

## **A CALL TO ACTION ON ELDER LAW EDUCATION: AN ASSESSMENT AND RECOMMENDATIONS BASED ON A NATIONAL SURVEY**

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*The explosive growth of the field of elder law raises questions about how best to prepare lawyers for elder law practice and how to ensure that those currently practicing in the area have the training they need to serve their clients. We surveyed approximately three hundred elder law practitioners and professors with the aim of better describing the field of elder law and identifying needs related to elder law education and training. Our findings paint a positive view of the field's prospects. They indicate that—even in the middle of a downturn in the overall market for legal services—elder law is a growing specialty with significant opportunities for future growth, and an area of practice that is especially satisfying for attorneys who appreciate a high level of interpersonal interaction. Our findings further indicate that there is a distinct body of elder law, that elder law attorneys need particular skills, and that education and training about this body of law and focused on these skills are of*

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*value both during and after law school. Based on these findings, we make a series of concrete recommendations for the legal academy and others interested in improving elder law education. Finally, we explore how these recommendations are consistent with broader calls for reform in legal education.*

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## I. Introduction

The field of elder law has grown dramatically over the past several decades.<sup>1</sup> Today, it appears to be one of the fastest growing fields of legal specialization and a majority of U.S. law schools include elder law in their curricula.<sup>2</sup> The questions that now need to be addressed are how to prepare future lawyers for elder law practice and how to ensure that those currently practicing in the field have the training they need to provide high-quality legal services to clients.

In this Article, we seek to meet that challenge by identifying the kinds of education and training that would benefit law students and lawyers wishing to practice elder law, and by formulating recommen-

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1. See Nina A. Kohn & Edward D. Spurgeon, *Elder Law Teaching and Scholarship: An Empirical Analysis of an Evolving Field*, 59 J. LEGAL EDUC. 414, 430 (2010).

2. See *id.*

dations for law schools and other organizations providing legal education. The article is the product of the second phase of a multi-year study on elder law education conducted with support from the Borchard Foundation Center on Law and Aging. The findings of the first phase of the study, published in the *Journal of Legal Education* in 2010, documented a dramatic increase in the number of law schools offering elder law education and provided a descriptive account of the content of that education and those providing it.<sup>3</sup>

This Article proceeds in four major parts. Part II describes our methodology. Part III describes our findings as to the current state of the field of elder law, including those related to the characteristics of the elder law bar, the content of elder law practice, and the market demand for specialized elder law services. Part IV then discusses the implications of our findings for the future development of the field and for legal education. Finally, Part V sets forth concrete recommendations for the legal academy and others interested in improving elder law education.

## II. Methodology

In order to gain insight into how law schools and other organizations can best help prepare lawyers to successfully practice in the field of elder law, we conducted two online surveys: one of practicing attorneys and one of law school professors who teach elder law. The surveys had quantitative and qualitative elements designed to assess the participants' perceptions of the field of elder law and their experiences with elder law practice, as well as to obtain their suggestions for elder law education. Survey questions were designed by the authors and were informed by input from members of the study's advisory group, which consisted primarily of academics who teach elder law and attorneys practicing in the field. In addition, survey questions were informed by a facilitated discussion about this project at the 2009 World Study Group on Elder Law convened at Stetson University.

The surveys were formally launched at a plenary event at the National Aging and Law Conference in December 2010, where attendees were invited to participate in the survey. Over approximately the next six months, we recruited additional survey participants by

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3. *See id.*

distributing the web link to the surveys through a variety of means, including websites, blogs, and listservs. These included three listservs managed by the ABA Commission on Law and Aging: Elderbar (a listserv aimed at professionals working in law and aging), Collaborate (a listserv focused on elder mediation and alternative dispute resolution), and Elderlink (a listserv focused on ABA entities that produce elder law programming), as well as the AgingProf listserv which serves members of the elder law academic community. We also distributed the surveys through state bar associations' elder-law-related membership groups. To do so, we tried to identify the head of the elder law section or committee of the state bar association in every state where such a section or committee existed. We then personally emailed these individuals, requesting that they share our information and survey link with their members. This resulted in 32 emails to state bar leaders. We are unable to determine how many of these leaders shared the survey information with their members. However, eight reported that they either had or would do so, and 30% of respondents to the practitioners survey indicated that they learned of the survey from a state bar association.

From December 2010 through October 2011, 312 individuals began the practitioners survey and 270 completed it, for a completion rate of 87%. The average time to complete the survey was 12 minutes. During that same period, 31 individuals began the professors survey and 23 completed it, for a completion rate of 74%. The average time to complete the professors survey was eight minutes.

### **III. Survey Findings**

#### **A. Overview**

Data collected in our surveys provide insight into characteristics of the elder law bar, the current state of the field of elder law (including market conditions and needs), and how law schools and other organizations might provide elder law education that would help better meet the needs of elder law attorneys and their clients.

## **B. Respondent Characteristics**

### **1. PRACTITIONERS SURVEY RESPONDENT CHARACTERISTICS**

Respondents to the practitioners survey were predominantly experienced elder law attorneys in solo or small firm practices, with a small but significant number providing direct legal services in non-profits or working in government.

Respondents generally had significant legal practice experience. Most were specialized in the field of elder law. More than one-third (37%) practiced elder law exclusively, and for more than three-quarters (77%) elder law constituted the majority of their practice. Respondents also typically had established elder law practices: 60% had practiced in the field for 11 or more years, and 83% had practiced in it for at least 5 years. Most had come to the practice of elder law after they had already practiced law for some time. Nearly half (49%) had been practicing law for 20 or more years, over three-quarters (77%) had been practicing for more than 10 years, and only 10% had been practicing for less than 5 years. This is consistent with the fact that almost half (45%) of respondents began practicing elder law after expanding their practice due to client interest or potential. By contrast, generally only those attorneys who were new to legal practice indicated that they had deliberately chosen the field upon graduating from law school: 52% of those in law practice for less than 5 years reported that they had known that they wanted to practice elder law when they began to practice, compared to 24% of those with 5–10 years of experience in legal practice, 17% of those with 11–20 years of experience, and less than 10% of respondents with 20 or more years of practice experience. This trend likely reflects, at least in part, the growth of the field of elder law over the past several decades.

Respondents were heavily concentrated in private practice, with 80% working in private law firms, 10% in nonprofits focused on providing direct legal services, and 6% in government. Most respondents were either members of small law firms or solo practitioners. Of the 201 attorneys who indicated the size of the firm in which they practiced, 93 (43%) reported that they had a solo practice; 57 (28%) reported that they were in two or three person firms; and only 31 (15%) that they were in a firm of five or more people.

