

Advantages of the Elder Law Clinic Experience

By Emily Bensco, Adam Cooper, and Kristen Chang
With Deirdre Lok, Donna Harkness and Matthew Andres



Attorneys who practice Elder Law know that being a successful and effective advocate for elderly clients requires more than just a thorough understanding of the substantive law. Elderly clients present a unique set of vulnerabilities which can manifest as problems with communication, ambulation, diminished mental capacity, and potential abuse. These specific vulnerabilities demand a combination of patience, sensitivity, zeal and ingenuity, creating a stimulating and rewarding experience for students. Since working with elderly clients requires so much of attorneys, and since 10,000 Americans are reaching retirement age every day, taking an Elder Law clinic in law school is an invaluable opportunity for aspiring lawyers.

There are approximately 30 Elder Law clinics at law schools throughout the country, where students are given the opportunity to represent older adult clients in a variety of contexts. This article includes perspectives from three students who each participated in one of those clinics: Adam, from The University of Memphis Elder Law Clinic; Kristen from the Elder Financial Justice Clinic (EFJC) at the University of Illinois College of Law, and Emily, from the Helping Elders through Litigation and Policy (HELP) clinic at Brooklyn Law School.

Each clinic deals with a different area of law, but as these students found, the most important lessons were universal. This article contains the students' thoughts on the various obstacles they faced, and specific situations they experienced which contributed to their learning.

The students immediately learned the importance of acting practically and thoughtfully before any legal issues are even presented. Many older adults are not able to ambulate easily, which can present challenges ranging from office meetings, courtroom access and safety and health concerns. Learning to create an inviting and accommodating atmosphere for clients is a critical skill for any attorney providing direct client services.

Adam—Our clinic encouraged us to make home visits for some of our clients who had difficulty getting to the office. It was valuable

to see and appreciate the various situations that clients can be in when they turn to a clinic for help. This was an experience that helped me to put myself in the older client's place in a way I might not have been able to in the course of an office visit.

Emily—We also were encouraged to make home visits, which always proved helpful. Since all of our clients were facing eviction, sometimes a home visit was necessary to assess the situation. I found that my relationship with clients whose homes I visited was even stronger because there was an increased sense of trust and familiarity which became helpful later in the representation.

Kristen—Two of the cases that my partner and I handled involved clients who had difficulties driving and walking, which resulted in their inability to physically visit the EFJC office. This was a challenge in itself, but having limited mobility also makes a senior more susceptible to abuse. As a result, we were always sensitive to the effects of mobility challenges on different aspects of a client's life.

Communication with older adult clients can also present challenges. Hearing impairments, speech impediments, vision loss, language barriers, reliance on technology, and stressful situations can make standardized attorney-client meetings difficult. Sensitivity to and awareness of each of these potential obstacles are necessary, and will continue to serve clinic students in their careers as new lawyers, regardless of practice area.

Emily—Several of our clients were non-English speakers, which made some communication difficult. Even though our office had access to a telephone translating service, dealing with a combination of barriers, including language, generation, and technology, made it difficult to establish and maintain a close relationship with some clients.

Adam—*Since many of our clients came to us for help with trusts and estates, our clinic taught us how to speak frankly but sensitively with clients, about life and death and the distribution of possessions.*

Kristen—*Though communication can sometimes be a challenge for both the client and the attorney, having a representative who is willing to listen will have a positive effect on the client. As students assisting elderly clients at the EFJC, we were prepared to listen patiently to elders about topics that were tangential to the case. Sometimes, the elder simply needed a listening ear. Some form of validation is particularly crucial to building rapport and developing the client's trust so as to be able to investigate the case. The opportunities to speak with the senior also gave us a better impression of the senior's values and priorities.*

Many elderly clients will sometimes include other family members in the representation and decision making processes. This can be very helpful, but is also cause for wariness by an attorney. The students had differing experiences with this particular obstacle. Familiarity with the ethical issues that often arise in the course of legal proceedings can be helpful as clinic students move forward in their careers.

