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A youthful approach to **ELDER LAW** at Wake Forest University

By Kate Mewhinney

WINTER 96/EXPERIENCE

PHOTO: LEE RUNION/WAKE FOREST UNIVERSITY



*Law student
Heather Poulin
conferring with Clinic
for the Elderly client
Angeline Anderson.*

The young law student listened patiently one more time. She was meeting with her 94-year-old client in a pleasant rest home in Winston-Salem, North Carolina. She heard again, how—25 years ago—her client bought a cherished granddaughter a raincoat, umbrella, and clothes for college. Weaving this important memory into her advice, the law student encouraged the client to consider a power of attorney. “Remember how you helped your granddaughter by getting her the raincoat and umbrella? Now

it is her turn to help you, if you become sick, with what you need.” Comfortable that the client understood the document and trusted the granddaughter, she drafted a power of attorney and assisted her in executing it.

Despite an enormous gap in age and experience, law students work well with their clients in the Clinic for the Elderly of Wake Forest University’s School of Law. Approximately 550 clients, with an average age of 73, have been served in the clinic. Each semester, as many as ten

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upper-level students enroll in the clinic where they learn about the practice of law and the developing field of elder law by handling cases under the direction of a clinical faculty member.

A unique collaboration

In 1991, Dean Robert K. Walsh sought to expand the law school's clinical program by joining forces with the J. Paul Sticht Center on Aging. The center was established by Wake Forest to mesh the university's educational, clinical, and research components in the field of aging. The university's Clinic for the Elderly soon became a partner in the network to deliver better, comprehensive care for older adults.

Medical and legal issues often overlap for older clients. In the Wake Forest program law students joined a multidisciplinary team of geriatricians, including faculty from the departments of internal medicine, neurology, or psychiatry, plus a geriatric social worker, a nurse, and a doctor of pharmacy. In this setting, students learn about critical issues that arise when representing the elderly client.

Students spend eight hours per week in the clinic, and attend a two-hour weekly class. For orientation, the law students attend a lecture by medical school faculty about conditions that may affect a client's decisional capacity. The class covers dementia, especially Alzheimer's disease, depression, and polypharmacy (the overuse of medication). Then, in the assessment team at the hospital, students watch physicians administer the Folstein Mini-Mental Screening Exam.

Mental competency often is an issue in helping older adults, and lawyers who work with elderly clients must be sensitive to the ways that mental impairment can be masked. In the hospital outpatient setting, the law students observe the "bedside manner" used when dealing with marginally or fully impaired patients. Experienced geriatricians demonstrate subtle ways of assessing a patient's orientation and memory, while keeping the patient at ease.

Located in the university's Bowman Gray School of Medicine within the North Carolina Baptist Hospital complex in Winston-Salem, the Clinic for the Elderly

benefits from its unique connection with the school of medicine. Access to medical input provides an additional tool for students to serve their clients' needs. For example, in defending an eviction case, one student consulted with a geriatric psychiatrist to prove that her elderly client was mentally handicapped. The medical opinion showed that her client's disruptive behavior was the result of a handicap that could, as the law requires, be "reasonably accommodated" by the landlord. In a consent judgment, the client kept her subsidized apartment and the landlord agreed to train its resident managers to properly handle mentally handicapped tenants. The landlord also paid attorneys fees to the clinic.

There is no doubt that this collaborative approach provides a better service for elderly clients and patients, and enriches the learning process for law students as they begin to view the older client in a broader context. As lawyers, the students will better understand competency issues, and will be more likely to seek appropriate assessments of clients and not overlook or misinterpret a client's deficits in understanding.

Why elder law?

America's changing demographics make it imperative that all educational institutions, including law schools, train students to address the unique, and often complex, needs of older people. In response, increasing numbers of lawyers and law schools are focusing on elder law. Today, attorneys familiar with legal issues of the elderly often find themselves advising clients on matters beyond wills and trusts, such as Social Security, real estate transfers, home equity conversion, Medicaid, nursing home issues, continuing care retirement communities, fiduciary representation, advance medical directives, pension and retirement benefits, and long-term care insurance.

Professional associations have acknowledged and responded to the changing demographics as well. The National Academy of Elder Law Attorneys has grown to 2,900 members since its founding in 1988; and the first ABA-approved certification exam in the area of elder law was administered by the National Elder Law Foundation in 1994.



Kate Mewhinney, managing attorney of the Clinic for the Elderly, and law student Murali Bashyam.

Educational institutions have acted too. About one third of ABA-approved law schools offer courses or clinics on elder law, according to Legal Counsel for the Elderly, a department of AARP. Forty-one schools have courses in elder law, and twenty-seven operate clinical programs that serve the elderly.

