poverty law areas); Spiegel, supra note 5, at 581-86 (arguing that practice-based model of legal education was replaced by scientific model); Ralph S. Tyler & Robert S. C. Katz, *The Contradictions of Clinical Legal Education*, 29 CLEV. ST. L. REV. 693, 697 (1980) (noting that law professors were originally hired for their trial experience but now are hired for their legal scholarship).

13. AMERICAN BAR ASSOCIATION, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (1992) [hereinafter THE MACCRATE REPORT]. After a three-year study of the alleged gap between the needs of the law profession and the current law school curriculum, the task force "concluded that there is no 'gap.'" Id. at 8. Rather, it stated that "[t]here is only an arduous road of professional development along which all prospective lawyers should travel." Id. Yet, the report identified the following lawyering skills as necessary components in legal education: "problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiating, litigation, alternative dispute resolution procedures, organization and management of legal work and recognizing and resolving ethical dilemmas." Id. For an example of the report's influence on legal education scholarship, see Tarr, supra note 11, at 32 (noting that "many law schools will be re-evaluating the clinical and skills components of their curriculums" because of findings in *The MacCrate Report*).

14. See ALBERT J. HARBURG, *LEGAL EDUCATION IN THE UNITED STATES* 6 (1953) (noting that Edward I directed judges to take apprentices and teach them law); 2 WILLIAM HOLDsworth, *A HISTORY OF ENGLISH LAW* 314-15 (1923) (arguing that Edward I's appointment of 140 legal apprentices resulted in new systematic arrangement of legal education in England); Pertnoy, supra note 11, at 174 (noting that Edward I created Inns of Court that exposed aspiring legal practitioners to moot court arguments and mock lawsuits).
three centuries.\textsuperscript{15} By about the seventeenth century, apprenticeships almost entirely eclipsed the simulated lawsuits and moot arguments, which were the predominant features of the Inns' training.\textsuperscript{16} The legal apprenticeship system was imported into the new world\textsuperscript{17} and, as at least one commentator has pointed out, private law schools and college-based legal education eventually supplemented the hands-on practitioner training.\textsuperscript{18}

A contemporary discussion of the apprenticeship model portrays it as "wholly practical."\textsuperscript{19} Really, it is untenable that this or anything putatively pragmatic is devoid of theory. That is, if we ascribe to any derivative of \textit{cogito ergo sum}\textsuperscript{20} or, at least, accept it as gnomic that part of what makes us alive is our capacity to think and if we also believe that thinking entails the extrapolation of general explanations of particular phenomena,\textsuperscript{21} and if we also surmise that Inns and apprenticeships had in their regiments some living thinkers, then we should likewise conclude that theory had to have permeated that practical "doing" sphere.\textsuperscript{22} Nevertheless, many historians have dubbed Christopher Columbus Langdell, Dean of Harvard Law School from 1870 to 1885, the knight of a separate theory movement in legal education.\textsuperscript{23}

For Dean Langdell, legal education ensued from a scientific study of the law through the case method and, of course, "consist[ed] of

\textsuperscript{15} See Harno, supra note 14, at 6 (noting that education at Inns of Court typically lasted for seven to ten years and included studies of singing, music, dancing, history, discipline, and virtue, in addition to law).

\textsuperscript{16} See Harno, supra note 14, at 7 (noting that Inns' teaching methodology consisted of "bolts," theoretical cases, and "moots," mock lawsuits, tried by students).

\textsuperscript{17} See Pertnoy, supra note 11, at 175 (explaining that early colonists brought English system of legal apprenticeship training to America).

\textsuperscript{18} See Stevens, supra note 9, at 8-4 (noting that college-based approach to teaching law was similar to science).

\textsuperscript{19} See Hoflich, supra note 5, at 125 (discussing practical merits of apprenticeship model such as networking, community relations, relative inexpense, and production of great lawyers).

\textsuperscript{20} Rene Descartes, \textit{Meditation II: Of the Nature of the Human Mind}, in \textit{THE PHILOSOPHY OF DESCARTES} 214, 227 (John Veitch trans. & ed., 1901) (translating loosely as "I think therefore I am").

\textsuperscript{21} See Spiegel, supra note 5, at 580, 595-97 (arguing that definitions affect conceptualization of subjective phenomena).

\textsuperscript{22} See Holdsworth, supra note 14, at 481 (calling Inns "a very practical system" in which "theory was not neglected" because it produced pleaders and advocates, as well as accomplished lawyers).

\textsuperscript{23} See Hoflich, supra note 5, at 140 (arguing that current failure to integrate theory and practice in legal education results from Langdell's influence); Harold A. McDougall, \textit{Social Movements, Law, and Implementation: A Clinical Dimension for the New Legal Process}, 75 \textsc{Cornell L. Rev.} 83, 88 (1989) (stating that apprenticeship model is better merger of law and science than Langdell's case-based model, despite contrary belief by Langdell); Spiegel, supra note 5, at 581 (stating that "theoretical" label of case-based education stems from Langdell's attempt to equate law with science).
certain principles or doctrines." Possibly, because Langdell stressed the importance of gleaning such principles from a text, some Langdell interpreters see his method as wholly theoretical and contrast it with the Inns and apprenticeship models. Such a reading of Langdell, however, is quite distortive and really approaches the making of mythic allegory.

As Dean Hoeflich more accurately states, "Langdell, like his predecessors, accepted that legal education had to integrate both theory and practice, to include both the lecture room and the moot court exercise." Also, as Dean Hoeflich explains, "Langdell and his contemporaries, like Butler and Hoffman[,] . . . also assumed that a lawyer's education would take place both in the law school and in the law office." More basically, the Langdellian process, which entails the anatomization of cases, implicates the finding of similarities and distinctions between such cases. That process is surely germane to practice. Specifically, it is seminal to the doing of legal analysis or the formulation of a legal argument.

