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Mr. St. Clair's Case

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I.

The events recounted here took place at The University of Tulsa Legal Clinic between 1995 and 1998. One of the Clinic's programs is the Older Americans Law Project (OALP). The program receives a grant of federal government money administered by the Tulsa Area Agency on Aging. Under the terms of the grant, OALP provides free legal services to persons sixty years of age and older who live in Tulsa County and two adjacent, primarily rural, counties. The grant accounts for about a third of the program's funding; the College of Law provides the remainder.

Tulsa is a small city in Northeastern Oklahoma. According to the estimates of the Oklahoma Chamber of Commerce, the city's population in 1996 (the last year for which an estimate is available) was about 378,000. The Department's county-by-county estimates, made at the end of 1998, show a total population of 643,500 for the three-county service area.

OALP typically enrolls eight students during the fall and spring semesters and four in the summer. It also employs two or three law clerks. Law clerks are students who in most instances have taken a semester of clinic and have been hired as employees under the University's work-study program. The clerks' primary duties are intake and what are called "brief service" cases; those that require brief intervention: only and are thus less suitable for assignment to an enrolled student. I supervise the students and clerks; among my titles are "project director" and "supervising attorney."

OALP handles civil matters only. Our primary services are the drafting of wills, durable powers of attorney and advance directives for health care, the handling of Social Security and Medicare appeals and, increasingly, consumer problems. The program has operated since October, 1993.

While the case discussed below involved litigation, our program doesn't handle many litigation cases. This is due in part to limited resources. It is due also to Oklahoma's anomalous lack of a student practice rule. Oklahoma may now be the only state that does not allow clinic students to appear in court accompanied by a supervisor.[1] As a result, I acted as attorney in this case while the students acted as,

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1. *See* David F. Chavkin. *Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. REV. 1507, 1546-54 (1998) for a state-by-state survey of the supervision required when a clinic student appears in court. The rule cited for Oklahoma, Rule 3.7(d), OKLA. SUP. CT. R. ON LEGAL INTERNSHIP, applies to "Legal

in law firm terms, clerks. They researched, drafted documents, and interviewed witnesses. Though I much prefer the clinical model which places the student in the lawyer's role, I was unable to use that model in this case.

Mr. Audy St. Clair called us on a rainy Monday morning in February, 1995. One of our law clerks took the call. Mr. St. Clair related that he had hired a contractor to replace his roof and put siding on his house. The contractor had initiated contact by means of a recorded telephone message informing the listener that he/she "may be eligible for a loan of HUD guaranteed funds for home improvement." Mr. St. Clair found this attractive; his home was badly in need of renovation and he was worried that he might not be deemed credit worthy. He responded to the call and was visited the next evening by the contractor, who closed the deal.

Work began within the week. Workers had removed the old roof on the previous Friday afternoon and had not provided temporary covering. It had rained heavily over the weekend, damaging Mr. St. Clair's furniture and other personal belongings and making his home all but uninhabitable. His calls to the contractor's office had so far brought no response. He had called the police, the fire department and the local senior hot-line. The hot-line worker had referred him to us. The law clerk, whom I will call Ms. Jansen, scheduled an interview with Mr. St. Clair for that afternoon, and asked him to bring all relevant documents.

Mr. St. Clair was a 67 year old divorced white male living alone. He had one son living in a small Oklahoma town about fifty miles from Tulsa. He and the son were estranged; they had had no contact for several years. Mr. St. Clair had a colorful past: he had worked as a rodeo clown and livestock auctioneer. He had also been an oil field worker, or "roughneck," in Oklahoma and Texas.

In the course of the interview, Ms. Jansen discovered that our client had financed the renovation project by means of a mortgage on his home. He had been buying the house under a contract for deed. The contractor, whom I will call "Universal Home Builders" or "UHB," had paid off the balance due under the contract for deed, about $3,500.00, obtained a warranty deed for Mr. St. Clair, then taken a mortgage on the property. A mortgage company in Austin, Texas had provided the money, claiming that these funds were "HUD approved and guaranteed."

Ms. Jansen also discovered that UHB had presented to Mr. St. Clair loan disclosure forms with several key terms left blank, including those stating the total amount financed, the total amount of the loan, and the monthly payment amount. Mr. St. Clair had signed these incomplete disclosure forms. The presentation of incomplete disclosure forms for customer signature is a per se violation of the federal Truth in Lending Act.[2]

Interns" who have been qualified to appear in court, without a supervisor present. For a range of reasons, including cost and the difficulty of meeting the requirement for number of hours in court, very few of our students seek to qualify as Interns. The program is of benefit primarily to solo and small firm practitioners, who can employ interns to appear on motions and similar matters at a cost much lower than that of employing an associate. It is no substitute for a student practice rule.

2. 15 U.S.C. 1638(b)(1); Reg. Z 2216.17(b) (1994).

Following the interview, Ms. Jansen and I discussed the case briefly. We then met with Mr. St. Clair together. We agreed that we would first call the contractor. Ms. Jansen reached the contractor (let's call him Mr. Roach) after several attempts. His phone manner was surly. He said that he would visit Mr. St. Clair that evening and take care of any problems. He mentioned that a subcontractor was responsible for the roofing. Mr. Roach also said that Mr. St. Clair was foul-mouthed, a drinker, and that he resented Mr. St. Clair's having "bad-mouthed" his company all over Tulsa.

We heard from Mr. St. Clair by mid-morning the next day. He recounted that Mr. Roach had visited him the previous evening, and had promised to make sure that a temporary roof covering was put in place and that work was resumed by Wednesday. Mr. Roach had been mildly conciliatory. He had blamed the roofing sub-contractor for failing to provide the covering, said that the sub-contractor was "a crook" and that he had fired him. Two of Mr. Roach's workers had appeared that morning to put a temporary cover on the roof.

Though still upset, Mr. St. Clair said that he wished to proceed with the work. Ms. Jansen told him that he should insist upon receiving completed disclosure forms before allowing the work to proceed any further. Mr. St. Clair responded that Mr. Roach had assured him the whole job would cost no more than $15,900 and that monthly payments would not exceed $210. He said that it was tough for someone like him to get renovations done, and that he thought it best that he stick with the arrangement.

We next heard from Mr. St. Clair about ten days later. He told us that he had just received the completed disclosure forms which he had pre-signed. They showed the total amount financed as $15,900, as Mr. Roach had promised. However, they also showed the finance charge as $26,592, the total amount of payments as $42,492, and the annual percentage rate as 15.95% Monthly payments were $237, significantly in excess of what Mr. Roach had promised. Mr. St. Clair said that he could not get a ride to our office that day, but would arrange for a neighbor to bring him the next day.

