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2010

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Publication Information

40 Stetson Law Review 97 (2010)

Repository Citation

Dayton, A. Kimberley, "The Accidental Elder Law Professor" (2010). *Faculty Scholarship*. Paper 195.
<http://open.mitchellhamline.edu/facsch/195>

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The Accidental Elder Law Professor

Abstract

This Article discusses my somewhat unusual and erratic path to becoming an Elder Law professor. My story, told more or less in chronological order, is a first-person narrative of one woman's journey to achieve, if not academic renown, then at least personal satisfaction in the realm of the legal academy. It does not aspire to convey ponderous wisdom about the best way to teach Elder Law or the importance of scholarly productivity as a measure of one's legitimacy. On the contrary, I hope the Article will illustrate that, in the same way the field of Elder Law has grown and changed over the past two decades, I have grown and changed as a teacher and writer. As Elder Law becomes richer and more complicated as a practice specialty and academic discipline, the ways in which its substance is conveyed to students also become richer and more complicated—encompassing practical, theoretical, and policy-oriented approaches to the legal challenges facing an aging population. Ultimately, I hope the Article reveals how Elder Law allows me to accommodate my varied scholarly inter-ests in a way I believe serves the interests of my students, practitioners, and the older persons whose welfare has over time become so important to my work as teacher, writer, and lawyer.

Keywords

elder law, leaching, scholarship, clinics, National Elder Law Network, Center for Elder Justice and Policy, keystone

Disciplines

Elder Law | Legal Education

THE ACCIDENTAL ELDER LAW PROFESSOR

Kim Dayton*

I. INTRODUCTION

Let me be up front about this: a little more than fifteen years ago I knew nothing about the then relatively new legal practice specialty known as “Elder Law.” Medicaid vs. Medicare? You mean there’s a difference? What the heck is a QTIP trust anyway? I was reading, writing, teaching, and thinking about many interesting things—the Federal Rules of Civil Procedure, the Confrontation Clause, the role of mandatory arrest laws in combating domestic violence—but the legal issues facing seniors were not among them. My course load consisted of various civil and criminal procedure classes, with a dash of intellectual property and feminist legal theory thrown in to keep things interesting. To be honest, I had never even heard of Elder Law. So, how does someone whose early writing comprised theoretical and empirical articles about civil and criminal procedure become fascinated with, and intellectually embroiled in, the practice-oriented particulars of a field as prosaic and academically irrelevant¹ as Elder

* © 2010, Kim Dayton. All rights reserved. Professor of Law and Director, Center for Elder Justice and Policy, William Mitchell College of Law. B.A. University of Kansas, 1980; J.D. University of Michigan, 1983. Special thanks to Laurie Hanson, Kate Mewhinney, and Rebecca Morgan for their advice and encouragement as I wrote this Article, and thanks to every person mentioned in it by name or implication for the things they have taught me and the wisdom they have shared over the past fifteen years.

1. I certainly do not believe that Elder Law is either of these—how could it be, given its interdisciplinary character, our nation’s and the world’s aging population, and the policy issues this demographic reality generates? But there can be no question that at many, or perhaps most, law schools it is regarded as such. Just try to find an Elder Law course at any of our nation’s highest ranked law schools. At many law schools, Elder Law is marginalized as a “clinical” subject; professors who are among not just the nation’s, but the international community’s, leading experts on law and aging are non-tenured faculty members on long-term, but nonetheless terminable, contracts. See Lawrence A. Frolik, *The Developing Field of Elder Law Redux: Ten Years After*, 10 Elder L.J. 1, 12 (2002) (discussing how many law schools treat Elder Law as a clinical or seminar class and force professors to teach other courses). Attempt to publish an article on a subject relating to pure Elder Law in a “top twenty” non-specialty law review and see what happens. “Elder Law” in this context must be distinguished from traditional wills, trusts, and estates law,

Law? More specifically, how does someone whose fantasy was to be the next Mary Kay Kane² end up co-authoring a casebook and a treatise on Elder Law and eventually joining the Board of Directors of the National Academy of Elder Law? And how has the varied nature of my pre-Elder Law life affected both my philosophy about teaching Elder Law and the content of my courses?

This Article discusses my somewhat unusual and erratic path to becoming an Elder Law professor. My story, told more or less in chronological order, is a first-person narrative of one woman's journey to achieve, if not academic renown, then at least personal satisfaction in the realm of the legal academy. It does not aspire to convey ponderous wisdom about the best way to teach Elder Law or the importance of scholarly productivity as a measure of one's legitimacy. On the contrary, I hope the Article will illustrate that, in the same way the field of Elder Law has grown and changed over the past two decades, I have grown and changed as a teacher and writer. As Elder Law becomes richer and more complicated as a practice specialty and academic discipline, the ways in which its substance is conveyed to students also become richer and more complicated—encompassing practical, theoretical, and policy-oriented approaches to the legal challenges facing an aging population. Ultimately, I hope the Article reveals how Elder Law allows me to accommodate my varied scholarly interests in a way I believe serves the interests of my students, practitioners, and the older persons whose welfare has over time become so important to my work as teacher, writer, and lawyer.

which is grounded in the history of medieval England and therefore considered worthy of deep academic inquiry. *See generally* Nina A. Kohn & Edward D. Spurgeon, *Elder Law Teaching and Scholarship: An Empirical Analysis of an Evolving Field*, 59 J. Leg. Educ. 414 (2010) (discussing Elder Law as a legitimate field of scholarly inquiry).

2. Professor Mary Kay Kane, Emeritus Professor of Law at the University of California, Hastings College of the Law, taught me civil procedure at Michigan and was the inspiration for my goal of becoming a law professor. She has authored countless scholarly works on civil procedure and related subjects and served in a variety of administrative positions at the Hastings College of Law for many years. U. Cal. Hastings College of L., *Mary Kay Kane, Emeritus Professor of Law*, <http://www.uchastings.edu/faculty-administration/faculty/kane/index.html> (accessed Dec. 30, 2010). I continue to worship her from a distance even though she barely knows I exist.

II. ON FATE

My law school teaching career began in the fall of 1986 when I was hired by the law school at the University of Kansas, my undergraduate alma mater. My course package was based partly on what I (thought I) knew (civil procedure and appellate advocacy), and partly on what the school needed me to teach (intellectual property).³ Within a couple of years, the dean added the school's prison clinic and criminal procedure to the array of courses for which I was at least intermittently responsible. My pre-tenure academic writing included articles on personal jurisdiction,⁴ the harmless error doctrine in constitutional criminal procedure,⁵ and the use of alternative dispute resolution in the federal courts;⁶ I also wrote many briefs and memoranda in connection with my representation of inmates in direct appeals and habeas petitions. In about 1991, around the time I was awarded tenure, I began to develop an interest in both the law and literature movement (I had been, after all, an English major and had also dabbled in writing fiction) and in feminist jurisprudence. I wrote some articles and book chapters in these areas as well.⁷ Elder Law was not even in my peripheral vision.

Of Farm Belt Demographics. Undoubtedly, many practitioners of Elder Law have a story about how they came to be interested in this relatively new legal specialty. I credit my former student and research assistant, Melissa Rodriguez, with my transition from my original areas of specialty to Elder Law. In early 1993, Melissa decided that the University of Kansas School

3. I came to the school from private practice in Washington, D.C., where I had been a junior associate working primarily in the litigation department on corporate litigation. My firm, Shean & Gardner, specialized in appellate litigation but also defended a Canadian asbestos mining company and represented many transportation-related clients in both transactional and adversarial situations. Thus, civil procedure and advocacy seemed to be natural fits.

4. Kim Dayton, *Personal Jurisdiction and the Stream Of Commerce*, 7 Rev. Litig. 239 (1988).

5. Tom Stacy & Kim Dayton, *Rethinking Harmless Constitutional Error*, 88 Colum. L. Rev. 79 (1988).

6. Kim Dayton, *The Myth of Alternative Dispute Resolution in the Federal Courts*, 76 Iowa L. Rev. 889 (1991).

7. E.g. Kim Dayton, *Family Fictions/Legal Failures: A Feminist View of Family Law and Literature*, in *Beyond Portia: Women, Law, and Literature in the United States* 129-139 (Jacqueline St. Joan & Annette Bennington McElhiney eds., N.E. U. Press 1997).

of Law needed an Elder Law clinic.⁸ Relative to its population, Kansas was a disproportionately “old” state, at that time ranking among the top twelve states in its percentage of persons sixty-five and older.⁹ Elder Law was a new but growing practice specialty—the National Academy of Elder Law Attorneys (NAELA), founded in 1987, had increased in size from an original informal membership of forty or so attorneys (at the end of 1988) to nearly two thousand members at the end of 1992.¹⁰ In an aging state, the need for an Elder Law clinic to train students to practice in this area was almost self-evident.

I had no interest in becoming the director of any new clinic, much less one devoted to Elder Law issues. For personal reasons, I was sympathetic to the plight of rural elders,¹¹ so I gave Melissa the go-ahead to research what an Elder Law clinic would involve, how we might establish such a clinic at the law school, and what potential sources of funding were available to support the program.¹² At the time, we were able to identify only two “dedicated” Elder Law clinics—one at Thomas Cooley and the other at Wake Forest. Melissa obtained the clinic manuals from these schools, and we decided to propose a clinic modeled after the Wake Forest program run by Kate Mewhinney, which integrated the law school clinic with the medical school clinic programs at Wake Forest. A year or two earlier, the University of Kansas had established the Landon Center on Aging at the medical school

8. It has always been something of a mystery how she came up with this idea, as she had been working with me on a project involving Kansas’ recently enacted law requiring mandatory arrests in most domestic violence incidents. Her goal was to become a prosecutor (which she did achieve, joining the Jackson County, Missouri’s Domestic Violence Strike Force after she graduated from law school). In a very real and direct sense, I owe my career to Melissa, wherever she may be. And Melissa—if you ever read this—I have your book.

9. Frank B. Hobbs, *Population Profile of the United States: The Elderly Population*, <http://www.census.gov/population/www/pop-profile/elderpop.html> (accessed Dec. 30, 2010).

10. See Email from Kirsten Brown Simpson to Kim Dayton, *Re: NAELA Membership Figures* (June 9, 2010, 1:14 p.m. EDT) (copy on file with the Author) (discussing historical membership information for the National Academy of Elder Law Attorneys).

11. I had always been close to my maternal grandparents, who lived in a rural North Carolina community that had once been a “company town.” In their later years, they were able to take advantage of many programs provided in their county through the Older Americans Act, including transportation services and congregate meals. For a description of the Older Americans Act and its terms see 42 U.S.C. §§ 3001–3058ff (2006).