Emily—*Several of our clients usually had their adult children as a support system. I found working with a client's adult child to be a great asset in helping the client to fully understand the litigation process. I also found our clients to seem more at ease in the courtroom with a familiar face.*

Adam—*In one particularly difficult situation, my client was a 92-year-old lady who claimed that she had been forced to move to a nursing home where she felt isolated from her church and friends. Her family claimed that she was incompetent, but I found her to be competent and to complicate matters, it seemed that there had been some financial improprieties on the part of some of her family members. These cases were instructive regarding the need for attorneys to help older adults avoid being preyed upon by the people they trust.*

Kristen—*On a practical level in the clinic, involving family members in representation raised questions for us as students about who our client was, when an individual accompanying the senior could stay with the client during otherwise privileged meetings, and how to best reach a resolution that did not result in unintended consequences or reper-*

cussions for the elderly client's relationships with his or her close ties. In some ways, these ethical questions affect aspects of the client's life far beyond the scope of the legal issues in the case.

While older adult clients may bring routine legal problems, there is a heightened possibility of some degree of cognitive impairment that needs to be addressed. Cognitive impairments present on a wide spectrum, and can be caused by a number of diseases that are often present in aging adults. As the students experienced, gaining a level of comfort in this area helps to hone listening and issue-spotting skills.

Emily—*In our weekly seminar we were able to learn about various illnesses that may have an impact on an aging person's mental capacity. Although we should be cognizant of any potential issues such as dementia, it is also important to remember that we are not experts in the field and cannot make diagnoses.*

Kristen—*My clinic partner and I found that symptoms of cognitive impairment may have made some elders more susceptible to financial abuse. Moreover, the limited memory or mental capacity of some clients may make it harder to conduct fact investigation and prepare clients to testify, which can make dire situations even harder to resolve.*

Adam—*Although dealing with a client who may have diminished capacity is challenging, I found that it helped refine some important skills. I became a keen observer of my clients' behavior—and I believe that made me a better interviewer.*

In many cases, seniors are identified as easy targets for many forms of abuse—physical, emotional, financial and even sexual. The students were all confronted with this harsh reality in some way in their clinics, and all found the experience informative and impactful.

Kristen—*In the context of dealing with elderly clients who may be financially, emotionally, or physically vulnerable, the consequences of moving forward without strategically examining contingencies and ramifications may be very grave. Elders most often face financial exploitation by those closest to them—their longtime friends, adult children or grandchildren, and caretakers. This puts elderly clients in a uniquely vulnerable situation when they arrive at the EFJC. Additionally, some of our elderly clients had psychological or emotional ties to their abusers, causing the client to feel dependent upon or beholden to the abuser due to the client's vulnerabilities.*

Adam—Unfortunately some of our clients appeared to be victims of abuse. One client, the 92-year-old woman that I spoke of previously, seemed to have been the victim of financial abuse perpetrated by family members. Ultimately we were able to return the client's funds. While rectifying a situation of abuse was not the original goal of that representation, the experience taught us the positive impact an attorney-client relationship can have for a victim of abuse, and showed us that seniors are especially at risk.

Emily—In our field work, we focused primarily on housing, but our seminar allowed us to take a different focus, that of elder abuse. Our professor, who is Assistant Director and General Counsel at an elder abuse shelter, presented us with an opportunity to screen for elder abuse as part of a legal intake process. The legal intake process is a perfect opportunity for such a screening because lawyers, or legal assistants, are already addressing serious problems with older adult clients, and questions that may help identify instances of abuse could be easily integrated into the process.

Clinics often provide students their first experiences with the actual practice of law, and thus, especially when dealing with such delicate yet demanding issues, case-related tasks may take students more time than they would take experienced attorneys. However, elder law attorneys sometimes must work quickly, particularly if clients are sick or at risk of losing memories or capacity. Learning to generate high quality work under strict time constraints is a cornerstone of building a successful legal career.

Kristen—Aside from the stress of these situations, working with elders also requires strategizing around timelines that bring remedies efficiently and effectively. For example, one of our EFJC clients brought up that a later trial would interfere with his potential cancer treatment timeline. Sometimes an older adult client cannot afford his or her cost of living after suffering financial abuse, or a client's ailing health can jeopardize the chance for the client to receive justice in what can be a slow legal process. We learned to be very conscious of the litigation timetable. Since most seniors are retired, we also learned to expect frequent calls from clients and to be prepared to provide clients with frequent updates. The case is often the senior's main priority, and while this may be the case with other litigation clinic clients too, the desire for frequent contact with student attorneys and the potential mismatch between student schedules and client schedules seemed especially pronounced with elders.

Adam—Because these cases may be especially sensitive and complex, I continued to work with some clients after the semester had ended, over the winter break and into the next term, instead of leaving it for another intern.

