A Clinical Experience

Edwin H. Greenebaum

*Indiana University Maurer School of Law*, greeneba@indiana.edu

Follow this and additional works at: [https://www.repository.law.indiana.edu/facpub](https://www.repository.law.indiana.edu/facpub)

Part of the Legal Education Commons, and the Legal Profession Commons

**Recommended Citation**


This Article is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.
A Clinical Experience

By Edwin H. Greenebaum*

Whenever individuals or groups needing help come to professionals with specialized knowledge and skills, they must cope with issues common to all clinical situations. In a previous article in this journal, I have explained that whatever the unique features of different contexts, clinical work always involves problems: of communicating and testing the reality of information and values; of working in and representing groups; of trust in helping relationships; of conflicting interests and viewpoints of clinic and client; of agreeing on the clinic's tasks and implementing an organizational structure to accomplish them; and of managing transactions (between clinic and client, between parts of the clinical organization, and between the clinic and its environment) which are necessary for the clinic's work, but which always represent threats to clinics' and individuals' integrity.

Because the legal profession comprises diverse practices which vary in significant ways, the one clinical experience shared by all of us in the profession is traditional legal education as practiced in typical law school courses, the clinic in which student-clients seek law faculty help in becoming qualified as professional lawyers. My purpose in this article is to make concrete and comment upon the common themes of clinical work as they arise in this context which we have all experienced intimately, occasionally painfully.

I. The Clinic

On the surface clinics and their clients agree on the tasks for which they join together, for example in law school of qualifying laymen to become lawyers. Nevertheless, clinics and clients have very different viewpoints. For law schools education and research are the reasons for their existence and are their continuing business. From law students' viewpoint, in contrast, legal education is a temporary, preliminary occupation: they bring with them prior learning and experience, incor-

* Professor of Law, Indiana University, Bloomington.
porate a selection of the knowledge and experiences available to them in law school, and go forward from law school to earn their livelihood through the exchange of legal services for material rewards with the institutions and individuals who are their clients and employers. Law schools are matured, functioning organizations, while students, as lawyers and otherwise, are in a starting-up, developmental phase. A law school may focus on students as future lawyers, and when students leave the school as successful graduates, the school is through with them (except to ask them for money and political support). In contrast, students must integrate the lawyering aspects of themselves with the rest of their lives. For them the process involves changes in themselves, incorporating knowledge, values and behavioral skills. It is unclear for them what aspects of their legal educations they will be able to leave behind when they disentangle themselves from the law school.

Clinicians tend to obscure their difficulties in agreeing on their tasks. In law schools, tasks are uncertain in both content and priorities. What is law and the practice of law are controversial descriptively and normatively. Which aspects of professional training are a law school’s responsibility is controversial, as are the relative importance of teaching, which is of primary concern to students, and research and service, which law schools, like many clinics, understand to be part of their work. Law schools have responded to these uncertainties by permitting faculty to operate on their own task conceptions, subject only to indirect controls of salary, promotion and tenure decisions and informal social pressures. Significant diversity of task viewpoint is tolerated. Students have diverse views on these matters as well, and faculty instruction is only one source of influence on their task understanding.

Within any clinic there are typical contexts in which professionals and clients engage each other. The courses which dominate law school curricula are “all-purpose” organizations in which faculty understand they have responsibilities for conveying knowledge of a subject matter, training the skills necessary to “think like lawyers,” and impart appropriate professional models and attitudes according to which students will behave responsibly in their professional roles. Faculty are given wide latitude to order their priorities among these goals and to fill them with their own conceptions of the law, the legal profession, and the law school’s task. The single examination at the end of a course which typically measures students’ performance furnishes imperfect and (con)fused evidence of student competence in the different goal areas. The single grade which the examination produces is averaged with the
grades received in other all-purpose courses to determine eligibility for graduation. There is no "quality control" of students' discrete competencies in knowledge, skills and professionalism other than their having sufficiently satisfied a sufficient number of faculty with their diverse, and only informally controlled, task conceptions and priorities.