Interestingly, early critics of the case method—the very ones that contributed to the eventual integration of more skills courses and clinics into law school curricula—somehow furthered the solidification of an ostensible wall between the supposed terrains of practice and theory. Professor Jerome Frank, in condemning the law school as "too academic and too unrelated to practice," argued that law schools should include work in actual legal offices and courts. Similarly, Professor Karl Llewellyn urged law schools to "deliberately set to work to plan an interstitial apprenticeship" and lamented that "law school

26. See Hoeflich, supra note 5, at 140 (stating that to interpret Langdellian method as "too theoretical and doctrinal" reflects misapprehension of his theory).
27. Hoeflich, supra note 5, at 140.
28. Hoeflich, supra note 5, at 140. Hoeflich asserts that "[w]e should not blame Langdell for what we perceive as the increasing isolation of law school curriculum and pedagogical theory from practice." Id.
29. See LANGDELL, supra note 24, at vi-vii (suggesting that legal areas are best studied through systematically selecting and classifying most influential cases).
30. STEVENS, supra note 9, at 156 (citing Jerome Frank, Why Not a Clinical Lawyer-School?, 81 U. PA. L. REV. 907, 908-12 (1933)). But see Jerome Frank, A Pleas for Lawyer-Schools, 56 YALE L.J. 1303, 1321 (1947) ("An interest in the practical should not prelude, on the contrary it should invite, a lively interest in theory. For practices unavoidably blossom into theories, and most theories induce practices good or bad.")
is needlessly abstract, and needlessly removed from life.” Implicit in such views is the fictive image of a law student jarringly shifting from the theoretical confines of the classroom to some antipodal outside sphere of really practicing.

Even after the Ford Foundation awarded the Independent Council on Legal Education for Professional Responsibility (ICLEPR) a substantial grant for the funding of clinics and field work and such clinics began to infiltrate the traditional law school curriculum, there persisted a perceived lack of congeniality between the traditional way and the “new” programs. Specifically, some faculty and administrators saw the clinical newcomers as practitioner interlopers and even as players in a marginal arena. In fact, this mind-set endures in spite of the mounting scholarship acknowledging the false dichotomy between practice and theory and in spite of literature touting the clinic as the very situs of theory-practice convergence.


32. *See Stevens*, supra note 9, at 230 n.95 (noting that Ford Foundation granted approximately $6,000,000 to ICLEPR in June 1968).

33. *See Pertnoy*, supra note 11, at 176 (remarking that ICLEPR grants gave rise to “explosion” of clinical programs in 1970s); *Smith*, supra note 12, at 435 (discussing substantial impact of ICLEPR on traditional law school curriculum).

34. *See Francis A. Allen, Law, Intellect and Education* 69 (1979) (describing how traditional faculty members have negative outlook on clinics); *Eleanor M. Fox, The Good Law School, the Good Curriculum, and the Mind and the Heart*, 39 *J. LEGAL EDUC.* 473, 478 (1989) (discussing academic faculty treatment of clinics and clinic faculty as “second class”); *Arthur B. LaFrance, Clinical Education and the Year 2010*, 37 *J. LEGAL EDUC.* 352, 355 (1987) (discussing problematic costs of clinical programs); *Tarr*, supra note 11, at 35 (discussing how “political underpinnings” of law school clinics can be controversial and thus, objectionable to certain academic constituents); *cf. Goldfarb, A Theo-Practice Spiral*, supra note 5, at 1667-74 (analyzing methodological similarity between clinical education and feminist jurisprudence); *Mark V. Tushnet, Scenes from the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education*, 52 *GEORGE WASH. L. REV.* 272, 274-75 (1984) (attributing marginal status of clinical education to its association with female characteristics—its concern for people, unstructured situations, and feelings—and concluding that such characteristics “make the men who dominate law school extremely uncomfortable”).

35. *See Robert J. Condlin, "Tastes Great, Less Filling": The Law School Clinic and Political Critique*, 36 *J. LEGAL EDUC.* 45, 47-48 (1986) (discussing analysis of lawyer skill practices in clinical instruction elucidates how individual actions constitute legal rules and how legal system fits together); *Goldfarb, A Theory-Practice Spiral*, supra note 5, at 1667 (demonstrating convergence through comparison of clinic to feminist jurisprudence); *Goldfarb, Beyond Cut Flowers*, supra note 5, at 720-23 (explaining that clinical legal educators engage in “theoretical deconstruction” by examining lawyers’ practices and theories upon which they are based to reform law practice and legal system); *Goldsmith, supra note 5, at 415 (arguing that convergence enables students to understand human and social elements of legal practice); *Howard Lesnick, Infinity in a Grain of Sand: The World of Law and Lawyers as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 97 *UCLA L. REV.* 1157, 1158 (1990) (concluding that all legal teaching is clinical teaching and should be viewed as such to eliminate needlessly labeling); *Spiegel, supra note 5, at 578 (concluding that choice to label academic classes as theoretical and clinic as practical is mistaken because each has elements of other).
Coterminous with the movement to bring more clinics into law schools was support for improving education in particular areas like appellate advocacy and professional responsibility. Many of the complaints about these areas getting short shrift assailed what was again described as that troublesome rift between the theoretical academy and the practice world.

Although The MacCrate Report identified a working knowledge of appellate litigation as an aspect of lawyering competency, there has waxed, and continues to wax, grumbling from the judiciary about an epidemic of appellate sloppiness. At least one critic traces the source of the problem to how "appellate litigation is still primarily taught in first-year research and writing programs and student-run moot court competitions, both of which do more harm than good in teaching how to be an advocate in a real appellate court." In fact, the Appellate Judges Conference in July 1985 approved a report that essentially blamed law schools for bad appellate work because the schools failed to replicate real life appellate experience:

First and foremost, the [traditional appellate advocacy] programs treat appellate litigation as involving only two aspects—writing a brief and making an oral argument. They ignore all of the other important ingredients of appellate litigation. . . . Second, and just as fundamental, because they lack a realistic appeal record they do not aid in the development of the skill that is unique to appellate litigation: building a case out of a record. Third, as a result of the first two defects, the issues argued in these programs are usually abstract legal questions without factual content upon which most appeals are decided.

