

**CREATING THE PERFECT STORM: HOW
PARTNERING WITH THE ACLU INTEGRATES
THE *CARNEGIE REPORT'S* THREE
APPRENTICESHIPS**

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I. INTRODUCTION

Imagine a law school course that not only prepares its students for the practice of law,¹ but empowers ordinary citizens

1. A.B.A., STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, STANDARD 301(a) (2008-2009) [hereinafter ABA STANDARDS] (“A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.”) available at <http://abanet.org/> (last visited on Jun. 16, 2009); ROY STUCKEY ET AL., CLINICAL LEGAL EDUCATION, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 39 (2007) [hereinafter BEST PRACTICES] (“At its core, . . . legal education is a professional education, and part of the mission of every law school is to prepare its students to enter the

to defend their civil liberties. Imagine law school faculty using education theory to develop that course.² Imagine a law school course that teaches students how to meet a community's legal needs through a coordinated use of both litigation strategy and legislative initiatives. You have imagined the Civil Liberties Seminars offered at Atlanta's John Marshall Law School.

The perception that law schools fail to graduate students who can competently practice law, which leads to the conclusion that legal education needs to be improved, is highlighted by two recent reports: *Educating Lawyers: Preparation for the Practice of Law* from The Carnegie Foundation for the Advancement of Teaching³ and *Best Practices for Legal Education: A Vision and A Road Map*, a project of the Clinical Legal Education Association.⁴ In response to these reports, Atlanta's John Marshall Law School has partnered with the American Civil Liberties Union of Georgia ("ACLU") to develop the Civil Liberties Seminars. The Seminars were developed to respond to the noted criticisms and provide students with the foundation necessary to practice law competently.

legal profession. It is why law schools exist."); GREGORY S. MUNRO, INSTITUTE FOR LAW SCHOOL TEACHING, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 88 (2000) [hereinafter OUTCOMES ASSESSMENT]. The ABA Standard 301 was a response to the legal profession's demand that law schools become responsible for preparing students for the practice of law. *Id.* at 28-29.

2. Law faculty increasingly are using education theory to develop new courses and improve law school curriculum. *See, e.g.*, Laurel Currie Oates, *Did Harvard Get It Right?*, 59 MERCER. L. REV. 675 (2008); Michael Hunter Schwartz, *Teaching Law Students to be Self-Regulated Learners*, 2003 MICH. ST. L. REV. 447; Alice M. Thomas, *Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy*, 6 WIDENER L. SYMP. J. 49 (2000); Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313 (1995); Gregory S. Munro, *Integrating Theory and Practice in a Competency-Based Curriculum: Academic Planning at the University of Montana*, 52 MONT. L. REV. 345 (1991); Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555 (1980).

3. WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT].

4. BEST PRACTICES, *supra* note 1.

This article focuses on the experiences of the authors in developing the Civil Liberties Seminars.⁵ Although no one or two courses can provide a law student with all of the knowledge, skill, and professional judgment needed to competently represent clients upon graduation and admission to the bar,⁶ the partnership between Atlanta's John Marshall Law School and the ACLU of Georgia is an effort to provide John Marshall students with the opportunity to experience the law as it affects real people in their ordinary lives, to learn the law in context, to act in the role of a lawyer, and to understand the power, privilege, and responsibilities which come with a license to practice law.

The partnership between Atlanta's JMLS and the ACLU of Georgia was a conscious decision made with the recognition that the development of the Civil Liberties Seminars would further the mission of the Law School⁷ and benefit the ACLU. The Law School's partnership with a non-governmental organization that pursues its core mission⁸ through community organizing, impact litigation, and legislative advocacy made

5. ATLANTA'S JOHN MARSHALL LAW SCHOOL, CIVIL LIBERTIES I & II, <http://www.johnmarshall.edu/academics/jd.php#2> (last visited Jul. 7, 2009).

6. BEST PRACTICES, *supra* note 1, at 78 ("One course cannot equip students with the professional skills needed to practice law effectively and responsibly.").

7. ATLANTA'S JOHN MARSHALL LAW SCHOOL, MISSION STATEMENT, available at <http://www.johnmarshall.edu/about/mission.php> (last visited Jul. 21, 2009) ("The mission of John Marshall Law School is to prepare highly competent and professional lawyers who possess a strong social conscience, continually demonstrate high ethical standards, and are committed to the improvement of the legal system and society.") [hereinafter MISSION STATEMENT]; ATLANTA'S JOHN MARSHALL LAW SCHOOL, CIVIL LIBERTIES I SEMINAR COURSE DESCRIPTION, <http://www.johnmarshall.edu/academics/coursedetails.php?c=44> (last visited Jul. 21, 2009); ATLANTA'S JOHN MARSHALL LAW SCHOOL, CIVIL LIBERTIES II SEMINAR COURSE DESCRIPTION, <http://www.johnmarshall.edu/academics/coursedetails.php?c=87> (last visited Jul. 21, 2009).

8. The mission of the ACLU of Georgia is to advance the cause of civil liberties in Georgia, with emphasis on the rights of free speech, free press, free assembly, freedom of religion, due process of law, and to take all legitimate action in furtherance of such purpose without political partisanship. ACLU of Georgia, <http://www.acluga.org/about.html> (last visited Jul. 21, 2009).

possible learning opportunities not otherwise available in the Law School's traditional curriculum. The partnership provided the ACLU with manpower they would not otherwise have - manpower to locate and interface with clients, manpower to assist in developing doctrinal expertise, and manpower to develop public education materials.

In developing the Civil Liberties Seminar, the authors consciously designed the course to address many of the criticisms set forth in both the *Carnegie Report* and *Best Practices* and to meet the needs of the ACLU of Georgia. This article will begin by summarizing the criticism of legal education in the *Carnegie Report* and *Best Practices* and setting forth their recommendations for improving legal education. The article will then describe the process used to develop the Civil Liberties seminar, followed by a discussion of how the seminar meets the recommendations for improving legal education. The article will conclude with a discussion of the benefits received by the ACLU of Georgia.

It is the authors' hope that the Civil Liberties Seminars can be used as models for other law schools to partner with their local ACLU affiliates or with other non-governmental organizations to create similar learning opportunities for their students.

II. CRITICISM OF LEGAL EDUCATION IN THE UNITED STATES AND RECOMMENDATIONS FOR REFORM

Criticism of legal education in the United States, particularly of the Socratic Method,⁹ is not new.¹⁰ What is new is the publication of two reports in close temporal proximity which come to the similar conclusion that legal education needs to be improved by teaching students in context and providing students with opportunities for formative assessment.¹¹ While it is

9. See Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249 (1997).

10. See, e.g., Robert MacCrate, *An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, A.B.A., SEC. EDUC. & PROF'L DEV. (1992); and H. Russell Cort & Jack L. Sammons, *The Search for "Good Lawyering": A Concept and Model of Lawyering Competencies*, 29 CLEV. ST. L. REV. 397, (1980).

11. Compare BEST PRACTICES, *supra* note 1, at 27 with CARNEGIE REPORT, *supra* note 3, at 185-202.

obvious that the authors of the two reports shared material,¹² there are no co-authors. One report, *Best Practices*, was published by those inside the academy of law schools.¹³ The other report, the *Carnegie Report*, was published by a group of experts in education, most of whom are not members of the academy of law schools or the legal profession.¹⁴ Because the authors of the two reports come to the same conclusion, despite being from different disciplines, and because that conclusion echoes the sentiments of the practicing bar, the criticisms and recommendations in these reports cannot easily be dismissed.

So, what should professional education and, in particular, legal education accomplish? Is legal education accomplishing these goals? And, what are the recommendations for improvement? These are the questions which both the *Carnegie Report* and *Best Practices* attempt to answer.

A. *The Goals of Professional Education*

Both the *Carnegie Report* and *Best Practices* recognize that law schools, like other professional schools, are needed.¹⁵ Over the past century, as more and more states required a law degree from an accredited law school in order to be eligible to sit for the bar examination, and thus gain entry into the legal profession, law schools became the one common experience “that virtually all legal professionals share.”¹⁶ The first year of law school provides the foundation of legal knowledge and begins the formation of the students’ professional identity as a

12. *The Carnegie Report* and *Best Practices* reference each other. See BEST PRACTICES, *supra* note 1, at 275-81, and CARNEGIE REPORT, *supra* note 3.

13. *Best Practices* was authored by Roy T. Stuckey, Margaret Barry, Robert D. Dinerstein, Jon C. Dubin, Russell Engler, Gail Hammer, Randy Hertz, Peter Joy, Carolyn Kaas, Vanessa Merton, Greg Munro, Sandy Ogilvy, Suellyn Scarnecchia and Michael Hunter Schwartz, all individuals holding positions at U.S. law schools. BEST PRACTICES, *supra* note 1, at x.

14. *The Carnegie Report* was authored by William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond and Lee S. Shulman. Only Judith Welch Wegner is a member of the legal academy. CARNEGIE REPORT, *supra* note 3, at ix-x.

15. BEST PRACTICES, *supra* note 1, at 265-87; CARNEGIE REPORT, *supra* note 3, at 185-202.

16. CARNEGIE REPORT, *supra* note 3, at 2.

lawyer. The goal of law schools, as with any other professional school, is to impart the “specialized knowledge” needed to successfully practice in the profession and to instill “professional identity” which cannot be accomplished without the foundation of the first year of law school.¹⁷

The purpose of professional education is to educate and train the novice to be an expert. As stated in the *Carnegie Report*, “[p]rofessional schools are not only where expert knowledge and judgment are communicated from advanced practitioner to beginner; they are also the place where the profession puts its defining values and exemplars on display, where future practitioners can begin both to assume and critically examine their future identities.”¹⁸ Professional schools train the novice “to think, perform and to conduct themselves (that is, to act morally and ethically) like professionals.”¹⁹ The goal is for the novice to acquire knowledge and understanding “so they can act competently, and they must act competently in order to serve responsibly.”²⁰

1. *The Six Tasks of Professional Education*

Education research has shown that effective professional education, that is professional education which prepares the novice to competently participate in the profession upon graduation, involves six tasks.²¹ Those six tasks are:

1. Developing in students the fundamental knowledge and skills, especially an academic knowledge base and research
2. Providing students with the capacity to engage in complex practice
3. Enabling students to learn to make judgments under conditions of uncertainty
4. Teaching students how to learn from experience
5. Introducing students to the disciplines of creating and participating in a responsible and effective professional

17. BEST PRACTICES, *supra* note 1, at 8 (“Law schools should help students acquire the attributes of effective, responsible lawyers. . .”); CARNEGIE REPORT, *supra* note 3, at 3.

18. CARNEGIE REPORT, *supra* note 3, at 3.

19. *Id.* at 22.

20. *Id.* at 23.

21. *See* CARNEGIE REPORT, *supra* note 3, at 203-11.

community

6. Forming students able and willing to join an enterprise of public service.²²

Although not explicitly stated in the *Carnegie Report*, the six tasks taught in effective professional education are, for the most part, identified in the order in which the tasks must be learned, performed, and mastered by the student.²³ In order for a student to be able to engage in “complex practice” (Task 2), the student must have the tools to understand the issues raised, how the issues raised relate one to the other, and how to resolve those issues – all of which are part of the “fundamental knowledge and skill” of the profession (Task 1). Likewise, before a student can “learn to make judgments under conditions of uncertainty” (Task 3), the student must be able to make judgments under conditions of certainty, which requires the mastery of the “fundamental knowledge and skill” of the profession (Task 1) and the “capacity to engage in complex practice” in a controlled environment (Task 2). In order for a student to be able to “learn from experience” (Task 4), the student must have experience gained from “engaging in complex practice” (Task 2) and/or “learning to make judgments under conditions of uncertainty” (Task 3), both of which require mastery of the “fundamental knowledge and skill” of the profession (Task 1).²⁴ A student can be introduced to “the disciplines of creating and participating in a responsible and effective professional community” (Task 5) while the student is in the process of mastering Tasks 1 through 4, but without some basic competence in Tasks 1 through 4, a student will not have the core knowledge or skills to recognize, model, or participate in a “responsible and effective professional community.”

