

TEACHING ELDER LAW AT THE UNIVERSITY OF HAWAII—INTEGRATING HEALTH LAW AND CULTURAL ISSUES INTO THE CURRICULUM

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I. INTRODUCTION

The University of Hawaii Elder Law Clinic students were excited and proud, yet humbled. Seeing a picture of one of their clients on the front page of the Sunday edition of Hawaii's largest newspaper made them realize that what they were doing in class was "real." The headline accompanying the picture read: "Financial Abuse 'Huge' Issue for Isles' Elderly."¹ The article summarized the tribulations of eighty-two-year-old "Mr. H,"² with whom three of the students had spent several hours just days before. Earlier in the week, three other students did their best to assist ninety-four-year-old "Mrs. T," who was the subject of a guardianship proceeding designed to protect her from potential

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1. Christie Wilson, *Financial Abuse 'Huge' Issue for Isles' Elderly*, Honolulu Advertiser A1, A6 (Feb. 14, 2010).

2. The client's full name is Robert Hikichi. *Id.* at A6. But this Article refers to Mr. Hikichi as "Mr. H" because that is an affectionate name given to him by the Author and his students.

abuse. Mrs. T clearly had diminished capacity, but she was nonetheless more than willing to sign “papers” for her son, who was suspected of neglecting her. The following week, all of the Elder Law Clinic students met with healthcare providers at a community health center that serves a clientele consisting largely of immigrant Pacific Islanders. Many of these patients’ cultural values clash with the traditional “Western”³ approach, which champions the use of both advance healthcare directives and selecting surrogate decisionmakers once determining a patient is mentally incapacitated.⁴

Within the first two weeks of a fifteen-week semester, students in the Elder Law Clinic were already grappling with the complex legal, ethical, cultural, and practical issues that often arise at the intersection of law, aging, and healthcare. Some of the topics covered included conflicts of interest, confidentiality, decisional capacity, undue influence, elder abuse, healthcare financing, language barriers, and cultural competency. The students encountered these issues early on in their legal experience, and tackling problems related to those topics will hopefully serve the students well when they become lawyers.

Before gaining these experiences, all of the students had taken the prerequisite course entitled Law, Aging, and Medicine (formerly “Elder Law”), and several had taken or would take the Health Law and Bioethics and the Law course, so each was familiar with some Health Law issues from at least an academic viewpoint. These students’ experiences demonstrate how the “didactic”⁵ and clinical modalities of Elder Law instruction at the

3. Many of these patients’ cultural beliefs, such as collective decisionmaking whereby decisions are made by a village chief, clash with Western notions of autonomy and self-determination. For further discussion, see *infra* Part III(B)(6) (discussing how cultural differences can affect end-of-life decisionmaking).

4. See Pam Lambert, Joan McIver Gibson & Paul Nathanson, *The Values History: An Innovation in Surrogate Medical Decision-Making*, 18 J.L. Med. & Ethics 202, 202 (1990) (arguing for widespread dissemination of information pertaining to issues that arise out of diminished capacity, such as designating a surrogate decisionmaker); see also Natl. Ctr. on Caregiving, Family Caregiver Alliance, *California Advance Health Care Directive*, http://www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=429 (accessed Nov. 20, 2010) (providing the public with information on advance healthcare directives, such as appointing a healthcare agent, drafting specific future healthcare instructions in the event of incapacity, and addressing other legal issues that may arise upon incapacity).

5. At the William S. Richardson School of Law, the Author teaches both clinical courses and more traditional courses in substantive areas, including Elder Law, Health Law, and Bioethics. The Elder Law Clinic courses emphasize the development of skills

William S. Richardson School of Law (Law School)⁶ integrate traditional concepts of Elder Law, Health Law, Bioethics, and cultural issues into the curriculum. This integration may have begun almost by accident, but it has taken decades to develop and continues to evolve.

The purpose of this Article is to review the origins of the Elder Law curricula at the Law School, and illustrate how these curricula integrate practical lawyering skills with other inextricably related areas of law while simultaneously inculcating an understanding of the important role that cultural diversity plays in providing effective legal services. To accomplish this objective, this Article will first provide a brief description of the interconnectedness of Elder Law, Health Law, and cultural competence.

Next, the Article will generally summarize gerontology,⁷ Elder Law, and Health Law programs in academia, and provide a narrative on the beginning and evolution of the Elder Law curricula at the Law School. With respect to how the Elder Law

through experience. Courses at the John A. Burns School of Medicine tend to utilize a “didactic” style based largely upon textbooks as opposed to laboratory or clinical courses. The Author hesitates to use the term “doctrinal” in view of the considerable controversy relating to relative statuses of teaching faculty based on the type of courses taught, whether they are writing, clinical, or so-called doctrinal. Borrowing from his medical school teaching experience, the Author prefers to use the term “didactic.” For a contemporary view of the state of Elder Law teaching and scholarship, 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, 414–418, 421–423 (2010) (discussing different Elder Law teaching methods based on survey evidence). Kohn and Spurgeon note that “it is common for teachers to use their own materials to teach [E]lder [L]aw,” and posit that “[t]he diversity of teaching materials [used in Elder Law courses] . . . reflect[s] both a mismatch between clinical teaching needs and published materials, and some dissatisfaction with existing published materials among those teaching doctrinal courses.” *Id.* at 423.

6. The Law School was named for Retired Hawaii Supreme Court Chief Justice William S. Richardson, or “C.J.” C.J. was UHELP’s senior partner until his death in June 2010, and his contributions to the program due in part to his extensive and impressive background cannot be overstated:

After graduating from law school, [engaging in] combat service in the U.S. Army, and the private practice of law, C[.]J[.] was elected as Lieutenant Governor and serve[d] with Governor John A. Burns, the namesake of the [M]edical [S]chool. He was subsequently appointed as Chief Justice of the Hawaii Supreme Court. After he retired from the Supreme Court, C[.]J[.] was appointed as a Trustee of the (then) Bishop Estate.

U. of Haw. at Manoa William S. Richardson Sch. of L., *University of Hawai‘i Elder Law Program: UHELP Staff*, <http://www.hawaii.edu/uhelp/staff.htm> (accessed Nov. 20, 2010) [hereinafter *UHELP Staff*].

7. Merriam-Webster defines “gerontology” as “the comprehensive study of aging and the problems of the aged.” Merriam-Webster.com, *Gerontology*, <http://www.merriam-webster.com/dictionary/gerontology> (accessed Sept. 7, 2010).

program developed at the Law School, the Author will demonstrate how Health Law and cultural issues are integrated into both the clinical modalities of teaching Elder Law at the Law School and the so-called didactic Elder Law curricula.⁸ The Article will then discuss how integrating these concepts complements the Law School's ancillary goals of improving legal education in the United States by encouraging public service and fostering a commitment to pro bono legal services.⁹

8. As more emphasis is placed on integrating experiential opportunities into the general curriculum, the lines between teaching modalities may become blurred. The MacCrate Report was instrumental in changing the way law schools approach teaching by encouraging the increased use of clinics and other experiential opportunities for law students to better prepare them for careers in the law. See ABA Sec. of Leg. Educ. & Admis. to the Bar, *Legal Education and Professional Development: An Educational Continuum, Report to the Task Force on Law Schools and the Profession: Narrowing the Gap* (July 1992) (available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>) (noting that "the most significant development in legal education in the post-World War II era has been the growth of the skills training curriculum"). As another example, the Author participated in the panel "Putting Pro Bono in the Classroom" for the Law School Pro Bono Advisor Program of the ABA/NLADA Equal Justice Conference in Phoenix, Arizona on May 12, 2010. The panel's stated subject matter and objective was:

Following the movement toward integrating clinical courses and field placements into the traditional teaching curriculum, there is a growing trend toward incorporating pro bono service into classroom courses. There are several benefits to this model: students are provided with the opportunity to put classroom learning into practice, faculty teach practical skills side-by-side with casebook lessons, and much-needed legal services are provided to the community. This panel will focus on successful strategies for incorporating pro bono into the curriculum and will suggest methods to collaborate with faculty and provide a richer classroom experience for students.

ABA Ctr. for Pro Bono, Law School Pro Bono Advisor Program, CLE Presentation, *ABA/NLADA Equal Justice Conference: Putting Pro Bono in the Classroom* (Phoenix, AZ May 12, 2010) (agenda available at http://www.abanet.org/legalservices/ejc/lawschool_preconference_agenda_2010.pdf).

9. "The Pro Bono Program at the [Law School] was one of the first law school pro bono programs in the nation and is believed to be the first student-initiated mandatory program in the nation." U. of Haw. at Manoa William S. Richardson Sch. of L., *Pro Bono Program* [¶ 2], www.law.hawaii.edu/probono (accessed Nov. 20, 2010) (emphasis removed). In the Law School's Pro Bono Program:

Students are required to locate and to provide law-related pro bono work under the supervision of an attorney, law school faculty[,]dean, or other supervisor, as approved by the [Law School's] Pro Bono Program Administrator. The definition of law-related pro bono work is construed liberally and includes law[-]related work [in the public interest with private practice and non-profit attorneys, as well as any international[,] federal, state, or local government agency, court[,] or legislature. Law students are encouraged to provide a portion of their pro bono service for indigent clients.

Id. at [¶ 3] (emphasis removed). The pro bono requirement began with the entering class of August 1992, and successful completion of this requirement is a condition for graduation. The Author is the faculty pro bono advisor for the Law School's students.

II. DESCRIBING THE INTERCONNECTION BETWEEN ELDER LAW, HEALTH LAW, AND CULTURAL COMPETENCE

Demonstrating the interconnection between Elder Law, Health Law, and cultural competence must begin with a description of these fields independently. Elder Law is a subcategory of law that is coming of age. Before attempting to discuss what Elder Law is, the first question in an Elder Law course is how one might define “elder,” “elderly,” “older person,” “senior citizen,” “advanced age,” and “old age.”¹⁰ But however “elder” is defined, it should be noted that early in the development of Elder Law as a specialized area of practice, the field was described as being focused primarily on Health Law issues and the protection and preservation of older individuals’ income and assets.¹¹ The National Academy of Elder Law Attorneys (NAELA)¹² has developed a more expansive definition of the concept of Elder Law practice, which includes the areas of public benefits, long-term care, estate planning, abuse, discrimination, and litigation.¹³ While the

10. See Marshall B. Kapp, *Legal Aspects of Elder Care* 6–10, 15 (Jones & Bartlett Publishers 2010); Harry Moody, *Aging Concepts and Controversies* 2, 81, 128 (6th ed., Pine Forge Press 2000) (both sources providing additional insight regarding definitions of “old age” as well as insights into aging and legal issues pertaining to the elderly). This Article will not attempt to resolve the question, but does note that the definition of “old age” is highly dependent upon the scenario for which it is needed. For example, fifty is the minimum age for AARP membership. AARP, *AARP Homepage: About AARP*, www.aarp.org/scroll to the bottom of the page (accessed Sept. 4, 2010). And the United States Code defines “older individual” as a person of age sixty or over. 42 U.S.C. § 3002(40) (2006). But an individual cannot claim Social Security Retirement benefits until reaching the age of sixty-one years and nine months. Soc. Sec. Online, *Retirement Planner: How to Apply for Benefits*, <http://www.socialsecurity.gov/retire2/applying8.htm> (last modified July 2, 2010). And Supplemental Security Income, or “Old Age” Social Security benefits, are not available to a working, low-income-earning individual until age sixty-five is reached. Soc. Sec. Online, *Electronic Booklet: Supplemental Security Income (SSI)*, <http://www.socialsecurity.gov/pubs/11000.html#part3> (accessed Nov. 20, 2010).