Such a critique is especially intriguing because it takes what has traditionally been viewed as one of the few law school accommodations of "the practical"—the moot court model that emphasizes the actual doing of briefs and oral arguments—and brands that very
program as defective for not being real. Implicit in such an attack is an assumed polarization of practice and theory and the notion that even the attempted duplicated doing of appellate practice with its platitudinous moot-court-two-step of brief and oral argument still gravitates much too close to some theoretical axis.

Another critic of legal education also isolates the teaching of professional responsibility as a prime candidate for improvement. This too is not something new. In fact, "professional responsibility" is part of the ICLEPR's title and focus. William Pincus, described as ICLEPR's "moving force," argued that clinics could effectively teach professional responsibility, an area which embraces an understanding of the roles of lawyers and of injustice in various legal institutions.

In urging an alliance between clinics and professional responsibility training, such advocates again implicitly foster the sense that a separation exists between practice and theory. Specifically, the "clinical" assessment was that the abstract study of ethical codes was the theoretical thing that could not alone do what Chief Justice Burger once said that law schools fail to do—"inculcate sufficiently the necessity of high standards of professional ethics, manners and etiquette as things basic to the lawyers' function.

This Essay's narrow thesis is that an in-house appellate clinic is especially suited for the fusion of theory and practice. The practice of building a case out of a real record, formulating legal points, and grappling with precedent and policy considerations infuses itself with theory so that the process becomes a theoretical doing. Also, appellate work, by its very nature, encourages self-consciousness—so much so that the whole process of working on an appeal transforms

41. See Edwards, supra note 5, at 38 ("Law students need concrete ethical training. They need to know why pro bono work is so important. They need to understand their duties as 'officers of the court'. . . . They need to have great ethical teachers and to have every teacher address ethical problems where such problems arise.").

42. See STEVENS, supra note 9, at 240-41 (discussing ICLEPR program and its focus on clinical education).

43. Smith, supra note 12, at 435 (identifying Pincus as President of ICLEPR).

44. See Smith, supra note 12, at 435 (stating Pincus' belief that clinics could teach professional responsibility by exposing students to "the injustices of legal institutions"); see also Report of the Committee, supra note 4, at 513-14 (discussing teaching professional responsibility in in-house clinical programs); infra note 63 and accompanying text (discussing how clinics force students to challenge their own values).

45. See Smith, supra note 12, at 435 (suggestions that exposure to real problems would reinforce sensitivity in future lawyers).

itself into a doingness theory where the participants emerge with general propositions not just about the appellate process, but about practice and life itself.

This Essay aims to show how an in-house appellate clinic synthesizes theory and practice while it trains students in appellate advocacy and professional responsibility. In Part I of this Essay, I describe my in-house appellate clinic and summarize five of its objectives. Part I attempts to show how such an in-house clinic can unite theory and practice.

In Part II, which is the Essay's real core, I focus on two of our appellate clinic's lessons in professional responsibility. Part II demonstrates how professional responsibility issues become entangled with the process of appellate work. What occurs in this educational mode is not just the syncretistic theory-practice experience, but also a crystallization for students of what should be an unremarkable realization that their identities as lawyers can be compatible with their identities as human beings. The use of narrative in Part II stems from my agreement with those that validate a form of "consciousness raising," and from my acquiescence in Professor Peter Marguiles' belief that stories, among other things, "do not reduce to categories" but they "demonstrate that action in the world requires the constant dialogue of theory and practice."

In the conclusion, I revisit Walter Pater's analysis of artistic achievement. In that respect, I develop the Essay's inaugural conceit and try to further define what I see as a real affinity between in-house appellate clinical education and music.

I. THE IN-HOUSE APPELLATE CLINIC: AN OVERVIEW OF FIVE OBJECTIVES

I run an in-house appellate clinic, which has about ten to fourteen third-year law students. Under the student practice rules, the Florida Supreme Court certifies these students as legal interns, which allows them to appear in any Florida court.

47. Goldfarb, A Theory-Practice Spiral, supra note 5, at 1630, 1631-34 (discussing use of narrative to empower women's groups overlooked by traditional feminist scholars).
49. For an account of how I started the clinic, see Amy D. Ronner, Real Students, Real Appeals, Real Courts: The In-House Appellate Litigation Clinic at St. Thomas University School of Law, II THE RECORD: J. APPELLATE PRAC. & ADVOC. SEC. FLA. B. 13 (1994).
51. Id. 11-1.2(b) ("An eligible law student may appear in any court or before any administrative tribunal in this state on behalf of any indigent person . . . .").
This two-semester course aims to give each student an opportunity to work on about two appeals and participate in one oral argument. In running the clinic, I minister to at least five basic goals, which because of the nature of appellate work itself and because of the in-house format of the clinic, are so intertwined that their isolation—even for the purpose of this discussion—is admittedly quite artificial.

One, the appellate clinic aspires to be an education in appellate practice and procedure. That is, I devote a portion of the class sessions to an exploration of the state and federal appellate rules. Through a series of exercises, denominated "Rules Gymnastics," the students confront problems that can and do arise with respect to appellate jurisdiction: the notice of appeal, extraordinary writs, the record, preservation of issues, briefs, oral argument, motions, rehearings, and further appellate review.

While it is apodictic that "[o]ne of the primary goals in teaching modes of analysis and professional skills is to provide means by which students can learn from experience,"52 and the "Rules Gymnastics" aspect of the clinic consists primarily of hypothetical problems, experience infiltrates the exercises through both the front and back doors.

Specifically, my decision to incorporate this component into the course stems from my own experience as an appellate practitioner who for years entertained questions—mostlly from trial attorneys—that the rules themselves unambiguously answered. My epiphany, albeit rather unremarkable, was that so many practitioners—even some of the finest—stubbornly resisted pulling a rule book from the shelf or accessing a rule on their screen. An affiliated impasse was just the basic inability of attorneys to really read a rule (as opposed to a case), a debilitation which could conceivably be traced to our rearing in the Langdellian universe where cases tend to monopolize the syllabi.53 Thus, my aspiration was to have a class of student lawyers, who by the end of their third year, could flip through the rules as easily as they turned their keys in auto ignitions.

