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# Clinical Syllabi as Demonstration of Best Practices Implementation

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## CLINICAL SYLLABI AS DEMONSTRATION OF BEST PRACTICES IMPLEMENTATION

*Jean Mangan\* and Fernanda Mackay\*\**

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## I. INTRODUCTION

This Article posits that the University of Georgia School of Law for Clinical Programs course syllabi demonstrate implementation of recommendations found in leading works that advocate for change in traditional legal education. This Article reviews some high points of legal education reform with a focus on clinical legal education and then discusses the role of syllabi in the classroom and the potential within the document that many professors miss. This Article then turns to using syllabi to measure the extent that the clinics are implementing instruction that addresses all three apprenticeships as defined in the Carnegie Report.<sup>1</sup> To assess the syllabi, the authors begin with the basic model of apprenticeships in knowledge, skills, and values from the Carnegie Report and then use recommendations of best practices found in *Best Practices for Legal Education*<sup>2</sup> to analyze whether syllabi demonstrate efforts to instruct in each of the three apprenticeships.

## II. BRIEF OVERVIEW OF LEGAL EDUCATION FROM LANGDELL TO BEST PRACTICES FOR LEGAL EDUCATION

### A. LANGDELL'S CREATION OF THE CASE-METHOD APPROACH AND CERTAIN CRITICISMS

The modern law school model started at Harvard in the 1870s under Harvard President Charles William Eliot and Harvard Law School Dean, Christopher Columbus Langdell, who instituted the case-dialogue method of instruction.<sup>3</sup> Under this method, students read appellate cases and then discuss the facts, reasoning, and holdings in one particular case to serve as an illustration for a larger legal principle.<sup>4</sup> While serving to quickly and efficiently mold law students' minds into thinking like lawyers, the method has come

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<sup>1</sup> William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 197 (2007) [hereinafter Carnegie Report].

<sup>2</sup> Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* vii (2007) [hereinafter Best Practices for Legal Education].

<sup>3</sup> *Id.* at 154 (explaining how Langdell brought a version of the Socratic method to law school).

<sup>4</sup> Karen Tokarz et al., *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J. L. & POL'Y 11, 13 (2014).

under scrutiny for failing to cultivate the variety of skills that successful attorneys use.

A call for reform of law schools in the United States away from the Langdellian method has been ongoing for many years, with mixed results. In 1933, Jerome Frank, a legal scholar who strongly disagreed with the Langdellian method,<sup>5</sup> criticized law schools' reliance on the case-dialogue method of teaching and called for "transforming 'law schools' into 'lawyer schools.'"<sup>6</sup> Frank proposed changing the main focus of legal education from the study of appellate cases to a focus on the everyday work of practicing lawyers.<sup>7</sup> He argued that the main focus of legal education should be clinical education with students' participating in representing clients, participating in trials, and taking part in other day-to-day legal work with case study as a secondary focus.<sup>8</sup> However, Frank's contemporaries did not overwhelmingly support his call for such drastic reform. Scholars continued to look into developing legal education.<sup>9</sup> In the 1970s and 1980s, clinical educators argued that the case-dialogue study focused "too heavily on judge-centered thinking, and that law school ought to do more to expose students to lawyers' roles and thinking processes."<sup>10</sup> Again, very little change for movement away from solely examining appellate cases occurred.

In 1992, the American Bar Association Task Force on Law Schools and the Profession published *Legal Education and Professional Development: Narrowing the Gap*, commonly referred to as the MacCrate Report.<sup>11</sup> The MacCrate Report identified ten professional skills and four professional values "essential for competent, ethical representation, and emphasized the value of experiential and clinical education."<sup>12</sup> The MacCrate Report

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<sup>5</sup> Suzanne Valdez Carey, *An Essay on the Evolution of Clinical Legal Education and Its Impact on Student Trial Practice*, 51 U. KAN. L. REV. 509, 513 (2003) (stating Frank "exposed the deficiencies of the case-Socratic method").

<sup>6</sup> Kristen Holmquist, *Challenging Carnegie*, 61 J. LEGAL EDUC. 354 (2011).

<sup>7</sup> *Id.* at 354–55 (advocating this approach because the usual method only "half-heartedly" prepares for practice).