The clinical experience to which we turn will serve as a particular example of a professional (a law school faculty member) helping clients (law school students) achieve a desired goal (achieving qualification for legal practice). The event described occurs in one of four or five typical courses which law students will be taking during their first term in law school. In recounting this clinical experience, I will illustrate how one professional in one context coped with multiple, competing task demands, in this instance of teaching about a specific legal subject matter and about the legal system of which it is a part, of training in the skills of legal analysis and discourse, and of initiating the client-students into the role of professional lawyer. This is an example of an individual with professional training helping inexperienced clients achieve goals sought by clients, but through a "treatment" program prescribed by the profession on the basis of technical experience not shared by client. I will follow the recounting of the clinical experience with some commentary.

2. A Clinical Experience

This clinical experience is from the first-year course in Civil Procedure which I taught for several years. The teaching/learning situation to be described occurred during the fifth week both of the course and the students' experience in law school, and my client-students were still inexperienced in engaging with their faculty-clinicians. While the classes in question reflected my idiosyncratic methods and task conceptions, they were within the limits of conventional law school pedagogy.

The subject matter of Civil Procedure, as I conceive it, is the means provided by the legal system for resolving disputes and settling estates, and the task of the course is to build a working model of this procedural system. One does not learn to exercise judgment in operating in a system by learning the mechanics of isolated parts, be the system inanimate machinery or a social system, but one must have a conception of the whole system and the functional relationship of the parts to the whole. While operators can be instructed to take specifically described actions in defined circumstances, for example, in operating
machinery to turn a valve a specified degree and direction on a defined indication, exercising judgment in their operations requires having a working model of the system in their minds so they can estimate what effects turning the valve will have in other parts of the machinery and on the functioning of the whole.

Model building requires studying the parts and the whole at the same time, which is a considerable intellectual challenge. At the same time, misconceptions about law which beginning students' frequently bring with them are drastically confronted in Civil Procedure, a subject matter many expect to involve learning clear rules regarding the do's and don'ts of litigation, something like putting square pegs in square holes. The reality is that critical aspects of the procedural system are as uncertain and indeterminate as anything the law has to offer. The shapes and sizes of the holes are constantly changing and the shapes of the pegs subject to dispute. Overcoming these preconceptions was perhaps the hardest obstacle to effective legal studies for many of my client-students and the greatest obstacle in gaining their collaboration with me in our shared clinical tasks.

In the class situation to be described, the class is studying the second case in the second chapter of the course materials, "Civil Litigation: Available Remedies." Two subject matter tasks are pursued. The part of the procedural system which is the subject of the chapter is the kinds of remedies which may be available as the fruits of litigation. At the same time, this is the first occasion in my structuring of the course on which examination of the functioning whole of litigation is undertaken.3

Regarding available remedies, the students became acquainted with the award to claimants of monetary compensation, with decrees and injunctions, and with declaratory judgments. The object was not to

2. The teaching materials were ones accumulated and edited by me over my several years teaching the course rather than a commercially published casebook. Edwin H. Greenebaum, Materials on the Resolution of Dispute (not published).

3. The first chapter in the course materials had acquainted the students with some estate settling and dispute resolving devices which, like the "judgments" which conclude litigation, foreclose subsequent litigation of the merits of a dispute, for example, statutes of limitations which provide that claims may not be sued upon in litigation after periods of time and settlements which provide for conclusive determination of parties' rights by agreement. The procedural system offers complementary devices for settling disputes which is the systemic context in which each operates. Also, litigation, the most complex device, contains elements of the simpler devices studied in the first chapter, that is, time limits, stipulations, and protection of reliance on representations.
A Clinical Experience

achieve comprehensive learning of the topic, which was treated in only nine class sessions, but to sample the kinds of remedies available and become acquainted with the factors which influence development of the law governing remedies and its administration in cases. That is, the purpose was to identify one part of the procedural system with sufficient understanding for it to take a functioning position in the whole.

In examining the whole of litigation, students' attention was directed to the fact that litigation is coercive; those served with a court summons to respond to an asserted claim must participate in the litigation or lose their rights by default. Students were directed to examine what the justifications may be for this coercive process, including the necessity of having disputes resolved, the importance to the parties and to the public of protecting and vindicating substantive rights, the existence of ascertainable and acceptable legal criteria (rules of law) to control results, the existence of procedures likely to reach correct results, decision making by competent and impartial judges and juries, and participation of the parties in the decision making process. In their studies students discover that each of these foundations for the acceptability of litigation can be very shaky.