Emily—Since all of our clients were facing eviction, the pressure was on to resolve cases quickly so they could feel secure in their homes. Stalling a case may be a useful tactic in some areas of law, but an older adult client's peace of mind and sense of stability was of the utmost importance at the HELP clinic.

All three clinics discussed here are categorized under the "elder law" rubric, and Adam, Kristen, and Emily shared many of the same insights. However, elder law is also unique in that it can encompass so many areas of substantive law. Having the opportunity to participate in an elder law clinic can afford law students with any number of novel educational experiences. Emily and the students at the HELP clinic were faced with problems that expand outside of an individual client's representation:

Emily—Working with the HELP Clinic, we were in a unique position at the intersection of crises not just for our clients, but for the entire city. New York City is currently dealing with a rise in its older adult population coupled with a serious lack of affordable housing. According to NYC.gov, "Adults age 65 and older occupy almost 60% of the city's rent controlled units...and as the population of older New Yorkers continues to grow, the demand for affordable housing will undoubtedly increase as well." Working with the Elder Law unit at South Brooklyn Legal Services, we were directly addressing problems right in the middle of serious political and social issues troubling the city. Dealing with these problems first-hand at SBLS, not only were we able to make a real positive impact for our individual clients, but with our combined efforts, we felt like advocates for broader social change.

Kristen and students at the EFJC learned that representing a client may require attorneys to come up with inventive solutions:

Kristen—One EFJC client who was cheated by unlicensed roofers managed to obtain a judgment in her favor. However, the defendant filed for bankruptcy, and the skimpy sum the bankruptcy court ordered him to pay the EFJC client would have left the client with an inadequate sum to fix her roof. Throughout the semester, the EFJC students helping this client looked for ways to raise money or set up a crowd-fund through a third-party to bring the client a quicker, tangible resolution

while arguing her case in bankruptcy court. Students should always consider solutions short of litigation. Since financial exploitation often involves family and close relationships, if amicable resolutions can be reached without going to court then it may help maintain family bonds and decrease the likelihood of a bitter breakdown. As in any case, the priority is the client, and EFJC students try to muster all possible resources to find a viable solution for their senior clients.

Adam and students at the University of Memphis were given the opportunity to learn about many different areas of law in one setting, which has been especially instructive as Adam starts his career as an attorney.

Adam—Working with elders brought me into contact with a wider array of legal issues than other legal clinics might handle. For example, I helped with estate, medical, family, and debt issues. I was able to appear in court on a debt issue and managed to negotiate a favorable resolution for the client. I am now working as an attorney in general practice. Although elder law is just a small part of my caseload, I still find myself using skills I was able to develop through working in the University of Memphis Elder Law Clinic and referring back to my experiences there.

Organizationally, the programs sponsoring these clinics are all passionate about exposing a new generation of lawyers to the engaging, cutting-edge issues involved in working with older adults. The Harry and Jeanette Weinberg Center for Elder Abuse Prevention at the Hebrew Home at Riverdale and the Elder Law Unit at South Brooklyn Legal Services, cosponsors of the HELP clinic at Brooklyn Law School, view educating newly minted attorneys about issues surrounding elder abuse and older adult housing insecurity as a core element of their mission. Students carry a caseload advocating for older adults in Brooklyn Housing Court and participate in a seminar exploring the legal ramifications of aging in our society. Students receive cases via the Assigned Counsel Project (ACP), which provides legal representation and an assigned social worker to individuals over 60 who are engaged in eviction proceedings. To supplement their direct client experience, students also participate in a weekly seminar, which covers a variety of legal arenas including capacity, guardianship, family court, ethics, and access to justice and the unique ways in which older adults interact with these areas of the law. Over the course of the semester, each student completes a project related to larger social policy issues facing older adults in New York City.

The Elder Law Clinic at the University of Memphis Cecil C. Humphreys School of Law is a "live client" clinic staffed by upper division law students who are specially admitted to practice by the Tennessee Supreme Court. The Clinic works in partnership with Memphis

Area Legal Services, a Legal Services Corporation-funded nonprofit legal services provider serving the low-income population of Memphis and the surrounding four-county area. Under the supervision of the Clinic Director, who is a licensed attorney, the students provide direct representation to indigent clients age 55 and over in a variety of civil matters, ranging from wills, advanced directives, consumer protection issues and financial exploitation to government benefits, housing and real property ownership, conservatorship and family law issues.

