

PRACTICAL PREPARATION, STUDENT FOCUSED, SERVING THE COMMUNITY— THE WILLS CLINICAL LAB EXPERIENCE

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Practical preparation, student focused, and serving the community are the essential components of the Charlotte School of Law (“CharlotteLaw”) mission.¹ With these concepts in mind, the Wills Clinical Lab (“Lab”) at CharlotteLaw was launched during the spring semester of 2010. This article discusses the mechanics of the Lab, how the Lab embodies the future of legal education, and the lessons we learned along the way.

I. BACKGROUND

Although “[t]he mission statements of many law schools in the United States include some reference to the preparation of law students for the practice of law,”² law schools often struggle with how to provide meaningful experiences for large numbers of students. “The American Bar Association has encouraged law schools to be creative in developing instruction in professional skills related to a lawyer’s practice responsibilities, using the strengths and resources available to the school.”³ The clinical lab is a one-credit course that combines practical experience and classroom training. It is a way to bridge the gap between clinical and doctrinal courses because a doctrinal faculty member teaches the course as either an “add on”⁴ or “follow up”⁵ to a doctrinal course. Rather than

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1. See generally *About Charlotte Law*, CHARLOTTE SCH. OF L., <http://www.charlottelaw.edu/about/aboutcontent.aspx?id=32> (last visited Oct. 1, 2010).
2. Okianer Christian Dark, *Transitioning from Law Teaching to Practice and Back Again: Proposals for Developing Lawyers Within the Law School Program*, 28 J. LEGAL PROF. 17,17 (2003-04).
3. Ursula H. Weigold, *The Attorney-Client Privilege as an Obstacle to the Professional and Ethical Development of Law Students*, 33 PEPP. L. REV. 677, 699 (2006).
4. An “add on” is an optional additional practice ready/skills course hour during the same semester as the doctrinal course of the same substantive subject area.
5. A “follow up” is an additional practice ready/skills course credit taught after successful completion of the doctrinal course of the substantive subject area.

separate practice from theory, the Lab provides an opportunity to apply theory to practice. Moreover, the Lab offers a cost-effective alternative to in-house clinics. Given the cost of in-house clinics, it is nearly impossible to offer all law students an in-house clinical experience prior to graduation.⁶ As law schools look for lower-cost methods to introduce clinical methodology into the law school curriculum, the Lab is a valuable alternative.

The clinical lab approach expands the number of existing faculty teaching clinical courses, and therefore more students receive an in-house clinical experience. Often, this potentially less expensive approach to expanding clinical opportunities involves a larger percentage of the law faculty and the pedagogical advantage of directly linking substantive courses with clinical experience. If a large number of clinical labs is offered, and if students are permitted to take multiple labs, this approach can result in a pervasive approach to the teaching of lawyering skills and professional values.⁷

A. The Required Doctrinal Course

At CharlotteLaw, Wills, Trusts and Estates is a required upper-level doctrinal course. I taught the class for the first time in the fall of 2008 and again in the fall of 2009. In the spring of 2010, the Lab was offered as an elective. Fifteen third-year students participated in the clinic. The only pre-requisite was satisfactory completion of the Wills, Trusts and Estates course (“doctrinal course”). Interested students submitted applications expressing why they were interested in the clinic. Our original plan was to allow ten students to participate in the Lab, but due to an overwhelming interest from the student body we increased the number of participants to fifteen.

Both “doctrinal analysis and theoretical considerations” and “practice” have an “important role to play in a sound legal education.”⁸ Recognizing the importance of both, we emphasized skills and lessons that were not covered in the doctrinal course. The Lab offered a different educational experience where students demonstrated their knowledge of the area of law by using such knowledge to assist clients.

6. See Margaret Martin Barry *et al.*, *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 21 (2000). Because of the costs associated with in-house clinics, even the MacCrate Task Force was not optimistic about offering an in-house clinical experience to every law student. *Id.* at 23.

7. *Id.* at 28.

8. *Id.* at 33.

In the doctrinal course, we begin the semester with a policy discussion about the transfer of wealth. We then move into a discussion about the probate process. Afterward, our first major topic is intestacy. We discuss state statutory distribution schemes that determine an individual's distribution of property when he fails to execute a will. We recognize that most individuals die without a will.⁹ Those who are less educated, minority, and in lower socio-economic groups are disproportionately less likely to have an estate plan.¹⁰ The reasons are varied as to why individuals choose not to plan for their demise. Some state that they have no assets so there is no need, others suggest that they do not need one since they have added additional names to bank accounts and real estate, and others erroneously assume that their spouses will get everything even without a will.¹¹ We spend time discussing how each state, through its intestacy statutes, essentially makes a will for anyone who does not have one. And while the presumption is that the statutes are based on what an individual would have done if he had taken the time to prepare an estate plan, such is not always the case.

After intestacy we move to the wills portion of the class. In the capacity and contests unit, we discuss why a will may be deemed invalid. Discussion questions may include whether undue influence or fraud was involved when the testator executed his will. We also look at situations where the capacity of the testator is questionable. We analyze cases where jilted would-be heirs contest the testator's capacity to draft estate planning documents. We begin to introduce the concept of trusts by looking at whether the capacity to execute a trust is the same as the capacity to execute a will.

As we transition to the formalities of wills, we look at the requirements that are necessary for an execution ceremony to be valid. The execution must be valid in order for the will to be valid. We analyze various situations to determine whether a will should be invalid when the formalities of execution are not met.

When we discuss components of a will and interpretation and construction of wills, we look at what happens when the document drafted is incomplete. May additional writings be attached as part of the will? Does it matter whether the writing was written before or after the will? What happens if a testator dies before the beneficiary? What if property

9. "Will" also refers to will substitutes such as a revocable living trust.

10. Alyssa A. DiRusso, *Testacy and Intestacy: The Dynamics of Wills and Demographic Status*, 23 QUINNIPIAC PROB. L.J. 36, 54 (2009).