The case which is the focus of our teaching/learning situation raises a question of whether a claimant should be compensated with money for a psychic/emotional injury which claimant asserts she has suffered and will continue to suffer in the future as a result of defendant's misconduct. More particularly, the case in question, McAlister v. Carl,\(^4\) raises the issue of in what circumstances and to what extent claimants may be awarded compensation for that loss of enjoyment of life which may result when injuries (negligently caused by defendants) disable claimants from pursuing their chosen occupations. Economic injuries are not necessarily involved in such cases as alternative employments available to claimants may pay as well, even if they do not give as much satisfaction. In advance of class, students are assigned to study the appellate court's opinion and some notes which include a problem in which students are asked to prepare a memorandum (in their minds) in the role of a clerk to a trial court judge in the jurisdiction in which McAlister v. Carl was decided, evaluating how McAlister v. Carl should bear on the decision of a hypothetical new case involving a claim with some similarities to that precedent. It is my clinical task to help students understand and use these materials to attain course goals. If the substan-

\(^4\) 223 Md. 446, 197 A.2d 140 (1964).
tial description of and quotation from the case and notes which follow seem tedious, bear in mind that it is less than the students endure in preparing for these (usually two) classes.

In *McAlister v. Carl*, there was no question that defendant was legally responsible for claimant's injuries, that is, that defendant's negligence caused the injuries, nor, as the case was presented in the appellate court, was there any continuing question regarding claimant's compensation for economic injuries (principally medical expenses). The trial judge, however, had not allowed claimant to introduce evidence which would have shown that claimant had recently received a college degree in physical education and that the injuries suffered would prevent her from pursuing her chosen occupation as a physical education instructor.

Colloquies between court and counsel made it clear that this evidence was intended as the first step in showing that the plaintiff was trained in this field, that she wished and intended to become a teacher of physical education—particularly of swimming—and that her injuries prevented her from doing so and required her to take up another and more sedentary occupation.¹

This aspect of loss of enjoyment of life, therefore, was not available for consideration by the jury in awarding compensation, although the jury was in a position, and was instructed by the judge, in awarding compensation for "pain and suffering" to consider evidence of claimant’s diminished ability to engage in and enjoy swimming, horseback riding and long motor trips. "The jury's verdict was for $1,528.50, which was substantially the sum of plaintiff's medical expenses . . . plus $1,000.00."² Claimant asserted on appeal that the trial judge's refusal to permit presentation of the evidence regarding her ability to pursue her chosen occupation was an error requiring reversal of the judgment.

The appellate court's opinion acknowledges that certain aspects of emotional distress are compensable by awards of money, but notices that:

Authors are divided, however, as to whether loss of enjoyment of life is compensable in damages . . . Several objections are relied upon to defeat recovery for such damages: usually that such damages are too speculative or uncertain and are incapable of

---

5. *Id.* at ____, 197 A.2d at 141.
6. *Id.* at ____, 197 A.2d at 142.
measurement in monetary terms, and sometimes that such damages would overlap other elements of damage otherwise compensated for, and occasionally because of lack of causal connection. Cases which uphold recovery have no difficulty with the question of causation (and we have indicated that here we do not), and they usually meet the other objections on the ground that the problems of determining the existence of such damages and of measuring them in money are not materially different from those involved in making any award for pain and suffering. . . .

After describing some of the precedents, the court goes on to say:

Most of the cases which have upheld recovery for loss of enjoyment have done so on a broader basis than is involved here. Usually they deal with capacity to enjoy things which involve matters of common experience with which a jury may be expected to have some familiarity. . . . Though we agree with courts and commentators who have adopted the view that the difficulty of measuring damages for loss of enjoyment in terms of money should not of itself be a bar to the recovery of damages for such loss, we are not unmindful of the numerous cases in which this court had held that speculative damages are not recoverable. It is difficult to lay down any hard and fast rule and to draw a clear and sharp line of demarcation between damages which are purely speculative and damages which are capable of some reasonable measurement based upon the common knowledge or experience of juries (or of judges sitting without juries). In cases involving loss of capacity to enjoy more or less usual or familiar things or activities of life, the element of speculation seems no greater than in disfigurement cases. . . . But once we get beyond that and have to consider such a question as we have here—damages for the enforced abandonment of a desired occupation which the plaintiff had not entered upon—the problem is apt to become more difficult and the guides of common experience less sure. In some instances, however, this might not present any great added difficulty. Thus, we might suppose a case in which the plaintiff has completed a college course designed as a preliminary to entering medical school, has just graduated from medical school, has taken and passed the necessary examinations and has received a license to practice, has prepared himself and plans to engage in surgery, and has been appointed to an internship in some great hospital. Then through the defendant’s negligence, he suffers injuries to his hands which prevent him from practicing surgery. In such a case, and leaving to one

7. *Id.* at ___, 197 A.2d at 143-4.
side any question of pecuniary loss which might be entailed, the loss of the plaintiff's opportunity to engage in his chosen occupation would seem to be one for which damages could be awarded without any substantially greater risk of speculation than would be involved in making an award for disfigurement (apart from loss of earning power consequent thereon), and would seem to be equally compensable. ⁸

Nevertheless, the court affirms the trial court's judgment.

We think that whether, or to what extent, damages claimed for loss of enjoyment due to enforced change of occupation are too speculative to be submitted to the jury, depends in large measure upon the facts and circumstances of each particular case, and that the admissibility of evidence with regard thereto should (at least until sufficient experience shall have developed to warrant the formulation of a more definite rule) be committed largely to the discretion of the trial court. ⁹

There is ambiguity, however, regarding the object of the discretion in a case where the right to jury trial has been claimed. Is the trial judge permitted to decide whether a particular item is a matter of "common experience" the loss of which may be compensable or is not too "speculative" on some other basis? Or is the discretion limited to a decision whether the offered evidence is sufficiently probative to be worth the jury's attention, or whether it would only serve to confuse or obscure the evidence which the jury ought to consider? This ambiguity arises because the court goes on to say:

Our examination of the testimony admitted and of the lengthy colloquies as to what the plaintiff was seeking to show leads us to think that the evidence as to whatever sense of disappointment or frustration or of loss of enjoyment the plaintiff may have experienced through her inability to become a physical education instructor was rather vague and unsubstantial. Though it is evident that she was fond of swimming and that she had elected to make physical education the major field of her collegiate education, it seems clear that she had done little to carry her ambition into practical effect. She had graduated from college, we suppose, in June and had had summer jobs as a lifeguard and swimming instructor. It was not until the September following her graduation that she was advised by her doctor not to go into teaching physical educa-

---

8. Id. at __, 197 A.2d at 145.
9. Id. at __, 197 A.2d at 146.
tion, but to go into a more sedentary occupation; yet even then, with the opening of the school year close at hand, she had not obtained employment as an instructor in physical education. She spoke merely of then being "interested" in such a job in some unspecified school in Virginia. We find no indication that such employment had been offered her, and certainly she had not engaged in it. Furthermore, there is no proffer of any direct evidence to show that her enjoyment of life in the work which she has since gone into is less than it would have been in physical education. On this state of the record, we think that any damages which might have been attributable to the plaintiff's inability to become an instructor in physical education were in the realm of speculation. . . . We accordingly affirm the judgment appealed from.  

Class discussion of the case, molded by my "leadership" into my version of the Socratic law school classroom, included my questioning students regarding their understanding of the court opinion, further questions intended to draw out and develop their analysis, my comments on their responses and on the materials, and discussion among students. Through this process we sought to elucidate the position in which the court in McAlister found itself and the factors influencing its decision. As the court notes, its decision is not directly controlled by authority. The court, therefore, must declare the law for the case consistently with such precedents as there are and with legally significant values.

The court is faced with a dilemma; there will be regrettable costs in deciding the case either way. Some of the factors are recounted in the following paragraphs.