52. Report of the Committee, supra note 4, at 513; cf. Anthony G. Amsterdam, Clinical Legal Education—A 21st Century Perspective, 94 J. LEGAL EDUC. 612, 615-16 (1994) ("When we were students, law school did absolutely nothing to prepare us to learn from our experience after graduation. Law school was conceived as a wholly self-contained and terminal educational episode.").

53. See Amsterdam, supra note 52, at 613 (discussing traditional law school method of teaching students to dissect judicial opinions and apply holdings to other factual hypotheticals); LaFrance, supra note 10, at 628-29 (posing that Langdell, who developed case method approach, did not anticipate increased importance of statutory law in legal profession); Spiegel, supra note 5, at 582 (noting Langdell's belief that "cases were the law's raw empirical data").
Experience also comes into "Rules Gymnastics" in the form of the backward glance. Students, in the process of handling their own appeals, often have a specie of déjà vu as they recognize an issue from one of their past "Rules Gymnastics" problems. As an example, in one class we explored the Florida statute and appellate rule that enumerate the particular dispositions that the State can appeal in a criminal case. After I presented to the students questions with respect to the State's relatively limited opportunity to appeal, one student suggested that perhaps double jeopardy principles were breathing behind such appellate provisions.

Only a few months later, the clinic had an appeal in which the State sought review of a trial court's dismissal of charges against our client. In the course of discussing the case, one student blurted out, "Why isn't this one of those double jeopardy things we talked about in Rules Gymnastics?" Out of this query sprang an argument that the trial court's dismissal was tantamount to a judgment of acquittal and thus, the order was not appealable. Consequently, the students successfully moved to dismiss the appeal for lack of jurisdiction. In so doing, the students dealt with not just the statute and the rule, but also the constitutional basis behind them.

The students' work on their cases also propels them into expanding what is still their rudimentary grasp of certain substantive areas, including evidence, constitutional law, and criminal law. For example, in one appeal, the students represented an individual who had been found guilty of first degree murder and arson by reason of insanity and was involuntarily committed to the Department of Health and Rehabilitative Services. Before requesting a reversal of the trial court's denial of a request to transfer our client to a less restrictive civilian facility, the students had to research the law with respect to not only involuntary commitment, but also the separation of powers doctrine.

In another appeal, the students represented an adjudicated delinquent whose mother was a single welfare recipient with five children. The students' effort to obtain the reversal of a restitution award imposed upon their client's mother forced them to explore the

54. FLA. STAT. ANN. ch. 924.07 (Harrison 1991) (providing that state may appeal order dismissing indictment, order granting new trial, order arresting judgment, illegal sentence, or order adjudicating defendant insane); FLA. R. APP. P. 9.140(c) (providing appellate procedures for filing, service, and notice).

history of restitution and to define the appropriate means of establishing the value of stolen goods.

Still another clinic appeal was from the denial of post-conviction relief. A jury had convicted our client of conspiring to murder a judge in Palm Beach County, Florida.\footnote{56} Although the issue on appeal was the ineffectiveness of our client's defense counsel, the matter motivated the students to do an in-depth study of the disqualification of trial judges, unconstitutional jury systems, the retroactive application of new law, and the prejudicial impact of various arguably erroneous rulings.

What transpires when clinic students reach out into several different areas of the law is growth along with the fulmination of meaningful chaos. Stated differently, the once seemingly indestructible partitions between putatively separate course subjects, each housed in its own case book—red or blue—crumble as students are hurled into the eclecticism of law. I do not agree, however, that the clinical experience is what Professor Mark Tushnet has suggested might be associated with the "feminine."\footnote{57} I find it is the somewhat unsettling genderlessness of things that preliminarily defy order.

Two, the appellate clinic is designed to be an arduous journey into the process, frustration, and artistry of legal writing. Although I usually assign two students to every appeal, each individual must produce her or his own brief. For each appeal, which takes the students step-by-step through the brief-drafting and revision process, I tailor a separate work schedule with strict deadlines. After the students complete satisfactory individual drafts, I meet with each team in conference to guide them in the combining of their individual products into a team brief. After the creation of the team brief, the students do about four or five rewrites. I intersperse these with conferences.

The revision process eventually culminates in an "Editing Team Meeting," which the students have coined "The Meeting from Hell." In this notorious conference, all three of us revise and edit the brief together. At this juncture, our predominant tool is the human ear: we read most of the brief aloud and as we go, we chop sections, re-
order arguments, truncate sentences, and rehabilitate most passive constructions with active transplants.

The writing aspect of the in-house clinic substantiates what some legal educators have explained as the reason why many students do not write well in traditional class settings—namely, the students' proclivity to place little importance on what they are writing.\(^{58}\) As one advocate of the clinical experience has stated, "The real world consequences of the clinic give students strong incentives to improve their writing" simply because "[s]tudents are more motivated to write when they feel that a task must be accomplished and when they believe that their writing will be taken seriously."\(^{59}\)

In this respect, the students' participation in the appellate process constitutes one of the most powerful testimonials to the potential power of the written product. Students typically embark on the appellate clinic with an eager anticipation of just the oral argument, which they aggrandize as the climactic event. To the appellate neophyte, the oral argument is seen as the sexy thing—their moment of "real" lawyering.

By the time the students are about to graduate, their change in attitude is quite dramatic. All of them have written briefs in which they asserted from one to four points and all of them have held in their hands the court orders setting oral argument, which often gave them a paltry ten minutes. Almost all of the students have stepped up to that podium and experienced the distorted rapidity of the passage of their allotted time. After that oral argument, the appellate brief undergoes an apotheosis as students comfort themselves with the fact that they did indeed painstakingly flesh out the policy analysis or meticulously distinguish the very case that our opposing counsel kept chanting was the deathblow to the clinic's position.