12. Memoranda, notes, and other materials relating to the formation of the Elder Law clinic at the University of Kansas are on file with the Author.

campus in Kansas City, Kansas.¹³ We believed that an association with the Center on Aging could facilitate a mutually beneficial, collaborative relationship among law students, medical students in geriatrics, and social work students in gerontology programs. The prospects for establishing a successful clinic increased substantially when Molly Wood, a former student who was the managing attorney of Kansas Legal Services, Inc.'s (KLS) Title III unit, indicated that she might be able to provide supervision of clinic students through staff attorneys assigned to her unit.

Melissa and I drafted a proposal based on her research and discussions with administrators at the Center on Aging and KLS. The proposal recommended that the law school establish a direct client services clinic similar to the one at Wake Forest. We did not intend to compete for Title III funding—rather, the clinic would operate out of several satellite offices of KLS, with one new location to be established within the Center on Aging at the medical school. Molly Wood would teach the classroom component of the course and provide general supervision of all students. Students in the clinic would also work directly with a KLS Title III attorney on a caseload mix that would expose the students to the broad array of matters comprising the Elder Law specialty. We contended that an Elder Law clinic would add to the law school's already rich array of opportunities for clinical legal education, in an area that was of particular importance given the State's disproportionately older population and its need for attorneys with expertise in the particular issues facing the elderly. As part of a publicly funded institution, the law school had a special obligation to give back to the taxpayers in a meaningful way. It took more than a year after we originally proposed the clinic to obtain formal approval from the dean and academic committee, but by the early spring of 1995, the clinic was a go, to be offered for the first time in the fall of 1995.¹⁴ My work in the field of Elder Law, I thought, was done.

13. See generally KU Medical Center, U. Kan., *Landon Center on Aging: About the Landon Center on Aging*, <http://www2.kumc.edu/coal/> (accessed Dec. 31, 2010) (providing general information about the Center on Aging).

14. See generally Molly M. Wood, *Changing with the Times: The KU Elder Law Clinic and the Kansas Elder Law Network*, 44 U. Kan. L. Rev. 707 (1996) (discussing the development of the University of Kansas School of Law's Elder Law Clinic and the Kansas Elder Law Network).

KELN: The Site, the Myth, the Legend . . . I am almost certainly the only person on the planet whose interest in and expertise on Elder Law developed primarily as an incident of her discovery of the Internet. Shortly after I established my first e-mail account at the University of Kansas in 1994, I learned about the early Unix-based text browser “Lynx”¹⁵ and Internet protocols such as Gopher, telnet, and file transport protocol (FTP).¹⁶ These in turn led me to the nascent World Wide Web¹⁷ and its unlimited capacity to deliver information to anyone, anywhere in the world, in less time than it takes to say “deliver.” The release of Windows versions of two graphical browsers, Cello (developed at the Legal Information Institute at Cornell) and Mosaic, enabled ordinary computer users like me to interface easily with “the Net” and view the Web’s content in its full glory.¹⁸ The power of the Web to provide instant access to information concerning legal subjects and authority immediately became clear to me.

The idea to create a dedicated Web site devoted to all things Elder Law was born shortly after the Elder Law clinic had been approved, a few months before the first offering of the Elder Law Clinic course. Several coincidences converged and led to the notion of creating a “one-stop shop” for accessing reliable information “on topics of interest to seniors and their advocates.”¹⁹ By

15. See Ind. U., U. Info. Tech. Services, *Knowledge Base: What Is Lynx, and How Do I Use It?* <http://kb.iu.edu/data/afik.html> (accessed Dec. 31, 2010) (providing more information on the Lynx browser); Michael Grobe, *An Early History of Lynx: Multidimensional Collaboration*, <http://people.cc.ku.edu/~grobe/early-lynx.html> (Apr. 10, 1997) (giving a brief history of the development and uses of Lynx).

16. See Steven T. Karris, *Networks: Design & Management* §§ 2.2–2.3.9 (2d ed., Orchard 2009) (providing both general and specific explanations of various protocols used to transmit information).

17. See W3 Consortium, *A Little History of the World Wide Web*, <http://www.w3.org/History.html> (accessed Dec. 31, 2010) (maintaining a brief history of the Web); *Id.* at <http://www.w3.org/History/19921103-hypertext/hypertext/WWW/TheProject.html> (accessed Dec. 31, 2010) (displaying “the Web” as it existed in late 1992).

18. Graphical Web browsers were developed as early as 1992, but these early browsers displayed image files that were referenced in HTML documents separately from document text. The release of the Windows version of Mosaic (later renamed Netscape) is generally credited with launching the Web as we know it today. See generally Juha-Pekka Tikka, *The Greatest Internet Pioneers You Never Heard of: The Story of Erwise and Four Finns Who Showed the Way to the Web Browser*, <http://www.xconomy.com/national/2009/03/03/the-greatest-internet-pioneers-you-never-heard-of-the-story-of-erwise-and-four-finns-who-showed-the-way-to-the-web-browser/> (posted March 3, 2009) (explaining the development of the first Internet browser).

19. See KELN.org, *Elder Law*, <http://www.keln.org/> (accessed Dec. 31, 2010) (contain-

early 1995, I had learned the basics of HTML and had set up several primitive Web sites.²⁰ Tim Stanley had founded FindLaw as a free alternative to Westlaw and Lexis.²¹ A forward-thinking Kansas legislator from a western Kansas county had pushed through legislation mandating that all telephone service providers in the state make Internet access available to their customers, at a cost of fifteen dollars per month or less, by October 1, 1996.²² The State of Kansas, which had established an Internet presence in 1990 via the Information Network of Kansas (INK), was one of the first in the Nation to set up a publicly accessible Web site where citizens could view information and download documents pertaining to state government operations.²³ The State's rural nature made information that was electronically available particularly important and useful, and INK quickly became an essential resource to anyone interested in state law, government, and public policy. As did FindLaw and Cornell's LII, INK showed that the kind of information then available mostly through expensive proprietary databases could be made available for free through the new medium of the World Wide Web.

In the spring of 1995, we proposed adding a one-credit research component to each semester of the clinic as a supplement to its classroom and client representation aspects. This "research project" would require students to write an annotated bibliography on a specific topic pertaining to Elder Law or the

ing information on Elder Law and access to Elder Law resources).

20. These included a site for my son's elementary school and another for my historic neighborhood of Old West Lawrence. Pinckney Elementary School in Lawrence, Kansas was the first grade school in the United States to launch a public Web site. By the spring of 1995, first- through sixth-graders at Pinckney were learning to write HTML code and creating Web pages for display on the "Pinckney Wide Web." See generally Pinckney Elementary Sch.—Lawrence, Kan., *Welcome to Pinckney Elementary School, Lawrence, Kansas: The First WWW School in Kansas*, <http://schools.lawrence.com/pinckney/> (accessed Jan. 4, 2011) (displaying the original Pinckney Elementary School Web site); Old West Lawrence, Kan., *Welcome to Virtual Old West Lawrence!*, <http://www.kansastowns.us/vowl.html> (last updated Jan. 3, 2008) (showing the Virtual Old West Lawrence Web site).

21. See FindLaw, *Two Largest Law Portals Join Forces to Generate Five Times the Traffic of Nearest Competitor*, <http://company.findlaw.com/pr/2000/032900.infirmation.html> (March 29, 2000) (discussing FindLaw.com and its merger with Infirmation.com as an online legal resource). Tim Stanley left FindLaw in 2003 and now operates the law-related Web site Justia.com. Justia, *Justia Company, About Justia*, <http://company.justia.com/about.html> (accessed Jan. 4, 2011).

22. Kan. Stat. Ann. § 66-2011 (2009).

23. See Kansas.gov, *About Kansas.gov*, <http://www.kansas.gov/about/> (accessed Jan. 4, 2011) (giving a history of the Information Network of Kansas, Inc. (INK)).

intersection of Elder Law and gerontology. The bibliographies would eventually be made available on a Web site that we named the Kansas Elder Law Network (KELN).²⁴ Early versions of the site had little original content—KELN consisted mostly of topically organized links to Elder Law-related information already available online with occasional postings of job announcements and other interesting news. It was, in some ways, a primitive legal blog, long before a name for such things existed.

By early 1996, the first set of KELN bibliographies had been completed, formatted, and uploaded to the site.²⁵ For the most part, these early “bibs” comprised annotated references to print resources—books, articles, cases, and so on. But as the substantive content of the Web began to increase at a wildly exponential rate, the students’ annotated bibliographies became not just independent scholarly resources in their own right, but highly developed stand-alone indexes of other Web content pertaining to Elder Law and related subjects. For example, a bibliography on long-term care insurance published on KELN in 1999 contained twenty-nine links to Web sites and organizations offering information on the pros and cons of long-term care insurance contracts.²⁶ At the time, no other site in the country was comparable in terms of the range of information presented and the amount of original Elder Law-related content developed and stored there.²⁷ Consequently, second- and third-year law students at Kansas were, in a very real sense, generating the Web’s most significant and reliable Elder Law-related content.

24. Were it not for Robert Fleming, one of the founding fathers of Elder Law, KELN would have been named the Kansas Elderlaw Network (KEN), which clearly would have been an incorrect and inferior moniker.

25. Because students own the copyright in work they produce for academic credit, I have always requested but not required that students authorize publication of their bibliographies on KELN (and now NELN) through a non-exclusive license and permit the creation of derivative works (mostly, updated bibliographies) as necessary to assure the document’s reliability and usefulness. Because this is a non-exclusive license only, students are free to republish or distribute their work in other ways if they choose.

26. Christy D. Cramer, *Annotated Bibliography Update: Long Term Care Insurance, A KELN “Consumer Focused” Bibliography*, <http://web.archive.org/web/20000525115445/www.keln.org/bibs/cramer.html> (Dec, 15, 1999).

27. Furthermore, the Elder Law-related content available at this site was unavailable elsewhere. See Kate Mewhinney, *The ABA and Wake Forest Law Review: Partners in Scholarship*, 32 Wake Forest L. Rev. 239, 242 n. 7 (1997) (noting that KELN.org is one of the largest sources of online information relating to Elder Law).