11. This is based on class discussions from author's Wills, Trusts and Estates class. Under many state statutes, including North Carolina, a surviving spouse does not receive an intestate decedent's entire estate.

has changed after the execution of a will? What happens if a beneficiary and the testator die at the same time?

We then introduce will substitutes. Individuals often use the terms “will” and “revocable inter vivos trust” interchangeably. So, we discuss how one creates a revocable trust and the benefits of a trust versus a will. The revocable trust is just one type of will substitute. We also discuss life insurance, joint accounts, retirement accounts, and other will substitutes. We look at restrictions to testamentary disposition. We end the semester with an overview of various types of trusts. We look at how a trust is created and the characteristics of a trust. We discuss how to determine whether an instrument is a trust or something else. We look at how trusts and wills are used together to dispose of property. Finally, we discuss the rights of trust beneficiaries and trust administration.

B. The Clinical Lab

1. *Course Overview*

The Lab is an extension of the doctrinal course. We designed the Lab as a course to provide students with practical experience in the area of basic estate planning. Each student was required to prepare a basic estate plan (will, power of attorney, health care power of attorney, and a living will) for at least two individuals seeking assistance through Legal Services of Southern Piedmont (LSSP).¹² An attorney licensed in the state of North Carolina supervised each student. Each student was responsible for initiating and maintaining contact with each of his or her clients. Students were also responsible for making all necessary preparations for the client’s estate plan, scheduling and meeting with his or her supervising attorney, and conducting the client’s execution ceremony with the supervising attorney.

In addition to the work they prepared for their clients, students were required to attend training sessions, class discussions, and other outside activities. They were required to observe two sessions of probate court and write a reflection paper about each observation. They participated in a Habitat for Humanity New Homeowners Estate Planning Session where they conducted preliminary interviews for the new homeowners. Members

12. *See generally* LEGAL SERVICES OF S. PIEDMONT, <http://www.lssp.org/> (last visited Oct. 1, 2010) (LSSP’s mission is to assure a full measure of justice for those in need. LSSP provides a wide range of civil legal assistance to eligible low-income persons in the Charlotte metropolitan area and west-central NC. LSSP accomplishes its mission through a variety of legal advocacy strategies including individual advice and representation, community education and outreach, representation of groups, self-help remedies, collaboration with other agencies, community economic development, legislative and administrative advocacy, and impact litigation.).

of the local bar prepared the actual documents for those homeowners. The students also participated in several community awareness workshops at senior centers and other locations to inform the community about the importance of estate planning.

The class training session topics included the following: professionalism, interviewing and counseling, document preparation and software use, ethics in the profession, and a roundtable discussion with a panel of speakers who work in the area of Trust administration. Some classes were devoted to peer review of work in progress. Students were also encouraged to keep an online journal so that they could document any unique experiences.

In the Lab, students counseled their clients in an attempt to avoid the issues that are highlighted in our doctrinal course textbook. The Habitat for Humanity seminar and other seminars conducted throughout the semester help to educate members of the community about the importance of an estate plan—regardless of their income. In essence, the community speaking engagements were meant to prevent the problem of dying intestate. “Perhaps one of the most serious failings in contemporary legal education is that all too many students graduate with a vast doctrinal base of knowledge sealed within a context that is not translatable into practice.”¹³

Students were also able to see the importance of formalities when they performed an execution ceremony. It is one thing to read about the formalities necessary if a client is blind. It is quite another when one has a client who is blind. Two of our students had blind clients. In class we looked at the North Carolina General Statutes. As an example, in section 31-3.3, students read the signing and acknowledgment requirements necessary for a testator and witnesses. Although North Carolina states that an attesting witness must sign the will in the presence of the testator, in a jurisdiction that uses the line of sight test, what does this mean when the testator cannot see? Students now had to apply a rule to a real situation.

Students also had to determine whether their elderly clients had the capacity necessary to draft a will. One student had a potential competency issue. The student questioned the client’s ability to understand the documents. Ultimately, the client did not suffer from Alzheimer’s or senile dementia. She was merely of low intelligence. She was able to express her wishes in simple terms. The student’s mentor stated,

13. John B. Mitchell *et al.*, *And Then Suddenly Seattle University Was on its Way to a Parallel, Integrative Curriculum*, 2 CLINICAL. L. REV. 1, 21 (1995) (quoting Professor Barbara Woodhouse).

[the student] displayed an enormous amount of empathy and patience when dealing with her [client]. She read each document and explained each and every sentence to the client in terms she would understand. The process was tedious, but [the student] was kind and understanding throughout. The client did not sign the documents until [the student] was satisfied she understood every aspect of the procedure.¹⁴

This same student had another client who had a degenerative disease and was adamant that any money for this research was to go to a specific research institute with which she had a special relationship. The research institute could not promise that they would be conducting such specific research. The student worked with the director of the institute and was able to satisfy the client's wishes by creating particular language and alternative language.

In the doctrinal course we do not spend a lot of time discussing the interaction between lawyers and other professionals during the estate planning process. The Lab provided an opportunity for students to understand how non-legal professionals (specifically, professional trust officers) counsel their clients and how attorneys work with non-legal professionals so that the client benefits. We hosted a panel of trust officers and advisors who discussed the complexities of wealth management and trust administration for families and individuals.

While the doctrinal course focused on substantive knowledge, the Lab focused on applying that knowledge to real life circumstances.

2. *Why Would I Choose to Do Such a Project?*

I chose to embark on this project quite simply because students desired more hands-on opportunities. Other faculty members had taught labs in areas such as employment law and real estate finance.

