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**ENGAGING AND ASSESSING OUR STUDENTS**  
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***A Five-Lesson Framework for Reaping Dividends from  
Spontaneous Classroom Controversy***

**SESSION 1 WORKSHOP**  
**Thursday, June 2, 2011**  
**10:45 a.m.-12 noon**

**WORKSHOP MATERIALS**

- 1. Program Description**
  - **Learning Outcomes**
  - **Teaching Strategies**
  
- 2. Context for the  
Five-Lesson Framework**

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# WORKSHOP MATERIALS

## 1. Program Description

Spontaneous moments of classroom controversy often present unique opportunities to foster learning about the integrative character of professional judgment. Intentionally mining the synergistic potential of these multi-faceted moments can help students to cultivate the integrative awareness at the core of professional being. To show how, we offer a five-lesson framework through which to capitalize on the knowledge, skills, and values lessons inherent in such moments and will explore, through interactive exercises and a hypothetical moment of controversy, various strategies to actualize those lessons.

*Learning Outcomes.* We plan to begin the workshop with a taped re-enactment of a hypothetical moment of classroom controversy, which will become the centerpiece for both small and large group discussions. Additionally, workshop participants will be introduced to the five-lesson framework as a construct for understanding the learning outcomes that might be achieved by teaching to and through the moment.

*Teaching Strategies.* Then, through roleplays, critique and discussion, we will explore teaching strategies that can be used to facilitate learning of one or more of the five types of lessons inherent in the hypothetical moment of controversy. These include strategies that teachers might employ (a) *before* the controversial moment arises (such as introducing the class to the five-lesson approach, explicitly paving the way for controversy by discussing its importance and its likely appearance, and adopting discussion guidelines), (b) *during* the moment or in its immediate aftermath to help survey and stabilize the class, and (c) *after* the moment (such as direct questioning about the framework, abstracting through roleplays, methodological doubting and believing, reflective writing, and next-class reflection back).

## 2. Context for the Five-Lesson Framework

What follows is an edited excerpt from our draft article explaining the five-lesson framework and exploring its use to maximize the integrated learning opportunities inherent in spontaneous moments of controversy. Our goal is to provide a theoretical foundation for the framework and a larger context for the workshop exercises.

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The Carnegie Report<sup>1</sup> makes a compelling case that preparation for legal practice should involve learning experiences that help to integrate the three basic apprenticeships<sup>2</sup> or dimensions of

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<sup>1</sup> WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter the Carnegie Report or EDUCATING LAWYERS]. In 1999, the Carnegie Foundation for the Advancement of Teaching undertook a comparative study of

professional work — thinking,<sup>3</sup> performing,<sup>4</sup> and valuing<sup>5</sup> like a lawyer. As Carnegie confirmed: “The common problem of professional education is how to teach [this] complex ensemble of analytic thinking, skillful practice, and wise judgment on which each profession rests.”<sup>6</sup> From the

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professional education in clergy, law, engineering, nursing, and medicine. WILLIAM M. SULLIVAN, *WORK AND INTEGRITY: THE CRISIS AND PROMISE OF PROFESSIONALISM IN AMERICA* 30 (2d ed. 2005) [hereinafter *WORK AND INTEGRITY*]. At the heart of Carnegie’s study were “questions about the educational genesis of professional work and about understanding the cognitive, the technical, and the ethical aspects and their integration in practice.” *Id.* at x. What is often referred to as the “Carnegie Report” in the legal academy is the second volume to come out of this cross-disciplinary study. See The Carnegie Foundation for the Advancement of Teaching website, <http://www.carnegiefoundation.org/previous-work/professional-graduate-education> (last visited Apr. 19, 2011), noting the individual reports. CHARLES R. FOSTER, LISA DAHILL, LARRY GOLEMON & BARBARA WANG TOLENTINO, *EDUCATING CLERGY: TEACHING PRACTICES AND PASTORAL IMAGINATION* (2005); *EDUCATING LAWYERS* (2007); SHERI D. SHEPPARD, KELLY MACATANGAY, ANNE COLBY & WILLIAM M. SULLIVAN, *EDUCATING ENGINEERS: DESIGNING FOR THE FUTURE OF THE FIELD* (2008); PATRICIA BENNER, MOLLY SUTPHEN, VICTORIA LEONARD & LISA DAY, *EDUCATING NURSES: A CALL FOR RADICAL TRANSFORMATION* (2009); and MOLLY COOKE, DAVID M. IRBY & BRIDGET C. O’BRIEN, *EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY* (2010).