We met with Mr. St. Clair next day, a Friday, and reviewed the disclosure forms. He remained distraught. He said that workers had been at his house for parts of four days and were there as we spoke. They had done a total of just under two full days of work, virtually all of it demolition. He was unhappy with the quality and pace of the work. Ms. Jansen pointed out that the Truth in Lending Act allows a three-day cancellation period for transactions within its scope, and that the period begins to run from the day upon which the buyer has been presented with and signed completed disclosure forms.[3] In this case, the period had begun the day before and Mr. St. Clair might still cancel. Looking relieved, he told us that he wanted to cancel.

Ms. Jansen drafted a cancellation letter, which Mr. St. Clair signed. He returned home. Ms. Jansen, accompanied by her husband, personally served the letter on Mrs. Roach at the UHB office later that afternoon. I was not surprised to hear

3. 15 U.S.C. 1635 (f); Reg. Z 226.15 (a)(3). (1994)

that the UHB office was located in the Roaches' home in a nearby Tulsa suburb. Mr. St. Clair called to tell us that Mr. Roach had called his home that afternoon and asked to speak to one of the workers. He had had his phone speaker on and overheard Mr. Roach say, "Get the hell off that job right now!" He added that the workers had done just that.

On the following Monday, Ms. Jansen received a call from Mr. Roach. Not surprisingly, he sounded angry. He said that his men had already put in five full days of work on the project and that he had put out several thousand dollars for materials. He maintained that there was no legal basis for cancellation and said that he would begin a foreclosure proceeding. Ms. Jansen told him that Mr. St. Clair was still within the statutory cancellation period. She told Mr. Roach that he could not foreclose because there was no contract to foreclose upon. Mr. Roach denied hotly that he had presented incomplete disclosure forms, and insisted that the cancellation period had ended over a month ago. He closed with, "we'll let the court decide who's right."

Ms. Jansen and I visited Mr. St. Clair at his home the next day. The house was a small version of what Oklahomans call a "bungalow," a one-story structure of wood and shingle. The shingle had been completely stripped from one wall; the roof was incompletely covered. Piles of stripped shingle and lumber covered most of the small backyard. But Mr. St. Clair was in good spirits. He was relieved that the deal was off and that he had gotten away from "that con artist." He said that his plan was to obtain another mortgage on the house and find a reputable contractor to complete the work, then sue Mr. Roach for the damage he had caused.

Ms. Jansen told Mr. St. Clair that it might be a while before another contractor would actually begin work. She said that she would try to organize some volunteers to provide emergency repairs so that the home would be habitable. She did a remarkable job on this aspect of the case, as on others. Within two weeks, Ms. Jansen had organized a corps of eight law student volunteers, including one who had been a building contractor before entering law school, and found a local merchant willing to donate materials. She even raised some cash from law students to pay for materials not donated. The volunteers made what appeared to my untutored eye to be makeshift repairs, but were successful in rendering the house habitable.

By this point I would ordinarily have assigned the case to one of our enrolled students. But Ms. Jansen was so involved and had done such exemplary work that I readily agreed to her request that she continue with the case. She wrote to UHB, informing them of the liquidated damages provisions of the Truth in Lending Act in cases of cancellation and the provisions for recovery of materials left on site. Both sets of provisions require that the contractor pursue these limited remedies promptly. Mr. Roach failed to do this; we heard nothing from him for over a month.

In the meantime, Mr. St. Clair received some bad news. He had applied at his local bank for a home improvement loan, offering his house as collateral. In the course of the title check, the bank discovered that UBH had placed a lien on the property. Mr. St. Clair was furious. He cursed Mr. Roach. Ms. Jensen told me that this news reached her through what was the latest of several phone calls in which Mr.

St. Clair, apparently having been drinking, was not his usual agreeable self. He demanded that we do something right away. Ms. Jensen, after calming him down, told him that she would prepare a petition to remove the lien.

Two days later, on the very day that Ms. Jansen handed me a draft of the petition, we were served with a Petition in Foreclosure filed in Tulsa County Court by UHB. The Petition, a pre-printed form with the money amounts filled in by hand, had been prepared by a solo practitioner whose office was near the Roaches' home/office. It alleged that Mr. St. Clair had received "value in the amount of $15,900," but had failed to make monthly payments due under the loan agreement. It was early May, 1995; about three months had elapsed since our client's first contact with UHB.

Ms. Jensen and I drafted an answer denying all material allegations of the petition and asserting as affirmative defenses that the contract was void because timely cancelled, unconscionable and obtained by fraudulent means. We also asserted counterclaims for violations of the Truth in Lending Act and the Oklahoma Consumer Credit Code.[4] Because the plaintiff in the foreclosure was UBH, we also prepared a third-party action asserting these claims against the Roaches as individuals. It took us nearly a week to get these filings into final form. Sometime during this period, we received a letter from the attorney for UBH. The letter informed us that the attorney had been appointed "Special Judge" for three rural counties in Northeastern Oklahoma. He was therefore withdrawing from this case. Another attorney (we'll call him Dick Davis) would enter an appearance in his stead.

Davis filed his entry of appearance and sent us a copy. We learned from it that he was another solo practitioner in the Roach's neighborhood. We filed our answer and counterclaim, and our third-party action, and served him with copies by mail. It was the last week of May, 1995.

It was at this point that things became interesting. The twenty-day response period passed and we heard nothing from Davis. He simply did not file an answer or other responsive pleading to our counterclaim and third-party action. We sent Davis notice by letter of our intention to seek a default judgment, and received no response. By this time it was late June and our summer session was in progress. Ms. Jensen had transferred the case to a summer student. That student made several attempts to call Davis. In the course of these attempts, she spoke to both an answering machine and an individual in Davis' office . She left messages with each; still there was no response.

Through the volunteer efforts of our law students, both within the Clinic and without, Mr. St. Clair's home had been made at least minimally habitable. In this sense, the emergency created by the contractor had been addressed, at least temporarily. Nonetheless, Mr. St. Clair remained understandably angry and frustrated that his house was in worse condition than when he had first sought renovation, and that in the short term he could do nothing about it. Besides aesthetic considerations, insulation of Mr. St. Clair's home, deficient to begin with, was now

4. OKLA. STAT. ANN. tit. 14A, §§1-101, et seq (West 1999).

plainly inadequate. He reminded us that winter was approaching.

The UHB lien prevented Mr. St. Clair from using the house, his only significant asset, to raise cash. His immediate goal, Mr. St. Clair told us repeatedly, was to have the lien removed. A pattern developed. We would speak by phone weekly or every other week; the conversations were usually cordial, with Mr. St. Clair bantering pleasantly and thanking us for our efforts. Perhaps one call out of four was angry. Under the influence of alcohol, we now had reason to think, Mr. St. Clair would rail and curse Roach and the court. He would also demand to know why we weren't doing more.