We began to receive requests for republication or redistribution of KELN's bibliographies and other original documents from bar associations, government employees, and other academics. Permission to redistribute was freely granted within the parameters of KELN's copyright licensing policies.²⁸ KELN's resources—mostly its student-authored materials—were being referenced in law review articles, books, and professional journals.²⁹

Initially, the KELN Web site was set up in a personal UNIX directory on the University of Kansas computer system. But this presented problems for the long term—the structure of the University's computer systems did not allow for the use of original domain names on Web sites (e.g., www.keln.org), and there were space restrictions associated with personal accounts. I also wanted to maintain control over the Web site in case I ever left the University.³⁰ By another fortuitous coincidence, a former student of mine had been hired to develop and manage INK.³¹ He offered to host the Kansas Elder Law Network on INK, in its legal

28. KELN's copyright licensing policies were as follows:

Copyright in all documents contained within the Kansas Elder Law Network (KELN) is owned by Kim Dayton and the Kansas Elder Law Network, except as otherwise indicated within a particular document. Any person is hereby authorized to link to this network, and to download, copy, and print KELN documents for their personal use, subject to the following conditions: (1) KELN documents may be used only for informational, educational, and non-profit/non-commercial purposes, and (2) any copy of a KELN document or portion thereof which is downloaded, copied, or printed must include an appropriate copyright notice. Subject to the fair use doctrine, permission to distribute or publish a KELN document must be obtained from the KELN administrator. The Kansas Elder Law Network makes no claim of ownership to the contents of documents, including statutes, judicial opinions, and other materials, which are in the public domain. KELN's formatting of such documents for presentation on the World Wide Web, however, is protected by federal copyright law.

KELN.org, *Notice of Copyright, Trademark, and Disclaimer*, http://web.archive.org/web/20001205021500/www.keln.org/keln_discl.html (link checked Feb. 21, 2000).

29. E.g. ABA, Sec. on Gen. Prac., Solo & Small Firm Div., *The Compleat Lawyer* 41 (Spring 1998) (available at <http://www.abanet.org/genpractice/magazine/1998/spring/sp98elder.html>) (providing information and a link to the Kansas Elder Law Network); Mewhinney, *supra* n. 27, at 242 n. 7.

30. See generally Kim Dayton, *Copyright, Academia, and the New Scholarship*, <http://jurist.law.pitt.edu/lessons/lesmar98.htm#Lessons> (accessed Jan. 4, 2011) (discussing intellectual property rights for academics' work on the Web and other publications).

31. Harry Herington, J.D. University of Kansas, 1993. Harry's experience as a pioneer in the creation of e-government has served him well; he now sits as Chairman of the Board and CEO of NIC, a publicly held company "closely identified with the development and growth of electronic government." See NIC: The People Behind eGovernment, *NIC and eGovernment History* <http://www.nicusa.com/AboutNIC/Pages/History.aspx> (accessed Jan. 4, 2011) (displaying a chronological history of NIC).

resources area. KELN moved to the state government site in early 1996 and, within a few months, began to accumulate “hits” at an astonishing rate. By the fall of 2000, the site contained more than fifty bibliographies. It was receiving more than thirty thousand visits a month and over four hundred aging-related Web sites elsewhere on the Internet linked directly to KELN.³² Although today such figures are insignificant, a decade ago they were phenomenal.

One of KELN’s most important contributions in its early years was the site’s ability to make government information—in particular, the Social Security Administration’s Program Operations Manual (POMS) and the State of Kansas’ counterpart, the Kansas Public Assistance Manual (KPAM)—available to practitioners in an online format. In 1996, KELN began offering a POMS-on-demand service—practitioners who needed access to a particular section of the POMS could e-mail me requesting the section by citation. The law library subscribed to the POMS and other government documents on CD-ROM, so individual POMS provisions could easily be placed on KELN as a PDF or HTML file. Molly Wood obtained an electronic version of the KPAM and, with the blessing of the Kansas Department of Social and Rehabilitative Services, we added this essential resource to the KELN database.³³ In the course of formatting these materials for the

32. See Internet Archive Wayback Mach., *KELN.org, Archive Results from Jan 01, 1996-Latest*, http://web.archive.org/web/*/http://www.keln.org (accessed Jan. 4, 2011) (displaying archive results of www.keln.org Web site). Among the materials accessible via this archived version of KELN are a slideshow presentation on KELN’s growth from its creation through fall 2000, the full text of its collection of bibliographies, and links to archived versions of KELN’s guides to other Web-based materials on Elder Law and gerontology. One can also access, via KELN, such long-lost documents as the Program Manuals of the Health Care Financing Administration and many other historical resources. Wayback is way cool!

Alas, tragedy struck in early 2005 when the domain registrar for KELN.org failed to notify me that the KELN domain name was about to expire. Within a day or two after the registration expiration, the name had been purchased by a cybersquatter who clearly hoped to extort money from me to recover the name. By that time, however, I had left the University of Kansas and had migrated KELN’s contents to a new domain, the National Elder Law Network, www.neln.org. I was never able to recover the domain name KELN.org despite numerous idle threats of litigation, and www.keln.org still has a Web presence but should not be confused with the KELN.org of old. During its heyday, the Kansas Elder Law Network received more than 3.5 million visits over the course of seven years (1996–2003). May it live on in the annals of cyberspace history.

33. Thank you again to Dennis Priest, policy specialist at SRS, who graciously allowed KELN to host this document way back in 1997.

Web, I usually had to read them. Over time, much of what I was reading actually entered my long-term memory.³⁴ I used the National Academy of Elder Law Attorneys' listserv and KELN's "What's New" page to announce the addition to the site of a new POMS or other original materials.

If You Build It, They Will Come. By 1998, the Elder Law Clinic offered some ten to twelve students a year the opportunity, not only to work with an experienced attorney to provide direct assistance to older clients, but also to contribute to a relatively small body of scholarly literature on Elder Law and related issues then available to researchers and practitioners.³⁵ I taught the research workshop class and guided students through two drafts of the fall and spring bibliographies, then formatted the drafts for Web publication and uploaded them to KELN. The site's "bibs" were becoming significant research destinations for attorneys, gerontologists, and other professionals working on aging issues.³⁶

My biography in the Association of American Law Schools (AALS) Directory of Law Teachers continued to identify me as a teacher of Civil Procedure, Criminal Procedure, Appellate Advocacy, and Intellectual Property. Few persons in legal academia knew me.³⁷ But at the intersection of Elder Law and cyberspace, "the webmom" was becoming a household name.³⁸

In 1998, I was invited to be a co-author of a new Elder Law casebook to be published by Anderson Publishing.³⁹ I thought

34. By 1996, I was one of the few people in the United States of America (most of whom were Elder Law attorneys) who had actually read and cared about the content of HCFA Transmittal 64. How could this be happening? The goal to be Mary Kay Kane was fading to but a dim flicker, deep within the recesses of my brain!

35. The primary sources of traditional scholarship on Elder Law-related issues were the *Elder Law Journal* (published by the University of Illinois Law School) and a random assortment of symposium issues on Elder Law in general law reviews. See U. Ill. Elder L. J., *Welcome to the Elder Law Journal*, <http://www.law.uiuc.edu/elderlaw/> (accessed Jan. 4, 2011) (noting that the *Elder Law Journal* "is the oldest scholarly publication in the country dedicated to addressing [E]lder [L]aw issues").

36. See Cramer, *supra* n. 26 (containing an excerpt of such a bibliography).

37. They still don't know me, but that's another story.

38. I used the moniker "webmom" to describe my role as KELN's architect and technical contact, rather than the nearly universally used "webmaster." Reader, you can interpret my motive however you like. Thus, all e-mail pertaining to KELN was directed to webmom@www.keln.org.

39. Professor Tom Gallanis was then on the faculty at Ohio State University and had a contract with Anderson Publishing. Gallanis served as a co-author with Molly and me for the first and second editions. In 2007, Professor Julia Belian of Detroit-Mercy College of Law replaced Gallanis as the book's third co-author.

about it for a day or two. I had been considering trying my hand at a casebook—in fact, my colleague Roscoe Howard and I had compiled a set of class materials for the first-year criminal procedure course and were contemplating shopping it with the legal publishers. But there were already a bunch⁴⁰ of criminal procedure casebooks. There was only one Elder Law casebook.⁴¹ By 1998, I had supervised students on an enormous range of topics relating to Elder Law.⁴² The KELN site was keeping me busy reading and evaluating Elder Law-related resources for possible inclusion on or as links from the site. I suggested that Molly Wood also co-author the casebook and thereby help incorporate the practitioner's perspective.⁴³ Less than a year later the book and an accompanying statutory supplement were published.⁴⁴

The book's format was (and remains) somewhat non-traditional. It relies primarily on statutory and secondary mate-

40. By "a bunch" I mean more than ten but probably less than one hundred.

41. Two of the most significant dates in the history of Western Culture are 1992, the date of publication of the first Elder Law casebook, Lawrence A. Frolik & Alison McChrystal Barnes, *Elder Law: Cases & Materials* (Michie 1992), and 1995, the date of publication of Lawrence A. Frolik & Richard L. Kaplan, *Elder Law in a Nutshell* (West 1995).

42. By the fall of 1998, KELN contained bibliographies on the following topics: Adult Protective Services; Age Discrimination and Downsizing in the Workforce; The Age Discrimination in Employment Act and Early Retirement; Age Discrimination; Retirement and Employment Benefits; Alcohol and Drug Abuse among the Elderly; Consumer Credit for the Elderly; Consumer Fraud against the Elderly; Drivers' License Law and Senior Citizens; Durable Powers of Attorney; Elder Abuse: Financial Exploitation by a Conservator; Elder Abuse in the Domestic Setting; Elder Abuse in the Institutional Setting; Estate Recovery; Grandparents Who Wish to Adopt; Grandparents' Rights: Visitation; Home Health Care; Homeowners Rights and Responsibilities: Disputes with Neighbors; The Kansas Residential Landlord and Tenant Act; Living Wills; Long-Term Care Insurance; Medicaid and Estate Planning; Medicare and Managed Care; Mutual and Contractual Wills; The Nursing Home Admission Process: Consumer Focus; The Nursing Home Admission Process: Legal/Technical Focus; Nursing Home Resident Rights; Physician Assisted Suicide; Prenuptial Agreements and Estate Planning; Retirement Benefits in Kansas; Reverse Mortgages; Spousal Elective Share; Tax: One Time Exclusion of Gain from Sale of Principal Residence; Transfer on Death Deeds; Veterans' Benefits; Viatical Settlements; Women and Aging: Health Issues; and Women and Aging: Legal, Economic, and Social Issues. See KELN.org, *Topical Index to KELN Bibliographies*, <http://web.archive.org/web/20000126162723/www.keln.org/bibs/bibindex.html> (last updated Jan. 24, 2000) (containing an index to all of KELN's bibliographies, including the topics listed here).