11. Lawrence A. Frolik, *The Developing Field of Elder Law: A Historical Perspective*, 1 *Elder L.J.* 1, 3 (1993).

12. Natl. Acad. of Elder L. Attys. (NAELA), *About NAELA*, http://www.naela.org/public/about/public/about_NAELA/About.aspx (accessed Nov. 20, 2010). NAELA “is comprised of attorneys in the private and public sectors who deal with legal issues affecting seniors and people with disabilities. Members also include judges, professors of law, and students.” *Id.*

13. See *id.* at http://www.naela.org/Public/About/Media/What_is_an_Elder_Law_Attorney/Public/About_NAELA/Media/What_is_an_Elder_Law_Attorney.aspx (providing considerably more areas of interest in which an Elder Law practitioner may focus). Additionally, the American Bar Association Commission on Law and Aging does not use the

definition of Elder Law may be a moving target,¹⁴ the clientele remain constant: an aging population.¹⁵

While the field of Elder Law has expanded greatly to encompass more than just Health Law, estate planning, and preservation issues, Health Law nonetheless remains integral to the Elder Law practice. Health Law has also become an increasingly important legal specialty, particularly for: assisting older individuals with receiving government-mandated benefits; gener-

term "Elder Law":

The mission of the American Bar Association (ABA) Commission on Law and Aging is to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of elders. It carries out this mission through research, policy development, technical assistance, advocacy, education, and training.

The ABA Commission consists of a [fifteen]-member interdisciplinary body of experts in aging and law, including lawyers, judges, health and social services professionals, academics, and advocates. With its professional staff, the ABA Commission examines a wide range of law-related issues, including: legal services to older persons; health and long-term care; housing needs; professional ethical issues; Social Security, Medicare, Medicaid, and other public benefit programs; planning for incapacity; guardianship; elder abuse; health[]care decision[]making; pain management and end-of-life care; dispute resolution; and court-related needs of older persons with disabilities.

ABA Commn. on L. and Aging & APA, *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers* ii (ABA & APA 2008).

14. For example, William H. Overman and William A. McCormick define "Elder Law" as follows:

Elder law is the legal practice of counseling and representing older persons and their representatives about the legal aspects of health and long-term care[-]planning, public benefits, surrogate decision[]making, older persons' legal capacity, the conservation, disposition and administration of older persons' estates, and the implementation of their decisions concerning such matters, giving due consideration to the applicable tax consequences of the action or the need for more sophisticated tax expertise.

In addition, attorneys certified in [E]lder [L]aw must be capable of recognizing issues of concern that arise during counseling and representation of older persons, or their representatives, with respect to abuse, neglect, or exploitation of the older persons, insurance, housing, long-term care, employment, and retirement.

William H. Overman & William A. McCormick, *Elder Law and Alzheimer's Disease*, 104 Am. J. Med. 22S, 23S (Supp. 1 1998); see also Israel Doron, *Elder Law: Current Issues and Future Frontiers*, 3 Eur. J. Ageing 60, 62-65 (2006) (analyzing how Elder Law has developed significantly over the last two decades, and suggesting methods for the future development of this area of law).

15. Even the clientele in a traditional Elder Law practice may be changing, as evidenced by NAELA's recent interest in Special Needs Planning, which strives to address the needs of people with disabilities regardless of age. For instance, NAELA President Lawrence Davidow once stated: "NAELA Members stand ready to help advise seniors *and people with disabilities* about how to contend with these changes and how to prepare for long-term care." All Business, *NAELA Says New Medicaid Restrictions Spell Disaster for Seniors and People With Disabilities*, <http://www.allbusiness.com/government/government-bodies-offices-legislative/5447894-1.html> (posted Feb. 3, 2006) (emphasis added).

ally adapting to the expansion of businesses focused on healthcare delivery; and teaching in academia.¹⁶

Working with older clients or their representatives is part of any Elder Law practice. These clients' healthcare concerns frequently surface as legal issues, whether in the context of mental capacity, healthcare financing, or healthcare and end-of-life decisionmaking. It is also likely that healthcare professionals such as physicians, nurses, social workers, pharmacists, and physical and occupational therapists may be involved in the lives of Elder Law practitioners' clients, or may be in a position to provide professional advice with respect to clients' health needs or concerns. It follows that any Elder Law course must include some element of Health Law.

Reciprocally, education in the health field should also take elements of Elder Law into consideration, especially with the growing population of older persons.¹⁷ Healthcare professionals themselves may have identified legal questions with respect to their patients or with respect to their relationships with older patients and those patients' families, surrogates, or caregivers. Accordingly, a basic understanding of Health Law, combined with a basic familiarity on how to develop relationships with healthcare providers, is essential for the Elder Law practitioner. Healthcare professionals may likewise benefit from a basic understanding of the legal aspects of working with older patients,

16. Even in the context of academia, Health Law is a difficult term to define, or perhaps to limit. See generally Barry R. Furrow, Thomas L. Greaney, Sandra H. Johnson, Timothy S. Jost & Robert L. Schwartz, *Health Law: Cases, Materials and Problems* (6th ed., Thomson/West 2008) (providing over 1,500 pages covering substantive topics including: public health, regulating the quality of healthcare, professional and institutional liability, managed care, confidentiality, informed consent, fraud and abuse, organizing healthcare delivery, access to healthcare, healthcare cost control, antitrust, human reproduction and birth, life and death decisions, and research involving human subjects). The materials in the textbook are organized to support several discrete courses. *Id.*

17. See Administration on Aging, Dept. of Health & Hum. Servs., *Aging Statistics*, http://www.aoa.gov/aoaroot/aging_statistics/index.aspx (accessed Sept. 4, 2010) [hereinafter *Aging Statistics*] (noting that the current population of persons age sixty-five and older is approximately forty million, but predicting that number will jump to approximately seventy-two million by 2030); see also Sharon O'Brien, About.com, *Senior Living, Aging Population: Seniors Are Fastest Growing Population Worldwide*, <http://seniorliving.about.com/od/lifetransitionsaging/a/seniorpop.htm> (accessed Nov. 20, 2010) (noting that "there is also an aging population explosion in many other countries" due to technological advances).

particularly with respect to interacting with patients' legal and nonlegal representatives.

While practitioners in the field of Elder Law were pioneers in developing relationships with healthcare professionals, these partnerships were usually informal in nature.¹⁸ In the Author's experience, the relationships were often founded upon providing education and training to healthcare providers at their request, and through providing opportunities for attorneys and healthcare professionals to become acquainted and share each other's perspectives with respect to the issues that may arise when serving older individuals. As these relationships evolved, healthcare professionals began returning the favor by not only sharing relevant information but also providing consultation when needed. Later, legal and healthcare professionals began witnessing the benefits of working together with mutual clients and patients. Working with healthcare professionals can be rewarding, but it can also be complex—especially when navigating privacy and confidentiality issues.¹⁹ If practitioners can continue successfully addressing these complexities, such informal legal-health partnerships could become common.

More formalized legal-health partnerships and partnership networks are already gaining popularity.²⁰ One model of integrating information between the services of lawyers and healthcare professionals is the medical-legal partnership (MLP), which is a healthcare-and-legal-services delivery model that aims to improve

18. Many of these pioneers worked through federal- and state-funded legal services projects. For example, UHELP originated at LASH, and operated as the Senior Citizen Unit at LASH from 1981 until 1991, when it commenced operations at the University of Hawaii. See generally Legal Aid Socy. of Haw., *About Us*, <http://www.legalaidhawaii.org> (accessed Nov. 20, 2010) (indicating that LASH originally formed in order to "secure justice for and to protect the rights of the needy and to promote measures for their assistance in such connection"). For further discussion and an example of the Author's relationship with a healthcare professional in the academic context, see *infra* Part III(B).

19. See e.g. A. Frank Johns, *Multidisciplinary Practice and Ethics: Part I, Lawyers, Doctors, and Confidentiality*, 5 NAELA J. 123 (2009); see also Bernadette McSherry, *Health Professional-Patient Confidentiality: Does the Law Really Matter?*, 15 J.L. & Med. 489 (2009) (providing an international perspective on this issue).

20. See e.g. Natl. Ctr. for Med.-Leg. Partn., *About Us*, <http://www.medical-legalpartnership.org/about-us> (accessed Nov. 20, 2010) [hereinafter *Partnership Center*] (noting that medical-legal partnerships already exist at over two hundred hospitals and health centers, and offering additional assistance with beginning a formal medical-legal partnership); N.Y. Leg. Assistance Group (NYLAG), *LegalHealth*, <http://www.nylag.org/legalhealth.htm> (accessed Nov. 20, 2010) (providing legal and medical assistance to low-income children and adults).

the health and well-being of vulnerable individuals, children, and families by integrating legal assistance into the medical setting.²¹ But delivering services must nevertheless take place in an appropriate context. This condition raises the issue of cultural competence. But “cultural competence” is no less difficult to define than “Elder Law” or “Health Law,” and the topic is not a discrete law school subject.²² Cultural issues are especially relevant when discussing healthcare decisionmaking, particularly with respect to end-of-life decisions.²³

Thus, although no comprehensive set of definitions for the terms “Elder Law,” “Health Law,” and “cultural competence” appears to exist, the terms’ individual definitions demonstrate their interrelation, and an understanding of how those terms interact is crucial to understanding the legal aspects of aging.

21. *Partnership Center*, *supra* n. 20. The National Center for Medical-Legal Partnership is a program of the Boston University School of Medicine and Boston Medical Center. *Id.* “MLPs address social determinants of health and seek to eliminate barriers to healthcare in order to help vulnerable populations meet their basic needs and stay healthy.” *Id.* “The National Center for Medical-Legal Partnership supports the expansion, advancement, and integration of medical-legal partnership by providing technical assistance to partnership sites, facilitating the MLP Network, promoting leadership in law and medicine[,] and coordinating national research and policy.” *Id.*

22. Cultural competence is important across the human experience in multiple settings, including law, healthcare, business, government, and many others. U.S. Dept. of Hum. Servs., Office of Minority Health, *What Is Cultural Competency?*, <http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=11> (last modified Oct. 19, 2005). The Office of Minority Health states:

Cultural and linguistic competence is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations. “Culture” refers to integrated patterns of human behavior that include the language, thoughts, communications, actions, customs, beliefs, values, and institutions of racial, ethnic, religious, or social groups. “Competence” implies having the capacity to function effectively as an individual and an organization within the context of the cultural beliefs, behaviors, and needs presented by consumers and their communities.

Id. (adapted from Terry L. Cross, Barbara J. Bazron, Karl W. Dennis & Mareasa R. Isaacs, *Towards a Culturally Competent System of Care: A Monograph on Effective Services for Minority Children Who Are Severely Emotionally Disturbed* (Georgetown U. Child Dev. Ctr. 1989) (available at <http://eric.ed.gov/PDFS/ED330171.pdf>)).

23. See generally *Cultural Issues in End-of-Life Decision Making* (Kathryn L. Braun, James H. Pietsch & Patricia L. Blanchette eds., Sage Publications, Inc. 2000) (offering a societal perspective on healthcare directives by examining different cultures’ end-of-life rituals and history, and urging policymakers to consider laws from the perspective of citizens with both dominant and non-dominant cultural backgrounds).