The University of Illinois College of Law's Elder Financial Justice Clinic is the first law school clinic in the country focused exclusively on combating elder financial exploitation. The clinic provides free legal services in Illinois to people 60 and over and vulnerable adults who have been victims of any type of financial fraud or abuse, and works for systemic change, including proposing and advocating for legislation, to improve the lives of financially abused seniors. The 44 students who have enrolled in the EFJC since it began three years ago are leaving the College of Law with a skill set and knowledge base that makes them uniquely qualified to continue to advocate for seniors. They have also hopefully gained an enthusiasm for public interest law that will encourage them to continue to serve disadvantaged populations once they enter practice.

In conclusion, for professors the field of elder law is an exciting and rewarding area in which to educate students. And for professors who are also elder law practitioners, it is fulfilling to be part of a constantly evolving legal field. Although the students' experiences represent the challenges and rewards of working in elder law, these experiences have made them better equipped to practice not just elder law, but any legal area.

Emily Bensco is from New Jersey. She attended Temple University, where she majored in English and French and currently is a student at Brooklyn Law School.

Adam Cooper is a graduate of the University of Memphis Cecil C. Humphreys School of Law and works in a general practice law firm in Memphis, TN handling bankruptcies, divorces, wills and estates, and other matters. Prior to earning his law degree, Adam studied and was a teacher of Jewish law and philosophy for 10 years in New York, where he also served as assistant rabbi in a small congregation for many of those years. Adam also holds a B.A. in Psychology from the University of Memphis, and has a passion for medieval history and literature as well as early music and jazz.

Kristen Chang participated in the Elder Financial Justice Clinic in Fall 2015 under the instruction of Professor Matthew Andres. She graduated from the University of Illinois College of Law, and she is currently working as a law clerk at Hall, Render, Killian, Heath & Lyman, P.C. She holds a Master of Public Administration degree focused on Health Policy from the George

Washington University and a Bachelor's degree in Biological Sciences with a minor in Political Science from the University of the Pacific.

Deirdre M.W. Lok, Esq. is the Assistant Director and General Counsel for The Harry and Jeanette Weinberg Center for Elder Abuse Prevention at the Hebrew Home at Riverdale, the nation's first emergency shelter for elder abuse victims. Ms. Lok manages the operations of the shelter, including providing legal services to victims in Supreme Court, Housing Court and Family Court. An Adjunct Professor at Brooklyn Law School, Ms. Lok currently co-directs the law school's HELP (Helping Elders through Litigation and Policy) Clinic. Ms. Lok is a frequent speaker on the issue of elder abuse and the law, and has guest lectured at Penn State Dickinson School of Law, Cardozo Law School, Touro Law, Hofstra Law School and CUNY Law School and has provided training to attorney's through the New York State's Judicial Institute, the Queens Bar Association, and the Bronx Bar Association. Ms. Lok was appointed by Mayor Bill de Blasio to the Age-Friendly NYC Commission, is co-chair of the American Bar Association's Senior Lawyer's Division, Elder Abuse Prevention Taskforce, and serves as Chair of the Policy and Procedure Subcommittee of the New York State Committee on Elder Justice. Prior to joining The Weinberg Center, Ms. Lok was a Deputy Prosecuting Attorney in Oahu, Hawaii and an Assistant District Attorney in the Queens County District Attor-

ney's Office where she focused on domestic violence cases.

Donna S. Harkness is Professor of Clinical Law at the University of Memphis Cecil C. Humphreys School of Law and Director of the Elder Law Clinic. She is certified as a specialist in Elder Law by the National Elder Law Foundation and is a member of the National Academy of Elder Law Attorneys. Ms. Harkness earned her B.A. degree, *cum laude*, from the University of Memphis and her J.D. degree from Vanderbilt University. She is a frequent lecture to various professional groups on elder law and ethical issues, and has published a number of articles on elder law issues. Ms. Harkness is a member of the American Bar Association, Senior Lawyers Division, as well as being a member of the Tennessee Bar Association, the Association for Women Attorneys, and the Memphis Bar Association.

Matt Andres is an Associate Clinical Professor at the University of Illinois College of Law and the Director of the Elder Financial Justice Clinic. Prior to starting the Elder Financial Justice Clinic, Matt taught in law school clinics helping domestic violence victims at the University of Cincinnati College of Law and Cooley Law School, was a prosecutor in Milwaukee, Wisconsin, and Oakland County, Michigan, and was a litigation associate at Foley & Lardner in Milwaukee. He earned his J.D. from University of Michigan Law School and a B.A. from Michigan State University.

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