

SEEKING INTEGRITY: LEARNING INTEGRATIVELY FROM CLASSROOM CONTROVERSY

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The need is, in some fashion, for an integration of the human and the artistic with the legal. Not an addition merely; an integration.

— Karl N. Llewellyn¹

O moments big as years!

— John Keats²

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1. Karl N. Llewellyn, *On What is Wrong with So-Called Legal Education*, 35 COLUM. L. REV. 651, 663 (1935).

2. THE OXFORD DICTIONARY OF QUOTATIONS 286 (2d ed. 1959) (quoting John Keats, *Hyperion: A Fragment, Book I*, BARTLEBY.COM, <http://www.bartleby.com/126/49.html> (last visited Nov. 20, 2012)).

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INTRODUCTION

The Carnegie Report³ makes a compelling case that preparation for legal practice should involve learning experiences that help to integrate the

3. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007) [hereinafter *EDUCATING LAWYERS*]. In 1999, the Carnegie Foundation for the Advancement of

three basic apprenticeships⁴ or dimensions of professional work—thinking,⁵ performing,⁶ and valuing⁷ like a lawyer.⁸ As Carnegie confirmed: “The

Teaching undertook a comparative study of professional education in law, theology, engineering, medicine, and nursing. 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.” Lee S. Shulman, *Foreword to 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 *Professional & Graduate Education*, THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, <http://www.carnegiefoundation.org/previous-work/professional-graduate-education> (last visited Nov. 6, 2012) (listing the Foundation’s reports for the different disciplines). See also ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 97-100* (2007) [hereinafter *BEST PRACTICES*] (urging integration of theory, doctrine, and practice in the law school curriculum).

4. 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 3, at 26. The route to professional expertise requires “complete involvement with learning new ways of thinking, performing, and understanding oneself.” *Id.* at 27.

5. The first dimension (the doctrinal, analytical, or cognitive apprenticeship) “focuses . . . on the knowledge and way of thinking of the profession.” *Id.* 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.”).

6. The second dimension (the practical, skills, or performance apprenticeship) focuses on “forms of expert practice shared by competent practitioners.” EDUCATING LAWYERS, *supra* note 3, at 28; see also Wegner, *supra* note 5, at 888 (positing that “legal education has not really embraced the need for students to learn to ‘do and act’”).

7. 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 3, at 28; see also Wegner, *supra* note 5, 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 th[e] important, but often invisible, integration process”); LEE S. SHULMAN, *Making Differences: A Table of Learning*, in *TEACHING AS COMMUNITY PROPERTY: ESSAYS ON HIGHER EDUCATION* 64, 67-68 (Pat Hutchings ed., 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 ways consistent with the norms, values, 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.”). The Carnegie Report uses various combinations of terms to describe the three apprenticeships. *E.g.*, *id.* at 9 (understanding, skill, meaning); *id.* at 10 (formal knowledge, know-how, intention); *id.* at 12 (conceptual knowledge, skill, moral discernment); *id.* at 13 (theoretical knowledge, practical knowledge, formation or professional identity); *id.* at 13-14 (legal analysis, practical skill, professionalism/ethics/social responsibility); *id.* at 27 (thinking, performing, understanding oneself); *id.* at 27 (analytical thinking, skillful practice, wise judgment); *id.* at 33 (cognitive, practical, formative); *id.* at 34 (theory, practice/technique, ethical engagement); *id.* at 81 (knowledge, know-how, ethical judgment); *id.* at 120 (knowledge, skill, purpose); *id.* at 147 (cognitive, practical, ethical/social).

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.”⁹ From the 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.”¹⁰ The basic challenge is to “bring[] the disparate pieces of the student’s educational experience into coherent alignment.”¹¹ 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.¹²

8. For detailed catalogues of the types of doctrines, skills, and values that inform a lawyer’s work, see, for example, BEST PRACTICES, *supra* note 3, at 65-91 (describing the attributes of effective, responsible lawyers); AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 138-221 (1992) (commonly known as the MacCrate Report) (describing the fundamental lawyering skills and values of the profession).

9. EDUCATING LAWYERS, *supra* note 3, at 27.

10. Wegner, *supra* note 5, at 887.

11. EDUCATING LAWYERS, *supra* note 3, at 27-28. See also WORK AND INTEGRITY, *supra* note 3, 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”). Cf. BEST PRACTICES, *supra* note 3, at 97-98 (positing reasons for the lack of integrated learning approaches in legal education).

12. E.g., EDUCATING LAWYERS, *supra* note 3, at 34-43 (describing City University of New York’s integrated approach to the three-year curriculum and New York University’s first year lawyering program); *Washington and Lee’s New Third Year Reform*, WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW, <http://law.wlu.edu/thirdyear/> (last visited Nov. 6, 2012) (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”); Earl Martin & Gerald Hess, *Developing a Skills and Professionalism Curriculum-Process and Product*, 41 U. TOL. L. REV. 327, 333-48 (2010) (describing the creation of Gonzaga University School of Law’s integrated required curriculum); Stephen Gerst & Gerald Hess, *Professional Skills and Values in Legal Education: The GPS Model*, 43 VAL. U. L. REV. 513, 526 (2009) (describing the General Practice Skills course at Phoenix School of Law required of all third year students to “[help] orient students to the profession” through the practice of “skills and values essential to attorneys”); Patricia E. Salkin & John R. Nolan, *Practically Grounded: Convergence of Land Use Law Pedagogy and Best Practices*, 60 J. LEGAL EDUC. 519, 519-20 (2011) (illustrating the importance of teaching land use law with a “new . . . paradigm” based upon “interdisciplinary knowledge, a careful integration of core doctrinal subjects areas, proficiency with an array of practical skills, and awareness of ethics and appropriate professionalism”); see also EDUCATING LAWYERS, *supra* note 3, at 145-61 (examining the continuum of curricular strategies for uniting the three apprenticeships in light of existing practices and “the overall formative purpose of law school”); NELSON MILLER & VICKIE EGGERS, *TEACHING LAW: A FRAMEWORK FOR INSTRUCTIONAL MASTERY* 69-77 (2010)

Not to be overlooked, however, are the immediate integrative learning¹³ opportunities presented by unexpected moments of classroom controversy. Many of these moments—whether they involve issues of race, gender, ethnicity, socio-economic status, disability, sexual orientation, religion, patriotism, or other sensitive subjects—provide a vehicle for teaching critical lessons pertinent to becoming self-reflective, well-rounded, and responsible lawyers. Of course, these moments can be diverting and disruptive. But if handled with intention and care, they can be rich with learning potential and have special worth as unique pedagogic platforms for helping students to understand the integrative character of professional judgment and behavior.¹⁴

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

(suggesting ways to integrate knowledge, skills, and ethics, whether by mixing distinct courses, encouraging co-curricular modules that focus on service learning, or modifying existing courses or course practices).

13. For a discussion of integrative learning, see *infra* text accompanying notes 37-63 (synthesizing pertinent teaching and learning literature). Our review of that literature reveals no universally-accepted usage of the term “integrative learning” or agreement about what, if anything, distinguishes “integrative” from “integrated” education. As Hutchings reiterates, “there’s no real consistency in how the term [integrative learning] is used.” Pat Hutchings, The Carnegie Found. for the Advancement of Teaching, Plenary Address at the Association of American Colleges and Universities Network Conference on Integrative Learning: Building Habits—And Habitats—Of Integrative Learning 2 (Oct. 2005) [hereinafter Building Habits], available at gallery.carnegiefoundation.org/ilp/uploads/Hutchings-building_habitats.pdf. Teaching and learning scholars often use the terms “integrative” and “integrated” somewhat interchangeably. Conversation with Dr. Tami S. Carmichael, Director, Univ. of North Dakota’s Integrated Studies Program, in Grand Forks, N.D. (Sept. 15, 2010); see Julie Thompson Klein, *Integrative Learning and the Scholarship of Teaching and Learning (SoTL)*, OTL NEWSLETTER (Feb. 2009), http://www.lib.wayne.edu/blog/otl_newsletter/?p=746 (tracing the history of “integrative learning” and related terms). For this article, an “integrative” or “integrated” learning experience is one that offers the opportunity to 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 *infra* text accompanying notes 37-55; Building Habits, *supra*, at 3 (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.”).

14. In their instructive work on multiracial learning communities, see *infra* text accompanying notes 123-34, Susan Sturm and Lani Guinier have observed in similar settings that [p]resenting conflict as a learning opportunity also emboldens the teacher to take more risks in the classroom. She begins to worry less about “managing” difficult interactions and to focus more on using the unanticipated as an occasion for further reflection. Learning from conflict invites the unpredictable, counsels patience, and encourages persistence in ferreting out what is often unsaid but still thought. Surfacing rather than avoiding conflict can generate a sense of freedom. It is as if danger no longer lurks behind students’ questions and mistakes.

Susan Sturm & Lani Guinier, *Learning from Conflict: Reflections on Teaching About Race and Gender*, 53 J. LEGAL EDUC. 515, 546 (2003).

either generates heated discussion or reaction (expressed or unexpressed), or has the capacity to do so.¹⁵ These moments are, in essence, student-generated hypotheticals with a contentious edge that create some sort of disruption in the learning environment. Given their student origin, sudden appearance, real life impact, and multi-faceted character, they are ready-made opportunities to truly engage students and to explore professional knowledge, skills, and values in an integrated fashion. In the Carnegie sense, they implicate the cognitive, practical, and ethical-social skills and sensibilities central to effective legal problem-solving and professional development. Exploring them through a lens that emphasizes three crucial aspects of integrated learning—connecting concepts, applying knowledge in new contexts, and discerning larger meaning for both lawyer and client—can help students to become more “integratively-aware,” an awareness at the core of professional being.

But fostering growth from inveterate disagreement is not easy to do. In our experience, controversial subjects are difficult to manage and often intensify the underlying problems 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. Given this culture, it can be difficult to capitalize on the teaching opportunities presented by spontaneous controversy. Teachers may find themselves stuck in the moment—unless they bring a different pedagogic consciousness to the task.

This article targets that consciousness. We propose that looking at controversial moments intentionally and integratively will help in teaching to and through them. Their kaleidoscopic character, coupled with their intensity, is the source of their learning potential. Because they often involve deep feelings (tapping into students’ 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 legal strictures, personal preferences, 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

15. Compare spontaneous controversy with structured controversy, a term describing the well-established technique of teaching planned controversy. *E.g.*, David W. Johnson & Roger T. Johnson, *Critical Thinking Through Structured Controversy*, 45 *EDUC. LEADERSHIP* 58, 59-61 (1988); *see also* DAVID W. JOHNSON, ROGER T. JOHNSON & KARL A. SMITH, *ACTIVE LEARNING: COOPERATION IN THE COLLEGE CLASSROOM* 2:22-23 (3d ed. 2006) (describing structured academic controversies).

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.”¹⁶

In this way, controversial moments are especially useful for releasing the formative power of the third dimension of professional work and promoting synergistic realizations about the meaning and communication of legal concepts.¹⁷ Moreover, with its emphasis on integrity and the “self in relation,” an integrative approach to spontaneous controversy can help inspire a broader sense of professional aspiration as well as a deeper appreciation of the public service imperative.¹⁸ “Through learning about . . . different aspects of professional knowledge and beginning to practice them,” the Carnegie Report opines, “the novice is introduced to the meaning of an integrated practice of all dimensions of the profession, grounded in the profession’s fundamental purposes.”¹⁹ In turn, these connections may spur a more nuanced understanding of professional integrity—a critical goal of an integrative approach to legal education.

This article proceeds in three parts. Part I starts with a hypothetical moment of classroom controversy, followed by a discussion of the pedagogic and professional significance of confronting controversy. Then to show how controversial moments can double as integrative learning opportunities, we explore basic integrative learning principles and suggest the use of a five-lesson framework to assist teacher and students in identifying the possible learning outcomes to be achieved with an integrative approach. Part II offers a suggested set of teaching and learning strategies to help actualize the potential integrative lessons inherent in heated moments. Part III muses briefly on the larger implications and

16. EDUCATING LAWYERS, *supra* note 3, at 194 (footnote omitted).

17. See WORK AND INTEGRITY, *supra* note 3, at 29-30 (noting that the “third dimension of professional education . . . typically receives the least attention in the formal curriculum” but “holds the greatest promise for integrating the whole educational experience, permeating its currently disparate parts with explicit concern for developing in students the capacity and disposition to perform in accordance with the best standards of a field in a way that serves the larger society”); *id.* at 209 (noting that “it is the third apprenticeship through which the student’s professional self can be most broadly explored and developed”); EDUCATING LAWYERS, *supra* note 3, at 13, 28, 88, 121, 128 (highlighting the unifying effect of the third apprenticeship); SHULMAN, *supra* note 7, at 68 (“*Acting* is more than knowing something or performing well; it seems to involve the development of a set of values, commitments, or internalized dispositions. It reminds me of what theological educators talk about as *formation*—the development of an identity that integrates one’s capacities and dispositions to create a more generalized orientation to practice.”).

18. See EDUCATING LAWYERS, *supra* note 3, at 28.

19. *Id.*

ultimate consequences of using an integrative learning approach in times of both “war” and “peace” in the classroom.

Ultimately, this article attempts to provide both theoretical and practical assistance in maximizing the learning potential inherent in difficult classroom moments. But perhaps most importantly, it attempts to show the meaning and significance of an integrative approach to learning about lawyering by seeing these moments as vehicles to reinforce that potential. 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 in non-controversial moments. They can be, in effect, prototypical integrative teaching and learning experiences with benefits beyond their boundaries. Moments as microcosms.

I. CONTROVERSY AS CRUCIBLE: WHY CONTROVERSIAL MOMENTS CAN PROVIDE RICH INTEGRATED LEARNING EXPERIENCES

A. *A Hypothetical Moment of Spontaneous Controversy*

To illustrate the pedagogic vitality of spontaneous controversy, we offer a hypothetical but representative moment, this one in an Employment Law course. Under consideration is Title I of the Americans with Disabilities Act (ADA),²⁰ which prohibits employers from discriminating against qualified individuals with disabilities²¹ and requires them to make reasonable accommodations for such employees unless doing so would cause an undue hardship to the employer.²² The class has been studying the ADA for several days, discussing the definitions of the statutory terms and elements necessary to make out a *prima facie* claim of discrimination under Title I. This particular class session is focused on the reasonable accommodation and undue hardship provisions in the statute and the regulations.

20. 42 U.S.C. §§ 12101-12117 (2006 & Supp. III 2009).

21. The ADA defines a “disability” as: “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” 42 U.S.C. § 12102(2) (2006). Under the Title I regulations, “[t]he term ‘qualified,’ with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position.” 29 C.F.R. § 1630.2(m) (2012).

22. See 42 U.S.C. § 12112(b)(5)(A) (2006); 29 C.F.R. § 1630.4 (2012) (prohibiting discrimination on the basis of disability); 29 C.F.R. § 1630.9 (2012) (stating that failure to provide reasonable accommodation constitutes discrimination absent undue hardship).

To begin class, the professor posits a hypothetical concerning a valued employee of a publishing company who is undergoing chemotherapy as part of her cancer treatment. She has reacted poorly to the treatment and coming into the office is extremely difficult for her. Accordingly, she has requested, as an accommodation, to work out of her home for the foreseeable future. The employee is an editor and one of her job duties is to attend weekly staff meetings.

The legal question is whether the ADA requires the employer to grant the employee's request to telecommute.²³ The professor asks the class to analyze that issue under the ADA's reasonable accommodation and undue hardship provisions.²⁴ She starts by asking the students to consider the essential functions of the position, and to brainstorm possible accommodations that would enable the employee to perform those functions, including the mandatory weekly meetings. Students generate several accommodation options for the meetings, suggesting that the employee could participate remotely by conference call or Skype, or that the staff could hold the meetings at her home, which is about a five-minute walk from the office.

It is this last idea that activates Jennifer, who immediately raises her hand and states: "I think this is a terrible idea. If I worked at this company, I wouldn't want to have to go to some coworker's house to do my job. What if that employee had a lifestyle that I'm not comfortable with? I'm pretty religious, and I would not want to be forced to deal with something like that." A tense silence grips the room. Caitlin, an openly gay student, shakes her head slowly in disapproval. Other students either look down or become wide-eyed with surprise. After a few seconds, Caitlin, looking directly at Jennifer, says, "I can't believe you just said that. Are you really that homophobic?"

An unsettling moment for most teachers and students. It is fraught with difficulty and discomfort, especially given Jennifer's unexpected focus on "lifestyle," rather than disability, and the heightened emotions of the interaction. But this is how controversial moments arise and why they are so rich to explore from a teaching and learning perspective.