III. GERONTOLOGY, ELDER LAW, AND HEALTH LAW PROGRAMS IN ACADEMIA

Centers for aging and gerontology in the academic realm have existed for decades,²⁴ but the legal aspects of aging did not appear essential to their development.²⁵ Involvement of legal professionals still tends to be limited.²⁶ For example, the University of Hawaii Center on Aging (Center)'s mission statement contains all of the words one would hope for in fostering a multidisciplinary integration of teaching, research, and service, with a focus on multiculturalism.²⁷ But while law is included in the Center's

24. The oldest and perhaps best-known gerontology center is the Davis School of Gerontology at the University of Southern California. USC Davis Sch. of Gerontology, *Ethel Percy Andrus Gerontology Center*, <http://www.usc.edu/dept/gero/index.shtml> (accessed Nov. 20, 2010). The school is dedicated to "improving the quality of life for older persons through research and education," and further describes its history and mission as follows:

As the oldest and largest school of gerontology in the world, the USC Davis School has a long tradition of forging new pathways in the field of aging. A multidisciplinary institution from its inception in 1975, the USC Davis School was built on the bedrock of excellence in aging research. Research in molecular biology, neuroscience, demography, psychology, sociology[,] and public policy is conducted under the auspices of the Andrus Gerontology Center, founded in 1964.

Id.

25. For example, the Scripps Gerontology Center—another one of the nation's oldest gerontology centers—originated as a population- and fertility-studying center, and later expanded into a multidisciplinary institution. Scripps Gerontology Ctr., *History, Mission, Values*, <http://www.scripps.muohio.edu/content/history-mission-and-values> (accessed Nov. 20, 2010). The Scripps Gerontology Center was founded in 1972, and "was one of the first seven multidisciplinary centers for the study of aging in the nation to be funded by the [United States] Administration on Aging." *Id.*

26. See Marshall B. Kapp, *Professional Development in Law, Health Care, and Aging: A Model Fellowship Program*, in 40-3 *The Gerontologist* 364, 364–366 (Gerontological Socy. of Am. 2000) (asserting that there is a growing need for programs geared toward elder issues).

27. U. of Haw., *Center on Aging: Mission*, <http://hawaii.edu/aging/> (accessed Nov. 20, 2010). The Center communicates the following as its mission:

The health and quality of life of older adults is a vital concern in this changing demographic and economic climate. To enhance the well-being of older adults, the [Center] is committed to interdisciplinary and collaborative efforts in research, educational programs[,] and service to the community. Most often, our Center's initiatives focus on the integration of research, education[,] and service with a focus on the multicultural populations of Hawaii and the Pacific Region. [The Center's primary goals are to:]

1. Promote collaborative and interdisciplinary research within the university and with other academic and community partners. Our focus is often on applied, translational, and community-engaged research that serves older adults in our [S]tate.
2. Develop innovative programs of interdisciplinary gerontological education and practice.

list of disciplines represented among its faculty, the reality is that interdisciplinary interaction is conducted through personal contacts among faculty members with little coordinated effort at a central level. The main reason, at least in Hawaii, seems to be a lack of both funding and a permanent home for the Center.²⁸

Elder Law courses have multiplied over the years, and have become dynamic focus areas at several law schools.²⁹ For the most part, however, Elder Law courses have not yet attained the same stature or stability that Health Law courses have enjoyed in academia, as either teaching areas or research foci; and perhaps due to its lack of prominence, Elder Law has also failed to attract the attention of many research-funding entities.³⁰ While few Elder

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3. Provide state[-]of[-]the[-]art information to policy makers, program managers, clinicians, and the general public.

As an interdisciplinary center, the faculty represent a broad array of disciplines, including Public Health, Medicine, Law, Social Work, Disability Studies, Family Resources, Sociology, Nursing, and others.

The Center consists of several focused research areas that reflect the mission and vision of the [Center] :

- Social and Health disparity Policy Research
- Behavioral and Social Sciences, and Related Research from Professional Schools
- Culture, Diversity[,] and Community Engagement Research
- Workforce and Educational Models

Id.

28. Currently housed in the Office of the Vice Chancellor of Research and Graduate Education, the Center was originally an independent entity at the University of Hawaii's Manoa Campus until funding became a problem. The Center was subsequently disseminated between the School of Public Health, the Medical School, and until recently, the School of Social Work. In 2008, a gift was given to the University to establish a Chair in Aging. The U. of Haw. Sys., *UH Manoa Center on Aging Receives \$2 Million Gift*, <http://www.hawaii.edu/news/article.php?aId=2569> (posted Nov. 25, 2008). The chair would be occupied by:

[A] recognized scholar who will solidify existing courses and develop new curricula in an interdisciplinary and holistic approach to issues associated with aging. The chair will work with an advisory steering committee made up of administrators, deans[,] and directors who have programmatic, research[,] and instructional curriculum experience focused on the elderly.

Id. While awaiting a permanent Chair in Aging, the University of Hawaii appointed an Interim Chair, Collette Browne, Ph.D. U. of Haw. at Manoa Myrnon B. Thompson Sch. of Soc. Work, *Collette Browne, DrPH, MSW, MEd*, <http://www.hawaii.edu/sswork/faculty&staff/cbrowne.html> (last modified Jan. 20, 2010).

29. *E.g.* Danielle Valdenaire, ABA Commn. on Law and Aging Survey, *Law School Elder Law Courses & Clinics Listed in On-line Course Catalogs*, <http://new.abanet.org/aging/PublicDocuments/Law%20schools%20offering%20elder%20law-CHART.pdf> (posted Nov. 2009) [hereinafter *Elder Law Course Catalogs*].

30. *Compare* Ga. St. U. L., Ctr. for L., Health & Socy., *Health Law Courses*, http://law.gsu.edu/clhs/index/education/health_law_courses (accessed Nov. 20, 2010) [hereinafter

Law centers exist,³¹ Health Law centers have taken hold at numerous law schools and have even become part of national-rating frenzies.³²

GSU Health Law Courses] (describing Georgia State University Law School's six core curriculum tracks in Health Law, each containing many courses that provide for in-depth exploration of different legal issues in Health Law but none of which reference aging or older persons) with Stetson Law, *Elder Law Course Survey*, <http://justice.law.stetson.edu/excellence/elderlaw/ElderLawCourseSurvey.htm> (accessed Nov. 20, 2010) [hereinafter *Stetson Course Survey*] (providing all law schools' available courses pertaining to Elder Law, including Health Law-related courses).

31. *Stetson Course Survey*, *supra* n. 30. Of the Elder Law centers that do currently exist, Stetson University College of Law (Stetson Law)'s Center for Excellence in Elder Law is possibly the prime example of what an Elder Law program should encompass. According to that center's webpage:

[Stetson Law's] Center for Excellence in Elder Law was established to meet the increasing need for legal education and research in the field of law and aging. The Center provides legal education to law students, attorneys, and judges in the field of elder and special needs law and produces scholarly research and writing on issues impacting those who are older and/or have special needs.

[Stetson Law's] Center for Excellence in Elder Law offers opportunities for specialized courses, research projects, and continuing legal education. Students who wish to focus their studies on [E]lder [L]aw can enroll in the [E]lder [L]aw concentration. The online LL.M. in Elder Law program . . . offers the convenience of [twenty-four]-hour access to academic courses.

Stetson Law, *Center for Excellence in Elder Law*, http://www.law.stetson.edu/tmpl/academics/internal-1.aspx?id=566&ekmense=78e6e020_148_0_566_1 (accessed Nov. 20, 2010) (emphasis removed). Stetson Law also provides its students with opportunities for interactive learning. Specifically:

Stetson has created four programs to educate students about the special legal needs of the elderly. The Elder Law Clinic allows eligible students to attain hands-on experience in legal problems of the elderly by working on actual cases. Some students work in legal services offices and actually represent elderly clients with civil legal problems. Other students work with assistant state attorneys prosecuting cases where elders are victims of consumer scams. The other three courses are: Aging and the Law, the Elder Law Seminar[,] and the Elder Law Internship.

Id. at http://www.law.stetson.edu/tmpl/academics/elder/internal-1-sub.aspx?id=568&ekmense=78e6e020_148_0_568_5 (emphasis removed). Stetson Law also offers an Elder Law Certificate of Concentration program, which requires that students take certain courses. *Id.* at <http://www.law.stetson.edu/tmpl/academics/elder/internal-1-sub.aspx?id=570>. The Mandatory Curriculum includes: Aging and The Law; Disability Law; an Elder Law Internship; either a State Court Judicial Internship (probate judge placement only) or an Elder Law Clinic or Civil Poverty Clinic; an Elder Law Seminar course; Estate Planning; either Interviewing, Counseling, and Negotiation or Interviewing and Counseling; and Trusts & Estates. *Id.* The Elective Curriculum includes Administrative Law; Florida Administrative Law; Elder Law Drafting; Elder Law Practice Management; Advanced Legal Research (pathfinder in Elder Law); either Alternative Dispute Resolution, Negotiation and Mediation, or Negotiation, Mediation, and Arbitration; Federal Taxation of Estates, Trusts, and Gifts (also known as Estate & Gift Tax); Health Law; and Individual Research Projects. *Id.* Another example of a very firmly established program is the William Mitchell College of Law Center for Elder Justice and Policy. William Mitchell College of L., *Center for Elder Justice & Policy*, <http://www.wmitchell.edu/cejpe/elderjustice/?page=117&Home> (accessed Nov. 20, 2010). The William Mitchell College of Law also has

Of course, Health Law is more pertinent than Elder Law in that the entire population is affected by Health Law issues whereas Elder Law, albeit an arguably more diverse subject area, specializes in assisting with a smaller subset of the population.³³ But Elder and Health Law courses and centers at universities sometimes intersect, and in some law schools Elder Law may be considered a subset of Health Law.³⁴ And in some institutions, Elder Law courses and clinics either arose out of or were formed in partnership with medical schools.³⁵ However, in some instances, older persons and Elder Law are not directly men-

a well-established Public Health Law Center. Pub. Health L. Ctr. at William Mitchell College of L., <http://publichealthlawcenter.org/> (accessed Nov. 20, 2010). The William Mitchell Public Health Law Center focuses on education, research, and public service opportunities in the context of Elder Law and aging issues. *Id.* Students benefit from a rich Elder Law curriculum that is one of the most comprehensive in the nation. *Id.* Health Law issues may be integrated into the curriculum, but Health Law courses are not listed as part of the William Mitchell College of Law Public Health Law Center's core curriculum. *Id.* On an international level, the Canadian Centre for Elder Law (CCEL) provides a model of Elder Law advocacy but without an internal teaching component. Canadian Ctr. for Elder L., *Welcome to CCEL*, <http://www.bcli.org/ccel> (accessed Nov. 20, 2010). The mandate of the CCEL includes research, law reform, and education relating to legal issues of interest to older adults. *Id.* Today, the CCEL is recognized for its expertise in Elder Law issues both in Canada and internationally. *Id.*

32. U.S. News & World Rpt., *Best Law Schools Specialty Rankings: Healthcare Law*, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/clinical-healthcare-law> (accessed Nov. 20, 2010).

33. See Overman & McCormick, *supra* n. 14, at 23S (defining "Elder Law," which pertains to older persons in the population); see also *Aging Statistics*, *supra* n. 17 (indicating that the population of older persons is, in fact, growing).

34. See e.g. St. Louis U. Sch. of L., Ctr. for Health Law Stud., Brochure, *The Center for Health Law Studies* (2009–2010) (available at http://law.slu.edu/admissions/assets/health_law_brochure.pdf) (listing Elder Law as one of seventeen courses taught at the Saint Louis University School of Law that can be credited toward a certificate in Health Law studies).