I practiced law for twelve years before I became a full-time law professor. When I began teaching, someone gave me a copy of *Best Practices for Legal Education: A Vision and a Road Map*.¹⁵ I was intrigued by the "vision of what legal education might become if legal educators step back and consider how they can most effectively prepare students for practice."¹⁶ Furthermore, I believe that "[l]aw schools are not producing

14. Throughout this article, I have included statements and comments from students, mentor attorneys, and others who have participated in the Will Clinical Lab. Some are direct quotations, while others are included as paraphrases. In the interest of clarity and space, footnote references are not provided in these instances.

15. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

16. *Id.* at 1.

enough graduates who provide access to justice, are adequately competent, and practice in a professional manner.”¹⁷ I teach at a school where these issues are important. I was fortunate to have the opportunity as a junior member of the faculty to propose and teach a course to help law students make the transition to competent lawyer while understanding the importance of community service.

I spent half of my law practice years in the area of estate planning and probate administration, so I was excited about the opportunity to teach Wills, Trusts and Estates. I had many ideas about how to structure the class. However, my excitement was slightly dampened when someone warned me that teaching the subject was not the same as practicing in the area. While I did not initially understand what that meant, it did not take long before I realized that there is a tension that exists when trying to find a balance between coverage of substantive material and the introduction of practical exercises. John Sexton of NYU has said “we must abandon the ‘coverage’ paradigm [and] abandon the notion that there is a certain, fixed body of doctrine which must be covered.”¹⁸ However, until bar examiners shift the focus of the exam, coverage will remain an unresolved issue.

Additionally, as with any required course, there are students who are interested in the subject area and may want to practice in the area after graduation but there are students who take the course only because it is a required course. Their immediate goals are to graduate and successfully pass the bar exam. The former group desired more practical exercises than the latter. They also wanted pro bono opportunities. “Why can’t we do Hospice Wills?” asked one such student near the end of the fall 2008 semester. I recognized my limitations as a new law professor. I had a full teaching load and could not afford to take on any new responsibilities. So, I quickly referred the student to our pro bono coordinator. I also encouraged the student to participate in Wills for Heroes, a program that was already up and running where basic estate planning documents are prepared for first responders (police, firefighters, and EMTs) throughout North Carolina.¹⁹ The more students requested additional opportunities, the more I pushed back. In answer to their “why,” I would inform them that at least in the state of North Carolina, there is almost always a wills and estates question on the bar exam. Therefore, I wanted to ensure that by the end of the

17. *Id.* at 24.

18. Barry, *supra* note 6, at 49–50.

19. *See generally* *Wills for Heroes*, WILLS FOR HEROES FOUNDATION, <http://www.willsforheroes.org/> (“Wills for Heroes programs provide essential legal documents free of charge to our nation’s first responders, including wills, living wills, and powers of attorney. By helping first responders plan now, they ensure their family’s legal affairs are in order before a tragedy hits. The 501(c)(3) charitable non-profit Wills for Heroes Foundation supports these Wills programs, giving back to the community and “protecting those who protect us.”).

doctrinal course each student understood the substantive law and was able to recognize and analyze legal issues so that he or she could write an effective bar exam essay.

In an attempt to satisfy my students, I tried to provide some practice application in the doctrinal course. After all, I do believe the historical notion that “[b]oth rule mastery and practical skills [are] recognized as important for new lawyers.”²⁰ The balance that I struck in the doctrinal course was to provide two practice-ready assignments and a guest speaker.²¹ For those students who wanted to practice in the area, I knew the practice-ready assignments and guest speaker were not enough. I recognized that a student who successfully completes the required course may not fully grasp what the practice of law in this area entails. I also recognized that while simulations “can add value to traditional law school teaching methods” they are “not a substitute for live-client interactions.”²² With this in mind, I began to seriously think about how my subject area could fit into the clinical lab model.

“Legal education is often criticized for being too narrow because it fails to teach students how to practice law—it fails to develop in them practical skills necessary for the competent performance of lawyers’ work.”²³ When a doctrinal professor teaches a Lab, he or she signals to students that practical skills are a valuable part of legal education. I wanted to be a part of the solution so I began to look at how I could help provide additional experiences to our students.

3. *Legal Services Communication*

One student in the fall 2008 class had completed an externship at LSSP, and she approached me with names of attorneys with whom she had worked. I hired the student as my teaching assistant for the 2009–2010 school year, and during the summer of 2009, we met with the LSSP staff attorneys to discuss what we could reasonably accomplish. What I thought was far and away quickly became the here and now. We talked about a day-long clinic to provide elderly individuals with a basic estate plan.²⁴ We talked about the semester-long Wills Clinical Lab. I submitted proposals for each idea to our Dean of Academics; she liked both ideas. So, we merged them. We liked the idea of a day-long clinic where we assisted

20. Weigold, *supra* note 3, at 687.

21. The first assignment is at the end of intestacy and the second assignment is at the end of wills.

22. Weigold, *supra* note 3, at 691.

23. Anthony G. Amsterdam, *Clinical Education Modes—Modes of Thinking*, in *A DIALOGUE ABOUT LEGAL EDUCATION AS IT APPROACHES THE 21ST CENTURY* 12 (1987).

24. LSSP had partnered with law firms and legal departments where estate-planning attorneys supervised other attorneys who prepared the estate plan documents for LSSP clients.

multiple clients. However, we wanted our students to understand that a good estate planner is more than a scribe and the practice requires more than simply completing form documents.

Although the students represented individual clients, we scheduled two “Clinic Days.” On these days, we had paralegals, witnesses, and attorneys available all day, as we held execution ceremonies throughout the day.