Three, the appellate clinic aims to be an experience in oral advocacy. Because the students actually do the oral arguments in the appellate court, they adhere to a rigorous preparation schedule in which they practice at least a dozen times before me and before a

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58. See Angela J. Campbell, Teaching Advanced Legal Writing in a Law School Clinic, 24 SETON HALL L. REV. 653, 653-54 (1993) (arguing that students in clinic place greater importance on their writing because they have more at stake).

59. Id. at 659-60; see also John M. Burman, Out-of-Class Assignments as a Method of Teaching and Evaluating Law Students, 42 J. LEGAL EDUC. 447, 450 (1992) ("I had the student in three traditional classes. . . . The student consistently wrote C exams. Yet his class participation always indicated a much higher level of understanding. In the clinic, that understanding blossomed."); Appellate Judges' Conference Report, supra note 37, at 129 ("As an employer, often of second year law clerks with little more than a first year of law school, I see about 100 moot court briefs a year drawn from the national student market; they are the typical writing sample. For research, writing or advocacy, they are not worth much.").
panel of other clinic students. Much of the emphasis here is on combating the knee-jerk impulse to shun the hard question and coddle the favorable. The apex of achievement in this regard is when a student transforms the very thing that enervates her position into the most potent ammunition.

Also, a part of the oral advocacy training is the opportunity for students to argue the other side in their own appeals. This exercise, of course, assists the students in anticipating what could be a primary concern at the actual oral argument and sometimes helps them figure out what they need to emphasize in their own briefs.

Four, the appellate clinic gives students experience interacting with others. In the process of working on the appeals, students occasionally discover that their own moral judgments—ones they have somehow imposed on clients convicted of offenses that they have branded as "heinous"—can render them from either apoplectic to less effective.60

Also, students doing appellate work, which is indeed "specialized,"61 sometimes collide with serious communication barriers and out of that impact, realize how difficult it really is to convey to a client the limitations of what can be accomplished on appeal. We have devoted, in fact, class time to discussing the frustration of trying to make the involuntarily-committed-insanity acquittee understand that victory in his particular appeal cannot be outright release, but, at best, an improved quality of life in confinement. We have also discussed ways of making our client, one convicted of battery on a police officer, understand that we could not present to the appellate tribunal the two supposed defense witnesses that, according to him, his trial counsel "hid" from the jury. In this respect, we have further confronted the disquieting mission of making that client grasp that retrying his case in the appellate court is a literal impossibility and not some covertly hostile unwillingness on our part to help.

Five, the clinic becomes a lesson in teamwork. As the academic year progresses, something significant occurs: students actually congeal as a working unit. My syllabus is designed to force them to not merely myopically fixate on just the cases to which they are assigned. Instead, they must contend with issues and problems that arise in all pending clinic cases. The students read each other's briefs

60. Cf. Marguiles, supra note 48, at 697 (offering two stories about individuals who came to his clinic seeking legal services and exploring students' responses to them).

61. See ALDISERT, supra note 37, at 4 (suggesting that appellate advocacy skills are different from skills used in other areas of law); Appellate Judges' Conference Report, supra note 37, at 147 (noting importance of clinical instructor's qualifications in specialized programs).
and help prepare each other for their oral arguments. In fact, most students voluntarily attend almost all of the appellate arguments and wait until the end to applaud their colleague on the courthouse steps.

II. TWO STORIES OF PROFESSIONAL RESPONSIBILITY

Professional responsibility is an expansive domain, one which Professor David Barnhizer has described as including judgments and value orientations that become both an explicit and implicit part of the individual's decisionmaking and professional behavior. The achieving of this level of understanding demands educational experiences that are capable of providing a source and kind of involvement penetrating enough to cultivate the clarification of values, and flexible enough to allow the instructor to guide the experience into a functional structure. This level of understanding is developed not in sole relation to intellectual theories of ethical behavior, but in response to the kinds of actual forces that will confront, challenge, and tend to seduce the person as a lawyer.62

A clinic lends itself to the training of professional responsibility63 because it is elastic: it brings all kinds of experiences to the students that inevitably force them to explore their own judgments and values, the very ones that percolate within the decisions they do and must make as lawyers.

In an appellate clinic, professional responsibility training cannot be isolated into a lesson unto itself, but pervades all of the clinic's educational objectives. Specifically, it breathes within appellate practice and procedure and is inextrinsic from the clinic's journey into the artistry of legal writing and oral advocacy. Professional responsibility, also, comprehends the students' interactions with each other and the clients, trial counsel, and the courts.


63 For discussions of how clinics are especially suited for the teaching of professional responsibility, see Lester Brickman, Contributions of Clinical Programs to Training for Professionalism, 4 CONN. L. REV. 437, 444-45 (1971-72) (stating that clinical environment is conducive to raising student awareness and sensitivity to inequities in legal system and suggesting that clinical instructors can expand students' knowledge about professional responsibility issues by introducing selected materials such as code provisions, case law, and articles to be used in class discussion); Steve H. Leleiko, Love, Professional Responsibility, The Rule of Law and Clinical Legal Education, 29 CLEV. ST. L. REV. 641, 653-56 (1980) (discussing opportunity for student to gain hands-on, practical experience in clinical setting); Report of the Committee, supra note 4, at 513-14 (expressing that clinics provide opportunity for students to grow as part of learning professional responsibility). But see Robert Condlin, The Moral Failure of Clinical Legal Education, in THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS 317, 326 (David Luban ed., 1984) (asserting that clinic students are often "more zealous at modeling and imitating dominating and manipulative behavior" than other non-clinic students).
What emerges in the clinical context is an incipient integration of the students' identities as lawyers with their identities as human beings. They come to feel and even articulate that the ethical and moral dilemmas they face while in their "legal" personae have a meaningful nexus to the choices they make and will always make about how they want to live their lives as people.

It is here that I resort to narrative because it is an appropriate way of not just talking about, but actually capturing the clinical experience. One of the reasons that stories are "in vogue in academic circles" is that they can induce empathy and raise consciousness. This is especially true when the narrative voice emanates from an oppressed member of what has been treated as an excluded or subordinated "group." As Professor Richard Delgado has said, "Stories, parables, chronicles, and narratives are powerful means for destroying mindset—the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place."