35. See e.g. Wake Forest U. Sch. of L., *Clinics & Field Work: Elder Law Clinic*, <http://law.wfu.edu/clinics/elder> (accessed Nov. 20, 2010). The Wake Forest Clinic provides free legal assistance to moderate-income seniors, and serves as a resource center for lawyers and other professionals. *Id.* In a partnership with the Wake Forest University School of Medicine, the so-called E-Clinic offers law students a unique opportunity to learn about the medical and Health Law issues of older clients. *Id.* The Wake Forest Clinic is located in the J. Paul Sticht Center on Aging and Rehabilitation at the Wake Forest University Baptist Medical Center. *Id.* at <http://law.wfu.edu/clinics/elder/contact/>. While there may be some disadvantages to having a legal program outside of a law school setting, the Wake Forest program is an excellent example of integrating Health Law into its Elder Law Clinic curriculum because its Elder Law Clinic is physically located within a healthcare facility. See also Kate Mewhinney, *Ideals and High Heels—A Look at Wake Forest University's Elder Law Clinic*, 11 N.C. St. B. J. 20–24 (Fall 2006) (available at http://www.ncbar.com/journal/archive/journal_11,3.pdf) (providing an in-depth assessment of the Wake Forest program).

tioned at all as part of a Health Law program.³⁶ Likewise, Elder Law concentrations do not necessarily require students to take any courses in Health Law,³⁷ although health issues are included in a number of Elder Law courses.³⁸

A. Elder Law (and Health Law)³⁹ at the University of Hawaii

Elder Law has been an integral part of the Law School's curriculum for approximately twenty years.⁴⁰ The Elder Law course,

36. See e.g. *GSU Health Law Courses*, *supra* n. 30. But Florida State University (FSU) has a new center that aspires to offer courses open to both law and medical students, and also encourage more collaborative activities among doctors and lawyers. Fla. St. U. College of Med., *Center for Innovative Collaboration in Medicine and Law*, <http://med.fsu.edu/?page=innovativeCollaboration.home#> (accessed Sept. 7, 2010) (describing the joint efforts between FSU's Colleges of Medicine and Law). The Author also confirmed that the goal of FSU's new center is consistent with the emerging trend of integrating law and medicine via a September 16, 2010 telephone conversation with Marshall Kapp, J.D., M.P.H., who is the current Director of the Center for Innovative Collaboration in Medicine (FSU Center). The FSU Center's stated mission is:

[T]o identify and facilitate (through education, the conduct and dissemination of scholarship, and performance of service activities) opportunities for members of the medical and legal professions, working together and with others, to foster improvements in the quality of life enjoyed by individuals and to promote public health in Florida, the United States, and globally.

Id. A clear link to aging is evident, and will be encouraged by the FSU Center because FSU's Medical School specializes in serving the elderly and disenfranchised. For instance, FSU's College of Medicine was founded with the intention of "us[ing] community-based clinical training for the education of its students, creat[ing] a technology-rich environment, and address[ing the] primary care health needs of Florida's citizens, especially the elderly, rural, minorities, and underserved." Myra M. Hurt & J. Ocie Harris, *Founding a New College of Medicine at Florida State University*, 80 *Academic Med.* 973, 973 (Nov. 2005) (available at http://journals.lww.com/academicmedicine/Abstract/2005/11000/Founding_a_New_College_of_Medicine_at_Florida.2.aspx; select "Article as PDF" from the "Article Tools" menu).

37. See e.g. USC Davis Sch. of Gerontology, *Academic Programs*, <http://www.usc.edu/dept/gero/academics/graduate.shtml> (accessed Nov. 20, 2010) (explaining that this particular gerontological center does not require its students to take Health Law courses).

38. *Elder Law Course Catalogs*, *supra* n. 29. For example, Drake University Law School, the University of Houston Law Center, the University of Miami School of Law, and the State University of New York: Buffalo Law School focus their respective programs' efforts beyond healthcare decisionmaking to encompass other health-related issues. *Id.*

39. It is often difficult to separate Health Law from Elder Law, and this Article could have been titled "Integrating Elder Law into the Health Law Curriculum." As previously indicated, at the Law School the course once titled "Elder Law" is now called "Law, Aging, and Medicine," which by its very name provides for integrating both health and aging issues when teaching aspiring Elder Law attorneys.

40. U. of Haw. at Manoa William S. Richardson Sch. of L., *Welcome to the University of Hawaii Elder Law Program*, <http://www.hawaii.edu/uhelp/> (accessed Nov. 20, 2010) [hereinafter *Welcome to UHELP*]. The University of Hawaii was founded as a land-grant college in 1907 and designated a university in 1920. U. of Haw. Sys., *History of the University of Hawaii*

which was originally called “Legal Problems of the Elderly” and is now called “Law, Aging, and Medicine,” has been taught at the Law School in one form or another since 1989.⁴¹ The Elder Law Clinic is one of several “live” client clinics at the Law School, which sees itself as a uniquely situated and diverse institution of legal education.⁴²

Some of the special aspects of teaching Elder Law at the Law School arise out of the cultural diversity in which we find ourselves in Hawaii;⁴³ the evolution of a multidisciplinary approach for the Law School’s courses on aging at the University of Hawaii; and the special emphasis we place on community service and protecting older persons in the State. These focus areas, coupled with a systematic integration of both Health Law and cultural awareness, derived from and continue through the University of Hawaii

System, <http://www.hawaii.edu/about/history.html> (accessed Nov. 20, 2010). Its largest campus, which includes the Law School, is located in Manoa Valley near central Honolulu on the island of Oahu. *Id.* The Law School admitted its first class in 1973. U. of Haw. at Manoa William S. Richardson Sch. of L., *About Us, Time Line*, <http://www.law.hawaii.edu/about-us/time-line> (accessed Sept. 7, 2010). It is the only Law School in the State, and was accredited by the American Bar Association in 1974. *Id.* The Law School was also admitted to the Association of American Law Schools in 1989. *Id.*

41. The Author has been teaching this course each fall since 1989. The Author initially taught “Legal Problems of the Elderly” as an adjunct professor while he was managing the Senior Citizens Program at the Legal Aid Society of Hawaii. Later, as the legal specialty matured and lawyers practicing in the field searched for an identity and a “brand” for their work, the course was renamed “Elder Law.” This change coincided with the Author’s move to the University of Hawaii. The course is now known as “Law, Aging, and Medicine,” partially to help anchor a small piece of funding bearing that name that became available, but which has been mostly expended. The Author would have preferred the term “health-care” over “medicine.” Early in the process, an Elder Law Clinic was established that was initially funded by a federal grant under Title IX of the Higher Education Act. From the beginning and except for a few years after the Title IX funds lapsed, the Author has been teaching an Elder Law Clinic during the fall semester. An Advanced Elder Law Clinic runs in both the fall and spring semesters, depending upon the level of student interest.

42. U. of Haw. at Manoa William S. Richardson Sch. of L., *Our Mission*, <http://www.law.hawaii.edu> (accessed Nov. 20, 2010). The Law School’s mission statement is:

[To] provide an excellent professional legal education to highly qualified and diverse students in a collaborative, multidisciplinary educational community that is deeply committed to teaching, scholarship, public service, ethical responsibility, and the pursuit of social and economic justice. We embrace Hawai’i’s diversity, location, and values. As Hawai’i’s law school, we recognize a special responsibility to this [S]tate and region and to the global community. We lead in important areas of law, including environmental law, Pacific-Asian legal studies, and Native Hawaiian law.

Id.

43. See Barbara Gross Davis, *Diversity and Complexity in the Classroom: Considerations of Race, Ethnicity, and Gender*, <http://honolulu.hawaii.edu/intranet/committees/FacDevCom/guidebk/teachtip/diverse.htm> (accessed Nov. 20, 2010) (discussing the general role that diversity should play in academia).

Elder Law Program (UHELP), which has provided stability for the Law School's Elder Law program.⁴⁴

UHELP is located at the Law School, which is on the main campus of the University of Hawaii at Manoa.⁴⁵ UHELP ties together three interrelated components designed to both train future Elder Law attorneys and healthcare professionals, and provide better access to quality legal services for traditionally underserved populations: legal education (including clinical legal-healthcare education); legal-medical education; and direct legal services. Both the didactic and clinical courses at the Law School are affiliated with UHELP.⁴⁶

B. Didactic Courses Affiliated with UHELP

Didactic courses affiliated with UHELP consist of three primary courses offered to law students and certain graduate students. These courses include the previously mentioned Law, Aging, and Medicine; Health Law; and Bioethics and the Law courses. These courses are open to second- and third-year law students, as well as graduate-level students who are studying various disciplines, including medicine, nursing, psychology, and social work. Professionals, such as doctors, nurses, psychologists, lawyers, and social workers, are also permitted to audit the courses. Each of these didactic courses help prepare students for the clinical aspects of the Elder Law experience at the University of Hawaii. In 1993, the Author began teaching Health Law with an adjunct professor who is a doctor, a lawyer, and a professor at the University of Hawaii John A Burns School of Medicine.⁴⁷ From 2005 through 2007, the Author taught the Health Law

44. See *Welcome to UHELP*, *supra* n. 40 (indicating that UHELP is a pillar of the program as a whole, and "plays a vital role in educating students and in serving the community").

45. See U. of Haw. at Manoa, *About UH Manoa*, <http://manoa.hawaii.edu/about/> (accessed Nov. 20, 2010) (noting that the University of Hawaii at Manoa is the "flagship campus of the University of Hawai'i System").

46. See U. of Haw. at Manoa William S. Richardson Sch. of L., *Programs, Clinics & Institutes*, <http://www.law.hawaii.edu/programs-clinics-institutes> (accessed Nov. 20, 2010) (exemplifying the availability and interrelationship between both clinical and traditional classroom curricula at the Law School).

47. See U. of Haw. at Manoa John A. Burns Sch. of Med., *JABSOM Faculty & Staff: Siang Y. Tan*, <http://jabsom.hawaii.edu/JABSOM/faculty/bio.php?facultyid=206> (accessed Sept. 26, 2010) (providing Professor Siang Y. Tan's contact information at the University of Hawaii at Manoa's John A. Burns School of Medicine).

course independently. Because the demand for Health Law-related education has increased, the Law School is currently embarking on a plan to expand these courses. A number of visiting law professors have been teaching Health Law courses at the Law School over the past three years, and the Author will continue to teach one of the Health Law component courses, namely Bioethics and the Law. Also, the Law, Aging, and Medicine course will continue to serve as the anchor for integrating law, aging, and healthcare into the Law School's curriculum.

1. Law, Aging, and Medicine Course

The Law, Aging, and Medicine course provides a basic theoretical and substantive foundation for legal practice involving the needs of older individuals at the intersection of law, aging, and medicine.⁴⁸ The course addresses legal issues that older persons in our society frequently face, as well as legal issues that affect not only the elderly but also the general population, with an emphasis on healthcare-related legal issues.

Substantive topics covered include the following: the demographics of aging; the Older Americans Act;⁴⁹ delivering legal services to the elderly; mental capacity issues; ethical considerations in an Elder Law practice; consumer protection; age and disability discrimination; Social Security and Supplemental Security Income;⁵⁰ Medicare and Medicaid;⁵¹ guardianship and alternatives to guardianship; elder crime, abuse, and neglect; adult protective services; nursing home and other long-term care

48. The course size varies depending upon interest or conflicts with other courses. For instance, over the past few years, the course has "competed" with a Bar course on the schedule, so enrollment has averaged about fifteen students instead of the normal average of about twenty students.

49. 42 U.S.C. § 3001 (2006).

50. See generally Soc. Sec. Admin., *Social Security Online: The Official Website of the U.S. Social Security Administration*, <http://www.ssa.gov> (accessed Nov. 20, 2010) (providing that Social Security is a program created mainly to assist citizens financially as they age and to keep families together, as opposed to Supplemental Security Income, which is funded using general tax dollars and used to assist aged, blind, and disabled people who have little to no income).

