

ELDER LAW CLINIC:

*Chapman University Fowler School of Law
Alona Cortese Elder Law Center*

KURT EGGERT*

THE REWARDS AND ETHICAL CHALLENGES OF REPRESENTING ELDERS

Introduction

An elderly woman had to flee her home during the pandemic because her son had physically mistreated her and threatened to kill her and then himself. She moved into a shelter designed to protect people from domestic violence. When social workers at the shelter connected her with Chapman's Alona Cortese Elder Law Center, we had greater challenges than usual in obtaining an Elder Abuse Restraining Order to help her stop this horrific abuse. In years past, we could meet with our clients either in our office or, if need be, in their homes. We could interview them at length in person, look at their photos or documents, go through their history, and prepare them for the hearing on the restraining order. We could easily

This article is part of the special section, "Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools," in *California Legal History*, vol. 17, 2022 (see editor's introduction on page 3).

* Kurt Eggert is Professor of Law and Director of the Alona Cortese Elder Law Center, Chapman University Fowler School of Law.

call them with follow-up questions and talk with them almost daily, if we needed to. Because of the pandemic, we could not meet with our client in person and, because she was in a shelter, it was sometimes a challenge even to schedule Zoom meetings or phone calls. We even had difficulty meeting with her on Zoom, video technology that many of our senior clients are unfamiliar with and have difficulty using. Then, once we prepared her for her hearing, we had to work with shelter staff to make sure that she could make her court appearances on the court's video system despite the technological challenges. In the end, she was able to make her court appearances and we were able to obtain a permanent restraining order.

Another elder wanted us to draft a will and advance health care directive, deciding to whom she would bequeath her possessions and who she wanted to make her health care decisions for her when she was no longer able to. Normally, to discover and understand her true wishes and ensure that she was not subject to undue influence, we would meet with such a client separately, with no family member present. During the pandemic, however, we could not meet with her in person but instead would do so on Zoom. She needed her daughter to help her join the Zoom meeting and be nearby and instantly accessible in case of Zoom problems. Just looking at the Zoom screen, we could not be absolutely certain that her daughter was not just off-screen, listening in. We had to determine that we did not think that the daughter was unduly influencing the mother and coaching her from off-screen.

A daughter brought in her ninety-plus-year-old mother to our office before the pandemic and said that another daughter was taking advantage of her. This immediately raised the question of which one of the two of them, mother or daughter, would be our client. If the mother were not competent to make decisions, we could represent the daughter to gain a conservatorship over her mother to protect the mother's interests. If the mother were competent, we could represent the mother in obtaining a restraining order against the other daughter. However, it would be a potential conflict of interest to represent both, since we could not simultaneously represent the mother while representing the daughter in obtaining a conservatorship over the mother. And so, we had to decide which person was our client, and we had to do so almost immediately, before the other could develop the reasonable expectation that we were representing her as

well. We determined that the elderly mother was competent to retain us and therefore we represented her and not her daughter, and were clear with both of them which one we were representing.

Another client wanted us to draft a will and health care directive. She could not come to our office, but she did not want us to meet with her in her own apartment, because of her COVID concerns, among other reasons. And so, we met with her in the lobby of her apartment building. This forced us to halt conversation every time someone else entered the room, in order to preserve client confidentiality. We had to stop completely when a third party came into the room and sat down to read, and she did not want to ask that person to leave.

These brief vignettes illustrate recurring ethical issues we face in the Elder Law Clinic. Although the universe of such issues is potentially vast, four ethical challenges recur in a huge percent of our cases. These are (1) determining who is the client and the role of other family members; (2) determining whether the client is competent enough to hire us and, if so, working through any cognitive or memory issues the client might have; (3) being on the alert for any undue influence by others; and (4) keeping the client's confidences as best we can while obtaining the client's consent to work with and through family members or others who are not clients, when appropriate.

The practice of elder law has more difficult, complicated, and immediately urgent ethical issues than most other areas of the law. These ethical quandaries often arise in the first minutes of the initial client meeting. Many elderly clients are dependent on their family to help them meet with attorneys and often to explain their experiences and legal problems to the attorneys. Sometimes, the client needs a family member to translate for them. However, elder law attorneys also have to preserve client confidentiality and ensure that the family member who is "helping" the client is not also taking advantage of or unduly influencing them. Elder law attorneys regularly have several members of a family come in for a consultation, and the attorney must almost immediately establish who is the client, in order to determine to whom the attorney's duty of loyalty and other duties are owed, then immediately communicate that to the family or friends who accompanied the client to the meeting. We have to tell family members that we do not represent them, that our duties run to our client and not to them, and that we may need to tell our client anything the family members

tell us, even if they do not want us to. We cannot keep important secrets from our client, however painful that might be for those family members.