<sup>8</sup> *Id.* at 354.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 354–55.

<sup>11</sup> Tokarz et al., *supra* note 4, at 16.

<sup>12</sup> *Id.* at 16; *see also* SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM iv, 3 (Robert MacCrate ed., 1992) [hereinafter MacCrate Report]

concluded that these skills and values should be taught by law schools, “where skills can be developed and tested.”<sup>13</sup> The MacCrate Report emphasized the importance of clinical education, finding that clinics are “an invaluable contribution to the entire legal education enterprise” because of their ability to let students refine skills and values that practicing lawyers actually use.<sup>14</sup> Although the MacCrate Report led to some law schools making curricula changes to improve the preparation of students, it did not have as great of an effect as those advocating for change had hoped.<sup>15</sup>

#### B. CHANGE FINALLY ARRIVES: THE CARNEGIE REPORT

In 2007, the Carnegie Foundation published *Educating Lawyers: Preparation for the Profession of Law*, commonly known as the Carnegie Report, which followed a series of reports on other areas of professional education such as medicine, engineering, architecture, and teaching.<sup>16</sup> For this report, the Carnegie Foundation visited sixteen law schools during two academic semesters, including public and private, large and small, nationally known and regional schools, in the United States and Canada.<sup>17</sup> The data accumulated from those visits was published in the Carnegie Report.

The Carnegie Report breaks down professional education into three different “apprenticeships of learning”: the cognitive apprenticeship, the practical apprenticeship, and the identity apprenticeship.<sup>18</sup> The cognitive apprenticeship develops a student’s

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(listing the ten “fundamental lawyering skills” as: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute-resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas; and listing the four “fundamental values of the profession” as: provision of competent representation, striving to promote justice, fairness, and morality, striving to improve the profession, and professional self-development).

<sup>13</sup> Tokarz *supra* note 4, at 17.

<sup>14</sup> Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 114 (2001) (citation omitted).

<sup>15</sup> *Id.* at 144 (assessing the impact of the MacCrate Report nationally).

<sup>16</sup> See Carnegie Report, *supra* note 1, at 3; see also Holmquist, *supra* note 6, at 353 (describing the questions raised by the Carnegie Report).

<sup>17</sup> THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, SUMMARY OF EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 3 (2007) [hereinafter Summary of the Carnegie Report].

<sup>18</sup> Holmquist, *supra* note 6, at 358.

ability to “*think* like a lawyer” by focusing on “legal materials and law-related content”<sup>19</sup> through use of the case-method of instruction. The practice apprenticeship refines a student’s ability “to *act* like a lawyer” by learning the skills that are necessary for practicing attorneys.<sup>20</sup> The identity apprenticeship guides a student’s ability to *feel* like a lawyer by contemplating how to implement professionalism, ethics, and purpose as a member of the legal profession.<sup>21</sup> The Carnegie Report argues that law schools do a great job of teaching the cognitive apprenticeship but fail to pay enough attention to the apprenticeships of practice and identity.<sup>22</sup>

The Carnegie Report made five key observations based on the data collected and aggregated by the authors. The first three observations are connected to the Langdellian method of legal instruction.<sup>23</sup> First, law schools quickly train students on how to “think like a lawyer.”<sup>24</sup> In other words, law schools have honed pedagogy that addresses and educates law students in the cognitive apprenticeship sphere. Second, law schools use primarily one form of instruction “to accomplish the socialization process”:<sup>25</sup> the case-dialogue method of teaching. Third, although the case-dialogue method is beneficial for students, it also has some adverse consequences.<sup>26</sup> While the case-dialogue method succeeds at helping students develop their ability to make well-thought legal arguments by showing them how to determine what the most important issues are in a set of facts, it is not suitable for developing practical skills that students will need to use once they are practicing lawyers. Specifically, the report noted that “[t]he task of connecting the analytical process ‘with the rich complexity of actual

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<sup>19</sup> *Id.* at 360 (emphasis added) (quoting Judith Welch Wegner, *Reframing Legal Education’s Wicked Problems*, 61 RUTGERS L. REV. 867, 887 (2009)).

<sup>20</sup> *Id.* at 358.

<sup>21</sup> *Id.* (emphasis added).