There are several respects in which allowing compensation for the asserted claim would seem unsatisfactory. Evidence of loss of enjoyment will usually center on the claimants' testimony which may be of questionable reliability because of their interest in the result. Awarding money for a psychic injury requires an entirely subjective evaluation. How are experiences of pain and loss of enjoyable activities such as horseback riding and swimming equated with $1,000? If a jury should be persuaded to award an extremely large amount, judges reviewing

10. *Id.* (citation omitted). An additional conceivable construction of the court's holding was that the trial court's ruling was "harmless error." That is, even if the exclusion of the evidence was error, it did not affect McAlister's rights sufficiently to justify a new trial. As the opinion did not purport to rely on harmless error, and as the discourse was already sufficiently complicated, I chose not to introduce the principle at this point unless students raised it. They never did.
the award, for example, on a motion for a new trial, would find it difficult to articulate criteria by which to reject that verdict. These factors indicate a strong potential for unequal treatment of claimants and defendants in similar circumstances, but having their cases heard by different tribunals. And there are court precedents supporting the limitation of compensation in this area.

Opposing factors, however, tend to make awards for these injuries feel compelled. The loss may be a real, felt injury for which a sense of justice may require compensation, and letting defendants off too lightly might fail to deter careless conduct. The limitations on the available evidence to support such claims are not necessarily the fault of claimants. There is difficulty in finding a reasoned distinction between this and other psychic injuries for which compensation is allowed. That is, the limitation seems arbitrary which allows claimant to go as far as to show loss of enjoyment of activities, such as horseback riding and swimming, but not to show their relevance to career training. (One wonders, in fact, if McAlister's lawyer made the argument that the evidence of career training and intentions should have been admitted to prove the extent to which she received pleasure from horseback riding and swimming.) Finally, there is concern for possible infringement of the claimed right to jury trial if the trial judge is to make necessarily factual distinctions, such as whether a loss is one which would be comparable to common experience or whether the evidence is sufficiently persuasive to make it worth considering.

Study and discussion of these matters was intended to contribute to students' understanding of remedies, but also to further develop jurisprudential themes worked on from the beginning of the course: that courts face dilemmas in which there are no satisfactory decisions, that factors focusing on an issue may relate both to values of substantive law and to the operation of the procedural system (whether to permit an "irrational" determination equating pain with money affects the acceptability of courts' decisions as well as compensation for injuries), and that indeterminacy in the law exists not only where authorities are not controlling, but also because courts and legislatures sometimes choose to adopt indeterminate rules.

The "Problem" in the notes following the court's opinion in the teaching materials was intended to exercise students in their developing abilities to understand the course subject matter and to analyze and argue the resolution of legal issues. But, as will be seen, issues of professional roles and responsibilities were introduced as well.

4. Problem: You are a clerk to a trial judge in the same jurisdic-
tion as the one which decided McAlister v. Carl. In a subsequent case, a female plaintiff has offered to prove the following matters:

She has graduated from an accredited law school and passed the state's bar exam, although plaintiff has not obtained or attempted to obtain a position or office to practice law. She has subsequently been injured due to the negligence of defendant resulting in plaintiff's becoming blind. Plaintiff's primary interests in life are marriage and family, but she had intended to pursue a legal occupation in charitable and public service capacities, and she had felt a sense of security knowing that she could practice law for pay if the necessity should ever arise. And finally, blindness makes the practice of law exceedingly more constricted, and perhaps impossible if the attorney does not have special talents and experience.

Your judge has asked you for a memorandum on how McAlister v. Carl bears on the issue of damages in the subsequent case. The judge would also like you to advise him whether the damages should be any different if he should find that plaintiff's injuries were intentionally, rather than negligently caused?

5. The extent to which McAlister would control the above "problem" case as a precedent will be discussed in class. To the extent that you do not develop the available distinctions on your own, you may find it worthwhile to try to identify those factors inhibiting your work.

6. Do you feel McAlister's attorney represented her competently in developing arguments and in being adequately resourceful in finding and using precedent? If not, what factors may have inhibited the quality of that attorney's service?

Suppose as a practicing attorney you feel hostility towards women who offer their valuable professional services for nothing, because it's the kind of work you would like to do but feel you should be paid for it. (In fact you are just establishing your practice and are a bit hungry.) If the claimant in the problem case above sought your professional representation, what service would you provide?

