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SHAKESPEARE COMES TO THE LAW SCHOOL CLASSROOM

NANCY COOK*

INTRODUCTION

This is a paper about legal pedagogy. Although content and methodology are often difficult to separate, what I have to say has more to do with process than with substance. It is not complicated, but it is intended to be provocative as well as illustrative. The basic premise is that virtually any subject area can provide fertile ground for teaching the skills, principles, and theories of responsible law practice from which law teachers have to choose in designing their courses. The subject of Shakespeare, for both practical and philosophical reasons, serves here as the example by which this premise is demonstrated.

In putting this piece together, I was guided by two underlying principles. Neither is revolutionary, but together they help explain the conclusions I have drawn and the decisions I make about teaching. The first principle has to do with metaphors and the interrelationships between ideas. Law can be seen as a metaphor for life, and life, I suppose, can be seen as a metaphor for the practice of law.¹ Anything, in fact, can be seen as a metaphor for anything else. Any process can be analogized to any other, and in the final analysis, all things are related to all others. It is simply a matter of seeing the connections. Thus I can say to my students, a good brief is like an award-winning Japanese garden; it must be planned and laid out with excruciating care to insure that the results achieved appear to be the inevitable and untampered-with design of nature. Or, I might postulate, the attorney at the negotiating table is a Babel fish;² the attorney's job is to decode both the client's and the

* The author owes thanks to Susan, Bob, Ann, Nancy, and Elliott, who not only tolerate their colleagues' experiments in education, but encourage them; to Mary, Heather, Lori and Michael for all their hard work; and of course to Peter and Jamie, whose brilliant scholarship and stellar courtroom performances were the inspiration.

1. The same idea has been expressed by James De Young, speaking on the subject of experiential learning in the field of theatre arts:

Since the main goal in theatre practicums is cooperative achievement of the best production possible and since every step along the way in a production involves a new problem or new decision, it would appear that we have in place an ideal model for life training as well as artistic training.

J. De Young, *The Practicum Experience, Relic of the Sixties or Hope of the Eighties 3* (1985) (paper prepared for U.S. Department of Education, National Institute of Education, Educational Resources Information Center).

2. "The Babel fish," said the *Hitchhiker's Guide to the Galaxy* quietly, is small, yellow and leechlike, and probably the oddest thing in the Universe. It feeds on brainwave energy received not from its own carrier but from those around it. It absorbs all unconscious mental frequencies from this brainwave energy to nourish itself with. It then excretes into the mind of its carrier a telepathic matrix formed by combining the conscious thought frequencies with nerve signals picked up from the speech centers of the brain which has supplied them. The

adversary's language and communicate the thoughts of each to the other. Such analogies, discussed and developed in the classroom, help bridge the perceived chasm between the world of lay experiences and the world of law practice. Students are thus able to learn something about lawyering.

It is no doubt true that not all things are easily related to the practice of law, nor are all analogies equally appropriate. I would not, for example, necessarily teach Japanese gardening as a prelude to teaching about brief writing. Then again, I would not rule out the possibility either. The point is, I *could* use Japanese gardening theory to teach about brief writing, and do it successfully. Sufficient similarities exist in the two activities to make an extended metaphor or analogy workable in the classroom. This is true of a great many processes.

The second point I'd like to make is that we do best what we love. When Bill Moyers asked Joseph Campbell during one of their interviews on the critically-acclaimed *Joseph Campbell and the Power of Myth* (interviews reprinted in J. CAMPBELL, *THE POWER OF MYTH* (1988)), what advice he would give to one attempting to find meaning in this mythless and ritualless time, Campbell replied, "follow your bliss." Law, teaching, the teaching of law, and the practice of law may be blissful activities in and of themselves, but most of us have broader interests. We like to scale mountains or bake, steep ourselves in political debates or bury ourselves in classical languages. These interests are important to us and there is no reason why we have to leave our interests or those interesting parts of ourselves outside the classroom door. The metaphorical method is one way of making the things we love best an integral part of our teaching.

One thing that makes it possible for law teachers to bring outside interests into the classroom is the fact that the range of things that practicing lawyers need to know and understand is so vast as to be almost overwhelming. We have the luxury—or the impossible task—of picking and choosing among any number of important subject areas and ways of teaching. This gives us broad latitude in discovering ways to fit into the curriculum matters of interest to ourselves without straining to find ways in which these interests are relevant to lawyering.

This is not, however, a call to omit a class on cross-examination in favor of a class on bird watching. Nor do I mean to suggest that law teachers should abandon basic instruction in essential areas. I simply point out that what is "essential" consists of a great many things, and that the number of ways of prioritizing what should be taught and how is infinite. It is possible—perhaps even essential—to incorporate what we

practical upshot of all this is that if you stick a Babel fish in your ear you can instantly understand anything said to you in any form of language. The speech patterns you actually hear decode the brainwave matrix which has been fed into your mind by your Babel fish.

D. ADAMS, *THE HITCHHIKER'S GUIDE TO THE GALAXY* 59 (1979). I am indebted to my friends George LaRoche and Edith Blackwell for introducing me to the Babel fish.

teachers, as human beings, have learned and loved outside the classroom into our course syllabi.

There is also, I believe, a sound pedagogical basis for doing this. Imagine a lawyer sitting back after dinner doing the *New York Times* crossword puzzle. She is suddenly struck by the idea that the stories told by plaintiff's and defendant's witnesses in court that day, cross and fit together in the same way as the downs and acrosses of the *Times'* puzzle. That lawyer has the beginnings of a closing argument. Such is the way arguments and theories of a case are born. The ability to idly reflect on processes and things and to make associations with other processes and things is itself a skill, a skill that can be learned through observation and practice. When law teachers practice that skill in the classroom, it enhances, rather than sacrifices, pedagogical objectives.³

To demonstrate how these ideas can be put into practice, I have selected two sample classes from an appellate advocacy seminar in which the main theme is the writings of Shakespeare. The classes were inspired by a debate over the question of the true authorship of Shakespeare's works. The format of the debate—an argument before an appellate court—made it easy to see the connections that might be drawn between Shakespearian scholarship and lawyering, and provided some familiar means by which the classes could be taught.

Part I of this Article provides basic historical background to the subject of legal pedagogy, and particularly to the rise of the clinical method. Part II identifies the existing problems law teachers face in deciding on course content for skills-related courses and describes a few of the choices others have made or advocated. Part III discusses my personal approach to course design. Part IV examines the multiple ways in which the subject of Shakespeare *could* be used to accomplish the objectives. The ultimate choices made and justifications for these objectives are detailed in Part V.

I. HISTORICAL BACKGROUND

In the late 19th century, when the scientific method was enjoying its heyday, Christopher Columbus Langdell introduced into the law school curriculum a pedagogical theory which he believed applied principles of scientific analysis to legal thought.⁴ The legal system envisioned by Langdell was one in which the ultimate discovery of a "few fundamental principles" would inevitably lead to a legal practice governed by these fundamentals. Legal judgments would be made by applying the few legal principles written into the common law to facts, and legal judgments accordingly would be dictated by "rationally compelling reason."⁵ Despite the continuing efforts of legal theorists who have

3. It makes the learning process less painful for the students. "When we our betters see bearing our woes,/ we scarcely think our miseries our foes." W. SHAKESPEARE, *King Lear*, act 3, sc. 6, lines 102-103.

4. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1 (1983).

5. *Id.* at 8.

pointed out the many flaws in Langdell's orthodoxy,⁶ Langdell's theories retain much of their vitality in today's law schools. The notion that decisions are made by judges pursuant to some rational ordering of known constructs still predominates, and the belief that such a process of analysis can best be understood by examining the cases in which it is done is still operative through the case book method of teaching law.⁷

Even as the law schools clung (and continue to cling) to the scientific method as adapted by Langdell, the legal profession has continuously registered its complaints about the inability of new lawyers to handle real cases as well as about the failures of the legal education system to prepare students to practice law.⁸ Recent years have seen a vast increase in the number of skills training programs for lawyers.⁹ This trend must be attributed in part to the profession's concern that lawyers are not acquiring training in law school which is adequate to meet professional practice norms.¹⁰

Although legal education has been slow to respond to the needs of the profession, some development along these lines has taken place during the last twenty years. Perhaps the most significant development has been in the area of clinical legal education.¹¹ Without engaging in, and certainly without resolving, any debates about what the definition of

6. This includes the futility of achieving anything like the formalistic utopia he predicted in a system governed by humans preferring to apply their own subjective rules rather than the ostensibly objective ones of Langdell's ideal world. See, e.g., Bok, *A Flawed System of Law Practice and Training*, 33 J. Legal Educ. 570 (1983); Cramton, *Lawyer Competence and the Law Schools*, 4 U. Ark. Little Rock L.J. 1 (1981); Frank, *Why Not a Clinical Lawyer-School?* 81 U. Pa. L. Rev. 907 (1933); Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 4 B.Y.U. L. Rev. 695 (1977); Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. Legal Educ. 591 (1982); N. Redlich, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS* (1914).

7. GREY, *supra* note 4, at 50.

8. See e.g., Burger, *Isn't There a Better Way?* 68 A.B.A. J. 274 (1982); Devitt & Roland, *Why Don't Law Schools Teach Law Students How to Try Lawsuits?* 13 WM. MITCHELL L. REV. 445 (1987). Macauley, *Law Schools and the World Outside Their Doors II: Some Notes on Two Recent Studies of the Chicago Bar*, 32 J. LEGAL EDUC. 506 (1982); Martineau, *Appellate Litigation Skills Training: The Role of the Law Schools*, 54 CINN. L. REV. 129 (1985); McEachern, *The Trial Process*, 40 THE ADVOCATE 217 (1982).