22. *Id.* at 22.

23. *Id.* at 59 (“Because new learning must always be grafted onto existing understanding, the pedagogy must somehow make connections between what the learner knows and believes and the kinds of thinking needed for professional success.”); BEST PRACTICES, *supra* note 1, at 8-9 (Law schools should organize their curriculums to develop knowledge, skills, and values progressively . . .”).

24. *See* BEST PRACTICES, *supra* note 1, at 74 (“Before a novice lawyer can embark on solving any legal problem, she has to have a knowledge base to organize her experience, to communicate her ideas to others, to rely on for handling difficult situations, and to develop creative solutions.”).

In the alternative, the attributes of a “responsible and effective professional community” and the ability to recognize those attributes must be deemed a part of the “fundamental knowledge and skill” of the profession, thus making Task 5 a subset of Task 1. “Forming students able and willing to join an enterprise of public service” is dependent upon how well the professional school prepares its students in Tasks 1 through 5 and whether the professional school, through its faculty and other programs, provides role models (professionals involved in the enterprise of public service) and opportunities for students to join the enterprise of public service while they are students.²⁵

In understanding how professional schools teach the six tasks to develop experts from novices, one must understand the attributes of an expert. Psychological and educational research has identified two primary features of expert performance.²⁶

First, compared to novices, experts possess not only knowledge but highly structured knowledge. That is, they understand concepts basic to their domains,²⁷ and they have mastered well-rehearsed procedures, or “schemas,” for thinking and acting. These schemas enable experts to bring their knowledge to bear on situations with remarkable speed and accuracy.

Second, expert knowledge is conditioned, or related to contexts. Experts can perceive aspects of situations in ways that are relevant to deploying their knowledge in ways beginners cannot These two traits characterize measures of expertise regardless of domain, although the content of the knowledge and specific features of experts’ skilled perception and ability to act are highly specific to particular domains of activity. In the language of learning theorists,

25. BEST PRACTICES, *supra* note 1, at 28 (faculty are role models).

26. *Id.* at 60 (“The mark of professional expertise is the ability to both act and think well in uncertain situations.”); CARNEGIE REPORT, *supra* note 3, at 25; *see also* HOWARD GARDNER, FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES (Basic Books 1983).

27. GARDNER, *supra* note 26, at xvi (A “domain” is “a discipline, craft or other pursuit in which one can become enculturated and then be assessed in terms of levels of competence one has attained. A domain is likely to be referred to as a skill or skill set.”).

these features of expertise are what underlie the ability of experts to solve problems in their domains.²⁸

Thus, to move from novice to expert, students need to learn the underlying knowledge of the profession, the schema or manner in which the knowledge fits into a cohesive whole, and how to use the schema to solve problems with speed and accuracy.²⁹

Education research suggests that people learn best “when an expert is able to model performance in such a way that the learner can imitate the performance while the expert provides feedback to guide the learner in making the activity his or her own.”³⁰ This ability to model the performance of the expert, and not just mimic actions, presumes that the student has a base of knowledge and an understanding of why and how the knowledge relates to the performance the student is being asked to model. For a student to efficiently and effectively learn this base of knowledge and understanding requires the expert to teach the subject matter in a manner “that is already structured for performance, according to the explicit norms of the professional community.”³¹ In other words, the expert must teach the student, not only the substantive material, but the schema for thinking and acting within the profession. The expert must then model for the student how the expert retrieves

28. CARNEGIE REPORT, *supra* note 3, at 25.

29. *See id.* at 101-02 (“[T]he expert first abstracts from a complex, often messy environment a set of factors that are most important. (This is just the skill the beginner does not have.) These are the aspects of the situation that the expert attends to and manipulates in order to render certain outcomes. Models and schema that represent the objects of the expert’s perception, together with the procedures by which the expert works on these objects, are the elements of what might be called “theories of practice.” Once articulated . . . , these general schemas can be probed and tested for their reliability, much like more formal scientific hypotheses. In the realm of teaching expert practice, theories are really statements of technique in the classic sense of well-tested procedures for achieving specific outcomes in certain kinds of situations. Thus novices begin to learn the rudiments of litigation practice, for example, by attending to core elements of procedural and conceptual models exemplified in expert practice. Teachers make this possible by allowing novices to work with and imitate multiple examples, using the conceptual models as scaffolds through which to understand feedback, in order to guide their assimilation of more skillful performance.”).

30. *Id.* at 26.

31. *Id.*

the substantive material and uses the schema for solving the problem. Much of the learning in professional schools “is by observation and imitation because much of what experts know is tacit.”³² Nevertheless, to the extent that the expert can exercise their own meta-cognitive skills³³ to deconstruct their own problem-solving processes to derive their schema, the expert can then teach the student the schema, and the student can then observe the expert’s performance, identifying how the expert utilized the schema to solve the problem.³⁴ By deconstructing her own problem-solving processes and teaching the student the process, i.e. how to apply the schema to problem solve, the expert is assisting the student to become aware of their own learning process, which assists the student to develop her own meta-cognitive skills. Once the student knows how to apply the schema and has developed her own meta-cognitive skills, the student can then transfer the knowledge and skill³⁵ learned to a new unrelated problem to solve.³⁶

2. *The Three Apprenticeships of Professional Education*

The authors of the *Carnegie Report* recognize that “[t]he common problem of professional education is how to teach the complex ensemble of analytic thinking, skillful practice, and wise judgment on which each profession rests.”³⁷ To address this problem, the authors recommend an apprenticeship model, identifying Three Apprenticeships: Cognitive, Practice, and Ethical-Social.³⁸

32. *Id.*

33. *See id.* at 72 (“Meta-cognition” is the ability to recognize what one is doing while one is doing the task or while one is learning how to do the intellectual task.)

34. CARNEGIE REPORT, *supra* note 3, at 59 (“The challenge of any pedagogy is to make the invisible visible, both in the mind of the teacher and the mind of the learner.”).

35. *Id.* at 62 (“The point of much teaching in law schools is to foster students’ ability to transfer their learning so that they can apply what they have learned in one context or another, different one.”).

36. *See id.* at 145-46, 161 (a goal of professional education is to develop meta-cognitive skills).

37. *Id.* at 27.

38. The authors of *Best Practices* propose that law schools “articulate . . . educational goals in terms of desired outcomes, that is what the school’s

The first apprenticeship is the Cognitive Apprenticeship. The Cognitive Apprenticeship “focuses the student on the knowledge and way of thinking of the profession.”³⁹ In the Cognitive Apprenticeship, students learn “the academic knowledge base of the domain, including the habits of mind that the faculty judge most important to the profession.”⁴⁰ For law students, the Cognitive Apprenticeship includes the mastery of the legal rules taught in the first year required doctrinal courses.

The second apprenticeship is the Practice Apprenticeship. The Practice Apprenticeship requires students to perform in a practice setting, engaging in those acts which a practitioner would encounter when representing a client.⁴¹ For law students, the Practice Apprenticeship is usually introduced through the legal writing program where students are required to produce the types of documents that practicing lawyers create.

The third apprenticeship is the Ethical-Social Apprenticeship. The Ethical-Social Apprenticeship “introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible.”⁴² The Ethical-Social Apprenticeship “opens students to the critical public dimension of the professional life, [and] shares aspects of liberal education in attempting to provide a wide, ethically sensitive perspective on the technical knowledge and skill that the practice of law requires. The essential goal, however, is to

students should know, understand, and be able to do, and the attributes they should have when they graduate.” BEST PRACTICES, *supra* note 1, at 42. “Educational theorists most frequently describe outcomes as having three components: knowledge, skills, and values. Statements of intended educational (student) outcomes are descriptions of what academic departments intend for students to know (cognitive), think (attitudinal), or do (behavioral) when they have completed their degree programs.” *Id.* at 43 (internal citations omitted). The *Best Practices* outcome model mirrors the *Carnegie Report’s* apprenticeship model. Compare BEST PRACTICES, *supra* note 1 at 43, with CARNEGIE REPORT, *supra* note 3, at 38. Under the outcome model, what faculty intend students to know is the Cognitive Apprenticeship, what faculty intend students to be able to do is the Practice Apprenticeship, and what faculty intend students to be able to think is the Ethical-Social Apprenticeship. BEST PRACTICES, *supra* note 1, at 43.

39. CARNEGIE REPORT, *supra* note 3, at 28.

40. *Id.*

41. *Id.*

42. *Id.*

teach the skills and inclination, along with the ethical standards, social roles, and responsibilities that mark the professional.”⁴³ Law students are introduced to the Ethical-Social Apprenticeship as part of the required Professional Responsibility course.⁴⁴

Legal education is criticized because, to the extent that students are introduced to each of the Apprenticeships, the Apprenticeships are taught in isolation. If professional education is to attain its goal to produce competent and professional experts, professional education must “introduce students to the full range of professional demands” and “initiate [students] into all three apprenticeships.”⁴⁵ Legal education must not just introduce all three Apprenticeships into the law school curriculum, but must integrate all three Apprenticeships into the curriculum in a way which creates opportunities for students to model how practicing lawyers work.

3. *Integrating the Six Tasks and the Three Apprenticeships*

The authors of the *Carnegie Report* recognize that the challenge of professional education is to develop education programs which graduate students who have acquired a basic competence, in both substantive knowledge and skill, and who have developed sufficient understanding of the need and skill to be able to be lifelong learners.⁴⁶ The combination of basic competence and the ability to be a self-learner provides the new graduate with the skill to competently represent clients competently and to problem-solve in content areas not studied in the classroom. To accomplish the goal of producing new graduates who have mastered this combination requires professional education programs to teach the six tasks identified

43. *Id.*

44. A.B.A., STANDARDS, *supra* note 1, at 302(a)(5) (“A law school shall require that each student receive substantial instruction in . . . the history, goals, structure, values, rules and responsibilities of the legal profession and its members.”).

45. *Id.*

46. *Id.* at 45 (“The challenge is to align the practices of teaching and learning with the professional school so that they introduce students to the full range of the domain of professional practice while also forming habits of mind and character that support the students’ lifelong growth into mature knowledge and skill.”).

above within the framework of the Three Apprenticeships. It is not necessary for each task to be taught within each apprenticeship. Some tasks are more conducive to being addressed within one apprenticeship rather than another. Moreover, a truly integrated professional education curriculum will develop courses which address more than one apprenticeship within the construct of the course.⁴⁷ Atlanta's John Marshall Law School's Civil Liberties Seminars are just such courses.

B. The Challenges of Legal Education: Meeting the Goals of Professional Education by Incorporating the Three Apprenticeships

Law schools, unlike other professional schools, have additional hurdles which must be overcome in order to accomplish the goal of imparting the specialized knowledge and instilling professional identity. Unlike medical school and other graduate professional schools, students enter law school from a variety of undergraduate or work experiences.⁴⁸ There is no prescribed undergraduate major or course of study for law school. Law schools do not require that students have a minimal core of knowledge before beginning their legal education. The Law School Admission Test does not test a core of basic knowledge. In fact, law schools do not want all of their students to come from a similar background; law schools want diversity in their student bodies.⁴⁹ Because the law is pervasive, because the law regulates so many substantive areas, because the law must be informed by real world consequences to real people from diverse walks of life, law schools must continue to

47. *Id.* at 68-69 (provides an example of how a professor linked the Cognitive Apprenticeship with the Practice Apprenticeship by linking the legal concepts learned through case method to current events).