The vast majority (84%) of respondents did not take an elder law course during law school. Newer lawyers were more likely, however,

to have taken such a course than more experienced lawyers. Indeed, only 3% of those with 20 or more years of legal practice experience reported taking an elder law course while a law student. This may reflect the fact that many more law schools offer elder law courses today than in the past.<sup>4</sup>

## 2. PROFESSORS SURVEY RESPONDENT CHARACTERISTICS

Among the 28 individuals who identified their teaching experience in the professors survey, 15 reported that they taught a doctrinal elder law course, 7 responded that they taught a clinical course, while another 3 described their elder law course as neither clinical nor doctrinal (one called it a seminar; one, a hybrid of doctrinal and skills training; and one, a counseling course). An additional three respondents reported that they had previously taught an elder law course but did not currently. Participants split on whether they had been able to offer the level of elder law instruction they desired. Of those who reported on whether they were able to offer as much instruction in elder law as they wished, 13 reported that they had been able to do so, but 14 reported that they had not.

### C. Current State of the Field

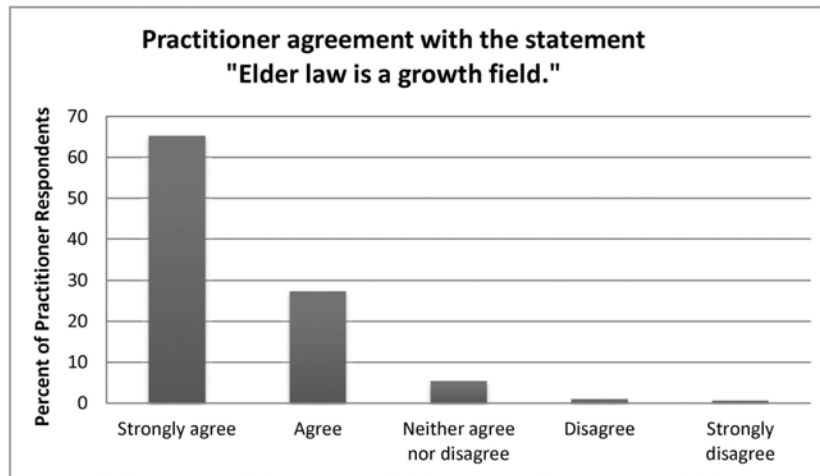
#### 1. THE CONDITION OF THE ELDER LAW MARKET

Respondents to the practitioners survey resoundingly reported that elder law is a growing field. As shown in Figure 1, an impressive 93% of participants classified elder law as a growth field, with nearly two-thirds (65%) strongly agreeing that it is. Only 2% of respondents thought that elder law is not a growth field. Over two-thirds (68%) also felt that there are ample job opportunities in the field, while a mere 8% felt that there are not ample job opportunities in the field. It appears that this demand is consistent with an underlying need: nearly three-quarters (72%) of practitioner respondents opined that there is a need for more elder law attorneys, whereas only 8% reported that there is no such need.

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4. *See id.* (describing the growth in the number of law schools offering elder law education over time).

FIGURE 1

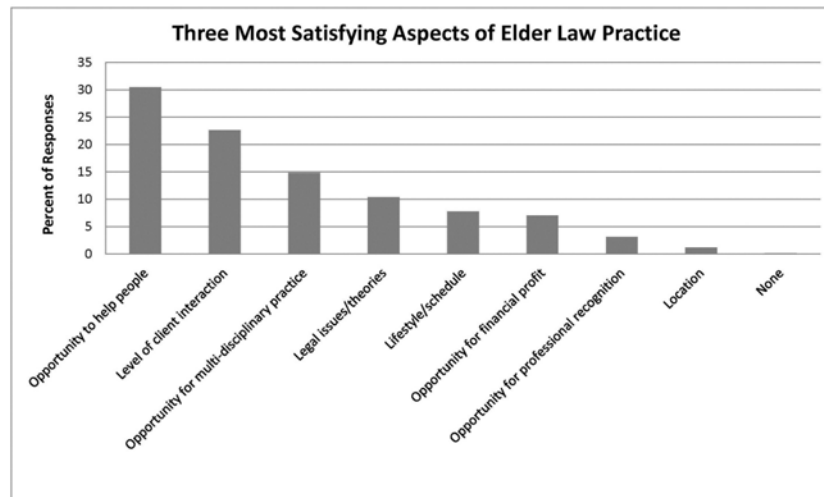


## 2. THE APPEAL OF ELDER LAW PRACTICE

Respondents to the practitioners survey reported that the most satisfying aspect of elder law practice is the opportunity to help people, followed by the level of meaningful client interaction and the opportunity to engage in multidisciplinary practice. Specifically, when asked to indicate the three aspects of elder law practice they found most satisfying, almost all practitioner respondents listed "the ability to help people." Indeed, the ability to help people was the most satisfying aspect of elder law for attorneys regardless of whether they worked in the private, nonprofit, or government sectors. A majority also listed "the level of client interaction," while just under half listed "the opportunity to engage in multi-disciplinary practice." As shown in Figure 2, other potential benefits of elder law practice (e.g., profit, lifestyle) were far less commonly cited. Notably, only a single practitioner could not identify three satisfying aspects of elder law practice.



FIGURE 2

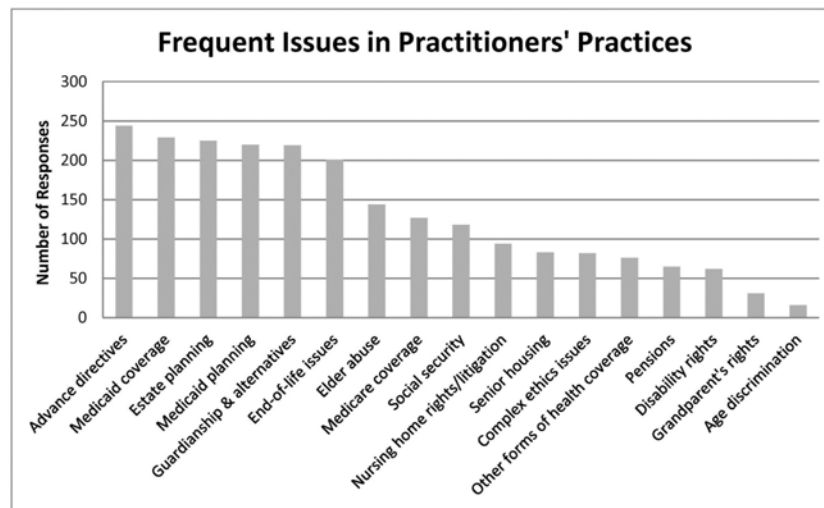


Consistent with the interpersonal appeal of elder law practice, many of the open-ended comments to the practitioners survey suggested that respondents felt an emotional connection to the field and their clients. For example, some volunteered that they were drawn to the field by a personal experience, such as the mistreatment of a relative.

### 3. THE CONTENT OF ELDER PRACTICE

Respondents to the practitioners survey indicated that elder law practice covers a wide range of substantive areas related to the health, personal and financial security, independence, and dignity of elders. As shown in Figure 3, with the exception of issues of age discrimination and grandparents' rights, at least 20% of practitioner respondents frequently deal with each of the 17 practice areas included in the survey.