In urging that exploration, we start from the premise that lawyers have an obligation to address controversial subjects in moments like this, and to deal with them respectfully and productively. This is especially important given that these types of issues often implicate the social responsibility of the legal profession. The privilege of lawyering confers a concomitant

23. See *Work at Home/Telework as a Reasonable Accommodation*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <http://www.eeoc.gov/facts/telework.html> (last modified Oct. 27, 2005).

24. See *supra* note 22.

responsibility to take on some of the most pressing and perplexing social issues of our time, and lawyers should be the standard-bearers for thoughtful, reasoned discourse about intractable legal and social problems.²⁵

Controversial moments also have a notice function. They make manifest problems inherent in the more traditional approach to legal education, which does not always provide intentional or supportive learning environments for tackling sensitive issues. As such, these moments serve as flashpoint reminders of the strongly-held views that students, like Jennifer and Caitlin, naturally carry into the classroom and may find difficult to reconcile with the more analytical approach that dominates the law school experience. These moments help make visible the areas where the professional and personal cross or where critical thinking and emotional reacting collide, and often implicate the need for exploring alternative ways of thinking or resolving disagreements. To avoid or minimize them does a disservice to our students, who in practice, must regularly confront controversy and learn to identify, regulate, or activate the personal and emotional content of their professional responses.

For these reasons, it is important not only to have conversations about controversial issues in law school, but also to teach students *how* to have those conversations.²⁶ Learning how to handle these moments is critical to the civil discourse and mutual respect that should be at the heart of lawyering.²⁷ This is particularly true now. In recent years, commentators across disciplines have noted that “[o]ur own democracy needs intellectual debate, but increasingly we lack the inclination and skills to have it. Like

25. See DIANA E. HESS, *CONTROVERSY IN THE CLASSROOM: THE DEMOCRATIC POWER OF DISCUSSION* 5, 173 (2009) (arguing that “teach[ing] all young people to engage in high-quality public talk about controversial political issues” is vital to democracy and that “[p]eople in the United States should be in favor of hearing the other side [of issues] because the consequences of not doing so are so dangerous—to our own thinking, to the decisions we make about how to solve the public’s problems, and to democracy itself.”). See also Parker J. Palmer, *A New Professional: The Aims of Education Revisited*, *CHANGE: THE MAGAZINE OF HIGHER LEARNING*, Nov.-Dec. 2007, at 1, 3 (observing that the “new professional” is “a person who is not only competent in his or her discipline but has the skill and the will to deal with the institutional pathologies that threaten the profession’s highest standards.”), available at <http://www.changemag.org/Archives/Back%20Issues/November-December%202007/full-new-professional.html>.

26. Cf. DIANA E. HESS, *supra* note 25, at 5-6.

27. As Robin Wellford Slocum has written:

Managing conflict is another emotional competency skill that is part-and-parcel of the typical lawyer’s daily life, yet perhaps no other competency requires greater skill or a greater understanding of human behavior. . . . Many students graduate from law school with almost no skill-set that would help them maintain (or regain) their emotional equilibrium when they become emotionally reactive, or defuse emotionally charged situations with clients or other lawyers.

Robin Wellford Slocum, *An Inconvenient Truth: The Need to Educate Emotionally Competent Lawyers*, 45 *CREIGHTON L. REV.* 827, 838, 840 (2012) (footnote omitted).

students within their homogenous peer groups, American citizens increasingly inhabit intellectually gated communities. Untested and unchallenged, ideas devolve into opinion: ‘political discourse’ becomes a contradiction in terms.”²⁸ Of course, it is perfectly acceptable—even desirable—to disagree and have strongly divergent opinions about difficult subjects. But learning how to talk about those differences and to explore the assumptions underlying them are professional imperatives.²⁹

B. The Unique Integrative Learning Platform Provided by Spontaneous Controversy

Most importantly for the thesis of this article, controversial moments, like the Jennifer-Caitlin exchange, also provide opportunities to reinforce, in powerful ways, the integrated nature of professional thought and action. There are at least four reasons for this:

First, these moments are *student-generated* and often come from deep places inside the student. And, because of their potential to provoke or incite, these kinds of comments may also *affect other students deeply*, often memorably so. Thus, they may engender the type of engagement in both “sender” and “receiver” that facilitates deep learning, implicating both mind and emotion.³⁰ Almost by definition, these are issues students care about, either because they felt the need to make the comment in the first place or because the comment, once made, can have a powerful impact. Either way, “caring is crucial”³¹ to learning.

28. Mark C. Carnes, *Inciting Speech*, CHANGE: THE MAGAZINE OF HIGHER LEARNING, Mar.-Apr. 2005, at 6, 11.

29. See Steven Rosendale, *The Subject of Privilege/The Privileged Subject in the Classroom*, in *POLITICAL MOMENTS IN THE CLASSROOM* 83 (Margaret Himley ed., 1997) (“Helping students to rationally reflect upon the assumptions they hold and employ in argument is an important part, not only of enabling informed exercise of their civic voices, but also of students’ coming to know more about themselves, about the ways in which ideology speaks to and through them, and, in a sense, defines their very subjectivity in various ways.”).

30. See MARY TAYLOR HUBER & PAT HUTCHINGS, *INTEGRATIVE LEARNING: MAPPING THE TERRAIN* 2 (2004) [hereinafter *MAPPING THE TERRAIN*], available at <http://www.carnegiefoundation.org/publications/integrative-learning-mapping-terrain> (explaining that “emotion can be a catalyst for integrative learning. When students become passionate about their learning, when a topic ignites enthusiasm, integration is more likely to happen.”); cf. Wegner, *supra* note 5, at 889 (explaining that a professional school’s “signature pedagogy” (in law school, the case-dialogue method) often operates in a situation where “the emotional stakes are high (coupling excitement with anxiety), resulting in experiences that shape students in profound ways affecting their values and dispositions as members of a particular profession.”).

31. KEN BAIN, *WHAT THE BEST COLLEGE TEACHERS DO* 31 (2004). Bain explained: “If [students] don’t care, they will not try to reconcile, explain, modify, or integrate new knowledge with old. They will not try to construct new mental models of reality.” *Id.* Bain also noted the connection between caring and remembering. *Id.*

Second, these moments are *unexpected*. They can arise out of nowhere and create tension for the entire class, teacher included. But it is precisely this uncertainty and discomfort that can increase their pedagogic worth.³² Thus, the unpredictability of spontaneous moments of controversy serves two distinct pedagogical purposes: the sudden tension or disruption they cause may heighten student engagement, and also present the very type of unexpectedness that professionals must learn to address.

In this way, controversial moments offer a third integrative learning advantage: they are *contextual*. They provide opportunities for applied learning in real life, and in real time.³³ The students involved in the controversy (as well as those watching) must quickly assess the situation and decide what reaction, if any, might be appropriate. This includes anticipating the potential consequences of that response, especially given the tension generated by the sensitive situation.

Finally, these moments are *multi-faceted*. As mini-clusters of thought, emotion, experiences, and values, they often present the chance to explore and reap integrative dividends from five kinds of lessons (listed here, described more fully in Part I.D, and applied in Part II.C) in that they:

32. As Lee Shulman has written about the teaching profession, with words equally applicable to the legal profession:

At the very core of any field that we call a profession is an inherent and inescapable uncertainty. Professions deal with those parts of the world that are characterized by unpredictability. . . . Professions (like teaching) deal with that part of the universe where design and chance collide. . . . The way forward is to make that collision, that unpredictability in our fields, itself an object of individual and collective investigation. . . . But as a profession, we can grow much wiser about how to anticipate and deal with uncertainty.

LEE S. SHULMAN, *Taking Learning Seriously*, in *TEACHING AS COMMUNITY PROPERTY: ESSAYS ON HIGHER EDUCATION*, *supra* note 7, at 34, 42; *see also* *EDUCATING LAWYERS*, *supra* note 3, at 9 (“The mark of professional expertise is the ability to both act and think well in uncertain situations.”); Wegner, *supra* note 5, at 869, (noting that uncertainty is “one of the critical dimensions of professional practice”).

33. *See* TAMI S. CARMICHAEL, *INTEGRATED STUDIES: REINVENTING UNDERGRADUATE EDUCATION* 23 (2004) (footnote omitted) (endorsing evidence that “learning occurs best in the context of a compelling problem”); *see also* Edward Rubin, *What’s Wrong with Langdell’s Method, and What to Do About It*, 60 *VAND. L. REV.* 609, 661 (2007) (footnote omitted) (highlighting the “experiential character of learning,” and with it, the facts that “real-world experiences provide a vivid and visceral aid to learning” and “that many lessons are best learned by being observed or applied in the settings where they will ultimately be used”); *EDUCATING LAWYERS*, *supra* note 3, at 39 (describing the “[s]imulation of legal tasks in context” or “working in role” as the “core pedagogical practice” in New York University’s lawyering courses); Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 *U.S.F. L. REV.* 941, 943, 957 (1997) (noting the importance of context to learning, especially real-life situations).

1. Raise unclear or complicated questions of *law* and challenge a student's knowledge of, and ability to apply, legal principles;
2. Involve socially significant *policy* issues that require balancing or harmonizing competing values and challenge a student's grasp of the relationship between law, policy, and *justice*, as well as the *social* consequences of legal action;
3. Rub up against deeply-held views that resist reasoned analysis and challenge a student's *critical thinking* and *metacognitive* skills;
4. Engender disagreement or tension because of their polarizing nature and challenge a student's ability to *communicate* effectively and to maintain viable professional *relationships* in the face of conflict, discomfort, or the unfamiliar; and/or
5. Touch the core of being and belief as well as the overlap between professional and personal self-conceptions and challenge a student's ability to confront issues of *ethics, identity, and professionalism*.

These five facets of controversial moments can be seen as more specific and concrete manifestations of the Carnegie trilogy. Each bears upon the other, and is a part of what will become, for the well-rounded legal professional, components of a holistic response to the situation facing him or her.³⁴ Exploring—and experiencing—the synergy between these various strands of thinking, doing, and valuing can become for the students involved in these moments powerful lessons in understanding their reactions and decisions in situations of tension and uncertainty. As microcosms of these five lawyering concerns,³⁵ heated moments provide

34. Cf. EDUCATING LAWYERS, *supra* note 3, at 12-14 (describing the three elements of Carnegie's "integrative framework" for legal education); see also Peggy Cooper Davis, *Slay the Three-Headed Demon!*, 43 HARV. C.R.-C.L. L. REV. 619, 621 (2008) (noting that "[s]tudents have not been guided toward an understanding of the intricate relationships among doctrinal, strategic, interpersonal, and ethical analysis"); Panel Discussion, *Is The Tail Wagging the Dog?: Institutional Forces Affecting Curricular Innovation*, 1 J. ASS'N LEGAL WRITING DIRECTORS 184, 190 (2002) (comments of Dean Thomas Sullivan) (explaining the University of Minnesota School of Law's attempts at "integrating the whole panoply of our responsibilities: theory, doctrine, policy, ethics, skills, and practice, in hopefully a seamless way . . . so that the student can literally feel comfortable with—and it's part of the culture of—going from a discussion of theory to figuring out how to actually use that on behalf of a client.").

35. Of course, an almost countless array of sub-skills falls under these five basic lessons. For example, a teacher facilitating discussion around a controversial moment might encourage students (1) to use evidence to support statements made, (2) to discern and diplomatically point out inconsistencies in positions taken, (3) to make concessions, when appropriate, (4) to refrain from interrupting others, and (5) to listen with patience. These capabilities not only implicate the cognitive dimension of legal work, but also communicational, relational as well as ethical values. See Nelson P. Miller & Bradley J. Charles, *Meeting the Carnegie Report's Challenge to Make Legal Analysis Explicit—Subsidiary Skills to the IRAC Framework*, 59 J. LEGAL EDUC. 192

ready platforms for demonstrating how practice impacts theory, emotions impact logic, ethics impact outcomes, and the personal impacts the professional. These realizations are at the core of professional understanding and action—in the presence *or* absence of controversy. But controversial moments offer a special vehicle for exploring these synergistic lessons, significant in their ability to tap the emotions, beliefs, and biases often key to promoting or inhibiting deep learning but left unaddressed by more abstract legal analysis.³⁶

C. Integrative Learning Principles

1. Connection, Application, and Meaning-Making

Before demonstrating the integrative character of the Jennifer-Caitlin exchange, we begin with a fundamental question: What exactly is integrative learning? And what characterizes an integrative approach to capitalizing on spontaneous controversy in the classroom? As the teaching and learning literature indicates, a (if not *the*) key component of any integrative learning experience is connection—intentional connection.³⁷ Accordingly, one scholar describes integrated learning as “[f]ostering the intellectual art of making, recognizing and evaluating sound, meaningful connections across different concepts, cases, or experiences . . . [along with]

(2009) (examining the skills implicated by legal analysis); Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807 (2007) (examining the skills and values implicated by performing the tasks of lawyers in clinical settings); Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 J. LEGAL EDUC. 240 (2009) (examining the professional values and skills implicated by externship experiences).

36. See Alan M. Lerner, *Using Our Brains: What Cognitive Science and Social Psychology Teach Us About Teaching Law Students To Make Ethical, Professionally Responsible, Choices*, 23 QUINNIPIAC L. REV. 643, 706 (2004) (arguing that “[r]ecent discoveries in social psychology and neuroscience demonstrate rather clearly that a [non-traditional] pedagogy based upon contextually rich, emotionally engaging, role-based, problem solving, coupled with ongoing reflective discourse is most likely to significantly enhance law students’ effective engagement with, and mastery of, the role of ethical practitioner”); cf. DONALD A. SCHON, EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS 6, 13, 17, 22, 26-29, 31 (1987) (arguing that the artistry at the heart of seasoned professional judgment is best developed when students learn by doing and attempt to solve problems in the indeterminate zones of practice through a supervised process of reflection-in-action and reflection on reflection-in-action).

37. Mary Taylor Huber et al., *Leading Initiatives for Integrative Learning*, LIBERAL EDUC. (Spring 2007), <http://www.aacu.org/liberaleducation/le-sp07/featurefour.cfm> (noting that integrative learning is about “[d]eveloping the ability to make, recognize, and evaluate connections among disparate concepts, fields, or contexts”).

an appreciation of context or engaging theory with practice.”³⁸ Another authoritative source describes it as “connecting skills and knowledge from multiple sources and experiences; applying theory to practice in various settings; utilizing diverse and even contradictory points of view; and, understanding issues and positions contextually.”³⁹

While most learning involves linkages of thoughts or concepts, integrative learning typically involves “larger leaps of imagination” and centers on “ideas and domains that are not easily or typically connected.”⁴⁰ This type of synthesis is higher order and takes time and experience to develop.⁴¹ Helping students to cultivate an “integrative cast of mind”⁴² or “habits of connection-making”⁴³ requires teaching intentionally to encourage a self-consciousness in students to see junctures of theory and practice, to “apply knowledge forward to new situations,”⁴⁴ and to bring to bear on an issue whatever information or action is needed to understand or resolve it.⁴⁵ The result should be “[l]earning [t]hat [i]s [g]reater [t]han the

38. Mary Taylor Huber, *Integrative Learning as An Intellectual Art 3-4* (Oct. 2005) (Closing Plenary Panel at the Association of American Colleges & Universities Network Conference on Integrative Learning), available at gallery.carnegiefoundation.org/ilp/uploads/Huber-intellectual_art.pdf; see also *supra* note 13 (offering other definitions of integrative learning).

39. ASS’N OF AM. COLLS. & UNIVS. & THE CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, *A STATEMENT ON INTEGRATIVE LEARNING* (March 2004), available at http://www.aacu.org/integrative_learning/pdfs/ILP_Statement.pdf. This definition continues: “Significant knowledge within individual disciplines serves as the foundation, but integrative learning goes beyond academic boundaries. Indeed, integrative experiences often occur as learners address real-world problems, unscripted and sufficiently broad to require multiple areas of knowledge and multiple modes of inquiry, offering multiple solutions and benefiting from multiple perspectives.” *Id.*

40. Huber et al., *supra* note 37.

41. *Id.*

42. *MAPPING THE TERRAIN*, *supra* note 30, at 3.

43. *Id.* at 8. Hutchings has listed what she called “(Emergent) Habits of Integrative Learning” as “[r]elating what I know to what others know (and don’t), [c]onnecting different levels of understanding, [t]ranslating academic knowledge into meaningful action, [and u]nderstanding how the discipline applies to my own life.” *Building Habits*, *supra* note 13, at 7.