48. While both *the Carnegie Report* and *Best Practices* give passing acknowledgement to this fact, neither address how law school education should create the uniformity of knowledge which is present in both U.S. medical schools and in legal education in the United Kingdom, where law is an undergraduate degree.

49. *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003) ("law schools represent the training ground for a large number of our Nation's leaders" and as supported by amici, diversity and cross-cultural understanding in the workplace can best be achieved when there is diversity in higher education).

strive to maintain diversity in its student body, diversity in undergraduate studies and prior work experience, as well as diversity in race, gender, religion, and socio-economic background.

Because law schools begin with a student body which is not uniform in substantive knowledge or skills, law schools must provide students with a unifying experience which provides a basic level of knowledge and skill upon which more complex knowledge and skill can be built. This base of knowledge is the first year curriculum, which, although not required by the American Bar Association,⁵⁰ is basically uniform across all law schools in the United States.⁵¹ The first year law school experience is such that by the time most law students have completed their first year they “have developed a clear ability to reason and argue in ways distinctive to the American legal profession.”⁵² While both the *Carnegie Report* and *Best Practices* acknowledge that the first year curriculum provides this unifying experience and floor of basic competency,⁵³ both criticize the teaching methodology of the first year and the failure of law school curriculum or teaching methodologies to address all three of the Apprenticeships.⁵⁴

50. The American Bar Association (“ABA”) is the accrediting agency for U.S. law schools. See the ABA website at <http://abanet.org>.

51. CARNEGIE REPORT, *supra* note 3, at 3; *see also* OUTCOMES ASSESSMENT, *supra* note 1, at 27 (reporting criticism of the uniform methodology used in law schools across the U.S.).

52. CARNEGIE REPORT, *supra* note 3, at 2.

53. *Id.*; BEST PRACTICES, *supra* note 1, at 18; *but see* OUTCOMES ASSESSMENT, *supra* note 1, at 42 (criticizing law schools for their failure to teach students to think like lawyers).

54. Both *the Carnegie Report* and *Best Practices* are critiquing legal education in general. Both acknowledge that some law schools as well as individual professors are working toward incorporating the Three Apprenticeships into legal education. We, too, acknowledge that these are generalized statements which do not pertain to all law faculty or law schools. *But see* OUTCOMES ASSESSMENT, *supra* note 1, at 153-169 (discussing why reform must be an institutional effort and not just the work of a small number of faculty).

1. *The Socratic Method*⁵⁵

The Socratic Method is the “legal academy’s standardized form of the Cognitive Apprenticeship,”⁵⁶ which focuses not only on the knowledge, but the fundamental skills, of the profession. The authors of the *Carnegie Report* recognize the skills component of the Socratic Method when they state that “with its heavy predominance in the first year, this pedagogy emphasizes a view of the legal profession as constituted not so much by a kind of knowledge as by a particular way [of] thinking, a distinctive stance toward the world.”⁵⁷ The purpose of the Socratic Method is to teach students to “think like a lawyer.”⁵⁸ The *Carnegie Report* defines to “think like a lawyer” as “the ability to translate messy situations into the clarity and precision of legal procedure and doctrine and then to take strategic action through legal argument in order to advance a client’s cause before a court or in negotiation.”⁵⁹ While the

55. Both *the Carnegie Report* and *Best Practices* use the Socratic Method synonymously with case method. The problem with this terminology is that the Socratic Method is interpreted differently and implemented and executed differently by different teachers. Regardless of exactly how a teacher interprets or executes the Socratic Method within their classroom, the teacher is asking questions and having a conversation with the student; it is not a lecture. The Socratic Method focuses on the method of instruction. A teacher can use the Socratic Method with any subject matter presented in any form. The case method focuses on how the substantive material is presented to the student. In law schools, the case method refers to the fact that students learn the law from court opinions. The Socratic Method focuses on what questions we ask. The case method focuses on what material is used to form the basis of the questions. Thus, in the mind of this author, the two are not synonymous.

56. *CARNEGIE REPORT*, *supra* note 3, at 23.

57. *Id.* at 51.

58. *Id.*

59. *Id.* at 54. While this definition of to “think like a lawyer” recognizes the end result of the ability to “think like a lawyer”, it fails to recognize or identify the component skills necessary to reach the end result. In order to “think like a lawyer,” one must be able to, at a minimum, identify the process used by the court to apply the law to the facts of a given case and replicate that process; to understand the public policy concerns of the court; to understand the interplay between the court and the elected branches of government; to understand the directions given by the court or the legislature and use those directions, not only in a litigation context, but also to draft contracts and other documents; to ascertain the needs and goals of the client

ability to “think like a lawyer” does not encompass all of the skills needed to practice law, it is the foundation upon which most of the skills necessary to practice law competently are built.⁶⁰

Although it is recognized that the Socratic Method does a good job of accomplishing its goal of teaching first year law students to “think like a lawyer,”⁶¹ the pedagogy is criticized for being “acontextual . . . for emphasizing the formal, procedural aspects of legal reasoning as the central focus, making other aspects of cases peripheral or ancillary.”⁶² The criticism of the Socratic Method is that the ordinary people who are the actors in the underlying dispute are defined in impersonal terms (parties, plaintiff, defendant, appellant), in reference to positions taken or legal arguments to be made, and as static facts; not as persons in terms of humanity or as actors whose ongoing

and to determine how those needs and goals can be met within the bounds of the law with the least amount of risk to the client. *See also* BEST PRACTICES, *supra* note 1, at 71 (“‘Thinking like a lawyer’ involves: recurrent use of questions that are gradually internalized; structured forms of reasoning that become routine; new concepts of ‘knowing’ that integrate uncertainty at their root; exposure to a limited universe of law and the legal system; development of ‘legal literacy’ involving careful reading, mastery of vocabulary, and conventions for textural interpretation; treating professional roles as a given, rather than exploring their depth; and exposure to professional norms to foster adaptation without confronting student views.”) (internal citations omitted); ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO THINK LIKE A LAWYER* (Oxford Univ. Press 2007) 3-4 (“[O]ne thinks like a lawyer because one speaks, writes, and reads like a lawyer. Some would associate thinking like a lawyer with superior analytic skills in a neutral sense; I would instead characterize the acquisition of lawyerly ‘thinking’ as an initiation into a particular linguistic and textual tradition found in our society.”).

60. *See* Myron Moskowitz, *Beyond the Case Method: It’s Time to Teach with Problems*, 42 J. LEGAL EDUC. 241, 245 (1992) (“Problem-solving is the single intellectual skill on which all law practice is based.”).

61. CARNEGIE REPORT, *supra* note 3, at 74 (“The case-dialogue method is a potent form of learning-by-doing. As such, it necessarily shapes the minds and dispositions of those who apprentice through it. The strength of the method lies, in part, in how well it results in learning legal analysis, and in part in its significant flexibility in application.”), *but see* OUTCOMES ASSESSMENT, *supra* note 1, at 23 (criticizing law schools ability to teach students to think like a lawyer).

62. CARNEGIE REPORT, *supra* note 3, at 52.

actions cause the facts of the case to continually evolve.⁶³ One might question, however, whether this a-contextualization is a necessary result of the use of the Socratic Method or whether it is indicative of the value judgments made by the teacher utilizing the pedagogical tool.

2. *The Missing Components*

Law students are not taught the law “in context.”⁶⁴ Few law students are exposed to clients.⁶⁵ The failure to incorporate clients into legal education leaves few opportunities for students to experience the ethical dilemmas raised when client behavior is not static, but in constant motion.⁶⁶ This motion can affect the facts at issue. Understanding how client behavior during the legal dispute can affect the relevant facts for purposes of legal analysis is essential for effective and competent client counseling. Students have difficulty understanding how client behavior during the pendency of a legal dispute can affect the legal issues and thus, the outcome. In addition, the failure to incorporate clients reduces the opportunities to discuss the “equities” of the law or public policy issues as they might arise in practice.⁶⁷ These two deficiencies are seen as a direct result of teaching students from a collection of appellate cases using the Socratic Method.⁶⁸

In the law school classroom, students are taught doctrine, the law, and the skill of how to “think like a lawyer.” The environment the student is learning in or being tested in (the classroom) is not the environment (the practice of law) in which the student will be required to use the knowledge and skill acquired. “When the setting for learning is quite different from

63. *Id.* at 54.

64. BEST PRACTICES, *supra* note 1, at 9 (“Law schools should use teaching methods that most effectively and efficiently achieve desired educational objectives, employ context-based instruction throughout the program of instruction . . .”).

65. CARNEGIE REPORT, *supra* note 3, at 56.

66. *Id.* at 57.

67. *Id.*

68. *Id.* (“In order to gain facility in legal reasoning, case-dialogue teaching often forces students to separate their sense of justice and fairness from their understanding of the requirements of legal procedure and doctrine.”).

the settings of application and use, the challenge is great . . . , for learners must first master new skills and understanding in one setting and then figure out how to bring them into use in an entirely different one.”⁶⁹ Because the learning environment does not replicate the practice environment, at the time of graduation, law students have not yet mastered the knowledge or skills needed to practice law competently.⁷⁰

By teaching students in an environment different from the environment experienced in the practice of law, legal education separates the Three Apprenticeships – the Cognitive, from the Practice, from the Ethical-Social.⁷¹ The separation of the Three Apprenticeships occurs on multiple levels. Different faculty teach the different types of courses – doctrinal tenure-track faculty teach courses focused on substantive law (the Cognitive Apprenticeship), skills faculty teach courses focused on developing skills such as legal writing, mediation and trial advocacy (the Practice Apprenticeship), and clinical faculty teach courses with client contact, requiring students to make ethical decisions and act in a professional manner (the Ethical-Social Apprenticeship). The different types of courses usually use different types of pedagogy – doctrinal courses are usually taught using the Socratic Method, skills courses are usually taught using simulations and other active learning techniques,⁷² and clinical courses are taught using modeling and other formative assessments.⁷³ Moreover, law schools communicate to students the relative importance of each of the apprenticeships by the manner in which the institution treats the faculty teaching in each apprenticeship; the manner in which the

69. *Id.* at 59.

70. BEST PRACTICES, *supra* note 1, at 7.

71. CARNEGIE REPORT, *supra* note 3, at 81.

72. BEST PRACTICES, *supra* note 1, at 124 (“Active learning requires students to share responsibility for acquiring knowledge, skills, and values Active learning recognizes that, during classroom time, students should be engaged in behavior and activities other than listening. Active learning requires students to undertake higher order thinking, forcing them to engage in analysis, synthesis, and evaluation.”) (internal citations omitted).