THE ALONA CORTESE ELDER LAW CENTER AND ITS HISTORY

Chapman Law School hired me in 1999 to create an elder law clinic during its first years of existence. I had worked for almost a decade at Bet Tzedek Legal Services in Los Angeles, representing elders and indigent clients in a variety of issues, including home equity fraud and mortgage foreclosure cases and eviction defense. For two years, I was also simultaneously an adjunct professor at Loyola Law School, teaching Elder Law.

When I joined Chapman, I was told I would have a secretary/paralegal and they would find space for the clinic in the new law school building, which was then under construction. My first day of work was also the first day the building was open. The clinic opened in 2000. Initially, our clinic office was in two small rooms not much larger than broom closets tucked away on the third floor of the law school. Clients sometimes had trouble finding the office, especially when they came at the wrong time or unannounced, and our goal was to find better and more accessible offices for the clinic. That goal was met when Heidi Cortese, an Orange County philanthropist and Alona Cortese's daughter, met with me and then a day or two later informed me that the Alona Cortese Trust was going to donate a building for the elder law clinic, to be named after her mother.

Alona Cortese is an appropriate namesake for an elder law clinic, because she and her husband, Ross Cortese, were co-founders of the company that developed the Leisure World communities across the country. Leisure World was designed around the concept of "active retirement," fostering "better lifestyles at every age," and giving seniors a place where they could live and enjoy recreational and social activities in a safe environment. In her young adulthood and before the creation of Leisure World, Alona Cortese had been a Hollywood starlet. Under the name Alona Marlowe, she had appeared in movies with actors such as Zasu Pitts, Douglas Fairbanks Jr., and Joan Crawford. She also worked with the Gilmore Oil Company, making appearances with their mascot, the Gilmore Lion.

I worked with Heidi Cortese to select the appropriate building for an elder law center, and she decided on the perfect building, a two-bedroom house a half-block from the law school. Built in 1917, the house had been used for shops for years. The bedrooms became attorneys' offices. The kitchen became a meeting room for clients. The living room turned into a student workspace that could double as a large conference room, and we have space for a secretary/paralegal. The building has a comfortable, homey feel, is easily accessible by public transportation, has parking in the back for clients with a ramp to the back door, and is a short stroll from the law school for law students to attend client meetings. In the clinic, we have photos of Alona Cortese at various stages of her life, one from her Hollywood days, another of her driving a convertible with a Gilmore Lion in the back seat, and a third taken when she was in her nineties, about the time I met her. I tell students that these photos are a wonderful photographic example of healthy aging.

The Elder Law Clinic grew in size for a time. First, I was able to hire an adjunct professor to work with me both in teaching and in supervising students with cases. Then, Chapman hired a Chapman law graduate as a professor and full-time attorney in the clinic. I think it was inspirational to students to have a Chapman Law grad as a professor. Recently, the clinic has reverted to a smaller size, and again I am working with just an adjunct professor.

THE DESIGN OF THE ELDER LAW CENTER

I designed the Elder Law Center to accomplish several goals. Among them:

- To provide free high-quality legal services to the needy elderly of Orange County;
- To teach students how to be great practical lawyers, able successfully to take on challenging cases for clients often in great stress and be empathetic counselors for their elderly clients;
- To give students doctrinal instruction about elder law and such topics as Medicare, Medicaid, Social Security, elder abuse, and end-of-life planning; and
- To teach students the joys and benefits of pro bono legal representation. I encourage my students to provide pro bono representation after

they graduate by showing them how representing needy clients is not only fulfilling, but also allows young attorneys to learn new skills and areas of law and to jump-start their legal careers.