9. In addition to the training opportunities offered by private firms, state and local bar associations and such organizations as the National Institute for Trial Advocacy, lawyers in some states are now required to participate in some form of practice-oriented continuing legal education. See, e.g., IOWA CODE ANN. §§ 602, app. A (Supp. 1991); OKLA. STAT. ANN. tit. 5, ch. 1, app. 1-B (Supp. 1991); S.D. COD. LAWS §§ 16-8-2 (1987).

10. The American Bar Association's standards on accreditation of law schools have thus far not been interpreted to require law schools to make lawyering skills courses mandatory for their students. See *Standards for Approval of Law Schools*, Standard 302 (1987). Despite increasing pressure from bench and bar, such courses are still offered primarily as electives; indeed, practical skills courses constitute a small percentage of the total number of courses offered at most law schools. See Devitt & Roland, *supra* note 8, at 459. Devitt and Roland point out that studies commissioned by federal judges and by the ABA have identified significant advocacy deficiencies, which they attribute in part to the interpretation of Standard 302. *Supra* note 8 at 445, 459.

11. This development is tracked in Meltner & Shrag, *Report from a CLEPR Colony*, 76 COLUM. L. REV. 581 (1976). See also Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162 (1974); Meltner & Shrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1 (1978).

“clinical legal education” is¹² or what the purposes of clinical education are,¹³ I think it is safe to say that clinical education is, in part, a response to the perceived failures of the educational system. Clinical teachers are engaged in a search for ways to prepare students for the responsibilities and realities of law practice.¹⁴

Thus, in clinical circles, the underlying assumption of Langdell orthodoxy—that we need to teach students to *think* like lawyers—has been undermined by identification of a need for students to learn how to *act* like lawyers.¹⁵ Dissatisfaction with the Langdell method and greater emphasis on what lawyers do has led to experimentation and development of new methods and theories.¹⁶

12. One definition of clinical legal education that has been proposed is “a curriculum-based learning experience, requiring students in role . . . to take responsibility for the resolution of a potentially dynamic problem.” Boon, *A Working Model for Clinical Legal Education: Testing the Definition Against a Range of Examples*, 21 L. Tchr. 172 (1987). Boon goes on to describe five categories of clinical course design: work experience; applications of new (computer) technology; observation exercises; simulation exercises; and gaming. *Id.*

13. It has been asserted that clinical legal education had a “specific political origin” in the late 1960’s and was intended to promote two experiential goals: the exposure of middle class professional students to the life of the poor and the exposure of those same students to the hypocrisy of the bar. Kennedy, *The Political Significance of the Structure of the Law School Curriculum*, 14 SETON HALL L. REV. 1, 6 (1983). Another educator has argued that clinical methodology differs from the Langdellian appellate casebook method only insofar as clinical instructors collect directly experienced examples involving third parties as their core teaching materials rather than vicariously or indirectly experienced two-dimensional examples from casebooks. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67 (1979). Barnhizer then suggests that a “unique” potential of clinical programs is in the area of teaching professional responsibility. *Id.* at 68.

The uncertainty about, or lack of consensus on, what the purposes of clinical education are can be gleaned further from articles describing clinical program development at various schools. *E.g.*, Haydock, *Clinical Legal Education: The History and Development of a Law Clinic*, 9 WM. MITCHELL L. REV. 101 (1984) (focusing on clinical education as a “learn-by-doing” method); Oppenheimer, *Boalt Hall’s Employment Discrimination Clinic: A Model for Law School/Government Cooperation in Integrating Substance and Practice*, 7 INDUS. REL. L. REV. 245 (1985); *see also* Adams, *Tulane Students Must Undertake Pro Bono Work Before Graduation*, 10 NAT’L L.J. 4 (1988) (illustrative of the view that community service is a primary goal of student practice).

14. It is no small problem that clinical legal education, however it is defined and whatever its purposes are purported to be, is still regarded by many as peripheral to law school education. Among other things, the continued marginality of clinical education has been attributed to its associations with feminine (in the Jungian sense) concerns with people, unstructured situations and feelings. Tushnet, *Scenes from the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education*, 52 GEO. WASH. L. REV. 272 (1984). Tushnet argues that clinicians have themselves contributed to this marginality by taking a defensive posture when clinical education’s overall value and cost-effectiveness are brought into question rather than taking the offensive and attacking traditional legal education’s methods and values. It is well beyond the scope of this article to examine the reasons for whatever continuing resistance there is to the inclusion of clinical programs in the law schools, but in defense of clinical educators, I think it should be pointed out that many are, and have been, engaged in the process of refining definitions, analyzing programs and making recommendations for development, and are not simply expending efforts justifying the existence of clinical programs. *See, e.g., infra* note 34 and accompanying text.

15. *See, e.g.*, Motley, *A Foolish Consistency: The Law School Exam*, 10 NOVA L.J. 723 (1986). Motley critiques the law school examination tradition, and goes on to make recommendations for change based on experiential learning concepts.

16. *See* Amsterdam, *Clinical Legal Education - a 21st Century Perspective*, 34 J. LEGAL EDUC.

II. CURRICULAR NEEDS AND OPTIONS FOR LAW TEACHERS

As educators have moved from the rationalistic orientation of Langdell orthodoxy to a more practice-focused orientation, considerable attention has been paid to the tasks of lawyering. In this regard, much effort has been expended on teaching students, particularly in clinical programs, how to "do" such tasks.¹⁷ Implicit in this approach to clinical teaching are some underlying assumptions about what lawyers do. From the available literature, it may be widely assumed that what lawyers do is interview and counsel clients, negotiate, develop case theories, engage in case planning, conduct direct and cross examinations of witnesses, write pleadings and do discovery. No doubt many lawyers do engage in these activities, but they engage in many other activities as well. Even these identified tasks can be broken down further or rearranged to create different categories of tasks for teaching purposes. The fairly typical focus of clinical curricula on such skills as interviewing and negotiation is by no means necessarily dictated by the needs of the legal profession or the goals of clinical educators.¹⁸

Moreover, dissatisfaction with Langdellian orthodoxy has not led to wholesale agreement or immediate satisfaction with the programs created in part as alternatives. Interestingly enough, although the initial creation of skills programs may be intimately related to a growing dissatisfaction with Langdellian orthodoxy, internal program development has suffered from many of the very same problems as those which have consistently plagued the legal education profession and which contributed to the creation of clinical skills programs in the first place. This, perhaps, should come as no surprise. The more clinicians inquire into their own as well as traditionalist pedagogical assumptions, the clearer it

612 (1984); Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981).

17. A quick inventory of some of the best known texts in clinical legal education demonstrates the high priority given to the "how to's" of lawyering. See, e.g., A. AMSTERDAM, *TRIAL MANUAL FOR THE DEFENSE OF CRIMINAL CASES* (1978); G. BELLOW & B. MOULTON, *THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY* (1978); P. BERGMAN, *TRIAL ADVOCACY* (1982); D. BINDER & S. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT CENTERED APPROACH* (1977); R. FISHER & W. URY, *GETTING TO YES* (1981); K. HEGLAND, *TRIAL AND PRACTICE SKILLS* (1978); T. MAUET, *FUNDAMENTALS OF TRIAL TECHNIQUES* (1980); J. TANFORD, *THE TRIAL PROCESS* (1983).

The underlying theory, expressed in another context, is that Play acting like child's play is a ritualized form of exploration of the world that is both enjoyable and challenging while being structured to move towards a satisfying learning conclusion. Seeing is better than hearing and doing is better than seeing. Or as an old Chinese proverb has it:

I hear; I forget.

I see; I remember.

I do; I understand.

J. De Young, *supra* note 1, at 5.

18. See Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277 (1982). Indeed, clinical law teachers have recognized that the structure and focus of their courses may well be the result of historical accident or the demands of funding needs rather than the consequence of planning in response to well thought out pedagogical objectives.

becomes that the number of things that lawyers do, and therefore must learn, is mind boggling.

For example, law can be perceived of as a helping profession. Since lawyers work with people, they must talk with them, understand their needs, and work with them to solve problems.¹⁹ This requires the ability to communicate, and communication requires an understanding of values and language and of the interplay between the two.²⁰ This, in turn, may require an understanding of political, socio-economic, and historical contexts.²¹ To provide a client with adequate information

19. "The beginning and end of a lawyer's professional life is talking with a client about what is to be done." Shaffer, *The Practice of Law as Moral Discourse*, 55 NOTRE DAME L. REV. 231 (1979); "The skills of the successful lawyer lay in mastery of the human interaction and in subtle awareness of the emotions, concerns and anxieties of others as well as in the knowledge of how to utilize that awareness to advance the attorney's professional aims in the interaction." Goodpaster, *The Human Arts of Lawyering: Interviewing and Counseling*, 27 J. LEGAL EDUC. 5 (1975). "This is a practice, / As full of labour as a wise man's art." W. SHAKESPEARE, *Twelfth Night*, act 3, sc. 1, lines 64-65. The way in which attorney-client discussions are to be carried out has been a subject of some interest. See, e.g., D. BINDER & S. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT CENTERED APPROACH* (1977); M. SCHOENFIELD & B. SCHOENFIELD, *LEGAL INTERVIEWING AND COUNSELING* (1982); T. SHAFER & R. REDMOUNT, *LEGAL INTERVIEWING AND COUNSELING* (1980); A. WATSON, *THE LAWYER IN THE INTERVIEWING AND COUNSELING PROCESS* (1976).