73. Formative assessment is “an instrument of learning.” OUTCOMES ASSESSMENT, *supra* note 1, at 16. A formative assessment tool “is designed to facilitate the student’s learning and to provide extensive [and timely] feedback.” *Id.* at 72.

faculty treat each other, administration, and staff; and the manner in which it grades courses in each of the apprenticeships.⁷⁴

The issues raised by the failure to teach “in context” are exacerbated by the manner in which law schools assess student learning. The *Carnegie Report* and *Best Practices* both criticize the law school assessment method.⁷⁵ These criticisms are leveled at both the grading curve commonly imposed by law schools and the use of one final exam for the basis of the student’s grade. Because grading curves best measure the performance of the student in relation to peers, a grading curve is not an accurate assessment of whether the student has mastered the knowledge and skills taught during the course.⁷⁶ Grading curves merely provide a sorting and ranking function, not an assessment of knowledge.⁷⁷ Both the *Carnegie Report* and *Best Practices* recommend a movement toward the use of criterion-referenced assessments, assessments that use objective criteria to test the mastery of identified knowledge or skills that were taught in the classroom.⁷⁸ Moreover, because ranking is based on one final exam, law schools are not providing students with formative assessment, which, according to research in other areas of education, is necessary for effective learning.⁷⁹

74. CARNEGIE REPORT, *supra* note 3, at 140 (“Students are learning not only from the courses they take but also from the moral culture or atmosphere of their classrooms and the law school campus more broadly. . . . In law school, students learn both from what is said and what is left unsaid.”); BEST PRACTICES, *supra* note 1, at 28 (faculty should serve “as role models . . . striving to infuse in every student a commitment to professionalism.”).

75. BEST PRACTICES, *supra* note 1, at 235-63; CARNEGIE REPORT, *supra* note 3, at 162-84; *see also* OUTCOMES ASSESSMENT, *supra* note 1, at 33-39.

76. BEST PRACTICES, *supra* note 1, at 235 (“The main purpose of assessments in educational institutions is to . . . find out whether students are learning what we want them to learn.”).

77. CARNEGIE REPORT, *supra* note 3, at 168.

78. BEST PRACTICES, *supra* note 1, at 244 (“The use of clear criteria helps students understand what is expected of them as well as why they receive the grades they receive The criteria should be explained to students long before the students undergo an assessment. This enhances learning and encourages students to become reflective, empowered, self-regulated learners.”).

79. CARNEGIE REPORT, *supra* note 3, at 171-73.

Formative assessment includes opportunities to practice the knowledge and skills necessary to become an expert, followed by feedback on how well the student has mastered those skills.⁸⁰ In fact, students learn best when given multiple opportunities of formative assessment, prior to the summative assessment⁸¹ – the final exam. The formative assessment⁸² opportunities need not be individually graded or included in the final grade, but the opportunity, followed by the feedback, is essential for effective learning and mastery of the skills needed for practice of the profession.⁸³ Because formative assessment opportunities provide students with the ability to practice using the expert schema to problem solve and because context-based learning combines the Three Apprenticeships, formative assessment opportunities provided within context-based learning is the most appropriate model for professional education, including legal education.

The current structure of law school curriculum, which teaches students doctrine separated from skills has created a situation where law students are not being taught how the knowledge and skills in the Three Apprenticeships are complementary and all needed for the practice of law. Because of the emphasis on learning the law as illustrated by the number of doctrinal courses in the required curriculum and by the nature of the bar exam, law students are receiving the message that law schools and the legal profession value the Cognitive Apprenticeship over the Practice and Ethical-Social Apprenticeships.

80. BEST PRACTICES, *supra* note 1, at 175 (“Feedback about their performances should help students understand what conduct is inappropriate (and requires avoidance) and what conduct is acceptable (and deserves repeating) To be useful to the student, feedback should be relevant and focus on learning dilemmas.”).

81. Summative assessment “measures achievement, its after-the-fact character forecloses the possibility of giving meaningful feedback to the student about progress in learning.” CARNEGIE REPORT, *supra* note 3, at 164.

82. Formative assessment “provides feedback in order to support opportunities to improve learning as the course proceeds.” CARNEGIE REPORT, *supra* note 3, at 164.

83. OUTCOMES ASSESSMENT, *supra* note 1, at 73 (Law students should be provided with formative assessment opportunities prior to the final exam.).

C. *The Recommendations for Improvement in Legal Education*

Law schools must develop a curriculum which integrates the Three Apprenticeships.⁸⁴ An integrated curriculum is not the addition of individual courses which each focus on only one of the Three Apprenticeships.⁸⁵ Each course should teach “the analytical and the moral, the procedural and the substantive in dialogue throughout the process of learning the law.”⁸⁶ This can be done by teaching “in context,” using active learning techniques.⁸⁷ Context is important because it helps students “understand what they are learning, provides anchor points so they can recall what they learn, and shows them how to transfer what they learn in the classroom to lawyers’ tasks in practice.”⁸⁸ The inclusion of skills modules in doctrinal courses and the increased use of clinical opportunities are two ways to integrate the Three Apprenticeships in the current structure of legal education.⁸⁹

More focus needs to be given to developing professional judgment. Professional judgment is the expert’s ability to “bring their knowledge to bear on situations with remarkable speed and accuracy” by “perceive[ing] aspects of situations in a way that are relevant to deploying their knowledge.”⁹⁰ Professional judgment can only be exercised within the context of a particular situation. Because the individual exercising professional judgment must understand the situation presented and know how to apply the schema to problem solve, professional judgment is best taught within the context of the situation in which the problem arises. Professional judgment takes time and experience to develop.⁹¹ As such, professional judgment is best taught using formative assessment, in situations where the expert demonstrates the behavior in context

84. CARNEGIE REPORT, *supra* note 3, at 58, 81.

85. CARNEGIE REPORT, *supra* note 3, at 58; *see also* OUTCOMES ASSESSMENT, *supra* note 1, at 171.

86. CARNEGIE REPORT, *supra* note 3, at 142.

87. *Id.* at 57, 115.

88. BEST PRACTICES, *supra* note 1, at 141.

89. CARNEGIE REPORT, *supra* note 3, at 88, 142.

90. *Id.* at 25.

91. BEST PRACTICES, *supra* note 1, at 60; CARNEGIE REPORT, *supra* note 3, at 135.

and the student can practice modeling the behavior under different scenarios until the schema is mastered.⁹² Professional judgment is a hallmark of competency. Competency, however, “is context dependent in that it is a statement of relationship between an ability (in the person), a task (in the world), and the legal framework and the specific contexts in which those tasks occur.”⁹³ “Competence requires the integrative application of knowledge, skills and values.”⁹⁴ Competence, thus, indicates a mastery of the Three Apprenticeships – Cognitive, Practice, and Ethical-Social. Not only is the best way to teach competency through context-based learning, the only way to measure competency is through context-based learning and formative assessment.⁹⁵

When students learn to be problem solvers by solving problems in context,⁹⁶ students have the opportunity to develop professional judgment, i.e. the ability to discern and respond appropriately to the ethical and social issues raised by the problem being solved.⁹⁷ When students learn in context, they are better able to transfer the professional judgment developed in law school to the practice of law and thus, better able to practice law competently at the time of graduation.

According to the authors of *Best Practices*, the best process to use to reform legal education such that all Three Apprenticeships are integrated is to “articulate clear educational objectives for the program of instruction and . . . to describe those objectives in terms of desired outcomes.”⁹⁸ “Descriptions of desired outcomes of legal education should include statements of what graduates should know, what they should be able to do, and how they should be able to do it.”⁹⁹ The focus should be on preparing students “for the jobs they are likely to have and the contexts they are likely to encounter as new

92. CARNEGIE REPORT, *supra* note 3, at 165, 172.

93. BEST PRACTICES, *supra* note 1, at 60.

94. *Id.*

95. OUTCOMES ASSESSMENT, *supra* note 1, at 12-17.

96. CARNEGIE REPORT, *supra* note 3, at 95.

97. *Id.* at 115.

98. BEST PRACTICES, *supra* note 1, at 8.

99. *Id.*

lawyers.”¹⁰⁰ This requires a shift from using the Socratic Method, which “is teacher centered, gives little consideration to clients, and treats feelings as irrelevant,” to experiential teaching, which “is student centered, takes clients seriously, and values feelings as much as thinking.”¹⁰¹

III. THE CIVIL LIBERTIES SEMINAR: AN EXPERIMENT WITH EXPERIENTIAL LEARNING

The concept for the Civil Liberties Seminar was born from the desire to create a low cost experiential learning¹⁰² opportunity for students that would provide more guided learning than would participation in the Law School’s Externship Program¹⁰³ and which would further the mission of the Law School “to prepare highly competent and professional lawyers who possess a strong social conscience, continually demonstrate high ethical standards, and are committed to the improvement of the legal system and society.”¹⁰⁴ The Civil Liberties Seminar was designed within the constraints of the

100. *Id.* at 27.

101. *Id.* at 35.

102. *Id.* at 165 (“Experiential courses . . . [i]n law schools . . . involve using students’ experiences in the roles of lawyers or their observations of practicing lawyers and judges to guide their learning. Experiential education integrates theory and practice by combining academic inquiry with actual experience . . . [and] consists of a designed, managed, and guided experience.”).

103. The Law School maintains a robust Externship Program with approximately 19% of the student body participating in the Program during each semester. But, as recognized in *Best Practices*, the quality of the experiential learning opportunities in an externship program is dependent upon both the quality of the interaction with and the time availability of the supervising attorney. *BEST PRACTICES*, *supra* note 1, at 201-02. Neither of these variables is within the control of the faculty member directing the externship program or the law school itself. When the experiential learning opportunity is brought in house, faculty can exert more quality control. *Id.* at 192.

104. MISSION STATEMENT, *supra* note 7.

Law School's existing curriculum,¹⁰⁵ no funding, and the ABA Standards for the Accreditation of Law Schools.¹⁰⁶

The objective¹⁰⁷ in developing the Civil Liberties Seminar was to provide students with the opportunity to work on real cases, with real clients. In providing legal services to real clients, students would be required to utilize the knowledge learned in doctrinal courses and the skills learned in skills courses.¹⁰⁸ Students would be required to act in an ethical and

105. Atlanta's John Marshall Law School is a school of opportunity, providing a legal education for those who historically have not had an opportunity for legal education. As such, the required curriculum is highly structured and consists of sixty-two hours of required courses, thirty of which are first year courses (six hours each of Civil Procedure, Contracts, Legal Research, Writing, and Analysis, Real Property, and Torts). Thirty-two of those hours are upper level required courses (Business Organizations, Constitutional Law I and II, Criminal Law, Criminal Procedure, Evidence, Professional Responsibility, Remedies, Sales and Secured Transactions, and two upper level writing/skills courses). Recognizing that a majority of the Law School's graduates practice in Georgia and upon graduation practice in government offices or in solo and small firms, the required curriculum was designed to teach students those basic subjects which they were most likely to encounter in practice and which are tested on the Georgia Bar Exam. Electives were likewise designed to expose students to those subject areas they were most likely to encounter in practice. Prior to the approval of the Civil Liberties Seminar, most experiential learning took place in the Externship Program and within the skills curriculum. ATLANTA'S JOHN MARSHALL LAW SCHOOL, STUDENT PROGRAM, <http://www.johnmarshall.edu/academics/jd.php#1> (last visited on Jul. 8, 2009).

106. See *supra* note 50. The ABA is the accrediting agency for law schools, and thus, the Law School's curriculum must meet ABA Standards.

107. The basic principles for curriculum design were used to develop the Civil Liberties Seminar. Those principles are:

Stage 1: Identifying educational objectives that the school or course should seek to attain.

Stage 2: Selecting learning experiences that are likely to be useful in attaining those objectives.

Stage 3: Organizing the selected learning experiences for effective instruction.

Stage 4: Designing methods for evaluating the effectiveness of the selected learning experiences.

BEST PRACTICES, *supra* note 1, at 3 (citing Ralph Tyler, *Basic Principles of Curriculum and Instruction* (1949)).