To accomplish these goals, my clinic has typically handled more than one hundred cases each semester, so that each student works on about five cases at a time, gaining new cases as they resolve existing ones. Students are given a mix of cases centered on the typical legal problems of the elderly. A student may be drafting a will and health care directive for one client, working on an elder abuse restraining order for another, and handling a debt collection case for a third, while completing a conservatorship case for a fourth. My students often work in teams on bigger cases, such as elder abuse restraining orders, meeting together with the clients, dividing up the work, and talking with each other about the cases. I tell my students that more and more legal work is being done by teams of attorneys and non-attorneys, so that learning to work well and cooperate with others will likely be crucial to their careers.

The clinic is offered for up to four credit hours per semester, and the students can take the clinic twice, once in Spring Semester and once in Fall Semester, in any order, as we cover different doctrinal subjects in the two semesters. While some of our clients call the clinics directly, we receive referrals from courts and a variety of different agencies in Orange County, including senior centers, legal aid organizations, and domestic violence organizations. I start giving the students cases in the second week of class, so that they can begin going through the files and preparing to work on them. We do not have a rigid income screening for our clients unless we receive a grant that requires one, but generally only represent clients who could not afford to hire private attorneys.

STUDENT TRAINING

At the beginning of the semester, I train students how to do initial interviews of clients, where many of the ethical issues in the representation of elders pop up. I do this by teaching the practical skills of interviewing elderly clients, how to talk with clients of questionable memory or capacity, and how to handle an initial interview where the client is accompanied by one or more family members or friends. And then the class spends two

weeks on mock interviews, with students switching off portraying either an attorney or a client. They start with simpler situations with a single client with a straightforward legal issue, and then face more and more difficult and complex situations. They interview a mock client with memory loss, for example, or an elder brought in by a non-family member who does not seem to have the client's best interests at heart. A student may be directed to portray a mock client who is highly suspicious and distrusting of attorneys, and so the student playing the attorney must work to gain the mock client's trust. A final interview scenario is of an elderly parent coming in with two adult children who argue with each other vociferously, each son or daughter accusing the other of wrongdoing. Plus, the elderly client secretly wants to leave her estate to a third child who is currently in jail, but does not want to disclose this plan to the children with her at the interview. Students must learn how to control the interview despite the loud and incessant wrangling, and how to figure out the facts when the two adult children make contradictory accusations. And they learn to insist that the adult children leave the room, so that they can talk with the elderly client without the children's interference or knowledge of what is being said.

During the mock interviews, I pass notes to the students playing the clients on what to say to the student-attorneys to make the interview more challenging. For example, I may tell them to stop talking and just stare at the student-attorney for a minute, or to accuse the student-attorney of working with the client's children, just to see how the student-attorney reacts. Students need to learn how to deal with curveballs that clients throw at them. Then after the mock interview, we talk about what worked, what did not, and how the students could better have addressed the challenges of the interview. Students learn a lot from these mock interviews, not only about how to conduct such interviews, but also about how it feels to be interviewed. I think students gain empathy for their clients by playing clients and having a student playing an attorney ask them extremely personal and sometimes even painful questions. Students have often told me that when they were doing the mock interviews, they thought I had designed impossibly difficult interviews that could not happen in real life, and then later found themselves in an interview with a real client that was surprisingly similar.

One of my goals in the mock interviews is getting students used to talking with clients about some of the deepest and most troubling aspects of the clients' lives. Clinic students and elder law attorneys need to be able to talk with clients about planning for the clients' own deaths or possible incompetence. They need to be able to ask clients calmly and sympathetically about what the client would want to happen when they die or if they were in a coma and unlikely to regain consciousness. Students are often nervous or even frightened to discuss such issues with clients, and I let them know that clients often have little reservation about talking about them. The clients have often thought through what they want done and have talked with their friends and families about what to do. Students are often amazed when clients calmly discuss or even joke about their end-of-life decisions.

Students also need to be able to ask clients probing questions about conflicts or abuse in their family, about the son who has become increasingly controlling and even violent, or about the daughter who is threatening never to let the client see her grandchildren again. Our students have to be able to go deep into some of the most distressing and important aspects of our clients' lives, often talking with clients in crisis and in times of greatest need. Sometimes, our clients cry and need to be comforted, and I teach students how to treat a frightened, sad, or grieving client with dignity and empathy. I devote one whole class to the importance of empathy for attorneys and how students can practice and develop empathy while still maintaining a professional relationship with their clients.