We shared Mr. St. Clair's frustration, though not his physical discomfort. Through the summer session, the student assigned to the case worked with me to draft a motion for default judgment. The relief we sought was twofold. First, and of greatest importance to our client, was removal of the lien; second was money damages. This required the gathering of documentation of damages Mr. St. Clair had suffered. We calculated the damages as follows:

a. Actual Damages to Property	$7,288.00
b. Statutory Damages	$3,000.00
c. Attorney Fees and Costs	$2,500.00
Total	$11,788.00

We filed the Motion for Default Judgment, with exhibits documenting damages, during the first week of October, 1995. My litigation experience in Oklahoma was then quite limited; my experience with default judgments in Oklahoma was nil. Based upon my motion practice experience in Philadelphia, where I had practiced for ten years in a firm and in a law school clinic, I expected to receive notice of a hearing within a week or two. Instead, October passed with no word from the court.

At the beginning of November, the student called the judge's chambers and spoke with his secretary. The secretary promised to call us back with news of the status of our motion. She did so the next day, and said that we must file a motion for hearing on our motion. Research in the Oklahoma and local rules found no authority for such a requirement, nor did it conform to my practice experience. Nonetheless, we filed a motion and order for hearing and one was scheduled for late November.

Our expectation, a reasonable one I think, was that opposing counsel would not appear. Our efforts to contact him, both by phone and letter, had been fruitless. We speculated that he had left practice, left town, even died. He did appear however, and we introduced ourselves. Dick Davis was amiable and seemed puzzled that we were upset about the case. I began to outline my concerns. He listened for perhaps thirty seconds then said, "let's go in and talk to Judge Cooper," (once again, not the Judge's real name). With that, he stepped toward the Judge's chambers. As I was to learn, Judge Cooper liked to resolve as many matters as possible in chambers.

The student and I followed Davis into chambers. Judge Cooper, whom I had not met before, appeared to be about sixty years old. He greeted Davis in a manner that, though not effusive, seemed to demonstrate a long acquaintance. I introduced myself and the student; the Judge greeted us cordially. He then began sifting through some papers on his crowded desk and asked what case we were here on. I named the case and he took about half a minute to locate it on the morning docket. When he nodded to me, I explained that we were here to request a default judgment. I summarized the procedural history of the case, emphasized that it was now more than five months since we had filed our counterclaim and third-party action and had still received no response, and described briefly the hardship to our client. When I was done the Judge looked at Davis who simply said, "Judge, I been busy lately." Davis handed the Judge a "Motion for Leave to File Out of Time" and an order granting the motion. The Judge looked at me, said "I've never seen a default motion upheld in Oklahoma," and signed the order.

Despite my professed belief that in law as in life just about anything can happen, I was surprised. The student then on the case, a woman and "non-traditional" student who had entered law school after raising a family, was shocked. Upon reflection, I came to view the denial of our motion as yet another example, though a strong one, of a central message of the clinical experience: the law as taught traditionally in law school and the law in actual operation can be two very different things. In my eleven years as a clinical teacher I have found this to be an endlessly fertile theme for reflection and discussion. My immediate reaction though was one of surprise and anger. Based again on my Philadelphia litigation experience (about all the experience I had at that point), default judgments were not lightly granted. At the same time, courts there had an overriding concern with keeping matters moving and dockets cleared. From this viewpoint, five months without response seemed an ample basis upon which to grant the motion.

When we arrived back at the Clinic, the student raised our most immediate concern: how to break the news to Mr. St. Clair. While scrupulously avoiding any explicit guarantees (I always exhort my students on this point), both the student and I had, perhaps unavoidably, communicated our sense of optimism about the motion. As one would expect, our client was far from pleased. He directed his anger at the Judge, calling him impolite names. He also insisted that he would telephone the Judge and tell him his opinion of him. This was a threat that Mr. St. Clair would repeat from time to time throughout the course of our representation. It was only when I told him that we would withdraw from the case if he called the Judge that he promised not to do so.

We now entered the discovery phase of the case. The student phoned Davis and scheduled the depositions of Mr. and Mrs. Roach for late January, 1996. In the same conversation, she attempted to discuss the case with Davis and to begin to explore the possibility of settlement. She told me that Davis was noncommital, saying only, "I'll get back with you." He avoided answering questions about his client's position; probably, the student thought, because he didn't know the answers. This conversation

took place in early December, and was this student's final action on the case. Our semester was ending and a new student would be assigned in January.

When the new student took over, she worked with me to prepare interrogatories and requests for production of documents. In line with what I believed to be common practice, we would serve these on Davis more than thirty days in advance of the depositions so that we could review the responses and pursue further inquiry when we deposed the Roaches.

The student served the documents personally upon Davis; she returned from this errand visibly upset. She said that Davis had been in his office when she got there, and that he became angry when he saw the documents. He had said that discovery could be taken either by deposition or by written requests for information, but not both. I called Davis, and he repeated this objection to me. I told him that I was aware of no provision in the Oklahoma Discovery Code that said this, but would be glad to look at any citations he could offer. He had no citations, but repeated several times, "that's the way its done." This sounded ridiculous to me. At the same time though, I feared it was just possible that there was some obscure Oklahoma rule of which I, an attorney new to the jurisdiction, was not aware.

Later that day, the student brought me the relevant section of the Discovery Code. As I had thought, that section provided:

> Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things...[5]

This is of course a typical discovery code provision. My fear that Oklahoma might differ from every other jurisdiction in the United States had thus proved, to my relief, baseless. Following discussion with the student and consultation with a faculty colleague, we decided to proceed with the deposition. We could do nothing about compelling answers to our other requests until the thirty-day response period had passed.

But the frustrations continued. At eight forty-five a.m. on the day the depositions were to be taken, I received a call from Davis. He said that the Roaches would not be able to attend the depositions scheduled for nine thirty that morning. Davis explained that Mr. Roach's mother had suddenly become ill, and that the Roaches had left early that morning for Southeastern Oklahoma. He declined to set a new date during that phone call. He said that he would see how the Roaches' family crisis was resolved and then get back to us. When I asked him about responses to the interrogatories and requests for production, now overdue, he said that he did not intend to submit them.

A few weeks later, in early March, 1996, I received a call from a social worker at the Veterans Hospital in Muskogee, OK. He said that Mr. St. Clair had had a

5. OKLA. STAT. ANN. tit. 12, §3326 A (West 1999).

stroke two days earlier, and was in stable condition at the hospital. He said that he thought it doubtful Mr. St. Clair would be returning home. I told the social worker that I would contact him periodically to check on Mr. St. Clair's progress.