108. BEST PRACTICES, *supra* note 1, at 190.

professional manner.¹⁰⁹ The overarching objective in developing the Civil Liberties Seminar was to integrate the Three Apprenticeships – Cognitive, Practice, and Ethical-Social.

The problem was, without an established clinic and without funding to establish a clinical program, from where would the clients come?

*A. In Search of a Client: Partnering with a
Non-Government Organization*

The search for a client presented several opportunities. The Law School could partner with a private attorney who was working on a pro bono case. The Law School could partner with a government agency, such as a prosecutor's office or public defender's office, or the Law School could partner with a civil legal aid organization. Each of these possibilities would provide students with the opportunity to learn how the law applies to an individual by representing clients. These possibilities would provide the same types of opportunities as a traditional Law School externship program. None of these possibilities would necessarily provide the student with the opportunity to learn how to work to change the law. In order to provide students with the opportunity to learn not only how the law affects people in real world situations, but to understand that litigation is not the only response to laws which cause inequitable results, it was determined that the Law School should partner with a non-governmental organization that provided legal services to the underprivileged and which also actively monitored legislation.

This subsection will identify the pedagogical reasons for introducing a live-client experience, will identify the constraints of choosing a client, and will explain why the ACLU of Georgia was deemed the perfect partner for Atlanta's John Marshall Law School's Civil Liberties Seminars.

1. Why a Live Client Experience?

Experiential learning works best when students believe that the work they have been assigned has purpose. The use of simulations, particularly when students are informed as to why

109. *Id.*

and how participation in a particular simulation is important and will have relevance to the practice of law upon graduation, can provide a better learning opportunity than a lecture or use of the Socratic Method. Because students do not emotionally connect to a lecture, student learning is not as effective as when students are engaged by a simulation. When students are given the responsibility to represent a person, someone they can see and talk to, students are more engaged, better prepared, and learn more.¹¹⁰ To create an engaging learning environment, supervised by a full-time faculty member, of a type which was not yet available at the Law School, a real client was needed.

The client's needs would, of course, identify the substantive or doctrinal component of the course. It was important then for the type of client and that client's legal needs to fit within the Law School's mission and the goals that the Law School had identified in order to achieve its mission. Such a fit between client and Law School mission would start the integration between the Cognitive Apprenticeship and the Ethical-Social Apprenticeship.

The client then had to be from or serving a "historically underserved community."¹¹¹ In addition, a perfect client from a mission viewpoint would be one whose legal needs provided opportunities to "[p]repare students to anticipate and adapt to future developments in the law."¹¹²

2. *Constraints on Identifying the Client*

While the primary focus of developing the Civil Liberties Seminars was to create learning opportunities for students, the authors recognized that developing an experiential learning opportunity with a real client required the authors to not only act as educators, but also required the authors "to think like lawyers."¹¹³ When students asked why the Seminars were

110. *Id.* ("the learning is deeper and more meaningful when a student is participating as a lawyer, rather than as an observer or assistant or in a make believe situation.").

111. MISSION STATEMENT, *supra* note 7 ("[e]ncourage students to engage in pro bono activities and to provide legal services to historically underserved communities upon their admission to the Bar").

112. *Id.* ("[p]repare students to anticipate and adapt to future developments in the law").

113. The Law School is an independent law school and thus, has no in-

designed in a particular way, there needed to be a rational answer. Even the design of the course was a modeling opportunity for students, as each decision made in the development of the courses was made to enhance student learning or made in response to a legal concern and in an effort to minimize risk to the Law School and the ACLU.

While designing the Seminars, several constraints were identified. First, not all faculty at the Law School, who might in the future teach the Seminars, were licensed to practice law in the State.¹¹⁴ Second, the Law School does not carry a malpractice insurance policy for faculty or students, and there was no money in the budget to purchase one.¹¹⁵ Third, the doctrinal component of the courses should be one with which the faculty member teaching the courses was familiar.¹¹⁶

To address these constraints, it was determined that the Seminars should be a partnership with an attorney licensed to practice law in Georgia, who carried their own malpractice insurance, which would cover the work of the students. This determination, in turn, required that the attorney with whom the Law School would partner was one who understood the mission of the Law School, the pedagogical goals of the course, and who was willing to work with the faculty in a collaborative model. It also meant that the pedagogical goals of the course would need to complement the work of the attorney. In other words, the attorney needed to derive some benefit from the work that would be expended in collaborating on the course and assisting in supervising the students.

house general counsel.

114. The author and faculty member currently teaching the Seminar is admitted to practice in the State of Illinois, State of Yap in the Federated States of Micronesia and admitted to practice before the Supreme Court of the United States, the Supreme Court of the Federated States of Micronesia, United States Court of Appeals for the Seventh Circuit, and United States District Court for the Northern District of Illinois; but is not admitted to practice in the State of Georgia.

115. BEST PRACTICES, *supra* note 1, at 194, 203 (Law schools should carry malpractice insurance.).

116. MODEL RULES OF PROF'L CONDUCT R. 1.1 (limiting an attorney's representation to those issues with which the attorney has knowledge or familiarity).

3. *Non-Governmental Organizations*

The process of identifying a client whose legal needs complemented the mission of the Law School lead to the concept of partnering with a non-governmental organization (NGO). A NGO, which engages in legislative advocacy, rather than a private firm or individual, was more likely to require legal services which would serve “historically underserved communities.”¹¹⁷ A local NGO already providing legal services would likely have on staff an attorney licensed to practice law in the State. If the local NGO was already providing legal services, then the NGO should already carry its own malpractice insurance policy, and if the NGO had an internship program, the malpractice insurance would likely already cover the work of students, whether on-site or off. Students would learn not only how the law is enforced, but how the law is created. With the knowledge of how the law is created and the experience of a lobbyist, students would have the skills and understanding to know how to affect “future developments in the law.”

Moreover, the benefits would not all accrue to the Law School and its students. Many NGOs which provide legal services to “historically underserved communities”¹¹⁸ are underfunded and even those not significantly underfunded could use more manpower in their legal services department. The Law School would provide the manpower – students supervised by a full-time faculty member with expertise in the substantive area of law.

On the educational side, a NGO that already provided legal services and which already had an internship program would likely have a staff attorney with experience in supervising law students and would already be aware of ABA requirements and the pedagogical concerns of the Law School. Less time would be needed to educate the staff of the NGO, and more time could be spent on designing and then implementing the curriculum for the course.

117. MISSION STATEMENT, *supra* note 7 (“[e]ncourage students to engage in pro bono activities and to provide legal services to historically underserved communities upon their admission to the Bar”).

118. *Id.*

Partnering with the right NGO would also mean that the Law School would be able to provide its students with opportunities to affect the “future developments in the law.”¹¹⁹

4. *The ACLU of Georgia: A Perfect Partner*

The perfect NGO would be one which (1) provided legal services to “historically underserved communities”¹²⁰; (2) had an attorney on staff licensed to practice in the State; (3) carried malpractice insurance which would cover the work of students; (4) was willing to work collaboratively with Law School faculty and administration; (5) provided services in an area of faculty expertise; and (6) whose mission included the provision of legal services which were likely to affect the “future developments in the law.”¹²¹

The ACLU of Georgia was identified as the perfect partner. In addition to meeting all of the Law School’s criteria for partnership, the ACLU of Georgia’s mission has allowed the ACLU and the Law School to create the kinds of learning opportunities identified in both the *Carnegie Report* and *Best Practices* as being best at integrating the Three Apprenticeships. It is the execution of the ACLU’s mission through its legal department which has allowed the Law School to create these opportunities.

The primary function of the ACLU’s legal department is litigation. While hundreds of cases with legal merit present themselves each month, litigation activities are limited to impact cases.¹²² Successful impact litigation brings about needed changes in laws and policies, but more than litigation is needed for those changes to have an impact upon communities and individuals. Through public education and community

119. *Id.* (“[p]repare students to anticipate and adapt to future developments in the law”).

120. *Id.* (“[e]ncourage students to engage in pro bono activities and to provide legal services to historically underserved communities upon their admission to the Bar”).

121. *Id.* (“[p]repare students to anticipate and adapt to future developments in the law”).

122. The ACLU defines impact cases as those cases which extend rights to segments of the population that have traditionally been denied their rights, affirm rights that may be in question, or stop a governmental deprivation of rights.

organizing, the ACLU is able to translate legal decisions into practical applications that inform and empower communities to know their rights, protect their freedoms, and take action in defense of civil liberties.

The ACLU of Georgia relies upon input from those same communities to develop a legislative agenda. Communities bring problems and concerns to the ACLU of Georgia. With guidance for and from the community on the solutions needed, issues are evaluated to determine the most cost-effective and efficient way to reach the solution. When addressing violations of civil liberties that arise from applications of state statutes and the Georgia Constitution, legislative advocacy is often a more effective means to achieve systemic change. ACLU members and supporters advocate for the ACLU's legislative agenda as constituents and work diligently to influence the actions of Georgia lawmakers. Constituent advocacy is important because elected officials have an obligation to listen to constituents and represent them. Constituents are also able to hold lawmakers accountable for action or inaction by voting them into or out of office. Inclusion of an item on the legislative agenda brings the implicit understanding that, if the issue cannot be resolved through legislative action, litigation is a possibility.¹²³

In administration of the legal program, the ACLU of Georgia acts through three separate, but interrelated mechanisms – community organizing with a public education component, impact litigation, and a legislative agenda. The three components are interdependent, and each is necessary to the successful implementation of the ACLU of Georgia's mission.¹²⁴

The synergies created by identifying learning opportunities which require students to work within and across the ACLU's three interrelated mechanisms – community organizing with a

123. The relationship between legislative action and the threat of litigation is often not developed in the traditional law school classroom. The Civil Liberties Seminars have been developed to provide students with the opportunity to explore the relationship between litigation and legislation, between the courts and the legislature, and between the community and the government. Due to time constraints and the amount of material which must be covered, it is not always possible to explore these relationships in a doctrinal course.

124. *See supra* note 8.

public education component, impact litigation, and a legislative agenda - provide the integration of the Cognitive, Practice, and Ethical-Social Apprenticeships.

B. Designing the Course – A Collaborative Effort

The nature of the legal work performed by the ACLU allowed for the development of two seminars. Civil Liberties I, offered in the fall semester, focuses on the ACLU's litigation docket. Civil Liberties II, offered in the spring semester when the Georgia General Assembly is in session, focuses on the ACLU's legislative agenda. Civil Liberties I and II are designed such that a student can take one or both. If a student takes both courses, the student can work on the same issue in both courses, thus gaining a deeper understanding of how issues raised in litigation can be resolved through appropriate legislation and how poorly drafted legislation forms the basis for litigation.

The curriculum for both Civil Liberties I and II was designed to provide a highly structured mechanism by which to deliver the six tasks of professional education while instructing students as to how the Three Apprenticeships were modeled in the work of the ACLU's legal department. In addition, Civil Liberties I and II were designed to provide students with the opportunity to experience the different roles that an attorney for the ACLU fills. While there is some artificiality in the sense that, unlike the ACLU attorney, the students do not work on pending or proposed litigation at the same time that students are working on legislation, both courses have been designed such that students learn how the ACLU's community education programs, litigation docket, and legislative agenda impact each other and, both individually and collectively, further the mission of the ACLU and meet the legal needs of the ACLU clients.