<sup>2</sup> The apprenticeship, the main educational vehicle for professional induction, is a teaching situation where the “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.” *EDUCATING LAWYERS*, *supra* note 1, at 26. See also *WORK AND INTEGRITY*, *supra* note 1, at 197 (describing the “crucial aspect of apprenticeship” as the “initiation into the wisdom of practice”). Thus, the route to professional expertise requires an important transformation: “Thinking like a student” must broaden into “thinking like an apprentice” to the domain (the legal profession). *EDUCATING LAWYERS*, *supra* note 1, at 27. As Carnegie observed: “[T]o become expert in a profession [requires] . . . complete involvement with learning new ways of thinking, performing, and understanding oneself.” *Id.* See also Gary L. Blasi, *What Lawyers Know: Lawyering Experience, Cognitive Science, and the Functions of Theory*, 45 *J. OF LEGAL EDUC.* 313, 316, 317-18 (1995) (using theories of cognitive science to uncover the “nature of lawyering expertise in matters beyond doctrine . . .”).

<sup>3</sup> The first dimension (the doctrinal, analytical, or cognitive apprenticeship) “focuses . . . on the knowledge and way of thinking of the profession.” *EDUCATING LAWYERS*, *supra* note 1, at 28. See also Judith Welch Wegner, *Reframing Legal Education’s “Wicked Problems,”* 61 *RUTGERS L. REV.* 867, 887 (2009) (“In short, students must learn ‘what counts’ by way of knowledge, and how to construct knowledge for themselves within this particular field.”)

<sup>4</sup> The second dimension (the practical, skills, or performance apprenticeship) focuses on “forms of expert practice shared by competent practitioners.” *EDUCATING LAWYERS*, *supra* note 1, at 28. See also Wegner, *supra* note 3, at 888 (positing that “legal education has not really embraced the need for students to learn to ‘do and act’”).

<sup>5</sup> The third dimension (the identity and purpose, ethical/social, or formative apprenticeship) focuses on “the purposes and attitudes that are guided by the values for which the professional community is responsible.” *EDUCATING LAWYERS*, *supra* note 1, at 28. See also *WORK AND INTEGRITY*, *supra* note 1, at 208 (describing the three apprenticeships); Wegner, *supra* note 3, at 888 (noting that “[t]aken together the three apprenticeships should lead students through the process of ‘professional formation’ but that legal education is not a field “adept” at the “important, but often invisible, integration process”).

The Carnegie Report uses various combinations of terms to describe the three apprenticeships, some of which provide additional insight into their meaning (especially the third). *EDUCATING LAWYERS*, *supra* note 1, at 8 (cognition, action, intention), 9 (understanding, skill, meaning), 10 (formal knowledge, know-how, intention), 11-12 (legal knowledge, practice, moral bearing), 12 (conceptual knowledge, skill, moral discernment), 12 (legal theory, practice needs, professional responsibility), 13 (theoretical knowledge, practical knowledge, formation or professional identity), 13-14 (legal analysis, practical skill, professionalism/ethics/social responsibility/formation), 22 (thinking, performing, conducting oneself as a professional), 27 (analytical thinking, skillful practice, wise judgment), 27 (thinking, performing, behaving), 33 (cognitive, practical, formative), 34 (theory, practice/technique, ethical engagement), 81 (knowledge, know-how, ethical judgment), 120 (knowledge, skill, purpose), 147 (cognitive, practical, ethical/social), and 163 (conceptual knowledge, practical competence, professional identity and purpose).

<sup>6</sup> *Id.* See also Lee S. Shulman, *Making Differences: A Table of Learning*, *TEACHING AS COMMUNITY PROPERTY: ESSAYS ON HIGHER EDUCATION* 67-68, ed. Pat Hutchings (2004) (“To become a professional, one must learn not only to think in certain ways but also to perform particular skills, and to practice or act in was consistent with the norms, values,

learner's perspective, "students must learn to 'think and know,' 'do and act,' and 'believe and be' while wrapping these dimensions into a meaningful whole."<sup>7</sup> Thus, the basic challenge is to "[bring] the disparate pieces of the student's educational experience into coherent alignment."<sup>8</sup> This challenge has not been ignored by the legal academy. In recent years especially, many law schools have attempted to foster learning experiences that integrate legal doctrine, lawyering skills, and professional values. These efforts span the spectrum from broad-based curricular change to the addition or revision of individual courses.<sup>9</sup>

Not to be overlooked, however, are the immediate integrative learning<sup>10</sup> opportunities presented by unexpected moments of classroom controversy. Many of these moments — whether they involve issues of race, gender, ethnicity, class, disability, sexual orientation, religion, patriotism, or other sensitive subjects — provide priceless opportunities for teaching critical lessons pertinent to becoming self-reflective, responsible, and well-rounded lawyers. Of course, these moments of controversy can be diverting and disruptive. Wishing them away, however, is not the answer. If handled with intention and care, they can be rich with learning potential, and have special value as unique pedagogic platforms for helping students to understand the integrative character of professional judgment and behavior.