<sup>22</sup> *See id.* (“[The Carnegie Report] finds that law school successfully teaches students the conceptual pieces of lawyering, but neglects the apprenticeships of practice and identity).

<sup>23</sup> *See, e.g.*, THE CASE STUDY TEACHING METHOD, <https://casestudies.law.harvard.edu/the-case-study-teaching-method/> (describing the Langdellian teaching method).

<sup>24</sup> Summary of the Carnegie Report, *supra* note 19, at 5.

<sup>25</sup> *Id.*

<sup>26</sup> *See id.* (“[T]he task of connecting these conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions, remains outside the case-dialogue method.”).

situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions, remains outside the case-dialogue method.”<sup>27</sup> Thus, while law schools have developed a pathway of learning that caters to the cognitive apprenticeship, this pathway does not assist greatly in the apprenticeships of practice and identity.

Next, while law schools regularly give summative assessments of students’ performance through final exams and papers that evaluate what students have learned by the end of the course, law schools lack sufficient formative assessments that assess students’ progress in comprehension of material and provide feedback to allow for growth prior to the end of the term. While law schools are deft at providing data for the school to measure its success in academic performance, the overwhelming use of summative assessments adversely affects the students and their ability to grow into well-rounded attorneys;<sup>28</sup> when seen through this filter, the traditional law school methods seem less pedagogically sound. The fifth and final observation by the report is that although schools are attempting to improve the opportunities and experiences available to their students, these attempts have been partial.<sup>29</sup> Law schools, then, continue to need guidance in how to educate the whole student.

To address the need for guidance, The Carnegie Report made seven recommendations for law schools to consider implementing in their programs. First, law schools should offer a curriculum that pairs analytical thinking with both practical training and exploration of identity and values congruous with the legal profession.<sup>30</sup> Second, although legal analysis can remain the central theme taught in law schools, legal education must also include practical experiences and opportunities for students to think about issues of professionalism.<sup>31</sup> Third, law schools should take advantage of the second and third years of law school to encourage

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<sup>27</sup> Holmquist, *supra* note 6 at 359.

<sup>28</sup> Carnegie Report, *supra* note 1, at 7.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 8.

<sup>31</sup> *Id.* at 9.

students to take part in clinical training, work with faculty and other students, and reflect on their educational experience.<sup>32</sup>

The fourth and fifth recommendations combine to suggest that faculty within law schools should work together to ensure a better understanding of each other's work so as to be able to provide students with a well-rounded and cohesive understanding of legal doctrine.<sup>33</sup> The Report noted that "in teaching for legal analysis and lawyering skills, the most powerful effects on student learning are likely to be felt when faculty with different strengths work in a complementary relationship."<sup>34</sup> Sixth, the Report stated that law schools should make sure the most important purpose of law schools is the "formation of competent and committed professionals."<sup>35</sup> The seventh and last recommendation was that law schools should work together "[w]ithin and [a]cross [i]nstitutions."<sup>36</sup>

Overall, the Report suggested that students need to be given more experiences with practice and more opportunities to deal with issues of professionalism— while continuing to learn legal analysis. Put in stronger words, law schools' "pedagogy and curriculum— an over-reliance on neatly edited cases to the exclusion of working with messy, human facts, in ways that real lawyers might— obscures the inter-dependence of knowing and doing that is at the heart of thinking like a lawyer."<sup>37</sup> This time, law schools listened.

#### C. BEST PRACTICES FOR LEGAL EDUCATION AS A BOLSTER FOR CHANGE

In 2007, the same year the Carnegie Report was published, Roy Stuckey and his co-authors published *Best Practices for Legal Education: A Vision and a Road Map*, a project that stemmed from Clinical Legal Education Association's interest in best practices for clinical education.<sup>38</sup> While the original intents of the Carnegie Report and *Best Practices* grew from different ideas, both advocated for stronger commitment to developing opportunities for students to

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<sup>32</sup> *Id.*

<sup>33</sup> Carnegie Report, *supra* note 1, at 9.

<sup>34</sup> *Id.* at 10.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Holmquist, *supra* note 8, at 357.