51. See generally U.S. Dept. Health & Human Servs., *Centers for Medicare and Medicaid Services*, <http://www.cms.gov> (accessed Nov. 20, 2010) (providing that Medicare and Medicaid are government-sponsored health programs, with Medicare being financed and run by the federal government and Medicaid funded primarily by state governments).

legal issues; housing and healthcare decisions (including end-of-life decisions); estate planning; and grandparents' rights.

The course expands the original Elder Law course taught over the years by integrating certain healthcare issues and utilizing both a traditional Elder Law casebook and supplemental healthcare and cultural materials developed by UHELP.⁵² The Law, Aging, and Medicine course also provides experiential opportunities for its students, who are encouraged to both attend extra lectures and events, and observe and work with UHELP and Advanced Elder Law Clinic students.⁵³ The course objectives are:

- to explore the general areas of law that affect older persons[;]
- to understand unique practice issues involved in providing legal services to this age group[;]
- to understand legal issues related to [providing] healthcare [that] face the general population, including the elderly [especially in the context of living in Hawaii;]

52. The primary text used in the course is Lawrence A. Frolik & Alison McChrystal Barnes, *Elder Law Cases and Materials* (4th ed., LexisNexis 2007), but the Author has also used the equally fine A. Kimberley Dayton, Molly M. Wood & Julia Belian, *Elder Law: Readings, Cases, and Materials* (3d ed., LexisNexis 2007); see generally *Welcome to UHELP*, *supra* n. 40 (providing a link to publications issued by UHELP).

53. For example, in the fall semester of 2009 and spring semester of 2010, UHELP sponsored over a dozen community lectures and two major Law School events: "Death Panels in Hawaii?" and "Death Panels in Hawaii II," which explored healthcare decision-making, including end-of-life decisions and "death-with-dignity" issues in Hawaii. And every fall UHELP sponsors its annual "Night of the Living Will," which provides the community with information about advance directives and healthcare decisionmaking, and affords its attendees the opportunity to fill out and execute an advance directive. A number of the students enrolled in Law, Aging, and Medicine, and students taking other Elder Law Clinic courses, have attended these sessions. Over the years, the Author has also been a member of several hospital ethics committees that review and discuss ethical issues relating to patient care help. The Author is also a member of the University of Hawaii Institutional Review Board, which reviews and monitors research involving human subjects. See U. of Haw. Comm. on Hum. Studies, *General Information: Why IRB?*, http://www.hawaii.edu/irb/html/gi_why.htm (accessed Sept. 26, 2010) (indicating that the University of Hawaii's Institutional Review Board is an oversight committee that is charged with protecting against and managing risks associated with human research). Students are periodically given the opportunity to observe those committees, and some students write articles discussing the legal, medical, and ethical issues that often surface.

- to understand the role of the lawyer in the context of a multidisciplinary professional approach to health and social services for the elderly[; and]
- to recognize the ethical issues faced by lawyers serving vulnerable clients and their families and to understand how the rules of professional responsibility apply.⁵⁴

The integration of Health Law and cultural issues commences on the first day of class. Foremost, Hawaii sees itself as a special place,⁵⁵ and the Elder Law and related courses have always attracted a diverse range of students with respect to gender,⁵⁶ age, ethnicity,⁵⁷ and life experience. The Law School is considered one of the most diverse law schools in the United States.⁵⁸ Some of the students are older than the average law stu-

54. U. of Haw. at Manoa William S. Richardson Sch. of L., *University of Hawai'i Elder Law Program: Elder Law (Law 521)*, <http://www.hawaii.edu/uhelp/law-521.htm> (accessed Sept. 7, 2010).

55. Hawaii was formerly a kingdom with its first formal law decreed over two centuries ago. See *infra* n. 90 and accompanying text for more information about Hawaii's first laws. Former Hawaii Governor George Ariyoshi (1974–1986) was famous for describing Hawaii, which is the only island state of the United States and is separated from North America by over two thousand miles of ocean, as more nearly a nation than any other state—a statement that, in light of a currently reenergized sovereignty movement, may have been prescient. See Will Hoover, Honolulu Advertiser, *George Ariyoshi*, <http://the.honoluluadvertiser.com/150/sesq4ariyoshi> (posted July 2, 2006) (providing a brief overview of Governor Ariyoshi's accomplishments as governor of Hawaii); *Hawai'i: Independent and Sovereign*, <http://www.hawaii-nation.org/> (accessed Nov. 20, 2010) (providing information about Hawaii's recent legal struggle to regain its independence from the United States).

56. The fall 2009 semester was unique in that only one male law student was enrolled in the course—that student became most aware that feminist theory is also very much integrated into the curriculum.

57. Hawaii has no majority race, and “[it is] a land where residents talk so openly about identity that many call themselves ‘chop suey’ . . .” Philip Rucker, *Washington Post*, Honolulu Advertiser, *Islands' Influence Seen in Obama's Cool*, <http://the.honoluluadvertiser.com/article/2009/Jan/03/ln/hawaii901030344.html> (posted Jan. 3, 2009). In fact, from its admission as a state in 1959, Hawaii always had a population in which no majority race existed. Jeff Campbell, Glend Bendure, Ned Friary, Molly Green, China Williams & Luci Yamamoto, *Hawaii* 41 (Lonely Planet 2007). It was also the United States' first “majority-minority” state. *Id.* at 47. People in Hawaii seem more comfortable, perhaps, in integrating their own lives rather than worrying about race. See e.g. Honolulu Advertiser, *Hawaii Still Leads U.S. with Highest Rate of Mixed Marriages*, <http://the.honoluluadvertiser.com/article/2010/May/27/ln/hawaii5270361.html> (posted May 27, 2010) (stating: “Nearly one-third of marriages in the Islands are between interracial couples—by far the largest percentage in the country and four times the national average”).

58. The Law School is listed as having the best environment for minority students, the

dent,⁵⁹ and many of the students have been caregivers to grandparents, parents, or, in some instances, to adult children with special needs. These students provide an important insight into many of the subject areas of the course, and help keep the course relevant to “real” people. So discussions about the importance of cultural competency are made easier due to the level of diversity generally present in the classroom.

Also, every semester at least two students in each class are healthcare professionals, and enrollees have included doctors, nurses, social workers, and physical or occupational therapists. In-class contributions from these professionals considerably enriches the experience of the entire class. For example, during the semesters in which the course is fortunate enough to have a law student who is also a psychiatrist, brain damage, mental incapacity, undue influence, and mental illness are discussed quite in-depth as those issues arise in different parts of the curriculum. In semesters without such “in house” expertise, a psychiatrist from the medical school is usually called upon to speak with the class about those concepts.

Finally, under a course policy of “non-attribution,”⁶⁰ all students are encouraged to, and often do, share any personal experiences they may have had that reflect the intersection of law, aging, and healthcare. All are charged with both sharing their life experiences with classmates and challenging assumptions about law and aging in America. This provides for uniquely insightful discussions about healthcare and cultural issues throughout the semester.

seventh best environment for older students, and the fifth most diverse faculty. Princeton Review, *2011 Best 172 Law Schools Rankings: Best Environment for Minority Students*, <http://www.princetonreview.com/schoollist.aspx?id=691&type=r> (accessed Nov. 20, 2010) (free registration required) (indicating that the Law School is ranked first under this category); *id.* at <http://www.princetonreview.com/schoollist.aspx?id=733&type=r> (indicating that the Law School is ranked second under this category); *id.* at <http://www.princetonreview.com/schoollist.aspx?id=730&type=r> (indicating that the Law School is ranked fifth under this category).

59. So far, the oldest student was sixty-five years old upon graduation.

60. See e.g. Fed. Acquisition Inst., *Classroom Courses Handbook 4* (Fed. Acquisition Inst. 2007) (available at http://www.fai.gov/pdfs/FAI_Classroom_Courses_Handbook.pdf) (indicating that a nonattribution policy generally provides that what students say in a classroom will not be attributed to them when repeated outside of class, which allows students to express their opinions without “fear of retribution”).

2. Health Law

This course provides a basic foundation for practicing in the field of Health Law. “Health Law’ is a broad term that encompasses not only the patient-healthcare provider relationship[, but] also includes legal issues pertaining to the [healthcare] industry, managed [healthcare]services, financing [healthcare], [and] the role of government” in healthcare and healthcare ethics.⁶¹ The course’s stated objective is “to expose participants to the general areas of law that affect [healthcare]and delivery.”⁶² Substantive topics covered include the following: “public health[,] regulating the quality of [healthcare], professional and institutional liability, managed care, confidentiality, informed consent, fraud and abuse, organizing [healthcare] delivery, access to [healthcare], [healthcare] cost control, antitrust, human reproduction and birth, . . . life and death decisions, and research involving human subjects.”⁶³

3. Bioethics and the Law

This course provides a basic overview of the study of bioethics, healthcare, and the law. The course website states that:

The term “bioethics” is used generally to describe ethical issues in the life sciences but can be expanded to include other concerns such as humanitarian law. The professional fields that deal with bioethical issues in this expanded sense include medicine, nursing, law (including to some extent, international law), sociology, philosophy, and theology.⁶⁴

The course aims to provide students with a basic understanding of how “bioethics, healthcare, scientific experimentation[,] and the

61. U. of Haw. at Manoa William S. Richardson Sch. of L., *University of Hawaii’s Elder Law Program: Health Law (Law 532)*, <http://www.hawaii.edu/uhelp/law-532.htm> (accessed Nov. 20, 2010).

62. *Id.*

63. *Id.*

64. *Id.* at <http://www.hawaii.edu/uhelp/law-520E.htm> [hereinafter *Bioethics Law*]; see also Deleso Alford Washington, *Defining Race: Critical Race Feminist Bioethics: Telling Stories in Law School and Medical School in Pursuit of “Cultural Competency”*, 72 Alb. L. Rev. 961, 985 (2009) (noting that bioethics “is traditionally defined as a branch of ethics concerned with issues surrounding [healthcare] and the biological sciences”).

law” are interconnected.⁶⁵ The course also furnishes students with information “about selected principles of bioethics and significant issues or unsettled matters in bioethics.”⁶⁶ As its title suggests, the course introduces students to the study of bioethics, but the course also covers topics such as: “Human Reproduction and Birth; Legal, Social[,] and Ethical Issues in Human Genetics; Defining Death[:] Life and Death Decisions; Regulation of Research Involving Human Subjects; Distributive Justice and the Allocation of Health[c]are Resources—the Example of Human Organ Transplantation; and Public Health and Bioterrorism.”⁶⁷

4. Geriatric and Psychiatry Fellows Seminars

Educating healthcare professionals in legal topics at the Law School began quite informally. When the Author was at the Legal Aid Society of Hawaii and was first teaching as an adjunct professor at the Law School, he was approached by the chair of the newly established department of Geriatric Medicine at the John A. Burns School of Medicine (Medical School)⁶⁸ to provide education and training in legal subjects to the Geriatric Fellows enrolled at the Medical School.⁶⁹ This education and training later

65. *Bioethics Law*, *supra* n. 64.

66. *Id.*

67. *Id.*

68. U. of Haw. Dept. of Geriatrics, *About the Department of Geriatric Medicine*, <http://www.hawaii.edu/geriatrics/> (accessed Nov. 20, 2010). The current Department Chair is Dr. Patricia Lanoie Blanchette. *Id.*

69. Geriatric Fellows are medical doctors or doctors of osteopathy who have already completed residency programs in such areas as internal medicine and family practice. U. of Haw. Dept. of Geriatric Med., *Fellowship: Important Information*, http://www.hawaii.edu/geriatrics/html/pages/fellowship_info.html (accessed Nov. 20, 2010). The Department of Geriatric Medicine fellowship program at the John A. Burns School of Medicine is accredited by the Accreditation Council for Graduate Medical Education (ACGME). *Id.* at http://www.hawaii.edu/geriatrics/html/menu_pages/fellowship.html. Graduates of this program are certified or eligible for Board Certification in Geriatric Medicine. *Id.* Other trainees include:

[S]tudents from the [M]edical [S]chool and other health professions[] schools, residents, fellows[,] and continuing education participants from the community. The department has [thirty-five] geriatricians and [twenty-seven] associate faculty ([eighteen] physicians from a variety of disciplines such as Geriatric Psychiatry, Neurology, Cardiology, [and] Epidemiology; and [nine] doctoral[-]level faculty from disciplines such as Gerontology, Public Health, Social Work, Sociology, Nursing, Law, Audiology, Dentistry[,] and Statistics).