44. Carmichael Conversation, *supra* note 13.

45. Accordingly, one learning scholar defined integrative learning as:

[A] shorthand term for teaching a set of capacities—capacities we might also call the arts of connection, reflective judgment, and considered action—that enable graduates to put their knowledge to effective use. Thus defined, integrative learning may certainly include the various forms of interdisciplinary learning. But it should also lead students to connect and integrate the different parts of their overall education, to connect learning with the world beyond the academy, and above all, to translate their education to new contexts, new problems, new responsibilities.

Carol Geary Schneider, *Liberal Education and Integrative Learning*, 21 *ISSUES INTEGRATIVE STUD.* 1, 1-2 (2003).

[s]um of [i]ts [p]arts.”⁴⁶ In this way, “[i]ntegrative learning marks a notable shift in the practice of the liberal arts from language we used to use—*understanding, appreciating, comprehending, remembering*—to actually being able to *do*. Students must know how to apply knowledge and to use it in new contexts.”⁴⁷

Ultimately, then, integrative learning fosters intentional connection in the service of understanding and addressing multi-faceted problems. It is foundational to a “pedagogy of the contemporary,”⁴⁸ given its power to push past traditional disciplinary boundaries in order to equip graduates with both the knowledge and the know-how necessary to confront the most pressing questions of the day:

[B]ecause integrative learning expands the nature of the questions that we can legitimately ask in class it expands the epistemic jurisdiction of our courses. In so doing it gives room for a novel point of departure for curriculum development: where our world of today and tomorrow becomes the source of problems for study and helping students *make productive sense* of such problems becomes our goal.⁴⁹

This is terribly important. Embedded in the idea of “mak[ing] productive sense” is the concept that integrative learning facilitates “meaning-making” by requiring students to grapple intellectually, emotionally, and intuitively with multiple sources of information internal and external to themselves, to apply them in the unruliness of reality, and to evaluate the present and future consequences of that application. This type of studied struggle can put students up against the fundamentals of who they are, what they want the world to be, and their role in, and responsibility for, creating both.⁵⁰ So it is no surprise that the quintessential

46. MAPPING THE TERRAIN, *supra* note 30, at 1. As another learning scholar put it: “The essential commonality [of integrative learning strategies] is drawing from multiple perspectives on a complex phenomenon for insights that can be integrated into a richer, more comprehensive understanding” Klein, *supra* note 13 (citation omitted).

47. Carol Geary Schneider, *From the President*, PEER REV., Fall 2008, at 3, 3. Although the notion of integration is not itself new to learning theorists or academicians generally, intentional educational efforts to ensure it are more recent. Mary Taylor Huber, Pat Hutchings & Richard Gale, *Integrative Learning for Liberal Education*, PEER REV., Summer/Fall 2005, at 4, 4-5; *see also id.* at 4 (“[D]eveloping such a synthesizing, creative cast of mind has long been a goal of liberal education, albeit one that students have been expected, more often than not, to pick up for themselves.”). As these authors further stated: “[T]he capacity for integrative learning—for connection making—has come to be recognized as an important learning outcome in its own right, not simply a hoped-for consequence of the mix of [educational] experiences” *Id.* at 5.

48. Veronica Boix Mansilla, *Integrative Learning: Setting the Stage for a Pedagogy of the Contemporary*, PEER REV., Fall 2008, at 31, 31.

49. *Id.* (emphasis added).

50. As one scholar observed in defining integrative learning: “The philosophy of integrative learning is informed by constructivist epistemology. When students are engaged in making

characteristics of integrative learning—drawing intentional connections, applying synthesized knowledge to understand new situations and address new problems, and “making productive sense” of them in both professional and personal terms—are particularly pertinent for fledgling lawyers.

The Carnegie Report aptly capitalizes on these integrative aspects in conceptualizing “learning the law . . . [as] an ensemble experience, its achievement a holistic effect. From the point of view of student learning, the apprenticeships of cognition, performance, and identity are not freestanding. Each contributes to a whole and takes part of its character from the relationship it has with the others.”⁵¹ Central to connecting these domains is some overriding understanding of what it means to be a legal professional—the special territory of the third apprenticeship. As Carnegie explained, echoing basic tenets of an integrative learning approach:

[T]he context in which [students] learn must encourage [them] to grasp the meaning and purpose of their particular professional community. . . . Legal analysis alone is only a partial foundation for developing professional competence and identity. It is not enough even to develop analytical knowledge plus merely skillful performance. The goal has to be integration into a whole *greater than the sum of its parts*.⁵²

More precisely, an integrative approach anchored in the third dimension of professional work should help to develop a student’s sense of consequence for self and society, motivating him or her to understand the impact of professional behavior in the course of problem-solving and meaning-making.⁵³ Put another way, at the core of integrated learning is

meaning, application of knowledge takes precedence over mastery of facts alone. Students are immersed in acts of question posing, problem posing and solving, decision making, higher-order critical thinking, and reflexivity.” Klein, *supra* note 13; *see also id.* (“‘Integration’ is synonymous with synthesizing and reintegrating knowledge, revealing new patterns of meaning and new relations between parts and wholes. . . . The relational skills that students gain also foster the ability to adapt knowledge in unexpected and changing contexts.”); 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, 76, 97-98 (2000) (describing “meaning making” and the “hallmarks of meaningful learning”).

51. EDUCATING LAWYERS, *supra* note 3, at 58-59; *see also id.* at 82 (“The sort of thinking required to meet the challenges of practice blends and mixes functions, so that knowledge, skill, and judgment become literally interdependent: one cannot employ one without the others, while each influences the nature of the others in ways that vary from case to case.”).

52. *Id.* at 178 (emphasis added).

53. *See* Anne Colby & William M. Sullivan, *Formation of Professionalism and Purpose: Perspectives from the Preparation for the Professions Program*, 5 U. ST. THOMAS L.J. 404, 411 (2008) (arguing that “[t]he integrative function of the third apprenticeship . . . draws together and grounds the two most essential features of high quality work—deep expertise and ethical commitment.”); Morning Panel Session, *Symposium: The Opportunity for Legal Education*, 59 MERCER L. REV. 821, 848 (2008) (comments of William M. Sullivan) (urging law schools to concentrate on “how the formative dimension of their curriculum—both manifest and hidden—

the development of professional and personal self-awareness, and with it, the concomitant ability to synthesize the issues of law, policy, communication, relationships, and ethics that comprise an effective professional response.⁵⁴ As Huber and Hutchings have put it: “Reflection. Metacognition. Learning how to learn. Whatever the language or lineage, the idea of making students more self-aware and purposeful—more intentional—about their studies is a powerful one, and it is key to fostering integrative learning.”⁵⁵ An integrated approach to learning not only models interconnectedness, but provides the pedagogical path to making those links between doctrine, skills, and values, between theory and practice, and between the personal and professional facets of a more holistic and authentic life as a problem-solving lawyer.

2. Integration and Integrity

Thus, moments of classroom controversy, with their many moving parts, have unique potential to inspire critical realizations about how to live

actually works” and “to attend more systematically to the pedagogical practices that foster the formation of integrated, responsible lawyers.”).

54. This activated awareness, Carnegie posits, comes best through clinical experiences where the student becomes responsible for the client and accountable for her actions. As the Report explains:

Assuming responsibility for outcomes that affect clients with whom the student has established a relationship enables the learner to go beyond concepts, to actually become a professional in practice. Taught well, it is through this experience of *lived responsibility* that the students come to grasp that legal work is meaningful in the ethical, as well as cognitive, sense. Or rather, the student comes to understand that the cognitive and the practical are two complementary dimensions of meaningful professional activity that gets its point and intensity from its moral meaning. Taking the role of the lawyer in real cases makes visible the ways in which the lawyer’s decisions and actions contribute to the larger functioning of the legal order. At the same time, it reveals the value of that activity as part of the larger function of the law in securing justice and right relations for actual persons in society.

EDUCATING LAWYERS, *supra* note 3, at 121 (emphasis added).

Controversial moments certainly cannot provide the same level or type of responsibility and accountability residing in actual client representation. Nonetheless, they do involve the student’s (and teacher’s) responsibility for the welfare of other class members or for the class itself, as well as accountability for what has been said or done, especially if the student’s words have upset other classmates. At bottom, many of these moments are powered by the depth of their social and moral dimensions—which, if excavated with care, may help students to experience some form of “lived responsibility,” albeit on a less comprehensive scale. In addition, these moments can be seen as hybrid episodes that capitalize on both the controlled aspects of classroom simulations and the uncontrolled aspects of real life representations—the best of both pedagogic worlds. See PAUL MAHARG, *TRANSFORMING LEGAL EDUCATION: LEARNING AND TEACHING THE LAW IN THE EARLY TWENTY-FIRST CENTURY* 116 (2007) (arguing that both clinical experience and simulations “enable students to develop and reflect upon intuitive, experiential knowledge, ways of coping, discerning, sensings of professional development, the ‘social spaces’ of training, [and] the awareness of changing identities.”).

55. *MAPPING THE TERRAIN*, *supra* note 30, at 7.

a principled life as a lawyer.⁵⁶ More specifically, the multi-faceted and charged qualities of these experiences help to illuminate the meaning of professional integrity in both the moral and structural senses of that concept. Lee Shulman, in describing the goal of professional education to accomplish “the move from thinking like, to performing like, to acting or being like [a professional,]” explained this duality:

[A]t one level, we think about [integrity] as a synonym for honesty, dependability, reliability. [When] somebody acts with integrity or has integrity, we think of it as a kind of a moral attribution. But at another level, what it’s saying, is this is the kind of person who is capable of integrating across the multiple . . . sources and constraints on his or her judgment and decision-making and somehow pulling it all together . . .⁵⁷

And so the direct link between integrative learning and integrity. The more that students can “pull together” knowledge, know-how, and ethical/social insight as they attempt to create a cohesive set of operating principles and practices to guide their lawyering choices, the stronger their professional infrastructure for making sound decisions in applying those principles in new situations. And those critical connections are especially

56. Cf. ANTHONY T. KRONMAN, *EDUCATION’S END: WHY OUR COLLEGES AND UNIVERSITIES HAVE GIVEN UP ON THE MEANING OF LIFE* 6-8 (2007) (arguing that “the meaning of life is a teachable topic” that has been “pushed to the margins of professional respectability in the humanities” and should be “restored to its proper place in American higher education”). See also MARTHA C. NUSSBAUM, *NOT FOR PROFIT: WHY DEMOCRACY NEEDS THE HUMANITIES* 2, 7 (2010) (arguing that the “cut[ting] away” of the arts and the humanities and their associated abilities to think critically, think globally, and to “imagine sympathetically the predicament of another person” in the democratic societies of the world has endangered their health and their capacities to “constructively address[] the world’s most pressing problems”); PARKER J. PALMER ET AL., *THE HEART OF HIGHER EDUCATION: A CALL TO RENEWAL—TRANSFORMING THE ACADEMY THROUGH COLLEGIAL CONVERSATIONS* 2, 12-14, 20 (2010) (calling for a “wider and deeper conversation about integrative education” to help develop its “philosophical infrastructure” with the goal of helping “students become more fully developed [multidimensional] human beings” in community and ready “to face the challenges of our time”); Nancy B. Rapoport, *Is “Thinking Like a Lawyer” Really What We Want to Teach?*, 1 J. ASS’N LEG. WRIT. DIRS. 91, 102 (2002) (arguing in part that what law students “need is the classic liberal education that represented Nineteenth Century high-quality education”).

57. *Lee Shulman on Integrity and Integrative Learning*, *Integrative Learning: Opportunities to Connect* (July 2004), http://gallery.carnegiefoundation.org/ilp/assets/ilp_lsclips.mov (video recording). Shulman also observed:

It’s not an accident that it’s a term that’s also used in architecture to talk about a design that has integrity. And, to say it has integrity means that it somehow combines the aesthetic, utilitarian, the economic constraints, and it just works. And . . . are we trying to educate human beings with that kind of integrity? . . . Design is clearly the ruling metaphor, if you’re talking about the education of engineers. These are people being educated to design, but they have to somehow integrate the mathematical, the pragmatic, . . . the economic, but also increasingly we say to engineers [that] you have to do it in a way that is socially responsible . . . And so, once again—design, integrity—these things all begin to resonate with one another.

Id.

driven by the formative apprenticeship of identity and purpose. Working with such purpose helps to ground the knowledge and skills of lawyering in aspirations beyond self-success to “encompass issues of both individual and social justice, and . . . the virtues of integrity, consideration, civility, and other aspects of professionalism.”⁵⁸ In this way, the Carnegie Report championed the importance of tapping the ethical underpinnings of practice and their compass-like ability to help give greater meaning to the daily demands of legal thinking and performing:

If [students] are to fully grasp the nature of their responsibilities as attorneys, [they] must achieve a deep understanding of the multiple dimensions of their roles and the arguments for alternative conceptions of the way that meaning should play out in practice. Achieving a firm grasp of these intellectual issues and their implications for legal practice is a challenge but, as challenging as it is, it is not sufficient. Law school graduates who enter legal practice also need the capacity to recognize the ethical questions their cases raise, even when those questions are obscured by other issues and therefore not particularly salient. They need wise judgment when values conflict, as well as the integrity to keep self-interest from clouding their judgment.⁵⁹

To promote a more nuanced understanding of integrity in both its ethical and structural respects, it is vital for law students to confront the multi-faceted nature of legal problems on the shifting terrain of self- and other-interest, where they will need to balance the individual with the social, and the immediate problem response with the longer-term consequences of that response. Accordingly, William Sullivan recognized that “[i]ntegrity is never a given, but always a quest that must be renewed and reshaped over time. It demands considerable individual self-awareness and self-command.”⁶⁰ Conceptualizing professional integrity as a dynamic state created within, and constantly tested by, the tension between private and public interest, Sullivan emphasized that “[t]he goal of self-actualization itself must be transcended (or perhaps better, reoriented) by integrating individual goals with those of the larger community. The logical fulfillment of this process is a kind of character for whom what

58. EDUCATING LAWYERS, *supra* note 3, at 132.

59. *Id.* at 146.

60. WORK AND INTEGRITY, *supra* note 3, at 284; *see also* Lee S. Shulman, *Foreword to WORK AND INTEGRITY*, *supra* note 3, at xiii-iv (“Sullivan argues that integrity can only be achieved under conditions of competing imperatives. Unless you are torn between your lawyerly duties as a zealous advocate for your client and your communal responsibilities as an officer of the court, you cannot accomplish integrity. Unless you are confronted with the tensions inherent in the practice of any profession, the conditions for integrity are not present . . .”).

happens to these larger commitments is as important as what happens to self, or more so.”⁶¹

Sullivan captures here something fundamental about the professional persona: It is, and deeply so, a “self in relation,” a concept at the crux of the lawyer-client relationship. The professional, as fiduciary, does not enjoy the unadulterated luxury of self-indulgence or isolation. She or he must think, act, and value in relation to others, especially client and community. Accordingly, legal education must do more to accomplish this recalibration of self and instill the broader perspective, in part by a more conscious encouragement of connections among the multiple dimensions of legal work necessary for critical, creative, and adaptive professional responses.⁶² As Carol Geary Schneider has written: “[I]ntegrative learning is also an essential element in the goal of helping students develop a strong sense of social responsibility and civic engagement. . . . Today . . . we see abundant efforts to tie the educational experience to ‘big questions’ that matter both to students and the health of our communities.”⁶³

D. The Five-Lesson Framework: A Construct for Identifying Integrative Learning Outcomes

Controversial moments—like the one involving Jennifer and Caitlin—provide excellent opportunities for promoting this type of synergistic learning central to the responsible exercise of professional judgment. Below, we illustrate the integrative character of that moment by identifying and unpacking (“dis-integrating”⁶⁴) some of the opportunities-turned-learning-outcomes that grow out of the five-lesson framework if used to

61. *Id.* at 289-90.

62. As Sullivan observes: “[A] social contract with the public they serve” is “at the core of professionalism.” *Id.* at 2. Accordingly, “[t]he professions have become responsible for key public values It is this responsibility for public goods that sets off professionals from other knowledge workers.” *Id.* at 4. In carrying out their public responsibilities, professionals “develop themselves within and through a collective professional culture.” *Id.* at 11. In addition, their “livelihood . . . is also a way of life.” *Id.* at 21. “[T]he meaning of the work derives from both what it is and the ends toward which it is directed as much as or more than . . . the return it affords,” and the focus is on its “quality” and “the belief that it is of value to others.” *Id.* Thus, a professional “not only . . . join[s] an occupation,” but “assume[s] a civic identity.” *Id.* at 23. And that is the intersection of individual with collective interests:

By taking responsibility through one’s work for ends of social importance, an individual’s skills and aspirations acquire value for others. Professionalism thereby forms a crucial link between the individual’s struggle for freedom in a fulfilling existence and the needs of the larger society, so that individual opportunity can serve the demands of interdependence.