<sup>38</sup> See generally *Best Practices for Legal Education*, *supra* note 2.

practice legal skills and to learn about how to shape attorney identity.<sup>39</sup>

The principles identified in *Best Practices* “are based on long-recognized principles of sound educational practices as well as recent research... about teaching and learning.”<sup>40</sup> The committee divided its recommendations into seven groups: “1) setting goals, 2) organizing the program of instruction, 3) delivering instruction, generally, 4) conducting experiential courses, 5) employing non-experiential methods of instruction, 6) assessing student learning, and 7) evaluating the success of the program of instruction.”<sup>41</sup> These groups were discussed by chapter.

In chapter two, the authors discussed setting legal goals and included recommendations such as encouraging law schools to clearly articulate their educational goals with their students;<sup>42</sup> paying attention to “outcomes-focused education”;<sup>43</sup> helping students develop the ability to resolve legal problems effectively while also teaching students to be responsible lawyers through knowledge and understanding of the law, professionalism, and self-reflection.<sup>44</sup>

Chapter four described what the authors determined to be best practices for professors to use to instruct students.<sup>45</sup> The authors noted that professors should do things such as: make an effort to know their students well,<sup>46</sup> continue to improve their teaching skills,<sup>47</sup> create a healthy learning environment,<sup>48</sup> explain their goals

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<sup>39</sup> CYNTHIA F. ADCOCK ET AL., BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD xxxvii (Deborah Maranville et al. eds., 2015) (discussing how both the Carnegie Report and Best Practices for Legal Education have impacted legal education).

<sup>40</sup> *Best Practices for Legal Education*, *supra* note 2, at 1.

<sup>41</sup> *Id.* at 5.

<sup>42</sup> *Id.* at 29 (“There is nothing more important for any educational institution than to have clearly articulated educational goals.”).

<sup>43</sup> *Id.* at 32 (“We encourage law schools to describe their desired outcomes in terms of what their students will know, be able to achieve, and how they will do it upon graduation.”).

<sup>44</sup> *Id.* at 43–48.

<sup>45</sup> *Id.* at 77.

<sup>46</sup> *See id.* at 84 (noting that law school teachers should get to know students in order to establish respect).

<sup>47</sup> *See id.* at 78 (explaining that most law school professors have no type of educational training when they are hired, and few law schools provide thorough assistance to help new teachers develop the necessary skills).

<sup>48</sup> *See id.* at 81 (noting the components of an effective learning environment).

and methods of teaching to their students,<sup>49</sup> use multiple methods of teaching and not focus too heavily on the Socratic and case methods of teaching,<sup>50</sup> use context-based teaching,<sup>51</sup> bring in practicing lawyers as well as judges to help teach their students,<sup>52</sup> use technology to enrich learning,<sup>53</sup> and establish learning centers.<sup>54</sup>

Chapter five discussed conducting courses that rely heavily on experiential education as the principal method of teaching.<sup>55</sup> Experiential learning “integrates theory and practice by combining academic inquiry with actual experience.”<sup>56</sup> The authors explained that there are “three domains of learning” all of which are used in educating students experientially.<sup>57</sup> These three domains are the cognitive domain,<sup>58</sup> the psychomotor or performance domain,<sup>59</sup> and the affective or feeling domain.<sup>60</sup> The authors also included some best practices for experiential courses, such as providing students with clear statements about the learning objectives of the course and how they will be assessed, focusing on learning objectives that can be efficiently achieved through experiential learning, using

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<sup>49</sup> *Id.* at 95 (“Students are more motivated to learn as part of a community of learners if they understand the long term and intermediate objectives of the program instruction.”)

<sup>50</sup> *Id.* at 97 (“There are many more tools for reaching students than one finds in the typical law school classroom.”).

<sup>51</sup> *Id.* at 104 (quoting Deborah Maranville, *Infusing Passion and Context Into the Traditional Law Curriculum Through Experiential Learning*, 51 J. Legal Educ. 51 (2001)) (“Adult learning theory suggests that our students will learn best if they have a context for what they are learning.”).

<sup>52</sup> *Id.* at 116 (noting that judges and practicing lawyers can help give students a practical view of the day to day tasks of attorneys).

<sup>53</sup> *Id.* at 117 (declaring that technology is part of the future of legal education).