1. Identifying and Meeting General Curricular Goals

Although students require scaffolds to learn and those scaffolds must start with the foundational pieces of knowledge which are found in the Cognitive Apprenticeship and move toward the integration of the Three Apprenticeships, when designing curriculum, whether a single course or a series of courses, faculty must start with the intended outcome – the

goal.¹²⁵ Thus, we started by identifying the goals we wanted our students to accomplish during each semester and how those goals related to the practice of law.

a. The Goals of the Civil Liberties Seminar

The authors identified the goals that represent the types of legal knowledge and skills which students need to master if they are to be competent to represent clients upon graduation and admission to the bar. The course goals provide the students with a relevant educational experience because the goals are accomplished through the use of assignments that require students to engage in legal work for real clients. The students learn the knowledge and practice the skills they need for the competent practice of law in the context of representing live clients under the supervision of a full-time faculty member and a practicing attorney. The authors started by identifying the goals that formed the bases of both courses and then within each goal more narrowly tailored the goal for the context within which it would be learned – litigation or legislative advocacy. The authors identified nine goals:

Goal 1: The student will be able to identify and appropriately resolve ethical and professional dilemmas. The student will participate in a responsible and effective professional community.

Civil Liberties I: Within the context of client communications, the student will be able to identify when the attorney-client privilege attaches. The student will be able to identify when the work product doctrine attaches to their work. The student understands the ACLU Confidentiality Agreement and can articulate the different obligation imposed by the ACLU Confidentiality Agreement from the Georgia Rules of Professional Responsibility.

Civil Liberties II: Within the context of being a lobbyist for the ACLU, the student will be able to identify when the attorney-client privilege attaches. The student understands the ethical rules for lobbyists, can recognize when the rules apply, and conforms their actions to the rules. The student understands the ACLU

125. See CARNEGIE REPORT, *supra* note 3, at 28; and *supra* text accompanying note 39.

Confidentiality Agreement and can articulate the different obligation imposed by the ACLU Confidentiality Agreement from the Georgia Rules of Professional Responsibility.

Goal 2: The student will be able to identify legal issues within complex factual settings.

Civil Liberties I: Within the litigation context, students will be able to identify the federal and state constitutional and statutory causes of action. The student will be able to articulate the factual and/or legal bases for which the client has standing.¹²⁶ The student will be able to articulate the appropriate remedy for the cause of action and state how the remedy will affect the client.

Civil Liberties II: Within the lobbying context, students will be able to identify the federal and state constitutional issues raised by the bills introduced into the Georgia General Assembly. The student will be able to identify the current laws which the bill will modify. The student will be able to identify the public policy concerns raised by the bill introduced into the Georgia General Assembly, including any unintended consequences of the bill.

Goal 3: The student will be able to demonstrate the ability to engage in factual investigation.

Civil Liberties I: The student will be able to identify the legally relevant facts for standing and the underlying cause of action. The student will be able to identify where to locate the factual information and the best method for obtaining that information.

Civil Liberties II: The student will be able to identify the factual situation to which the proposed legislation will apply. The student will be able to identify the unintended consequences of the proposed legislation. The student will be able to determine whether the legislative purpose will be accomplished by the proposed legislation as drafted.

126. The issue of standing was specifically chosen because it is one of the few practical skills taught in a constitutional law course and which is also necessary for all litigation.

Goal 4: The student will demonstrate the ability to identify and evaluate strategies for solving a legal problem.

Civil Liberties I: The student will be able to identify and evaluate alternative solutions to the issues raised in litigation. The student will be able to identify and diagnose problems with current law and recommend changes utilizing non-litigation strategies.

Civil Liberties II: The student will be able to identify, evaluate, and propose solutions to problems raised by proposed legislation. The student will be able to identify litigation opportunities raised by the proposed litigation and identify the characteristics of the best plaintiff.

Goal 5: The student will be able to critically assess the actions taken by self and others. The student will develop an understanding of what it means to participate in an enterprise of public service.

Civil Liberties I: The student will be able to articulate the litigation strategy of the named counsel, critique the strategy, and recommend alternative courses of action. The student will be able to articulate reasons for their actions, assess whether the actions taken obtained the result intended, and determine whether an alternative course of action would be appropriate in the future.

Civil Liberties II: The student will be able to articulate the legislative agenda for the ACLU, critique the strategy formulated to further the agenda, and recommend alternative courses of action. The student will be able to articulate reasons for their recommendations for strategies to attain the ACLU's legislative agenda on the bills they are following, critique those reasons, and determine whether alternative strategies would be more effective in the future.

Goal 6: The student will be able to demonstrate proficiency in legal research and related social science research.

Goal 7: The student will demonstrate a proficiency in both oral and written communication.

Goal 8: The student will demonstrate the ability to counsel clients.

Civil Liberties I: The student will establish a relationship with the client within the parameters established by the ACLU. The student will gather relevant information from the client as requested by ACLU attorneys. The student will provide information to the client and inform the client regarding decisions to be made.

Civil Liberties II: The student will establish an appropriate rapport with the ACLU attorney. The student will gather relevant information regarding the ACLU position on the legislation being tracked. The student will provide information to the ACLU attorney and ACLU Legal Committee on the legislation and recommend action.

Goal 9: The student will demonstrate the ability to organize and manage legal work.

Civil Liberties I: The student will demonstrate the ability to maintain time records and a client file.

Civil Liberties II: The student will demonstrate the ability to track legislation on a substantive area for the legislative session.

b. Public Service and Professionalism – Tasks 5 and 6

Implicit in the choice of the ACLU of Georgia as a partner was the goal of “forming students able and willing to join an enterprise of public service” (Task 6).¹²⁷ By partnering with a NGO with an in-house legal director who was willing to take an active role in curricular design, in class participation, and in supervising students, the students were exposed to a role model who exemplified a member of the profession involved in public service, providing legal services to “historically underserved communities.”¹²⁸ The fact that the Law School approved the course and assigned a full-time faculty member to teach the course showed the Law School’s commitment to the goals of the course. The partnership between the ACLU of Georgia and the Law School established a course whose curriculum focused

127. CARNEGIE REPORT, *supra* note 3, at 22.

128. MISSION STATEMENT, *supra* note 7 (“[e]ncourage students to engage in pro bono activities and to provide legal services to historically underserved communities upon their admission to the Bar”).

on public service - exposed students to the unmet needs of the legal community and the need for attorneys to take action to meet those needs.

The choice of a NGO, whose professional and ethical standards are higher than those imposed on the profession in general, insured that students would be exposed to role models who already “participat[ed] in a responsible and effective professional community” (Task 5).¹²⁹ Moreover, students would be expected to model the behavior of the ACLU attorneys resulting in the students themselves “creating and participating in a responsible and effective professional community.”¹³⁰ Because most students who would be enrolled in one or both of the Seminars would not yet have taken the required Professional Responsibility course¹³¹ and because the students cannot conform their behavior to expectations if those expectations are not communicated to students,¹³² the first class of the course is a class on professional responsibility. Students are introduced to the basic requirements of professionalism imposed on the bar by the Supreme Court of Georgia¹³³ and are also informed of the requirements and expectations of the ACLU of Georgia. The professionalism component of the course is presented by the ACLU of Georgia’s Executive Director. By having the Executive Director present the professionalism material and assist the students in working through situations¹³⁴ that raise ethical and professionalism issues the students are likely to encounter, the expectations of the ACLU are communicated clearly to the students. The

129. *Id.*

130. *Id.*

131. *See, e.g.,* ATLANTA’S JOHN MARSHALL LAW SCHOOL, COURSE SCHEDULE (Fall 2009), <http://www.johnmarshall.edu/academics/CourseSchedule.php?Y=2009&P=Fall> (Professional Responsibility is a required course for third year students.).

132. BEST PRACTICES, *supra* note 1, at 168; OUTCOMES ASSESSMENT, *supra* note 1, at 78, 99.

133. GA. RULES OF PROF’L RESPONSIBILITY, (Jan. 1, 2001), *available at* http://www.gabar.org/handbook/part_iv_after_january_1_2001_-_georgia_rules_of_professional_conduct/.

134. The scenarios used are different in Civil Liberties I versus Civil Liberties II because the types of situations that the student is likely to encounter in each course are different.

students are also provided with the fundamental knowledge and skill (Task 1) to identify and assess the ethical and professionalism dilemmas that they may encounter throughout the semester.¹³⁵ Because the students' field work is likely the first time that they will have encountered either clients or similar ethical issues, students are specifically told when in doubt as to the best and appropriate way to proceed, to call for instructions.¹³⁶ As many of the legal issues which students will work on are high profile issues, students are provided specific protocols on how to handle media requests. Students have uniformly lived up to expectations by demonstrating legal skills comparable to practitioners, including communicating with clients in a culturally competent manner, demonstrating an ability to articulate complex legal theories and concepts, and interacting in a professional manner with colleagues in litigation and legislative settings.

The framework for integrating the *Carnegie Report's* Three Apprenticeships was created by establishing that the legal work the students would be engaged in would further the Law School's mission, would promote justice, and would require that students engage in a professional community. The students would be performing legal work in context – within the framework of the ACLU's legal agenda, thus establishing the basis for students to engage in the Ethical-Social Apprenticeship. Although the framework for integrating the Three Apprenticeships was established, the Law School and the ACLU needed to identify how the goals of the Cognitive and Practice Apprenticeships would be met.

Because the context of Civil Liberties I (litigation) and Civil Liberties II (legislation) is different, slightly different goals were identified for the Cognitive and Practice Apprenticeships

135. The fact that the Executive Director of the ACLU of Georgia takes the time to meet with students to discuss ethics and professionalism highlights the importance of these issues and the need for the students to master this knowledge and skill. In addition, the course policies specifically state that a violation of the student's professional responsibility in the course is a violation of the Law School's Code of Student Responsibility and is subject to the school's disciplinary procedures.

136. Students are provided the cellular telephone numbers for the ACLU attorney and the faculty member.

for each course.¹³⁷ The authors identified the experiences which would allow the student to “engage in complex practice” (Task 2) and to “learn to make judgments under conditions of uncertainty” (Task 3)¹³⁸ the experiences needed to both accomplish the pedagogical goals of the course and provide the ACLU with value. Once the experiences were identified, the authors designed assignments around the experiences such that opportunities for students to “learn from experience” (Task 4) were created. Once the experiences were identified and the assignments created, the authors were able to identify the knowledge and skill (Task 1) and the order in which the knowledge and skill needed to be taught in order for the students to be able to perform the tasks assigned for the semester.¹³⁹

c. Identifying the Assignments – Tasks 2 and 3

i. Civil Liberties I – The Fall Semester

Civil Liberties I focuses on the ACLU’s litigation docket. Students either work on litigation that is currently pending or work to identify and locate the perfect plaintiff for impact litigation in an area within one of the ACLU’s priority issues.¹⁴⁰ The assignments that the students must complete during the semester are all placed within the context of the litigation the student is working on or the ACLU’s agenda and provide opportunities for students to understand the interrelatedness of the ACLU’s education program and its litigation strategy, how one informs the other.

137. *See supra* Part III.B.1.a.

138. This is Stage 2 of curriculum design. *See supra* text accompanying note 23.

139. This is Stage 3 of curriculum design. *See supra* text accompanying note 23.

140. The ACLU of Georgia’s priority issues are criminal justice, death penalty, disability rights, drug policy, free speech, HIV/AIDS, Human Rights, Immigrants Rights, Lesbian and Gay Rights, National Security, Police Practices, Prisoners’ Rights, Privacy and Technology, Racial Justice, Religion and Belief, Reproductive Freedom, Rights of the Poor, National Security, Students’ Rights, Voting Rights, and Women’s Rights. The national ACLU’s website is located at <http://www.aclu.org>.