Id. at http://www.hawaii.edu/geriatrics/html/menu_pages/faculty.html.

expanded to include Psychiatry Fellows as well.⁷⁰ Eventually, working with these fellowships led to a formal appointment for the Author as an adjunct professor at the Medical School, a first for a law professor in the State.⁷¹ All Geriatric and Geriatric Psychiatry Fellows are currently required to take the Author's specific courses of legal instruction, which are intended to help them understand the medical-legal issues that affect older persons. The instruction takes the form of multiple seminars on a variety of medical-legal topics.⁷² These seminars are also open to internal medicine, family practice, and psychiatry residents. Law students taking any one of the three didactic or clinical courses affiliated with UHELP are also encouraged to attend these seminars.

As an added bonus, because the Author has volunteered to teach at the Medical School, colleagues from the Medical School are willing to consult with UHELP regarding capacity and other healthcare issues. They are also willing to come to the Law School and present on a variety of healthcare issues to both the Elder Law Clinic and students taking the Law, Aging, and Medicine, Health Law, and Bioethics courses. These professors of geriatrics and psychiatry are leaders in their fields. Additionally, the Medi-

70. Most of the Psychiatry Fellows attending the seminars at the Law School are undertaking ACGME-accredited fellowships in geriatric psychiatry and forensic psychiatry. "A geriatric psychiatrist is a medical doctor with special training in the diagnosis and treatment of mental disorders that may occur in older adults. These disorders include, but are not limited to, dementia, depression, anxiety, alcohol and substance abuse[and] misuse, and late-life schizophrenia." Geriatric Mental Health Found., *Find a Geriatric Psychologist*, <http://www.gmhfonline.org/gmhffind.asp> (accessed Nov. 20, 2010). Geriatricians are often called upon to help lawyers and courts with issues relating to mental capacity and undue influence, and forensic psychiatry can be seen as "the interface between law and psychiatry." Karen Lotter, Suite101.com, *What is Forensic Psychiatry? Expert Witnesses, Insanity Defense, Criminal Responsibility*, http://forensicscience.suite101.com/article.cfm/what_is_forensic_psychiatry (posted May 4, 2008). Forensic psychiatry involves the application of medical psychiatric expertise in legal contexts such as capacity to stand trial, criminal responsibility, and capacity to execute documents, including but not limited to wills, trusts, powers of attorney, and contracts. *Id.*

71. The Author is currently undertaking this responsibility at no expense to the Medical School.

72. Topics include the following: Introduction to Elder Law and its Relationship to Geriatrics and Psychiatry; Capacity and Incapacity; Informed Consent; Decisions Pertaining to Healthcare, including Futility and End-of-Life Issues; Health Care Financing, including Medicare and Medicaid issues; Guardianship and Alternatives to Guardianship; Mental Health and Civil Commitment; Elder Abuse, including Mandatory Reporting Laws for Abuse of Vulnerable Adults; Privacy and Confidentiality Laws; and Impaired Driver Laws.

cal School professors and their students often call upon the Author to pose questions about legal issues pertaining to their patients. On occasion, law students and Fellows work together to simultaneously resolve issues for the same patient or client. This integration provides perhaps the best example of the interrelation between the Health Law and Elder Law curricula at the Law School.

5. *Clinical Courses Affiliated with UHELP*

Law students and certain graduate students who have completed one or more of the required didactic courses are eligible to participate in the Elder Law Clinic, which also includes an Advanced Elder Law Clinic.⁷³ The goal of the Elder Law Clinic is to provide students with real-life experience in representing older clients with a variety of Elder Law issues.⁷⁴ The Elder Law Clinic combines traditional classroom education with the opportunity to provide direct legal services under the close supervision of a professor who is also licensed to practice law in Hawaii.⁷⁵

The Elder Law Clinic allows students to serve socially and economically needy Oahu citizens over the age of sixty with many legal issues, including the following: public entitlements; guardianship, conservatorship, and their alternatives; landlord-tenant issues; elder abuse; age discrimination; planning for incapacity and death; consumer protection; and healthcare and medical treatment decisions.⁷⁶ While the services provided by the Clinic to

73. U. of Haw. at Manoa William S. Richardson Sch. of L., *University of Hawai'i Elder Law Program: Elder Law Clinic (Law 590D)*, <http://www.hawaii.edu/uhelp/law-590.htm> (accessed Nov. 20, 2010). In spring 2010, the basic course consisted of nine law students who worked on various Elder Law projects in groups of three throughout the semester. The advanced course varies, but usually consists of two to four students per semester.

74. *Id.* For instance, the Elder Law Clinic students “[d]irect legal assistance activities such as intake, case work, counseling, [and] document preparation[and]execution” *Id.* The students’ activities “take place at a variety of locations, including the [L]aw [S]chool, senior citizen meeting places, institutions, and even private homes.” *Id.*

75. All students are given a seventy-plus page Elder Law Clinic Manual, which provides students with information about the organization and the Clinic’s policies and procedures; and an Elder Law Clinic “Legal Assistance Starter Kit,” which contains extensive information about the aging network in Hawaii, including contact information, an appendix of references, and required forms. Demonstrating that most of these skills are transferrable, the 2008 Elder Law Clinic Manual—with, of course, significant changes—has also served as a template for the United States Embassy-funded and Iraqi Bar Association-operated Legal Aid Clinic for detainees in the eastern part of Baghdad.

76. See also U. of Haw. at Manoa William S. Richardson Sch. of L., *University of*

the community are free, the Clinic only operates during the fall and spring semesters. But the direct legal services component of UHELP, which provides the legal logistics and support for the Elder Law Clinic, does render direct legal services year-round. This component of UHELP is especially important for those cases undertaken by Elder Law Clinic students that are not completed by the end of a given semester.⁷⁷

The Elder Law Clinic course exposes students to some of the areas of law that affect older persons. The Clinic also alerts students to some of the ethical and practical issues that often arise when providing legal services to older persons and their caregivers. In addition to developing skills in interviewing clients and providing advice and counsel, students also gain experience by drafting and executing legal documents for their clients. A popular recent addition to the course is "Legal Rounds," which is based on the common practice in medical schools of holding "medical rounds." This course addition affords all of the students with an opportunity to observe, engage with, and learn from a willing client or caregiver who comes to the Clinic seeking assistance with a legal problem. The Clinic also provides students with an opportunity to present Elder Law topics to the community and participate in court cases involving guardianship and conservatorship. The course further exposes students to practical caregiving and healthcare-related legal issues faced by the general population, which includes but is not limited to older persons. Students participating in the Legal Rounds course are also afforded a chance to work with other professionals in the aging network, including doctors, nurses, social workers, case managers, and financial advisors.

Hawai'i Elder Law Program: Elder Law Hawaii, <http://www.hawaii.edu/uhelp/elderlaw.htm> (accessed Nov. 20, 2010) (listing other Elder Law issues with which UHELP assists, including obtaining durable powers of attorney, estate planning, and drafting wills and trusts).

77. For example, during one spring semester, Elder Law Clinic students helped commence a guardianship petition in the Family Court of the First Circuit in Honolulu. The average guardianship petition case takes several months to appear on the court docket, and this particular case had not been heard before the semester ended. That summer, UHELP monitored the case and kept the client informed of its progress. Students who enrolled in the Advanced Elder Law Clinic that fall were able to attend the court hearing and see the case through to conclusion.

Students work under the direction of a professor and the UHELP staff,⁷⁸ who specialize in assisting older persons and other socially and economically needy Hawaiians.⁷⁹ The course provides students with increasing levels of experience in a variety of legal areas, including public entitlements, basic estate planning, planning for incapacity, and issues arising out of healthcare decisionmaking and financing. After extensive research and preparation, students also provide education and training within the community. As a course requirement, students visit at least one nursing facility or hospice and one senior center or other facility where elderly persons often gather.

6. Integrating Law Students with UHELP Activities

As previously indicated, UHELP has been responsible for delivering legal services to the elderly since 1991.⁸⁰ The program originated at the Legal Aid Society of Hawaii, which remains a valued partner in addressing legal issues pertaining to older persons.⁸¹ UHELP's stated goal is "to enhance, protect[,] and

78. UHELP's legal assistant and program administrator is Lenora "Lennie" Lee: [Dr. Lee], who is a graduate of the Kapiolani Community College Legal Assistant Program, was a paralegal at the Legal Aid Society of Hawaii for over [twelve] years where she served both in the family law unit and the [E]lder [L]aw unit. In addition to her experience as a paralegal[, she] has a teaching certificate in secondary education, a Master[']s Degree in Political Science from the University of Hawaii, and a Master[']s [in] Business Administration from Chaminade University.

UHELP Staff, supra n. 6. Dr. Lee also holds a Doctor of Philosophy Degree from the University of Hawaii, and her doctoral dissertation was on the politics of "Death with Dignity" initiatives in the United States. Additionally, she has received several awards, including the Hawaii State Bar Association's Liberty Bell Award. *See* Haw. St. Bar Assn., *Young Lawyers Division: Liberty Bell and Justice Award Nominations Sought*, <http://www.hsba.org/yldawards.aspx> (accessed Nov. 20, 2010) (providing that "[t]he Liberty Bell Award honors non-lawyers or organizations who have helped to promote a better understanding and respect [for] government[and] the legal system[,] and an appreciation of the role of law in our society") (emphasis removed). UHELP's Senior Associate Attorney is Scott Suzuki, a volunteer whose private practice specializes in Elder Law and Special Needs. *UHELP Staff, supra* n. 6. Scott graduated from the Law School in 2004. *Id.* In addition to his Juris Doctor degree, "[h]e also has a Master of Public Health in Gerontology degree from the University of Hawaii, [and] a [Bachelor of Arts] as well as a Master of Gerontological Studies degree from the University of Miami of Ohio." *Id.*

79. Additionally, all Clinic students must become law student interns pursuant to the Hawaii Supreme Court Rules regarding the supervised law student practice of law. R. Sup. Ct. Haw. 7.3(b).

80. *See supra* nn. 18, 78 and accompanying text (discussing UHELP's foundational history).

81. Legal Aid Socy. of Haw., *supra* n. 18. Additionally, many law students perform

preserve the autonomy and independence of older persons through education, training[,] and direct legal services.”⁸²

UHELP handles approximately four hundred cases per year. UHELP also conducts extensive community outreach services, such as providing educational seminars for older persons, caregivers, and service providers.⁸³ While UHELP is able to assist many people each year through its legal services and community outreach endeavors, the scope of services is limited—UHELP is prohibited from advising clients regarding business law, criminal law, personal injury law, or other fee-related matters.⁸⁴ Also, qualifying individuals must either be or represent persons who are sixty or older, and “[e]ach case is evaluated according to its own merits and in accordance with staff capabilities” and the availability of law students.⁸⁵

Over the past six years, UHELP has produced approximately fifty thousand copies of consumer handbooks, which provide a simplified guide through several areas of legal concern facing older persons and their caregivers.⁸⁶ Law students use the hand-

their mandatory pro bono legal services at the Legal Aid Society of Hawaii. For more information about the Law School’s Pro Bono program, see *supra* n. 9 and accompanying text.