<sup>54</sup> *Id.* at 119 (“Law schools could create model ‘learning centers’ that could address such [academic support and other special] needs in innovative, cost-efficient ways.”).

<sup>55</sup> *Id.* at 121 (“Our discussion of experiential education is primarily concerned with those courses in which experience is a significant or primary method of instruction . . .”).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 122.

<sup>58</sup> *Id.* (describing the cognitive domain as “increasingly complex sorts of understandings and analytical processes”).

<sup>59</sup> *Id.* (describing the psychomotor or performance domain as “complex patterns of physical or motor activity such as lawyering activities”).

<sup>60</sup> *Id.* (describing the affective or feeling domain as “values, attitudes, and beliefs”).

simulation-based courses,<sup>61</sup> using in house-clinical courses,<sup>62</sup> and providing students with externship courses.<sup>63</sup>

Chapter eight addressed evaluating the success of the program of instruction through methods such as: evaluating effectiveness on a regular basis,<sup>64</sup> using multiple methods to gather information about the method of instruction,<sup>65</sup> using student performance and outcome assessment results in their evaluations, meeting recognized standards for conducting assessments, using opinions from outside sources such as practicing lawyers and judges,<sup>66</sup> and using data gathered on educational outcomes to determine if “they are delivering an effective educational program.”<sup>67</sup>

Although many schools may already implement some or all of the seven categories recommended by *Best Practices*, law schools should continue making efforts to implement all categories of improvement because this will lead to better learning environment and outcomes for graduates of their programs.

### III. SYLLABI AS POWERFUL TOOLS TO SET THE SCENE FOR THE COURSE

A syllabus is the first document most students receive from a professor.<sup>68</sup> In its most basic form, a syllabus provides the course name, contact information for the professor, some type of calendar showing topics to be covered in the course, and how students will be graded. Many professors view a syllabus as a contract wherein the

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<sup>61</sup> *Id.* at 132 (describing simulation courses as those in which “a significant part of the learning relies on students assuming the roles of lawyers and performing law-related tasks in hypothetical situations under supervisions and with opportunities for feedback and reflection”).

<sup>62</sup> *Id.* at 139 (defining in-house clinics as “courses in which a significant part of the learning relies on students representing clients or performing other professional roles under the supervision of members of the faculty”).

<sup>63</sup> *Id.* at 146 (defining externships as “courses in which a significant part of the learning relies on students either representing clients or performing other professional roles under the supervision of practicing lawyers or observing or assisting practicing lawyers or judges at work”).

<sup>64</sup> *Id.* at 198.

<sup>65</sup> *Id.* at 199.

<sup>66</sup> *Id.* at 203.

<sup>67</sup> *Id.*

<sup>68</sup> Gerald F. Hess, *Humanizing Legal Education Symposium: Humanizing Syllabus: Collaborative Course Design: Not my Course, Not Their Course, but Our Course*, 47 WASHBURN L.J. 367 (2008).

professor states his expectations for the course and tells the students what they can and cannot do in order to receive a passing grade.

However, a syllabus can serve a far more powerful function that many professors overlook: it can show intentional course design on the part of the professor, outlining the goals, materials, assignments, methods, and evaluation to be used in the course.<sup>69</sup> A well-done syllabus will establish the progression of the course and foster in students a desire to learn the covered material.<sup>70</sup> Professors can display how different components of the class will come together to create the whole learning experience.<sup>71</sup> Further, studies have shown that students now favor “more detailed syllabi, clearly defined instructional objectives, and written guidelines, checklists, and instructions.”<sup>72</sup> Syllabi have been recommended as a way that law professors can guide first-year students into setting appropriate time-management goals in balancing effectively reading for class, completing course outlining, and attempting practice questions through the use of a detailed calendar that includes outlining and reviewing deadlines.<sup>73</sup>

#### IV. ASSESSING UNIVERSITY OF GEORGIA SCHOOL OF LAW CLINICAL COURSE OFFERINGS AS MEETING CRITERIA SYNTHESIZED FROM THE CARNEGIE REPORT AND *BEST PRACTICES* THROUGH EXAMINING COURSE SYLLABI

A syllabus can be an effective, powerful vehicle to convey to students in one document clear expectations, what practical skills will be taught, lessons aimed to assist the student in developing a set of values as an attorney, and how the individual lessons throughout the course connect to create a greater whole. Further,

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<sup>69</sup> *Id.* at 373.