43. For Molly Wood's credentials, as well as a list of her recent publications and presentations, see Stevens & Brand, LLP, *Molly Wood*, <http://www.stevensbrand.com/molly-wood.html> (accessed Jan. 5, 2011) (listing Molly Wood's professional biography).

44. Thomas Gallanis, A. Kimberley Dayton & Molly M. Wood, *Elder Law: Readings, Cases, and Materials* (Anderson 1999) [hereinafter Gallanis, Dayton & Wood, *Readings, Cases, and Materials*]; Thomas Gallanis, A. Kimberley Dayton & Molly M. Wood, *Elder Law: Statutes and Regulations* (Anderson 1999).

rials to explain principles of Elder Law and the policies underlying them. For example, the section on Social Security includes a narrative overview of the history of the Social Security statute, portions of a law review article by Richard Kaplan correcting the “Top Ten Myths of Social Security,”⁴⁵ and a short excerpt from a bar publication on eligibility rules.⁴⁶ By design, the book contains very few cases. To a large extent, the content of the casebook reflects our assumption that students who enroll in an upper-level elective have at least some interest in the subject matters covered in the course as a focus of their future careers.⁴⁷ Moreover, the great majority of law school courses rely for the most part on case analysis—even the textbooks for so-called statutory courses tend to comprise equal portions of statutory text and cases interpreting it. Books incorporating the materials lawyers actually use to do their day-to-day work are less common.

Most Elder Law attorneys are not litigators;⁴⁸ traditional case analysis is arguably less important to their practices than understanding the relationships between often complex federal and state laws, the role of administrative regulations in shaping the substance of Elder Law at both the federal and state levels, and the nature of the legal documents that practitioners must be competent to draft on behalf of their clients. Clients of an Elder Law practice are, for the most part, members of the middle class facing financial burdens due to existing or impending long-term disability.⁴⁹ Only in unusual circumstances will a client have the wherewithal to litigate against government entities and their salaried attorneys. While this does not eliminate the practitioner’s need to “think like a lawyer,” this aspect of legal education is well-addressed in other courses. Thus, although the book does not lend itself to instruction using the traditional Socratic method, it does allow one to convey a broad range of information concerning

45. Richard L. Kaplan, *Top Ten Myths of Social Security*, 3 *Elder L.J.* 191 (1995).

46. Gallanis, Dayton & Wood, *Readings, Cases, and Materials*, *supra* n. 44.

47. Of course I am fully aware that some students take some upper class electives solely because they envision a higher grading curve in those courses, a perception that is often accurate.

48. *But see* Douglas Chalgian, *Elder Law Litigation and the Lessons I’ve Learned*, 89 *Mich. B.J.* 38, 39 (observing that “Elder [L]aw litigation is on the rise”).

49. Elder Law is thought by some to refer to clients aged sixty-five or older. Lawrence A. Frolik, *The Developing Field of Law: A Historical Perspective*, 1 *Elder L.J.* 1, 2–3 (1993). But an Elder Law attorney is defined more by the work that he or she performs than by the actual client’s chronological age. *Id.*

the nuts and bolts of Elder Law practice through lectures, guest speakers, and liberal incorporation of based-on-a-true-story hypotheticals to round out one's discussion of a particular topic area.

Writing a casebook with two very accomplished co-authors enabled me to become something approaching an expert on the broad array of topics comprising Elder Law. One thing truly does lead to another: soon after the publication of our casebook, an editor at West suggested that Molly and I assist in a major revision of West's principal treatise on Elder Law issues—the three-volume *Advising the Elderly Client*.⁵⁰ To make a long story short, at first we said “NO!” (at exactly that volume); two years later, we relented on the condition that West grant us three years to finish the project. The chapters for which I was responsible included, in essence, everything not directly related to trusts and estates, taxes, or paying for healthcare. This would entail adding several new chapters and significantly revising many others. We began working to update the treatise in 2001. We persuaded national experts on matters such as veterans' issues and drafting special needs trusts to contribute chapters to the book. We expanded the book's coverage of elder abuse, consumer issues, and guardianship/conservatorship, and added chapters on age- and disability-based discrimination and the legal issues facing grandparents. Our goal was to provide a comprehensive overview of all things Elder Law that could serve the needs of newbies and experienced practitioners alike. By the time of the project's completion in May 2003, the treatise had expanded from three to four volumes.⁵¹

Introduction to Elder Law. I did not begin teaching an actual Elder Law course until several years after I had begun to acquire substantial knowledge of the field. The substantive Elder Law class at Kansas was incorporated into the Elder Law clinic, which was then taught by its director, Molly Wood. In the spring of 2000 (shortly after publication of the first edition of the Elder Law casebook), I began to offer a one-credit survey of Elder Law for

50. See A. Kimberley Dayton, Timothy H. Guare, Louis A. Mezzullo & Molly M. Wood, *Advising the Elderly Client* (Thomson/West 2010) (representing the current version of the publication).

51. Ironically, by the time we actually finished the revision, a former student of ours in the elder clinic and research project at Kansas had become an editor in the Elder Law publications department at West in Rochester, New York. My student had become my boss! This former student and current boss is Kelly Cooper, J.D. University of Kansas, 2000, and she is indeed quite bossy, especially when it comes to deadlines and such.

students who either did not have the time required to participate in the clinic or thought that they might be interested in the clinic but wanted to get some idea of what Elder Law involved before committing to a two-semester, eight-credit clinical experience. It was one of the few elective courses open to first-year students. I did not use our casebook, but instead Frolik and Kaplan's *Elder Law in a Nutshell*,⁵² which offers a comprehensive yet concise overview of the essential components of the Elder Law practice specialty. Students' grades were based primarily on a paper discussing some aspect of Elder Law that particularly interested them and a presentation to the class regarding the subject matter of the paper. About a third of the students in the class, including most who took the class as first-year students, eventually went on to apply for the main Elder Law course and clinic.

Student papers in this course were generally shorter—fifteen pages or fewer—and less formal than the traditional long paper often required for graduation.⁵³ They covered the full range of Elder Law-related topics; many of the papers addressed issues that students had encountered in their own families with grandparents or other relatives. One student, for example, decided to take the course after his family had discovered stacks and stacks of magazines in his great-aunt's farmhouse after she died, still in their shrink-wrapping. These magazines represented more than one hundred subscriptions, to such titles as *Field and Stream*, *Motor Trend*, and *PC Magazine*. His great-aunt had been the victim of one or more of the many scams aimed at tricking older persons into purchasing magazines or other publications in which they have no interest and that they cannot afford.⁵⁴ The student's paper addressed consumer scams targeting the elderly and included a discussion of the Publishers Clearing House marketing strategy that continues to draw warnings from Attorneys General around the nation.⁵⁵

52. Frolik & Kaplan, *supra* n. 41.

53. Papers written for this class did not satisfy the upper-class writing requirement.

54. *See infra* n. 55 and accompanying text (highlighting the Publishers Clearing House scam on the elderly).

55. In 2001, Publishers Clearing House settled several lawsuits brought by a total of twenty-six attorneys general around the country for using fraudulent means to encourage consumers, many of whom were seniors, to purchase magazines in the hope that this would increase their chances of winning sweepstakes prizes. The settlement agreement forbade Publishers Clearing House from using deceptive marketing practices to trick con-

Movin' on out In 2003, a number of factors persuaded me that it was time to move on from my faculty appointment of almost eighteen years at the University of Kansas. To the extent that I was a known quantity in legal academic circles, I was primarily regarded as an Elder Law specialist. And in 2005, I had the opportunity to become a member of the faculty at William Mitchell College of Law, hired specifically to develop and teach an Elder Law curriculum. I had finally committed myself to a specific research *and* teaching agenda: the intersection of law and aging.

III. EMBRACING MY DESTINY

*Fate leads the willing . . .*⁵⁶

Elder Law Workshop: Advising the Elderly Client. During my final semester at Kansas, I had been offered an opportunity to visit at William Mitchell in the spring semester. The school's basic curricular needs were being met already, so I had some leeway to negotiate a teaching package that suited my personal interests. From its founding, William Mitchell's mission has been to provide its students with the skills they will need to practice law.⁵⁷ Clinical legal education is an important component of most students' education there; clinical and quasi-clinical faculty members are highly respected, tenured (or on a tenure track), and regularly serve in the school's administration.⁵⁸ Although an

sumers in to purchasing magazines and required millions of dollars in restitution. *See e.g.* Tex Atty. Gen. Press Release, *Texas, 25 States Reach Settlement with Sweepstakes Giant* (June 26, 2001) (available at <http://www.oag.state.tx.us/newspubs/newsarchive/2001/20010626pch2.htm>) (discussing states' lawsuits against Publishers Clearing House and a proposed settlement). Despite this settlement agreement, the marketing strategies of the company have continued to generate warnings from state attorneys general and consumer groups. *See e.g.* Iowa Atty. Gen. Press Release, *Sweepstakes Mail Threatens Older Iowans* (May 4, 2007) (available at http://women.iowa.gov/latest_news/releases/may_2007/sweepstakes_threaten.html) (discussing Publishers Clearing House's sweepstakes campaign and its effect on the elderly in Iowa).

56. QuotationsBook, *Seneca Quote*, <http://quotationsbook.com/quote/14551/> (accessed Jan. 5, 2011).

57. *See* William Mitchell College of L., *About William Mitchell College of Law: Mission and Vision*, <http://www.wmitchell.edu/about/mission.html> (accessed Jan. 5, 2011) (speaking to the school's commitment to provide the skills necessary for a competitive legal advantage).

58. *See generally* William Mitchell College of L., *Mitchell Faculty: Scholars, Practitioners, Pioneers*, <http://www.wmitchell.edu/faculty/> (accessed Dec. 27, 2010) (listing faculty at William Mitchell College of Law and links to their personal Web pages).

Elder Law clinic modeled after the one at Kansas was not an option,⁵⁹ some substantive courses offered at William Mitchell included a skills “add-on.” For example, students enrolled in Employment Law could also (but were not required to) take a one-credit supplement aimed at exposing students to the actual practice of employment law.⁶⁰ I proposed a course along these lines—an Elder Law skills module in which students would draft some of the typical documents prepared by Elder Law practitioners and be required to develop a presentation aimed at a lay audience on a legal topic of interest to older persons.⁶¹

Planning this course involved taking advantage of my direct pipeline to the document templates of many highly respected Elder Law attorneys both in the Twin Cities and around the

59. In Kansas, a single legal services organization, the previously mentioned Kansas Legal Services, received funds under the Older Americans Act (OAA) to provide legal services to persons age sixty and older throughout the state as well as to operate an advice-only senior legal hotline. In Minnesota, six separate entities compete for Title III funding, and the state lacks a dedicated senior legal hotline. For reasons beyond the scope of this Article, it was apparent that it would not be feasible to set up an Elder Law clinic like the one in Kansas, in either the short or long run.

