Our first class of the millennium has been busy and productive. Working hard are five 3Ls: Tiffany Bennett, Blair Burns, Tate Davis, Jennifer Patterson, and Chris Pecone, and five 2Ls: Sue Alcorn, Michelle Dhunjishah, Court McBayde, Laura Quirk and Deborah Tyson.

LITIGATION OF FEDERAL AND STATE CLAIMS

Blair Burns and Michelle Dhunjishah researched and drafted a complaint filed in federal bankruptcy court. Their client is an 80 year old widow who lives in a nursing home. All of her Social Security income is being taken by the nursing home each month. However, federal and state law guarantee her a $30 monthly “personal needs allowance.” Blair and Michelle allege that the nursing home has violated a federal statute that protects Social Security income from creditors. For over three years, their client has not had a penny of spending money.

The lawsuit seeks damages, a penalty for unfair debt collection practices, and a declaratory judgment. Under state consumer law, the Clinic may also recover attorneys’ fees for its advocacy on behalf of this client. Michelle and Blair’s case was covered by local TV news!

ANOTHER DYNAMIC DUO

Two other students are co-counseling, this time in state court litigation. Deborah Tyson and Sue Alcorn (a visiting student) recently filed a Complaint and Motion for Preliminary Injunction. Their client is a woman who had appointed her son to handle her finances, under a power of attorney. Unfortunately, her son used our client’s credit cards for his own purchases, and for cash advances, running up thousands of dollars in debts. As if that wasn’t bad enough, the son took out a mortgage on Deborah and Sue’s client’s home, without telling his mother.

Deborah will argue the Motion for Preliminary Injunction in court, to prevent the defendant from spending the mortgage proceeds until the case is completed. She will also argue that her client’s on-going medicine bills - costing hundreds of dollars a month - should be paid out of the mortgage proceeds pending the outcome of the case. Sue - who is a CPA - has done a masterful job reconstructing several years of messy financial records.

Jennifer Patterson’s client signs her will.
GUARDIANSHIPS FROM EVERY ANGLE

Hats off to Court McBryde, who has dived into some pretty complicated guardianship cases. She was appointed by the court to represent a married couple, both of whom were alleged to be incompetent! As the guardian ad litem, she investigated the facts and met with her clients. One spouse, it turned out, was exhausted as a result of caregiving duties for the other! Court filed a motion for a multidisciplinary evaluation and a request for a jury trial. Both cases were ultimately resolved.

This semester, our technical expert on the nitty gritty of guardianship accountings has been Laura Quirk. Laura has tackled both annual and final accountings, working with the Clerk of Court's Estates Division to be sure receipts and disbursements are listed properly. Laura has also been representing the disabled daughter of a former client of the Clinic, who recently died. The daughter needed help negotiating with a creditor, so that she would not lose her home in the estate proceedings.

Chris Pecone is one of the first to use a new state statute on gifting by guardians. The law was enacted last fall, and allows guardians to transfer the property of their "ward" under certain limited circumstances. Chris represents the granddaughter of a gentleman who has been in a nursing home for several years. The granddaughter is the general guardian, over property and personal decisions. On behalf of the guardian, Chris filed a petition to start a Special Proceeding to transfer the ward's real estate to the guardian. This will allow the property to pass to the granddaughter, as the gentleman wanted it to do under his will. There are also complex Medicaid issues in this case, so Chris has had his hands full!

THERE'S MORE TO LAWYERING THAN THE LAW

Tate Davis had a difficult case to negotiate. His clients were a couple who wanted to move into a senior citizens housing complex with federally subsidized rents. Unfortunately, the husband had some minor misdemeanors on his record, from many ago. Though the law wasn't strongly supportive of Tate's clients' right to admission, Tate used equitable and common sense arguments to show the landlord's attorney that his clients should be admitted. And he won - the clients are now able to live in affordable, clean housing!