In the spring of 2010, the CharlotteLaw/LSSP partnership was able to provide a valuable service to the community while providing practical preparation to students in a student-focused environment. While I knew that I had limitations in the doctrinal class, I always took seriously the call of the *Best Practices* report that law school educators should “make a commitment to improve the preparation of . . . students for practice, clarify and expand their educational objectives, improve and diversify methods for delivering instruction, and give more attention to evaluating the success of their programs of instruction.”²⁵ The Lab was my small way to contribute to the legal education provided to the students at CharlotteLaw. In the Lab, I was able to “integrate the teaching of theory, doctrine and practice.”²⁶

II. COURSE STRUCTURE AND DESCRIPTION

Now that the Clinic was a reality, my teaching assistant and I met with the attorneys at LSSP to discuss the structure of the course. During winter break, we outlined the entire semester and determined the topics for the required training sessions. We discussed why we thought the areas were so important and what we hoped the students would learn. We believe the notion that “[a] law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.”²⁷ In order to achieve effective and responsible participation in the legal profession, we thought mentorship was a necessary component of the Lab. We thought that providing positive role models would help motivate our students.

A. Mentor/Mentee Pairings

We had envisioned a formal mentorship program. “In the eighteenth-century infancy of the legal profession in America, the predominant method

25. STUCKEY, *supra* note 15, at 7.

26. *Id.* at 9.

27. ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, 2010–2011 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 3.01(a), *available at* <http://www.abanet.org/legaled/standards/standards.html>.

of legal education was largely self-directed and consisted of some form of apprenticeship under the tutelage of a practicing lawyer.”²⁸ In British Commonwealth jurisdictions, there is a “mandatory period of supervised practice before full admission to the legal profession.”²⁹ However, there is no such requirement in the United States. “Mentors can model the attitudes, habits, and virtues that characterize good attorneys.”³⁰ “They can display ethical judgment in difficult situations.”³¹ “Mentoring can connect novices to their mentors, future clients, and other members of the legal community.”³²

As we searched for mentors, I looked first to estate-planning and probate attorneys that I knew. Approximately one third of the supervising attorneys consisted of such individuals. We then turned to the volunteer coordinator for the local county bar, knowing that members of the local bar often ask how they can benefit the law school. We thought the mentorship aspect of the clinic would be a good way to bridge a relationship between the local bar and the law students. After all, most of the students participating in the clinic would be members of the local bar within the year.

The volunteer coordinator helped us to identify members of the bar who were interested in mentoring law students. Each student in the clinic was paired with a mentor, an attorney who was an active member of the North Carolina bar. Most of the attorneys were members of the estate planning and probate section of the local bar. We held true to the notion that “[p]artnerships between law schools and the practicing bar hold great promise for providing all students with relatively low-cost experiential learning opportunities.”³³

Each attorney was to meet with his or her mentee, review the student’s work with him or her, be present for the execution ceremony, and allow the student to shadow him or her at work. We had also hoped that the attorneys would offer advice to the students about their career paths, goals, or other professional issues.

Some of the pairings worked better than others. LSSP attorneys and I covered the gaps. Although some attorneys stated that they felt an instant bond with their mentee, others were frustrated when their mentee did not contact them in a timely manner.

28. Weigold, *supra* note 3, at 687.

29. STUCKEY, *supra* note 15, at 13.

30. Weigold, *supra* note 3, at 695.

31. *Id.*

32. *Id.* at 696.

33. *Id.* at 700.

Sometimes outside circumstances prevented the mentor/mentee bonding that we had anticipated. For example, one attorney moved out of state in the middle of the semester. Another had a family emergency that required large amounts of time. Thus he was not available for face-to-face meetings. Sometimes there were breaks in communication between the student and the attorney. We provided each attorney with the name of his paired student and vice versa; the onus was on the student to contact the attorney.

As I assigned the mentor/mentee pairings, I did so randomly. I did not take into account the location of the attorney's office in relationship to the law school. One student commented that his attorney's office was located a good distance from the law school which made it more difficult for them to meet face-to-face. While telephone and email are adequate, I had hoped for the face-to-face connections. While the student preferred to meet with the attorney in person, the attorney wanted to handle communications through email. .

In spite of the frustrations, the mentor/mentee pairings benefitted most of the students and the clients. The mentor/mentee relationships gave most of the students yet another opportunity to ask questions in a non-threatening environment. "It is preferable for an aspiring attorney to acquire the skills he will need in practice while a student, under professional supervision, than to do so at the expense of the first clients who walk through the newly licensed attorney's office door."³⁴

B. Elements of Successful Education

"Education theorists have identified six essential elements of successful education. They are: (1) objectives, (2) reinforcement and feedback, (3) positive learning environment, (4) active classroom, (5) learning styles, and (6) lesson cycle."³⁵ As we outlined the syllabus, we wanted to ensure that these elements were met.

1. Objectives

Our objectives for the Clinic were as follows. Through the representation of individual clients, students would learn to counsel clients; provide representation to clients from diverse backgrounds in a culturally appropriate and ethical manner; gather and organize information to prepare

34. Weigold, *supra* note 3, at 698.

35. John Sonsteng et al., *Learning by Doing: Preparing Law Students for the Practice of Law*, 21 WM. MITCHELL L. REV. 111, 126 (1995).

a basic estate plan; and prepare for and complete a will execution ceremony.

We also wanted students to gain an awareness of probate administration, law practice and community outreach by observing and reflecting on two sessions of Probate Court or Superior Court; communicating with supervising attorney; and through their participation in the Habitat for Humanity New Homeowners Estate Planning Seminar and other community-based seminars. Finally, we wanted students to have an awareness of how attorneys interact with other professionals in the estate planning process. Thus we provided them with a session to interact with non-legal professionals.

2. *Reinforcement and Feedback*

We provided reinforcement and feedback at various levels. Each student was required to have his work peer reviewed before giving the documents to his supervising (mentor) attorney. We often used the beginning of class-time for students to discuss out of the ordinary circumstances so that classmates could comment and offer suggestions. The supervising attorney reviewed the documents before the student presented them to his or her client. When supervising attorneys were not available, LSSP attorneys and I were available to provide reinforcement and feedback. The ultimate feedback was when LSSP received positive client reviews.