60. See William Mitchell College of L., *Prospective Students, Course Description, Employment Law Workshop: Advising Clients and Drafting Employment Documents (3871)*, <http://wmitchell.edu/curriculum/course-description.asp?CourseId=3871> (accessed Dec. 27, 2010) (giving an example of and details about one such course at William Mitchell—Employment Law Workshop: Advising Clients and Drafting Employment Documents).

61. The skills add-on is described in the William Mitchell course catalog as follows:

Elder Law Workshop: Advising the Senior Client (3831). This course is an optional one-credit supplement to the [two]-hour Elder Law course. This workshop aims to broaden students’ understanding of elder law issues and introduce them to issues associated with drafting legal documents for an older client, such as special ethical considerations and cultural issues associated with aging.

The workshop will focus on a set of skills not often taught in law school: translating the law for lay people, presenting legal concepts to lay people, and drafting sample documents. These skills are important to lawyers whose practice involves training of groups of lay people.

Students may have the opportunity to work with elder law specialists [and] advocates for the elderly community in the Twin Cities.

Students will write a short expository article, suitable for a lay audience, on a topic pertaining to elder law, give an informal presentation relating to the topic to a seniors’ organization or other gathering of older persons, and draft documents relating to subject matter of the paper/presentation. For each project, there will be feedback on a preliminary product.

William Mitchell College of L., Ctr. for Elder Just. and Policy, *Elder Law Courses at William Mitchell College of Law*, <http://www.wmitchell.edu/curriculum/course-descriptions.asp?courseno=3831> (accessed Dec. 27, 2010).

country. These lawyers shared their materials, war stories, and editorial skills in a manner that enabled me to create realistic problems that exposed students to a representative range of substantive subjects and qualitatively different legal documents. Typical assignments in this class currently include an engagement letter addressing potential conflicts of interest in a joint representation, a power of attorney that will be used across multiple jurisdictions, healthcare directives for a husband and wife who do not necessarily agree on the medical or spiritual component of healthcare decisionmaking, a revocable trust, a Medicaid advice letter, and a personal care contract that will survive the scrutiny of county Medicaid workers looking for evidence of a transfer for less than fair market value.⁶² The students who take this course face a labor-intensive experience that, to some, seems excessive for the one credit awarded for the course. But inevitably, those who go on to practice in the Elder Law arena (as many of them do) find that the course has given them an excellent start on the path to becoming a competent, reputable practitioner. Although students are not able to meet with real clients, in other respects the course serves similar purposes to a traditional Elder Law clinic.⁶³

Feminist Theory, Law, and Aging. As noted earlier, my first few years teaching law included some feminist theory. My initial forays into law and literature and feminist jurisprudence led me to develop an upper-level seminar called Feminist Theory, Law, and [Something], which I first taught in 1993. In a particular semester, the “something” might be “Literature,” “the Family,” “Social Policy,” or “Philosophy.” Course materials consisted of feminist legal scholarship, topic-specific matter (e.g., caselaw on employment discrimination), and novels. The result was a reading-intensive class that offered law students an opportunity to

62. See Kim Dayton, *Teaching Elder Law Drafting Skills in a Non-Clinical Environment*, AALS Section on Aging and the Law Newsltr. 1–2 (Spring 2008) (available at <http://law.wfu.edu/aals/documents/newsletter.2008.spring.pdf>) (explaining the skills class called the Elder Law Workshop, which is comprised of drafting assignments). Examples of past drafting assignments can be obtained by e-mailing A. Kimberley Dayton at kim.dayton@wmitchell.edu.

63. See Frank S. Bloch, Susan L. Brooks & Alex J. Hurder, *Filling in the Larger Puzzle: Clinical Scholarship in the Wake of the Lawyering Process*, 10 *Clinical L. Rev.* 221, 237–238 (2003) (citing clinical courses as a way of contextualizing the type of material that is found in textbooks).

expand their thinking about law and the society it constructs beyond what can be gleaned from the typical casebook. This course allowed me to combine my long love affair with literature with my responsibilities as a law professor while accumulating a fair degree of knowledge respecting feminist theory generally and its application to legal institutions.

Oddly enough, it did not occur to me for quite a number of years that the feminist theory course could be tweaked to make it relevant to law and aging. But in the fall of 2005, the feminist theory workshop was configured as a limited enrollment seminar entitled “Feminist Theory, Law, and Aging.”⁶⁴ Interestingly, none of the leading books on feminist jurisprudence, even those purporting to be “anti-essentialist,” discussed the contribution of aging to women’s marginalization at home and work.⁶⁵ When discussing the multiple aspects of self—race, ethnicity, economic status, and sexuality—that factor into women’s oppression,⁶⁶ feminist legal scholars seemed not to consider how society preferences youth over age, especially with respect to women, or how the multiple forms of discrimination that women experience converge and are exacerbated as they reach old age.⁶⁷ For the first time, I began to think critically about aging policy in the United States as yet another manifestation of male-centered norms and the devaluation of women’s work. Well before many established feminist legal scholars even began to consider how a lifetime of gender discrimination might interact with our society’s general derision for the elderly, students in this class were using feminist research methodologies to explore such topics as the androcentricity and heteronormality of the Social Security system, the rates of poverty and abuse among elderly women, and legal institutions’ failure to assure adequate healthcare for women in old age. This course, which I teach once every two years, attracts many stu-

64. A course description for this class is available at William Mitchell College of L., *Prospective Students, Course Description, Research Workshop: Feminist Theory, Law, and Aging (4080)*, <http://wmitchell.edu/curriculum/course-description.asp?CourseId=4080> (accessed Dec. 27, 2010).

65. See generally A.K. Dayton, *A Feminist Approach to Elder Law*, in Israel Doron, *Theories on Law and Ageing: The Jurisprudence of Elder Law* 45, 50 (Israel Doron, ed., Springer-Verlag Berlin Heidelberg 2009) (discussing the problem with overlooking ageing as a factor in the oppression of women).

66. *Id.* at 49.

67. *Id.* at 50 (explaining that as women age, they will experience added discrimination that comes from a history of gender discrimination).

dents who would not otherwise have any exposure to Elder Law, and has resulted in a number of students changing their career objectives to include the possibility of practicing in the Elder Law field.

The Center for Elder Justice and Policy, or, On Not Dying at the Podium. More than a decade ago, I served on the planning committee for, and then attended, an AALS mini-conference aimed at mid-career female law professors who had obtained tenure and continued to write and publish, but might have begun to wonder “is this it?”⁶⁸ The program introduced me to the terms “dead wood”⁶⁹ (which I did not want to be) and “dying at the podium” (which I did not want to do). The idea was that in the thirty-odd years in academia that might follow becoming tenured, it can be difficult to stay motivated to teach and research without some larger goal in mind. Presenters included senior women faculty members who had started down the path to becoming an administrator, established a “law and something” center or institute, or taken a leave of absence from academia to become a prosecutor pro tem or train for the Ironman. I was not interested in those latter options, but the notion of running a “center” was certainly intriguing. I came home with a notebook full of ideas about what a center connecting Elder Law to its academic cousins (gerontology, geriatrics, and applied policy) might look like. I floated the idea for such a center at Kansas, but for various reasons nothing developed there. So I waited—for almost ten years.

A few weeks after I was offered a permanent position on the William Mitchell faculty, I pulled out the notebook and scheduled a meeting with my deans. They were open to my proposal to establish a Center for Elder Justice and Policy (CEJP or the Center) at the school. We envisioned this Center not as a physical place, but as a concept—a metaphysical way to connect the resources of the school, in particular the talents and commitment of its students, to government entities and private nonprofit

68. AALS Workshop for Women in Legal Education, *Getting Unstuck . . . Without Coming Unglued* (Oct. 1–2, 1999) [hereinafter *Getting Unstuck*] (copy of bibliography is available at <http://www.aals.org/wle99/biblio.html>).

69. See generally The Free Dictionary by Farlex, *Idioms, Dead Wood*, <http://idioms.thefreedictionary.com/dead+wood> (accessed Dec. 27, 2010) (defining “dead wood” as “[p]eople in a group or organization who are not useful [anymore] and who need to be removed”).

organizations that advocate in behalf of older persons.⁷⁰ Through such a center, we could make the school's physical facilities, its excellent library, and its technological resources available to cash-strapped public and private entities working for elder justice. The timetable for establishing this center was deliberately vague, but the deans authorized me to use the name and to initiate collaborative projects between advocacy organizations and the school via the Center.

As early as fall 2006, we began to identify certain personal and student projects as the work of the Center, but the CEJP was not formally launched until March 2008. The launch introduced Minnesota's elder advocacy community to the Center and its mission "to facilitate teaching and research about aging issues and the rights of society's elderly population, and to serve Minnesota's and the nation's community of senior citizens and their advocates."⁷¹ At the event, students who were enrolled in the Elder Justice and Policy Keystone (Keystone)⁷² discussed their current work as examples of how the Center's principal resource—William Mitchell's students—could use their developing skills as researchers and advocates to benefit Center partners.

The Center's Advisory Board comprises state and national experts on a variety of substantive matters that impact older persons.⁷³ The Board meets about twice a year to provide input on existing projects and offer suggestions for future directions. Advisory Board members also volunteer at Center events, participate in continuing legal education programs that the Center sponsors, and in some cases provide advice and assistance to student researchers on projects within their areas of expertise.

The Center's core faculty members include Phebe Haugen, an expert in bioethical issues; Carolyn Grose, who guides the school's Legal Planning Clinic; Gregory Duhl, a business law professor

70. We do sometimes refer to the cabinet in my office where I store flyers, healthcare directives, and other CEJP-related paraphernalia, such as the beverages we serve at some events, as "the Center." I am also pushing hard for an engraved sign to hang outside my office.

71. William Mitchell College of L., Ctr. for Elder Just. & Policy, *About the Center for Elder Justice & Policy*, <http://www.wmitchell.edu/CEJP/elderjustice/> (accessed Dec. 27, 2010).