First, students perform all work assigned by the supervising attorney as required by the status of the pending litigation and maintain a case file, including timesheets. The relevance of the assignment to the pending litigation is explained to the students either before or at the time of assignment.¹⁴¹ Students are informed when all assignments are due. Students are required to keep timesheets, which include a description of the task performed, and to submit timesheets on a weekly basis. By maintaining timesheets, students come to understand the time it takes to accomplish specific tasks,¹⁴² begin the habit of keeping accurate records,¹⁴³ and create business records for the purposes of collecting attorney fees if awarded by the court in the litigation on which the student is working. Students are required to maintain a case file, which includes a record of all contact with the client and all work done on the case including copies of all written work. A copy of the case file is submitted for grading purposes, and a copy is submitted to the ACLU and becomes part of the ACLU's case file.

The first semester Civil Liberties I was offered, students worked on a class-action lawsuit pending in the Northern District of Georgia which challenged the manner in which students in the Atlanta Public School System were disciplined and assigned to alternative schools. Students were divided into teams providing the students with a collaborative learning model.¹⁴⁴ Students met with clients, assisted with obtaining affidavits to support pleadings, attended meetings to prepare clients for depositions, attended depositions, and participated in

141. BEST PRACTICES, *supra* note 1, at 168, 175; OUTCOMES ASSESSMENT, *supra* note 1, at 143-44.

142. This understanding of how long it takes to accomplish a task assists the student to further develop their meta-cognitive skills and allows the student to develop the time management skills necessary for practice.

143. Maintaining accurate time records teaches the students one of the most important and least taught skills for the practice of law. Lawyers can not bill for their time unless they have accurate records of time spent on the case. *See* BEST PRACTICES, *supra* note 1, at 189 (discussing the importance of teaching office management skills in a clinical setting).

144. The collaborative model provides a more realistic practice setting and provides students opportunities to develop team work skills. BEST PRACTICES, *supra* note 1, at 119-21; OUTCOMES ASSESSMENT, *supra* note 1, at 148-51. In addition, for safety reasons, students were required to perform all field work in pairs and carry cell phones.

telephonic conference calls with attorneys from the national office of the ACLU.

Second, students were required to attend either a community meeting or a school board meeting and to maintain a journal regarding the experience. This assignment was required to ensure students observe and experience how the decisions made by school boards impact the lives of ordinary individuals and to understand the concerns of the community. This assignment provided the opportunity for students not only to learn the law, but to see the law in action and to hear from those individuals whom the law affects. It is through this ability to see how law affects those with little or no political voice that students can come to understand the power they will have as an attorney to effectuate change either for one individual or for a larger segment of society through impact litigation or through changing the law. The journaling requirement was designed to move students to think about their role in the community both as an individual and as an attorney.

Third, students were required to work in the ACLU's office doing client intake. This assignment provided students with an opportunity to see the types of legal issues that are raised by the local community. This assignment provided students with a window through which to see the general public's understanding or misunderstanding of their constitutional rights, how government officials in different parts of the State interpret their duties and the constraints placed on them by the U.S. Constitution, and what the U.S. Supreme Court means by the tyranny of the majority on a "discrete and insular minority."¹⁴⁵ In addition, students were exposed to the process by which the ACLU identifies potential clients and impact litigation opportunities.

Fourth, students were required to write a paper and develop public education materials on a topic of education law, which was the doctrinal basis of the course.¹⁴⁶ This assignment created the opportunity to build upon the knowledge and skills that students had already learned in their other law school

145. U.S. v. Carolene Prod. Co., 304 U.S. 144, n.4 (U.S. 1938).

146. The doctrinal basis of the course will change from semester to semester depending on the priorities of the ACLU, but will remain within the larger umbrella of civil liberties and constitutional law.

courses. Students were taught how the principles of legal writing taught in the first year program were transferable to writing a scholarly paper and to creating public education material. The paper assignment required the students to research their legal issue both in Georgia and across the country in order to identify both the majority and minority trends. Students were required to provide an analysis of their legal issue, identify any federal or state constitutional problems with the current state of the law in Georgia, provide a critique of the law, which focused on whether the legislative purpose was being met and whether the law created unintended consequences or was otherwise inconsistent with public policy, and to provide a recommendation for improvement of the law or an analysis of why the current law was appropriate and constitutional. The public education material assignment consisted of two parts, a written piece and a podcast. The public education material assignment created the opportunity to teach students the need for legal research and analysis even when communicating general legal principles to the public. The written public education assignment required students to write for an audience not usually a focus of law school education – the general public. The podcast required students to communicate orally with that same audience. The work produced by the students is also used by the ACLU. The papers are used to update research files and identify issues for the ACLU's legislative agenda. The public education materials are used in the ACLU's community education program.

ii. Civil Liberties II – The Spring Semester

Civil Liberties II focuses on the ACLU's legislative agenda.¹⁴⁷ Students choose an issue from the ACLU's legislative agenda. The faculty member and the ACLU staff work to identify those issues on the agenda that are most likely to have bills introduced in the current legislative session and are conducive to the educational goals of the course. The assignments that the students must complete during the semester

147. The ACLU of Georgia's legislative agenda features bills and resolutions filed by members of the Georgia General Assembly and offers an assessment of the legislation's potential impact on the fundamental rights and freedoms guaranteed by the Georgia and U.S. Constitutions.

are all placed within the context of the legislative agenda on which the student is working. The overall goals of the Civil Liberties Seminar II are to have students follow legislation introduced into the Georgia General Assembly and to lobby on behalf of the ACLU's legislative agenda. Students also come to understand how the ACLU's legislative agenda complements its litigation strategy, the relationship of the ACLU to the legal community, and the importance of the ACLU's community education program. A secondary benefit of Civil Liberties II is that students see and understand how the General Assembly operates and the sometimes messy process that occurs behind the scenes at the legislature.

Many of the assignments in Civil Liberties II mirror those of Civil Liberties I. Because students work on the ACLU's legislative agenda, the students are required to register as lobbyists for the ACLU of Georgia and comply with all reporting requirements for lobbyists.¹⁴⁸ As registered lobbyists for the ACLU, the students' client was the ACLU. Because the course focused on legislation and the client was the ACLU, the authors determined that to require the students to perform client intake at the ACLU's office was not consistent with the parameters of the course. The students in Civil Liberties II, however, were unanimous in their end of the semester critique of the course that spending time at the ACLU office and doing client intake would have been a beneficial experience. Students stated that understanding the intake process would have allowed the students to have attained a better understanding of how the priorities on the legislative agenda are set. Thus, although client intake is not listed as an assignment, it will be included as an assignment in future offerings of the course.¹⁴⁹

First, students are required to choose an issue from the ACLU's legislative agenda. Students are required to follow all legislation introduced into the Georgia General Assembly on their chosen topic for the entire legislative session. Students must attend committee hearings and coordinate with other ACLU lobbyists on strategies to communicate with

148. O.C.G.A. §§ 21-5-1-76 (2009).

149. BEST PRACTICES, *supra* note 1, at 121 (recommending student-teacher collaboration in designing course objectives).

legislators.¹⁵⁰ Students also shadow one of the ACLU's attorney lobbyists.¹⁵¹

Second, students draft committee hearing testimony. The testimony is presented in class in a simulated committee hearing. Alumni, who are currently members of the Georgia General Assembly, ACLU staff and JMLS faculty act as committee members. Students receive formative feedback from everyone acting as a committee member. Students receive information, from legislators with experience in receiving information at committee hearings who were able to discern good presentation as well as provide information on how to best frame the message to reach the most legislators, from ACLU staff who are able to test the testimony against ACLU protocol and strategy, and from faculty who are able to comment on the doctrinal soundness of positions taken. Moreover, the ACLU does not present committee testimony unless that testimony has been vetted. Thus, the classroom simulations replicate the type of in-house vetting that an ACLU attorney would use in preparing committee testimony.¹⁵² If a bill the student is following goes to hearing and the student has prepared and vetted committee hearing testimony, the student has the

150. The ACLU of Georgia's legislative program consists of a team of lobbyists, a community organizer and constituents – lobbyists who are trained in legislative advocacy. The ACLU of Georgia monitors legislation proposed by members of Georgia's General Assembly and attempts to influence legislation by meeting with legislators, testifying at legislative hearings, creating and distributing fact sheets that identify the strengths and weaknesses of legislation in a civil liberties context, and mobilizing constituents to contact their legislators.

151. This requirement was added at the request of the students. Students stated that because the legislative process is so chaotic, it would have been helpful to have watched an experienced lobbyist navigate the system. *See* BEST PRACTICES, *supra* note 1, at 121 (recommending student-teacher collaboration in designing course objectives).

152. Students were informed that ACLU attorneys use the same process of preparing committee testimony, thus reinforcing for students that what may appear as expert practice in public required the attorney to practice and seek critique from colleagues prior to performance.

opportunity to present the testimony at the actual committee hearing.

Third, students submit periodic updates on the status of the legislation they were following. These updates are incorporated into the public Legislative Report Card published by the ACLU of Georgia on its web site and distributed to legislators during By the People Days. By the People Days are held weekly at the state Capitol when the Georgia General Assembly is in session. They provide an intensive training session for constituents to learn the logistics and most effective techniques for communicating with elected officials, followed by an opportunity to implement the newly developed skills by talking to legislators about issues from the ACLU of Georgia's agenda that are the most important to them. NGOs with missions that include ACLU of Georgia priority issues are invited to attend with their members and supporters, take advantage of the training and present their legislative agendas.¹⁵³ Approximately 500 constituents participate in By the People Days each year and rely upon the ACLU of Georgia's Legislative Agenda to inform their activism. Students are encouraged to attend as many By the People Days as possible. Most importantly, the students see their work in use, being relied upon by ordinary people.

Fourth, students write a research paper and prepare a fact sheet.¹⁵⁴ The research paper and fact sheet, which is a form of public education material, provide the same opportunities as the research paper and public education material assignment in Civil Liberties I.¹⁵⁵ The research paper for Civil Liberties II focuses on one bill that the student has followed throughout the semester and includes a discussion of the current status of Georgia law on the legal issue, a description of and analysis of how, if passed, the bill would change Georgia law, an analysis of the constitutionality of the bill under both the U.S. and Georgia Constitutions, an analysis of whether the bill will create

153. NGO partners include Amnesty International, Planned Parenthood of Georgia, the Georgia Rural Urban Summit, Feminist Women's Health Center, the NAACP-Georgia, and the People's Agenda.

154. Fact Sheets prepared for legislative advocacy summarize the substance of the legislation, highlighting the impact of legislation and ask for specific action to support or defeat the legislation.

155. See *supra* text accompanying note 139.

unintended consequences or is otherwise inconsistent with public policy, and a recommendation for improvement of the law or an analysis of how the bill is appropriate and constitutional. In addition, the students present a synopsis of their research paper to the ACLU of Georgia's Legal Committee.¹⁵⁶

d. Fundamental Knowledge and Skill – Task 1

The issues on the ACLU's legal agenda that the students work on determine the doctrinal parameters of the Cognitive Apprenticeship. The authors recognized that in addition to substantive knowledge of the law, students required additional knowledge and skills to perform the tasks assigned for the semester effectively.

For Civil Liberties I, where students would be working on litigation, it was recognized that the student and the ACLU client would likely come from very different backgrounds and thus, the students would need to acquire cultural competency before the student would be allowed to have client contact. Acquiring cultural competency would require students to acknowledge, identify, and deconstruct their own cultural assumptions; be aware of the manner in which cultural assumptions are present in non-verbal communication; and learn cultural awareness. Cultural competency was a prerequisite to effective client communication and client representation. For Civil Liberties II, the cultural competency was not the ability to go into an unknown neighborhood of a different socio-economic class, but the ability to communicate with legislators and to understand the legislative process. Cultural competency, although not legal doctrine, is still part of the fundamental knowledge and skill necessary for the practice of law (Task 1). Cultural competency, however, cannot be taught through lecture or the Socratic Method. The best method of teaching cultural competency is through role play, which is part of the Practice Apprenticeship.