Sometimes a big challenge in a case is counseling the client about which options are realistic and workable! Tate Davis used his calm, persuasive style to assist another client who has been left in a rest home against his wishes. Though the client was adamant about returning home to live independently, this posed enough risks that he might even be declared incompetent. Tate has worked with the rest home and local agencies to arrange for his client to attend outside activities, and to explore assisted living housing options. Best of all, Tate's client really appreciates the good advice he’s been getting!
TESTAMENTARY TRUSTS - WHEN THE KIDS CAN'T HANDLE THE MONEY

Often our clients have adult children who are unable to handle an inheritance. They might have substance abuse problems or mental health difficulties. The parents - our clients - need to leave property in trust. Tiffany Bennett has set the standard this semester for a well-thought out, well-drafted will with testamentary trusts. She met several times with the client, provided for alternate beneficiaries, and listed the conditions under which her client’s home would be held in trust for one of the adult kids. Good job, Tiffany!

MEDICAID ESTATE PLANNING

Jennifer Patterson helped an elderly couple, when the wife's Parkinson's disease made it necessary for her to enter a nursing home. The couple was afraid they would lose their home - worth about $35,000 - and all their life's savings due to the cost of care. Jennifer advised them about several options allowed under Medicaid rules. This included prepaying for the couples' funerals and making home repairs that were long overdue. The husband continues to live in the home, and is now more financially secure.

ETHICS WITH A CAPITAL “E”

Elder law requires a broad range of knowledge. Students need to know about some of the medical issues that come up, especially involving mental capacity. An elder law attorney also needs to understand ethical principles that society uses when dealing with impaired or dying people. The ethical principle of “autonomy” underlies many of the laws that students learn about in this course. “Beneficence” is a principle underlying our protection of incompetent elders. When there is no law that clearly controls, lawyers, courts, physicians, and society look for the ethical rules to guide us. We have many difficult decisions to make as our society gets older - both on a policy level and for individuals. Ethical principles can be our guiding lights as we struggle with these decisions.

“Medical Ethics and End-of-Life Medical Care” will be the subject of a class taught by Jane Litzinger, Chaplain Supervisor, and Drew McGregor, M.D., a critical care physician from the Department of Anesthesiology. We also will tour one of the Intensive Care Units as part of this class.

CALLING IN REINFORCEMENTS!

Many thanks to teaching assistant Scott Horn, a 3L. Scott was in the Clinic last semester and has worked part-time in the Clinic this spring. He's been a big help with the Clinic's caseload. Scott will stay in Winston-Salem to practice law with a local firm.

LEGAL AND MEDICAL EXPERTS

We were fortunate to have a class on mental capacity issues taught by Jeff Williamson, M.D., of the medical school faculty. Dr. Williamson is a geriatrician and the Director of the Senior Health Center of the J. Paul Sticht Center on Aging. He
explained the causes of mental impairment, treatment options, and effective ways of interviewing people with dementia.

Local elder law attorney Bailey Liipfert was another guest lecturer. He taught about Medicaid estate planning and the general practice of elder law. Mr. Liipfert is Certified as an Elder Law Attorney by the National Elder Law Foundation.

COMMUNITY KUDOS

In a letter of thanks sent to Dean Robert Walsh about a community program to retirees about Medicaid laws:

"This type of service, particularly the manner in which it was presented, is certainly a credit to Wake Forest University School of Law."

From Regional Long-Term Care Ombudsman Pamela Southerland, which handles problems for residents of nursing and rest home residents:

"The Clinic for the Elderly is a champion of residents' rights. It is a privilege to work with them and support the residents they represent."

COLLABORATION WITH COMMUNITY GROUPS

The Clinic for the Elderly participates in a community group called Seniors and Lawmen Together, or SALT. This group focuses on preventing crimes and fraud against the elderly. The SALT group is made up of agencies who work with senior citizens, as well as senior volunteers who assist law enforcement agencies.