FIGURE 3



In open-ended responses, a significant number of elder law practitioners indicated that their practice also included veterans' benefits issues; we suspect that others might have described their practice as including this issue too had we listed this issue as a potential practice area in the survey. Other areas of practice noted in the open-ended comments included lesbian, gay, bisexual, and transgender issues and special needs planning. Interestingly, seven respondents also wrote in that they addressed matters of financial exploitation and financial abuse. We had assumed that this practice area was already described under the category "elder abuse." The fact that a not insignificant number of respondents wrote in this response raises the question of the extent to which elder law practitioners categorize financial exploitation as abuse. On the other hand, it may simply represent a failure on the part of respondents to read the question carefully or respondents attempting to indicate that they address financial exploitation of younger adults.

Although the content of elder law is varied, there are some clear focal areas. The most common areas of practice—those which the vast majority of respondents reported working in—are end-of-life issues, Medicaid planning and coverage, advance directives, guardianship and its alternatives, and estate planning. Just over half of participants also included practice in elder abuse.

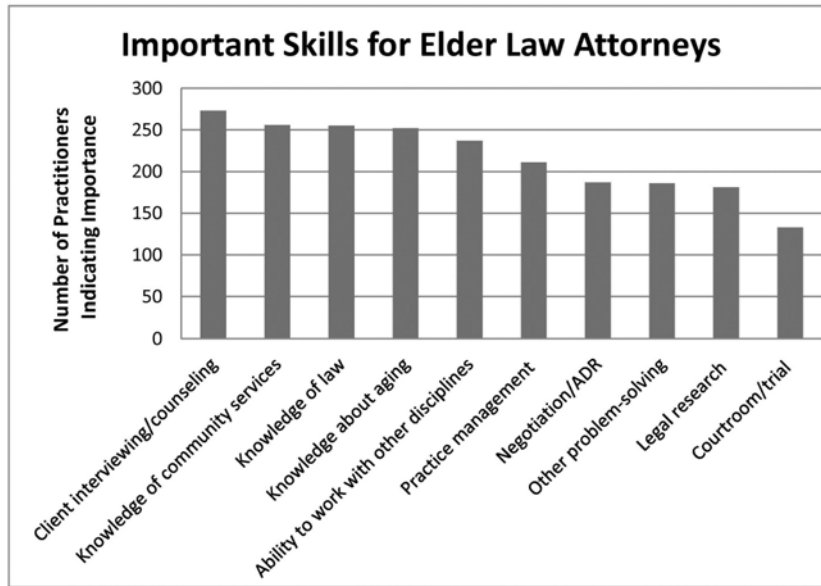
There were some differences, however, by sector. Those practitioners working in nonprofit settings were more likely to frequently

deal with Medicare coverage issues, Social Security, and nursing home rights and litigation than were those in the private sector. By contrast, those in the private sector were more likely to frequently deal with estate planning issues and Medicaid planning than were those working in the public sector. A chi-square test indicated that all of these sectorial differences were statistically significant at the .05 level.

4. THE SKILLS ELDER LAW ATTORNEYS NEED

As shown in Figure 4, respondents to the practitioners survey indicated that an elder law attorney needs a wide array of skills and knowledge.

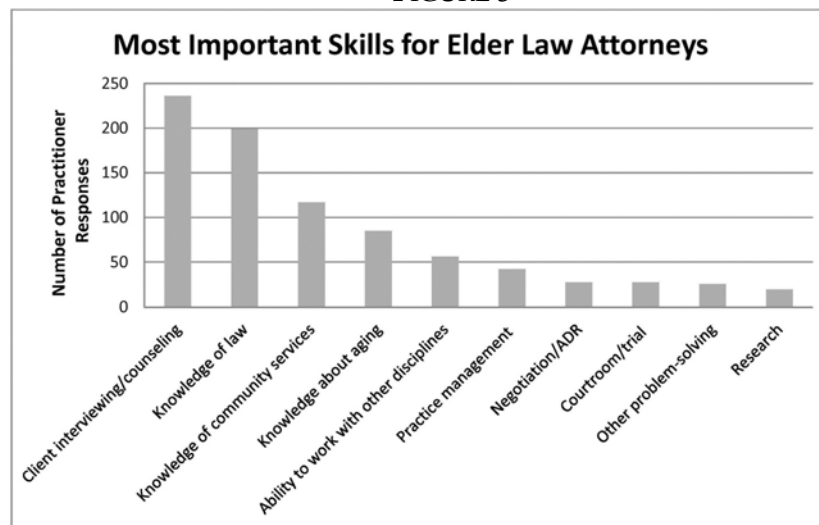
FIGURE 4



The most important skills appear to be client interviewing and counseling, although substantive knowledge about the law and knowledge about resources for older adults are also key. When asked to rank the three most important skills for an elder law attorney, the leading answers among practitioners were client interviewing and counseling skills (236 responses), followed by knowledge of the law (199 responses), and knowledge about community services for older

adults (117 responses). Similarly, as shown in Figure 5, when asked to indicate which skills are important for an elder law attorney to possess, virtually every respondent to the practitioner's survey indicated that it is important for elder law attorneys to have client interviewing and counseling skills. Additionally, the vast majority thought that such attorneys also need practice management skills, the ability to work with professionals in other disciplines, knowledge of the law, and knowledge of community services for older adults. A majority also indicated that negotiation and alternative dispute resolution (ADR) skills, other problem-solving skills, and legal research skills are needed.

FIGURE 5



Professors' survey responses about important practice skills largely mirrored those of practitioners, although professors tended to think that more skills were important than did practitioners. A majority of the professor respondents indicated that each of the skills we listed as potentially important to elder law practice were, in fact, important: courtroom/trial practice skills, practice management skills, research skills, client communication and interviewing skills, ability to work with professionals in other disciplines, knowledge of the law, knowledge about community services for older clients, knowledge about aging processes, negotiation and alternative dispute resolution

skills, and other problem-solving skills. When we asked professor participants to identify the three most important skills, the two that the vast majority (20 out of 23) identified were the same as the top two choices for practitioners: client communication and interviewing skills and knowledge of the law. The next most common response among professor respondents, "ability to work with professionals in other disciplines," was only selected by eight professors, reflecting a significant disagreement among the group as to the relative importance of the remaining skills.

Notably, the skills reported as being useful by both survey groups are not the litigation-oriented skills that are often associated with legal education. Indeed, the only skill that the majority of practitioner respondents did not feel is important was courtroom or trial skills. Similarly, only 3% of practitioners, and none of the professor respondents, thought that trial practice skills are among the three most important skills needed by elder law attorneys.

#### 5. QUALITY OF ELDER LAW ATTORNEYS

Participants had a fairly positive view of the current elder law bar, with approximately two-thirds (65%) reporting that the current quality of attorneys practicing elder law is either good or excellent. This positive view, however, was not universally shared. Nearly one-quarter (23%) described it as merely satisfactory, and 9% described it as poor. In addition, we do not know whether these views are more or less positive than the participants' views of attorneys in general.