72. William Mitchell College of L., *infra* n. 76 (discussing the Keystone program).

73. See William Mitchell College of L., Ctr. for Elder Just. & Policy, *Faculty/Advisors*, <http://www.wmitchell.edu/CEJP/elderjustice/?page=167&Faculty/Advisors> (accessed Dec. 27, 2010) (listing names and general credentials of Advisory Board members).

with a particular interest in consumer issues affecting the elderly; and Diane Dube, a resident adjunct at William Mitchell who directs the school's Community Development Clinic. These faculty members contribute to the Center's work in ways too numerous to list. The Center's interdisciplinary credibility was enhanced considerably when Iris Freeman joined the CEJP faculty, initially as an adjunct professor and later as associate director. Scholars from several foreign nations collaborate in research and teaching projects through the miracle of technology: Professor Israel Doron of Haifa University, Sue Field of the University of New South Wales, and Laura Watts, National Director for the Canadian Center for Elder Law, have been guest lecturers in Elder Law classes via Skype and Adobe Connect and regularly collaborate with my students and me on research and writing projects that fall within the Center's mission.⁷⁴ These affiliated faculty members provide students with a comparative perspective on law and aging that is not often available in the context of the general Elder Law curriculum.

In the thirty-odd months since its formal launch, the Center has successfully established working partnerships with a number of local, state, and national organizations engaged in empirical research, legislative work, and other forms of advocacy.⁷⁵ As I will discuss below, much of the Center's ability to form these collaborations is accomplished through the work of William Mitchell students who receive academic credit for undertaking research projects or legislative advocacy for CEJP partners. The CEJP's budget is quite small, although we have long-term hopes of obtaining grant funding to support specific projects with the Center's partners.

Magnum Opus: The Elder Justice and Policy Keystone. The Keystone was developed primarily to serve as a vehicle for exposing students to the complexities of Elder Law at the policy level. It also incorporates components of an advanced legal research

74. For example, in December 2009, Professor Doron and I received a grant from the Borchard Foundation on Law and Aging to research "elder law as municipal law." The grant has enabled three student research assistants at William Mitchell to work twenty to thirty hours per week over the summer and fifteen to twenty hours per week in the fall. These students receive direction from both Professor Doron and me.

75. William Mitchell College of L., Ctr. for Elder Just. & Policy, *Academics/Students*, <http://www.wmitchell.edu/CEJP/elderjustice/?page=165&Academics/Students> (accessed Dec. 27, 2010).

course—gone cyber, of course!—and requires students to acquire technology-related skills that will be useful to them post-law school, for example, in marketing a small law firm or promoting elder justice through grass-roots advocacy. Although the Keystone program at William Mitchell primarily targets students completing their final semester of law school,⁷⁶ several Keystone alums took the class during their second full year of law school and continued their association with the Center through research assistant positions or via independent study and independent externship projects that relate to the Center's main areas of focus.

The Keystone, which may be taken for four, five, or six credits, has three distinct components. The first is a placement with an outside organization—typically a state agency, a state or national advocacy group, or a legal-aid provider. These placements differ from other externships available at William Mitchell in that the Center's faculty retains significant supervisory responsibility for the student throughout the semester. Placements are for two credits (100 hours of work provided directly to the sponsoring organization) or three credits (150 hours). The second component is a one or two credit research paper. Students who intend to use the Keystone's paper requirement to satisfy the law school's upper-level writing requirement usually enroll for two credits.⁷⁷ The third element of the class—the technology component—is unique for a law school course. This one-credit component requires all the students in the class to create, by the end of the semester, a technology-based means of distributing information about their work, the Center, and elder justice issues generally.

The class meets two hours each week for lectures, discussions, and presentations on applied policy and legislative advocacy that incorporate substantive Elder Law topics. I teach the class with Adjunct Professor Iris Freeman. Enrollment in the course is by application and invitation only, and students who are accepted are designated "Elder Justice Scholars."

76. William Mitchell College of L., *Prospective Students, The Keystone Program*, <http://www.wmitchell.edu/curriculum/keystone-program.asp> (accessed Dec. 27, 2010).

77. William Mitchell College of L., *Current Students, Advanced Research and Writing Requirement*, <http://www.wmitchell.edu/academics/policies/advanced-research-writing-long-paper.asp> (accessed Dec. 27, 2010).

A Word about Biting Off More Than One Can Chew. The proposal for a new Elder Law-related keystone course submitted to the school's curriculum committee envisioned a classroom component to the course that would focus on *advanced Elder Law topics* relating to the subject matter of the placements. The proposed title incorporating the term "policy" was at best a vision statement about what the course aspired to be rather than what the course proposal actually described—or what I expected to cover directly in the class.

A few weeks into the Keystone's debut year, it became clear to me that I knew very little about theoretical approaches to policy analysis and public policy agendas. I did enough background reading to make sense of the topic and required each student to produce a formal policy analysis on an issue related to his or her placement. Professor Diane Dube had taught a short course on policy analysis during the January intercession, and several of her students presented the results of their policy-oriented research on aging issues to Keystone students. But the Eureka! moment occurred when I realized that I might be able to persuade Iris Freeman, a friend who was at the time teaching an applied policy class at the University of Minnesota, to co-teach the classroom component of the course. Freeman, a national leader and advocate for the rights of nursing home residents for more than thirty years, was interested in the proposal, the Vice Deans agreed, and the rest is history.⁷⁸

Keystone Placements. Most law-school-clinical programs are intended to educate students about "practicing law" through direct legal representation of a particular category of clients.⁷⁹ To the extent that the placement component of the class is considered a "clinical" experience, it is one that differs significantly from other clinic opportunities available in the typical law-school curriculum.⁸⁰ The parameters of the Keystone placements are defined by our collaborating entities and comprise specific, discrete

78. Freeman joined the Center as an Adjunct Professor in the fall of 2008 and was named Associate Director in 2010.

79. *E.g.* William Mitchell College of L., *Current Students, Clinic Program*, <http://www.wmitchell.edu/curriculum/curriculum/skills-clinics.asp> (accessed Dec. 27, 2010) (discussing William Mitchell College of Law's Clinic Program).

80. *Infra* nn. 81–84 and accompanying text (discussing the placement component of the Keystone class).

projects—for example, empirical research that might be relevant to securing passage of a bill addressing an elder rights issue, an analysis across fifty states of legislative or regulatory policy on a particular topic, or the development of consumer-oriented legal resources that are relevant to the organization's focus and mission. Almost always, these projects involve research or footwork that the sponsor lacks the staff or funding to support.⁸¹ Direct contact with traditional Elder Law clinic clients is rare, and, in any event, peripheral to the placement's main focus.⁸² In some instances, the placements are "virtual"—the sponsoring organization and the student are in contact only through various electronic means.

The sponsoring organization provides a supervisor for the placement, but the Keystone faculty members also provide direction and feedback to the student through review of written work produced in the course of the placement, during class discussions, and in other ways. This arrangement helps assure that placement sponsors enjoy a net gain from the student's work and that the external supervisor does not spend inordinate time and effort on technical activities. Because of this oversight, sponsoring organizations can rely on the accuracy of written material produced for the organization's benefit.

Since the Keystone's inception, students have been placed with a wide variety of public and private entities with many different focuses. National organizations that have sponsored placements include the Assisted Living Consumers Alliance (Los Angeles) and the National Center for Lesbian Rights (San Francisco).⁸³ Regional and state placement sponsors have included the Alzheimer's Association of Minnesota-North Dakota, the Minnesota Kinship Caregivers Association, the Offices of the

81. For an example of a project involving research that was completed through the placement component of the Keystone class, consult *infra* note 86.

82. For example, two years ago a Center placement with the Legal Aid Society of Minneapolis involved legal and empirical research on the issue of whether nursing homes are subject to federal fair housing laws and the Americans with Disabilities Act. In the course of working with her supervisor, the student in this placement had several occasions to meet with the client whose predicament had spawned the placement project, but representing the client was not the central focus of the student's work for the sponsoring entity.

83. A listing of past placement sponsors is available at William Mitchell College of L., Ctr. for Elder Just. & Policy, *Projects, News*, <http://www.wmitchell.edu/CEJP/elderjustice/?page=166&News/More> (accessed Dec. 27, 2010).

Ombudsmen for Long Term Care and for Mental Health and Developmental Disability, the Senior Law Project of the Legal Aid Society of Minneapolis, and Volunteers of America Minnesota-Senior Services.⁸⁴ The range of projects completed is extensive: students have drafted a guide to the legal rights of lesbian, gay, bisexual, and transgender (LGBT) elders;⁸⁵ conducted empirical research on the state's population of "unbefriended elders";⁸⁶ analyzed existing data on patterns of "patient dumping" by skilled nursing homes;⁸⁷ and prepared fifty-state surveys on such topics as caregiver leave laws,⁸⁸ delegations of parental authority to a relative-caregiver for education and medical decisionmaking,⁸⁹ and state felony-neglect statutes.⁹⁰ Through their work with their sponsoring organizations, students generate professional contacts that can be beneficial to them as they embark on their careers in Elder Law or other practice areas.

Almost all placements have resulted in tangible work product—white papers, consumer guides, bibliographies, Web site content/"wikis,"⁹¹ and the like. One of the Center's purposes is to

84. *Id.*

85. This document drafted by Nicole Wood was later edited and published by the placement sponsor. See Natl. Ctr. for Lesbian Rights, *Planning with Purpose: Legal Basics for LGBT Elders*, http://www.nclrights.org/site/DocServer/PlanningWithPurpose_Web.pdf?docID=6121 (June 2009) (discussing the law as it applies to LGBT elders).

86. See generally Volunteers of Am. Minn., *Unbefriended Elders Project*, <http://www.voamn.org/Services/SeniorServices/UnbefriendedEldersProject/tabid/7425/Default.aspx> (accessed Dec. 27, 2010) (explaining the purpose of the project).

87. This research by Mark Schultz resulted in the creation of a discharge-planning questionnaire to be used by hospital discharge planners to identify possible instances of illegal refusals to readmit. See Minn. Off. of the Ombudsman for Long-Term Care, *Refusal to Readmit Questionnaire*, <http://www.cejp.org/resources/rrq.pdf> (revised Feb. 2007) (including a copy of the hospital questionnaire, a list of involuntary transfer and discharge rights, and other resources).

88. Letty Van Ert, *United States Survey: Use of Paid Time Off for Care of an Adult Family Member*, <http://www.cejp.org/surveys/caregiver.pdf> (March 2008).

89. Joel R. Button, *Relative Caregiver Consent Authorization Legislation in the United States and Proposed Legislation for Minnesota* app. C, <http://www.elderjusticescholars.org/Documents/RelativeCaregiverConsentPaper.pdf> (accessed Dec. 27, 2010).