There is a considerable amount of non-legal literature dealing with the process of communication in professional or quasi-professional settings that is of use to law teachers as well. The work of Carl Rogers has been of particular interest to clinical law teachers. E.g., C. ROGERS, *ON BECOMING A PERSON* (1961) excerpted in *INTERPERSONAL DYNAMICS* 287 (Bennis et al eds. 1968). Other articles of note in this volume include Davis, *The Cab Driver and His Fare: Facets of a Fleeting Relationship*, at 556 and Gibb, *Defensive Communication*, at 606. See also A. BENJAMIN, *THE HELPING INTERVIEW* (2d ed. 1974); BERNSTEIN & BERNSTEIN, *INTERVIEWING: A GUIDE FOR HEALTH PROFESSIONAL* (1976); J. CHILDRESS, *WHO SHOULD DECIDE? PATERNALISM IN HEALTH CARE* (1982).

20. Jerome Bruner, in his work on the importance of language to the development of what he terms the "transactional self" (a self that is both "personal" and part of a culture), addresses this idea in depth. See, e.g., J.S. Bruner, *Development of a Transactional Self* (Apr. 29-30, 1983) (paper presented at the conference of the Erikson Institute, Chicago, Ill.) See also A.M. Quinton, *Contemporary British Philosophy* reprinted in WITTGENSTEIN, *THE PHILOSOPHICAL INVESTIGATIONS* 8-21 (G. Pitcher ed. 1966.) One attempt to deal with the problems of interpersonal communications has been made by developing an attorney-client communications model which takes into account the varied sensory-based ways in which people experience the world. Barkai, *A New Model for Legal Communications: Sensory Experience and Representational Systems*, 29 CLEV. ST. L. REV. 575 (1980). See also W. SHAKESPEARE, *The Tempest*, act II, scene 1 ("You cram these words into mine ears against the stomach of my sense."). Another approach is suggested by Clark Cunningham, who encourages attorneys to translate client language into jury language. For further understanding of the philosophical bases of the interplay between language and values, see Cornell, *Institutionalization of Meaning, Recollective Imagination and the Potential for Transformative Legal Interpretation*, 136 U. PA. L. REV. 1135 (1988).

21. Many would see this as a need for political action, not just as a need for recognition or understanding. "We must not make a scarecrow of the law, / Setting it up to fear the birds of prey, / And let it keep one shape till custom make it / Their perch, and not their terror." W. SHAKESPEARE, *Measure For Measure*, act 2, sc. 1, lines 1-6; Freeman, *Racism, Rights and the Quest for Equality of Opportunity, A Critical Legal Essay*, 23 HARV. C. R. - C. L. L. REV. 295 (1988) (taking the view that law is ideology); Pellar, *The Metaphysics of American Law*, 73 CALIF. L. REV. 1151 (1985) (asserting that legal discourse is political or mythical). See also Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L. J. 39 (1985) (examining the impact of the increased presence of women in the legal profession on the practice of the law). The title of Menkel-Meadow's article is, of course, derived from the character Portia in W. SHAKESPEARE, *Merchant of Venice*; Folsom & Roberts, *The Warwick Story: Being Led Down the Contextual Path of the Law*, 30 J.

to make decisions, a lawyer may need to know basic psychiatry, be proficient in math, or understand the inner workings of large bureaucracies.²²

Another view of the law focuses on the nature of the legal system. If the system is primarily perceived as an adversarial one, particular attention must be paid to its philosophical underpinnings, especially insofar as they have been adopted or institutionalized by the profession.²³ As advocates in an adversarial system, lawyers take on a certain role. An understanding of that role and its implications is necessary to competent performance in that role.²⁴ Adequate performance in this role may also entail competency in dramatic arts, public speaking skills, the ability to strategize and compete, and persuasive writing.

The trend toward specialization in law practice suggests another approach to teaching. To the extent that students enter law school or the profession with the expectation of practicing in a particularized area, there is a tendency to gravitate toward courses and clinics which relate

LEGAL EDUC. 166 (1979). These contexts affect the lawyer as much as the law and legal problems. See J. KATZ, POOR PEOPLE'S LAWYERS IN TRANSITION (1982); A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY AND POLITICAL CHANGE (1974). See generally C. GEERTZ, THE INTERPRETATION OF CULTURES: SELECTED ESSAYS (1973).

22. This need has been identified by supporters of the Langdellian scientific orthodoxy. R. Clark, *The Return of Langdell*, 8 HARV. J. L. & PUB. POL'Y 299 (1985). Clark asserts that first year students require some grounding in statistics, model building and cognitive psychology to enable them as lawyers to ferret out errors in legal reasoning. *Id.* at 307. See also T. C. SCHELLING, STRATEGY OF CONFLICT (1960) (mathematical principles applied to negotiation); Llewellyn, *The Modern Approach to Counseling and Advocacy - Especially in Commercial Transactions*, 46 COLUM. L. REV. 167 (1946) (identifying a need to understand "operational" systems); Monahan & Walker, *Teaching Social Science in Law: An Alternative to "Law and Society"*, 35 J. LEGAL EDUC. 478 (1985).

There is no lack of material intended to acquaint lawyers with the basic precepts of other disciplines relevant to law practice. *E.g.* W. CURTIS, MICROECONOMIC CONCEPTS FOR ATTORNEYS: A REFERENCE GUIDE (1984); D. HERWITZ, MATERIALS ON ACCOUNTING FOR LAWYERS (1980); M. HOOTS, LAWYERS GUIDE TO MEDICAL PROOF (1966); A. MOENSSES, F. INBAU & J. STARRS, SCIENTIFIC EVIDENCE IN CRIMINAL CASES (3rd ed. 1986); J. RUBIN, ECONOMICS, MENTAL HEALTH AND THE LAW (1978); T. SANNITO & P. MCGOVERN, COURTROOM PSYCHOLOGY FOR TRIAL LAWYERS (1985); A. WATSON, PSYCHIATRY FOR LAWYERS (1978).

23. The norms of the profession are perhaps best gleaned from the ABA Standards relating to professional conduct: "Toward the client the lawyer is a counselor and an advocate; toward the prosecutor the lawyer is a professional adversary; toward the court the lawyer is both advocate for the client and counselor to the court." ABA STANDARDS FOR CRIMINAL JUSTICE 4-8 (1980). Because "[a]dvocacy is not for the timid, the meek, or the retiring," and because "[o]ur system of justice is inherently contentious . . . it demands that the lawyer be inclined toward vigorous advocacy." *Id.* Voices have been raised against too-strict adherence to these principles. See, e.g., Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1 WIS. L. REV. 30 (1978) (discussing the implications of widespread unquestioning acceptance of certain professional norms, including the belief in the legitimacy of the system). See also Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. 1 (1975) (raising questions about whether "it is a good thing for lawyers to be so professional—for them to embrace so completely this role-differentiated way of approaching matters"). *Id.* at 8.

24. There are many writings from the lawyer's perspective on their professional role and its implications. A number of them have been collected in DVORKIN, HIMMELSTEIN & LESNICK, BECOMING A LAWYER (1981), and can be also found in BELLOW & MOULTON, THE LAWYERING PROCESS (1978). Some interesting implications of role assumption are also addressed in Weinstein, *The Integration of Intellect and Feeling in the Study of Law*, 32 J. LEGAL EDUC. 87, 89-93 (1982); and Elkins, *The Legal Person: An Essay on the Professional Mask*, 64 VA. L. REV. 735 (1978).

to those particular substantive interests. In-depth knowledge of substantive areas of law is considered both desirable and necessary by many law teachers as well as students. Because clinics in most instances serve a disempowered minority or class, there may be an increased danger that clients will be exploited in the name of education and will be dis-served by student representatives lacking basic understanding of the law in the field in which they are operating. Thus intense inculcation in substantive law is considered a necessary prerequisite to the rendering of services by students.

Process as well as substantive law can be viewed as essential content to clinical law courses. Whereas traditional law courses stress analytical thinking and demonstrable inferential logic as necessary components to the process of "thinking like a lawyer," clinical courses may concentrate more on creative problem solving and intuition as critical to legal thought processes.²⁵ In addition, process as content can take the form of deliberate observation, reflection, and self-analysis.²⁶ This suggests a process-oriented and experientially-based approach to teaching, or perhaps more accurately, to developing ethical standards.²⁷

The acme of the process orientation may be the theory that the real

25. "Clinical legal education, while attending to cognitive changes, has emphasized learning in the affective and active dimensions." Harbaugh, *Simulation and Gaming: A Teaching/Learning Strategy for Clinical Legal Education*, REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS-A.B.A. COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION 191, 198 (1980). It may be that the exposure to the real world of practice is what leads to this approach to developing thought processes. As Emily Calhoun notes, "The genius of a trial lawyer lies in knowing when to appeal to logic and when to appeal to values or unprovable intuition." Calhoun, *Thinking Like a Lawyer*, 34 J. LEGAL EDUC. 507, 512 (1984). Good litigators, in other words, can sometimes ". . . see that most noble and most sovereign reason,/ Like sweet bells jangled, out of tune and harsh." W. SHAKESPEARE, *Hamlet* act 3, sc. 1, lines 157-158.

26. See SCHON, *THE REFLECTIVE PRACTITIONER* (1988) for a full development of this notion. Of a student successfully taught by such a method, it might be said: "He is a great observer, and he looks/ Quite through the deeds of men." W. SHAKESPEARE, *Julius Caesar* act 1, sc. 2, lines 202-203. Clinical law teachers normally incorporate constructive critique methods, including self-critique methods, into their supervisory sessions and thus tend to be conscious of the process. Motley, *supra* note 15, at 749-50. In doing so, they certainly can emphasize the same analytical skills that are central to Langdell's orthodoxy, especially in the classroom. Some, perhaps many, clinical teachers are prone to utilize teaching methodologies such as the Socratic method generally associated with more traditional law courses. There is a belief that the clinical methodology merely adds a new dimension to or is only marginally different from more conventional methodologies, Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982); Barnhizer, *supra* note 13, and that it is in danger of becoming even more like the system from which it rebelled. Kennedy, *supra*, note 13, at 7. See also Tushnet, *supra* note 14 (suggesting that the leanings toward acceptance or integration of traditional methods should be resisted).