82. *Welcome to UHELP*, *supra* n. 40. No fees are charged for legal services at UHELP, but donations are welcome:

Funding for UHELP is provided by the University of Hawai’i William S. Richardson School of Law, the Elderly Affairs Division of the City and County of Honolulu (under Title III of the Older Americans Act), the State of Hawai’i Judiciary, the Hawai’i Justice Foundation[,] and through donations.

Id. (emphasis removed). Due to limited staff and resources, services are also limited, and UHELP gives priority to the most-needy clients.

83. *Id.*

84. *Id.* UHELP’s services include the following:

1. Advance Healthcare Directives—healthcare instructions (similar to the old “living will”) and healthcare powers of attorney
2. Simple wills—restricted to certain estate values
3. General durable powers of attorney
4. Planning for incapacity and death
5. Counseling on end-of-life decision[]making
6. Information about public benefits
7. Counseling on legal issues relating to elder abuse, caregiving[,] and guardianship[] and []conservatorship
8. General legal information and referrals

Id.

85. *Id.*

86. The most recent handbook is James H. Pietsch & Lenora H. Lee, *Deciding “Who Cares?”—A Legal Handbook For Hawai’i’s Caregivers, Families and Older Persons* (U. of Haw. Elder L. Program 2008) (available at <http://www.hawaii.edu/uhelp/files/>)

books as resources for class and in conducting community outreach sessions. Significant portions of the handbooks deal with mental capacity, healthcare decisionmaking, and healthcare-financing issues.

Through its services, UHELP has developed a reputation for sensitivity to the cultural aspects of being a responsible citizen in this State⁸⁷—and the students who participate in UHELP activities are inculcated with this sensitivity. The three examples mentioned at the beginning of this Article will be used to illustrate how cultural issues are integrated into the Elder Law Clinic and how Health Law is often part and parcel of Elder Law.⁸⁸

Part of the ethos of Hawaii, for example, is its long history and culture of protecting vulnerable individuals, especially the elderly.⁸⁹ Nearly two hundred years ago, King Kamehameha I gave Hawaii its first law, known as the Law of the Splintered Paddle, or *Mamala-hoe Kanawai*.⁹⁰ This initial edict of the King required,

DecidingWhoCares_08.pdf). UHELP is currently developing a slightly longer follow-up handbook, which will be uploaded to the UHELP website following publication. Portions of these handbooks, particularly the materials pertaining to healthcare decisionmaking, were adapted with permission from James H. Pietsch, *Akamai Kupuna: A Legal Handbook for Senior Citizens* (Haw. Jud., 7th ed., 1994) and James H. Pietsch & Lenora Lee, *The Elder Law Hawai'i Handbook: Protecting Your Health, Wealth, and Personal Wishes* (U. of Haw. Press 1998).

87. See *supra* n. 22 (indicating that in order to provide culturally and spiritually sensitive care, nurses, physicians, social workers, and others must know and understand the implications of family members' beliefs about life and death, supportive rituals, and other activities).

88. See *supra* pt. I (discussing the Author's students' participation with the elder abuse victims Mr. H and Mrs. T, and the students' involvement in a cultural-competence-related community outreach program).

89. Traditionally, older persons in Hawaii were shown respect and deference and were valued for the lessons they imparted to following generations. Claire Ku'uileilani Hughes, *Traditional Behaviors and Kupuna, 'Aukake 2008*, <http://www.oha.org/kwo/2008/08/col-hughes.php> (accessed Nov. 20, 2010). For this reason, some lament the changes brought by modern society. *Id.*

90. King Kamehameha I eventually united all of the islands of Hawaii during his reign from the late 1700s to early 1800s. Carol Chang, *The Law of the Splintered Paddle: Kanawai Mamalahoe* iv, 14 (Haw. Leg. Auxiliary 1994) (available at <http://www.hawaii.edu/uhelp/files/LawOfTheSplinteredPaddle.pdf>). The first edict declared by King Kamehameha was the Law of the Splintered Paddle. *Id.* at v. The law may have been based on King Kamehameha's own experience one day, when a fisherman taught him that "human life . . . was precious and deserved respect, and that it was wrong for the powerful to mistreat those who may be weaker." *Id.* The edict reads:

O my people,
Honor thy gods;
Respect alike (the rights of)
men great and humble;

among other things, that women, children, and the elderly be protected from harm while they slept “by the roadside.”⁹¹ Disobedience would result in the most severe of penalties—namely, death.⁹² The Law of the Splintered Paddle continues to be a part of Hawaii’s current constitution, but now only symbolizes the State’s commitment to maintaining public safety.⁹³

a. Exposing Elder Law Clinic Students to Elder Abuse Issues through UHELP

Elder Law Clinic students are exposed to elder abuse issues as part of their training to become both good Elder Law attorneys and citizens. This exposure usually comes easily because the Author is well-known in the Adult Protective Services community, and is often called upon to help resolve complex elder abuse issues.

Elder abuse in Hawaii takes the same form as in other states.⁹⁴ UHELP was instrumental in developing, drafting, and advocating for laws providing protection for older persons and other vulnerable groups. The Elder Law Clinic students quickly learn that issues of elder abuse, neglect, and exploitation are unfortunately prominent. UHELP is often called upon by Adult Protective Services,⁹⁵ the courts, and others to assist with elder

See to it that our aged,
our women, and our children
Lie down to sleep by the roadside
Without fear of harm.
Disobey, and die.

Id. at 16 (translating and quoting the original *Kanawai Mamalahoe*).

91. *Id.* at 16.

92. *Id.*

93. Haw. Const. art. IX, § 10 (“The law of the splintered paddle, *mamala-hoe kanawai*, decreed by Kamehameha . . . shall be a unique and living symbol of the State’s concern for public safety.”).

94. See Natl. Ctr. on Elder Abuse, *Frequently Asked Questions*, http://www.ncea.aoa.gov/NCEARoot/Main_Site/FAQ/Questions.aspx; *select* 1. What is elder abuse? (accessed Nov. 20, 2010) (identifying common forms of elder abuse as physical abuse, emotional abuse, sexual abuse, exploitation, neglect, and abandonment).

95. See generally Haw. Rev. Stat. § 346-221 (2004) (recognizing the need to “develop and promote community services for the economic, social, and personal well-being and protection of its elders who are mentally or physically impaired”). To meet this directive, Hawaii’s Department of Human Services created an Adult Protective Services program to provide “crisis intervention, without regard to income, including investigation and emergency services for vulnerable adults who are reported to be abused, neglected[,] or financially exploited by others or seriously endangered due to self-neglect.” St. of Haw.,

abuse cases. Every Elder Law Clinic student gains experience with elder abuse issues, and the case of Mr. H, who was highlighted at the beginning of this Article,⁹⁶ was no exception. In that case, mental capacity and undue influence issues were front-and-center.

Mr. H was a trusting eighty-two-year-old widower with no other family in the Islands.⁹⁷ He had appointed a female acquaintance as his agent under a durable power of attorney.⁹⁸ This acquaintance later used her authority to raid his bank account, obtain credit cards, and acquire a reverse mortgage.⁹⁹ Her actions plunged Mr. H into staggering debt. In addition, his diminished capacity and judgment, coupled with his trusting nature, allowed Mr. H to be lured into a Jamaican lottery scheme.¹⁰⁰ Mr. H subsequently incurred thousands of dollars in phone bills as he tried to collect the “million dollars” he had won.¹⁰¹

When Mr. H’s friends discovered the lottery scam and horrendous phone bill, they contacted UHELP. The Elder Law Clinic students first interviewed Mr. H, then researched the documents with which he furnished them in an attempt to piece together the trail of financial exploitation—which led the students to discover that hundreds of thousands of dollars were wrongfully taken from Mr. H. As more and more abuse was uncovered, policing agencies were contacted to help the students track down the perpetrators and recover some of Mr. H’s money.

Dept. of Human Servs., *Adult and Community Care Services (ACCSB)*, http://hawaii.gov/dhs/protection/social_services/adult_services/ (accessed Nov. 20, 2010). ACCSB defines a “vulnerable adult” as a person over the age of eighteen who “is unable to: communicate or make responsible decisions to manage the person’s own care or resources; carry out or arrange for essential activities of daily living; or protect oneself from abuse.” *Id.*

96. *See supra* pt. I (noting that Mr. H was a client of the Elder Law Program to whom the Author and his students rendered legal services).

97. *Id.*

98. *Id.* A power of attorney is “[a]n instrument granting someone authority to act as agent or attorney-in-fact for the grantor.” *Black’s Law Dictionary* 1209 (Bryan A. Garner ed., 8th ed., West 2004). A durable power of attorney is “[a] power of attorney that remains in effect during the grantor’s incompetency. Such instruments commonly allow an agent to make healthcare decisions for a patient who has become incompetent.” *Id.* at 1210.

99. Wilson, *supra* n. 1, at A6. The woman’s daughter was employed by the law firm that prepared the legal documents for the reverse mortgage. That woman subsequently became mentally incapacitated herself, but her daughter continued to take advantage of Mr. H’s diminished capacity.

100. *Id.*

101. *Id.*

Under the Author's supervision, the students provided documents to revoke the damaging power of attorney, and drafted a new special power of attorney¹⁰² to allow Mr. H's friends to work with Adult Protective Services,¹⁰³ inquire about his bills, settle his debts, and—hopefully—prevent further financial abuse and exploitation. As the students gained first-hand insight into crimes committed against the vulnerable and frail, they expressed that helping Mr. H was one of the most memorable and rewarding experiences they had gained in law school.

The second case involved a ninety-four-year-old parent, "Mrs. T," whose mental and physical capacities had deteriorated, rendering her a pawn in a dysfunctional family. The potential client was brought into the UHELP office by her son without notice—a walk-in. She had suffered a stroke, had limited mobility, suffered from "dementia,"¹⁰⁴ and had been placed in a nursing home for "her own good" by another child, her daughter. Her son claimed that at the nursing home, Mrs. T was overmedicated and neglected, had no stimulation, was propped in front of the television all day, fed food she was not used to, and cried to be taken home. Her son then removed Mrs. T from the nursing home and brought her back to her own home (which she still owned and in which her son lived at the time) to care for her. Thereafter, accusations of abuse and neglect flew between brother and sister, with Mrs. T in the middle.

The sister accused her brother of abuse and neglect, withholding medication, and endangering their mother's safety. She subsequently reported him to Adult Protective Services, which ultimately petitioned the court for guardianship.¹⁰⁵ At that point,

102. A special power of attorney is "[a] power of attorney that limits the agent's authority to only a specified matter." *Black's Law Dictionary*, *supra* n. 98, at 1210.

103. For information about Hawaii's Adult Protective Services program, see *supra* n. 95 and accompanying text.

104. The National Institutes of Health define "dementia" as:

[A] word for a group of symptoms caused by disorders that affect the brain. It is not a specific disease. People with dementia may not be able to think well enough to do normal activities, such as getting dressed or eating. They may lose their ability to solve problems or control their emotions.

U.S. Natl. Lib. of Med., Natl. Insts. of Health, *MedlinePlus: Trusted Health Information for You: Dementia*, <http://www.nlm.nih.gov/medlineplus/dementia.html> (accessed Nov. 20, 2010).

105. Guardianship is "[t]he fiduciary relationship between a guardian and a ward or other incapacitated person, whereby the guardian assumes the power to make decisions

Mrs. T's son sought UHELP's services to fight the guardianship proceedings on behalf of his mother, whom he claimed requested that he seek legal assistance.