<sup>70</sup> *Id.* at 374.

<sup>71</sup> See Christine P. Bartholomew, *Time: An Empirical Analysis of Law Student Time Management Deficiencies*, 81 U. CIN. L. REV. 897, 943 (2013) (describing use of syllabi to show the relationship between the parts and the whole of the course).

<sup>72</sup> Nelson Miller & Victoria Kremski, *Who Is the Customer and What Are We Selling? Employer-Based Objectives for the Ethical Competence of Law School Graduates*, 33 J. LEGAL PROF. 223, 228 (2009).

<sup>73</sup> See Jennifer M. Cooper, *Smarter Law Learning: Using Cognitive Science to Maximize Law Learning*, 44 CAP. U. L. REV. 551, 581–82 (2016) (describing the scheduling strategies new law students can learn to deal with transitioning to the methodology of law school).

syllabi of the University of Georgia School of Law Clinical Programs demonstrate the effective use of such a tool. The primary drawback to using syllabi alone in this assessment is that some classes may rely on additional material, such as clinic manuals and online learning sites, that do not show the full breadth of what the professor considers to be important components of what to learn in the class. However, consideration should be given to how to include all information in one place to allow for a more cohesive picture of the course components and how they fit together.

As of March 15, 2019, University of Georgia School of Law has eighteen clinical legal education offerings.<sup>74</sup> For purposes of this classification as a clinical legal education offering, these courses are “restricted to separate courses involving real experiences -- law clinics, externships and offerings using alternative models.”<sup>75</sup> Georgia offers seven law clinics: Appellate Litigation Clinic; Business Law Clinic; Community Health Law Partnership Clinic; Family Justice Clinic; Mediation Clinic; Veterans Legal Clinic; and Wilbanks CEASE Clinic.<sup>76</sup> Georgia offers seven externship-model programs: Atlanta Semester-in-Practice Clinic; Capital Assistance Project; Civil Externships; Corporate Counsel Externship; Criminal Defense Practicum; Prosecutorial Justice Program; and Washington, DC Semester-in-Practice Clinic.<sup>77</sup> Georgia offers four alternative-model programs: Economic Opportunity Clinic; Environmental Law Practicum; Practicum in Animal Welfare Skills (PAWS); and Public Interest Practicum.<sup>78</sup>

Particular focus in examining these syllabi was on whether:

1. Content knowledge, practical skills, professionalism, and ethics are addressed through traditional methods of readings and lectures, as well as other appropriate methods of instruction;

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<sup>74</sup> For more information on the history of clinical education at University of Georgia School of Law, see Alexander Scherr, Elizabeth Grant & Graham Goldberg, *Towards a Jurisprudence (and Pedagogy) of Access: A Reflection on 25 Years of the Public Interest Practicum*, 53 GA. L. REV. ONLINE 1 (2018).

<sup>75</sup> *Building on Best Practices*, *supra* note 2, at 162.

<sup>76</sup> *Clinics, Externships, and Experiential Learning Programs*, UNIVERSITY OF GEORGIA SCHOOL OF LAW, <http://www.law.uga.edu/clinics-externships-and-experiential-learning-programs> (last visited Mar. 25, 2019).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

2. The clinic takes steps to create a positive teaching environment that models best practices of conducting oneself in a law practice setting and using an appropriate level of professionalism;
3. Expectations and goals are clearly communicated in writing to students, including explaining why a particular concept is important; and
4. The clinic uses guest speakers, both from the community and from the faculty, as examples of attorneys who have developed knowledge, skills, or values that can foster growth in students and help students develop an attorney identity.

Clinical courses typically cover more practical skills and attorney values than substantive law, so fewer markers for developing the cognitive apprenticeship were sought than were markers for developing the practice and identity apprenticeships.