I also give the students a crash course in legal ethics as focused on elder law, especially elders subject to duress or with questionable competence, and then follow up with additional discussions on ethics in an elder law practice throughout the semester. The rules of professional ethics often provide too little guidance regarding the professional responsibilities of elder law attorneys, and especially attorneys representing persons with diminished capacities, whether due to age, disability, or other condition. We talk about the various ethical responsibilities attorneys have, such as the duties of confidentiality, loyalty, competence, and avoiding conflicts of interest, and how all of these duties require the attorney quickly to determine the central question often facing elder law attorneys: who is the client? Normally it is the elder, but if the elder is of questionable competence

or lacks competence, the client may have to be a family member. If several members of a family come in for an initial interview, it may be a challenge to determine whom to represent and do so quickly enough that the other family members do not develop a reasonable expectation that the attorney will be representing them. If an attorney makes the wrong choices about who the client is, they may find themselves conflicted out of the case when they discover they picked the wrong person to represent.

In addition to teaching students how to handle cases, the class covers the significant substantive issues in elder law, including government benefit programs such as Social Security, Supplemental Security Income (SSI), Medicare, and Medicaid, as well as housing programs and methods to aid aging in place for the elderly. Students learn about end-of-life decision-making for the elderly, both the elders' own decisions and also rules and best practices for substituted decision-making by conservators or health care directive agents for elders who are no longer able to make decisions for themselves. We discuss laws protecting or restricting the right to die. We also discuss laws governing physical and financial elder abuse and fraud against the elderly.

TYPES OF CASES

The Elder Law Center represents clients in a wide-ranging set of cases. Many of our cases are typical of the legal issues of the elderly, such as drafting wills and health care directives. We draft wills only for those with limited assets and we do not draft trusts. We refer out clients with significant assets or who should have trusts, so that they can find attorneys with expertise in more complicated estate planning. We handle government benefits cases, such as SSI overpayment cases, senior housing issues, and others, and regularly appear before Administrative Law Judges (ALJs) on these cases. In one case, we represented a senior on Medicare after Medicare decided that it would not pay the tens of thousands of dollars in costs when she was airlifted to a hospital with a health crisis, claiming that she did not need to be airlifted. We successfully convinced the ALJ that the airlift was necessary and was essentially decided upon by her treating doctors for her, and so she should not have to pay the massive bill that she was being charged. These appearances in front of ALJs are great experiences for our students,

as each hearing is a mini trial, with the drafting of a brief, the examination of witnesses and cross-examination of the government's experts, and oral argument. ALJs seem typically relieved to have a student representing the petitioners rather than facing unrepresented petitioners, so that the ALJ has a well-organized case presented to them. ALJs, like judges in general, also appreciate that the students are accomplishing an important part of their legal education, and ALJs and judges have often complimented my students from the bench for their work and professionalism.

We also handle conservatorships, sometimes representing a family member of the proposed ward/conservatee. People who try to obtain a conservatorship without an attorney often find themselves facing a bewildering set of forms to fill out and legal hoops to jump through, and legal representation may be crucial to their being able to protect their family members. We also at times have represented proposed conservatees, either to oppose a conservatorship, seek a different conservator, terminate a no-longer-necessary conservatorship, or simply to protect their interests in the conservatorship process.

We also represent grandparents or other elders who want to become guardians for their grandchildren or adopt them. In our clinic, we have seen the effects of the opioid crisis and other drug issues, where parents of children are no longer able to raise them, and grandparents have to step in and take over the role of parents. The grandparents need the legal authority to make school and medical decisions for the children. Sometimes more than one generation is unable to care for the children. We represented a great-great aunt who was caring for a five-year-old boy, doing an admirable job even though she was in her eighties. We have handled adoptions of grandchildren who have lost their parents. One of happiest days I have had in court was representing grandparents in such an adoption. They told the judge they were having a party afterward to celebrate with the child and her friends and family, and it was clear how attached to and loved by the grandparents the child was. Even the judge was beaming.

We also handle a wide variety of cases that are not peculiar to the elderly but involve our elderly clients. We have helped force the transfer of stock to our client's name after a spouse's death when the company inexplicably refused to do so. We work on debt collection cases, where collectors hound our clients to repay debts that either they should not — or are

completely unable to — repay. We have represented homeless clients to obtain government benefits. In one case, a city refused to give a housing subsidy to a homeless elder, stating that she could not prove she lived in the city since she did not have a fixed address. We collected evidence that she lived in the city from her church, her library usage, and from neighbors.