### D. Educational Opportunities and Needs

#### 1. OPINIONS ABOUT J.D. ELDER LAW EDUCATION

Although most respondents to the practitioners survey had not taken an elder law course during law school, over 90% thought that law schools should offer such instruction, as did all professor respondents who offered an opinion on the issue. This enthusiasm for specialized elder law education is supported by the experience of those who did take an elder law course in law school. Of the respondents who took an elder law course in law school, 84% reported that it helped prepare them to practice elder law and 13% reported that it had helped them practice in another area. Notably, those who had taken clinical elder law courses were even more positive about

their experience than those who had taken doctrinal courses. While only 1 of the 13 respondents who had taken clinical courses reported the course had not been useful, 4 of the 17 who indicated the usefulness of their doctrinal courses responded that it has not been. Moreover, all who had taken a clinical course reported that their elder law education had helped them practice in other areas of the law, whereas none of those who had taken a doctrinal elder law course indicated it had. Respondents who had taken a clinical course were also more likely to indicate that the course helped them practice elder law, although this result was only marginally significant (chi square test  $p=.09$ ). Further surveying would therefore be necessary to determine whether a statistically robust difference in reported utility of clinical and doctrinal elder law courses would emerge with a larger sample size.

The notion that clinical elder law education prepares lawyers to practice in other areas is consistent with professors' belief that elder law courses can be a forum for teaching lawyering skills in general. Indeed, 84% of professor respondents described elder law courses as good vehicles for students to learn skills that they need to succeed in other practice areas, while only one felt that they are not. Doctrinal elder law courses may have similar spillover effects. As one professor respondent explained:

The great majority of students who enter private practice will encounter seniors with distinct elder law issues. At the least, they should have the opportunity in law school to have doctrinal education that will allow them to identify the issues, whether or not they practice elder law. Seniors are among the most underserved and mal-served clients. Without the opportunity for a doctrinal elder law course, law schools will be contributing to the problem rather than providing a solution.

Practitioner respondents not only had clear opinions on whether law schools should offer elder law-specific instruction, but also on how they should do so. Almost all practitioner respondents thought that law schools should offer clinical courses specific to elder law and that doing so was the single most important thing law schools could do to prepare students to succeed in an elder law practice. A majority also thought that law schools should offer doctrinal elder law courses,

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5. Nina A. Kohn & Edward D. Spurgeon, *Elder Law Survey for Professors*, Response 3890567 (unpublished survey on file with author) [hereinafter *Professor Survey*].

teach client counseling and negotiation skills, teach negotiation and conflict resolution skills, and teach practice management skills. When practitioner respondents were asked what are the three most important things for law schools to do, there were three leading answers: offer clinical courses tailored to elder law (220 responses), teach client counseling and interviewing skills (201 responses), and offer doctrinal elder law courses (147 responses). In open-ended comments, many respondents also indicated that they felt it would be helpful for law schools to provide opportunities for students to intern in elder law practices and be mentored by practicing elder law attorneys.

Professor respondents were also enthusiastic about elder law education but, by comparison, were more enthusiastic in their support for law schools offering doctrinal elder law courses than clinical elder law courses. However, none expressed opposition to clinical elder law instruction, and the relatively greater enthusiasm for doctrinal offerings may reflect the fact that professor respondents were more likely to teach doctrinal classes than clinical ones. Notably, professors did not seem to treat doctrinal and clinical courses interchangeably. Only approximately one-quarter (24%) said it did not matter whether elder law instruction was clinical or doctrinal, and only one strongly felt that it did not matter. That said, approximately three-quarters (74%) felt that law schools should offer both forms of elder law instruction. Approximately three-quarters (74%) also felt that a doctrinal course should be a prerequisite for a clinical course, although 18% disagreed.

In addition to supporting education specific to elder law, both sets of respondents strongly supported integrating aging issues into the broader law school curriculum. A majority of practitioner respondents and over three-quarters (78%) of professors survey respondents felt that law schools should integrate elder law throughout their curricula. When asked, 78% of professor respondents indicated that such integration should be in addition to elder law-specific courses.<sup>6</sup>

Many participants from both surveys also provided open-ended comments about the course of action law schools should take. From these, several themes emerged. First, a common suggestion was that law schools should provide cross-disciplinary study opportunities, including opportunities to learn about working with professionals from

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6. This question was not posed to practitioners, although perhaps it should have been.

other disciplines, the psychology and sociology of aging, community resources for older adults, and life-care planning. A second common suggestion was that law students need training in handling interpersonal and emotional issues, including developing patience and compassion skills. A third major theme was that there is a need for instruction on the ethical issues encountered by elder law attorneys.

## 2. OPINIONS ABOUT CONTINUING ELDER LAW EDUCATION

Currently, there are a variety of continuing education sources that respondents find helpful, with elder law sections of bar associations, the National Academy of Elder Law Attorneys (NAELA), and elder law listservs being the most frequently cited. However, responses to the practitioners study indicate that a substantial subset of practitioners perceive opportunities for continuing legal education (CLE) on elder law to be insufficient. Specifically, while approximately two-thirds of practitioner respondents consider CLE offerings sufficient, one-quarter do not. That, together with the fact that one-third thought the current quality of attorneys practicing elder law is only satisfactory or worse, suggests the need for improvement in CLE.

In the open-ended comments related to CLE, several themes emerged. One theme was that a subset of respondents felt that current CLE offerings tend to focus on wealthier clients and that more attention should be paid to CLE designed to inform those representing middle- and low-income clients. Comments suggested that doing so would mean not only offering CLE that addresses planning techniques and issues of importance to middle- and low-income older adults, but also offering CLE opportunities that are affordable and accessible to lawyers who themselves may have limited resources available for such education, perhaps because they serve lower income clients.

Another theme was that many respondents noted there is a need for additional, advanced CLE opportunities, partially in response to continual changes in the field as a result of new laws and regulations. One respondent, for example, complained that, "CLEs generally teach the same old tired themes over and over again. Elder law is a rapidly changing area and continuing education programs need to offer more courses that can analyze new rules and regulations in a clear, cogent



and concise manner for practicing attorneys.”<sup>7</sup> Another objected that, “[m]ost CLE offered are TOO BRIEF so the presenter raises issues, many issues, and says ‘if you get one of these situations, call me and we can co-counsel.’ That’s NOT education, it’s veiled advertising.”<sup>8</sup>

A third theme was that there are certain subjects about which respondents thought further education was especially needed. The two most commonly mentioned were ethics and elder abuse. Indeed, in their answers to a variety of open-ended questions, a number of respondents complained about lax ethical practices, some making stark comments such as “[e]thics are so lacking it is beyond belief.”<sup>9</sup> and “[t]he one thing that gives me the most concern is the lack of ethics and how many lawyers prey on the elderly.”<sup>10</sup>

### 3. PROFESSORS’ OPINIONS ABOUT EMERGING MODES OF EDUCATION

As part of the professors survey, we inquired about the desirability of elder law-specific LL.M. degrees and the use of distance learning education to teach elder law. Both approaches to legal education are rapidly gaining attention in the legal academia, in part because they are seen as financially attractive to law schools faced with budgetary challenges.<sup>11</sup>

When asked about the potential value to the legal profession of offering elder law LL.M. degrees in law schools, most professor respondents thought that it would either be very valuable (eight respondents, or 35%) or somewhat valuable (nine, or 34%). Of the remainder, two thought it would not be valuable, and the rest reported that they did not have an opinion on this issue. We did not pose this question to practitioner respondents, although perhaps we should have.