When the Elder Law Clinic students got involved, they were presented with serious ethical and legal dilemmas that could help decide where Mrs. T would spend the rest of her days. As a start, the students needed to decide the following: (1) who the client was; (2) whether the best interests of that client or her personal desires should prevail; (3) whether her son's veracity could be trusted; and (4) whether Adult Protective Services had adequately weighed Mrs. T's personal wishes to stay with her son, in a perhaps careless but familiar environment, against an institutionalized environment that would provide more predictable and regulated daily living activities. The students also faced the issue of weighing Mrs. T's right of privacy against whether she was mentally capable of stating her own wishes.¹⁰⁶

The Elder Law Clinic was very lucky to have two medical professionals among its students. Those professionals contributed to the assessment of Mrs. T's mental and physical capacity, and were also able to interpret medical reports obtained from her physician. Unfortunately, UHELP and the Elder Law Clinic were unable to find a viable solution to Mrs. T's problem, and ultimately declined to represent any of the parties to the dispute. During the guardianship proceedings, the son could not provide medical testimony from Mrs. T's physician to support the contention that Mrs. T should remain in his care, which undermined the contention that he could provide additional home care and a safe home environment for his mother. In the end, the court adopted Adult Protective Services' recommendations and granted guardianship to Mrs. T's daughter, who claimed she was inclined to institutionalize Mrs. T. This case did, however, acquaint the Elder Law Clinic students with professional responsibility and ethics issues. It also opened their eyes to one of the bittersweet remedies of Elder Law—namely, that institutionalization could and would eventually reign over personal choice.

about the ward's person or property." *Black's Law Dictionary*, *supra* n. 98, at 726.

106. *Black's Law Dictionary* notes that an individual's right to privacy, while not explicitly provided for in the Constitution, has been upheld by the Supreme Court as an implied "right of personal autonomy." *Id.* at 1350.

b. Exposing Elder Law Clinic Students to the Unique Cultural Competence Issues that Often Arise when Practicing Elder Law in Hawaii

Cultural competence includes more than just respect for different languages. Elder Law Clinic students are exposed to a wide range of cultural experiences, sometimes in a planned and coordinated fashion and sometimes by mere circumstance. Clinic students spend considerable time making presentations and visiting older persons in the community, including residences, senior centers, and healthcare and nursing facilities. Through the Clinic, students at the Law School have been exposed to the profound end-of-life issues that occur in hospices, military and veterans' facilities, and even among Hawaii's homeless population. For example, Clinic students recently spent a considerable amount of time at the Palolo Chinese Home, which is a nursing facility originally established for aging Chinese family members. They also visited the Lunalilo Home, which is a long-term-care facility originally established to help older Hawaiians.

In the areas of healthcare and end-of-life decisionmaking, UHELP provides extensive outreach to the community, and has worked on translating advance healthcare directives into seven different languages: Japanese, Chinese, Korean, Vietnamese, Samoan, Tagalog, and Ilocano. Law students use these materials while assisting clients at the Law School and in the community, which quickly teaches the students that language differences can also be barriers to understanding and assisting other cultures.

As part of their outreach, the Elder Law Clinic students engaged in a community outreach program at Kokua Kalihi Valley (KKV) Community Health Center.¹⁰⁷ The program was run by the staffs of both the KKV Community Health Center and the Medical-Legal Partnership for Children in Hawaii (MLPC), a project of the Law School's Health Law Policy Center.¹⁰⁸ When the

107. The KKV Community Health Center is a non-profit organization created to address the health service needs of the Asian and Pacific Island immigrant populations in Hawaii. Kokua Kalihi Valley, *Charles Judd Community Health Center*, <http://www.kkv.net> (accessed Nov. 20, 2010).

108. The MLPC also partners with both the University of Hawaii and the Law School. Natl. Ctr. for Med. Leg. Partn., *Medical-Legal Partnership for Children in Hawaii*, <http://www.medical-legalpartnership.org/mlp-network/sites/1167> (accessed Nov. 20, 2010). "The Law School's Health Law Policy Center was established in 2009, with the support of a U.S.

students' outreach program began, the MLPC had been operating for about two years, and most of its clients were originally from Micronesia, other South Pacific Islands, and Southeast Asia. Many newly arrived families to Hawaii seek public assistance, including housing and healthcare. At the time, more and more staff members and patients at the KKV Community Health Center were asking about healthcare decisionmaking for older family members. So the Elder Law Clinic was asked to make a presentation on advance directives and surrogate decisionmaking, focusing primarily on what to do when patients are unable to make medical decisions on their own. At first, some of UHELP's students were hesitant about venturing to the neighborhood surrounding the KKV due to that area's negative reputation. But they embraced the opportunity to serve a multicultural population, explore community service opportunities, and gain a window into the lives of Hawaii's immigrants—for whom access to justice is often limited by ethnicity, language, economics, and social status.

After an extensive presentation about informed consent,¹⁰⁹ preservation of autonomy and self-determination, and the importance of planning ahead for incapacity and considering the use of advance directives for healthcare,¹¹⁰ the audience gave a very polite applause, which was interpreted as approval. Then one of the more seemingly "Westernized"¹¹¹ women spoke up and very gently stated that advance directives may be irrelevant to some cultures, and that those cultures may neither need nor desire advance directives because here, the chief still rules traditionally

Department of Education Noncompetitive grant. The Center provides law and policy research and education aimed at improving health and well-being in Hawai'i." U. of Haw., *Health Law Policy Center Hosts Forum*, <http://manoa.hawaii.edu/news/article.php?aid=3473> (posted Mar. 17, 2010).

109. In the medical field, informed consent is "[a] patient's knowing choice about a medical treatment or procedure, made after a physician or other healthcare provider discloses whatever information a reasonably prudent provider in the medical community would give to a patient regarding the risks involved in the proposed treatment or procedure." *Black's Law Dictionary*, *supra* n. 98, at 323.

110. See ABA, *Health Care Advance Directives*, http://www.abanet.org/publiced/practical/directive_what.html (accessed Nov. 20, 2010) (providing that a healthcare advance directive is a written statement made while competent that instructs caregivers on certain healthcare decisions if the person later becomes incompetent).

111. A "western man" is defined as "humankind as shaped by the culture and civilization of western Europe and N[orth] America." *New Shorter Oxford English Dictionary* vol. 2, at 3659 (Lesley Brown ed., 4th ed., 1993). Stating that a person is "westernized" implies that person is influenced by "or convert[ed] to the ideas and customs of the West." *Id.*

in many households. The woman further explained that in her life and the lives of some of her friends, the Samoan or Chukese chief made all major decisions, including life-and-death decisions.¹¹² In fact, prolonging life or hastening death is often decided by consensus rather than the individual in many of the cultures represented at the presentation.¹¹³ But others in the audience then argued that individual choice is important, and noted that many people no longer knew who their chiefs and future successors were. The Author then suggested a range of options for the audience based on Hawaii law and a person's personal preferences.¹¹⁴

This experience was very different from the Western practice of law in which UHELP's students are trained, and until this outreach session they were not prepared for encounters with such unfamiliar cultural beliefs and the need to understand peoples' actions from a different cultural perspective. This opportunity provided the students with a first-hand lesson in cultural differences that cannot be taught from textbooks.

After the session, KKV staff called and emailed the Author to thank the Elder Law Clinic for providing them with these new, useful tools. The KKV staff also asked for advice on tailoring the materials provided to fit various familial and ethnic cultural needs. Finally, they invited the Elder Law Clinic students back to work with smaller groups that may wish to execute advance directives or learn more about a particular Elder Law, Health Law, or end-of-life decisionmaking issue in the future.

112. See Kipeni Su'apa'ia, Ph.D., *Samoa, the Polynesian Paradise* 34–35 (Exposition Press 1962) (stating that Samoan chiefs are responsible for both passing laws and regulations and deciding public matters that concern the welfare of the villagers).

113. One scholar notes that:

[T]he legal and medical systems in the United States are based on a European American male point of view, where individuality and autonomy are prized and primary considerations. This can be seen in the ways in which informed consent requirements are interpreted and applied. However, for some cultures, collectivism and joint decisionmaking, or deferring to others, is preferred and expected.

James L. Werth, Jr., *Some Personal Aspects of End-of-Life Decisionmaking*, 61 U. Miami L. Rev. 847, 856 (2007) (footnotes omitted).

114. See Haw. Rev. Stat. Ann. § 327E-5 (Lexis 2005) (detailing the surrogate's role in healthcare decisionmaking under Hawaii's Uniform Health Care Decisions Act); see also U. of Haw. at Manoa William S. Richardson Sch. of L., *University of Hawai'i Elder Law Program: Health Care Decision Making*, www.hawaii.edu/uhelp/healthcare.htm (accessed Nov. 20, 2010) (providing an overview of Hawaii's approach to surrogate decisionmaking).

IV. CONCLUSION

For the Author, integrating Health Law and cultural issues into the Elder Law curriculum appears to have resulted from a combination of serendipity, personal interest, and perhaps a dose of reality. There are certainly curriculum developers and legal scholars who could better analyze the pedagogical, philosophical, and structural imperatives involved in the theory and praxis of such integration. But the Author's integrated approach seems to work well for his students, as well as older Hawaiians, their families, and their caregivers. A possible future course study could be a redirected focus on law and aging, and where that topic fits within the curriculum and into the Elder Law practice.

At the end of the semester, the Elder Law Clinic students were invited over for pizza to informally critique the program and recommend ways in which the clinical experience could be improved. For the most part, the students indicated that they enjoyed their clinical experiences more than most of their other courses. They also indicated that they would have liked to work on more cases, but agreed that they probably could not handle more than the Clinic offered during the semester. The minority who had taken advantage of going to court also found that experience valuable.¹¹⁵ And most of the students expressed an interest in gaining further experience by working with healthcare providers and patients. Additionally, all of the students felt that the outreach sessions, during which they spoke in front of up to 125 senior citizens, helped them better learn the material—and all were deeply affected by the cultural interchanges they had experienced.

As the pizza ran out, the students talked about current demographic trends—namely how “Baby Boomers”¹¹⁶ are big business, and with the right set of marketing tools, Elder Law can be part of the boom. To succeed, the majority of the students agreed that the term “Elder Law” must be modernized to reflect the wave of Baby Boomers who do not consider themselves

115. Some students could not attend the live court sessions due to scheduling conflicts.

116. The term “Baby Boomer” generally refers to people born between 1945 and the late 1960s who have higher spending power and different demands from what our country has encountered in the past. BusinessDictionary.com, *Baby Boomers*, <http://www.businessdictionary.com/definition/baby-boomers.html> (accessed Nov. 20, 2010).

“elderly,” and who shun any reference of that term to themselves. The students’ suggestions ranged from the conservative “Elder Justice” to the tongue-in-cheek “Silver Concierge Legal Services” as terms that may appeal to the healthy, wealthy, and educated Baby Boomer. Most of the students also agreed that the needs of older low-income persons, especially those who are sick or dying, require additional focus without reference to payment. This led to a discussion of where Health Law and culture fit in with an Elder Law course. Some suggested combining the two areas into a larger-focused clinic where neither age nor health were necessarily barriers to accessing justice because knowledge about Elder Law and Health Law issues can be applied to many clients, and should not be limited strictly to older persons.

Within the coming year, this idea may become a reality at the Law School because negotiations are currently underway to establish a Veterans’ Legal Services Clinic as part of UHELP. Most of our veterans in Hawaii are older persons, but many of the younger veterans, especially our wounded warriors from Iraq and Afghanistan, experience similar “Elder Law” and “Health Law” issues. The new Clinic will also provide the Law School with an opportunity to integrate yet another cultural dynamic into its already-diverse curriculum, and the Author hopes similar programs throughout the country also continue to expand and refine.