7. Conflicts of interest can be very subtle. (The Code of Professional Responsibility discusses the topic in Canon 5.) The responsible practice of law is a challenge to anyone's maturity, but collaborating professionals can be helpful to each other in responding appropriately to the personally challenging aspects of practice. In that regard, you are presently developing habits of thought and behavior which will influence your professional life.
How do you presently share the responsibility for learning in law school courses? How and to what extent do you give each other constructive help and support?

Class discussion of the "Problem" typically generated diverse views regarding whether the damages in the situation are too speculative, whether the loss qualifies as a matter of common or familiar experience, whether the offered evidence is more probative than in McAlister v. Carl. These factors were usually compared to the court's hypothetical regarding the medical student, for example, noting that law, like medicine, requires obtaining a graduate degree, rather than only enduring an undergraduate program, as in McAlister v. Carl, and that this evidences a greater commitment to the occupation.

Thus, in their fifth week as lawyers, students were learning to play the legal game, but they were not too venturesome. For example, class members never noticed without prompting a distinction between McAlister v. Carl and the problem facts, that is, that claimant in the problem was offering to prove a loss of security as well as a loss of enjoyment. This difference may be argued not to require a different result, but it is a kind of difference which students were learning to be the subject of legal argument (for example, is a loss of security more important, more a matter of common experience, more persuasive?).

Class members were slow, as well, to examine decision making processes in McAlister and in the "Problem" as human, social phenomena. They seldom raised for discussion on their own initiative, for example, questions regarding whether the court in McAlister v. Carl was influenced by biases favoring high status, predominantly male professions (medicine) and against a lower status, more predominantly female one (school teachers) and how the possibility of this bias affects predictions regarding court responses to such cases in the present and future. Even after the issue was raised, there was infrequently explicit indication that questions raised by the case and problem were of personal importance to class members, even though there was significant female representation in the class membership during a period in which feminism was developing vigorously. It was left to my initiative, as well, to introduce into the discussion the possibility that biased stereotypes and attitudes may have affected the quality of representation of McAlister by her lawyer and the service which the students themselves may provide their future clients, although students professed to be concerned with practical and ethical problems (and although the notes had called these aspects of the "Problem" to their attention).
There is a significant difference in studying mechanical and social systems. With mechanical devices, there is no ambiguity regarding motive power; its source, the quantity of its force and the pathways of its transmission can all be identified. Some experiments with animate systems simulate this situation. A hungry rat learning to run a maze in search of food (and without the distraction of other rats, especially those of the opposite sex) presents little ambiguity in motivation. Creatures with more subtle motivations, however, are less suitable objects for such behavioral studies. Building a model of the procedural system, as we attempt to do in Civil Procedure, presents all the difficulties inherent in understanding human, purposive activities; motivations are multiple and conflicting and must be inferred from participants' actions as well as from what they say. This view of the subject matter which I was dedicated to helping my client-students see and accept was strongly resisted. I confess to colleagues and students that Civil Procedure was for me a year long struggle for the hearts and minds of my students. Motivations have emotional implications, and studies of human systems are complicated by the complex motivations of those, students and teachers, conducting the investigations.

In the clinical work I have recounted, I believe that I had a coherent conception of the goals I was pursuing and that they were appropriate to the teaching/learning work of the larger law school program. I had first encountered McAlister v. Carl in the teaching materials of another experienced Civil Procedure teacher, and colleagues who have helped me with drafts of this article have told me they are interested in using the case and the "Problem" in their own teaching. Finally, the teaching methods I used consisted of rational discussion among adults and were validated by a long, pervasive tradition in legal education. It seems it should have worked, but my judgment is that the success of this work was limited. The reasons, I believe, relate to difficulties in clinical work generally, as I will explain in the commentary which follows.