We also asked professor respondents whether they had used distance technology to teach elder law. Only one said that he or she had. However, we did not define distance technology as part of this ques-

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7. Nina A. Kohn & Edward D. Spurgeon, Elder Law Survey for Attorneys, Response 3909947 (unpublished survey on file with author ( [hereinafter Attorney Survey]

8. *Id.* at Response 1098817.

9. *Id.* at Response 840005.

10. *Id.* at Response 989741.

11. LL.M. degrees can provide law schools with a new source of revenue; distance learning, by contrast, is seen as a potentially attractive way to decrease the cost of delivering instruction.

tion or indicate whether we were asking about its exclusive use. It is certainly possible, therefore, that some had used certain remote technologies that they did not view as distance learning technologies, perhaps for a discrete event (e.g., having a speaker appear in a classroom using video or participating in a CLE webinar).

#### **IV. Implications of the Survey Findings**

In this section, we discuss the value of the survey data we obtained and then identify and discuss four key themes (or conclusions) that emerge from the data.

##### **A. Value of Survey Findings**

When interpreting our survey data, it is important to recognize that the practitioners who completed our survey were self-selected and may not be fully representative of those practicing in the field of elder law in general. Since the survey was distributed primarily through elder law affinity groups and bar association groups, the respondents are likely to be unusually engaged in the field and disproportionately well-connected to local and state bar associations and national elder law organizations. The fact that, without remuneration or recognition, they invested the time needed to complete the survey (an average of 12 minutes for practitioners) suggests that they are also likely to be unusually engaged with and interested in elder law and its future. Accordingly, it would be a mistake to assume that their responses reflect those of the average attorney practicing elder law, or possibly even the average attorney specializing in elder law. However, on the positive side, it suggests that their opinions of the field and recommendations for its development are likely to be well-informed. Well-informed respondents are valuable for our purposes as we did not seek their input simply to describe the field, but also to get insight from the practicing bar about the field's needs to help shape recommendations for elder law education.

Similarly, we cannot know the extent to which the responses to the professors survey are representative of those teaching in the field. However, the primary purpose of the professors survey was to obtain insight into potential recommendations for the design of elder law education, including specific suggestions for reform, not to describe

elder law education as we did during the first phase of our study.<sup>12</sup> Accordingly, the potential lack of representativeness does not significantly undermine the utility of these survey responses for our purposes.

## B. Themes Emerging from the Surveys

### 1. ELDER LAW IS A GROWTH FIELD

Our findings strongly support the conclusion that elder law is, and will continue to be, a growth field. As noted above, 93% of practitioner respondents described the field as a growth field, more than two-thirds of practitioner respondents believed there are ample job opportunities in the field while only 8% thought that there are not, and the most common reasons practitioners cited for entering the field were a specific job opportunity and to meet client interest. Notably, ample opportunities were reported even though the survey was conducted well into the economic downturn in the legal market,<sup>13</sup> and during a period of time in which many law firms had reduced or discontinued hiring first year associates.<sup>14</sup>

Responses to our survey do not fully indicate the reasons for the growth, although they do suggest that actual or perceived client interest is driving it. This interest may, in turn, reflect the fact that the population of older adults is increasing—both in absolute number and as a proportion of the overall population.<sup>15</sup> Thus, the field's growth may simply reflect the fact that—despite an overabundance of attorneys in some legal specialties—more elder law specialists are needed to meet the elder law-related needs of the aging population.<sup>16</sup> Another

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12. See Kohn & Spurgeon, *supra* note 1, at 415.

13. See GEORGETOWN UNIV. L. CTR., CTR FOR THE STUDY OF THE LEGAL PROFESSION, 2013 REPORT ON THE STATE OF THE LEGAL MARKET 1 (2013), available at [http://scholarship.law.georgetown.edu/cslp\\_papers/4](http://scholarship.law.georgetown.edu/cslp_papers/4) (reporting that the current “unprecedented” economic downturn in the legal services market began in the third quarter of 2008).

14. See *id.*

15. U.S. CENSUS BUREAU, 2010 CENSUS BRIEFS: THE OLDER POPULATION (2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-09.pdf> (describing the aging of the population).

16. Elsewhere commentators have noted that the oversupply of attorneys is limited to certain sectors of the legal market, and that other areas of the legal market remain underserved. See, e.g., Luz Herrera, *Educating Main Street Lawyers*, 63 J. LEGAL EDUC. 189, 191–94 (2013) (discussing the unmet need for attorneys for low-

potential growth driver is that the legal profession in the United States is actively changing as the market for legal services becomes more competitive, placing increasing pressure on firms to provide more cost effective services and to distinguish themselves by doing so. One way that firms, especially smaller firms, are responding to this pressure is by developing specializations that give them stronger footholds in the legal market,<sup>17</sup> including substantive specialties (e.g., family law, tax law) and process-based specialties (e.g., collaborative law).<sup>18</sup> Developing elder law practices has the potential to allow firms to benefit from specialization and the marketing of that specialization.<sup>19</sup>

## 2. THERE IS A NEED FOR ELDER LAW-SPECIFIC EDUCATION IN LAW SCHOOLS

There was a resounding consensus among respondents to both surveys that law schools should offer elder law education, which is consistent with the fact that the subset of practitioner respondents with such training generally described it as helpful. Our findings also indicate that there are particular skills and knowledge that elder law practitioners need, and that a subset of these are different from those generally needed by other lawyers. This subset includes knowledge about community resources for older adults, knowledge about aging processes, knowledge about laws of particular importance to older

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er-income and middle-income individuals); E. Thomas Sullivan, *The Transformation of the Legal Profession and Legal Education*, 46 IND. L. REV. 145, 153 (2013) (describing the current situation as reflecting a "maldistribution of lawyers").

17. See Ward B. Coe III, *Profound "Nonchanges" in Small and Midsize Firms*, 70 MD. L. REV. 364, 366–67 (2011) (describing specialization as a way for small and midsize legal firms to compete with large legal firms in an increasingly competitive market); Gary A. Munneke, *Why Specialize?*, L. PRAC. TODAY, (Jan. 2009), available at <http://apps.americanbar.org/lpm/lpt/articles/bkr01091.shtml> (discussing the benefits of specialization, especially as they pertain to solo practitioners).

18. Such specialization is consistent with the increase in the segmentation of the legal market more broadly. See GEORGETOWN, *supra* note 13, at 15 (discussing the increased segmentation of the legal market).