27. Thus, it has been advocated that professional conduct in the mental health provider field be taught, tested and modified through "active experimentation and concrete experience," even if the risk is that, by working through the decision making process themselves, students will reject professional codes of conduct. Pelsma & Borgers, *Experience-Based Ethics: A Developmental Model of Learning Ethical Reasoning*, 64 J. COUNSELING & DEV. 311, 313 (1986). Although the teaching of ethics has long been a concern of clinical law teachers, see COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, THIRD BIENIAL REPORT, 1973-1974 (1974), there has been some resistance to entrusting this task to clinical education. See Burger, *The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility*, 29 CLEV. ST. L. REV. 377, 392-93 (1980).

goal of the educational system, or at least that part designated as "clinical," ought to be one of empowering students to teach themselves. The thrust of most self-directed learning proposals is that teachers should facilitate a process by which students are ultimately transformed into their teachers' equals.²⁸ Among the advantages cited for adopting a self-directed learning approach are: (1) such learning coincides with normal psychological development toward a more independent and mature self,²⁹ and (2) learners can be expected to continue to assimilate ever-increasing amounts of needed new knowledge over time.³⁰

Regardless of what substantive approach to legal education is favored, law teachers cannot teach everything.³¹ The choices with respect to content are difficult and frustrating. If students are plied with substantive law, how will they learn what to do with it? If they are not, do the clients suffer? Is it reasonable to expect that students will grapple with professional responsibility issues in their ethics classes and will have been provided adequate foundations in research and writing skills in their first year legal methods classes? Are clinical law teachers qualified to teach about matters having psychological components?

Even the goal of teaching students to teach themselves, however valid, is rife with complications. For one thing, students raised in educational environments notable for using external reinforcements such as grades as learning incentives may resist or have difficulty adjusting to the demands of self-education. The learning quotient in such situations may decrease in the short term.³² This has obvious implications for clinical programs in which clients are dependent on the students' ability to assimilate a significant amount of information quickly and which, because of their intensity and the time demands made on students, are likely to suffer from student frustration and attendant decreased motiva-

28. M. KNOWLES, SELF DIRECTED LEARNING 14, 29 (1975). Knowles' theories are applied to the clinical legal education context in Bloch, *supra* note 26. Actually, Shakespeare may have forecasted this trend when he wrote, "[b]e governed by your knowledge and proceed/ I' the sway of your own will." W. SHAKESPEARE, *King Lear*, act 4, sc. 7, lines 19-20.

29. KNOWLES, *supra* note 28, at 14. It has been asserted that with self-directed learning, "the self-actualized person experiences an integration of self and an integration of experience into a meaningful whole" during which the person "feels more whole, more alive, more at one with the world, more self-sufficient." M. Kersh, Integrative Curriculum for Gifted Learners 2 (April, 1987) (paper presented at the annual meeting of the American Education Research Association, Wash., D.C., April 20-24, 1987).

30. KNOWLES, *supra* note 28, at 16; P. Beare, The Contract-An Individualized Approach to Competency-Based Learning and Evaluation 1 (Oct., 1986) (paper presented at 15th annual conference of Internat'l Soc. for Individualized Instruction, Atlanta, Ga., Oct. 9-11, 1986). Other possible advantages may be reduction of stress, which has been attributed in part to the one-exam system, *see* Archer & Peters, *Law Student Stress*, 23 NAT'L A. STUDENT PERSONNEL ADMIN. J. 48 (1986), and the greater development of talent. A. Astin, *Assessment, Value-Added and Educational Excellence*, 15 NEW DIRECTIONS FOR HIGHER EDUC. 89 (1987).

31. As it is, "[m]ore to know/ Did never meddle with my thoughts." W. SHAKESPEARE, *The Tempest*, act I, sc. 2, lines 22-23.

32. K. Duckworth, Intelligence, Motivation, and Academic Work: An Operations Perspective (March 25, 1983) (paper commissioned by the National Commission on Excellence in Education, Mar. 25, 1983).

tion. In addition, the recognition of different styles and paces of learning makes the task of teaching self-directed learning a particularly difficult one.³³

Given that every legal educator cannot teach everything, choices about what to teach have to be made. One way of looking at the choices is to see them as mutually exclusive. In deciding what to teach and how to go about it, it is certainly possible to restrict one's self to a very limited number of topics and methodologies. For example, one could decide to focus exclusively on interpersonal skills taught through lecture and discussion, or one could choose to teach substantive bankruptcy law by means of role playing. It is, however, also possible to avoid the conclusion of mutual exclusivity and recognize both the importance of all the learning areas and the individual teacher's inability to teach everything there is to know in all these important areas. The choices can be seen as providing a wide range of interesting and relevant topics and methods from which individual educators and institutions can select in ways that best serve their purposes.³⁴ This calls for selective incorporation of learning areas and methodologies.³⁵

III. ONE APPROACH TO COURSE DESIGN

There are, no doubt, as many ways to design a syllabus as there are law teachers to do it. In this section, I describe only one of the ways of conceptualizing a clinical seminar, that being my own. It is an illustration of how a selective incorporation approach to course design can work when non-legal subject areas are included in the learning areas to be incorporated.

I should point out that in putting together my class syllabus, I am guided by several principles. First, I believe that students do learn in different ways and that it is important to attend to their different needs

33. Much work has been done in the development of learning models from a number of different perspectives. Chief among the various theories seem to be those which identify stages of development. See, e.g., A. CHICKERING, *EDUCATION AND IDENTITY* (1969); Kohlberg, *Stage and Sequence: The Cognitive-Developmental Approach to Socialization*, in *HANDBOOK OF SOCIALIZATION THEORY AND RESEARCH* 347-480 (1969); Kolb & Fry, *Toward an Applied Theory of Experiential Learning*, in *THEORIES OF GROUP PROCESSES* (G. Cooper, ed. 1975); the "whole brain" theories developed by Abraham Maslow among others, see, e.g., A. MASLOW, *TOWARD A PSYCHOLOGY OF BEING* (1969); K. Bruch, *Bridging Curriculum with Creative Development*, 30 *GIFTED CHILD Q.* No. 4 (Fall 1986); and studies collected in *INTEGRATIVE PRINCIPLES OF MODERN THOUGHT* (H. Morgenau, ed. 1972); and those which concern themselves with the impact of environmental factors and dynamics to explain intellectual growth patterns, e.g., A. ASTIN, *ACHIEVING EDUCATIONAL EXCELLENCE* (1985); K.A. Feldman, *Some Theoretical Approaches to the Study of Change and Stability of College Students*, 42 *REV. OF EDUC. RES.* 1 (1972); G. STERN, *PEOPLE IN CONTEXT: MEASURING PERSON-ENVIRONMENT CONGRUENCE IN EDUCATION AND INDUSTRY* (1970).

34. This seems almost too obvious to state. A number of law teachers have made recommendations regarding how to go about identifying priorities and begin the process of selection. See, e.g., Bloch, *supra* note 26; Hoffman, *supra* note 18.

35. I have no doubt that most law teachers do engage in a process of selective incorporation in designing their courses. If my method of course design differs from my colleagues in any notable way, I believe it is more a matter of degree than anything else, and is based on the belief that the range of learning areas and teaching methodologies from which it is possible to draw is endless.

as much as is reasonably possible. I also lean to the view that my job is to give students the push they need to get started in their chosen profession, so that they can carry on confidently without my assistance a few months or years down the road.³⁶ Finally, I believe that contributing to my own growth and maintaining an interest in my work are important goals that should not be overlooked in deciding what and how to teach.

With those precepts always in mind, I move to designing the class syllabus. In keeping with the general goal of empowering students to learn on their own, I attempt to identify subject areas and teaching methods that can serve as the source for learning something outside and beyond the classroom. I think of these learning areas in simple (if trite) metaphorical terms as "seeds." For example, a focal point of a class nominally dealing with counseling might be the process of decision making. Decision making is clearly not an activity that is limited to the context of counseling. In fact it is not limited to lawyering activities at all. An individual who understands the process of decision making can apply that understanding to other life decisions. It is, therefore, a skill that aids in learning and self development. The subject area of decision making, taught in the context of a counseling class, has the potential to "blossom" later in other situations and thus helps insure the individual's continued growth.³⁷

Consistent with the belief that people learn in different ways, I have found it works best to select seeds from several different categories for each class or series of classes. These categories include skills, substantive law, values issues, and overlapping interdisciplinary theory. I likewise try to utilize several different teaching methods in each class, such as non-legal role plays, problem solving, simulation, non-legal games, and lecture with discussion.

As important as it is for the subject matter and learning method to have intrinsic interest for me, it is equally important that the subject matter and learning method have some intrinsic interest for the students.³⁸ There are many ways in which student interest can be piqued. Some measure of familiarity with the subject area may do the trick. For example, they studied this subject in college or played this game in kindergarten. Non-threatening novelty, especially combined with humor, can likewise be appealing. Predictably, student interest is affected by the degree to which it is apparent that what they learn in the classroom has a direct relationship to what they are doing in their field work or will be doing in practice. It also helps if students are able to see the relationship of any given class to other classes or to the course as a whole.