For our purposes, the term "controversial moment" (or any of its close variations) refers to an unexpected comment made by a student in class that either generates heated discussion with or

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and conventions of the profession. Thus to learn to be a lawyer one needs to *think* like a lawyer, *perform* like a lawyer, and *act* like a lawyer.") (italics in original).

<sup>7</sup> Wegner, *supra* note 3, at 887.

<sup>8</sup> EDUCATING LAWYERS, *supra* note 1, at 27-28. See also WORK AND INTEGRITY, *supra* note 1, at 195-96 (noting that the "greatest challenge" to professional education is the "lack of integration among the parts," with the "academic model of thought and teaching" devaluing the development of practical skills and professional judgment and "push[ing] the professions' social contract out of students' sight during the critical years of schooling").

<sup>9</sup> See, e.g., *Washington and Lee's New Third Year Reform*, available at <http://law.wlu.edu/thirdyear/> (offering a "third year . . . of four components that blend the practical and the intellectual into a diverse range of simulated and real practice-oriented experiences") (last visited Apr. 19, 2011). See also Deb Quentel, *Teaching Law Students Using SIMPLE (SIMulated Professional Learning Environment)*, available at <http://lawteaching.org/conferences/2010/handouts/6c-TeachingSIMPLE.pdf> at p. 1 (last visited on Apr. 19, 2011) ("Simulations are an effective, alternative method to traditional law school teaching and can achieve some of the teaching objectives and deficits noted in the Carnegie Report. A well-written simulation can hone a single skill, reinforce the mastery of a single concept or yield a more complex "capstone" learning experience for students.") For a comprehensive survey of educational reforms undertaken by law schools in the wake of or relevant to the Carnegie and BEST PRACTICES reports, see Michael Hunter Schwartz, Chart of Legal Education Reform, available at <http://lawteaching.org/publications/ILTLchartoflegaleducationreform200905.pdf> (last visited Apr. 19, 2011). See also ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 97 (2007), another influential report encouraging integration of the three apprenticeships.

<sup>10</sup> Our review of the integrative learning literature reveals no universally-accepted usage of the term "integrative learning" or agreement about what, if anything, distinguishes "integrative" from "integrated" education. As Hutchings notes, "there's no real consistency in how the term [integrative learning] is used." Pat Hutchings, *Building Habits – And Habitats – Of Integrative Learning*, Plenary Address, Assoc. of American Colleges and Universities Network Conference on Integrative Learning, Oct. 2005. Indeed, teaching and learning scholars often use the terms "integrative" and "integrated" somewhat interchangeably. Conversation with Dr. Tami S. Carmichael, Director of Univ. of North Dakota's Integrated Studies Program, Sept. 15, 2010; see generally Julie Thompson Klein, *Integrative Learning and the Scholarship of Teaching and Learning*, OTL NEWSLETTER (Feb. 2009) at [http://www.lib.wayne.edu/blog/otl\\_newsletter/?p=746](http://www.lib.wayne.edu/blog/otl_newsletter/?p=746) (citation omitted) (last visited on Apr. 19, 2011) (tracing the history of "integrative learning" and related terms).

reaction (expressed or unexpressed) by other classroom participants, or has the capacity to do so.<sup>11</sup> The critical features of such moments are their student origin, sudden appearance, charged nature, substantive complexity, and creation of some sort of dis-ease, disruption, or disequilibrium in the learning environment. They are, in essence, student-generated hypotheticals with a contentious edge that provide powerful learning platforms precisely because of their genesis, unexpectedness, impact, contextuality, and multi-faceted nature.

Our theory is that spontaneous moments of classroom controversy present naturally recurring and ready-made opportunities to teach law students professional knowledge, skills, and values in an integrated fashion.<sup>12</sup> In particular, they often offer important lawyering lessons in that they:

- (1) raise challenging, unclear, or complicated questions of *substantive law* that test a student's knowledge of, and ability to apply, legal principles (thus offering potential **Law and Legal Analysis Lessons**);
- (2) involve socially significant *policy* issues that require balancing or harmonizing competing social values and test a student's grasp of the relationship between law, policy, and justice, of the human dimension of legal strictures, and of the social consequences of legal action (thus offering potential **Policy and Socio-Justice Lessons**);
- (3) rub up against deeply-held views that resist reasoned analysis and test a student's *critical inquiry* skills (thus offering potential **Critical Inquiry Lessons**);
- (4) engender disagreement or tension because of their polarizing nature and test a student's ability to *communicate*, advocate, or represent effectively, to maintain viable professional *relationships*, and to understand the consequences of things said or done on others (thus offering potential **Communication and Relational Lessons**); and/or
- (5) touch the core of being and belief as well as the overlap between professional and personal self-conceptions and test a student's ability to confront issues of *professional ethics, identity, and aspiration* (thus offering potential **Ethical and Professionalism Lessons**).