Id. at 30-31.

63. Schneider, *supra* note 45, at 5.

64. Carmichael Conversation, *supra* note 13.

address the Jennifer-Caitlin exchange. *How* these lessons might be actualized in the classroom is the focus of Part II.

1. Lessons in Law and Legal Analysis

The first potential lessons implicate the doctrinal or cognitive realm. Jennifer's comment raises challenging, unclear, and complicated issues of substantive law that could be used to develop an understanding of ADA principles and their application in new situations. For example, under governing law, must an employer take into account a co-employee's personal preferences as part of the reasonable accommodation and undue hardship analyses? If so, how? More specifically, what if that personal preference, as it is in Jennifer's case, is grounded in a faith-based objection and the proposed accommodation arguably interferes with the religious beliefs of another employee? This in turn highlights the need to consult other areas of law such as Title VII,⁶⁵ which confers certain rights on employees regarding their religious beliefs and practices.⁶⁶ Jennifer's comment pushes the hypothetical in a different substantive law direction, suggesting consideration of how antidiscrimination law resolves a situation in which competing rights, implicating disability, same-sex equality, and religious expression, are at stake.

This line of thought might also give rise to procedural questions concerning whether and how Jennifer (or her client) might challenge an offending accommodation granted to another employee. For example, could Jennifer (had she been a fellow employee) bring her own lawsuit to enjoin the accommodation? And from an opposing perspective (perhaps Caitlin's), might that action be subject to a dismissal motion for failure to state a claim? Or could Jennifer intervene in a lawsuit brought by the employee seeking the accommodation and again (from Caitlin's perspective) possibly be subject to a dismissal motion for lack of standing? These are questions that a teacher might raise to spur deeper thought about the substantive law dimensions of the ADA, even in the absence of Jennifer's comment.

65. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e to 2000e-17.

66. *Id.* § 2000e-2(a)(1), (2). For a discussion of the relationship between accommodation and discrimination in Title VII religion cases, see generally Roberto L. Corrada, *Toward an Integrated Disparate Treatment and Accommodation Framework for Title VII Religion Cases*, 77 U. CIN. L. REV. 1411 (2009).

2. Lessons in Policy and Socio-Justice Concerns

In tweaking the hypothetical to put the disabled employee's rights in tension with another employee's religious rights, Jennifer has opened the door to a rich discussion about the socially significant policy issues embedded in potentially competing legal rules. Difficult to resolve, these issues can test a student's grasp of the connection between law and policy and the social impact of legal action. Jennifer's comment and Caitlin's response highlight not only the question of what the law *is* when rights collide, but also what the law's role *should be* in addressing the competing interests of disability accommodation and religious belief. Further questions flow from this: Are there social costs to eliminating discrimination against people with disabilities? To eliminating discrimination based on sexual orientation? Or religious beliefs? And what about economic costs? Should the price tag of change override principled concerns about workplace equity and dignity? How should these terms be defined? When does one person's desire for dignity become another's indignity? Just how far should private employers have to bend in the name of fairness, especially given the complex mix of employment, disability, same-sex, and religious rights at issue? Grappling with these kinds of questions forces students to explore what "justice" really means and asks Jennifer and Caitlin (and the other students) to wrestle with the social import and impact of their positions in both theoretical and practical ways.

3. Lessons in Critical Thinking and Metacognition

Beyond the substantive law and policy questions raised, Jennifer's remark and Caitlin's response also give rise to another set of issues to explore—specifically, the thinking (and feeling) processes that underlie their comments. A central task in learning to "think like a lawyer" is to engage in critical thinking, a process that Stephen Brookfield describes as "calling into question the assumptions underlying our customary, habitual ways of thinking and acting and then being ready to think and act differently on the basis of this critical questioning."⁶⁷ Similarly, Susan

67. STEPHEN D. BROOKFIELD, *DEVELOPING CRITICAL THINKERS: CHALLENGING ADULTS TO EXPLORE ALTERNATIVE WAYS OF THINKING AND ACTING 1* (1987) [hereinafter *DEVELOPING CRITICAL THINKERS*]. See also *id.* at 93 (defining critical questioning as "questioning designed to elicit the assumptions underlying our thoughts and actions"). Other definitions of critical thinking include "purposeful, self-regulatory judgment," "reasonable and reflective thinking that is focused on deciding what to believe or do," and "that mode of thinking . . . in which the thinker improves the quality of his or her thinking by skillfully taking charge of the structures inherent in thinking and imposing intellectual standards upon them." James T. Broadbear, *Essential Elements of Lessons Designed To Promote Critical Thinking*, 3 *J. SCHOLARSHIP TEACHING & LEARNING*, No.

Sturm and Lani Guinier describe a process they call “critical reframing,”⁶⁸ in which they “focus students’ attention on the assumptions and values that underlie conventional approaches to controversial issues” by using “a brainstorming framework to invite students to think outside the box.”⁶⁹ Through this approach, in which they “encourage students to question things they take for granted and try to shift discussions away from polarized or zero-sum thinking to stretch for new paradigms,” they have found that students are able “to open up coalitions and perceptions of shared interests that have been camouflaged by more static and interest-group-oriented approaches to race, gender, disability, or sexual orientation.”⁷⁰

A crucial aspect of Sturm and Guinier’s strategy is to “view conflict as a source of energy and learning.”⁷¹ In class, they “identify the multiplicity of viewpoints at work, make the fact of the conflict visible, and then give students time to reflect on the sources and meaning of the conflict.”⁷² Significantly, “the goal is to understand the conflict rather than to resolve it by creating artificial consensus.”⁷³ They have discovered that “[p]robing the source of the conflict . . . can also generate surprising information and creative ways of reframing the initial problem.”⁷⁴

Where a student’s assumptions are grounded in deeply-held views that resist reasoned analysis, teachers have an opportunity—and arguably an obligation—to help the student develop the skills necessary to uncover these assumptions, test whether they hold up under scrutiny, and assess how they might be affecting her legal analysis or ethical conclusions.⁷⁵ Key is encouraging students to become reflexively metacognitive so that they automatically think about their thinking and monitor what they are saying, doing, and feeling as the professional situation develops in order to make necessary midstream adjustments in thought and behavior and, ultimately,

3, 2003, at 1, 2, available at <https://www.iupui.edu/~josotl/toc.php?id=6> (listing definitions of the term, all of which evidence its metacognitive character).

68. Sturm & Guinier, *supra* note 14, at 530-39.

69. *Id.* at 531.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. See DEVELOPING CRITICAL THINKERS, *supra* note 67, at 89-90 (noting that “[i]dentifying and challenging the assumptions by which we live is central to thinking critically. It is also difficult and complex. Admitting that these assumptions might be distorted, wrong, or contextually relative is often profoundly threatening, for it implies that the fabric of our personal existence might rest upon faulty foundations.”).

to learn more deeply from the experience.⁷⁶ These critical thinking and self-monitoring skills are so fundamental that they should apply to consideration of all lessons in the framework, whether law, policy, communicational, relational, ethical, or professional identity concerns are at stake.

In the hypothetical, at least from Caitlin's perspective, Jennifer appears to have jumped uncritically from the idea of visiting a gay employee's home (itself an assumption) to a conclusion that there is an increased likelihood of seeing behavior inside the house that would be inappropriate in a work environment (another assumption). To the extent Jennifer's remark is driven by a stereotype about or visceral discomfort with persons of a different sexual orientation, exploring it may provide her (and other students in the class) an opportunity to do a self-inventory of biases, and to examine whether her comment is motivated by a personal position or prejudice that may be interfering with her ability to think critically as a lawyer.

Whatever Jennifer meant, she offered a personal reaction in lieu of a legal one. From the standpoint of the legal reasoning required, Jennifer "as lawyer" could not purport to reject what might be a reasonable accommodation simply by complaining that *she* would not want to do something were she the employee's co-worker. Whether Jennifer is ultimately right that religion trumps the accommodation is not the immediate point. Jennifer's first response simply lacks the critical depth of a more reasoned one, and provides the opportunity to show the importance of rerouting the emotional intensity through the analytical framework, thus requiring exploration of the ADA's statutory scheme. The fact that Jennifer experienced personal discomfort, however, is neither irrelevant nor unimportant, especially given the religious basis of her reaction. But it is also critical for Jennifer to explore that emotive dissonance between her personal and professional stances, itself an important lesson in identity and possibly ethics (should Jennifer, for example, have a gay or atheist client).

Caitlin's reaction to Jennifer's comment provides a similar opportunity to engage in critical thinking and self-monitoring lessons. Caitlin herself may be reacting based on the mistaken assumptions that Jennifer's use of the term "lifestyle" is code for "gay" and that Jennifer's comment is motivated by homophobia. It may not have been. Caitlin, too, should be

76. See MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD HESS, *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 100* (2009) (noting the importance of classroom experiences that require "students to take their 'metacognitive pulse'" so that they "engage in a self-regulation skill and quickly reflect on the implications for their learning (i.e., they engage in metacognition).").

analyzing her own thought processes and feelings: what assumptions is she making about Jennifer, and what beliefs underlie those assumptions?⁷⁷ Has Caitlin mistakenly heard the word “religious” as shorthand for “narrow-minded”? And shouldn’t she consider that Jennifer’s religious beliefs might merit legal protections despite the fact that she feels personally offended by Jennifer’s apparent position? Both students may be acting on personal assumptions and past associations that interfere with their professional judgment and expression. It is also important for the teacher to give both Jennifer and Caitlin the benefit of the doubt and to be sensitive to the deep feelings that both may have—feelings perhaps born out of a lifetime of experiences that may be impossible to access or assess in a brief and unexpected classroom exchange.

4. Lessons in Communication and Interpersonal Relationships

Whatever their motivation, both Jennifer and Caitlin may be thinking and speaking on the basis of misconceptions—misconceptions that in turn may impede both critical analysis and authentic communication between them. So it is worth highlighting that communication as well as other interpersonal skills, especially in a professional setting with legal and ethical overlays, should not be taken for granted. As with other skills in the performance apprenticeship—drafting, investigating, or negotiating, to name a few—these more relational or psychologically-based capabilities should also be discussed and practiced given their central place in a lawyer’s life.⁷⁸

77. As Brookfield points out, “this can be a highly emotional and discomfoting process; people are asked to look critically at cherished values and personal beliefs that are bound up with their self-concept.” DEVELOPING CRITICAL THINKERS, *supra* note 67, at 90; *see also* Slocum, *supra* note 27, at 843 (arguing that “[c]ases or problems that are likely to incite emotional or value-laden reactions pose particular analytical problems for students, and are precisely the kinds of cases from which students need our guidance.”).

78. *See, e.g.*, Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skill, and the Importance, of Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225, 1234 (2004) (describing his course as “devoted to teaching the relationship skills that are (or at least ought to be) used by attorneys daily . . . that will enable them to have more effective and more meaningful relationships with those with whom they work. These skills . . . are (1) the ability to communicate (listen as well as speak) more clearly and completely; (2) self-awareness; and (3) an openness and receptivity to other people.”); Slocum, *supra* note 27 (arguing that emotional competency training in the areas of self-awareness, self-management, social awareness, and relationship management should be an integral part of the law school curriculum and illustrating how law professors might help develop these capacities in students through deliberate class strategies); Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001) (exploring the importance of teaching cross-cultural interaction and communication skills). *See also* Patti Alleva, *The Personal As Predicate*, 81 N.D. L. REV. 685, 690 (2005) (“Providing students thoughtful opportunities to learn about the

Studying relational skills is especially important in the intensity of controversy, where creating clear and productive lines of communication can be especially challenging. Jennifer and Caitlin illustrate this concern. Are they really listening to each other? Does each know with any certainty what the other is saying? Or why she is saying it? Or are both reacting without fully understanding the other's positions? Maybe Jennifer's "lifestyle" concern was motivated by the prospect of having to go to the home of an employee who is irreligious or practices a "competing" religion. Or perhaps Jennifer was unconsciously reacting against favoritism resulting from an unfairness she once suffered at work. No one in that classroom really knows, perhaps even Jennifer. So, too, Caitlin's reaction might have been primed by years of stigmatization or marginalization. Past experiences like these can work to fill in the blanks of ambiguity and might explain Caitlin's response to what she experienced as a hurtful remark cut out of seemingly similar cloth.

But it is precisely these uncertainties that highlight some of the skills-based lessons to be sprung from the moment. First, is the need for listening—and listening well.⁷⁹ This is a communication skill necessary for good lawyering in every context. But learning to listen is only half the equation. Effective lawyering also requires being able to talk about a sensitive subject without alienating those listening. For both Jennifer and Caitlin, this means sharpening the skill of anticipating the impact on other people of what they say and how they say it within professional settings. It also includes an ability to be tolerant of different views and a willingness to

interpersonal dynamics of lawyering should help them to become more deliberate and responsible decisionmakers, increasing their self-consciousness about what they say, do, and advise. This, in turn, should help them to achieve a more integrated professional identity that expressly accounts for personal preconceptions, experiences, and values.”); Lila A. Coleburn & Julia C. Spring, *Socrates Unbound: Developmental Perspectives on the Law School Experience*, 24 *LAW & PSYCHOL. REV.* 5, 23-24 (2000) (explaining that “[r]eason and emotion are melded in human cognition; our reasoning strategies are bound up with our feelings, for better or worse. . . . [I]t is time for the legal profession to update its conception of ‘thinking like a lawyer’ to encompass a central goal of developmental maturity—reflective, empathic engagement, with neither reason nor emotion in exile.”) (footnote omitted); Peggy Cooper Davis & Aderson Belgarde Francois, *Thinking Like A Lawyer*, 81 *N.D. L. REV.* 795, 795, 798 (2005) (arguing that “the cultivation of intellectual versatility is important to lawyers’ professional development” and “that lawyering requires the use of linguistic, logical/mathematical, kinesthetic, intrapersonal, and interpersonal intelligences.”).

79. See Mark Weisberg & Jean Koh Peters, *Experiments in Listening*, 57 *J. LEGAL. EDUC.* 427, 428 (2007) (arguing “that a skillful listener will not be simply a critical listener but will have available a variety of listening modes and will carefully choose which mode is appropriate for the setting.”); see also MARY ROSE O’REILLY, *RADICAL PRESENCE: TEACHING AS CONTEMPLATIVE PRACTICE* 19 (1998) (lamenting the loss of “deep, open-hearted, unjudging reception of the other”).

try to understand each other's perspectives.⁸⁰ This, in turn, implicates self- and other-awareness as well as the ability to self-reflect and -correct as the situation unfolds.

If Jennifer's comment was in fact motivated by a religious objection to a same-sex "lifestyle," the question then becomes how these two students—and the rest of the class—can engage thoughtfully around this complex and emotional issue. Lawyers have an obligation to do just that. As problem-solvers entrusted to handle some of the most challenging social issues of the day, lawyers should strive to avoid the "talk show discussions" in which people "share opinions but don't learn anything new"⁸¹ and instead attempt to have rigorous, meaningful discussion about difficult issues. These, too, are skills that can be practiced and learned.

These types of skills would be especially pertinent were Jennifer and Caitlin in either a lawyer-client or an adversarial relationship, where effective communication is crucial. Experiencing the emotional tumult of this classroom controversy might help to impress upon them the importance of learning diplomatic ways to express feelings and values as well as techniques for repairing ruptured relationships.⁸² These are invaluable professional lessons that highlight issues of trust, forgiveness, open-mindedness, and humility.⁸³ Agreement is not the goal here. Indeed, moments of controversy like this one are inherently divisive. For exactly that reason, they present the opportunity—in the charged moment of disagreement—to test a student's ability to speak and listen effectively, to maintain healthy professional relationships, and to understand the consequences of what they do or feel on others. Here, the conflict that has erupted in the classroom following Jennifer's remark and Caitlin's response provides an important opportunity for class participants to understand and practice the skills necessary to discuss positions that are grounded in

80. Brookfield refers to this as "readiness" and describes it in this way:

I must be prepared to enter that person's mental framework of understanding so that I can understand this idea from his or her viewpoint. I must try to appreciate the framework within which that person is forming beliefs about the world. Having done this, I must then lay bare my own assumptions on the matter.

DEVELOPING CRITICAL THINKERS, *supra* note 67, at 47.

81. Frank Lopez, *Pedagogy on Teaching Race & Law: Beyond "Talk Show" Discussions*, 10 TEX. HISP. J.L. & POL'Y 39, 41 (2004).

82. See Sturm & Guinier, *supra* note 14, at 545 ("To the extent conflict is presented as a learning opportunity rather than a moment for determining winners and losers, students often become less risk-averse and more engaged over time. They learn to probe for relevant information in unfamiliar places, build a diverse set of relationships, use dissenting views to challenge familiar assumptions, and grapple with the merits of competing ideas.").