36. The students "must be taught, and trained, and bid go forth." The hope is that they will not thereafter be "barren spirited," feeding on "abjects, orts, and imitations." W. SHAKESPEARE, *Julius Caesar*, act 4, sc. 1, lines 35-37.

37. "Their understanding/ Begins to swell; and the approaching tide/ will shortly fill the reasonable shore/ That now lies foul and muddy." W. SHAKESPEARE, *The Tempest*, act 5, sc. 1, lines 79-82.

38. Motivational theories of particular significance to clinical law teachers are discussed in Harbaugh, *supra* note 25, at 199-205.

Learning cannot take place in an environment in which students are forever in fear that they will be criticized or embarrassed. Many students embark upon their law school experience with intrepidity and nearly all enter clinical programs intimidated by the responsibility of client representation. For most students, it is no easy task to perform for courts and clients (even simulated ones) in the role of a lawyer. The need to create a non-threatening environment in which the first frightening steps toward being a professional can take place is of particular importance in skills-oriented teaching.³⁹ It is important to earn the students' trust by expressing over and over again, in the first few classes especially, support and confidence in their abilities. It is equally important to reinforce students' support of each other and to impress upon them both the need to work cooperatively rather than competitively (as many learned to do in their first semester or two of law school, if not before) and the responsibility each person bears towards the others in the learning process. In this way, a foundation can be laid upon which students individually and as a group can build. The idea is to create a relatively safe environment in which planted seeds can develop.

The overall methodological strategy for all this is to demystify the giant of lawyering by breaking it down into recognizable parts that can be analyzed, mastered, put into a legal context, and finally incorporated into an increasingly larger whole. Each of my classes has a goal of its own and provides some measure of closure. At the same time, each class fits into a series (usually a series of three), with each class relating to the others in the series and each successive class building on the class before it. There are recurring themes in many of the classes which help the students see their work as part of a much bigger picture as well.

IV. THE PROCESS OF INCORPORATING SHAKESPEARE

Shakespeare fits into this teaching framework very well. Fortuitously, in 1987 The American University hosted a debate in which the origins of Shakespeare's works was at issue. The debate, the brainchild of Shakespeare enthusiast David Lloyd Kreeger,⁴⁰ took the form of an appellate argument before three justices of the United States Supreme Court: Harry Blackmun, William Brennan, and John Paul Stevens. Representing the appellant in the case, Edward deVere, who claimed to be the true author of the works historically attributed to Shakespeare, was Peter Jaszi, a professor of law at the American University's Washington College of Law. Representing William Shakespeare before the Court was Professor Jaszi's colleague at the Washington College of Law, Professor James Boyle.⁴¹ The debate proved to be a rich source of class

39. I agree with Gary Goodpaster when he says "It is difficult to overemphasize the need for openness in class atmosphere, in the instructor and in the students." Goodpaster, *supra* note 19, at 7.

40. Mr. Kreeger, himself a lawyer among other things, also serves as chairman of the Board of the Corcoran Gallery of Art and the Washington Opera.

41. A full description of the debate, the briefs of the parties, the opinions of the justices, and Professors Jaszi's and Boyle's reflective comments on the project are contained

material for an appellate seminar.

The question of *whether* to use the debate as a teaching tool was an easy one; the possibilities seemed endless. The process of deciding *how* to use it was more problematical and required some brainstorming on the possibilities. What follows is an abbreviated and considerably better organized version of the brainstorming process by which specific potential subject areas for teaching were identified, considered, and either adopted or rejected. The choice of substantive content took precedence over decisions as to methodology. Teaching methodologies such as moot court-type arguments, edited tape review, and directed class discussions mentioned here in passing are specifically identified only because they are methodologies that seemed to jump out given the appellate argument structure of the Shakespeare debate already in place. Although decisions regarding methodology could be made in advance of decisions regarding class topics, here, because the starting point was a non-legal subject of interest, it seemed to make sense to first ascertain in what ways that subject matter related to topics associated with the practice of law before deciding on the specific method for incorporating an as yet undetermined topic into the curriculum.⁴² The advantages and disadvantages of particular methodologies available for each topic or class do have to be weighed,⁴³ a process which I believe is most effectively illustrated by the description in Part V of the choices ultimately made in this instance.⁴⁴

The first broad subject area considered was written advocacy. At a very basic writing skills level, students could be given one or both briefs or portions of the briefs and could be required to write responsive arguments or summaries of arguments. The purpose of such an exercise would be to get students to work on such elements of their writing as organization, clarity, emphasis, and accuracy. The same things could be addressed by having the students critique the briefs written by the participants in the debate and compare and contrast the writing styles and

in *In Re Shakespeare: The Question of Authorship*, 27 AM. U.L. REV. 609 (1988). The debate before the justices was also filmed and broadcast on public television.

42. This, then, is certainly not to make light of the decision as to methodology. "As teachers we must first collect, understand, and organize our material. But we must, in the end, pass on that material to students in a way that insures that meaningful learning occurs." Harbaugh, *supra* note 25, at 222.

43. Some of these advantages and disadvantages have been analyzed with reference to particular teaching methodologies. As the title of his report indicates, Dean Harbaugh has advocated the integration of gaming and simulation methods into clinical law teaching. *Id.* Simulation and gaming exercises are two of five clinical methods examined in the article by Boon, *supra* note 12 (the others being work experience, computer technology, and observation exercises). Role playing as an effective teaching methodology is addressed in Cabral, *Role Playing as a Group Intervention*, 18 SMALL GROUP BEHAV. 470 (1982). A communication and psychological interaction model specifically geared to law teaching is the subject of Gary Goodpaster's article, *supra* note 20. The use of non-legal role plays as an effective teaching method is discussed in Bergman, Sherr & Burridge, *Learning From Experience: Non Legally-Specific Role Plays*, 37 J. LEGAL EDUC. 535 (1987). Peter Hoffman looks at five methodologies—role assumption, evaluation, demonstration, expository teaching, and dialectic teaching, *supra* note 18.

44. "Though this be madness, yet there is method in 't." W. SHAKESPEARE, *Hamlet*, act 2, sc. 2, lines 203-04.

techniques used by the authors of the briefs.⁴⁵

A slightly more sophisticated approach to analyzing writing techniques and styles would be to construct a class around the role of truth in brief writing and how that "truth" is presented.⁴⁶ Discussions could also center around questions of perspective or point of view.⁴⁷ A closer look at specific word choices and language makes for yet a different kind of class discussion.⁴⁸

45. Countless books have been written on the subject of legal writing. *E.g.*, M. FONTHAM, WRITTEN AND ORAL ADVOCACY (1985); A. HORNSTEIN, APPELLATE ADVOCACY (1984); R. MARTINEAU, MODERN APPELLATE PRACTICE - FEDERAL AND STATE CIVIL APPEALS (1983); M. MOSKOWITZ, WINNING AN APPEAL (1983); E. RE, BRIEF WRITING & ORAL ARGUMENT (5th ed. 1983); R. STERN, APPELLATE PRACTICE IN THE UNITED STATES (1982); F. WIENER, BRIEFING AND ARGUING FEDERAL APPEALS (1967). This list is by no means exhaustive.

46. Discussions about the relationship between the "facts" of a case and "truth" always seem to pique considerable student interest. The notion that there is an objective truth to be known is prevalent. It often takes some time for students to realize that lawyers, also, must grapple with the idea that "[t]he truth or falsity of statements is affected by what they leave out or put in or by their being misleading and so on," and that "'true' and 'false,' like 'free' and 'unfree,' do not stand for anything simple at all, but only for a general dimension of being a right or proper thing to say as opposed to a wrong thing, in these circumstances, to this audience, for these purposes and with these intentions." J. AUSTIN, HOW TO DO THINGS WITH WORDS 143-44 (1962). In litigation, "[b]ecause one cannot usually return in a time machine to show a trier of fact 'what really happened,' investigations do not produce 'facts.' They produce evidence from which the trier of fact will resolve the parties' dispute(s) by deciding the *probable facts*." D. BINDER & P. BERGMAN, FACT INVESTIGATION: FROM HYPOTHESIS TO PROOF 6 (1984). The difficulty with ascertaining truth in the adversary system is effectively demonstrated in Susan Glaspell's play *Trifles* (copyright 1920 by Dodd, Mead & Co., Inc., renewed by S. Glaspell, 1948). (The movie version of Glaspell's play, *A Jury of Her Peers*, may be familiar to some.)

47. Perspective and point of view are closely aligned to the concept of truth. In weaving a story and bringing characters to life, the narrator necessarily begins somewhere and makes decisions that will be reflective of a particular point of view. Disciplined writers (and speakers) are conscious of this approach.

As Professor Jaszi points out, the question of who wrote Shakespeare's works will be determined to some extent on the basis of how Shakespeare himself is portrayed. Critics, he notes, have thus described Shakespeare as, *inter alia*, gardener, lawyer, doctor and sailor. Jaszi, *Who Cares Who Wrote "Shakespeare"?*, 37 AM. U.L. REV. 617, 619; *See also* Jaszi, *Brief of Appellant Edward De Vere, Seventeenth Earl of Oxford*, 37 AM. U.L. REV. 645, 673-74. Just as the sailor may be perceived as less likely to be the author of *Hamlet* than some other candidate for authorship of Shakespeare's works, a client, party or witness portrayed as a poet will be perceived differently from the person identified as a politician or pauper.

48. Language and literary style may be presumed to have limited definitions in the law.

If it were only teachers who insisted that . . . writers stay close to literary styles of the past, we might reasonably ignore them. But readers insist on the very same thing. They want our pages to look very much like pages they have seen before. Why? It is because they themselves have a tough job to do, and they need all the help they can get from us. . . . They have to *read*, an art so difficult that most people do not really master it. . . .