We began to lay the groundwork for a motion to compel opposing counsel to respond to our discovery requests.[6] Davis had made it clear that he did not intend to respond, and it seemed obvious to me that we could not allow the matter to rest there. We would almost certainly need to file a motion; the first step was to lay a documentary foundation. The student sent Davis two letters, spaced about three weeks apart, demanding that he respond. As expected, the letters were ignored.

In late April, near the end of the spring semester, the student spoke with the VA Hospital social worker. He informed us that Mr. St. Clair was being transferred to a VA rehabilitation facility in Okmulgee, OK, about forty miles south of Tulsa. The social worker once again expressed doubt that Mr. St. Clair would ever return home. But case developments, both legal and medical, continued to surprise us. I heard from the social worker again in mid-May, and learned that Mr. St. Clair had returned home against medical advice. His son had even become briefly involved, attempting to arrange a nursing home placement. But Mr. St. Clair was adamant that he would not be institutionalized.

Our summer session began in the first week of June, 1996, and yet another student took over the St. Clair case. That student spoke with Mr. St. Clair and reported that his speech sounded slurred. The student also related though that Mr. St. Clair was in good spirits and had said that he was getting along okay with the help of "a girlfriend." The student's task for that session was to prepare and file a motion to compel responses to interrogatories and requests for production. He did so, then called the Judge's chambers to find out what else if anything the Judge might want us to file. This time, in yet another unexpected twist, the Judge's secretary told him that he could simply bring down a copy of an order and the Judge would sign it. The secretary even suggested times when he would be most likely to find the Judge available. The Judge signed our order; it directed that the defendant respond to our discovery requests within three days. Of course, we received no response. It was mid-July, and the summer session was ending.

During the last week in August our fall semester started and yet another student was assigned. The new student began drafting a motion for sanctions against the defendant, who had now failed to obey a court order. Among the sanctions available under the Oklahoma Discovery Code is one allowing the court to find against the offending party on any issue of fact addressed in the unanswered discovery requests.[7] Our motion requesting this sanction was filed in mid-September. Meanwhile, Mr. St. Clair's medical condition remained stable and he continued to manage to live at home.

The court scheduled a hearing on the sanctions motion for mid-October. Davis continued the hearing to mid-November. He appeared at the November hearing and once again we met in chambers. Davis said only that he was having trouble

6. OKLA. STAT. ANN. tit. 12, §3237(A)(2) (West 1999).
7. OKLA. STAT. ANN. tit. 12, §3237(B)(2)(b) (West 1999).

contacting his client. He did not attempt to argue that having scheduled depositions, we were precluded from seeking answers to interrogatories. As in our previous meeting, the Judge showed little reaction. Davis asked for three more days and the Judge agreed. In response to my angry objections however he agreed that some sanction was appropriate, and assessed defendant one thousand dollars.

Whether as a result of the sanction or not, Davis finally responded to the discovery requests. On the afternoon of the third day following the meeting with the Judge, we received the responses. The answers to interrogatories were perfunctory and not very useful. The documents produced were ones we already had. Based upon my experience in civil litigation this kind of response is not unusual, but it seemed anticlimactic next to what we had had to do to get it. The student promptly prepared and filed a motion for pre-trial conference. A conference was scheduled for December, on the very last day of our fall semester.

The student and I arrived at the court house at about 9:20 am for the 9:30 am conference. We went through the metal detector and took the elevator to the Judge's chambers. At 9:25 am, as we were exiting the elevator, we nearly collided with Davis as he was entering. I held the elevator door as he told us, "I'm out of here. The clients won't do what I tell them. They have thirty days to find new counsel." We went to the waiting room outside chambers and spoke with the Judge's secretary. She said that the Judge was already gone and that a court minute had been entered in the record, "passing" (continuing) the conference and allowing defendant thirty days to obtain counsel.

We returned from the Christmas break and a new student took the case. It was January, 1997, and almost two years had elapsed since the events at issue. Mr. St. Clair's condition remained stable. At the end of the month, the student prepared and filed another motion for pre-trial conference. The thirty days given the Roaches to find new counsel had passed, so we served them directly with the motion and included a letter requesting that they notify us of their current representative, if any. We got no response.

A new pre-trial conference was set for late February. A week in advance of the conference date, we received an entry of appearance filed by defendant's new counsel. The Roaches had retained the firm of Snell, Trotter. With about forty attorneys, it is one of Tulsa's larger firms and known for its hardball litigation style. They requested and were granted a continuance of the conference; it was now set for the first week in April.

The student assigned to the case reported at about this time that he had begun to hear from Mr. St. Clair. We had heard little from him in the ten months since he had returned home. The student said that Mr. St. Clair had recently called and demanded to know the status of his case. He had complained desultorily about Mr. Roach and Judge Cooper, leading us to think that he was feeling better. After we reviewed the case, the student made two phone calls on successive days to Snell, Trotter. When he received no response, he sent a letter. Our aim was to confirm that someone would appear for the Roaches at the pre-trial conference, and to try to learn something about their position. One week later and two days before the conference,

I received a call from a paralegal at the firm. She informed me that an attorney from the firm would be there.

The conference was set for 10:30 am. I arrived at the Clinic a few minutes before 9:00 am, and found that I had already received two phone calls from a Mr. Agee at Snell, Trotter. I reached Agee, and he asked if I would agree to a continuance of the conference. He said that the case had been assigned to another attorney at the firm, but that attorney had a conflicting commitment. The conference had been put instead on his (Agee's) calendar; he had promised his young son that he would accompany him and his class to a performance of Sesame Street Live, scheduled for that morning at the Tulsa Convention Center.

I told Agee that I was sympathetic to his plight but that, in view of the long history of delay in this case, I could not agree to a continuance. Agee said that he was aware of the difficulties we had had with discovery, and asked if I was satisfied with the answers to interrogatories. I said, "barely," and he chuckled and said, "that's charitable." We discussed briefly the drafting of the pre-trial order. I told him that our portion was ready and had been for some time. Agee said that he would have defendant's portion to me within seven days. He said that once the order was complete, the Judge could set a trial date. He added that, in view of Judge Cooper's crowded docket, we would have plenty of time to explore settlement. The tone of the conversation was cordial. Potentially controversial issues, such as an extension of time for discovery, were not discussed.

The student, whom I'll call George, and I went to the court house at the appointed time. Counsel for defendant arrived a few minutes late, and appeared rushed and hassled. I'll call him McNee. This time the conference took place in open court, though no court reporter was present. I opened by telling Judge Cooper about my conversation with Agee and what we had agreed. McNee interrupted me, saying that the case was "not ready for pre-trial," and that defendant needed more time for discovery. He then said, "I move to strike the pre-trial." I replied that McNee's statement was contrary to my talk with Agee. I said that the period for discovery had been running since December of 1995, and that I objected strongly to its extension.