83. See PALMER ET AL., *supra* note 56, at 22 (noting that "a mode of knowing steeped in awe, wonder, and humility is a mode of knowing that can serve the human cause, which is the whole point of integrative education.").

deeply-held values and beliefs. Part of doing so in the role of a lawyer involves distinguishing the personal from the professional (at least for purposes of identifying either) and handling the emotions that necessarily accompany these issues.⁸⁴

5. Lessons in Ethics, Professional Identity, and Professionalism

Finally, precisely because moments of spontaneous controversy can touch the core of being and belief as well as the overlap between professional and personal self-conceptions, they are helpful vehicles for prodding students to confront issues of ethics and identity.⁸⁵ For example, if she deems it appropriate, the professor in our hypothetical has an opportunity to help Jennifer confront the question of whether she could represent a gay client, and to recognize the ethical and moral issues that may be at stake for her in answering that question.⁸⁶ Jennifer (and the rest of the class) may need to consider the ethical rule requiring diligence in a lawyer's representation of her clients, which obligates the lawyer to "take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor" and to "act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."⁸⁷

Could Jennifer meet this obligation, assuming her discomfort with lifestyles that differ from her own? Or would she have a conflict of interest within the meaning of the professional responsibility rules, which prohibit a lawyer from representing a client if there exists "a significant risk that the representation . . . will be materially limited by . . . a personal interest of the lawyer?"⁸⁸ And would the nature of the legal representation make a

84. Cf. Angela P. Harris & Marjorie M. Schultz, "*A(nother) Critique of Pure Reason*": *Toward Civic Virtue in Legal Education*, 45 STAN. L. REV. 1773, 1774 (1993) ("Attempts to banish [emotions] succeed only in ignoring them instead, and this distorts thought."); see also *id.* at 1805 ("Our ideal is neither reason nor emotion alone, but rather a wisdom and sense of justice that integrates both."); *id.* at 1789 ("Avoiding issues that upset students (or teachers) only contributes to shallow thought, balkanized classrooms, and a malaise born of 'objectivity' run amok.").

85. See Alleva, *supra* note 78, at 690 (bemoaning the absence of "safe, structured learning opportunities for all students (1) to explore the psychological dimensions of lawyering, (2) to grapple with what it means, from both theoretical and practical perspectives, to be self-aware, other-aware, well-rounded professionals . . . and (3) to recalibrate, if necessary, the personal with the professional in developing a conception of self as lawyer.").

86. See *id.* ("[A]sking students to focus on the preconceptions, experiences, and values of others (especially clients) should heighten their sensitivity to those who think, act, and live differently than they do [which] . . . may challenge [them] to re-examine their [own] assumptions about people and situations.").

87. MODEL RULES OF PROF'L CONDUCT R. 1.3 cmt. 1 (2009).

88. *Id.* R. 1.7(a)(2). Under this provision of the conflict of interest rules, a lawyer may represent such a client only if the lawyer "reasonably believes that the lawyer will be able to

difference in Jennifer's level of zealousness? For example, if she has strong religious objections to homosexuality, would she be as uncomfortable representing a gay client in a contract dispute where the client's sexual orientation is wholly irrelevant to the legal issues presented as she would be representing that client in an employment discrimination case based on the client's sexual orientation?

This, in turn, raises broader questions about lawyers' roles, professional identities, and personal comfort zones.⁸⁹ Are and should lawyers be viewed as mouthpieces for their clients' goals? What happens when those goals are inconsistent with the lawyer's goals and values? Should lawyers be personally and morally responsible for (or somehow implicated in) positions taken by their clients pursuant to their lawyers' advice?⁹⁰ Can an attorney say that she is merely a morally neutral player in an adversary system that depends on vigorous representation of all interests to establish truth, serve the overall ends of justice, and protect the freedom and autonomy of clients? These questions apply with equal intensity to Caitlin should she take on the representation of a person staunchly opposed to gay rights. Asking both Jennifer and Caitlin to emotionally extrapolate—that is, to viscerally envision representing a client who rejects Jennifer's religious beliefs or Caitlin's sexual orientation—is an important way to capitalize on the feelings ignited by this moment and to encourage the self-reflection necessary to explore the ethical issues and personal dimensions of professional representations.

6. Synergies

As this hypothetical illustrates, the unexpected controversy generated by Jennifer and Caitlin 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-lesson framework provides a platform for encouraging students to make intentional connections between different concepts and skills, to apply what they know

provide competent and diligent representation," *id.* R. 1.7(b)(1), and the client "gives informed consent, confirmed in writing." *Id.* R. 1.7(b)(4).

89. For a more in-depth discussion of the literature regarding the development of professional ethics and identity, see Muriel J. Bebeau, *Promoting Ethical Development and Professionalism: Insights from Educational Research in the Professions*, 5 U. ST. THOMAS L. J. 366 (2008).

90. See MODEL RULES OF PROF'L CONDUCT R. 1.2(b) ("A lawyer's representation of a client, including representing by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities."); *id.* R. 1.2, cmt. 5 ("Legal representation should not be denied to people . . . whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.").

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 of any individual lessons. Consciously reflecting upon what they think and feel in the heat of the moment, students may come to see interrelationships between the lessons and start to create for themselves a professional schema, grounded in lawyering and personal values, through which to process new situations they encounter. Put differently: “Lawyers must embed what it means for a lawyer to *know* something, within skilled practice and defined purposes.”⁹¹

Each area of the five-lesson framework could be taught on its own, as an end in itself, without the whole in mind.⁹² But the learning experience would be different. For example, isolating the legal question “What does the law require as reasonable accommodation when a fellow employee has personal objections to participating?” and ignoring the other lessons to be tapped or the controversial context enlivening them would present a more sterile and less engaging query. In addressing the issue as part of the controversial moment, each student is likely to have a stake (or a felt responsibility, similar to the way Carnegie describes the benefits of clinical experiences⁹³) in either “righting” the classroom tension or dealing with its impact upon themselves or others. This opens the door for students to experience the legal issue in a more realistic setting, where its interpretation and application will have tangible effects, as well as to realize that other skills relating to effective communication, relationship maintenance, and self-appraisal are vital to alleviating the tension at hand.⁹⁴

For example, students like Jennifer and Caitlin (and their colleagues), in discussing the sensitive legal, social, and interpersonal issues generated by the moment, could employ critical thinking and self-monitoring skills to surface and challenge their professional assumptions about the role of lawyers in society as well as their personal assumptions about different

91. MILLER & EGGERS, *supra* note 12, at 74; *see also id.* at 75 (“Law students do not know legal knowledge in the manner that they need to know it until they put it to good use. Only then is it truly the knowledge of a lawyer.”).

92. *Cf.* Rapoport, *supra* note 56, at 103 (arguing that “we don’t teach law students how interrelated the various substantive (and practical) areas are—instead, we convey the false impression that every substantive area is a silo, distinct unto itself.”).

93. *See supra* note 54.

94. *See* MAHARG, *supra* note 54, at 116 (“[I]t is not in the discussion of or reflection upon qualities, but in *action* that ethical education is enacted. . . . [and] for Piaget, the peer-to-peer relationship was more important for the development of moral reasoning than the relationship of teacher/student.”).

lifestyles or religious beliefs.⁹⁵ They will also need to focus on their skills of communication in discussing these issues—including the abilities to listen, to ask clarifying questions, to keep an open mind, to discuss and examine the ramifications of positions they find distasteful, 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 raised by the controversy.

And, coming back full circle to the original legal question posed by the professor (about possible ADA accommodations), in confronting their own presumptions about the situation, Jennifer, Caitlin, and their colleagues may need to re-examine their understanding of the substantive law or the policies driving it in order to accomplish their legal goals. On the statutory side, they may now realize that exploring Title VII or state antidiscrimination law also may be necessary given that ADA accommodations may impact religious expression. This realization, in turn, may highlight the importance of comprehensive research skills for addressing yet another aspect of the situation—the tentacled nature of legal problems and the ease with which they shape-shift.⁹⁶ Accordingly, they may also see the need to bring other subjects—both legal and non-legal—to bear upon resolving the problems raised, such as the rules of civil procedure in exploring potential challenges to the employer's accommodation decision, the rules of professional responsibility in working through the ethical issues raised by the intersection of professional obligation and personal belief, and the medical protocols concerning chemotherapy treatments that may impact the nature of any accommodation.

Cautions and Counters. This, of course, is not a comprehensive survey of all the substantive law, policy/justice, self-monitoring, practical skills, and professional values issues inherent in our sample moment of controversy. Nor would a teacher be expected to mine every potential lesson here. Which, if any, might be considered will be teacher- and classroom-specific. Nor will every controversial moment yield miraculous learning dividends. Some simply may not lend themselves to fruitful exploration or may cause unwarranted discomfort or frustration for the students. Others may take up too much time, adding to the traditional

95. Cf. Bryant, *supra* note 78, at 56 (“[N]on-judgmental thinking is required to develop connection to and understanding of clients. A cross-cultural anthropologist has referred to this as the capacity to enter the cultural imagination of another . . .”).

96. See John E. Sexton, *The Preconditions of Professionalism: Legal Education for the Twenty-First Century*, 52 MONT. L. REV. 331, 337 (1991) (explaining that clients do not present as pre-labeled cases, but as human situations).

“depth versus coverage” dilemma. In short, teaching to and through these moments may have costs or, in any given case, be ill-advised.

But the benefits are worth serious consideration. First is having a deployable framework as a first-line response against the disruptions of spontaneous controversy. Second is using that structure to teach with intention about the overlaps between doctrine, skills, and values in a context that highlights their connection, cross-fertilization, and foundation for professional integrity. And third is recognizing that this framework functions as a unifying construct in the presence *or* absence of controversy, so that using it is not necessarily a deviation from what a teacher might otherwise be seeking to accomplish. Instead, it could become a vehicle for helping to bring together, with new consequence, the various lessons the professor already may be attempting to teach.

Caveats considered, this sample controversy illustrates the richness and integrative learning potential of controversial moments. They may affect students deeply, help to harness their interest in learning, and bring to life the fact that complicated, value-laden questions may affect logical legal analysis and the interaction between two sparring professionals. In addition, they may bring to a head the tensions between values in pointed ways that test both professional and personal integrity. Accordingly, they epitomize the challenge of reconciling individual aspirations with those of others, and of understanding how the “larger commitments”⁹⁷ are inextricably a part of the individual calculus. In this way, controversy helps to anchor learning in the formative and to foster realizations about self and other central to the effective exercise of professional judgment.⁹⁸

Ultimately, and over time, students will need to integrate and internalize all five lessons in order to develop their own frameworks for approaching legal problems consistent with the obligations of their professional role and personal values. The key is to cultivate a conscious intention to make connections between learning domains, to apply that

97. WORK AND INTEGRITY, *supra* note 3, at 290.

98. The connection between controversy and the formative dimension of professional development is especially pertinent to the extent that difficult conversations implicate self-image concerns. See DOUGLAS STONE, BRUCE PATTON & SHEILA HEEN, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* 14 (1999) (postulating that difficult conversations, at one level, trigger self-identity issues relating to “who we are and how we see ourselves”). Thus, difficult discussions may cause anxiety

not just from having to face the other person, but from having to face *ourselves*. The conversation has the potential to disrupt our sense of who we are in the world, or to highlight what we hope we are but fear we are not. The conversation poses a threat to our identity—the story we tell ourselves about ourselves—and having our identity threatened can be profoundly disturbing.

Id. at 111-12.

accumulated knowledge to new situations, and to make meaning out of them—a consciousness that will become second-nature as part of those frameworks. And, as part of learning to “apply knowledge forward,”⁹⁹ students may recognize in a new situation, the same or similar emotional reaction that they had in a prior situation, which will help them to think more critically about it the second or third time around.¹⁰⁰

Moreover, exploring controversial moments like that between Jennifer and Caitlin can help students to grapple with fundamentals—the meaning of peaceful disagreement, open-mindedness, compassion, tolerance, respect, dignity, and ultimately, integrity, in both its moral and structural senses¹⁰¹—as they confront the dilemmas that attend the evolution from law student to lawyer. Because these moments are real, they embody hallmarks of their future professional lives, where many problems will not be “textbook” in either origin or resolution.¹⁰² That realization, in itself, is emblematic of integrative insight as students come to see and experience the messiness of real life and attempt to deal with the uneasy feeling of recurring inexperience in the context of professional problem-solving.

II. STRATEGIES FOR CAPITALIZING ON THE INTEGRATIVE CHARACTER OF CONTROVERSIAL MOMENTS

Assume Jennifer and Caitlin have just had their edgy exchange. Also assume any or all of the just-described learning outcomes are on the table to be explored. The focus now turns to the teacher. What should she or he actually say or do to get the class through the moment and to achieve any of those outcomes from the five-lesson framework, showing, if possible, interrelationships among them? We turn next to strategies that professors and students might employ to deepen the integrative learning potential of heated moments.

Capitalizing on classroom controversy begins with planning for these unforeseen moments early in the course and putting into place intellectual spurs and safeguards to facilitate meaningful discussion and deep learning once controversy arises. Preparing for the unexpected might seem oxymoronic, but there are many things a teacher can do to contextualize controversy before it erupts (the “pre-moment” zone) in order to maximize the learning when it does (the “post-moment” zone). This requires encouraging a receptivity to the lawyering lessons at play in heated

99. Carmichael Conversation, *supra* note 13.

100. *Id.*

101. *See supra* Part I.C.2.

102. *See* Carmichael Conversation, *supra* note 13.

moments, inculcating a habit of working through them more clinically, and employing an array of pedagogic strategies to assist in exploring them. As detailed below, the teacher should (a) in the pre-moment zone, lay a foundation through prefatory exercises and remarks that will help ground the class, once disrupted, in things both useful and familiar for getting back on a productive learning track, (b) in the moment's immediate aftermath, survey any damage to the learning environment and attempt to stabilize the class for next steps, and (c) for the extended post-moment, if appropriate, activate the five-lesson framework through various teaching strategies.

A. *Providing Pre-Moment Prefaces*

There are four up-front investments the professor might make in order to reap integrative dividends when controversy strikes:

1. Introduce the Five-Lesson Framework

Perhaps the most significant pre-moment strategy is sharing with the class the five-lesson framework itself.¹⁰³ It is critical to be explicit about the idea that spontaneous moments of controversy contain—in concentrated fashion—issues of cognition, skills, and values that deserve scrutiny despite the discomfort they create.¹⁰⁴ Being open with students about the inherently integrative nature of unexpected controversies might help them to approach these moments (and the practice of law) more thoughtfully and creatively as they see their importance to both learning about lawyering *and* to lawyering itself. For purposes of this class discussion, the framework can be converted into a five-question “approach,” with each lesson becoming a question to be asked and applied against a controversial moment—a kind of metacognitive checklist to remind students of the potential lessons to be

103. *See supra* Part I.B (listing the five lessons).

104. This is different from ensuring that everyone in the class is “comfortable”—at least in the way that some students may understand that term. Carol Trosset’s Grinnell College Study revealed that “[e]ighty-four percent of the first-year class we surveyed chose the statement, ‘It is important for the college community to make sure all its members feel comfortable,’ over the statement, ‘People have to learn to deal with being uncomfortable,’” leading Trosset to conclude that “promising our students that we will make them comfortable may simply confirm them in their view that they have the right not to be challenged.” Carol Trosset, *Obstacles to Open Discussion and Critical Thinking: The Grinnell College Study*, CHANGE MAG., Sept.–Oct. 1998, at 44, 49. As she points out, assumptions about discussion such as these can serve as significant impediments to critical thinking and informed debate. *Id.*

learned, even (and especially) in the heat of controversy.¹⁰⁵ That basic framework might look like this:

1. What are the law and legal analysis lessons?
(e.g., What are the substantive law issues raised by this moment?)
2. What are the policy and socio-justice lessons?
(e.g., What is—and should be—the role of the law in resolving the social issues at stake in the controversy and reaching a just result?)
3. What are the critical thinking and metacognition lessons?
(e.g., What are the preconceptions, assumptions, values, and/or biases that may be underlying the participants' statements, and how are they affecting the positions taken? Does self-monitoring help to highlight these things and encourage more nuanced responses to difficult situations?)
4. What are the communication and relational lessons?
(e.g., What does—and should—professional disagreement look like in the context of difficult and polarizing issues? What interpersonal skills are implicated?)
5. What are the ethical, professional identity, and professionalism lessons?
(e.g., Are there any ethical quandaries raised by this scenario? What role do/should personal values play in the development of professional identity and integrity?)