So . . . our stylistic options as writers are neither numerous nor glamorous, since our readers are bound to be such imperfect artists.

K. VONNEGUT, PALM SUNDAY 80 (1981). Vonnegut was not speaking about legal writing, although he could have been.

Notwithstanding the limits within which lawyers operate, much work can be done to increase awareness of the impact of word choices and phrasing and to alleviate the problems resulting from what George Orwell called "pretentious diction," "verbal false limbs," and "meaningless words," *see* G. Orwell, *Politics and the English Language* 337 in 4 THE COLLECTED ESSAYS, JOURNALISM, AND LETTERS OF GEORGE ORWELL 127, 130-32 (S. Orwell & I. Angus eds. 1968), and to improve the lucidity of what is written. Such efforts can mean the difference between verbal products consisting primarily of "dead carcasses

The topic of oral persuasion is at least as obvious a choice as that of writing skills. Students could themselves do oral arguments based on the briefs, either in class or in out-of-class taped sessions. The effectiveness of various techniques could be analyzed by means of in-class critiques, self critiques, or class discussion of edited tapes. As with the possible writing skills options, here, because the actual arguments are available on tape, students could review and critique those instead of engaging in the oral advocacy themselves. Some fairly typical goals of this critiquing process would be to alert students to the proper and effective use of humor and sympathy in oral argument, to help them develop ways of simplifying their arguments and making them more memorable, and to work on the concept of anticipatory rebuttal.⁴⁹

On a slightly different plane, the tapes and student presentations could be used to analyze performance issues, as opposed to content issues. Dramatic techniques involving body language, memory and delivery, listening, and audience bonding would be appropriate subjects to develop.⁵⁰ Also of particular importance for discussion in the legal context would be questions relating to the effects of role expectations, ego threats, and other underlying needs or inhibitions.⁵¹

of words," Y. OULOUEM, *BOUND TO VIOLENCE* 137 (1968), and those constituted of the kind of words describable as "damned sparks of syllables that set fire to the blood. . . ." C. FUENTES, *THE DEATH OF ARTEMIO CRUZ* 41 (1964). For further readings, see D. Allison, *Translator's Introduction* to J. DERRIDA, *SPEECH AND PHENOMENA AND OTHER ESSAYS ON HUSSERL'S THEORY OF SIGNS* (1983); *TRUTH AND MEANING: ESSAYS IN SEMANTICS* (G. Evans & J. McDowell eds. 1976).

49. As in the area of legal writing, there is no dearth of material on the skill of oral advocacy. Indeed, the vast majority of books dealing with the subject of written advocacy also include chapters on oral advocacy. For a listing of some of these works, see *supra* note 45.

50. Unlike many others who have tackled the subject of oral advocacy, Bea Moulton and Gary Bellow devote substantial space to the arts of rhetoric and drama in their book. Bellow and Moulton, *supra* note 17, at 914-23, 937-56, 638-45. For additional information, see B. BATES, *THE WAY OF THE ACTOR: A PATH TO KNOWLEDGE & POWER* (1987); V. SPOLIN, *IMPROVISATION FOR THE THEATRE* (1983); J.L. HANNA, *THE PERFORMER-AUDIENCES CONNECTION* (1983). Theatrical interpretation—by producers and audiences alike—is a subject of interest to Shakespeare scholars. As a result, a number of texts deal with the subject of interpretation specifically in the context of Shakespeare's plays. See Jaszi, *supra* note 47, at 620-21, and *supra* notes 6-8.

51. Motivating and inhibiting factors, frequently discussed in the context of counseling, deserve attention when attorneys and judges engage in a dialogue, if the advocate does not wish to be told, "your words/and performance are no kin together." W. SHAKESPEARE, *Othello*, act 4, sc. 2, lines 185-86. Legal argument must be more than an entertaining performance; it is intended to be persuasive. Similarly, argument that is substantively persuasive (i.e. good rhetoric) fails if the arguments are not heard or understood by the audience. This suggests that a focus on the communicative and persuasive aspects of oral discourse is desirable. Literature dealing with these subjects abounds. E.g., H. ABELSON AND M. KARLINS, *PERSUASION: HOW OPINIONS AND ATTITUDES ARE CHANGED* (1959); K. ANDERSON, *PERSUASION: THEORY AND PRACTICE* (1971); HOVLAND & JANIS, *COMMUNICATION AND PERSUASION* (1972); W. MINNICK, *THE ART OF PERSUASION* (1957). For some thoughtful insights on the psychology and ethics of persuasion, see F. Haiman, *Democratic Ethics and The Hidden Persuaders*, 44 Q. J. SPEECH 385 (1958) and White, *Persuasion and Community in Sophocles Philoctetes*, in *HERACLES BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW* (1985).

At another level, an understanding of differences in communication patterns is worth studying, particularly if attorneys and clients are representative of minority cultures. Perspectives on issues of difference that might be worth exploring include the gender-associ-

Moving from the performance skills orientation to the analytical, one could use the briefs and oral arguments to focus on the logical connections between factual premises and conclusions. What inferences are drawn? What authorities are used to support the inferences? What predictions are made and what role do the predictions play in the choice of arguments?⁵² Students could be asked to work through their ideas in advance of class or the process could be initiated in class, with a full development of logical constructs following.

With regard to substantive areas, it would be possible to have the students review the opinions of the justices on their merits and analyze the reasons for the decision as they might in any other class. Several aspects of this case deserve particular attention; for one thing, the parties are dead. In addition, there is no lower court record nor any precedent to guide the court. The absence of these elements could be the basis for a discussion about their ordinarily presumed importance or necessity. The justices who heard the case, in making their decision, relied heavily on the fact that deVere bore the burden of persuasion. This might prompt an inquiry into the standard of review and the deference to be given lower courts.⁵³ In their briefs, the parties examined at length historical and sociological factors,⁵⁴ which might suggest as a

ated view proposed by C. GILLIGAN, IN A DIFFERENT VOICE (1982), the cross-cultural approach to body language addressed in LaBarre, *The Language of Gestures and Emotions*, reprinted in INTERPERSONAL DYNAMICS, *supra* note 14, at 197, and the call to listen to the "voices at the bottom" in Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987). See also, *Julius Caesar* W. SHAKESPEARE, act I, sc. 2, line 284: "But for my own part, it was Greek to me."

52. Although logical reasoning or deduction may be the heritage of western philosophical thought and the foundation of the Socratic method widely used in American law schools, it is a method with which many students "being young, till now ripe not to reason," W. SHAKESPEARE, *A Midsummer Night's Dream*, act 2, sc. 2, line 128, in fact seem to have little or no familiarity. Were they more familiar with Shakespeare's works, they might come to a greater appreciation of these skills. See, e.g., W. SHAKESPEARE, *A Midsummer Night's Dream*, act 2, sc. 2, lines 129-30 "And touching now the point of human skill./Reason becomes the marshal to my will.;" W. SHAKESPEARE, *Hamlet*, act 4, sc. 4, lines 36-39 "He that made us with such large discourse,/Looking before and after, gave us not/That capability and godlike reason/To fust in us unused.;" W. SHAKESPEARE, *The Tempest*, act 4, sc. 1, lines 66-68 "rising senses/Begin to chase the ignorant fumes that mantle/Their clearer reason." A useful source for a full understanding of the practical applications of deductive reasoning to law practice is D. BINDER & P. BERGMAN, *FACT INVESTIGATION: FROM HYPOTHESIS TO PROOF* (1984).

53. See Martineau, *supra* note 8; J. PURVER & L. TAYLOR, *HANDLING CRIMINAL APPEALS* (1980); see also Note, *Ponduit Corp. v. Dennison Manufacturing Co.: De Novo Review and the Federal Circuit's Application of the Clearly Erroneous Standard*, 36 AM. U.L. REV. 963 (1987); Case Note, *Federal Rule of Civil Procedure 52(a): Applicability of the "Clearly Erroneous" Test to Findings of Fact in All Nonjury Cases*, 29 How. L.J. 639 (1986); Chapman v. California, 386 U.S. 18 (1967); Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938).

54. Indeed, a substantial portion of the Appellant's brief is devoted to untangling the historical events which led to the conclusion that Shakespeare of Stratford wrote the works attributed to him and to setting forth historical facts supporting the claim that someone other than Shakespeare of Stratford (allegedly Edward deVere), was the true author. The appellee, for his part, argues that the appellant "ignores the historical, social and artistic context in which the plays were written." *Brief of Appellant Edward De Vere, Seventeenth Earl of Oxford*, 37 AM. U.L. REV. 725, 733. Appellee also counters with a few historical facts of his own, including the fact that deVere was dead before all the plays were published. *Id.* at 745.

topic for discussion the appropriate reliance on non-legal authority and use of "Brandeis briefs."⁵⁵

The case against Shakespeare presents special problems of issue development. Much relevant information is unknown or unknowable or, if known, suspect.⁵⁶ Although most cases handled by the students do not suffer from the same extreme dearth of information, there are often problems of incomplete records, problems which may be exacerbated when there is access to information (from a client, for example) that will never be part of the record. Posing a question like "did Shakespeare write Shakespeare?" provides opportunities for brainstorming, discovering creative theories, and developing ways of testing the strength and validity of theories.⁵⁷ The brainstorming process leads into the process of classification and organization, which in turn provides fodder for discussion of how to frame issues.⁵⁸ Role issues abound in this context as in any other. Who is the client? How does one relate to an absent client?⁵⁹ What is the importance of the client to the case? Must others' interests be taken into account? What are the attorneys' obligations to

55. A Brandeis brief, named after the noted jurist Louis Brandeis, is "[a]n appellate brief in which economic and social studies are included along with legal principles." WEST'S LEGAL THESAURUS/DICTIONARY (1985).