As I spoke, I began to grow angry. Understandably, I think, I was frustrated with the long and tortuous course of the case and by my inability even then to shorten it. Also, I felt I had been doubled-crossed by the Snell, Trotter attorneys. After I had stated my objection, I turned to McNee and said, "and I don't appreciate being told one thing by an attorney from your firm on the phone and another from you." Judge Cooper gave me an annoyed look and said, "None of that shit." Reflexively and in good lawyerly fashion, I apologized to the Judge. He glanced down at the docket sheet and said, "Well, it won't hurt anything to reset this for April 18th," then stood up and walked into his chambers.

George and I left the courtroom through the waiting area, while McNee went out into the hallway. We walked past the desk of the Judge's secretary. She stopped me and asked that I tell her what had happened so that she could prepare a court minute of the conference. I did so. This took about sixty seconds.

We left the waiting area and exited into the hallway. We walked toward the

elevators and saw McNee waiting. We said nothing to him. McNee approached me and said loudly, "That was a cheap shot you tried before the Judge." I was taken aback, and could come up with nothing better than, "I disagree with you completely." I repeated this comeback twice more as McNee berated me. I then got mad and yelled, "Did you intentionally mean (sic) to deceive me...coming in and asking for more discovery after my totally different conversation with Agee?" McNee yelled back a denial. The elevator came and we entered. I then began to recount heatedly the long history of delay in the case. A young woman was in the elevator. McNee gestured towards her and said to me, "Let's not injure this young lady's ears. We'll finish this outside."

We got to the ground floor and McNee, saying nothing, quickly exited the elevator and left the building. George and I stood in the lobby and George began to laugh. He said to me, "Allright Mo, you got in his face!" I laughed too. Perhaps I should mention that McNee and I are about the same age and size, while George is younger and much bigger, a former college football star. As we were leaving the court house I joked that I would be sure to take George along as my bodyguard when I needed to come to court. We got back to the Clinic and George gleefully related the incident to several students.

This had taken place on a Friday. The following Tuesday I received a copy of a letter McNee had sent to the Dean. The letter began, "On Friday, April 4, 1997, I had an unpleasant and disturbing encounter with an employee of the College of Law, Morris D. Bernstein." It continued:

> At pretrial, I told Judge [Cooper] that I did not think the case was ready for Pretrial Conference and suggested that it should be stricken and re-set for a later date. Mr. Bernstein responded that he was "shocked" at my suggestion and told Judge [Cooper] that my position was at odds with his agreement with Mr. [Agee]. He further stated that Mr. [Agee] and I were "not being honest" with him and I was trying to "deceive the Court." Before I could respond, Judge [Cooper] told Mr. Bernstein he wanted to hear no more of this. The Court then continued the Pretrial to April 18th.
>
> After we left chambers, I told Mr. Bernstein that I did not appreciate his "cheap shot" and was offended by his suggestion that Mr. [Agee] and I were being less than honest either with him or the Court. I also said that his inappropriate accusations did not reflect how law is practiced in this community and that I hoped that this was not what the College of Law was teaching its students (Mr. Bernstein had a student with him).

The letter went on to describe McNee's credentials as an expert in professional responsibility, his having served as Chairman of the Tulsa County Bar Ethics and Fee Arbitration Committees, Vice Chairman of the Tulsa County Bar Fee Grievance Committee and a past member of the Oklahoma Bar Association Professional Responsibility Committee. It then set forth at length Snell, Trotter's position as a major contributor to the Law School and employer of law students and graduates.

It concluded:

> As a partner who has been with this firm since its inception...I would welcome the opportunity to meet with you and Mr. Bernstein. The purpose of this meeting would be to disabuse Mr. Bernstein of his incorrect perceptions of how this firm and I practice law; and, perhaps, to assist Mr. Bernstein in understanding the exercise and teaching of civility and professionalism at the Bar in Tulsa County.

To the Dean's credit, the suggested meeting never took place. The letter, copies of which had been sent to the Judge and to the "Firm Partners," elicited my own long letter giving a point-by-point refutation. I met with the Dean to give him my account of the incident. He apparently spoke with several partners at Snell, Trotter, but I heard no more about it.

In the two weeks between the aborted pre-trial conference and its new date, I had realized that despite the unconscionable delay in this case the Judge simply would not deny defendants' request for further discovery. George and I attended the conference on April 18th, and Agee appeared for the defendants. We agreed to a new discovery deadline of June 30th.

On May 1, the last day of the spring semester, I learned that I would need coronary bypass surgery. I was scheduled to be off that summer, though I had other plans about how to use the time. I underwent the surgery on May 12, and spent the remainder of the summer recuperating.

A supervising attorney had been hired for the summer; we'll call him Brad. He was a former legal services attorney who had taught for a year in our clinic and was currently employed as a high school social studies teacher. Brad called me in mid-June to tell me that depositions of the parties had been scheduled for later that month. He and a student visited me at home to discuss the depositions.

I returned to work in mid-August, one week before the start of the fall semester. I read through the deposition transcripts twice. Mr. Roach continued to deny that he had presented Mr. St. Clair with incomplete disclosure forms. The Roaches' story remained that Mr. St. Clair had signed the contract, then breached without cause. They had sent us documents after the deposition to support their claim for $13,000.00 in damages. The newly assigned student filed yet another motion for pre-trial conference, and a conference was set for October.

We attended the pre-trial conference as scheduled; Mr. Agee appeared on behalf of the defendants. Judge Cooper asked if we had talked about settlement. We said that we had, but that the parties were far from reaching an agreement. The Judge did not pursue this further. Trial was scheduled for early February, 1998. We returned to the office, and the student called Mr. St. Clair to inform him of the trial date. Mr. St. Clair was angry that he would have to wait that long, and talked again about calling the Judge.

Another task which occupied us that fall was collection of the $1,000.00 sanction the Judge had assessed against the Roaches for abuse of discovery. Agee had ignored our letters demanding payment. We were forced to file a motion asking

for a hearing to show cause why the defendants should not be held in contempt. Agee appeared at the hearing and presented a specious argument to the effect that the sanction order was "interlocutory," and could not be enforced during the pendency of the proceedings. Judge Cooper rejected that, and we finally got the check.

When I next spoke with Mr. St. Clair it was mid-December, a few days before the end of the fall semester. He called to tell me that he felt that he could no longer remain in his home, that living alone with no family nearby had become too difficult. He had arranged to rent an apartment in the San Antonio area, where he could be near his nephew. The nephew and his wife, both doctors, had encouraged Mr. St. Clair to make the move. He said that he would be moving within a week, and wished to sell the house as soon as the legal obstacles were removed. He spoke a bit about the Roaches, saying, "nobody's ever done me so dirty." He sounded more tired and sad than angry. He called back a few days later to confirm that he would be moving that weekend and to leave his new address and phone number.