This five-lesson framework becomes, in effect, a set of instructional objectives¹⁰⁶ to guide teacher and student in times of both ease and dis-ease in the classroom. The goal is to have a trusted analytical process in place that students know can be used to approach *any* legal situation, controversial or non-controversial. Then when heated exchanges arise, students will have a familiar framework to fall back upon in helping them to

105. Moreover, providing a structure for tackling these moments imparts a seriousness to the endeavor that may encourage students to think more carefully about these moments and help cultivate their confidence and ability to examine emotional responses in professional contexts.

106. As Wegner observed:

One of the surprising gaps in the pedagogy employed by many law professors is the failure to recognize that instructional objectives are worth considering and can make a difference in many ways. Effective instruction generally requires setting goals, developing strategies for achieving those goals, and assessment that measures whether goals have been achieved.

Wegner, *supra* note 5, at 965 (footnotes omitted).

wade through the challenges of difficult moments, and to do so in ways that will capitalize on their inherently integrative character. It is important to provide that framework before controversies arise so that students trust *both* guides to get them through (the teacher and the framework) when they are feeling most vulnerable in the heat of the moment.¹⁰⁷

Encouraging students to be integratively-aware is essential to their growth as professionals. And the five-lesson framework offers a holistic construct for encouraging the type of synergistic intellectual, practical, critical, metacognitive, emotional, relational, and ethical approach that facilitates the connections necessary for creative problem-solving, applying knowledge forward, and making meaning out of new and challenging situations with integrity.¹⁰⁸ In fact, it is around these ideas that teachers have the opportunity to highlight the overlaps between the multi-dimensions of professional work and their close connection to professional development. Priming the classroom environment to maximize these opportunities is the goal of the next three pre-moment strategies: paving the way for controversy, re-envisioning the classroom, and considering adoption of discussion guidelines.

2. Pave the Way

Also primary in helping the class prepare for spontaneous controversy is warning students that it likely will occur and highlighting the importance of learning how to handle its challenges.¹⁰⁹ As with introducing the five-lesson framework, paving the way is especially critical to do before the

107. David Pace, *Controlled Fission: Teaching Supercharged Subjects*, 51 C. TEACHING 42, 43 (2003) (offering strategies to help prepare the class for controversy before (and once) it erupts, including modeling the kinds of “cognitive operations” necessary to handle “emotionally charged material”). Pace developed this approach after repeatedly observing students, who had demonstrated critical thinking and productive dialogue skills, lose them in the heat of discussing a controversial topic and “assume uncharacteristically extreme positions.” *Id.* at 42. Pace thus seeks to “begin to shape these experiences well before the controversial material is encountered” with the goal of “greatly increas[ing] the likelihood that students will maintain their higher mental functioning even while examining an explosive topic.” *Id.* at 43.

108. *Cf.* Davis, *supra* note 34, at 621 (arguing that “students have not been guided toward an understanding of the intricate relationships among doctrinal, strategic, interpersonal, and ethical analysis.”).

109. Kate Bloch calls this basic concept the “in-class preface.” Kate E. Bloch, *A Rape Law Pedagogy*, 7 YALE J.L. & FEMINISM 307, 315-16 (1995); *see also* Beth Burkstrand-Reid, June Carbone & Jennifer S. Hendricks, *Teaching Controversial Topics*, 49 FAM. CT. REV. 678, 679, 682-83 (2011) (offering various strategies for handling controversial subjects, including “laying the groundwork,” taking “blind surveys” to encourage or protect minority viewpoints, and “taking arguments to their extremes” to help uncover their assumptions and possible faults); *see also id.* at 680 (inviting students, at the start of class, to “resist personalizing” controversial comments and to use them instead “as an opportunity to have a productive dialogue”).

fireworks erupt or student remarks become personal because it will help provide a road back when the going gets tough. To do so, the teacher might begin by explaining that managing controversy is a central lawyering task because lawyers are often expected to discuss sensitive and difficult issues about which people hold very different beliefs and values. In addition, the teacher might say something like, “These topics may be uncomfortable and difficult to discuss. There are no easy responses to some of the issues our class will face, but it is our job as lawyers-to-be not only to discuss them, but also to find ways to discuss them responsibly. Now, we may not always succeed. Any of us could misstep and say things we regret. It is important to self-monitor, be open-minded, and be capable of reconsidering or retracting or revising what we say. This is exactly what learning is all about.” The teacher might also explain that class is a collective undertaking: “We are all in this together, and we all have responsibilities not only to ourselves, but to each other in making this a successful class where learning is the paramount goal.”¹¹⁰ Also important is assuring the class that vigorous discussion is welcome, as are any and all views of the issues if raised respectfully and professionally.¹¹¹

Telling students that controversy is likely to occur and giving them the five-lesson framework as a mechanism to learn from it is important, but it may not be sufficient to ensure that students possess the ability to employ the framework during an actual, spontaneous moment of classroom controversy. To that end, another aspect of paving the way might include providing students with a sample moment (such as the one involving Jennifer and Caitlin), asking them to roleplay it, and then to unpack it using the framework. Doing so would allow them the experience of trying out the framework in a simulated (and therefore less emotionally-charged) setting, providing benefits similar to students roleplaying a direct examination before examining a real witness in court. This will give students the chance to learn through doing and also to try new things and make mistakes in a

110. See Wegner, *supra* note 5, at 981 (“[H]owever talented and committed instructors may be and however attuned they are in assessing student outcomes, learning will occur most effectively if students join forces toward achieving desired learning in the end.”).

111. The teacher may also wish to preview in brief some of the most sensitive subjects that she anticipates will arise in class. See Bloch, *supra* note 109, at 315 (preparing a criminal law class for the topic of rape). She might also provide an “escape hatch” in the form of announcing that she will make herself available outside of class to discuss difficult or sensitive issues. Expressly stating this during class (as opposed to simply including it in the syllabus) may help reassure students who might be especially reluctant to raise issues about class dynamics in the classroom setting. *Id.* at 315-16.

setting where the stakes are lower, while also receiving feedback on their performance from the teacher and their peers.¹¹²

Preparing the class for controversy in these ways makes it more likely that when a difficult moment arises, the teacher can more effectively use it as a vehicle to teach to the subjects of the day rather than to have the moment sabotage the intended learning process.¹¹³ In addition, candor about controversy—especially about its potential to disrupt—may help to cultivate trust between teacher and students.¹¹⁴ A foundation of trust is especially important in difficult moments, when a student may feel vulnerable or defensive, and trusting anyone (including or especially the teacher) may feel unsafe.¹¹⁵ Building a store of trust from the start is vital in a classroom setting shaken by controversy. Warning students about these moments, and their potential disruptions to the learning environment, is one way to nourish that rapport. Moreover, offering concrete strategies for addressing them and opportunities to practice them—before they occur—may also increase the trust quotient in times of turbulence.

3. Re-envision the Classroom

In times of controversy (and even in its absence), one strategy that might help to create an environment more conducive to learning is moving from the model of classroom-as-community to one of classroom-as-city.¹¹⁶ While the concept of creating a “community” of classmates is often an unquestioned goal in learning circles, it may, more often than teachers would like, work inadvertently to stifle the diversity of personalities and perspectives students naturally bring into the classroom. As Margaret Himley and Iris Marion Young have explained, the “dream of community

112. We are indebted to William Sullivan for this suggestion, which he refers to as “procedural scaffolding.” Providing such scaffolding, he points out, may benefit not only students but also teachers, especially those who are newer to teaching and/or to teaching students how to learn from controversy. Telephone Conversation with William M. Sullivan, Director, Educating Tomorrow’s Lawyers Initiative and First Author of the Carnegie Report (Feb. 9, 2012).

113. Cf. Burkstrand-Reid, Carbone & Hendricks, *supra* note 109, at 681 (“[U]sing consistent methods for tackling controversial topics provides an air of predictability for students and control for professors.”).

114. See SCHWARTZ, SPARROW & HESS, *supra* note 76, at 13 (observing that “[m]utual respect among students and teachers is fundamental to a healthy teaching and learning environment. . . . In respectful environments, students and teachers feel free to explore ideas, solve problems creatively, and challenge one another to grow.”).

115. See Burkstrand-Reid, Carbone & Hendricks, *supra* note 109, at 679 (“Discussions of difficult topics will go more smoothly if the professor and students have established an environment of trust and mutual respect over the course of the semester.”).

116. Margaret Himley, *The Classroom as City*, in POLITICAL MOMENTS IN THE CLASSROOM, *supra* note 29, at 119, 126-27, 129-30 (discussing the classroom-as-city model).

has become politically problematic . . . ‘because those motivated by it will tend to suppress differences among themselves or implicitly to exclude from their political group persons with whom they do not identify.’”¹¹⁷ As a result, the “‘desire for community helps [to] reproduce . . . homogeneity’ rather than fully recognize the ‘inexhaustible heterogeneity’ . . . of those in the group.”¹¹⁸ Himley thus proposes exchanging the ideal of classroom-as-community for Young’s use of the city as a guiding concept:

Unlike the internal relations posited by the ideal of community, the trope of the city privileges external relations, where people “experience each other as other, different, from different groups, histories, professions, cultures, which they do not understand” The city is full of public spaces where these strangers encounter each other for a host of purposes, where they engage each other in some form for a short time, witness, perhaps appreciate, perhaps feel alienated from each other’s cultures, but remain strangers and do not adopt the other’s ways as their own.¹¹⁹

Thus, “[t]he aim of a classroom defined as city . . . is not for unity but for an unassimilated openness that may allow us all to try to negotiate difference and inequity with justice.”¹²⁰ Explicitly adopting this perspective may help the class—including the teacher—resist the seductive pull toward inauthentic consensus.¹²¹ It may also provide incentives for the expression and accommodation of differences as both teachers and students attempt to create a “safe” space for all without the co-opting pressures to conform to an idealized notion of shared “community.” Additionally, this approach may protect students who are reticent to speak (especially those in the minority) by helping to prevent their immersion in majority viewpoints for a mythical “greater good” and by recognizing more expressly that difference is a natural and enriching aspect of “city” life.¹²²

Another type of class model also may help to minimize or avoid the pitfalls of forced community. In rethinking law school classroom dynamics in the context of a course focused on issues of race and gender, Sturm and Guinier have developed a multiracial learning community model.¹²³

117. *Id.* at 122.

118. *Id.* at 122-23.

119. *Id.* at 126.

120. *Id.* at 130.

121. *See id.* at 129-30.

122. *Cf.* Nina L. Valerio, *Creating Safety to Address Controversial Issues: Strategies for the Classroom*, MULTICULTURAL EDUC., Spring 2001, at 24 (defining the elements of a safe classroom and offering strategies to create and maintain that safety within “controversy-driven” courses).

123. *See* Sturm & Guinier, *supra* note 14, at 521-22 (describing this model); *see also id.* at 524, 540 (noting the possible utility of this model in both non-controversial complex problem-

Concluding that “[i]t is often hard to address conflict constructively . . . unless the teacher has already established a different kind of atmosphere,”¹²⁴ Sturm and Guinier have been able to “transform conflict into a tool for learning”¹²⁵ through “a commitment [adjusted as needed] to three ideas: shared power, creative experimentation, and critical reframing.”¹²⁶ These principles are designed to facilitate authentic conversation and creative, collective problem-solving which consciously capitalize on differences in perspective, position, and life experience.¹²⁷

Where classroom circumstances permit, Sturm and Guinier recommend reconfiguring or reinvigorating traditional pedagogic structures by (1) “involv[ing] students in shaping their own learning” and “circulat[ing] power throughout the room,”¹²⁸ which can work not only to facilitate learning and cooperative behavior, but also “enables students to see connections between the pedagogical tools and the substance of what they are learning”;¹²⁹ (2) “encourag[ing] students to explore problems using various modes of engagement that reflect different learning styles”¹³⁰ and require active participation, brainstorming, and experimentation so that students must “continually ask the question: what works and what does not?”;¹³¹ and (3) “emphasiz[ing] the importance of developing a ‘critical perspective’” that focuses “on the assumptions and values that underlie conventional approaches to controversial issues.”¹³² These pedagogic principles, which “connect[] thought to action, theory to practice, [and] aspirations to plans,”¹³³ have the additional benefit of facilitating integrative learning as students grapple with the meaning of power, justice, and

solving as well as traditional law school contexts); Lani Guinier & Susan Sturm, *Racetalks—Multiracial Learning Communities: Experiments with Learning and Transformation*, RACE TALKS (Jan. 31, 2012), <http://www.racetalks.org/indexhtml.html> (explaining the “setting up and running a multi-racial learning community in seminars that discuss race and gender, large law school classes, police training programs, and community advocacy groups”).

124. Sturm & Guinier, *supra* note 14, at 546.

125. *Id.*

126. *Id.* at 525.

127. *See id.* at 528-30.

128. *Id.* at 525.

129. *Id.* at 526 n.19.

130. *Id.* at 528.

131. *Id.* at 529.

132. *Id.* at 530; *see also infra* Section II.C.1.b (exploring the notion of critical questioning in the context of the Jennifer-Caitlin hypothetical).

133. Sturm & Guinier, *supra* note 14, at 539.

decision-making, both in and out of the classroom, and through the intersection of personal values and professional obligations.¹³⁴

4. Consider Adopting Discussion Guidelines or Aspirations

A supporting strategy for creating a culture conducive to learning and recovering from moments of controversy is the use of discussion guidelines. Stephen Brookfield and Stephen Preskill identify these pedagogical goals of discussion:

- (1) to help participants reach a more critically informed understanding about the topic or topics under consideration, (2) to enhance participants' self-awareness and their capacity for self-critique, (3) to foster an appreciation among participants for the diversity of opinion that invariably emerges when viewpoints are exchanged openly and honestly, and (4) to act as a catalyst to helping people take informed action in the world.¹³⁵

These goals are particularly relevant to aspiring lawyers, especially when charged issues arise. Brookfield and Preskill remind us, however, that students do not always possess the skills necessary for effective discussion, and that these skills can and need to be taught.¹³⁶

Asking the class to create its own set of discussion guidelines is one way to focus students on the nature and use of these vital skills.¹³⁷ The process is as important as the product, as talking about talking is itself an exercise in learning to communicate effectively. The resulting guidelines can range from the general to the very specific. Whatever form they take, they can work towards ensuring that "minority opinions are respected, that no one is allowed to dominate the group, that divergent views are allowed

134. Sturm and Guinier caution, however, that these three principles "are not a portable technique that a skilled facilitator can use successfully in one-shot interventions that do not offer sufficient time for sustained interaction. . . . Nor do these principles work as a moderating influence on thorny one-time conversations involving a large audience, even when the goal is to persuade." *Id.* at 539-40. Nonetheless, they are extremely valuable in prompting rethinking about the typical law school discourse and worthy of use, where feasible, and in whatever forms, in larger classes.

135. STEPHEN D. BROOKFIELD & STEPHEN PRESKILL, *DISCUSSION AS A WAY OF TEACHING: TOOLS AND TECHNIQUES FOR DEMOCRATIC CLASSROOMS* 6 (2d ed. 2005).

136. *Cf. id.* at 20 ("Creating the conditions for democratic discussion and realizing them to the extent possible are deliberate, intentional teaching strategies."). Thus, "discussion is not only a way to learn, but is also a skill to be learned." HESS, *supra* note 25, at 29. "Put another way, discussion is both a desired outcome and a method of teaching students critical thinking skills, important content, and interpersonal skills." *Id.* at 55.