Students also wrote reflection papers and kept an online reflective journal about how their experiences affected them. “[L]iterature suggests that self-reflection is an important, lifelong learning skill and that self-reflection enhances students’ learning.”³⁶ I encouraged students to do more than simply recite their actions in the journals. Many of the journal entries centered on the issue of access to justice and how many individuals do not have access to an attorney. People do not realize that they have legal issues until a major issue has arisen. Oftentimes such a realization is made too late to receive effective help regarding the client’s problem.

3. *Positive Learning Environment/Active Classroom and Lesson Cycle*

We believe the Clinical Lab is a positive learning environment because it combines the educational component with the representation of clients. As students applied their knowledge to their particular client’s

36. Andrea A. Curcio, *Moving in the Direction of Best Practices and the Carnegie Report: Reflections on Using Multiple Assessments in a Large-Section Doctrinal Course*, 19 WIDENER L. REV. 159, 167 (2009).

circumstance, the lesson cycle was complete. This is active learning at its best.

Because we wanted an active classroom environment, we met as a group most weeks, usually for an hour. The course was scheduled to meet at the same time each week. In addition, we scheduled a three-hour block of time for an extended training session and two all-day blocks for the execution ceremonies.

“All professionals must be lifelong learners.”³⁷ The court observations, journals and reflection papers were mechanisms used to foster that potential. The students often had a personal stake in their relationship with the client and they made sure that their representation was complete. When one client fell and hit his head on the day that he was to meet with his student attorney, the student contacted the client’s family to make sure there were no other issues that needed to be addressed. The student also stressed the importance of estate planning for this elderly individual.

C. Course Mechanics

The course was graded pass/fail. The grade was based on attendance at training sessions and other class meetings, consistently meeting deadlines for assignments, treating clients with respect, returning clients’ phone calls, following instructions given by the supervising attorneys, completing all required documentation for the LSSP file and meeting the requirement of 60 billable hours. Students kept track of their time using CharlotteLaw’s RUFUS system. I asked them to record their billable hours one time each week.

D. Content of Training Sessions

The training sessions included the following topics: professionalism, client interviewing and counseling, an overview of the documents and software, ethics, and a trust panel.

1. Professionalism

The first class training session was devoted to professionalism. I often see such language as follows: “too many graduates conduct themselves unprofessionally.”³⁸ While the term is probably overused in law school,

37. STUCKEY, *supra* note 15, at 66.

38. *Id.* at 27.

what it means in practice sometimes escapes law students. It is important for students to understand:

appropriate behaviors and integrity in a range of situations; the capacity to deal sensitively and effectively with clients, colleagues, and others from a range of social, economic, and ethnic backgrounds, identifying and responding positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client's objectives.³⁹

The LSSP staff attorney emphasized that our clinical lab clients were elderly and generally from a lower socio-economic income group. She stressed the importance of respecting the clients by calling them "Mr. or Mrs. X" rather than using their first names. Also, issues such as timeliness, proper business attire, and prompt correspondence and communication were addressed. Clients need to understand that their attorney cares about them. Sometimes a phone call to check-in is all that a client needs in order to feel valued.

We discussed eliminating intrusions such as texting during a client or mentor meeting. Lawyers are service providers and as with any other service provider, a reputation is hard to build but easy to destroy. To that end, students were reminded to pay special attention to details with respect to correspondence and form documents. Any document an attorney signs is important. Lawyers build their credibility one block at a time.

Our clients were a diverse group—men and women, single and married, able-bodied and handicapped, and of various races and nationalities. The session on professionalism ended with a reminder to the students that they need to be sensitive to "clients and colleagues from a range of social, economic, and ethnic backgrounds."⁴⁰

2. *Client Interviewing and Counseling*

In the second training session, we tackled the topic of client interviewing and counseling. "Client interviewing requires both basic and specialized communications skills."⁴¹ One of my colleagues who teaches skills courses led this session.

39. *Id.* at 191.

40. *Id.* at 88.

41. Weigold, *supra* note 3, at 683.

The students were taught that a lawyer must be observant and that practical judgment is crucial.⁴² “Practical judgment entails the application and tailoring of general knowledge to particular circumstances.”⁴³

In interviewing a client, the lawyer also must be observant enough to recognize signs of trouble during the interview. For example, a client may react negatively to something in the lawyer’s manner, feel uncomfortable disclosing information that is embarrassing, or exaggerate or skew the facts favorably to the client. Or there may be significant cultural factors that could impede the communication. If the lawyer does not have the skills to recognize and heed these potential problems, the representation will not be a success.⁴⁴

In addition to effective interviewing, “[e]ffective counseling requires that the lawyer be able to communicate advice in a way that the client will understand and find helpful.”⁴⁵ “Counseling requires more than just knowledge of the ethical rules that define the nature and bounds of the lawyer’s role as an adviser.”⁴⁶ “[T]he lawyer must be able to use intuition, conscience, training, and judgment to approach the client’s problems and give sensible advice.”⁴⁷ What a valuable experience to have in law school. “[P]rofessional judgment is not innate, but develops gradually through experience and reflection.”⁴⁸

“Communication skills provide a necessary foundation for the other essential lawyering skills of client interviewing and fact gathering, and client counseling. Those skills, in turn, are important to a lawyer’s overall problem solving abilities.”⁴⁹ A supervising (mentor) attorney stated, “law school, in general, often fails to emphasize that a client’s objectives and personal viewpoints will sometimes drive the direction of a transaction or case, as much as, if not more than, the underlying legal position.” Since these personal viewpoints are important, lawyers must be skilled communicators. In other words, “[a] lawyer must be adept at general communication processes, as well as the peculiar interpersonal dynamics that can be involved in client interviewing.”⁵⁰ This is a necessary lesson for students to grasp. One mentor attorney stated that while he was impressed with his mentee and her thoroughness, he noticed how the student reacted

42. STUCKEY, *supra* note 15, at 68.

43. *Id.* at 69.