The beginning of the spring semester found us busy with trial preparations. I had several civil contacts with Agee concerning the final form of the pre-trial order, but no discussion of settlement. We exchanged exhibits and witness lists. The new student assigned to the case, along with one of our law clerks, concentrated on outlines of testimony and opening and closing statements.

Another student task was the contacting of witnesses. Mr. St. Clair's neighbor, who had witnessed the Roach's demolition work, had moved and could not be found. I called Ms. Jansen, who had graduated in December 1995. She was now a successful solo practitioner in her home town in southwest Missouri, a two hour drive from Tulsa. We had spoken about the case a couple of times since her graduation, and Ms. Jansen was more than eager to testify about her contacts with Mr. Roach. We also planned to present the testimony of the former law student who had supervised the repair work. Of course, our main witness would be Mr. St. Clair.

I called Mr. St. Clair in mid-January. He was living outside San Antonio and enjoying the change. He remained resolved to come to Tulsa for the trial, especially in view of the fact that the Roaches had not changed their settlement demand of $13,000. We agreed that this was outrageous, best understood as an expression of Mr. Roach's almost pathological arrogance. I liked Mr. St. Clair's feisty attitude, but became concerned when I tried to do some pre-preparation of his testimony. He was hazy on details of discussions and the sequence of events key to our theories of breach and fraud. The trial was set for the second Monday in February. Mr. St. Clair said that he would be in Tulsa by the Thursday before.

When Mr. St. Clair got to our office that Thursday morning, his deterioration was evident. I had not seen him in about ten months, though we had spoken by phone. He looked older. He had always been a casual dresser, but now appeared disheveled. His speech was noticeably slurred and his gait unsteady. But he professed to feel fine and said that he was enjoying Texas. He became animated while releasing a stream of expletives aimed at the Roaches.

In the midst of our trial preparations, we now faced a new challenge. Mr. St. Clair's stroke and the passage of time had impaired his memory. We found ourselves

challenged to pare down his testimony to the bare minimum necessary to meet our burden. On the other hand, we thought it possible that his impairments would enhance his jury appeal.

We arrived at the courthouse a little before 9:00 am on the day of trial. Ms. Jansen had already arrived from Missouri; she and Mr. St. Clair embraced. We proceeded to the waiting area outside Judge Cooper's chambers. The Roaches and Agee arrived just before 9:30, the Judge a few minutes after. Judge Cooper asked to meet with counsel in chambers. He told us that we were number two in the trial pool, and that case number one would take two days to try. He could hear our case on Wednesday. I relayed this news to Mr. St. Clair, who was seated outside. Of the numerous moments of distress we had shared with him over the previous three years, this was probably the most intense. He said that his flight back to San Antonio was scheduled for Tuesday night and that he simply could not stay in Tulsa beyond that time. He cursed the Judge, this time with unusual vehemence.

The student and I reentered Judge Cooper's chambers to tell him about our client's problem. He listened impassively and said that there was nothing he could do. We went back out into the hall and commiserated with Mr. St. Clair. After a few minutes, the Judge's secretary came out of chambers. She said that Judge Troutman, who shared chambers with Cooper, had just told her that his list for the day had "fallen apart," and that, if both sides agreed, he could hear the case. Mr. St. Clair and the Roaches had no objection, so Agee and I entered Judge Troutman's chambers to discuss the case with him.

When we entered his chambers, Judge Troutman was reading through the court file. I had not met this Judge before and neither, it appeared, had Agee. From what I could gather, he had been only recently appointed. The Judge heard from Agee and from me. He expressed surprise that this was a contested foreclosure, saying that in his career to date he had never seen a foreclosure case in which defendant had counsel and was prepared to go to trial. He said that most defendants in foreclosure actions simply disappeared; a few would obtain counsel to file an answer and gain some time. I was pleased to hear this because it confirmed that our program was fulfilling its function of providing legal representation in cases in which there would otherwise be none.

We were barely a minute into the discussion but it was clear that Troutman was a far more interventionist judge than Cooper. He focused upon the fact that Mr. St. Clair was no longer living in the house, and suggested that he simply deed the house over to the Roaches and that both sides drop their damages claims. He was skeptical of our claim that Mr. St. Clair had suffered nearly $8,000 in actual damages to property, saying that the entire property was probably not worth that much. Turning to Agee, he emphasized that his clients would spend more to try this case than the amount at stake. Agee responded, "I know that, Judge, but they've said that they're willing to go to trial." Knowing the Roaches and their delusional sense of outraged innocence, I knew that this wasn't just bluster.

I pointed out that the house was now worth about $7,500.00, and that Mr. St. Clair had received roughly $3,500,00 in value when the Roaches paid the balance on

the contract for deed. This left $4,000.00 in equity for which Mr. St. Clair would not be compensated if the house were simply deeded over. Judge Troutman then directed us to the negotiation of the sum Mr. St. Clair should receive for the equity in the home. This was to our advantage, since it focused the negotiation on what the Roaches would pay Mr. St. Clair.

I was relieved that the Judge was encouraging settlement. Since Mr. St. Clair had returned to Tulsa and his deterioration become evident, I had been doubting that he would be able to testify in sufficient detail to allow us to meet our burden. Given the Roaches' inflexibility, I had resolved to make the best of it. But I continued to believe that settlement was the better option. After a series of offers, counteroffers, and discussions with our clients, we finally settled for a payment of $750.00 to Mr. St. Clair. I regarded this as an acceptable if not terrific deal. Mr. St. Clair was pleased. He boasted that he had lived rent-free for nearly three years and was still walking away with a little cash. He also expressed relief at not having to testify.

I was of course happy that our client was happy. But I became positively pleased with the deal when we met with the Judge in open court to place the terms of the agreement on the record, and I saw that Mr. Roach was sputtering mad. He asked the Judge if he could make a statement. The Judge replied, "unless its about the terms of the settlement, why don't you make it to your attorney when we're done." Roach spun on his heels and walked out of the courtroom. As he passed my student, who was sitting near the back of the courtroom, Roach said something I could not hear. The student later told me that he had said, "You go to TU? That's a shitty law school." Both Agee and Judge Troutman were TU law graduates.

As we left the courthouse it was raining, as it had been on the day Mr. St. Clair had first called us. We walked to the garage where I had parked, and Mr. St. Clair offered to take me to lunch. The student and Ms. Jansen had already excused themselves. We drove to a sandwich place near campus. There was further evidence of Mr. St. Clair's deterioration: he lost his pants while getting out of the car.

Later that afternoon, Mrs. Roach came to the Clinic with a cashier's check for $750.00. I gave her the quitclaim deed Mr. St. Clair had signed releasing his interest in the property to Universal Home Builders, and the matter was closed.

II.