3. Commentary

If inexperienced clients are not to be passive objects of their pro-
fessional helpers’ practices, they need to learn to recognize, digest and use new information. Early in students’ legal studies, as they were in this teaching/learning situation, the subject matter of law courses, including Civil Procedure, are not merely new data; it is a new kind of information organized on a structure of legal doctrine. The nature of “rules of law” is not simply explained in familiar terms. These are conceptions which influence decisions of lawyers in their various roles, but which are indeterminate, having shifting meanings in different contexts. Legal rules are understood differently by different lawyers, which is itself a part of the reality of these “rules.” Further adding to difficulty, the subject matter must be inferred from an unfamiliar literature which has to be understood as a product of the processes which produced it. For example, the meaning of language in a court opinion is different depending on whether the judges are speaking in a context of permitting an action to be commenced, determining the proper instructions to a jury, foreclosing decision of a case by a jury by directing a verdict, awarding a new trial or, as in *McAlister v. Carl*, admitting or excluding evidence. In each instance what facts are assumed to be true and what turns on the result will differ. Students, however, come for help with becoming lawyers, not to be burdened with such uncertainties.

Clients do not easily conceive, then, the goals of professional work from clinicians’ viewpoint. In the law school classroom, there are multiple goals, and the studied materials have multiple relevance. The *McAlister* case, for example, is examined for its practical use in lawyering roles, for its contribution to course themes, for directions in law reform, for increasing jurisprudential sophistication and reading skills in the legal literature, and for exploring professional responsibilities and conflicts of interests. As students and faculty develop their trains of thought in class discussion, the focus of examination may shift without explicit indication. Our student-clients need to develop apt conceptions of each goal and must perceive the aspect which is presently being discussed. Unfortunately, the focus of class discussion is already shifting among goals before students have developed that competency.

Further, students need to conceive how work in the present class relates to their larger law school experience and career development. How can the class discussion help students to do better in the course examination? What messages in this course are valid for other subject matters and other instructors? How do students’ developing conceptions and behavior affect their professional and personal group memberships? What are the values implicit in the information which I am
pushing at students in the teaching/learning situation? From what value perspective do I elucidate and emphasize? Is my implicit career advice regarding acceptable styles of legal discourse and behavior good advice?

Differences in clinic and client groups' composition and in their relations to external constituencies inhibit the trust with which clients accept what their professional helpers tell them. A clinic's clients may be very heterogenous. For example, the diversity of the legal profession, with its multiple, conflicting images, attracts a diverse student body to law school.13 While some students will have been planning to be lawyers from early years, others make late decisions to attend law school as the least unattractive alternative presently available to them. The clinicians who clients encounter are likely to be much less diverse. Law faculty, for example, are selected on close examination by this already homogeneous group from the most successful of former law students. They are actually attracted to the institution and the way it works. Clinicians easily develop loyalties to their professional group, and this cohesiveness is felt by clients.

Important constituencies outside of the helping relationship affect professionals and clients as they work together. In law school courses, those constituencies include state authorities, the universities of which law schools are a part, the practicing bar, the national legal education community, and the law school's administration and faculty. These groups affect law school funding, faculty promotion, tenure and mobility, and students' abilities to pass bar examinations and obtain job placements. The faculty's and students' mental images of these constituencies reflect both reality and fantasy. This is a complex field in which participants' views of what needs to be done for clinical work interact with their ideas of what they must look like to satisfy those who will make decisions which will affect their lives.

Experienced professionals can easily forget how confusing the rules of the clinical game can be to their clients, whose opportunities to test the reality of their developing conceptions may be chaotic and difficult to organize. Law students do not usually receive direct feedback on their current understanding, but are limited to vicarious participation

---

13. According to D. Campbell, Manual for the Strong-Campbell Interest Inventory 60 (1974), most occupational groups have distinct psychological profiles, but a "few occupations, notably, LAWYER and INVESTMENT FUND MANAGER, resisted classification, in the sense that they had no high mean scores, which probably means that these occupations are not psychologically homogeneous and should be broken up into smaller groups." See also J. Holland, Making Vocational Choices: A Theory of Careers (1973).
in conversations between faculty and other students. Opportunities for their direct participation in class are unpredictable and stressful. Comparing understanding with other students is unreliable. The most powerful reinforcement may come when students feel they have developed an understanding which has helped them to get from one day's work to the next. Students develop strong attachments to such understanding whether or not the understanding is apt.

Professionals have their information processing problems as well. I brought with me to the teaching/learning situation my understanding of the subject matter and of students' problems of learning it, as well as a strategy for achieving my teaching goals. These preconceptions needed to be tested against the reality of the situation, but understanding students' verbal and nonverbal communications was not easy as I attempted at the same time to explain (and defend) my conceptions of the subject matter, to assess the responses of individual students and of the whole class, and to meet my faculty colleagues' expectations of my work. Ideally, I should have empathetically listened to students' conceptions and worked to understand their problems of understanding, but I had problems of my own.