Experience is the best teacher

In today's job market for law students, knowing how to "hit the ground running" is an asset. Wake Forest's Clinic for the Elderly trains students to be better lawyers in all types of practices. Students receive intensive one-on-one supervision in interviewing, counseling, drafting, legal research, litigation, and administrative advocacy. Training in the fundamentals of maintaining files, meeting deadlines, and developing good client relations is also emphasized. Students are challenged to balance efficiency with delicate counseling issues and client rapport. For instance, many elderly people may be slower than other clients; they are not in a rush and they enjoy sharing

their personal histories. Students learn that what they consider just a technical document involves emotional family issues for their clients. And it is certainly a new experience for them when a client fifty or sixty years their senior, asks, "What do you think I should do?"

In the Wake Forest program, each student's caseload includes wills, advance medical directives, powers of attorney, consumer problems, and public benefits issues. (Cases dealing with business matters, most probate, torts or traffic tickets are not accepted by the clinic.) Most students handle a guardianship case, usually as the court-appointed *guardian ad litem* for an allegedly incompetent person. On occasion, a student will represent a petitioner, often the spouse of the incompetent person. For example, one client's husband was suffering from Alzheimer's disease. To obtain a reverse mortgage and tap the equity in their modest home, the client needed to be appointed her husband's guardian. A student obtained the necessary court permission for the client to enter into the reverse mortgage. This case made the stu-

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dent a firm believer in powers of attorney after seeing how time-consuming it is to obtain court approval and provide the required bonding and accounting.

Financial abuse of the elderly by relatives or businesses provides even more learning experiences. When a dispute is intrafamily, students may encourage mediation; if relatives will not respond or negotiate, litigation may be filed. In one case, a client living in a nursing home was the beneficiary of a testamentary trust, for which his son was trustee. When the son refused to provide for the client, a clinic student obtained a court order removing him as the trustee and requiring an accounting of the trust's assets. Unfortunately, the son had exhausted most of the assets by that time; he left the state after the hearing.

Abuses by home repair companies also are common. One elderly gentleman, who lived alone and often failed to take his insulin properly, was approached by two door-to-door salesmen. After several hours, they persuaded him to purchase products and place a deed of trust on his home, which was fully paid for. Soon after, the gentleman had to be hospitalized for two months due to "acute altered mental status." Law students filed suit under the consumer protection statutes and, after discovery was underway, obtained an excellent settlement for their client. The mortgage was removed, his payments were refunded, and the company paid the legal clinic \$3,500 in attorneys' fees.

Another teaching emphasis in the Clinic for the Elderly is properly handling professional ethics issues. Conflicts of interest abound in elder law, as any estate planner knows. Adult children, usually with good intentions, often accompany the elderly client. As a result, law students must learn "the sheepdog maneuver" of diplomatically separating a client from relatives to ensure that the elderly person's interests are protected and to maintain the integrity of the attorney-client discussions.

A community law office

Physically, the clinic resembles most law offices (as long as students remember to stow their backpacks when meeting with clients). Most documents are produced in larger typefaces and the

office is equipped with wheelchairs and devices for the visually- or hearing-impaired.

The clinic serves only low- and moderate-income people age 60 or more, and no fees are charged. Prospective clients are screened by staff for financial eligibility.

Eligible clients are placed on a waiting list, though priority is given to clients referred from the medical center.

Students are assigned cases that will expose them to a variety of learning experiences, including at least one client who is either homebound or in a nursing home. (With the clinic's laptop computer and a portable printer, documents can be generated at the client's bedside.)

Malpractice insurance is maintained by the law school. Students may appear in court pursuant to the state bar's student practice rules.

In the past, the U.S. Department of Education contributed partial funding for the clinic, with the bulk coming from the university. With expected cuts in the federal budget, however, the university's share of the burden will undoubtedly increase. The clinic is able to recover some attorneys' fees in litigation.

At Wake Forest's program, students regularly contribute to the surrounding community by making presentations to the public on issues in elder law. The clinic also has sponsored a program on nursing home residents' rights, which included speakers from the medical school and the regional long-term care ombudsman.

For students interested in the general practice of law, the Wake Forest program offers a range of opportunities to participate in the legal and local communities. And with the likelihood that current congressional initiatives will transfer more of the decisionmaking power to individual states through proposed "block grants," the students are sure to be involved in some way on the legislative reform front.

Several clinic graduates have gone on to make elder law either their specialty or a focus of their practices. Because of the Wake Forest program all students have left with a deeper understanding of what it means to be a lawyer, and with a greater sense of accomplishment in having helped clients solve problems. ■

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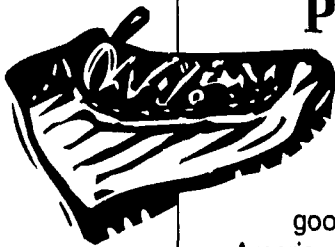
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It doesn't just seem that way

The average American spends a lifetime-total of 49 hours seeing his or her doctors and 64 hours waiting to see them. Sound about right?