44. Weigold, *supra* note 3, at 683.

45. *Id.* at 684.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* at 682.

50. *Id.* at 683.

to the different attitudes of clients. Although the student's work was admirable, the supervising attorney noticed that the student was not as noticeably engaged when the client appeared to take for granted the work that was being done on his behalf.

"A lawyer must be a sympathetic listener, a careful questioner, and a shrewd judge of people and situations."⁵¹ These qualities are especially important for attorneys who practice in the area of estate planning. Estate attorneys are not merely scriveners. Many times clients assume that they have a simple issue. However, after a conversation with a skilled estate attorney their issue is more serious than they originally thought.

It is important for the estate attorney to make sure that the client is comfortable enough to share information that may be relevant to determining the distribution of his or her estate. In order to do this, the attorney must establish rapport with the client. "The lawyer must be able to listen actively and to correctly interpret both verbal and nonverbal communications from the client."⁵²

These lessons were important when the students met their clients and began their initial interviews. Several students encountered clients who did not want a student lawyer. Their task was to reassure their client that the client would receive more than competent representation. One client was male-phobic—and, as luck would have it, she had been assigned to a male student! This particular student had to gain her trust. Several clients thought they knew exactly how they wanted to distribute their estate. After the student attorneys listened to the wishes of their clients, they then advised the client of what would happen if their initial desires were implemented. Lawyers must be good communicators.

It is the lawyer's responsibility to make sure the communication achieves its goals. Being a successful communicator requires that lawyers not only be able to impart information efficiently; lawyers must have certain "people skills" that will help them communicate with different personalities and elicit all information pertinent to the client's problem.⁵³

As the students developed a rapport with their clients, the clients opened up with information that would not otherwise have been available. Sometimes the information had to do with issues beyond the scope of the clinic; a situation that only reiterates the need for access to justice.

51. *Id.*

52. *Id.*

53. *Id.* at 682.

3. *The Documents, Software, Etc.*

Though most of our training sessions were held in one-hour blocks, the third session required a three-hour block. During the session we walked through each of the documents in detail—the will, power of attorney, health care power of attorney, and the living will. In addition, a local attorney demonstrated the software used at his firm to prepare documents, and both he and his paralegal talked about their respective roles in the process. The attorney also explained to the students that while they were gaining practical experience in the Lab, his clients were very different from those who were serviced through LSSP.

During the first hour we discussed questions that students would need to be able to answer. The students reviewed topics that they studied in the doctrinal course. Some questions included the following: Why is a will important? Does a will avoid probate? What happens if I don't have a will? How does a will differ from a revocable trust? What if the client requests a 'no contest' provision? How long does the power of attorney last? What happens if you don't have a power of attorney? What is a springing power of attorney? What if the client does not want a springing power of attorney? We also discussed HIPAA waivers, documents that provided visitation rights for gay and lesbian partners, and reviewed North Carolina General Statutes as a refresher. Students needed to be comfortable with their level of knowledge so that they could explain the concepts and information to laypersons.

The next hour was used to walk through the details of the will and supporting documents. Oftentimes in a clinic, volunteers are given form documents. They do not really take the time to understand the content. In this course, we needed the students to understand the words that are often skipped over as standard form language. We discussed issues of joint tenancy and appropriate ages of beneficiaries to receive an outright distribution of an estate. We even discussed what to do about pets—is a pet property or a beneficiary? Other topics included why a mandate that an executor sell everything and give the proceeds to charity may not be a good idea. We discussed how to account for the person who is unwilling or unable to serve as the executor. Additionally, we discussed whether or not co-trustees or co-executors were a good idea to include in the will.

The final portion of the training session included a detailed look at wealth transfer software. The students needed to understand that estate-planning practitioners use specific document preparation software. Though forms and software are used, attorneys do much more than simply plug data and chug results. Legal assistants often provide preliminary drafts of documents based on information that a client has provided through a questionnaire or other form document. However, attorneys must counsel

clients and deal with complex issues in order to ensure that the estate plan is indeed personal and fits the client's particular situation.

4. *Ethical Considerations*

During the fourth training session we discussed the nuts and bolts of ethics. "Law students need concrete ethical training. They need to know why pro bono work is so important. They need to understand their duties as 'officers of the court.'"⁵⁴ A local practitioner taught the session on how the Model Rules of Professional Conduct relate to the field of estate planning. The practice area is ripe with claims of malpractice and the students needed to understand why.

Generally, when one works with families, she sees the strong feelings that individual family members have about money and other family assets. Sometimes the assets have very little monetary value but priceless sentimental value. Husbands and wives may think they have similar desires until discussions begin. Children may think they know their parents' desires until discussions begin. Additionally, we wanted students to make sure that they understood whom they represented. Oftentimes, the adult child is the individual who contacts the attorney. Sometimes this child is paying for the services. Sometimes the child brings the parent to the meeting. He or she may insist on being in the room. Even so, such child is not the client. Certain circumstances may require an attorney to ask an adult child to leave the room while matters are discussed with the parent.

In the clinic, we assigned separate attorneys for husbands and wives in order to avoid any potential conflict issues. On one occasion the wife informed her student attorney that she was trying to have her schizophrenic husband committed to a veterans' facility. In another instance, the husband and wife had initially indicated that they wanted mirror wills. However, the husband ultimately wanted to provide for an out-of-wedlock son in his will. Conversely, the wife did not share the desire to include provisions for her husband's offspring in her estate plan.

5. *Trust Panel*

We convened a panel of trust administration professionals for the final training session. Two of the individuals were non-practicing attorneys and three were non-legal professionals. "Assembling a panel of speakers on a topic is often a useful means of bringing the 'real world' into the class

54. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 38 (1992).

discussion, and giving the students an opportunity to see a range of views on a topic.”⁵⁵ Our original plan had been to require students to observe a trust department. However, we wanted students to have the ability to have meaningful dialogue rather than a field trip. The students were able to ask questions and review documents that may not have been readily available during a field trip.