It is often said that one of the major goals of clinical legal education is to encourage students to reflect upon their experience. There are at least three apparent rationales. The simplest one is instrumental: a good practitioner learns from her inevitable mistakes and misjudgments, and reflection is central to the on-going process of improving one's skills. Another is political and perhaps moral: all law practice embodies social values and power relations, and reflection enables the practitioner to identify these in a given case and to point out directions for reform. The third, philosophical in the broadest sense, is expressed in two sayings attributed to Socrates: the injunction, "know thyself," and the judgment that "the unexamined

life is not worth living."[8]

In this case I can think of two additional rationales for reflection. One is pedagogical. Only a reflective teacher can evoke reflection in his students; this essay is meant to be a teacher's exercise in reflection. The other might be termed therapeutic. Lawyers are figures of power. The powerless lawyer might be an oxymoron, a failure, an object of shame or embarrassment, or perhaps a character in an absurdist comedy, like those Joseph K. encounters in THE TRIAL.[9] It is therefore not surprising that mention of the experience of powerlessness is all but taboo among lawyers. This despite the obvious truth that even the career of the greatest lawyer will encompass many such moments or, as a former student once observed, " half the lawyers who take cases to trial lose." Even after decades of debunking, our culture still prefers its lawyer stories in the heroic mode.

This story is best characterized as one in which moments of powerlessness alternate with moments of power, and I can honestly comfort myself that failure was not the outcome. Nonetheless, my strongest recollections of this case are of feeling that my client was the victim of an injustice for which legal remedies were maddeningly elusive, and that there was nothing that the students or I could do about it. Telling the story and reflecting upon its meanings are ways of gaining a power that I did not have over these events when they took place. They are acts of consolation and, in a very small way, revenge.

Among my motivations for becoming a lawyer was the hope that I could earn a living while doing some good. In my view, doing good meant helping the disadvantaged. My first goal was to become a legal services lawyer. It happened that my graduation from law school in 1983, and the pursuit of a job for about a year before, coincided with the glory days of the Reagan era. Legal services jobs, never very plentiful, had become very scarce. They were made more so by my decision to remain in Philadelphia. I took a job with a small Philadelphia law firm, doing claimant-side workers' compensation, employment law on behalf of plaintiffs and some union-side labor law. The experience was invaluable but, as I now say half-jokingly, I never really felt right about charging clients for legal services.

I have been a clinical teacher for eleven years, the last six in Tulsa. I feel good about the fact that our program is able to provide legal representation to at least a few needy elderly persons who would not otherwise have it. Mr. St. Clair was among these few. I think that his unexpected success in obtaining counsel explains some of the events in his case.

Had the system functioned as set forth in the Rules of Civil Procedure, the Roaches would have been required to come forward promptly, in a court conference or some other kind of dispositional meeting, and set a schedule for conducting their case. Failure to appear would have carried consequences, such as the entry of a

8. *The Defense of Socrates, in* Plato (trans. David Gallop), DEFENSE OF SOCRATES, EUTHYPHRO, CRITO 54 (1997).

9. *See* Franz Kafka (trans. Willa and Edwin Muir), THE TRIAL (1937).

default judgment and removal of the lien. A lawsuit is rarely a quick fix for anything, but we might reasonably have expected Mr. St. Clair's problem to be resolved in, say, six months.

But prompt adjudication is increasingly elusive, with courts of all kinds overburdened. This is especially so in cases arising within the low end of the housing and financial market. In the eyes of judges and lawyers, these are "small cases," though they are anything but small to clients. Most lawyers assume that representation is a commodity these clients simply cannot afford, another one of the good things in life that they will have to do without. In the vast majority of cases they are right, and act accordingly. My evidence is admittedly anecdotal (for example, Judge Troutman's remarks noted above), but I surmise that most of these cases are disposed of through default judgments in favor the plaintiffs, who are banks, finance companies, "home improvement" companies, and the like. As a consequence, lawyers for these entities tend to handle such cases in volume and perfunctorily.

Though many businesses operating in the low end housing and finance market are not small,[10] Universal Home Builders was a textbook example of a small business. Despite its grandiose name, its corporate officers were Mr. and Mrs. Roach and Mrs. Roach's son. There were no employees. From what we could learn in discovery, the son sometimes supervised construction projects, but UBH usually hired subcontractors. The company's business was to sell a job, obtain financing (if possible, backed by some form of government guarantee) from another company, secure the loan with a mortgage, and hire yet another group to perform the actual work. The Roaches dealt aggressively with Mr. St. Clair and, no doubt, with other customers who presented problems. They resorted quickly to litigation, having presumably learned that such an approach cost them little; the customer would mount only token opposition, if any. The Roaches could count on getting either the contract price or the customer's house. As evidence of this expectation, consider the Roaches behavior, the format of the original petition, (a form with amounts handwritten), and attorney Davis' utter lack of preparedness to litigate the case.

One of the challenges in reflection is judging which aspects of a given story should be confined to that story and which are generalizable. Indeed, a major objection to regarding narrative as a form of scholarship is the danger inherent in generalizing from individual experience.[11] In this case, one could argue that I ran into an unusual cast of characters: an especially nasty contractor, appallingly incompetent opposing counsel, a bad judge; and that no conclusions should be drawn from the ensuing events. I would agree that the constellation of characters was unusual, and that caution is called for in drawing conclusions. Yet I would also ask: how unusual was each of the players?

In my limited experience as a consumer lawyer, aggressive "home improvement" contractors who daily skirt the bounds of legality are not nearly as rare as one would

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10. *See generally*, Michael Hudson. MERCHANTS OF MISERY: HOW CORPORATE AMERICA PROFITS FROM POVERTY (1996).

11. *See, e.g.*, David A. Hyman, *Lies, Damned Lies, and Narrative* 73 IND. L.J. 797 (1998).

wish. Such contractors are among the occasions for the frequent consumer advisories that appear in government publications and the media. They like especially to prey upon older people. So too with the unusualness of Dick Davis: the quality of work among lawyers varies greatly. Particularly for those with volume practices of one kind or another, preparation is all but nonexistent and matters are not dealt with until they absolutely must be. As for Judge Cooper, my experience once again tells me that the quality of judges' work varies at least as much as that of lawyers.

Judge Cooper has been on the Tulsa bench for many years, and seems to be well-liked in the legal community. His reputation is that of a nice guy, or, more colloquially, a "good ol' boy." But in this case at least, he seemed never to want to do any of the tasks basic to judging, like making decisions or encouraging settlement. A truism that my students have grown used to hearing from me is that a system of decision-making, no matter how impressive looking on paper, is only as good as the people who staff it. A corollary, the contrast between law as written and law as applied, is a recurrent theme of clinical teaching. That theme played over and over again in this case. Had we drawn a different judge, things might have gone differently for Mr. St. Clair. I could just take this as another example of the contingency that rules so much of our lives, and leave it at that. But I think that Judge Cooper's behavior illustrates a broader problem with the judiciary.