Undoubtedly, storytelling and appellate practice are yokemates on several planes. In every appeal, there is, of course, the client's story. So many criminal appeals indeed harbor those "stories from the bottom" and thus, narrative can serve to penetrate bias and foster

64. For a comparison of a student with clinical experience to that of a traditional law school student, see Roger C. Crampton, The Ordinary Religion of the Law School Classroom, 29 J. LEGAL EDUC. 247, 259-60 (1978). Crampton describes the failure of the hired-gun law school model as follows:

In law school he is asked to argue both sides of many issues. It is common for a student to respond to the question, "How do you come out on this case?" with the revealing reply, "It depends on what side I'm on." If the lawyer is going to live with himself, the system seems to say, he can't worry too much about right and wrong. Many sensitive students are deeply troubled by the moral implications of this role, and law school generally provides little help in resolving the problem.

65. See Goldfarb, supra note 48, at 697 (discussing merits of narrative in learning about difference).

66. Goldfarb, A Theory-Practice Spiral, supra note 5, at 1630-34 (describing how personal stories are often more effective in raising consciousness than relying solely on teaching theory); see also Daniel A. Farber & Suzanna Sherry, Telling Stories Out of School: An Essay on Legal Narratives, 45 STAN. L. REV. 807, 809 (1993) (noting significance of "legal storytelling" in legal scholarship).


69. Farber & Sherry, supra note 67, at 808, 819 (using "stories from the bottom" as means of raising consciousness regarding societal oppression).
empathy in what is typical—a conservative bench, sometimes one with an extreme pro-government and law enforcement perspective. The omnipresent appellate problem of how to release the client's story from what is often the bastille of the record compounds an already difficult task. That is, the appellate scop must balance the desire to sing the client's story with the necessity of not doing what dehors the record, which is the product of the story that trial counsel has already told or imposed on the client.  

On another plane, every appeal has the story of the case, which does not just belong to the client. The case story belongs equally to trial counsel, who through action has authored an account of her travails in the trial court on behalf of the client. Because in criminal appeals defense counsel frequently shares some of the debilitating preconceptions that courts harbor with respect to the client, the story of the case can be another consciousness-raising feat.

In the process of wielding both the client's narrative and the case story, new stories are born out of experiences on the appellate plane itself. Because such experiences involve moral sensibility, values and judgments, such stories on appeal usually fall within the parameters of what we call professional responsibility.

Because in legal education the clinic still has a perceived inferior and even marginal status, narrative again can be offered as a "story from the bottom," as a form of consciousness-raising and, at least, as a viable lesson-sharing essay. What makes the two following stories significant is that they are neither momentous nor extraordinary.

A. The Candor

The story of candor was born in what appeared at first to be a near certain loser. Our client was a juvenile who the trial court had adjudicated delinquent for violating a criminal statute that proscribed

70. For a discussion of lawyers' legalistic imposition of stories on clients, see Anthony V. Alfieri, Stances, 77 CORNELL L. REV. 1233, 1234 (1992) (advancing alternative modes of client discourse to prevent domination by lawyer in lawyer-client relationship); Clark D. Cunningham, The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse, 77 CORNELL L. REV. 1298, 1301 (1992) (explaining that clients are often silenced by lawyers); Lucie E. White, Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G., 28 BUFF. L. REV. 1, 9 (1990) (noting that legal discourse, like politics, often precludes subordinated groups from "meaningful participation").

71. See supra notes 34-35 and accompanying text (discussing faculty and administrative skepticism about clinical education despite scholarship praising its merits).

72. Farber & Sherry, supra note 67, at 808.
a child's use of BB-guns, air or gas-operated guns, electric weapons or devices, or firearms.\textsuperscript{73}

Defense counsel had moved to dismiss the charge in the court below on the ground that the penalty portion of the statute provides for the punishment of only the parent or guardian of the minor child who had used one of the specified weapons.\textsuperscript{74} After a hearing, the trial court rejected the defense's motion and interpreted the penalty provision of the statute as applicable to the child himself.

On appeal, we sought a reversal of the trial court's order denying the motion to dismiss and the adjudication of delinquency. When I accepted the appeal for the appellate litigation clinic, I was aware of the fact that there was only one decision, In re W.O.C.,\textsuperscript{75} interpreting the penalty provision of the statute. Although W.O.C. was decided in another jurisdiction,\textsuperscript{76} the decision was squarely against us. In fact, an outside criminal defense attorney tactfully suggested that we might ultimately decide to file an Anders brief, which is the procedure for a criminal appeal that lacks a meritorious issue.\textsuperscript{77}

In W.O.C., the State had charged a child with violating the same statute and the appellate court had said point blank that the statute created "a criminal offense, subjecting juvenile offenders to arrest and prosecution."\textsuperscript{78} Lamentably, the situation in W.O.C. was indistinguishable from that in our case. In handing the appeal over to the students, however, I was resolved not to mention this decisional blemish.

Not unexpectedly, a group of students rushed forthwith into my office as if they were in the throes of a life-or-death emergency with copies of W.O.C. flapping in their hands. At first, they tried to

\textsuperscript{73} Fla. Stat. Ann. ch. 790.22(1) (Harrison 1991) (prohibiting "use for any purpose whatsoever of BB guns, air or gas-operated guns, electric weapons or devices, or firearms . . . by any child under the age of 16 . . . unless such use is under the supervision and in the presence of an adult").

\textsuperscript{74} Fla. Stat. Ann. ch. 790.22(2) provides:

Any adult responsible for the welfare of any child under the age of 16 years who knowingly permits such child to use or have in his possession any BB gun, air or gas-operated gun, electric weapon or device, or firearm in violation of the provisions of subsection (1) of this section is guilty of a misdemeanor of the second degree.

\textsuperscript{75} In re W.O.C., 318 So. 2d 148 (Fla. Dist. Ct. App. 1975).