156. The ACLU of Georgia's Legal Committee is a group of practicing attorneys who evaluate potential cases, recommend the best cases for impact litigation and volunteer the firm resources and staff to support the ACLU of Georgia's legal department.

It was also determined that part of the fundamental knowledge and skills the students needed included lessons on attorney/client privilege, work product doctrine, and confidentiality.¹⁵⁷ These areas were identified by determining what actions the students could take that might harm the client or expose the ACLU to harm, including reputational harm. The underlying doctrine of each of these areas was taught in class, along with an explanation of why these areas were important and how the issues might arise within the context of the students' work. In addressing these issues, the class module was designed to integrate the Cognitive Apprenticeship (the legal rules the students need to know) with the Practice Apprenticeship (how the issues would arise in practice and how the student should respond to the issue). In addition, because the legal rules of attorney/client privilege, work product doctrine, and confidentiality are premised on public policy, there is ample opportunity to address the Ethical-Social Apprenticeship within this module.

The student needs to acquire the basic doctrinal knowledge for the litigation or legislation at issue. The doctrinal knowledge was taught in a number of ways. Students were provided with reading material, both social science material and case law, on the doctrinal area. Also, guest speakers who are experts in the area, were used. Guest speakers included not only practitioners in the substantive area, but non-lawyer experts – former plaintiffs, forensic nurses, or others with knowledge of how the law affected the ordinary person. The guest speakers were chosen for their ability to humanize the law, to provide context – the narrative stories, to identify unintended consequences of the law and to provide practical solutions to remedy unintended consequences based on their own areas of expertise. Guest speakers also assisted students to develop cultural competence. According to at least one student, “hearing the experiences of the speakers who had been doing for years what we were expected to do in one semester was a great way to prepare us for what lay ahead of us.”¹⁵⁸

157. Student's sign the same Confidentiality Agreement required of ACLU staff and volunteers.

158. Email from Civil Liberties Seminar Student, Atlanta's John Marshall Law School, to Kathleen M. Burch, Associate Professor, Atlanta's John Marshall Law School (Jul. 17, 2009) (on file with author).

In Civil Liberties II, for students to identify the unintended consequences of legislation and to formulate recommendations, students need to know the rules of statutory construction, how to apply the rules, and how to draft legislation. Students are introduced to this knowledge by both the faculty member teaching the course and by an attorney from the Georgia General Assembly's Office of Legislative Counsel. Students are also assigned a text on the legislative process, which is used to both introduce students to the legislative process and as a reference for statutory construction.

2. Assessing Student Performance

The Civil Liberties Seminar is a graded course and, thus, student assessment is required both for the purpose of the student's learning and for the purpose of determining a final grade. Because the purpose of the course is to provide students with the opportunity to develop the skills and knowledge needed for the practice of law, assessing students with a traditional final exam is not appropriate. A formative assessment model is used.

Recognizing the amount and nature of the work the students perform throughout the semester, approximately one-half of the student's grade is based upon performance of assigned tasks. The other one-half of the student's grade is based upon the student's written work. Students are provided multiple opportunities for feedback on the work performed in the course.

While the authors presume that students have a base of knowledge and skill upon which to build, the authors consciously create opportunities to teach students how to transfer the knowledge and skill learned in other law school courses and apply that knowledge and skill in the Civil Liberties Seminar. For example, Civil Liberties I provides the opportunity to apply the student's knowledge of the doctrine of standing to the case on which the students were working. In both courses, opportunity is available to explain to students how the skills learned in their legal writing courses were transferable to the required research paper.

For each assignment, students are provided with written instructions, which detail the requirements of the assignment and identify the relevance of the assignment to the course and to the practice of law, and with a grading rubric that outlines how

the assignment will be graded. In addition, to the extent relevant and practical, students are provided instruction on how the knowledge and skills obtained in other courses apply to the assignment, including specific strategies for transferring the knowledge and skill to the new setting.

For each written assignment, students are provided with an opportunity to perform the assignment, receive feedback, revise their work, and then submit their work for purposes of a grade. Feedback on written assignments is in writing and received from both the JMLS faculty member and the ACLU attorney. For each assignment which requires the students to perform a task, to the extent possible, the students are provided the opportunity to practice the task in a simulated environment before performing the task in a real world setting. For work performed in simulations, students receive oral comments from the JMLS faculty member, the ACLU attorney, and other members of the bar who are present. Students watch each other's performance and are able to provide peer review.

IV. BENEFITS TO THE ACLU OF GEORGIA¹⁵⁹

The Civil Liberties Seminars enhance the ACLU of Georgia's ability to identify new clients. Civil Liberties I students meet with potential clients and conduct interviews using specialized questionnaires that elicit facts relevant to cases being considered for litigation. In the fall semester, the capacity to interview potential clients, who had contacted the ACLU with an interest in a case, increased ten-fold with the assistance of students.¹⁶⁰

159. Although the focus of this article has been on the benefits of the Civil Liberties Seminars to the students and secondarily to the ACLU, the faculty members who teach in the seminars receive benefits as well. *The Carnegie Report* assumes that law faculty are experts in the practice of law, but to maintain expertise requires practice. The Civil Liberties Seminars provides those who teach it the opportunity to continue to develop their expertise in the practice of law and to use that expertise to train the next generation of lawyers.

160. The case assigned to Civil Liberties I students has a litigation team comprised of more than 25 attorneys, paralegals, community organizers, and administrative professionals with offices in New York, Washington, D.C. and Florida. Only one staff attorney and community organizer were located in Georgia with the capacity to meet regularly with potential and current clients.

A review of interview notes from many families enabled the litigation team to select the most appropriate clients for participation in the litigation in an efficient manner that would have taken months without student assistance.

Student participation also enabled the ACLU of Georgia to conduct in-person interviews with potential clients rather than telephonic interviews or mailed questionnaires. In-person interviews are the preferred method for communicating with potential clients because they allow for comprehensive fact gathering, immediate assessment of the ACLU's ability to meet the client's needs with the proposed litigation, and opportunities for the ACLU of Georgia to offer community-based resources to address legal concerns outside the scope of litigation. No legal expertise is required to conduct these interviews, but an understanding of ACLU of Georgia protocols and ethical requirements for client interaction are required. Meetings with Civil Liberties Seminar students are one of the first interactions potential clients have with the ACLU of Georgia. During those initial visits, potential clients develop a sense of the ACLU of Georgia's commitment to addressing issues in their communities and the organization's ability to meet their legal needs. Students serve as the official representatives of the ACLU of Georgia and establish the foundation of the relationship that must exist between individual clients and NGOs for effective representation. The professionalism exhibited by the students during interviews solidifies the ACLU of Georgia's credibility in the community, a benefit that is immeasurable.

Civil Liberties I students provided the ACLU of Georgia with the manpower needed to maintain regular contact with the large group of plaintiffs involved in a complex class-action lawsuit. The students made weekly calls and visits to clients to provide them with updates on the progress of the lawsuit and prepare them to meet discovery obligations, including depositions. Visits were important to keep the legal team informed of changes in circumstances clients experienced during the course of the lawsuit. Regular communication with the client also helped to build the attorney-client relationship among the parents and students involved in the case and the ACLU of Georgia.

The doctrinal expertise developed through the Civil Liberties Seminars enhanced the ACLU of Georgia's ability to develop

action plans to address emerging civil liberties issues. The thorough legal analysis of issues presented in student research papers serves as the basis for evaluating issues in the development of strategic action plans. Historically, the ACLU of Georgia has been reactionary, with litigation coming as a response to public outcry, outrageous government behavior, or newly enacted legislation. Examining the issues before a crisis occurs allows for the development of a plan that extends beyond litigation, coordinates the effort of other ACLU affiliates, considers media strategies and identifies ways to incorporate communities in a manner that has the greatest impact. While such a comprehensive approach to civil liberties issues is always desirable, it is not always possible with limited staff resources and impending deadlines. The expertise provided by the students allows the ACLU of Georgia to be a leader on important civil liberties issues and develop new priorities for action.

The development of public education materials created by the Civil Liberties seminars included fact sheets, podcasts, brochures, issue summaries, best practices, guides and hearing testimony. These materials benefited the ACLU of Georgia in two ways.

First, public education materials increase the ACLU of Georgia's ability to offer the public substantive responses to requests for information. The ACLU of Georgia receives approximately 300 requests for assistance each month. Many of the requests relate to legal issues outside of the ACLU of Georgia priorities and others are simply requests for information. Limited resources do not allow for the ACLU of Georgia to provide comprehensive responses to every inquiry. The ACLU of Georgia uses public education materials created by its national office.¹⁶¹ The material is drafted in a way to provide for general applicability in all states. The public education materials researched and designed by the students augment the ACLU of Georgia's growing library of state specific materials that are responsive to concerns of Georgians. The newly developed public education materials are distributed

161. The ACLU Know Your Rights Brochures can be found on the national ACLU website at www.aclu.org (enter search term "Know Your Rights").

by regular mail and email thus providing those in need with substantive responses to inquiries and building public confidence in and good will toward the ACLU of Georgia. Public confidence in the ACLU of Georgia is important because impact litigation depends upon the willingness of the individuals who act as plaintiffs and trust the ACLU of Georgia to advocate for their individual rights.

Second, the public education material are an important part of our community organizing work, facilitating workshops, training seminars, town hall meetings, and community forums throughout the state. Printed materials are always needed to accompany community activities to meet the variety of learning styles of participants and to encourage individuals to share the information with others in the community. While the ACLU of Georgia reaches many communities in person, the ACLU of Georgia also provides informational materials to a variety of groups whose activities intersect with one or more of the ACLU's priority issues. These groups include churches, neighborhood associations, child-welfare groups and others who do not share the ACLU's mission but appreciate the ACLU perspective on civil liberties issues. Having public education materials available to distribute upon requests allows the ACLU of Georgia to share its message with a wider audience and makes us better coalition partners for future activities that advance our mission.

An anticipated long-term outcome of the Civil Liberties Seminars is to create a new group of lawyers who understand the importance of the ACLU's work and are inspired to contribute to that work as volunteers. The ACLU of Georgia's legal victories are a result of an ongoing collaboration between ACLU staff attorneys and volunteer attorneys acting as legal committee advisors, co-counsel with staff attorneys, and cooperating attorneys in ACLU sponsored cases. Competent, skilled attorneys with a commitment to civil liberties will always be needed. The authors' hope is that when students who have participated in the Civil Liberties Seminars are practitioners considering pro bono activities, their experiences will lead them back to the organization that has served as the guardian of liberties for the last ninety years, the American Civil Liberties Union.

V. CONCLUSION

Atlanta's John Marshall Law School's partnership with the ACLU of Georgia in the design and implementation of the Civil Liberties Seminars upon sound pedagogical principles has resulted in the integration of the *Carnegie Reports'* Three Apprenticeships. Upon completion of the Civil Liberties Seminar, students have participated in a professional community that is engaged in public service, have come to understand the interrelatedness between the community and the law, and have acquired skills for the practice of law. The students work furthers the core mission of the ACLU and empowers the community to take action to protect civil liberties. The students themselves are empowered. At the completion of the Seminar, the students have the confidence, the skill, and the knowledge to know that they can competently represent clients when they graduate.