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<sup>11</sup> Compare spontaneous controversy with structured controversy, a term of art describing the well-established technique of teaching planned controversy. See generally DAVID W. JOHNSON & ROBERT T. JOHNSON, CREATIVE CONFLICT (1987); DAVID W. JOHNSON & ROBERT T. JOHNSON, CREATIVE CONTROVERSY: INTELLECTUAL CHALLENGE IN THE CLASSROOM (3rd ed. 1995).

<sup>12</sup> For this article, which explores integration in a legal education context, we endorse Mary Taylor Huber's view of integrative learning as "[f]ostering the intellectual art of making, recognizing and evaluating sound, meaningful connections across different concepts, cases or experiences . . . [along with] an appreciation of context or engaging theory with practice." Mary Taylor Huber, *Integrative Learning as An Intellectual Art*, Closing Plenary Panel, Ass'n of American Colleges and Universities Network Conference on Integrative Learning (Oct. 2005). Thus, when we refer to an "integrative" or "integrated" learning experience, we mean one that offers students the opportunity to see or make connections between analytic thinking, skillful practice, and/or professional values in the context of solving legal problems or addressing legal situations critically and creatively. See also Hutchings, *supra* note 10 at 2 (characterizing integrative learning as a "big tent" and urging "keep[ing] it that way – with plenty of room for all of us who think that higher education could do a better job of helping students put the pieces of their education together in more powerful ways.")

Thus, in the Carnegie sense, these moments implicate the cognitive, practical, and ethical-social skills and sensibilities central to effective legal problem solving and professional development. Mining them for maximal learning effect — through an integrative learning lens that emphasizes connecting concepts, applying knowledge in new contexts, and discerning larger meaning for both lawyer and client — can help students to become more “integratively-aware.”

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Fostering growth from inveterate disagreement is not easy to do. In our experience, controversial subjects are difficult to manage and often intensify or magnify the underlying problems that we already have in communicating authentically and responsibly — problems traditionally reinforced in law school by over-concentration on the analytical at the expense of the emotional and relational, two critical dimensions of discussing difficult issues openly and productively. Given this culture, it may be difficult to capitalize on the teaching opportunities presented by controversy (especially the spontaneous kind). Professors may find themselves stuck in the muck of the moment — unless they bring a different pedagogic consciousness to the task.

We propose that looking at controversial moments integratively will help in teaching to and through them. Their kaleidoscopic character, coupled with their intensity, is the source of this learning potential. Because they often involve deep feelings (touching students’ learning nerves and tapping into their personal experiences), debatable positions or divisive ideas (pushing students up against the boundaries of polite expression and interaction), and fundamental policy concerns (challenging students to balance personal preferences with legal strictures and professional demands), heated moments can be used to demonstrate the discipline required to address thorny situations with equanimity and critical insight. As such, they can provide discrete integrative learning opportunities through which students can “link the learning of legal reasoning more directly with consideration of the historical, social and philosophical dimensions of law and the legal profession. . . . [and, in this context] pursue a fuller ‘theorizing of legal practice’ including their own future roles and responsibilities.”<sup>13</sup> In this way, controversial moments are illustrations on a small scale of how to think about and implement integrated learning strategies on a large scale throughout the law school curriculum, even — and especially — in non-controversial moments. They are, in effect, prototypical and quintessential integrative teaching and learning experiences with benefits beyond their boundaries.

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Ultimately, and over time, students will need to integrate and internalize all five lessons in order to develop for themselves a framework for approaching legal problems consistent with the obligations of their professional role and personal values — issues sharpened in meaning and feeling by the emotional power generated by controversy. For example, students, in discussing the sensitive legal, social, and interpersonal issues generated by a controversial moment, might need to

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<sup>13</sup> EDUCATING LAWYERS, *supra* note 1, at 194.

employ critical thinking skills to surface, explore, and, if need be, challenge, their professional assumptions about a lawyer's role in society as well as their personal assumptions about the subject at hand. They will also need to focus, with self-conscious attention, on their skills of communication — including their abilities to listen, to ask clarifying questions, and to present legal conclusions in ways that will enable them to be heard and considered, especially by others who disagree. These moments are also useful for illustrating that a non-response is not consequence-free, and may even exacerbate the emotions surfaced by the controversy.

In the end, we hope to show that unexpected controversy offers the teacher an opportunity, in a realistic context of heightened emotion and interpersonal consequence, to explore the critical components of integrative learning. The five lessons provide a platform for encouraging students to make intentional connections between different concepts and skills, to apply what they know to new situations, and to make collective sense of new experiences in both professional and personal terms. The end result should be learning greater than the sum total of any individual lesson(s) as students begin to see the interrelationships between each lesson and come to create for themselves a professional orientation or schema, grounded in lawyering values, through which to process new situations they encounter.

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