\textsuperscript{76} The Fourth District Court of Appeals decided W.O.C. and our appeal was before the Third District Court of Appeals.

\textsuperscript{77} In Anders v. California, the United States Supreme Court described the proper procedure for attorneys to follow when they find that the record in a criminal appeal reflects that there is no meritorious issue. 386 U.S. 738, 744 (1967). Pursuant to this procedure, lawyers must submit a brief providing any information that may be helpful to the client's appeal before withdrawing from the case. Id.

\textsuperscript{78} W.O.C., 318 So. 2d at 148. Judge Mager, however, dissented and expressed his view that the statute "does not create a criminal offense subjecting a juvenile to arrest and prosecution." Id. (Mager, J., dissenting).
convince me that we should simply “throw in the towel” and take another case—one we could win. Alas, they informed me that the Fourth District Court of Appeals had killed their argument and they wanted me to understand that this was indeed one of those rare funereal moments where they simply could not distinguish the unfavorable precedent.

While the discussion of the crisis desultorily progressed, one student, mentioning in a near whisper that she had actually consulted the Rules of Professional Conduct, pointed out that the Rules did not require us to disclose that bad case. Specifically, the Rules mandated disclosure “to the tribunal legal authority in the controlling jurisdiction” and we were not before the very district court that, as my student put it, “did us dirt.”

At this juncture, I made a valiant effort to repress what was almost a reflexive impulse to express repulsion. Instead, we modulated into a hashing over of the sort of things that could happen if we simply concealed W.O.C. from our tribunal. The students’ prognostications ranged from us winning the case to us losing and being sanctioned. The students, in fact, even envisioned us having to submit to a public flogging. Most of the initial predictions did not appear to ensue from any moral or ethical twinges, but rather from purely cerebral theories about what would be the best strategy on appeal or what approach could bring us the victory trophy.

The turning point, however, came when a student, who appeared quite troubled, inquired, “Professor Ronner, you wouldn’t make us hide the case? Because I just don’t think I could be that kind of person.” After assuring them that I would not make anybody do anything that made them feel uncomfortable about themselves as people, we embarked on a hypothetical, one which contained a caricatured portrait of a partner with whom I, as a new lawyer, had actually once worked.

I quoted Mr. Partner verbatim—“Don’t put the bad case in the initial brief because the court might not find it and the dolts on the other side probably won’t either.” From there, the students considered and even fought over how one might and should handle such a directive from a superior. The motif that ultimately surfaced, however, left the Rules of Professional Conduct and even our case far

79. R. REGULATING FLA. BAR 4-3.3(a)(3) (Harrison 1993 & Supp. 1995) (prohibiting lawyer from “knowingly” failing “to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel”).

80. See supra note 76 (noting appeal was in Third Circuit, not Fourth).
behind: it issued forth in the form of the students' consensus about a need to not bifurcate our lawyer identity from how we define ourselves as people.

Because so few contemporary stories have happy endings, I would like to relate that the “bad” case became the very hub of our initial brief. We did not merely present W.O.C. to the court, but built our argument around the reasons why the decision in W.O.C. was wrong and in the end, our court actually agreed with us.\textsuperscript{81}

B. The Sandbag

The sandbag story was born when our client, Mr. Gibson, was sitting on a milk crate in front of a grocery store. Mr. Gibson is black and many black people resided in the neighborhood where Mr. Gibson was sitting.

When a police officer received an anonymous tip that a black man was selling drugs in the area, he drove up to Mr. Gibson in his marked police car. When Mr. Gibson got up and walked away, the officer drove right in front of Mr. Gibson and blocked his path. The officer later ordered Mr. Gibson to stop and Mr. Gibson stopped. The officer told Mr. Gibson to place his hands on the police car and Mr. Gibson again complied. When the officer told Mr. Gibson to spread his legs, Mr. Gibson did that as well.

The officer then conducted a pat down of Mr. Gibson and pulled a small brown bag out of his right pocket. The bag contained what was later identified as crack cocaine. As a result, the officer arrested Mr. Gibson and the State charged him with possession of cocaine.

Mr. Gibson’s defense counsel had filed a motion to suppress the evidence and after conducting an evidentiary hearing, the trial court deemed the search to be illegal and granted the motion. An Assistant


For me, however, an even happier ending occurred in the middle of a case that we lost. When at oral argument, the student was distinguishing "the State's case," one judge on the panel remarked with a detectable modicum of warmth, "It is curious that you call it 'the State's case' because counsel wasn't it really you that first presented that case to this court?"
Attorney General, acting on behalf of the State, appealed the decision and our clinic represented Mr. Gibson, the appellee.

On the morning of the oral argument, we were waiting in the lawyer's lounge in the courthouse when an Assistant Attorney General glided in and plunked down on our table a "Notice of Supplemental Authority" with a case, Minnesota v. Dickerson, appended to it. The Assistant, however, made a point of informing us that because she was filing the notice at "the last minute," she would neither argue it nor mention it during the oral argument. Almost automatically, we agreed that we would not discuss it either.

After this seemingly innocuous encounter, Jeff, the one presenting the oral argument, and I read and discussed the Dickerson decision. Jeff correctly pointed out that the circumstances in Dickerson did not materially differ from those in the many cases that we had already addressed and distinguished in our brief.

Also, as Jeff saw it, the distinction between Dickerson and our case actually supported our position—not the State's. Specifically, in Dickerson, the United States Supreme Court reiterated the language in Terry v. Ohio, which allows officers to conduct a pat down search "to determine whether the person is in fact carrying a weapon" when that officer justifiably believes that "the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous." Under Dickerson, when officers are conducting such a protective Terry search and they discover "nonthreatening contraband," they may lawfully seize it.

As Jeff analyzed it, our case did not even arguably fall into that Terry-Dickerson exception because the officer who stopped Mr. Gibson had testified that he did not believe that Mr. Gibson had a weapon or that Mr. Gibson was dangerous. This was, in fact, something that the students had already underscored in their brief.