56. This is what Professor Jaszi calls "[t]he informational void surrounding the historical Shakespeare." Jaszi, *Who Cares Who Wrote "Shakespeare"?*, 27 AM. U.L. REV. 617, 623 (1988). According to Professor Boyle, "the whole imposing edifice of Shakespearian biography rests on a set of facts which one could fit onto-if not a postcard-then at least three medium sized sheets of paper." Boyle, *Brief of Appellee William Shakespeare of Stratford-Upon-Avon*, 37 AM. U.L. REV. 725, 729 (1988).

57. Thus, "imagination bodies forth/the forms of things unknown. . ." W. SHAKESPEARE, *A Midsummer Night's Dream*, act 5, sc. 1, lines 14-15, and "All difficulties are but easy when they are known." W. SHAKESPEARE, *Measure for Measure*, act 4, sc. 2, line 172. Creative problem solving is a not-entirely-new, though perhaps underused, approach to the legal issues. See, e.g., Hegland, *supra* note 17, at 180-85. The initial stages of creative thought are developed in J. GUILFORD, *WAY BEYOND THE IQ 160-80* (1977) and in A. OSBORN, *APPLIED IMAGINATION 125-36* (1963). For an understanding of how creativity can be blocked, read B. UELAND, *IF YOU WANT TO WRITE 28-39* (1987); R. PIRSIG, *ZEN AND THE ART OF MOTOR-CYCLE MAINTENANCE 270-94* (1974). Pirsig also provides a brief, readable description of theory development. *Id.* at 62-67, 252-59. The same ideas are explicated somewhat less colorfully in Osborn, *supra*, at 86-109. Those wishing to explore concepts of creativity further may find it useful to consult S. PARNES, *A SOURCE BOOK FOR CREATIVE THINKING* (Parnes & Harding, eds. 1962).

58. A simple checklist for evaluating theories which includes recognizing underlying assumptions, evaluating authority and understanding problems of language is contained in the NEW YORK TIMES: GUIDE TO REFERENCE MATERIALS 185-86 (rev. ed. 1985). The process of systematizing ideas and of organizing them is clearly explained by Guilford, *supra* note 57, at 34-37. The relevance and application of the skill of idea association to the process of classification is described by Osborn, *supra* note 57, at 111-21. Lawyers, in developing case theories and framing issues, of course go through this process, even if not consciously. One lawyer's attempt to simplify and clarify the process of issue classification by creating a full taxonomy of cases appears in A. HORNSTEIN, *APPELLATE ADVOCACY 74-127* (1984).

59. This is an issue that students in an appellate practice clinic face rather frequently. Clients are likely to be federal prisoners to whom access is often frequently restricted. The absent client problem can occur in trial work as well for a number of reasons, including the fact that some clients simply never communicate with their attorneys before trial. In other cases, such as class actions, the clients are many and geographically widely distributed, and some clients, such as very young children or the severely mentally disabled, may be literally present but incapable of communicating.

the Court in this case? Does the role of the attorney change depending on what is at stake and whose interests are involved?⁶⁰

Viewing any event, decision, or belief in its historical or political context is likely to affect perception. Analyzing the question of the authorship of Shakespeare's works in the context of 16th or early 17th century societal and political norms as compared to current societal and political norms is revealing.⁶¹ An inquiry into the effects of culture and class in the Shakespeare case is illuminating as to similar effects in legal disputes. Recognition of the significance of context raises questions about how and whether to address value-laden issues in any given case and what to do when conflicts between values are apparent.⁶² These are just a few examples of ways in which Shakespearian scholarship, as already encapsulated in briefs and oral argument, might work its way into a Clinic classroom. Once Shakespeare became the focal point of a class, it was more difficult to curtail the ideas for incorporating the theme than it was to come up with ways in which to make Shakespeare relevant to the practice of law. In fact, in the end, Shakespeare dominated two classes.

V. THE ULTIMATE CHOICES

Shakespeare originally made his appearance in the appellate seminar of a year-long clinical course.⁶³ By this time, most students in the appellate clinic had made an argument before a real court, and all of them had filed at least one brief of their own composition. Classroom coverage in the first semester included system analysis, interviewing, fact writing, and theory development. The beginning of the second semester introduced the students to counseling and to different aspects of written and oral persuasion, including logic and rhetoric, dramatic per-

60. These are issues that frequently arise in the cases clinic students handle. A student may feel very differently about what role to assume in a divorce case in which the issue is jurisdiction than about what the proper role is in the representation of a guilty murderer whose speedy trial claim, if successful, will result in the client's release from prison.

61. As Shakespeare wrote, "men may construe things after their fashion,/Clean from the purpose of the things themselves." W. SHAKESPEARE, *Julius Caesar*, act 1, sc. 3, lines 31-32. Professor Jaszi examines some of the ways in which Shakespeare's works have been interpreted at different points in history and by different people. Jaszi, *Who Cares Who Wrote "Shakespeare"?*, 37 AM. U.L. REV. 617 (1988). In his essay, Professor Boyle looks at "the strange subtext that lies under the Shakespeare story and [links] it to current philosophical and literary concerns about the reading of texts." Boyle, *supra* note 56, at 626. Professor Boyle analogizes the desire to understand Shakespeare's writings by reference to the "real" author to the drive to determine the "intent of the framers" in constitutional analysis. Among other things, he concludes that still prevailing 18th Century romantic notions about authors are what have led critics to reject Shakespeare of Stratford, who does not fit the romantic conception, as author of Shakespeare's plays.

For additional reading on the subject of the relationship between social, political and cultural norms and decision making, see R. BENDIX, *CLASS, STATUS AND POWER: A READER IN SOCIAL STRATIFICATION IN COMPARATIVE PERSPECTIVE* (R. Bendix & S. M. Lipset eds. 1966).

62. See *supra*, notes 22, 24, 28.

63. In addition to using these two classes in a clinical setting, I have included variations of them in a one-semester, non-clinical seminar on appellate advocacy.

formance, and communication problems. The classes I am about to describe were docketed as classes on the art of responding.

In the first of these two classes, the primary emphasis is on skills. The skills I seek to focus on are recognition of crucial points of argument, fluff elimination, argument reduction, and labeling. The primary focal points of the second class are interpersonal relations, role assumptions and underlying values. In both classes I make use of some interdisciplinary theories that have surfaced in prior classes. In addition, an attempt is made to bring in substantive law on the appropriate use of reply briefs and practical advice on maximizing the effectiveness of responses.

Prior to the first class, students are required to read the statement of facts and summary of argument from Appellant Edward deVere's brief. They are told to reduce deVere's argument to 50 words or less. They are then given Appellee William Shakespeare's summary of argument and instructed to reduce *it* to 50 words or less.⁶⁴

In class, samples of the reduced appellant's arguments are distributed and the discussion is focused on the decisions different people have made with respect to emphasis, in particular on the process by which choices were made and the difficulties encountered in trying to reduce a lengthy argument to bite-size pieces. The goal is to identify the skill of "argument reduction" and provide some information about the process and about possible resolutions of problems associated with it. We also talk about why this skill is important in the context of appellate advocacy.

The second segment of the class is devoted to a variation on the children's game of "telephone." Two students are provided with a one-page essay or argument of some sort. I have used several different things for this exercise, but my current favorite is a short portrayal of the life of Shakespeare's imaginary sister by Virginia Woolf.⁶⁵ The two students are asked to read the essay and then they are paired up with two other students. The readers have three minutes - or up to five minutes, depending on the length and complexity of the essay - to relay to their partners all the essential information contained in the essay. The two listeners are then paired up with two other students and instructed to convey what they have just heard. They have a reduced amount of time in which to do this, perhaps two or three minutes. The process continues, with the last two students receiving all essential information in a period of about thirty seconds. These last two students then relate to the group as a whole the substance of what they have heard. The results of the two lines of communication are invariably different.

What follows is a deconstruction of the process. How did the stu-

64. "Brevity is the soul of wit." W. SHAKESPEARE, *Hamlet*, act 2, sc. 2, line 90.

65. V. WOOLF, *A ROOM OF ONE'S OWN* 8-50 (1929). Woolf poses the hypothetical of William's "sister," Judith, a woman whose literary genius is equal to that of her brother's, attempting to find an outlet for that genius. Woolf concludes that had such a person lived, she may well have ended up committing suicide.

dents choose what to tell? How did they decide what to eliminate? Did they use any shortcuts—words, labels or themes—that got picked up by the next listener and passed on? Flowing from this is a discussion about the problem of time in the court room. Because time is scarce, and because an opponent's argument can take unexpected turns, it is important to be able to sift through a lot of information quickly and eliminate the non-essential. Of course, what constitutes "essential" information and what constitutes "fluff" are questions that provoke a fair amount of debate.

To build on the concept of labeling or themes-and the use of shortcuts-the students are given a list of quotes from Shakespeare and asked which they find best describe the Appellant's position, the Appellee's position, or maybe the class. The following selected quotations are illustrative:

"Things without all remedy

Should be without regard; what's done is done."⁶⁶

"Good wombs have borne bad sons."⁶⁷

"Thus the native hue of resolution

Is sicklied o'er with the pale cast of thought."⁶⁸

"Reputation is an idle and most false imposition;
oft got without merit and lost without deserving."⁶⁹

"[T]hy head is as full of quarrels as an egg
is full of meat."⁷⁰

"Our doubts are traitors."⁷¹

"Have we eaten on the insane root,
That takes the reason prisoner?"⁷²

"I shall the effect of this good lesson keep."⁷³

The students' choices are compared and the question is posed whether any of the ideas expressed in the quotations could be used as a centralizing theme for an argument. Ideas about the benefits of themetizing or labeling get aired and ways of putting such notions into practice are discussed, often with reference to the students' own cases.