Unlike a guest speaker for a large class, this group of fifteen students was able to spend quality time with professionals and have questions answered in a friendly, professional environment. The students were attentive and asked thought-provoking questions.

Finally, though the students hear me impart valuable information to them during class sessions, somehow when practitioners state the same information the students ascribe greater validity to what is being said. Accordingly, the panel was able to reinforce information that the students had heard before. It is true that practitioners’ “views . . . often coincide with the faculty member’s, [so] their presence may reinforce some of the ideas we are trying to impart.”⁵⁶

We discussed asset protection, protection of income stream, estate, gift and generation skipping transfer tax protection family protection. In addition, we talked about potential beneficiary flexibility and trustee flexibility. Finally, we discussed the benefits of using a professional corporate trustee rather than an individual friend or family member.

III. THE STUDENT EXPERIENCE

Students learned valuable information and received hands-on experience. The relationships established with the local bar were beneficial to the students, attorneys and the law school in general.

At the end of the course, I asked students to comment on the experience. All who responded stated that overall it was a valuable and enjoyable experience. One student (who has recently passed the North Carolina bar exam) stated,

My experience in the Lab was very rewarding. The clinic took all of the knowledge acquired in my wills and estates class and put it into a practical application. Not only did I enjoy the client interaction, but also the mentor/mentee relationship that was formed between other attorneys and the students. While my mentor was unavailable for the last client, . . . everything [was] in place so that the process went smoothly. Furthermore,

55. Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLINICAL L. REV. 347, 374 (1999).

56. *Id.*

I really enjoyed the guest speakers that came and spoke. The speakers covered everything from client interaction to wills and trusts. I actually feel like I learned more in the clinic than I did [in] most of my classes throughout law school. It provided actual experience and allowed us to apply skills that we had acquired through other classes. I was actually surprised at how smoothly the clinic went from client pairings and appointments to mentor/mentee pairings. [People] worked extremely hard behind the scenes to make sure that the clinic was not only skill oriented but also a rewarding and applicable experience for everyone involved. I truly appreciate all that was poured into the clinic to make us better students and future attorneys.

Another student had similar comments and added,

Working closely with a licensed attorney to learn how to go through these documents and explain them properly and professionally is particularly instructive. The ability to discuss potential conflicts and ask specific questions amongst a small group of individuals in the class was also beneficial and increased the efficiency of the overall Clinic. The gratification expressed by the clients after completion of the signing was very rewarding as well.

I also asked students for recommendations for the next time we offer the Lab. The suggestions are included in the following section—lessons learned.

IV. LESSONS LEARNED

There are always lessons to be learned along the way. Some problems that I did not expect had to do with lack of mentor training, client contact difficulties, scope of service and ensuring that each student followed through with administrative tasks.

A. Mentor Training

I assumed that a face-to-face training meeting with my mentor attorneys was not necessary. I thought, given their busy schedules, that I could outline via email what I needed from them. In hindsight, I think a face-to-face orientation would have helped tremendously, especially with respect to communication issues. For example, LSSP had drafted its own form documents. We used those forms provided by LSSP as the starting point for drafting all client documents. Several of the supervising attorneys wanted to substitute and use the form that their practice used. Or, they wanted to alter the language in some documents to suit their personal taste.

While we did not expect that everyone be completely tied to the form, we did want consistency. So, we did need for everyone to conform to the typical LSSP style.

In one instance, we had two different students represent the husband and wife. One supervising attorney wanted to revamp the LSSP document completely. We did not want a situation where the clients would question why the documents were so different, but their distributions were so similar. The importance of consistency should have been communicated better to the supervising attorneys. An orientation to explain the information to supervising attorneys would probably have helped them understand these factors.

B. The Difficult Clients

While it is no secret that many individuals need legal assistance, sometimes providing services is not necessarily an easy task. All of the clients had been pre-screened by LSSP to determine whether they met eligibility requirements. They were told that their attorney was a third year law student who was participating in a Clinic. At least one client made it known that she did not want a law student to handle her affairs. We explained the arrangement and tried to help her understand that all work was being peer reviewed and reviewed by a practicing attorney who had a North Carolina bar license. Although she reluctantly agreed to the services, she was a difficult client.

C. Client Contact

Several students had difficulty with the initial client contact. We had asked students to initiate calls to their clients on the telephone in the clinic workroom or from a telephone where caller identification could be blocked. We thought that if the student left a message with a callback time that they would be able to connect with their client. We thought that they would be able to obtain a couple of contact numbers from the client and ascertain the best time of day to call. Such was not always the case. Several clients did not answer a telephone call from a blocked number. While I felt strongly that students not give their personal contact information to their clients, several students informed me at the end of the semester that after the initial meeting with their client that they had felt comfortable enough with the client to give their personal contact information.

Several of our prescreened clients opted out of services after the students contacted them. One student conducted two unsuccessful initial interviews. Her third interview ended up being her first client.

D. Court Observations

The court visits were difficult to schedule and hearings were often cancelled at the last minute even though we went to great lengths to obtain schedules in advance. It was extremely frustrating for students to rely on a schedule and arrive at the courthouse only to find that a scheduled hearing had been cancelled. The student had wasted valuable time that could be used in a more productive way. Students suggest reducing the number of hearings or expanding the parameters of the observations.

E. Peer Review

While we had the foresight to require peer review before students submitted work to the supervising attorney, some students stated that they could have benefitted from a mock interview and mock execution ceremony prior to meeting real clients. This would have helped students simplify information and anticipate some of the questions that were asked of them by their clients.