137. *See* BROOKFIELD & PRESKILL, *supra* note 135, at 53-54.

full and free expression, and that there is no pressure to reach premature and artificial solutions to the problems posed.”¹³⁸

If the concept of discussion guidelines seems too formal or confining, it still might make sense to have in place a few acknowledged understandings about speaking and listening in class, especially in anticipation of sensitive exchanges. Perhaps the class could agree upon a few core principles of conversation or discussion, such as humility, respect and empathy.¹³⁹ Diana Hess, in encouraging pedagogic intentionality to address classroom controversy, has concluded that

skillful issues discussion teachers create classroom environments and courses that encourage the airing of multiple and competing views and the participation of all students. Such teachers recognize that peer relations within a class are undoubtedly going to influence students’ willingness to participate, as well as the nature and tone of the interaction. While there are many aspects of peer interactions teachers cannot control, they can ensure that expectations about appropriate behavior are clear, and that within-class grouping does not reify existing power hierarchies among students.¹⁴⁰

Discussion guidelines are one way to communicate these expectations from the outset, and to help level the playing field or expose some of its ruts with finesse and respect. In addition, by promoting respect, open-mindedness, and equality, discussion guidelines help to work against other learning obstacles, including the stigmas surrounding the expression and exploration of the emotions that accompany legal decision-making and the formation of professional identity.¹⁴¹

138. STEPHEN D. BROOKFIELD, *THE SKILLFUL TEACHER: ON TECHNIQUE, TRUST, AND RESPONSIVENESS IN THE CLASSROOM* 97 (1990).

139. One scholar in the Catholic Common Ground Initiative has described such principles as “the foundations of facilitating effective conversations” as they serve as the underpinnings of the following six concepts: (1) “[a]ccepting that none of us has the monopoly on truth”; (2) “[a]ccepting that no one is a saving remnant”; (3) “[r]ecognizing that proposals must be evaluated for . . . realism. Everything discussed must be tested for potential impact on real people”; (4) “[a]ssuming that all are acting in good faith”; (5) “[b]eing willing to see all constructions in their best light”; and (6) “[b]eing cautious in assigning motives.” *Guiding LGBTQ Discussions on a Catholic Campus*, WOMEN IN HIGHER EDUC., Jan. 2006, at 2, available at http://www.accessmylibrary.com/coms2/summary_0286-15039191_ITM. Cf. Sophie Sparrow, *Practicing Civility in the Legal Writing Course: Helping Law Students Learn Professionalism*, 13 LEGAL WRITING: J. LEGAL WRITING INST. 113 (2007) (offering concrete suggestions for teaching and assessing civility).

140. DIANA E. HESS, *supra* note 25, at 166.

141. It is important to note that these sorts of guidelines sometimes highlight the tension between respectful discourse and individual expression. Depending on the class, the potential benefits of discussion protocols may be outweighed by their disadvantages if they increase class discomfort and silencing (although this has not been our predominant experience). Teachers need to consider whether these guidelines create more response options for both professor and students

B. *Surveying and Stabilizing in the Immediate Post-Moment Aftermath*

The pre-moment strategies are designed to provide a strong foundation for learning integratively from controversial moments, and to create a classroom environment in which both teacher and students are well-situated to invoke the five-lesson framework when controversy occurs. But even the most prepared class might require some in-the-moment help to deal with the raw emotion and analytical challenges created by a controversial exchange. When a heated moment arises, it is important that the professor stands ready to survey and stabilize (if necessary) the classroom in the critical seconds comprising the immediate post-moment zone.

In surveying, the teacher should conduct a preliminary appraisal of the class climate in the wake of the controversial remark—a sort of “aerial assessment,” looking down upon the class as a whole.¹⁴² In doing so, it is important that the teacher mind *all* class participants: the student who made the remark, any student(s) to or about whom the remark may have been directed (or who otherwise might be particularly affected by it), the “bystander” class members, and last but not least, the professor herself.¹⁴³ In this brief window of time, it is also vital that the teacher remember her responsibilities to protect all class members, even (perhaps especially) the remark-maker(s), and to maximize learning.¹⁴⁴

A teacher’s immediate response to unexpected controversy will be highly context-dependent. It will depend on her preliminary and instantaneous, almost instinctual, survey of multiple factors, including: (1) the personalities, politics and history of the class; (2) where the students are, individually and collectively; (3) where the teacher is with the students, individually and collectively; (4) what discussion techniques, frameworks

once a controversy arises, or whether they operate to stifle students who may be so worried about violating a guideline that they decide not to participate at all. Other risks include the potential for augmenting tensions should class members conclude that the remark-maker “violated” one of the adopted standards. The use of a “policing power” by either teacher or student may create additional imbalances and friction at the most inopportune moments of conflict and discomfort. Making any guidelines merely aspirational helps to eliminate or at least minimize these potential problems.

142. See SCHWARTZ, SPARROW & HESS, *supra* note 76, at 127 (“Try to disengage for a minute and consider the view of the classroom dynamic from above the class.”).

143. As Lee Warren cautions, teachers must self-monitor and manage themselves: “[h]old steady,” “[d]on’t personalize remarks,” and “[k]now your [own] biases.” Lee Warren, *Managing Hot Moments in the Classroom*, DEREK BOK CENTER FOR TEACHING AND LEARNING, HARVARD UNIV., <http://isites.harvard.edu/fs/html/icb.topic58474/hotmoments.html> (last visited Dec. 2, 2012); see also SCHWARTZ, SPARROW & HESS, *supra* note 76, at 127 (“In facing challenging issues, we first need to be aware of our own responses. In these situations, students especially need to see us model calm and constructive leadership.”).

144. Warren, *supra* note 143.

and norms are already in place in the class; and (5) whether and how the class has confronted controversy before as well as its residual (if any) effects. There may be nothing the teacher can do about the “underground classroom”¹⁴⁵—the sub-surface class dynamic of student perception and interaction that the teacher is not always privy to, but which may intimately affect in-class dynamics—but she should factor in whatever she does know or surmise about it.¹⁴⁶

In performing this initial survey, the teacher should be especially sensitive to what Kate Bloch has called “a failure of forum” in the sometimes “smothering aftermath” of a controversial moment.¹⁴⁷ Forum failure is where the “explosion” in class “exceed[s] the uncomfortable and become[s] devastating.”¹⁴⁸ Teachers who have experienced this know the sequence only too well: “Combustion, . . . undermined rapport, chilled speech, and speaker alienation.”¹⁴⁹ When true forum failure has occurred, the class may not be in a position to invoke the five-lesson framework for some time.

After conducting these preliminary damage assessments from above and below, the teacher should next be ready, if necessary, to stabilize the classroom situation.¹⁵⁰ Marking the moment in some way by acknowledging to the class that something significant has occurred may be required.¹⁵¹ This might be accomplished by pausing—literally. By using

145. See Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 CAL. L. REV. 1511, 1554-71 (1991).

146. See *id.*; see also James Tomkovicz, *On Teaching Rape: Reasons, Risks and Rewards*, 102 YALE L. J. 481, 481 (1992) (explaining that controversy can surface hidden class dynamics).

147. Bloch, *supra* note 109, at 312.

148. *Id.*

149. *Id.* at 313. As Bloch points out, the line between vigorous (and possibly uncomfortable) discussion and forum failure can sometimes be difficult—but important—to locate: “[E]xplosiveness is fine, but no one wants a class to actually explode on her. Sharp disagreement and debate is what we strive for, but if it degenerates and goodwill is lost, the atmosphere for learning can be destroyed.” *Id.* at 312 n.28 (quoting Susan Estrich, *Teaching Rape Law*, 102 YALE L.J. 509, 515 (1992)).

150. Encouraging stabilization following a moment of controversy is not the same as recommending that teachers attempt to fix the situation. Certainly, the second desire is natural. *E.g.*, Margaret Himley, *Embodying Outsideness*, in POLITICAL MOMENTS IN THE CLASSROOM, *supra* note 29, at 91 (quoting a teacher, who saw a student in a painful situation, as wanting “to resolve it, want[ing] by the end of class to have the problem settled and the circle restored”). Not only might a unilateral effort of this sort fail, but more importantly, a teacher-imposed “resolution” deprives all class participants of the opportunity to work through, and learn from, the moment. Of course, a “teacher-fix” may be necessary to avoid unnecessary pain to students or severe derailment of class objectives.

151. Indeed, ignoring a controversial remark carries its own risks. See Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation and Disability Into Law School Teaching*, 32 WILLAMETTE L. REV. 541, 569 (1996) (“[The remark] will remain a part of

silence or facial expressions, the teacher might be able to convey the gravity or uncertainty of the situation and to alert the class that she is considering next steps. Even admitting uncertainty about what to do—and asking the class’s opinion about this—might be an effective (and engaging) way to move forward. Or the professor may also be ready to simply—but expressly—acknowledge the situation, speaking directly to the emotion that accompanies the controversy.¹⁵² Angela Harris and Marjorie Schultz call this “nam[ing] the tension” and recommend that the teacher “exhort[] the class to talk its way through the silence,” perhaps offering the notion that “[i]f we can’t deal with issues like [religion and sexual orientation] who can? Society is falling apart on these tensions. . . . We’ve got smart, articulate, caring people . . . in this room. If not us, who?”¹⁵³ As part of this, the teacher might also explicitly articulate her own desire to work through the difficult moment with the class.¹⁵⁴

Marking the moment in any of these ways also might help to slow things down a bit, which may benefit both teacher and students. At the very least, it gives the professor more time to think about her subsequent, more substantive response. Additionally, it gives the students who are particularly affected by the remark time to regroup and gives the student who made the comment time to clarify her remark or self-correct (if the remark came out differently than she intended or if he regrets the ensuing reactions). These approaches can also help reinforce the idea that “[e]motion can never successfully be eliminated from any truly important intellectual undertaking When strong emotions are considered inappropriate, participants in an intellectual exchange may miss the places where they need to think more deeply.”¹⁵⁵ In any event, as part of paving the way, the teacher can warn students about the potential discomfort in a moment’s aftermath, including the fact that he may not know exactly how to respond and may ask each student, as responsible members of the learning collective, to help in addressing the disequilibrium.

the classroom environment, distorting and undermining the professor’s ability to have open, respectful, and penetrating discussion of diversity issues.”)

152. See Harris & Schultz, *supra* note 84, at 1789.

153. *Id.* at 1789-90.

154. Schultz offers an example of this when she herself was the source of controversy: “I begin by telling the group how tense and blocked things seemed after my gaffe. Although I’m nervous, I want us to talk about it. I don’t want to institutionalize the tightness” *Id.* at 1796.

155. Harris & Schultz, *supra* note 84, at 1774.

C. *Deploying the Five Lessons*

If and when the class is sufficiently stabilized, it may then be possible to mine the controversial moment for lessons about law, policy, the critical inquiry process, communication and relationships, and ethics and professionalism. Especially if the class is already familiar with the idea of unpacking a moment of controversy via the five-lesson framework,¹⁵⁶ the actual analysis may be accomplished by asking questions that will lay bare and provide opportunities to explore any or all of the five lessons and their interrelationship. For situations that lend themselves less well to direct, on-the-spot inquiry about those lessons, we suggest some additional strategies that may be more useful for teaching to these areas, such as distancing students from the intensity of controversy, methodological doubting and believing, reflective writing, and the next-class reflection back.

We now examine these approaches in the context of the Jennifer-Caitlin moment. All share the common goals of centering learning in the student, promoting intentionality in legal problem-solving, encouraging self-reflection, and deterring the reflexive thinking and acting that can undermine the criticality, creativity, and connectivity necessary for integrative learning.

1. Questioning

A professor might first decide to explore the various dimensions of the controversial moment by expressly posing questions about one or more of the five lessons in the framework. Key to this approach is its intentionality. Invoking the framework is a way to remind students (or, if the framework is new to them, introduce them to the notion) that viewing the controversial situation through a professional lens will help to sort it out and to identify the lawyering lessons to be learned. Where the professor begins will depend on a variety of factors, including her teaching and learning priorities overall as well as in that particular moment; the level of emotion in the room; whether this is the first moment of controversy the class has encountered; her assessment of whether there are one or more threshold issues that need to be decided or discussed before others can be explored; and whether the class has adopted discussion guidelines and if so, which ones (if any) might be used to diffuse the tension or to jumpstart fresh discussion.

One preliminary issue is whether Jennifer's comment or Caitlin's response deserves the teacher's immediate and express disapproval or outright dismissal. Are some statements simply not worth dignifying with

156. *See supra* Part II.A.1.

discussion or taking up class time? Or unwise to spotlight given the discomfort or embarrassment that some students may feel if the situation is prolonged? Or, on the other hand, given the nature of the educational enterprise, should nothing be “off limits”? That is, should every remark be fair game for discussion or lesson-making—in particular, by helping students to use such statements to develop their critical thinking and self-monitoring skills and to grapple with how their underlying assumptions or emotional reactions might impact their learning, and in turn, their professional decisions? One scholar has articulated the line between appropriate and inappropriate to be when the discussion moves from “pointed academic debate”¹⁵⁷ to “emotional battle or personal invective,”¹⁵⁸ or becomes one “threaten[ing] psychic pain, but promis[ing] no offsetting benefits.”¹⁵⁹ Each teacher will need to make this type of determination for herself in the context of the particular situation presented and in accordance with her pedagogic principles and practices.¹⁶⁰ Indeed, a teacher’s decision not to dwell on a particular comment or exchange, if explained, may itself advance one of the framework lessons.

Assume the teacher determines that Jennifer’s remark and Caitlin’s reaction are appropriate for further exploration via the framework. To illustrate the questioning technique, we take the five lessons out of order, as any particular situation may demand. As earlier described,¹⁶¹ where possible, the teacher should attempt to teach to the synergies inspired by the controversy and to help students not only to see connections between the various dimensions of their work, but also between their personal reactions and professional decision-making.

157. Tomkovicz, *supra* note 146, at 501 n.49.

158. *Id.* at 486.

159. *Id.* at 501 n.49.

160. Another factor a teacher might consider in assessing the appropriateness of a remark is the speaker’s motivation for making it. This raises the question of whether a professor can distinguish misguided opinions from bigotry or mean-spirited remarks. Can teachers pretend to assess motivation? Or is it our obligation to do so? Yet another part of the calculus is the classroom reality that what is “acceptable” may “change over the course of a semester. The higher the level of trust and mutual respect that has been established in a class, the wider the unofficial boundaries become.” Ansley, *supra* note 145, at 1557 n.130. Also pertinent are potential standards concerning the permissible contours of speech, including the First Amendment, hate speech boundaries, university or law school policies that bear upon the classroom, and, of course, academic freedom concerns—all issues beyond this article’s scope.

161. *See* discussion *supra* Part I.D.6.

(a) Exploring Communication and Relational Lessons
(Framework Lesson Four)

The professor might first try to teach to the communication and relational issues raised by the Jennifer-Caitlin exchange. She could begin by observing that Jennifer's remark expands the substantive law inquiry presented by the hypothetical, but propose that given the tension in the room, the class should first attend to the interpersonal issues confronting them. To that end, the professor might point out the possible miscommunication between the two students and suggest that Jennifer and Caitlin ask each other "clarifying questions" in order to better understand what the other meant by her comments.¹⁶² Through this exchange, Jennifer and Caitlin may come to see that they have misunderstood each other, thus emphasizing the importance of two key lawyering skills related to interpersonal discourse—diplomatic, but probing, follow-up questioning and careful listening.¹⁶³ This inquiry also highlights the importance of thinking critically and not jumping to conclusions about a person or situation based on partial information and gap-filling assumptions that simply may be wrong (a critical inquiry lesson).

Alternatively, should discussion reveal that Jennifer was, in fact, expressing concern about entering the home of a gay colleague because of her religious beliefs that same-sex relationships are morally wrong, then different communication and relationship issues come to the fore, especially if Caitlin experienced Jennifer's position as homophobic and painful. The professor's challenge then would be to engage the class thoughtfully and safely around these complex issues, at once avoiding embarrassing or

162. The practice of asking "clarifying questions" (as embodied in one of the discussion guidelines created by one of Professor Rovner's clinic classes) urges discussion participants to "make a genuine attempt to understand what the person prior to you has just said, rather than simply responding . . . [and to] consider whether and how the use of clarifying questions can help ensure that you understand the prior speaker's point." Students have used this device to great effect by literally asking each other "May I ask you a clarifying question about what you just said?" Despite this seeming formality, use of this predetermined question helps to avoid defensiveness in the student being queried because, in accordance with the discussion protocol, she has already been told the explicit purpose behind the question—a genuine desire to understand what she has said. In this way, the questioned student can focus on more clearly articulating her position, and is relieved (at least temporarily) of trying to discern and respond to the motives of the student reacting to her.