This and other fascinating facts were compiled by Tom Heymann in his book, *The Average Lifetime* (Fawcett Columbine, 1994).

—Vitality



Pumps and/or tassled loafers won't do

When it comes to developing good exercise habits, older Americans are putting their younger counterparts to shame. Although the overall percentage of adults who are physically active has not increased in about a decade, statistics show that men and women 65 and older are more active than ever.

According to a nationwide study by the Behavioral Risk Factor Surveillance System of the Federal Centers for Disease Control and Prevention, the percentage of older Americans who engage in no leisure-time physical activity dropped from 43.2 percent in 1987 to 38.5 percent in 1992. The greatest decline (read "improvement") occurred in Rhode Island, where the percentage of completely sedentary older residents dropped from 59.5 percent to 38 percent. Maryland, Massachusetts, New Mexico and Ohio all reported declines of more than 10 percent; no state reported an increase. How come?

Researchers have documented an

impressive array of improvements in the health and well-being of older Americans who exercise regularly—a list that may just propel you out the door and down the block to buy new sneakers. Read on:

- Reduced risk of heart disease and stroke; cancers, such as breast cancer and colon cancer; osteoporosis; gastrointestinal bleeding and diabetes
- Weight loss (and muscle gain)
- Increased immunity to infection
- Decreased arthritis pain
- Fewer symptoms of depression
- Improved memory and an ability to think more clearly
- Improved sleep quality

So, what's keeping you in that chair?

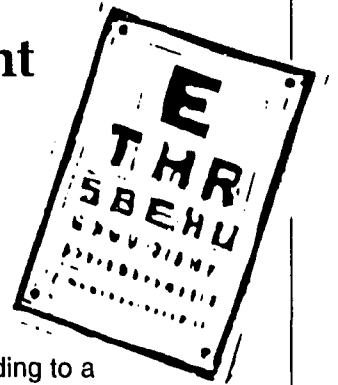
—The New York Times

We thought this was obvious

The effort in many states to make it easier to renew a driver's license may be misguided, according to a study by David T. Levy, an economics professor at the University of Baltimore. The study shows that license screening, particularly vision testing, is an effective way to reduce the number of fatal accidents involving older drivers.

In each of the five years studied—1985 to 1989—an average of 17,294 drivers older than 70 were involved in fatal crashes. The eight states that did not require vision testing during the period studied had 7 percent more traffic fatalities among elderly drivers than did the 42 states that did.

Previous studies have shown that older drivers' accident rates begin rising at age 60. By age 85, they average ten times as



many crashes per mile as drivers in their 40s (and they're 15 times as likely to die in a crash).

Surprisingly, only a handful of states—Alaska, California and Arizona among them—ban license renewal by mail. Florida, home to the largest population of elderly drivers, allows drivers to renew their licenses by mail for up to six years at a time.

The good news? Traffic engineers in some states are redesigning highway and road signs to enhance their visibility, and insurance companies are offering various good-driver incentives, such as discounts to people who complete the AARP's 55 Alive program.

—*The New York Times* and *USA Today*

He who laughs last . . .

For those who love to see the mighty fallen, even post-mortem, there was some satisfaction in the discovery that the late Chief Justice Warren Burger drew up his own will and—despite being the nation's one-time top jurist—got it wrong.

Accounts of the will, made public in an article by attorney George Dodge in the Arlington County Bar Association Journal, called the one-page document "woefully inadequate."

Among its flaws (aside from the obvious "exeutors" for "executors") was evidence of poor estate planning on Burger's part, which may cost his heirs more than \$450,000 in taxes. All or most of that amount could have been avoided, Dodge wrote, by using trusts and gifts—a scheme that would require a good estate-planning lawyer and only about \$2,000 to pay his or her fees.

It's likely that more than a few general practitioners saw some irony in Burger's screw-up. The skills they use daily to put

together simple wills, handle divorce cases and oversee house closings have long been viewed with disdain by lofty legal minds like Burger.

—*Chicago Tribune*

Thirty-five years takes the guess-work out of marriage



More than 200 couples taking part in a long-running Veterans Administration study of feelings about retirement were asked these questions about sex: Do you wish that you and your spouse had sex more often? Do you want your spouse to pay more attention to your sexual needs? Do you want your spouse to show more affection?

Each partner also was asked what he or she thought the other partner wanted. The couples studied had been married an average of 35 years. The average age of the men was 61; the average age of the women was 59.

In analyzing the results, researchers matched what each person wanted with what his or her partner thought was wanted. And interestingly—given women's reputation as the more perceptive sex—it was the men who knew best. Sixty-seven percent of the husbands, compared to 59 percent of the wives, correctly perceived their partners' wishes.

About 31 percent of the wives and 18 percent of the husbands thought their partners wanted more affection and sex than they really did. And about 15 percent of the husbands and 10 percent of the wives thought their spouses were satisfied, when actually they were not.

—*USA Today*