SALT chairman Kevin Robertson agreed to hold the April meeting at the J. Paul Sticht Center on Aging. Our keynote speaker will be Assistant Attorney General David Kirkman, of the Consumer Protection Division of the Attorney General's office. He will cover the various types of scams against the elderly that the AG's office is prosecuting, as well as legislative approaches to protecting the elderly.

HATS OFF TO THE MULTIDISCIPLINARY TEAM!

One of the most valuable features of Wake Forest's elder law program is its connection with the medical school. Thanks to Cathy Wilson, MSW, for coordinating the law students' participation in the Geriatric Assessment Clinic. Our students have especially appreciated Drs. Chris Herman and Paul McGann for taking the time to explain medical aspects of mental capacity.
A Little Legal Humor

"The Grandma Who Spoke Her Thoughts"

One of the refreshing things about working with older adults is that they are often willing to speak their mind, frankly and bluntly. Consider this:

A small town prosecuting attorney called his first witness to the stand in a trial—a grandmotherly, elderly woman. He approached her and asked, "Mrs. Jones, do you know me?"

She responded, "Why, yes, I do know you Mr. Williams. I've known you since you were a young boy. And frankly, you've been a big disappointment to me. You lie, you cheat on your wife, you manipulate people and talk about them behind their backs. You think you're a rising big shot when you haven't the brains to realize you never will amount to anything more than a two-bit paper pusher. Yes, I know you."

The lawyer was stunned. Not knowing what else to do he pointed across the room and asked, "Mrs. Williams, do you know the defense attorney?"

She again replied, "Why, yes I do. I've known Mr. Bradley since he was a youngster, too. I used to babysit for his parents. And he, too, has been a real disappointment to me. He's lazy, bigoted, he has a drinking problem. The man can't build a normal relationship with anyone and his law practice is one of the shoddiest in the entire state. Yes, I know him."

At this point, the judge rapped the courtroom to silence and called both counselors to the bench. In a very quiet voice, he said with menace, "If either of you asks her if she knows me, you'll be in jail for contempt within 5 minutes!"

Community Programs

Students in the clinic for the Elderly each do a speaking program, on legal issues of interest to senior citizens. This semester our programs have been:

- Blair Burns: Beth David Synagogue
- Tate Davis: Sunrise Towers*
- Jennifer Patterson: Westinghouse Retirees' Asso.
- Tiffany Bennett: F.C. Dept. of Public Health
- Laura Quirk: Healy Towers*
- Chris Pecone: Fries Memorial Moravian Church
- Michelle Dahunshah: Crystal Towers*
- Sue Alcorn: N.C. Services for the Blind
- Court McBryde: Bermuda Village

* Low-income housing for seniors.

CLINIC ALUMNI GIVE PRO BONO ASSISTANCE

Thanks to Phyllis Mendel (J.D. 1994) for her generous help on a real estate issue. Also, many thanks to Mark Addison (J.D. 1999) who is serving as the guardian ad litem in a complicated guardianship matter. Both of these Clinic alumni practice with law firms in Winston-Salem.
SPEECHES BY THE CLINICAL PROFESSOR

Besides supervising students' presentations, Clinical Professor Kate Mewhinney does teaching and speaking for a variety of groups. This semester, she has presented programs to:

- The Fourteenth Annual Alzheimer's Research Disease Research Conference, sponsored by Duke University Medical Center.

- Geriatric Mental Health for Long Term CareProfessionals; UNC-CH School of Social Work.

- Leadership Connections.

- Interdisciplinary Seminar on Aging, Wake Forest University.

- Forensic Psychiatry Lunch Series, Dept. of Psychiatry and Behavioral Health, WFU School of Medicine.

- Department of Risk and Insurance Management, Wake Forest University Baptist Medical Center.

THANKS AGAIN TO THE FALL '99 CLASS

CHANGE OF ADDRESS?

PLEASE CALL (336-713-8630) OR WRITE US IF YOUR ADDRESS HAS CHANGED.

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