Each of these exercises stresses the importance of identifying the heart of an argument. The first highlights the desirability of brevity; the second, the situational necessity for speed; the third, the advantages of having an easily remembered central theme. The final segment of the class is devoted to conceptualization of a framework for responding that can aid in preparation of rebuttal arguments.

It is not uncommon for a student to believe that a rebuttal argument is primarily a matter of making spontaneous declarations. The last

66. W. SHAKESPEARE, *Macbeth*, act 3, sc. 2, lines 11-12.

67. W. SHAKESPEARE, *The Tempest*, act 1, sc. 2, line 22.

68. W. SHAKESPEARE, *Hamlet*, act 3, sc. 3, lines 84-85.

69. W. SHAKESPEARE, *Othello*, act 2, sc. 3, lines 263-65.

70. W. SHAKESPEARE, *Romeo and Juliet*, act 3, sc. 1, line 22.

71. W. SHAKESPEARE, *Measure for Measure*, act 1, sc. 4, line 79.

72. W. SHAKESPEARE, *Macbeth*, act 1, sc. 3, lines 85-86.

73. W. SHAKESPEARE, *Hamlet*, act 1, sc. 3, line 45.

part of class is thus dedicated to analyzing the accuracy of this proposition and attempting to demonstrate that spontaneity can spring from a well-ordered framework—indeed, often works best when that framework is solidly in place in advance.

At this point, the students look at some of the 50 word reductions of the Appellee's argument and begin to categorize them. Generally, this categorization process breaks the possible arguments down to something like this: (1) The premises are false, incomplete or unsupported; (2) What the party is trying to achieve (the goal) is undesirable, creates havoc or is inconsistent with other desirable ends; (3) The points made lack relevancy or consistency, or the inferential leap between facts and conclusions is too great; (4) The writer is stupid, insincere, insensitive, etc.

These four categories all focus on the opponent's position. Other argument reductions usually fall within a set of categories building on the strength of the appellee's position, most frequently either: (1) there is direct support for the Appellee's position, or (2) there is indirect (consistent) authority supporting the appellee's position.

Once the arguments are categorized, it becomes clear that the categories cover a great many of the arguments that could be made by a respondent. Mastery of the categories, therefore, makes preparation for *any* rebuttal an easier task. Although the strengths and weaknesses of any given approach still must be balanced, rebuttal need no longer be viewed as a "gut reaction," but can be seen as a measured response.

The second class brings in the human dimension. Prior to class, the students engage in non-legal role plays with partners and write-up their reactions to the experience. The role plays are designed to require the students to confront persons having some measure of power or authority. So, for example, one situation might involve a street encounter with a police officer; another will place the student in a tax assessor's office. Other students might be required to confront the principal at a daughter's school, or a nurse at a hospital. These role plays become the focus of a discussion midway through the class.

Class begins with a review of taped excerpts of the appellant's argument in the Shakespeare case. A brief discussion follows on the difference between the appellant's written argument and his oral presentation. The students then put into practice what they learned the previous week. They discuss what has been identified by the appellant's counsel as crucial and what points of argument have been eliminated. The question of whether the argument as presented has a logo or central theme is raised, and the students are asked to develop memorable themes from what they have seen and heard on the tape. The themes that get developed may run the gamut from the simple "the facts don't fit" to the accusatory "their's is a classist plot" to the more mystical "Shakespeare is a figment of the collective imagination." What is important about this exercise is that students are able to see that they are

quite adept at breaking down an argument and reframing it in simple, memorable terms.

At this point, the students are broken into groups and asked to take a few minutes to construct a responsive argument. Volunteers from each group are then asked to stand up and make the responsive argument before me as judge. Following the first group's presentation, the class discusses the advantages and disadvantages of the choices made. Alternative choices might be brought up and the advantages and disadvantages of these other options discussed.

The second and third arguments are then heard without any intervening discussion. The second advocate's argument is interrupted by inappropriate, irrelevant, or confusing questions and comments from the judge. The third volunteer faces a judge who stares without making any response at all. At the end of the oral presentations, the students are asked what is different about the last two arguments, and the discussion shifts from a focus on the decisions about content of the arguments to the effects of the listener's conduct on both the substance of the arguments and the speaker's ability to present arguments.

This is the time at which the role play assignments are brought into focus. We talk about the difference between perceiving oral argument as a performance, as many students initially assume it is, and perceiving it as a confrontation with authority, which is what many really believe. Students begin to reassess their assumptions about the nature of courtroom presentations and begin to think about how they deal with persons with apparent power or authority (police officers, car mechanics, and administrators) and what about their manner of dealing with such figures is likely to carry over to the courtroom and cause problems.

This discussion is followed by a review of taped segments of the responsive arguments actually made in the Shakespeare case. The appellee's choices are compared to and contrasted with the choices made by the students. Also at this point, questions are raised about different styles of argument—manipulation versus conciliation, for example—and how these styles may be influenced by the attorneys' views of the nature of oral argument and any underlying authority issues. If there is time, volunteers are permitted to rebut the appellee's arguments and then excerpts of the rebuttal made by Professor Jaszi before the Justices are shown.

These two classes are, I believe, rather moderate examples of the principle that lawyering skills can be taught from any topical base. The inspiration of Mr. Kreeger to have a debate on the origins of Shakespeare's works and to have it presented as an appellate argument minimized the amount of imaginative work it took to bring Shakespeare into the classroom. Perhaps for that reason, it seemed an opportunity not to be passed up. In some ways, because the groundwork for introducing Shakespeare into a clinic seminar was already done, the classes built from that groundwork may not be the best choices for testing or demonstrating the hypothesis. In another way, I think the debate makes it eas-

ier to see the association between things non-legal and legal, and thus makes the point clearer. Even without the good fortune of having the briefs and arguments at hand, it is possible to draw on Shakespearian scholarship, or anything else, to make law classes both interesting and instructive. Obviously, a law teacher could fashion a debate on the origins of Shakespeare's works without the fanfare attached to Mr. Kreeger's spectacle and derive from that debate the same lessons as can be derived from the jazzed-up version.

Despite the fact that the two classes described here are what I view to be rather moderate extensions of fairly typical seminar classroom scenes, I feel it advisable to anticipate and respond to criticisms. I hear voices saying that the attempt to teach lawyering skills by drawing on outside interests is inefficient, clouds the issues, and trivializes the role lawyers must assume. There are those who would say that the best way to learn is to do, and "doing" means doing the thing itself, or the closest thing to it, and not some facsimile of tortuous relevance.

If the premise of such criticisms is that "person as lawyer" is somehow fundamentally different from "person as person," then I find myself in disagreement with the premise. It is only when we see our lawyer selves as independent of our non-lawyer selves that we see what we do in one context as separate from what we do in another. This notion of separate selves has, I think, been resoundingly refuted.⁷⁴ To the extent that it still curries favor within the profession, it seems to me to be wise to make attempts to eradicate its influence. Thus, the role of the lawyer is trivialized in non-legal contexts only if there is a preconceived notion of the lawyer's role.

The method is inefficient only if efficiency is defined in terms of what students learn in the immediate environs of the classroom, what they can regurgitate outside the classroom, or the amount of preparation time required of the teacher. It is not inefficient if looked at from the perspective of learning yielded per class. Admittedly, a lot of preparation goes into these classes, but the long term benefits go far beyond producing student lawyers who are capable of not humiliating themselves in court.

Similarly, the method clouds the issues only if the "issues" are artificially limited to well delineated legal issues. In fact, the introduction of non-legal subjects into the classroom helps identify and clarify important issues in the legal realm that might otherwise remain clouded. For example, when students read and transmit the essential thoughts in Virginia Woolf's essay about Shakespeare's sister, they learn not only about the skill of argument reduction, but about historical sexism and how individual values dictate decisions. It is a little bit like the poetry of Robert Frost or Emily Dickinson; everyday occurrences and familiar objects

74. "Our tendency to treat the law as a separate, unique human activity has been harmful; we need to tie law into the whole social fabric." Bergman, Sherr & Burrigide, *supra* note 43, at 540 (footnotes omitted). I would add that we need to tie person-as-lawyer into the concept of the whole person.

are the means by which the student is safely and uncombattingly brought into other contexts.⁷⁵ New ideas sink into consciousness without the learner even necessarily realizing that the process is occurring or knowing to what to attribute changes in thinking patterns and attitudes. It is learning by osmosis.

CONCLUSION

Experimentation in law teaching methodologies has opened up the range of options for those engaged in law teaching. The resulting proliferation of possible subject areas is forcing legal educators to look closely at their curricular offerings. It is also forcing educators to make difficult decisions both about what is most essential substantively and about what is the best and most efficient way to transfer knowledge and to prepare students to utilize their knowledge, skills, and perceptions in the practice of law. To the already overbrimming pot of subject matter covered in the classroom, I propose to add non-legal subject areas. Rather than flood the classroom with trivial or irrelevant ideas, I believe the introduction of non-legal subject areas into class helps to bridge the gap between students' life experiences and their legal careers. The integration of the non-legal with the legal enables students—and teachers—to see connections between different aspects of their lives, discloses new perspectives and meanings, clarifies and simplifies the mysteries of law practice through the device of analogy, and provides a measure of entertainment that enhances living as well as learning.

75. Like "Lovers and madmen," they "apprehend/More than cool reason ever comprehends." W. SHAKESPEARE, *A Midsummer Night's Dream*, act 4, sc. 1, lines 4-6.