19. The National Academy of Elder Law Attorneys (NAELA) helps attorneys realize the benefits of specialization by promoting the value of elder law specialists to potential clients. See, e.g., *Why an Elder Law or Special Needs Law Attorney?*, NAT'L ACAD. OF ELDER L. ATT'YS, [http://www.naela.org/Public/About/Consumers/Why\\_and\\_Elder\\_Law\\_Attorney\\_is\\_a\\_Good\\_Choice/Public/About\\_NAELA/Fact\\_Sheets/Why\\_an\\_Elder\\_Law\\_Attorney\\_is\\_a\\_Good\\_Choice.aspx?hkey=6569dbbe-5362-4cfa-8752-bd890a8a6ec1/](http://www.naela.org/Public/About/Consumers/Why_and_Elder_Law_Attorney_is_a_Good_Choice/Public/About_NAELA/Fact_Sheets/Why_an_Elder_Law_Attorney_is_a_Good_Choice.aspx?hkey=6569dbbe-5362-4cfa-8752-bd890a8a6ec1/) (last visited Dec. 10, 2013) (explaining to potential clients why they should engage an elder law specialist).

adults, and the ability to work with professionals from other disciplines to holistically meet the needs of older clients.

Notably, the responses to our surveys suggest that this need for elder law-specific education cannot be met simply by offering students broader instruction in advance planning or special needs law. Rather, elder law practice requires skills and knowledge tailored to representing older adults, and many of the issues on which elder law practitioners frequently provide representation are not primarily or exclusively planning oriented.

**3. THERE IS A NEED FOR EXPANDED CONTINUING LEGAL EDUCATION ON ELDER LAW**

Even among the presumably well-connected elder law practitioners who responded to our survey, there was a substantial subset who believed that there are insufficient CLE opportunities. Moreover, approximately one-third of this group felt that the overall quality of the field is no more than satisfactory. In addition, there were substantial concerns raised about unethical practices in the field and a subset of respondents specifically called for education on this issue. Another subset called for expanded education on other issues, including the needs of low- and middle-income clients and advanced training on elder law in general. Together, these findings indicate that there is a need for expanded CLE offerings on elder law topics.

**4. BOTH CURRENT AND FUTURE ELDER LAW ATTORNEYS WOULD BENEFIT FROM INCREASED TRAINING ON ETHICAL DILEMMAS AND CLIENT COUNSELING AND COMMUNICATION**

Elder law is a challenging practice area that requires significant people skills and the application of those skills in often-difficult situations. One respondent described the daily stresses of elder law practice as:

being overloaded with volumes of paperwork and details; constant exposure to sadness—ill health, death, dysfunctional family relationships, clients' fears; the pressures from health care providers, insurers. It takes a special personality to be successful as an elder law attorney. But the rewards are great. It is truly an honor to help clients in need.<sup>20</sup>

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20. Attorney Survey, *supra* note 7, at Response 997963.

Another noted that:

The most important aspect of elder law is the ability to communicate with your clients. "Communication" in this context means the ability to effectively obtain information on what the client wants, but more importantly, what they need. In many<sup>21</sup> cases, part of elder law practice is conveying bad news to clients.

Elder law also requires practitioners to navigate through complex ethical issues because they frequently confront situations involving multiple family members, family conflict, and clients with actual and perceived cognitive disabilities. Responses to our survey indicate that many in the elder law bar feel much more education and training on these ethical issues is needed to promote high-quality, ethical elder law practice.

## V. Recommendations

In the previous section, we explored the conclusions that can be drawn based on the information we gathered from our two-part survey. In this section, we build on those conclusions by suggesting concrete steps that law schools and other organizations providing legal training should take to help prepare attorneys to provide high-quality elder law services.

### A. Recommendations for Legal Education

#### 1. ALL LAW SCHOOLS SHOULD OFFER ELDER LAW COURSES TO J.D. STUDENTS

Elder law education should be a standard part of every law school's curriculum. Such education is consistent with preparing students for successful legal practice and helping them find fulfilling jobs in the legal profession. Elder law is a field that not only boasts strong job opportunities at the current time, but one in which we predict job opportunities will continue to expand in response to changing demographics and increased specialization in the legal market. Elder law is also a field for which practitioners need specific skills and knowledge in order to succeed, both of which can be taught, at least to a large extent, in a law school setting.

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21. *Id.* at Response 972162.

Notably, implementing this recommendation will require a significant additional investment of resources. Only slightly more than half of law schools currently include elder law as part of their official curricula, and not all of these regularly offer an elder law course.<sup>22</sup> Moreover, the schools that do have elder law courses tend to staff them with adjunct or non-tenure track faculty. This practice undermines the school's ability to create stable elder law programming and to integrate elder law concerns into the broader law school curriculum.<sup>23</sup>

**2. LAW SCHOOLS SHOULD OFFER BOTH DOCTRINAL AND CLINICAL ELDER LAW EDUCATION**

Given that a successful elder law practitioner needs both significant substantive legal knowledge and specific skills, including strong client counseling and interviewing skills, law schools should offer both clinical and doctrinal elder law education whenever possible. Ideally, doctrinal elder law courses should be made available as pre- or co-requisites for clinical elder law education opportunities.

**3. LAW SCHOOLS SHOULD INTEGRATE AGING ISSUES INTO THEIR GENERAL CURRICULUM**

While virtually all attorneys will have occasion to interact professionally with older adults, whether it be because of their practice or because of a family need, many law students will not choose to pursue specialized elder law courses. Integrating aging issues into the general curriculum (e.g., by discussing how age impacts damage awards in a torts class, considering rights of senior cohabitants in a family law class, or analyzing ethical issues involving clients with diminished capacity in a professional responsibility course) has the potential to both increase students' awareness of the legal issues facing older adults and their sensitivity to this client population. Integrating elder law issues into skills-focused courses may have similar benefits.<sup>24</sup> Moreo-

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22. See Kohn & Spurgeon, *supra* note 1, at 418.

23. See *id.* at 419–20.

24. Valparaiso University Law School's mandatory interviewing and counseling course for first-year students is an example of how one law school is integrating issues that are common in elder law practice into experiential and skills-based training. In the class, Valparaiso students learn about advance planning for health care and conduct a mock client interview on the topic. Under faculty supervision, students then have the opportunity to prepare advance directives and health care powers of attorney for community members. See Telephone Interview with Linda

ver, failure to include issues of relevance to older adults or to discuss actual or hypothetical situations involving older adults in the general curriculum has the potential to promote an ageist mentality among the legal profession by implicitly suggesting that problems of older adults are not important or are uninteresting.