We handle a significant number of elder abuse cases. A typical case may involve an elderly client living with her adult son who has drug or alcohol problems and has grown more controlling or abusive since his father passed away. Our clients have had their adult child push or hit them, take their walker from them to make them immobile, or take away their phone to cut off communication with the outside world. We have had several clients faced with adult children who have moved into their garages and refused to leave, haranguing and abusing their parents and making their lives miserable. The elders often feel unable to have friends over, never certain when their adult child will barge into the house and create problems. After we obtained an elder abuse restraining order evicting an adult child and her boyfriend from our client's garage, our client told me that she felt like we had given her life back to her.

STUDENT SELECTION, SUPERVISION, AND FEEDBACK

Our clinic is open to all Chapman law students, so long as they are eligible to become a certified law student under the rules of the State Bar of California. Becoming certified allows students to conduct trials under the direct supervision of a professor-attorney and otherwise practice law under my watchful eyes. I do not select the law students, in part because I want even students who are not planning a career in elder law to be able to take the clinic and perhaps discover that they are more interested in elder law than they had anticipated. Also, students can benefit from an understanding of elder law and elder issues in a wide variety of legal careers. Prosecutors often need to understand elder abuse, for example. Personal injury attorneys should recognize that an injury award may affect their clients' government benefits. Even non-elder law attorneys may often find themselves with some elderly clients and should understand what potential issues and challenges that might bring.

Our compact and cozy Elder Law Center building makes supervision of students easier than it might otherwise be. Although I also have an office in the law school building, my primary office is in the clinic. Students can come into my office individually or in teams for a brief or long talk about cases they are working on, and it is easy to have an informal meeting with a student or team of students about cases or other aspects of elder law. I tell the students that the clinic should be their home away from home and a place to escape to from the sometimes pressure-packed confines of the law school. When the pandemic does not prevent it, students regularly sit and have lunch in the clinic and socialize with each other.

One of the goals of the clinic is to teach students how to learn the law. When I assign cases to students, I do not spoon-feed to them how to do a conservatorship or how to draft a will. Instead, I teach them the fundamental principles, purposes, and pitfalls of conservatorships and wills and how to use the practice guides for each area of law. The student takes the first shot at drafting the appropriate documents, and then we go through the documents and talk about them. I want to make sure that the final product is as good as possible, but I also want the students to take responsibility for their cases and try to get the work right on their own before they bring it to me.

The feedback I get from students is uniformly positive. Students enjoy working with the elderly clients, even those who want to talk at great length about their legal issues or other aspects of their lives. I tell my students that for some of their clients, the student may be the only person they have a long conversation with that day. Especially during the pandemic, many seniors feel isolated in their homes with too little social contact. I have had students have two-hour conversations with clients, and I teach students how to end conversations with clients when appropriate. Students often comment that we throw them into the deep end of the pool, but teach them how to swim. Especially during the first weeks of the semester, many students are hesitant to call clients, unsure how to talk with them. That is the reason that we have so many mock interview sessions at the beginning of the semester, as it gives students confidence in their ability to talk with clients.

Some students are nervous about making court appearances and only want to take cases where they are just working with clients, but not appearing in court. However, I assure them that before each court appearance, I

will make certain that they are thoroughly prepared, likely more prepared than a typical attorney they might face. For hearings on elder abuse restraining orders or in front of an ALJ, we do an entire mock hearing with our client present, where I play the judge and the student conducts the questioning of the client. I had one student who said she was terrified of being in court and was not comfortable doing public speaking. I worked with her extensively to prepare for a court appearance, and she so enjoyed it and was energized by it that she took another case with a court hearing and said that she was considering becoming a litigator, since she loved appearing in court.

I tell my students that, for many areas of law, learning how to talk with clients, gain their trust, and really listen to them can be crucial for their careers and building their practices. I tell them that in my first job as an attorney, I was nervous about talking with clients, as I had not worked in a clinic in law school, and I remember my hands almost shaking when I called my first client, wondering what to say. Our students talk with numerous clients, often at length, during the course of the semester, and so gain confidence and skill in talking and working with clients.