At first, the oral argument was rather uneventful. The Assistant Attorney General went first because the State was the appellant, and even the purblind could see that the panel was not inclined to

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82. 113 S. Ct. 2130 (1993).
83. See Fla. R. App. P. 9.210(g) (providing that notice of supplemental authority may be filed anytime "before a decision has been rendered").
84. 392 U.S. 1 (1968).
86. Id. (quoting Terry, 392 U.S. at 24).
87. Id. See generally Barbara A. Doty, Note, Minnesota v. Dickerson: Plain Touch Doctrine—Authorizing Terry Stop and Search for Drugs?, 1994 Wis. L. Rev. 1303, 1313-15 (noting that police may perform pat down but may not conduct more intrusive search without probable cause).
reverse. When Jeff stood up at the podium, all went quite well and the court’s questions were quite friendly to our position. Because the Assistant Attorney General had set aside a minute or two for rebuttal, the State, of course, had the final word. As her final word, the Assistant Attorney General, appearing somewhat flushed and suddenly ironically stammering like a Billy Budd, uttered *Dickerson* and argued that her supplemental authority mandated a reversal.88

Interestingly, while most assistants in the Attorney General’s Office tend to be quite cordial and usually make a point of stopping to compliment the law students with a hearty handshake at the end of the argument, this particular Assistant Attorney General dashed out of the courthouse. We, however, huddled together in the heat of the Miami parking lot to discuss our story, a pow-wow which continued into the next class meeting. By then, some students had scrutinized the deific Rules of Professional Conduct and were somewhat miffed to discover that no provision precisely covered our event.

The students’ reactions to the incident spanned the gamut of the rational to the emotional. In articulating even some spiritual concerns, the students referred to both heaven and karma. They, of course, dwelled on what they thought it meant to be a lawyer, but a truly sentient nugget, the one that is most memorable for me, is one student’s remark, “Gee, it must suck to be her.”

**CONCLUSION**

In a paper delivered to the 1982 Plenary Session of the National Clinical Law Teachers Conference,89 Dean Michael Meltsner stated:

> Law teachers can avoid talking about such changes that take place in themselves and their students, but they cannot avoid influencing and being influenced by them. For example, students are given the opportunity to question—or not to question—the professional role being handed down to them. They are given the opportunity to consider—or not to consider—the interaction between their selves and their work. The impact of such opportunities, gained or lost, abides—regardless of whether we decide to acknowledge it.90

An in-house appellate clinic consists of unceasing opportunities to explore the professional role of lawyering and analyze the relationship

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89. The National Clinical Law Teachers Conference was held at the University of Minnesota Law School on June 20, 1982.

between the self and work. Because the actual questioning or considering of such issues is indeed incorporated into the syllabus, the clinic maximizes the impact of such opportunities.

What occurs in this educational context of dealing with clients, opposing counsel, and the courts is not just the students' constant clarification of values that inform their professional decisions, but their reckoning with an awareness that the professional identity ensues—not just from a code—but from their sense of themselves as human beings.91

In the story of candor, the decision that the students ultimately made sprung from a consensus about the way the students wished to conduct their lives. This, in essence, fueled their incentive to make an act of candor conspire with—not against—zealous advocacy. In the story of the sandbag, a seemingly minuscule event, which to the students magnified itself into a monstrous betrayal, led to an insight into what certain choices can harvest. Part of that realization was a sentiment that the most insidiously toxic aftermath of certain decisions does not take the form of a bad result in a case or the sting of disciplinary proceedings or some olympian lightning bolt striking us down, but rather issues forth as a subtle yet solemn sentence to simply keep marching through life as oneself.

In an in-house appellate clinic, what we denominate "professional responsibility" lessons become inseparable from the lessons in appellate practice and procedure. That is, the "forces that will [and do] confront, challenge, and tend to seduce the person as a lawyer,"92 erupt while reading the appellate rules, reviewing the record, writing the briefs, doing the oral argument and while communicating with clients, opposing counsel, and each other. Such a clinic is one of the few contexts in which variegated goals become a complete amalgam.

In describing how "clinical education can enhance the relationship between legal theory and legal practice," Professor Phyllis Goldfarb says that "[i]n the hands of clinical educators, experience can generate theory which can circle back to inform experience, which in turn can alter, refine, and improve the theory."93 What Goldfarb attributes to clinical legal education is especially true of in-house

91. For discussions of how law school models of lawyering roles can conflict with the students' human needs or impulses, see Crampton, supra note 64, at 259-60 (discussing moral emptiness many law students feel and how law schools provide little help in resolving this problem).
93. Goldfarb, Beyond Cut Flowers, supra note 5, at 721.
appellate clinics. That is, they "contain[] an implicit epistemological theory, and [their] . . . theory is inseparable from [their] practice."94

The dovetailing of theory and experience is intensified partly because of the nature of appellate practice and its amenability to becoming a theoretical doing and doingness theory.

Also, an in-house appellate clinic can perform the marriage rite between the apprentice and Dean Langdell.95 The Langdellian emphasis on the study of cases is, of course, integral to appellate argument. Appellate advocacy does not, however, merely entail the use of precedent, but also implicates and is, in fact, prompted by an understanding of the appellate process as the potential making of precedent. As such, any benefits that the Langdellian approach has already bestowed on the law student blooms in such a clinic when Langdellian methods unite with that student's appellate "apprenticeship."

In concluding where I began—with an allusion to Walter Pater's theory about art—I suggest that "all legal education constantly aspires toward the condition of an in-house appellate clinic."96 The clinical context does obliterate the putative distinction between the lesson and the experience. The experience, in fact, penetrates every part of the lesson. Such a clinic can be, like music, "ideally consummate."97

94. Goldfarb, Beyond Cut Flowers, supra note 5, at 721.
95. See supra notes 23-28 and accompanying text (discussing Langdellian case law method and its drawbacks).
96. See PATER, supra note 1, at 156 (proclaiming that "[a]ll art constantly aspires toward the condition of music").
97. PATER, supra note 1, at 156.