<b>Apprenticeship</b>	<b>Markers</b>
Cognitive	<ul style="list-style-type: none"> <li>- covers substantive law</li> <li>- final substantive paper, exam, or presentation required</li> </ul>
Practice	<ul style="list-style-type: none"> <li>- interviewing clients</li> <li>- counseling clients</li> <li>- negotiating outcomes</li> <li>- communicating with clients</li> <li>- communicating with colleagues</li> <li>- communicating with superiors</li> <li>- advocating for clients</li> <li>- preparing cases</li> <li>- synthesizing material for application</li> <li>- prioritizing cases and tasks</li> <li>- conducting legal research</li> </ul>
Identity	<ul style="list-style-type: none"> <li>- thoughtful reflection on material</li> <li>- ethical rules</li> <li>- rules of professionalism</li> <li>- attorney identity</li> <li>- guest speakers</li> <li>- clear expectations of students</li> <li>- self-care/stress management</li> </ul>

Each syllabus collected was carefully read to locate whether these markers shown in the chart above were present. Each author read the syllabi independently and drew her own conclusions. Where discrepancies existed, the syllabi were re-examined to determine whether the marker was present.

#### V. APPLICATION OF MARKERS TO COURSE SYLLABI, FINDINGS, AND RECOMMENDATIONS

The results of the clinic syllabi examination are shown in the chart below.

<b>Marker</b>	<b>Number of Syllabi with Marker</b>	<b>Percentage of Total Clinics*, **</b>
Covering substantive law	12	71
Containing final paper, presentation, or exam testing substantive law	9	53
Interviewing clients	10	59
Counseling clients	8	47
Negotiating outcomes	9	53
Communicating with clients	11	65
Communicating with colleagues	12	71
Communicating with superiors	8	47
Advocating for clients in adversarial situations	9	53
Preparing Cases	9	53
Synthesizing material for application	12	71
Prioritizing cases and tasks	5	29
Conducting legal research	13	76
Thoughtfully reflecting on material	14	82
Ethical rules	9	53

Rules of professionalism	8	47
Attorney identity	9	53
Guest speakers	8	47
Clear expectations of students	14	82
Self-care/Stress management	4	24

\* One clinic does not provide a syllabus to its students; that clinic has been excluded from calculations

\*\* Rounded to nearest whole percentage point

An ideal syllabus, meaning one that shows the course markers for each apprenticeship model, would meet the following criteria:

1. If the clinic incorporates substantive law instruction into its course, then the clinic also has a comprehension assessment on that substantive law through an exam, paper, or presentation; these expectations are explicitly outlined in the syllabus.
2. The clinic syllabus includes some reference to instruction on at least eight of the eleven markers that demonstrate practical skills are being taught.
3. The clinic syllabus includes some reference to instruction on at least five of the seven markers that demonstrate attorney values are being taught; the syllabus always includes stress management, thoughtful reflection, ethical rules, rules of professionalism, and clear expectations of students.

Out of the surveyed clinic syllabi:

1. Six clinics that incorporate substantive law instruction also test substantive law comprehension through an exam, paper, or presentation.

2. Eight syllabi included some reference to instruction on at least eight of the eleven markers that demonstrate practical skills are being taught; two syllabi included all eleven.

3. Seven syllabi included some reference to instruction on at least five of the seven markers that demonstrate attorney values are being taught; two syllabi included stress management, thoughtful reflection, ethical rules, rules of professionalism, and clear expectations of students.

Every syllabus included the basic requirements of a syllabus: course name, contact information for the professor, some type of calendar showing topics to be covered in the course, and grading methodology. The clinic syllabi that met few markers were syllabi using the premise of the “contract” format that “the less that is said then the easier it is” for all participants to agree to terms. Most syllabi included clear expectations of students, which meant a complete grading breakdown that included explanations of what assignments should involve or include, the attendance policy, the computer policy, and the code of conduct for the school.

Two clinics displayed four of twenty markers. While no clinic syllabus contained all twenty markers, one syllabus did have nineteen. The average number of markers on the clinic syllabi was eleven and the median number of markers on the clinic syllabi was twelve. Some of these markers were not appropriate for all types of clinics. Advocating for clients in adversarial situations is not within the realm of Mediation Practicum, Business Law Clinic, or the Semesters in Practice. Not covering substantive law or testing over that substantive law is also not a failure on the part of any clinic that does not choose to do so. Those clinics that do cover substantive law, however, should incorporate that knowledge in some way into their grading rubric. If the substantive law is important enough to teach, then it is important enough for the students to be assessed on their comprehension, whether that format be an exam, a paper, or a presentation.