#### 4. LAW SCHOOLS SHOULD CONSIDER OFFERING STUDENTS A CONCENTRATION AND CERTIFICATE IN ELDER LAW

To encourage<sup>25</sup> students interested in pursuing elder law to embark on a coherent course of study, law schools that offer ample courses on elder law and related subjects and have adequate faculty resources in this area should consider offering their students a concentration program and certificate in elder law.<sup>26</sup> By establishing a coherent set of courses and, ideally, by requiring a capstone project, law schools can provide guidance to students who wish to pursue a particular type of law<sup>27</sup> and encourage a deeper understanding of this area of law. Such programs also benefit students by signaling to potential employers that students have special expertise, interest, and commitment in a particular area of law.<sup>28</sup> In addition, because concen-

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Whitton (Nov. 22, 2013). While such programs could be replicated elsewhere, Valparaiso's course was designed by a member of the faculty who is a recognized authority on advance planning issues and who also assumed responsibility for designing the course and supervising students. Schools wishing to replicate this approach would, of course, need to be careful to ensure similarly close and appropriate supervision of students.

25. This would be consistent with current trends in education. See Victor Fleischer, *The Shift Toward Law School Specialization*, N.Y. TIMES, (Oct. 25, 2012, 12:22 PM), [http://dealbook.nytimes.com/2012/10/25/the-shift-toward-law-school-specialization/?\\_r=0](http://dealbook.nytimes.com/2012/10/25/the-shift-toward-law-school-specialization/?_r=0) (comparing the "the traditional model of legal education" in which "schools offer a general professional degree in law" with the "emerging model" in which students "add on a degree, certificate or other indication of readiness to engage in a particular practice area or industry").

26. John J. Worley et al., *Transactional Centers and Certificate Programs*, 12 TRANSACTIONS: TENN. J. BUS. L. 299, 300-01 (2011) (suggesting that certificate programs provide law students with a "guidebook" to a "coherent program of study").

27. Ann M. Griffin, *What's Your Major? A Question for Law Students in Michigan?*, 80 MICH. B.J. 72, 73 (2001) (noting one law firm's preference for students who have pursued a concentration).

28. See, e.g., Worley, *supra* note 26. These market factors may create temptations for schools to offer specialized certificates, even where they lack the resources needed to provide students with significant expertise in the subject of the certificate. See Michael A. Olivas, *"Majors" in Law? A Dissenting View*, 43 HARV. C.R.-C.L. L. REV. 625, 625 (2008) (criticizing specializations in law school and suggesting that the non-pedagogical motivations behind their adoption may create



trations and certificates can be a valuable marketing tool for law schools wishing to differentiate themselves to attract and retain students, they may help law schools justify committing additional resources to elder law instruction. Moreover, to the extent that some law schools embrace this approach while others use their limited resources to embrace certification programs in different areas of expertise, such differentiation might also be seen as a public good in that it would provide law students—and prospective law students—with more diverse options for their legal educations.<sup>29</sup>

**5. CONTINUING LEGAL EDUCATION ON ELDER LAW SHOULD BE EXPANDED**

It is important to increase the availability of accessible CLE related to elder law issues for all attorneys who represent older adults. For non-specialists, a particular need is basic elder law ethics education and training. For specialists, advanced education and training opportunities on a wide range of substantive issues are in order. Topics on which expanded CLE opportunities appear most needed for elder law specialists include planning tools for middle- and low-income older adults and complex and under-recognized ethical issues.

**6. ELDER LAW EDUCATION AT ALL LEVELS SHOULD INCLUDE CLIENT INTERACTION SKILLS**

While there are many skills that an elder law attorney needs, our respondents overwhelmingly indicated that client counseling and interviewing skills are the most important ones. Unfortunately, these are skills that law students often are not taught, at least not in the core

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programs that are ultimately harmful to the legal profession). Our recommendation should not be construed as encouraging this behavior.

29. Cf. Paul Horowitz, *What Ails the Law Schools*, 111 MICH. L. REV. 955, 971 (2013) (arguing that the legal education market suffers from excessive homogeneity, and attributing that homogeneity to law professors' tendency to try to recreate their own educational experiences and their "growing ignorance" of "the nature and needs of their own regional legal market"). In recommending such specialization, we are discussing specialization as to the substance of what is taught; we are not endorsing specialization in the form of less comprehensive or less-intensive forms of legal education, as have been suggested by some. See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 174 (2012) (suggesting that only two years of law school instruction be required, thus reducing the price of law school for students who merely wish to engage in "local practice" as opposed to "corporate legal practice", which the author implies requires a higher quality legal education).

doctrinal curriculum. Nor do they appear to be a focus of current CLE efforts. Nevertheless, training in these skills is possible.<sup>30</sup>

**7. ELDER LAW EDUCATION AT ALL LEVELS SHOULD INCLUDE A FOCUS ON ETHICS**

The extent of concern survey respondents expressed about unethical practices in elder law is disturbing and strongly suggests that ethics should be a focal issue in elder law education and training, both during and after law school. In addition to a need for elder law ethics education for those with limited elder law experience, there is a need for ethics-related instruction targeted at established elder law practitioners.

**8. ELDER LAW EDUCATION SHOULD BE RESPONSIVE TO THE EVOLVING NEEDS OF THE PRACTICE AND THE LEGAL PROFESSION**

No doubt the coming years will continue to see significant structural changes in both the legal market and in substantive law, including changes to federal and state benefit programs that will have a major impact on the older adults and elder law practice. We cannot know what effect these changes will have on elder law practice. For example, if there are significant reductions in old-age benefits programs, it could reduce the demand for attorneys to help older adults obtain eligibility for benefits, or alternatively, it could have the opposite effect by increasing older adults' need for assistance in navigating more demanding eligibility requirements. What we do know is that to best prepare lawyers to practice, elder law education, like other forms of legal education, will need to be responsive to such changes as they occur.

Similarly, those promoting elder law education must be sensitive to the pressures facing law schools. The legal academy is in the midst of a period of palpable anxiety as the number of applicants to law schools continues to decline and there is growing concern about the

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30. See, e.g., Stephanie K. Boys et al., *Lawyers are Counselors, Too: Social Workers Can Train Lawyers to More Effectively Counsel Clients*, 12 *ADVANCES IN SOC. WORK* 241, 252–53 (2011), available at <http://journals.iupui.edu/index.php/advancesin-socialwork/article/viewFile/1885/1861> (recommending that law schools look to how social work programs teach interviewing and counseling skills); Laurie Shanks, *Whose Story Is It, Anyway?—Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 *CLINICAL L. REV.* 509, 324–25 (2008) (discussing an approach for teaching client-centered interviewing).

cost of obtaining legal education. In the face of declining revenues, law schools must seriously and continually re-examine how they can more efficiently and effectively offer students the education they need in order to obtain the knowledge and skills to succeed as lawyers in a rapidly changing market. By (1) exploring ways to coordinate elder law offerings across campuses or departments; (2) making use of technology that allows access to resources such as guest speakers at reduced cost; and (3) otherwise pursuing alternative ways to deliver high-quality elder law education efficiently, U.S. law schools can facilitate the expansion of elder law offerings to their students.