I am willing to assume that most judges do their jobs reasonably well most of the time, and that instances of malfeasance are very rare. But what of judges whose performance of their duties is perfunctory or worse? There is very little in the way of meaningful review or recourse in such cases. Lawyers are understandably reluctant to make formal complaints against judges in all but the most egregious cases of misconduct. It is only for such misconduct that judges are removed, and even then the process may be agonizingly slow. Judges' actions are of course reviewable upon appeal, but the process is again slow and generally does not address the sort of problem discussed here. At the very least, there is a significant disproportion between the power judges wield and their accountability.

Of all that I have written so far, the preceding paragraph has been the most difficult. I can't help feeling that I am stating the obvious, and that the most common response might be shrugs or even accusations of "whining." What's more, I know without looking that there is a substantial literature on problems of judicial accountability. I suppose that all I have done here is to describe how the common everyday incompetence of one judge affected a practitioner and his client in one case.

Why is any of this worth discussing? If the law were a neutral set of rules uniformly applied, the proclivities of particular judges would be of no interest. I would bet that few if any practitioners believe that this accurately describes the law in operation, but that some at least would see it as an aspirational ideal. That lawyers everywhere, it seems, have developed an intricate lore about the judges in their locales, their personalities and biases, is one indicator of the distance between that ideal and reality. As the old joke has it, "good lawyers know the law, great lawyers know the judge."

Lawyers deal with the vagaries of judicial conduct by getting to know judges and

tailoring their own conduct accordingly, thereby becoming insiders who are able to navigate the system on behalf of their clients. For a newcomer, learning this lore is key to becoming an effective practitioner. In this case, I was an outsider and lacked this knowledge. I was new to Tulsa and to Oklahoma, having been in the area only a year and a half when the case began. I was from "up north;" Tulsa is the midwest, but with a strong southern influence. I was clearly not a member of the proverbial "old boy network."

Reacting from his insider's perspective, Dick Davis was probably sincere when he expressed shock at my plan to take discovery by both interrogatories and depositions, and insisted, "that isn't the way it's done." Though my plan was permitted by the discovery code, it may well have transgressed a local norm. I would speculate that the norm could be put in this way: we don't overdo it on little cases like this, because it only runs up everyone's costs. In the same vein, Judge Cooper seemed mildly but genuinely surprised that I was upset by his denial of our motion for default judgment.

In general, a client can certainly expect more effective representation from an insider than from an outsider attorney. But, like most strengths, insider status can be a weakness as well, at least from the client's standpoint. Insider networks everywhere expect each of their members to extend "courtesies" to the others, to agree to continuances, extensions of time for filing, and the like. This policy of easy agreement can result in unnecessary delay, and so disserve clients. It is one small instance of how the routine operation of the system places the convenience of lawyers and judges over the interests of clients. Once again, this appears to be especially true in the realm of "small cases," where the economics of practice dictate large caseloads with concomitant scheduling conflicts and lack of preparation.

In my encounter with Mr. McNee, I found myself the object of intimidation, an everyday ploy among hardball litigators. This case seemed to me to be one in which reflexive agreement to a request for continuance would have disserved the client. So McNee entered the courtroom just short of enraged that I had not agreed to continue the pretrial conference, and it took very little to move him the rest of the way. Snell, Trotter is a big firm by Tulsa standards, with the usual pressures around billable time. This was a small case, the Roaches small clients, and McNee had been pressed to appear at the last minute. He had had no time to familiarize himself with the procedural history of the case, though I doubt that anyone at Snell, Trotter knew or cared about that history. It was simply unaccountable to McNee that I would be so zealous or, in his view, obnoxious.

McNee's attempt to gain leverage over me and over Mr. St. Clair's case by reminding the Dean of his firm's position as law school benefactor was shameful, certainly the most disturbing event in this whole sad story. There is the potential for such pressure tactics whenever a clinic practices in an area such as consumer or environmental law. Opposing parties are likely to be clients of local large firms, and such firms are typically among the major financial supporters of the law school and employers of its graduates.

But what is most interesting, as always, resides in the details. McNee chose to draw attention to my purported "lack of civility," my lack of knowledge about how law is practiced in Tulsa, thereby highlighting my outsider status. At the same time, he trumpeted his credentials as an insider: his many years of practice in Tulsa, his service on Bar Association committees and panels. The charge of "lack of civility" conformed well with McNee's strategy of attack; it has lately become a handy tool with which to stigmatize one's opponents, while deflecting attention from the substance of their criticisms. McNee deployed this accusation to place me outside the fraternity of Tulsa lawyers. Coming from someone too ill-behaved to gain admittance to the fraternity, my serious concerns about how the system had handled Mr. St. Clair's case could be ignored.

As I learned early in my career as a clinical teacher, a major concern of students approaching their first court appearance is what might be called courtroom etiquette. I would focus, quite naturally, on making sure that the students knew the facts of the case, the substantive law and rules of procedure and evidence. The students recognized the importance of these things, but were concerned first with where they should stand, what they should say to the judge when he/she came into the courtroom, how they should relate to opposing counsel, and like matters. This reflects the students' perfectly valid perception that a mastery of courtroom etiquette is the most fundamental part of looking like a real lawyer. The converse is also true, and this made McNee's charge that I just didn't know how to act in a courtroom all the more damning.

I should say something about Mr. St. Clair's case as a teaching vehicle. I sometimes tell my students that, short of malpractice, everything that happens in the clinic should be regarded primarily as a part of the learning experience. Occurrences that would be viewed in a for-profit law practice as annoying, distressing or costly become in the clinic occasions for productive discussion. Certainly, Mr. St. Clair's case gave us many such occasions. Our involvement spanned seven semesters and three summer sessions. In all, ten students were assigned to the case. Each had a turn at presenting it in class. Among the topics addressed were theories of the case, client counseling challenges, procedural issues, use and abuse of discovery, witness preparation, and a host of strategic questions. Further, as already noted, the case was an incomparable tool for teaching the core clinical lesson of how the law is transformed as it moves from doctrine to application.

Each of the students assigned struggled with how best to understand the failure of the system to respond as expected. As one would predict, they looked to me for guidance and shared my sense of frustration. They expressed varying judgments on the question of how atypical the performance of the system and its actors was in this case. I have pondered, and continue to ponder, this question. At the very least, I think that the course of this case demonstrates something about the difficulty of getting justice for the low income client, even when he or she is represented.

Nevertheless, I prefer to avoid a facile cynicism. My students and I have had a sometimes painful lesson in the lore of one local court system. It is at least possible that, in confirmation of the clinical model, we will be better advocates for it.