90. Kristina Ebbott, *United States Survey: Felony Neglect of Vulnerable Adult Laws*, <http://www.cejp.org/surveys/ebott.pdf> (Dec. 2009).

91. Wikipedia defines a wiki as:

[A] website that allows the easy creation and editing of any number of interlinked web pages via a web browser using a simplified markup language or a WYSIWYG text editor. Wikis are typically powered by wiki software and are often used to create collaborative wiki websites, to power community websites, for personal note taking, in corporate intranets, and in knowledge management systems.

Wikipedia, *Wiki*, <http://en.wikipedia.org/wiki/Wiki> (footnotes and hyperlinks omitted)

facilitate knowledge transfer; the tangibles produced by Keystone Scholars are usually disseminated as widely as possible through publication on the Web or in print, and by distribution to potentially interested third parties via listservs and blogs. Sometimes the sponsoring entity is the publisher; sometimes the Center provides access to the materials via its Web site or on KELN's successor, the National Elder Law Network. Students often use their final technology project as a means to publicize their work and that of their sponsoring organizations.⁹²

Paper Component. The paper requirement of the Keystone offers students an opportunity to engage in "traditional" scholarly research that is usually related to the subject matter of their placements but is distinct from the discrete project(s) that comprise the placement experience. Students must account separately for the hours spent on the paper component to assure compliance with American Bar Association standards—in other words, no double billing!

As noted, the paper component constitutes one or two credits.⁹³ About half of the students who have enrolled in the Keystone course have elected to satisfy the upper-level class writing requirement through the Keystone and choose the two-credit option, which essentially entails completing a law-review-type article of publishable quality.⁹⁴ Students who have already completed the writing requirement have more latitude in the form and content of the paper, and have written annotated bibliographies, fifty-state surveys, or other less-formal documents.⁹⁵

(accessed Dec. 27, 2010) (Wikipedia as the source of this definition was a deliberate choice.).

92. See e.g. Ctr. for Elder Just. and Policy, *Elder Policy Post*, <http://www.cejp.org/resources/EPPSp10.pdf> (Spring 2010); Elder Just. Scholars, *Homepage*, <http://elderjusticescholars.org/> (accessed Dec. 27, 2010) (discussing a project of the Keystone class of 2008); Elder Just. Scholars Blog, *Homepage*, <http://elderjusticescholars.wordpress.com/> (accessed Dec. 27, 2010) (displaying a project of the Keystone class of 2010, while also incorporating content from 2008). The 2010 blog incorporates the content of the 2008 project as well as new materials added by the 2010 group.

93. *Supra* pt. Magnum Opus: The Elder Justice and Policy Keystone (discussing the two credits given for the Keystone class writing requirement).

94. See William Mitchell College of L, *supra* n. 77 (explaining the advanced research and writing requirement).

95. For examples of Keystone program projects that are less formal and may not have been used to fulfill the writing requirement, review *supra* notes 88, 90 and accompanying text.

The nexus between the paper's subject matter and the placement may be direct or indirect. One year, for example, two students had placements with the Elder Care Rights Alliance (ECRA), a nonprofit that serves as the State's principal advocate for the rights of nursing home residents. ECRA was the lead organization among a coalition of advocacy groups, state and county agencies, provider organizations, and other entities that had begun work aimed at improving the State's Vulnerable Adults Act (VAA).⁹⁶ Both placements involved providing administrative and research assistance to the coalition, and the two students shared responsibility for creating a wiki site to document the group's activities, shared research and other information among constituent entities,⁹⁷ and otherwise assisted the coalition to move forward with its legislative agenda.

One issue that the coalition identified early as a barrier to effective enforcement of the VAA was the inadequacy of the State's means of tracking employees of skilled nursing facilities who had been disciplined or dismissed because of abuse or suspected abuse of a resident.⁹⁸ One of the Keystone students in this placement completed a survey of other states' offender registry systems to determine whether a good model existed that could be incorporated into the Minnesota VAA. This research later influenced the drafting, discussion, and passage of legislative initiatives that were enacted in 2009 and 2010.⁹⁹

The other student in this placement decided to write about an issue of critical importance to vulnerable older persons that is often ignored in discussions of the problems facing older persons: disaster and emergency preparedness. It is well known that a

96. See generally Elder Care Rights Alliance, *Homepage*, <http://www.eldercarerights.org/> (accessed Dec. 27, 2010) (listing the goals, objectives, and projects of the organization, including the Vulnerable Adult Justice Project).

97. Ctr. for Elder Just. and Policy Wiki, *Vulnerable Adult Justice Project: FrontPage, Announcements and Updates*, <http://mnvac.pbworks.com/FrontPage?mode=print> (Oct. 25, 2010).

98. Elder Care Rights Alliance, *supra* n. 96 (listing the Web site for the coalition, which includes a discussion of the problems faced by those who are looking to effectively apply the Vulnerable Adults Act).

99. See Minn. Off. of the Revisor of Stat., *Minnesota Statutes Affected by Session Laws*, https://www.revisor.mn.gov/statutes/statute_action.php?cite=626.557 (accessed Dec. 27, 2010) (listing all changes made to the Minnesota Vulnerable Adults Act between 1995 and 2010); see generally Minn. Stat. § 626.557 (2010) (listing the most-recent version of the Minnesota Vulnerable Adults Act).

severely disproportionate percentage of the victims of natural disasters are elderly persons—for example, more than sixty percent of those who died in Hurricane Katrina were persons over sixty-five¹⁰⁰ and almost half were over seventy-five.¹⁰¹ Yet state and local disaster-management systems rarely take account of the particular issues confronting older persons that contribute to these statistics. The student's paper discussed federal mandates to states regarding emergency preparedness as well as best practices for ensuring that the elderly receive the assistance they need and analyzed Minnesota's state emergency preparedness plan in light of these considerations. Although the paper was concerned with the general subject matter of "vulnerable adults," it did not relate directly to the work of the ECRA on the VAA and was never circulated to coalition members. But that student and two others were able to present their papers the following fall at the Canadian Conference on Elder Law in Vancouver, British Columbia.¹⁰²

The Technology Requirement. Given my longstanding enchantment with everything cyber, it was probably inevitable that I would design a Keystone course that would require students to engage actively with The New Technology.¹⁰³ Transferring information effectively is as key to achieving success in legal fields as it is in any other. Law school does not always provide adequate exposure to the realities of practicing law, which require varied communication skills, collaboration and coopera-

100. Gavin Off, *A Look at the Victims of Hurricane Katrina*, <http://www.scrippsnews.com/node/30868> (posted Feb. 20, 2008, 2:07 p.m. EDT).

101. Joan Brunkard, Gonza Namulanda & Raoult Ratard, *Hurricane Katrina Deaths, Louisiana, 2005*, 2 *Disaster Med. & Pub. Health Preparedness* 215, 217 (Oct. 2008).

102. One of these three students, Melissa Hunt, J.D. William Mitchell College of Law, 2008, also won the Canadian Centre for Elder Law Studies' Gregory Steele, Q.C. Student Paper Prize in Elder Law for her Keystone paper on third-party custody issues in Minnesota. See Brit. Colum. L. Inst. and Canadian Ctr. for Elder L. Studies, *Annual Report 2008*, at 13, http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/338297/bcli_ar_2008.pdf (accessed Dec. 27, 2010) (naming Melissa Hunt for the award); Melissa Hunt, *Grandparent Custody: The Need for a Uniform Third Party Petition for Custody*, <http://www2.mnbar.org/sections/elder-law/Misc%20PDFs/Melissa%27s%20Paper.pdf> (May 17, 2008) (discussing third-party custody issues).

103. See generally Robert J. Cone & Patricia Barnes-Svarney, *How the New Technology Works: A Guide to High-Tech Concepts* (Oryx 1998) (discussing high-tech topics and concepts, as well as listing and describing high-tech items). I cite this particularly ancient book, in part, to illustrate how quickly the new technology becomes the old hat technology now that singularity has occurred.

tion with other attorneys, and occasional shameless self-promotion. The technology component of the Keystone comprises one credit and envisions that students will acquire skills in online research beyond Google and Westlaw, learn how the power of the World Wide Web can be harnessed for rapid and effective transfer of information, and then use these skills and the substantive knowledge they acquire during their placements to develop a medium for publicizing their work in the Keystone course and other work undertaken by or on behalf of the Center.

Library staff provides most of the instruction relating to this part of the Keystone. At both William Mitchell and Kansas, I have been fortunate to have as colleagues committed and unselfish librarians who are ever willing to assist me with my various schemes to integrate Elder Law and technology. The “Neal and Sean Show,”¹⁰⁴ taught by reference librarian Neal Axton and cataloger Sean Felhofer, introduces students to the mysteries of the “invisible Web,”¹⁰⁵ social bookmarking,¹⁰⁶ and online research management tools.¹⁰⁷ Students receive instruction and advice on project management and the pros and cons of traditional Web sites, blogs, listservs, and other electronic media as means to distribute information and promote a cause or a business. They also learn the basics of accessible Web site design and how to use accessibility-checking tools to assure that all potential users are able to navigate a site irrespective of disabilities such as vision or motor impairments. Library staff members remain at the ready throughout the semester to assist students as they collaborate to choose and create a finished technology project.

Interestingly, each class of Keystone Scholars has produced a qualitatively different final product to satisfy this particular

104. To Neal Axton and Sean Felhofer, I owe my next-born child. As I am fifty-two, odds are that they will never collect.

105. The invisible Web, also known as the “deep Web,” comprises content on the Web that is not found in most search engine results, because it is stored in a database rather than on HTML pages. Bin He, Mitesh Patel, Zhen Zhang & Kevin Chen-Chuan Chang, *Accessing the Deep Web*, 50 *Commun. of the ACM* 95 (2007) (discussing hidden information on the deep Web); see generally LaGuardia Community College, Library Media Resources Center, *Beyond Google: The Invisible Web*, <http://library.laguardia.edu/invisibleweb/tools> (last updated June 2010) (defining the term “invisible web”).

106. See e.g. Delicious, *Homepage*, <http://delicious.com/> (accessed Dec. 27, 2010) (providing links to social bookmarking Web sites).