F. Grading

The grading was pass/fail and the students were required to log 60 hours. Some students were exceptional; a few struggled. No one failed the clinic because I worked with students to ensure that they had met the necessary requirements. I consulted with LSSP attorneys to make sure that I was being fair. After all, some circumstances are out of the control of the student. One student suggested high pass/pass as a way to distinguish between those who went well beyond what was called of them.

G. The Execution Clinics

We liked the buzz created with the all-day execution ceremonies as lawyers, paralegals and clients met throughout the day. We scheduled both clinics on weekdays. Perhaps we will give some thought as to whether at least one clinic should be scheduled on a Saturday.

H. Administrative Tasks

While students were excited to represent clients, I did have to remind them to record their billable time. Both LSSP and the law school track volunteer hours. Making sure that students provided the necessary information to close a file was important.

I. Issues Beyond the Scope of the Clinic

Several students had clients with issues beyond the scope of the Lab. For example, a widow, after talking about her husband and her difficulties living without him, then asked about receiving his veteran's benefits. The student attorney was able to convey the information about her client's husband's military status to her supervising attorney. The supervising attorney was able to refer the client to an attorney who could help her. Thus, the client received needed assistance for an issue that was beyond the scope of the clinical lab.

In another example, as one student began to interview her client for what she thought was a simple estate, several issues arose. The client wanted to devise her home to her caregiver daughter at her death. When the student attorney obtained a copy of the deed, she noticed that her client had deeded the home to another daughter several years earlier and reserved only a life estate for herself. Unfortunately, the daughter who had title to the home had died. Further, the client assumed that she was the legal guardian of such deceased daughter's minor child. As part of her estate plan, she wanted to include guardianship provisions for the child in her will. In reality, the child's father never relinquished paternal rights, which meant he was still the child's legal guardian. The student attorney, with guidance from her professor and supervising attorney, was able to effectively ascertain information during the client interview and effectively counsel the client about her situation and her options. No in-class simulation could ever replicate this live client experience.

While we were able to make referrals, one supervising attorney suggested that we emphasize that the Lab "is not a global legal review of tax, business, non-profit ventures or other matters, so those expectations are not dragged into the execution process."

IV. CONCLUSION

The Lab was an invaluable experience for me. I would encourage other non-clinicians to teach a clinical lab at some point in their careers. Most of us learn best through practice and experience; legal education is no exception.

The lawyer of the next century will need to be able to diagnose and analyze problems, to talk to and listen to people, to facilitate conversations, to negotiate effectively, to resolve disputes, to understand and present complex material, to use ever-changing technologies, to plan, to evaluate both economic and emotional components and consequences of human decision-making, and to be creative—to use tried and true

methods when they are appropriate, but not to fear new and category-smashing ideas or solutions.⁵⁷

Law schools rarely provide students with adequate practical experience.⁵⁸ One of the reasons is that clinical legal education usually focuses on in-house clinics and externships.

In-house clinical programs are expensive. Such programs are “traditionally directed and supervised by a full time faculty member who was hired for the purpose of teaching in the clinic.”⁵⁹ Small numbers of students devote several course hours during an academic semester or year to the clinical experience. In contrast, the extern program is a less expensive alternative to the in-house clinic.

The extern program models vary quite a bit, but most share certain components. The student is placed in a practice setting outside of the law school, usually under the supervision of a lawyer who is not a faculty member. The student works for credit, and not pay, in a role similar to a junior associate or junior staff attorney in the office. Usually there is a classroom component to the course, in which the students meet with a faculty member to discuss lawyering, substantive law, ethics or other topics related to the field work. Most programs require the student to keep a journal that reflects not just the work she is doing but also what she is learning, critical insights, and comments on the profession and the law.⁶⁰

Unfortunately, there is no real way to monitor the quality of the externships and oftentimes students end up receiving very different experiences by the end of their externship placement.

A clinical lab is a low-cost alternative that provides some of the best aspects of both clinics and externships.

The lab is also a way to counter the apathy that often accompanies the third year of law school. “Law school causes students to lose the sense of purpose that made them want to become lawyers.”⁶¹ After we trained students in interviewing and counseling, professionalism and client sensitivity, ethical issues, and the mechanics of the documents that they were drafting, the students effectively “went to work.” They experienced “textbook cases” in real life. For example, North Carolina uses the line of sight test when a testator executes a will. For those students who worked

57. Carrie Menkel-Meadow, *Taking Problem-Solving Pedagogy Seriously: A Response to the Attorney General*, 49 J. LEGAL EDUC. 14, 14 (1999).

58. Weigold, *supra* note 3, at 687.

59. Eyster, *supra* note 55, at 348–49.

60. *Id.* at 349.

61. Daisy Hurst Floyd, *Reclaiming Purpose—Our Students’ and Our Own*, 10 THE LAW TEACHER 1 (2003).

with blind clients, the sight test was not something they could rely upon when executing documents. Instead of using the sight test, the students were required to test the client's mental and legal capacity. The students were also required to read their client's documents to them prior to having the clients execute their documents.

It is no secret that many individuals who need lawyers are unable to pay for their services. Additionally, a large portion of the population thinks they only need lawyers if they are in trouble. One of the most rewarding aspects of this clinic was to uncover problems that clients did not even know they had.

The majority of the clients were extremely appreciative of the services that we provided to them. Students learned valuable information and received hands-on experience. The relationships established with the local bar are beneficial to the students, attorneys and the law school in general. Additionally, the Lab is a good way to bridge the gap between traditional and skills faculty.

The most rewarding aspect of the Lab for me as a professor was to see the growth in the students. They honed skills such as "oral and written communication, client interviewing and fact investigation, client counseling, problem solving skills, and ethical judgment."⁶² More importantly, the students excelled beyond my wildest imagination.

A clinical lab is a cost effective way to bridge the gap between clinical and doctrinal faculty and student educational experiences. The Charlotte School of Law Wills Clinical Lab experience—practical preparation, student focused, and serving the community.

62. Weigold, *supra* note 3, at 680.