Most syllabi also cover a wide range of practical skills, but clinics vary as to the amount of depth they will go into about these skills. While twelve clinics did reference synthesis of the different skills,

all clinic syllabi would benefit from more explicit connections of the parts of practice transforming into the practice of law. Some clinics, primarily externship placements, do not focus on teaching specific skills in the same way that in-house clinics do. However, externship models that are relying on the outside placements to teach these skills to students should be aware of the potential for inconsistent training occurring based on site supervisors' time constraints and inclination to train students in these practical skills.

The primary area in which syllabi could improve is on inclusion of markers that demonstrate teaching within the identity apprenticeship. Specifically, discussion of the differences between ethics and professionalism should be incorporated. Some attorneys may wish that the two are the same and many will use the terms interchangeably. The reality is there are attorneys that will do what is required of them, ethically, so as not to be disbarred, but will not do what would be best to do, professionally, so as to promote a spirit of collegiality. A simple demonstration of this would be what an attorney chooses to wear to court. An attorney is not required to wear a suit to court for a motion day calendar; an attorney can show up with workout clothes, should he choose. However, an attorney would be best advised to wear a suit because it demonstrates respect to the court, to the client, and to the system as a whole.

Only four syllabi included self-care and stress management, but ideally all syllabi cover this topic. Research has historically shown that those in the legal profession struggle with both mental health and substance use disorders.<sup>79</sup> Recent research continues to support these findings.<sup>80</sup> A 2016 study that surveyed 12,825 legal professionals regarding substance misuse and mental health disorders found "that being in the early stages of one's legal career is strongly correlated with a high risk of developing an alcohol use disorder . . . . [M]ental health concerns manifested on a similar trajectory to alcohol use disorders, in that they generally decreased as both age and years in the field increased."<sup>81</sup> This same study asked participants what barriers they encountered in seeking help:

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<sup>79</sup> See Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICT. MED. 46, 46 (2016).

<sup>80</sup> See *id.* at 52.

<sup>81</sup> *Id.* at 51.

both substance abuse and mental health disorder groups stated the barriers were “not wanting others to find out they needed help...and concerns regarding privacy and confidentiality.”<sup>82</sup> This study offered several options to help combat these pervasive issues, including efforts to normalize seeking help for issues and letting attorneys know they are not alone in feeling like they need professional help.<sup>83</sup> Professors can start increasing awareness for students while they are in law school, an environment that serves to bring out these issues for many.<sup>84</sup>

## VI. CONCLUSION

Through the use of syllabi, professors can demonstrate they are open to answering questions and providing a “safe” space, allowing students to become comfortable enough to ask when they need help with how to handle a particular situation, which will in turn lead to another teaching opportunity for the professor to teach skills and values to the student seeking assistance. There is a balance between educator and practitioner that clinicians have to strive for. Keeping a primary attitude that “in practice they will have to sink or swim so I am just going to throw them in the pool here” is to forget that students are beginning learners, and the students must be given the skills to swim before they can be expected to do so with ease.

Professors must remember that what students see and hear emphasized is what they will learn to be the most important components of the subject matter. By providing clear expectations of students, explicitly spelling out the individual lessons throughout the course connect to create a greater whole, demonstrating and training with practical skills, and incorporating lessons aimed to educate for the identity apprenticeship, students will better grow

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<sup>82</sup> *Id.* at 50.

<sup>83</sup> *See id.* at 52 (“The data reported here contribute to the fund of knowledge related to behavioral health concerns among practicing attorneys and serve to inform investments in lawyer assistance programs and an increase in the availability of attorney-specific treatment. Greater education aimed at preventions is also indicated, along with public awareness campaigns within the profession designed to overcome the pervasive stigma surrounding substance use disorders and mental health concerns. The confidential nature of lawyer-assistance programs should be more widely publicized in an effort to overcome the privacy concerns that may create barriers between struggling attorneys and the help they need.”).

<sup>84</sup> *See id.* at 48.

into well-rounded attorneys who are capable of far more than regurgitating centuries-old case holdings and floundering at what to do with that knowledge.