PARTNERING WITH OTHER ORGANIZATIONS

The Alona Cortese Elder Law Center has succeeded in part by partnering with other organizations that provide aid to seniors in Orange County. From the beginning, we have worked with the Public Law Center (PLC), a nonprofit that provides free legal services in part by matching pro bono attorneys with indigent clients who need services. PLC not only matches attorneys with clients, it also trains attorneys how to handle certain types of cases. We regularly take cases from PLC, especially wills and conservatorship cases, and it is helpful to have a steady source of clients and be able to take specific cases that would be especially useful or interesting for our students. Sometimes, we take cases from PLC in areas of law that are new to us, and PLC is very helpful in providing advice and sample briefs as needed.

We have also worked with the Legal Aid Society of Orange County (now called Community Legal Aid SoCal). In the early years of our clinic, Bill Wise, an elder law attorney with Legal Aid, was an adjunct professor

with Chapman and co-taught our clinic. This allowed an easy collaboration between the two organizations, and the clinic could take referrals of Legal Aid cases, or we could work together with them on Legal Aid cases. Since then, Bill has co-founded the Elder Law and Disability Rights Center (ELDRC), a nonprofit that provides free and low-cost legal services to seniors, people with disabilities and also people experiencing homelessness. Starting last spring, Bill rejoined Chapman and our clinic as an adjunct professor, and our clinic and the ELDRC will be partnering with the Elder Law Center to provide legal services to the needy.

Another important collaborator has been Human Options, an organization that counsels, protects, and shelters those threatened by domestic or family abuse in Orange County. Human Options has regularly referred to us clients who are seeking Elder Abuse Restraining Orders, often after they have counseled the potential clients. As attorneys, we recognize that while we can provide legal counseling, our clients facing elder abuse also often need emotional counseling. It may take years for someone in an abusive situation to work up the resolve to end it, especially when the abuser is their own son or daughter. Parents often feel protective of their children even when the children are a physical or financial threat to the parent. Seeking a protective order and evicting a son or daughter from the family home can often be an agonizing decision, and the clients need emotional as well as legal support.

TEACHING IN THE CLINIC

I came to Chapman after nearly a decade as a legal aid lawyer, and some time ago came to realize that this is likely the last and certainly the perfect job for me. I love having the regular interaction with my elderly clients, helping them in their times of greatest need, and developing close relationships with them. We work with some of our clients for years. I have one client in her nineties with whom I meet in her house. She enjoys making home-made guacamole for my visit and I have come to know her extended family. At the same time, I appreciate the opportunity to teach a new generation of lawyers. I also teach podium classes, typically Remedies and Client Interviewing and Counseling, and while I find teaching those classes fulfilling, there is nothing like working with a student on an

actual case with an actual client to feel like I am really teaching them how to practice law.

I also appreciate the close relationships with students in the clinic that are more difficult to obtain otherwise. I recently served as a reference for a former student applying for a legal aid job doing eviction defense. I remember telling him when he was a student that he would make a great legal aid lawyer, that he had the passion and the skills to be an effective advocate for the needy. That student had done an excellent job in my clinic representing a client in front of an ALJ, and in my recommendation I could talk in great detail about how the student had grabbed the bull by the horns in a difficult case, figured out the complex regulations that governed, wrote a convincing brief, and did so well in the hearing that the ALJ complimented his witness examination and professionalism. Better yet, he got the job.

I am glad that part of my job is being a legal scholar. My scholarship includes but is not limited to elder law issues. I have given talks and presented papers on a variety of issues, including elder abuse, foreclosure and mortgage securitization, and even gambling law. I recently published an article on Originalism and the Nondelegation Doctrine,¹ enjoying working on an entirely new area of law. My work at Chapman led to my being appointed to a committee advising the Federal Reserve Board on consumer issues in the financial industry, and I have testified to congressional committees on numerous occasions on mortgage issues and on consumer protection in the gambling industry. I feel that doing legal scholarship has made me a better clinical professor, in that it has forced me to step back and view the larger picture. Speaking at conferences on elder law lets me talk with other experts in the field and gain new understanding. I feel fortunate that my scholarship and actual practice reinforce each other and allow me to continue to enjoy and model actual client representation, the heart of an attorney's work.

★ ★ ★

¹ Kurt Eggert, *Originalism Isn't What It Used to Be: The Nondelegation Doctrine, Originalism, and Government by Judiciary*, 24 CHAP. L. REV. 707 (2021).