Stetson University's online LL.M. program provides one example of how law schools might offer elder law education in a highly competitive legal market.<sup>31</sup> Since the program began in 2007, 52 students have graduated from the part-time program; an additional 33 are currently enrolled. With the exception of a two-day intensive course at the start of the program, all courses<sup>32</sup> are held online using a proprietary internet platform that allows students to "attend" lectures at their convenience.<sup>33</sup> Specifically, lectures are taped and typically synchronized with PowerPoint presentations.<sup>34</sup> Students typically have one week within which to view each lecture, complete a reading assignment, and participate in the class through an online exercise such as a contribution to the class's online forum or a small group exercise.<sup>35</sup> This format allows Stetson to offer elder law education to a geographically diverse group of students, as well as students with established legal practices who would not be in a position to suspend

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31. Telephone Interview with Rebecca Morgan & Roberta Flowers (Aug. 29, 2012) [hereinafter Morgan & Flowers].

32. Required courses include Aging and the Law, Long-term Care Planning, Estate and Gift Tax & Estate Planning, Ethics in the Practice of Elder Law, Guardianship & Alternatives, and a one-credit, in-person class at the start of the student's program. Elective courses include Basic Federal Income Taxation for Elders, Disability Law, Government & Private Health Benefits, Issues in Elder Law Advocacy (which focuses on litigation issues), Veterans' Benefits, and Law, Aging & Mental Health. *LL.M. in Elder Law - Course Descriptions*, STETSON L., available at <http://www.law.stetson.edu/academics/elder/llm/elder-law-llm-course-descriptions.php> (last visited Dec. 16, 2013) (listing required and elective courses). Sufficiently experienced students are given the option of substituting a course in disability law for the retirement planning course. Morgan & Flowers, *supra* note 31.

33. Morgan & Flowers, *supra* note 31.

34. *Id.*

35. *Id.*

their practices for a year in order to pursue an advanced degree.<sup>36</sup> In addition, since faculty need not be on-campus to teach, the format also allows Stetson to draw on the expertise of elder law professors, aging specialists, and practicing attorneys from around the country to teach full courses in the program. This has allowed Stetson to offer a comprehensive program without adding to its tenure or tenure-track faculty.<sup>37</sup>

### **B. Relationship Between Recommendations and Broader Calls for Legal Education Reform**

Our recommendations for elder law education in many ways mirror broader recommendations for legal education reform. Over the past two decades, there have been a series of influential reports issued calling for reform in legal education.<sup>38</sup> A common theme among them has been the need for more skills-focused legal training. The first of these, the 1992 MacCrate Report, stressed that “education in lawyering skills and professional values is central to the mission of law schools,”<sup>39</sup> and specifically encouraged law schools to offer instruction in communication and counseling skills,<sup>40</sup> as well as “recognizing and resolving ethical dilemmas.”<sup>41</sup> It was followed by the Carnegie Report, which concluded that law schools need to place greater emphasis on “helping students develop practical ‘lawyering’ skills

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36. A further description of the program and its faculty can be found online at *Online LL.M. in Elder Law*, STETSON L., <http://www.law.stetson.edu/academics/elder/llm/> (last visited Dec. 3, 2013).

37. See AM. BAR ASS'N, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT]; WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT]; ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007) [hereinafter STUCKEY REPORT]; MARJORIE M. SHULTZ & SHELDON ZEDECK, IDENTIFICATION, DEVELOPMENT, & VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING (2008) [hereinafter SHULTZ REPORT], available at <http://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>.

38. MACCRATE REPORT, *supra* note 37, at 330.

39. *Id.* at 332.

40. *Id.*

41. CARNEGIE REPORT, *supra* note 37.

and understandings of ethical and moral considerations.”<sup>42</sup> Shortly thereafter came the 2007 Stuckey Report, published by the Clinical Legal Education Association, which provided a scathing critique of legal education; it too urged a skills-based focus for legal education, arguing that the key aim of legal education is to develop professional problem-solving skills<sup>43</sup> and urged greater professionalism-related training. More recently, the Shultz report further developed the idea that legal training should focus on skills acquisition by identifying twenty-six “effectiveness factors”—skills lawyers need to be effective lawyers. Finally, in September of 2013, the American Bar Association’s Task Force on the Future of Legal Education issued a draft report and recommendations that, among other things, called on law schools to increase emphasis on skills training.<sup>44</sup> While the draft recommendations stop short of calling for law schools to matriculate “practice ready” students, they call on law schools to ensure that graduates have “some competencies in delivering . . . some legal services.”<sup>45</sup>

Like these more generalized reports, we take seriously respondents’ calls for law schools to prepare students for legal practice. As one practitioner respondent noted, “[m]y law school experience was generally based on how to think like a lawyer, not how to actually be a lawyer. Anything that can be done to teach students how to actually be lawyers is helpful.”<sup>46</sup>

Our recommendations are also consistent with current calls for greater accountability in legal education. Our recommended changes to law school education are designed explicitly to better prepare future lawyers for an area of practice that, given the current demand and demographic trends, appears highly likely to continue to . Like-

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42. STUCKEY REPORT, *supra* note 37, at 6 (“The primary goal of legal education should be to develop competence, that is, the ability to resolve legal problems effectively and responsibly”).

43. SHULTZ REPORT, *supra* note 37, at 26–27.

44. See AM. BAR ASS’N, TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, DRAFT REPORT & RECOMMENDATIONS (Sept. 20, 2013), available at [http://www.americanbar.org/news/abanews/aba-news-archives/2013/09/aba\\_task\\_force\\_onth.html](http://www.americanbar.org/news/abanews/aba-news-archives/2013/09/aba_task_force_onth.html).

45. See *id.* at 25 (further stating that “[a] graduate’s having some set of competencies in the delivery of law-related services, and not just some body of knowledge, is an essential outcome for any program of law-related education.”).

46. Attorney Survey, *supra* note 7, at Response 2814687.

wise, our recommendations related to CLE are designed specifically to meet the needs that have been identified by today's practitioners.

## **VI. Conclusion**

This study comes at a critical time in legal education. Law schools are actively struggling to respond to changes in the market for legal services—changes that are resulting in reduced job opportunities for law school graduates and an increased focus on specialization. Law schools are also struggling to respond to law students' and prospective law students' demands that law schools ensure that graduates have the skills and qualifications to find desirable legal employment. These demands are consistent with calls for law schools to embrace problem-solving and client-centered education more broadly, as well as a recognition that law students are best served when they leave law school armed with a concrete set of skills.

In this environment, it might seem foolhardy to ask law schools to do more by expanding their curricula to embrace elder law education. Yet expanding elder law education is, in fact, a concrete way to respond to these challenges and demands for reform. Providing elder law education opportunities helps prepare students to find employment and succeed in what our findings suggest is a rapidly growing and highly satisfying legal specialty. It also can be a concrete way to teach professionalism and client-centered, problem-solving skills. In short, expanding elder law education is likely to benefit both attorneys and those they represent, and should be a priority for law schools and other organizations interested in improving the legal profession.