Processing information and accomplishing the clinic's tasks are complicated by our difficulties in working in and on behalf of groups. That clients frequently are groups and are always members of groups affects the functioning of professional and client working together. Groups develop rules, for example regarding the appropriateness of student initiative in class discussion, which are uncomfortable to break. Emotions such as dependent helplessness, paranoid anger, and euphoric hopefulness seem contagious in group life. The group culture related to these emotional states in law school classes admires ease of intellectual brilliance. Groping through uncertainty is not rewarded in student or teacher, although functionally that is what is required. Lawyers' and judges' behavior in legal processes is genuinely confusing in many instances, and expertise is not adequate to remove this reality, as disappointing as this may be. Clinicians will choose either to collude with the myth of expertise's omniscience or to labor with their clients to confront reality. In the large class situation, students' lack of control resulting from their immature understanding is aggravated by the difficulties of group life. In the group, students' competence sometimes seems to have flown away. For some students the experience of being called upon in class feels devastating.

Professionals' expertise does, of course, give them advantage over their clients. I came to the teaching/learning situation with an organized
knowledge of the subject matter and with experience in the clinical context with the directions in which the work was likely to lead. For the inexperienced students, who were my clients, all was uncertainty. Their dependency in needing help from me may have provoked in students unresolved issues of relations to parents and other authority figures in their life histories, leading them to act in the present context on old scripts which may not have been appropriate. I, for my part, had emotional needs for a responsive class, was responding in the law school to the authorities who judged my work, and had to cope with the frustrations of the inevitability of the class being a partial failure (as well as a partial success).

Supplementing the protections of expertise, professionals, their colleagues and their predecessors structure clinical contexts to protect themselves from the anxieties inherent in their work.\(^{14}\) Inexperienced students with uncertain relations among themselves come in large groups into the law school classroom where they sit in uniform rows and where the instructor has the power of the podium and of giving grades. Because the benefits of such positions are conferred on individual professionals by traditions they do not create and have limited power individually to alter, they can feel diminished responsibility for the situation. And clients, including our students, can easily assume roles of victims with no responsibility at all.

There are important aspects of clinical work of which clients have special knowledge, that is, the circumstances of their own situations. As clients become experienced, they can become expert in their own cases, making possible fruitful collaboration between professional and client.\(^{15}\) As my students became expert in their particular learning problems, they were in a position to help me to help them, and I needed that help to be most effective. In typical law school classes, however, that spirit of collaboration comes in fine, but too rare moments.

Underlying the difficulties of working together is that negotiating a task between clinic and client frequently amounts to an adhesion contract. In our “Clinical Experience” the students are assumed to have accepted what the law school was offering in accepting admission. But implicitly the negotiation continued. Students accepted what they were able to and what they would; they wrote examination papers for me; and I could have failed them all if I dared. I didn’t dare;

but they didn't dare reject everything I offered, either. I was concerned to change students into the best possible lawyers for the benefit of their future clients, while students' most pressing need was to get through the course on acceptable terms. I felt I was benefitting students in my attempts to re-create them in my own successful, rewarded image, but to students my image may have seemed neither possible nor desirable. While I was aware that these conflicting interests and task issues were very difficult to deal with in this large class with its goal of building a model of the procedural system, I also knew that there was nowhere else in the first-year curriculum where working through task conflicts was central.

Different law school faculty make different compromises with the constraints of this systemically difficult situation, and over all, in our hopefully complementary ways, we may do as good a job as the structure of all-purpose courses permit. In the scope of this article, I have been able to do little more than call attention, with regrettably little development, to problems which pervasively confront clinicians and their clients and illustrate how they arise in legal education, the clinic in which law faculty and their client-students work together. Law schools as clinics have their unique tasks, complexities and constraints, but any clinic may obscure important issues through its organization. It seems responsible, then, to ask of a law school, or of any other clinic, whether there might be more productive ways to organize ourselves for our particular helping tasks.