107. See e.g. Zotero, *Homepage*, <http://www.zotero.org/> (accessed Dec. 27, 2010) (providing links to manage research sources).

course requirement.¹⁰⁸ After experimenting with both blogs and wikis, the 2008 class decided to create an Elder Justice Scholars Web site using server-side content-management tools.¹⁰⁹ The 2009 class, which was limited to some extent by its small size, designed a newsletter template and produced the Center's first newsletter.¹¹⁰ The most recent group of students incorporated and expanded on the original group's Web site, but moved its content and added additional information to a hybrid blog-Web site using a popular free blog-hosting service.¹¹¹

While the long-term significance of the class projects is questionable—does the world really need another seldom-updated blog?—the skills these students acquired through the Keystones' technology requirement have served them well. A number of Keystone students have, since graduation, set up their law firms' Web sites,¹¹² which in an uncertain economic climate has the potential to give them a leg up on other recent graduates just starting a practice. A wiki established by students assigned to ECRA in 2008 continues to serve as a repository for documentation on the current Vulnerable Adults Justice Project (VAJP) in Minnesota, providing public access, not just to the activities of the VAJP coalition, but to other historical materials relating to the state's VAA that were previously unavailable to researchers and advocates.¹¹³ The wiki is maintained on an ongoing basis by Keystone students placed with the VAJP and Center research assistants and staff. The Center newsletter continues to be produced through the efforts of Keystone alums who volunteer to write articles and provide important production assistance to the

108. *Supra* n. 92 (listing recent Keystone Scholars' class projects).

109. *See supra* n. 92 (listing the 2008 Keystone Scholars' class project).

110. *Supra* n. 92 (listing the 2009 Keystone Scholars' class project).

111. *Supra* n. 92 (listing the 2010 Keystone Scholars' class project).

112. *See e.g.* Buchholz & Burke, PLLC, *Homepage*, <http://twincities-elderlaw.com/default.aspx> (accessed Dec. 27, 2010) (displaying the law practice of Allison Crandall Burke, J.D. William Mitchell College of Law, 2008); Looking Forward Legal, *Homepage*, <http://lookingforwardlegal.com/> (accessed Dec. 27, 2010) (displaying the law practice of John Simshauser, J.D. William Mitchell College of Law, 2009); Schneider & Hunt, PLLC, *Homepage*, <http://www.schneiderhunt.com/> (displaying the law practice of Melissa Hunt, J.D. William Mitchell College of Law, 2008).

113. Minn. Off. of the Revisor of Stat., *supra* n. 99 (containing updates and explanations of changes to Minnesota's laws that affect elders).

Center—without their efforts, there would, in fact, be no newsletter at all.¹¹⁴

Ultimately, the goal of the Keystone is to expose students to the practice of policymaking and to help them become experts in a particular area that impacts the lives of older persons. The Keystone's success probably can best be described by the words of one of this past year's Elder Justice Scholars:

This placement allowed me to see the legislative aspect of the course (by attending several [Minnesota Judiciary Committee Meetings]), the advocacy aspect (by participating in the drafting of the new guardianship/conservatorship amendment), and the seminar aspect of the course (by having to tackle a real life problem and develop a solution for it).

The work that I did for the [Office of the Ombudsman for Long Term Care] dealt with real world issues and had a real world impact on residents of [long-term care] facilities.

• • •

[My] discussions with nursing home industry advocates, resident advocates[,] and legal practitioners led to the identification of several causes and several possible solutions to the problem. [I] conducted legal research of both the legal requirements of nursing home facilities to inform residents about a possible transfer or discharge and research into what rights nursing home residents are guaranteed under [f]ederal and [s]tate laws.

As a result of my work on this matter, [I] was able to create an educational product that helps affected individuals understand resident rights and provides them with contact information for the appropriate agencies that may assist in the case of a “refusal to readmit.”¹¹⁵

Independent Study, Research Assistants, and Other Miscellany. An early concern we had about the Keystone was that it would be offered only once a year, in the spring semester. The

114. *E.g.* Ctr. Elder Just. and Policy, *Elder Policy Post*, <http://www.cejp.org/resources/EPPSp10.pdf> (Spring 2010) (listing the most recent newsletter available).

115. Email from Mark Schulz to Kim Dayton, *Re: End of Semester Matters* (May 7, 2010, 6:43 p.m. EDT) (copy on file with the Author).

needs of the Center's partnering organizations do not wax and wane in accordance with the academic calendar. Although many Keystone placement projects can be completed in a single semester, some cannot.¹¹⁶ Sometimes, a placement project is just one part of a larger effort—for example, the Center has been engaged for more than three years in a long-term effort to help grandparents raising grandchildren obtain access to the courts. This project involves a number of strategies, including preparing educational materials for caregivers on their legal rights and the rights of the children for who they are caring, developing pro se third-party custody pleadings, and creating a network of attorneys in the state who will provide legal assistance to caregivers or children in kinship care on a pro bono or sliding fee basis. Although several students have been involved in this effort through the Keystone or William Mitchell's Family Law Externship,¹¹⁷ the project has been able to move forward only through the ongoing efforts of students enrolled in independent study courses and students who work year round as research assistants for the Center. Thus, one Keystone student, whose placement in 2008 focused on developing the attorney referral network, enrolled in independent research during the summer session and drafted the first set of third-party custody pleadings and a manual explaining how to use the forms.¹¹⁸ Another student, who came to law school from a career as a producer in the entertainment industry, received independent study credit to write, direct, edit, and publish a ninety-minute video on the various options available to kinship caregivers desiring temporary or permanent legal custody. Two of the Center's current research assistants—neither of whom has completed the Keystone—are developing a "Kinship Caregivers' Legal Resource Center," a Web site that will compile educational materials, documents, and legal referral

116. *Infra* n. 119 and accompanying text (providing an example of a Keystone placement project that cannot be completed in a single semester, the Kinship Legal Assistance Project).

117. The family law externship at William Mitchell combines an advanced seminar on family law with an externship with a family court judge, a family law attorney, or an advocacy organization. On two occasions, students in this clinic have worked with Center partner Lutheran Social Services on aspects of the Kinship Project.

118. These materials, which will be supplemented later this year with a set of related responsive pleading for pro se use, are available online at Ctr. for Elder Just. and Policy, *Pro Se Forms*, <http://cejp.org/kinship/forms.html> (accessed Dec. 27, 2010).

information in a single, publicly accessible location. The combined input of these and other students who have been involved in the Kinship Project represents more than seven hundred hours of law-related work on behalf of grandparents and other relative-caregivers.¹¹⁹

IV. LOOKING AHEAD, AND A CONCLUSION

The longer I am in academia, the better I understand that it is difficult to predict what the future might hold in terms of my teaching, research, and service. I have ideas for new courses relating to the ever-changing nature of the Elder Law specialty. For example, there is a growing interest in elder mediation—a trend that has both promise and peril. The intra-family disputes that can arise when an aging parent begins to show signs of incapacity are complex; their resolution often implicates the loss of an older person's civil liberties and financial decisions that can affect eligibility for long-term care. Mediation as an alternative to litigation in some nursing-home-discharge cases has potential to save costs and achieve positive results for both residents and providers. Yet many non-attorney mediators, whose training in the theory of mediation is often minimal and in Elder Law is nonexistent, have begun to look to the aging Boomer population as a fertile source of new business. It is important for Elder Law attorneys who are knowledgeable of the legal substance and ethical issues that permeate such disputes to have access to mediation training so that they can assist families in crisis that wish to avoid costly and time-consuming courtroom battles. Accordingly, the Center is exploring the possibility of establishing an elder-mediation clinic that would train law students who are certified mediators to mediate Elder Law-related disputes competently, before they end up in court.

Likewise, a planned course entitled “Comparative Perspectives on Law and Aging” will allow students to explore, compare, and contrast how other nations, both large and small, have addressed the common phenomenon of a rapidly aging population.

119. See generally Elder Just. Scholars, *Kinship Work*, <http://elderjusticescholars.org/gpage1.html> (accessed Dec. 27, 2010) (discussing kinship caregivers and listing applicable resources); Elder Just. Scholars, *Student Placements*, <http://elderjusticescholars.org/gpage7.html> (accessed Dec. 27, 2010) (discussing students' kinship work).

In a world that technology has made smaller, there is value in understanding that “our way” is not necessarily “the only way” or even “the best way” to deal with such issues as assuring income security in retirement, delivering and paying for long-term care for the elderly, and protecting vulnerable adults from abuse and exploitation. I taught an abbreviated, one-credit version of this class this past summer through a summer study-abroad program offered by the University of Kansas in Istanbul, Turkey, using technology to bring internationally renowned scholars into the classroom.¹²⁰ Over the next year, the course will expand and eventually will be offered as a three-credit, distance-learning opportunity for law and gerontology students.

A funny thing happened to me on my serendipitous path to becoming an Elder Law professor: this diverse, very human practice specialty has become my passion. The extraordinary range of subject matters that Elder Law encompasses has allowed me to indulge my early scholarly interests in civil procedure, constitutional criminal procedure, and feminism, while maintaining a focus on a single big picture—the rights and needs of older persons. Thus, when I teach guardianship, we consider whether the loss of liberty that results when a guardianship is imposed—which is not that different from the loss of liberty associated with a criminal conviction and imprisonment—should entitle the respondent to counsel at all stages of this so-called “protective” proceeding. The feminist theory, law, and aging seminar permits students to consider and apply a range of feminist jurisprudential approaches to Elder Law and policy. Elder Law’s interdisciplinary character permits me to incorporate non-legal reading materials in a casebook and invite non-lawyer specialists to lecture in my classes. Such courses as the drafting workshop and the Keystone appeal to my pragmatic nature and my belief that, ultimately, law school should provide students with the skills they need to be both competent and compassionate attorneys. The big tent of Elder Law lends itself to the introduction of technology as an avenue to convey information, advocate for vulnerable elders, and

120. See U. Kansas School of L., *Istanbul Program*, <http://www.law.ku.edu/current/studyabroad/istanbul.shtml> (accessed Dec. 27, 2010) (providing a course description for the Comparative Perspectives on Law and Aging class).

assure that the work of students and faculty members is made available to the broadest possible audience.

In the writing of this Article, I have come to realize that my philosophy about teaching Elder Law is this: if the substantive content of “Elder Law” is offered to students in many formats, made relevant to them through exposure to the stories of real seniors who have real problems, and afforded practical significance through drafting classes and clinics, then many of those students will develop the same passion for this field as I have. Former students, from both Kansas and William Mitchell, have joined or established their own Elder Law practices, become experts on policy at state agencies involved with protecting vulnerable adults, volunteered their services as pro bono attorneys assisting older persons in need of legal advice, and published law review articles on a variety of Elder Law topics. There is nothing more for which a teacher can hope.