163. Depending on the circumstances, the teacher could also begin with what Brookfield and Preskill refer to as a "perception check" in which she (or other class members) "describe what we think a particular person is feeling or thinking and request that the person confirm or correct this description." BROOKFIELD & PRESKILL, *supra* note 135, at 143. The theory behind perception checks is that by using them, "you send a message to those with whom you are in conversation that you genuinely want to understand how they interpret your words." *Id.*

“disciplining” Jennifer for her beliefs, while acknowledging that those beliefs may be hurtful to Caitlin. The skills at stake include learning to express respectful disagreement, being open to understanding a position that is personally offensive, acknowledging the rights of others, and attempting to see people for who they are without stereotypical distortion. Learning to keep the lines of communication open on these types of issues is vital to maintaining effective professional relationships with those who may be different, either in personal experience (such as clients) or in the positions they espouse (such as adversaries).¹⁶⁴

(b) Exploring Critical Thinking and Metacognition Lessons
(Framework Lesson Three)

Closely related to developing these communication and interpersonal skills and insights is the ability to think critically and metacognitively. Crucial to this approach is helping students to become more self-conscious about what they know, do, and feel. This, in turn, will help them to unearth and explore any misconceptions or preconceptions they hold, to hear new information in a different light, and to benefit from the built-in feedback loop that self-reflection provides as the situation unfolds and adaptive responses are required.¹⁶⁵

To these ends the professor might try critical questioning¹⁶⁶ with both Jennifer and Caitlin to help elicit the assumptions underlying their statements and to illustrate the advantages of self-monitoring. With Jennifer, for example, the professor might ask her questions about what kinds of things are and are not appropriate in a work environment. Doing so enables her to gently prod Jennifer to articulate specific examples of what she considers to be workplace norms, and “in many cases, the assumptions that are sought [by the questioning] will come through

164. This is particularly important, given the lack of attention to these types of skills elsewhere in the curriculum. See Daisy Hurst Floyd, *Lost Opportunity: Legal Education and the Development of Professional Identity*, 30 *HAMLIN L. REV.* 555, 560 (2007) (“Legal education ill prepares lawyers to handle the demands of relationships in the practice of law. This failure impacts the fundamental relationship of attorney and client. One does not practice law without being in relationship with a client Therefore, understanding the dynamics of those relationships should be a part of any practitioner’s legal education.”).

165. DEVELOPING CRITICAL THINKERS, *supra* note 67, at 14 (“Critical thinking . . . involves a reflective dimension. . . . Boyd and Fales . . . define reflective learning as ‘the *process* of internally examining and exploring an issue of concern, triggered by an experience, which creates and clarifies meaning in terms of self, and which results in a changed conceptual perspective.’”) (citation omitted).

166. See *supra* note 67.

clearly.”¹⁶⁷ As Brookfield recognizes, critical questioning “is concerned not so much with eliciting information as with prompting reflective analysis.”¹⁶⁸

Approaching Jennifer in this way is more likely to help her develop the skills of reflective analysis than asking a more general—and more confrontational—question such as “What are the assumptions underlying the comment you just made?”¹⁶⁹ From Jennifer’s response to the question about appropriate workplace conduct, the professor (or other students) may be able to engage Jennifer in further critical reflection that will uncover additional assumptions and/or stereotypes that may be embedded in her remark. These types of questions typically take the form of what Brookfield and Preskill refer to as “questions that ask for more evidence,” such as, “How do you know that? . . . What data [or information] is that claim based on? . . . [or] What evidence would you give to someone who doubted your interpretation?”¹⁷⁰

Similarly, Caitlin might be asked to critically examine her outright dismissal of Jennifer’s comment as “homophobic.” One professor argues that “the use of freighted terms like ‘racist,’ when used to label another individual in a classroom setting, is almost never conducive to intellectual exchange. It blocks rather than promotes communication and it fosters sloppy thinking and sloppy feeling. Our classrooms should be places where discussion does not proceed by epithet.”¹⁷¹ Teachers who share a similar philosophy may wish to try gently questioning Caitlin about the fact that Jennifer grounded her comment in her religious beliefs, and whether that fact makes any difference to her—either in how she hears the comment (a communication lesson) or what she believes the law can or should do in situations in which competing interests are at stake (a policy lesson).

In short, Jennifer’s remark and Caitlin’s response lead naturally to discussing the core principles of critical inquiry: the importance of acknowledging and exploring the values and assumptions that ground our

167. *Id.* at 94.

168. *Id.* at 93.

169. *Id.* at 93-94.

170. BROOKFIELD & PRESKILL, *supra* note 135, at 85-86.

171. Ansley, *supra* note 145, at 1556 n.130. Ansley relates a classroom conversation she observed between Derrick Bell and a student, during which Bell insisted that “[w]e will not call each other racists in this class.” Ansley “applaud[s] Bell’s] judgment . . . in that setting to declare that certain forms of discourse were ‘off limits’ in his classroom,” but recognizes that this was made possible by Bell’s “demonstrable personal concern for both the person using the epithet and the target of the remark, and the authority he naturally drew from his own strong and visible record on matters of racial justice.” *Id.* at 1556-57, n.130.

conceptions of the world.¹⁷² But cautions are necessary. For example, when does a professor-“sponsored” critique of a deeply-held personal belief (like Jennifer’s) amount to “subversion” (whether actual or perceived) of that belief, or to silencing of others in the class who may hold the belief being critiqued? Is the religious fair game in the public classroom, as long as speakers merely educate (rather than promote or denigrate), expose others to different religious views (rather than impose particular beliefs), inform about the religion (rather than seek conformity with it), and discuss the subject in an academic (rather than devotional) way?¹⁷³ So, too, in the spirit of caution and respect, the teacher needs to consider Caitlin’s feelings—specifically, whether even engaging in this kind of inquiry amounts to disregard of Caitlin’s pain or to disrespect for her and other students who may be similarly affected by Jennifer’s remark.¹⁷⁴

Queries like these that focus on the religious and moral values embedded in the controversy are some of the most sensitive and difficult areas of critical inquiry questioning. Professors will need to decide whether and how the potential learning to be gained may outweigh the risks of causing pain, instigating distrust, and inviting forum failure or other negative repercussions. In particular, the potential for unintentionally shaming Jennifer is fairly high, as is the potential for unintentionally delegitimizing Caitlin. The teacher in this situation might well conclude that the discussion is likely to degenerate to a place in which no one can learn, or in which both students (and others in the class) might feel insulted, disrespected, or disenfranchised.

If, as a result, the professor decides not to pursue the critical inquiry lessons about personal morals and values in the immediate moment, the

172. With that in mind, the teacher also might choose to ask Jennifer to explain why she feels the way she does in order to help everyone in the classroom to better understand the assumptions underlying her beliefs. Or, as Robert Palmer suggests, the professor might say something like, “OK. Not everyone here is [religious]. What can those people learn from this?” Robert L. Palmer, *Is God on Your Seating Chart? Discussing Religious Beliefs in Class*, L. TCHR., Fall 2005, at 1. But these types of questions highlight what is particularly challenging in this scenario: What happens when religious faith and critical inquiry clash in the classroom? Reasonable teachers (particularly those in public universities) may disagree about whether it is appropriate for the professor to explore these issues.

173. See Jay D. Wexler, *Preparing for the Clothed Public Square: Teaching About Religion, Civic Education, and the Constitution*, 43 WM. & MARY L. REV. 1159, 1185-86 (2002) (citing “guidelines for teaching about religion in public schools”).

174. The professor must also consider her own perspectives and experiences and how they might affect both her reaction to the controversial remark, as well as how the class perceives her. Regarding the first, Ansley has observed, “[T]eachers should be careful to note their own identifications: whose pain is easiest for us to understand, and therefore whose sensitivities do we take most care to respect? Whose learning path is most like our own, and therefore which path are we most likely to work to keep brush free?” Ansley, *supra* note 145, at 1559 n.134.

teacher should be alert to other, less charged, opportunities for pursuing this line of questioning in the context of other lessons. The teacher might then challenge students in more “neutral” territory to get at those assumptions via discussion of substantive law or professional conduct rules. So, for example, during a discussion of the legal issues raised by the controversial moment, the professor might ask the students how they know whether the ADA even applies to the situation at all—that is, whether they are making a threshold assumption that there are the requisite fifteen employees to make the publisher a “covered entity” within the meaning of the statute.¹⁷⁵ Uncovering this more “sterile” assumption concerning a statutory trigger analogously leads the way to understanding, more viscerally, the process of uncovering and seeing the influence of more personal assumptions or preconceptions about religion or orientation that may influence, perhaps unconsciously, seemingly logical legal conclusions (a professional identity lesson).

Relatedly, in a discussion about the professional responsibility implications of the exchange, students might be encouraged to consider the unstated reasons that undergird, for example, a position that Jennifer should not be required to represent the disabled employee (or any client) if she is uncomfortable with that client’s sexual orientation. Similar is the position that Caitlin should not be required to represent someone who disrespects those in same-sex relationships. Identifying the assumptions in these positions and making them explicit enables everyone in the discussion to benefit, as it lays bare for more careful examination the values, ideas, and behaviors that shape students’ understanding of legal concepts and their developing professional identities. Through critical inquiry questioning, the professor can help to inculcate a habit of critical reflection that students will, ideally, be able to self-generate in future professional encounters.

In the end, pursuing the lessons of critical inquiry should serve multiple goals. First, they should help make clear to students that thinking is a complex phenomenon and that much goes into clear and powerful thought, including and especially a self-awareness about *how* to think. It might be reaffirming to many students to consciously acknowledge that thinking well does not necessarily happen naturally. In addition, taking a more variegated look at “thinking” and “analyzing” and intentionally focusing on their emotional and relational aspects will help students not only to value their emotional reactions, but to see them as more discrete, yet interconnected, elements of their thinking and conclusion-drawing—an awareness vital to

175. 29 C.F.R. § 1630.2(b) (2011).

sound critical thinking, listening openly, and relating effectively, especially in charged situations.¹⁷⁶

(c) Exploring Law and Legal Analysis Lessons
(Framework Lesson One)

Now assume that the professor in our hypothetical thought it best to start the post-moment recovery with a more dispassionate discussion about the substantive law in order to double-back on the incendiary exchange and view it through the more clinical lens of the legal issues involved. In returning the class to the original hypothetical about possible accommodations, the teacher might begin the discussion in this way:

OK. There are clearly many important feelings here which this hypothetical has surfaced, and which we certainly can't ignore. And we won't. But I want to ask Jennifer and Caitlin—all of us, really—to freeze the frame on their exchange for a few minutes, remembering our discussion guidelines, and the importance of giving each other the benefit of the doubt right now.

This is exactly one of those controversial moments we discussed at the very start of the course. I don't want to disregard it, but want to get at it from a different angle. So this seems like a good time to invoke the five-lesson framework to look at this moment from the perspective of Lesson One and the substantive law issues here. Because inherent in the exchange between Jennifer and Caitlin are important legal issues that might need clarification before we go back to the other more personal, yet highly pertinent, issues raised by that exchange.

So let's talk for a few minutes about some of those legal questions. For example, just what is the legal standard for when an employer is required to provide an accommodation under the ADA? Can a different employee's personal preferences be part of the reasonable accommodation and undue hardship analyses? If so, how? Is there any authority in the statute, regulations, or case law to support the position that "lifestyle" concerns can be factored into the reasonableness inquiry?

The professor might then inquire about how the ADA's reasonableness analysis is impacted when a proposed accommodation interferes with the religious beliefs of another employee. Related questions include: Is there another body of law that should be consulted in examining this issue? What rights, for example, does Title VII confer on employees regarding their

176. See DEVELOPING CRITICAL THINKERS, *supra* note 67, at 7 ("Critical thinking is sometimes regarded as a kind of pure, ascetic cognitive activity above and beyond the realm of feeling and emotions. In fact, emotions are central to the critical thinking process.")

religious beliefs and practices?¹⁷⁷ How does the law resolve a situation like this where competing rights are at stake? And just what are those rights—disability rights, religious rights, or human rights? Getting to the notion of competing rights may set a more peaceful stage for exploring the exchange between Jennifer and Caitlin, given that the law may provide legitimate arguments for each of their perspectives on the matter. In addition, starting the discussion on the substantive side might encourage other students to participate, and empower them to either offer their views on the original controversy or to help diffuse it in ways that offer insight about its complexity.

(d) Exploring Policy and Socio-Justice Lessons
(Framework Lesson Two)

In addition, discussion of these issues provides a natural segue into questions that can help teach to the policy and socio-justice concerns raised by the Jennifer-Caitlin exchange. Thus, after examining what the law *is*, the professor could then inquire about what the law's role *should be* in addressing or regulating the competing interests of religion and disability accommodation, especially in a situation concerning same-sex equality. As noted earlier, further questions flow from this: What are the costs of equality? Are some rights more important than others? If so, how do you determine this? These are the types of questions that require students to grapple with the interest-balancing and line-drawing that are part and parcel of principled professional judgment. They push students beyond what may be comfortable and challenge them to define their ideals and test their meaning and application in a broader social context—all while presenting them with delicate issues of diplomatic communication and maintaining functional relationships with those who may hold very different views of these issues.

(e) Exploring Ethics, Professional Identity, and
Professionalism Lessons (Framework Lesson Five)

Finally, the teacher might ask questions designed to explore the ethical and professionalism issues raised by the moment of controversy. One of these is whether Jennifer could represent a gay client, or Caitlin, a very

177. See 42 U.S.C. § 2000e-2(a)(1), (2). There is also the question of whether face-to-face interaction at the weekly staff meetings could be classified as an essential function of the job. 29 C.F.R. pt. 1630 app. § 1630.2(m)-(n) (2012).

religious client who opposes same-sex relationships. As noted earlier,¹⁷⁸ both Jennifer and Caitlin (and the rest of the class) may need to consider the ethical rule requiring diligence in a lawyer's representation of her clients. In undertaking this exploration, students may come to recognize that emotional understandings are integral to the practice of law. They may also come to realize the need to interrogate those emotions. As Harris and Schultz have noted, "when emotions are acknowledged and rigorously examined, they can serve as a guide to deepening intellectual inquiry; they can make participants in a debate more keenly aware of the importance—or unimportance—of an insight or dialogue. Emotions are part of thought, not its antithesis."¹⁷⁹ Thus, it should become more clear to them that confronting their feelings about their morals and values is necessary to fully appreciate the ramifications of their ethical obligations and to reconcile, if necessary, their professional obligations with their personal beliefs or instincts.¹⁸⁰ These are the very types of experiential "test drives" that will help students to see that developing a professional identity involves much more than learning the law, arguing a case, or drafting an effective email.

The next four teaching strategies are ways to get at the learning outcomes identified within the five-lesson framework when direct questions alone are not the best approach.

2. Distancing

Teachers might also find value in attempting to distance the class from the immediacy of the moment by depersonalizing the situation or making it seem more abstract. One well-known example of distancing is using roleplays, where students do not have to speak as themselves but assume the buffer of another identity or role.¹⁸¹ For example, when discussing a sensitive topic like rape in her criminal law course, Kate Bloch advocates turning the class into a mock legislature entrusted with drafting a statute or statutes criminalizing rape.¹⁸² This conversion helps to create a built-in mechanism for reasoned debate. The result is fostering engagement about a

178. See *supra* notes 87-88 and accompanying text.

179. Harris & Schulz, *supra* note 84, at 1774.

180. See *id.* at 1805.

181. See Kevin C. McMunigal, *Reducing the Risks and Realizing the Rewards: An Approach to Teaching Rape Law*, 34 SAN DIEGO L. REV. 519, 520 (1997) ("The special advantages of role play . . . are that it increases distance and provides incentives which mitigate the risks of explosion and alienation.").

182. Bloch, *supra* note 109, at 317.

very difficult subject, while minimizing its potential to destroy thoughtful, productive conversation about the underlying issues.¹⁸³

In our hypothetical Employment Law class, the teacher might ask the class to assume the role of Congressional representatives debating the considerations involved in creation of Title I of the ADA or of lawyers charged with drafting the regulations implementing the statute. For example, in a roleplay based on a Senate debate about the ADA reasonable accommodation/undue burden provisions, some students could be asked to advocate for and against a statutory section including language stating that accommodations that infringe on other employees' religious rights are *per se* undue burdens. In so doing, students would need to refer to what they already know (or would need to research) about existing law, especially other areas of employment law. Additionally, they would need to formulate policy-based reasons for and against such a provision, providing them an opportunity to explore policy lessons in the creation and operation of the law. Some of the same lessons could be learned by asking students to put themselves into the shoes of the employer's counsel as he or she attempts to draft a new company telecommuting policy that comports with existing law. If time permits, assigning that writing task might provide students with an opportunity to experience how difficult drafting can be in the face of legal uncertainty and the pull of personal values.

Finally, as Bloch has observed, effective participation in a legislative roleplay requires explicit consideration of the legislator's role as "informing and persuading other legislators to adopt the speaker's perspective"¹⁸⁴ and highlights that "[t]he legislator's goals should be to ally rather than antagonize."¹⁸⁵ It also helps to illustrate "how a conscious decision about approach [and] words affects the impact of the message."¹⁸⁶ Focusing on the processes of debating and legislating as independent learning goals will help students to understand—both emotionally and intellectually—the nature of reasoned disagreement and compromise.¹⁸⁷ It will also work to test their skills in various strategies of persuasion.¹⁸⁸ In spotlighting other dimensions of the lawyer's role beyond the development of legal arguments, the professor creates a vehicle for students to consider other factors relevant to their professional development, such as how they are behaving in the exchange and the effect of their approach on their audience.

183. *Id.* at 309.

184. *Id.* at 319.

185. *Id.*

186. *Id.*

187. *See id.* at 336-37.

188. *Id.* at 337.

In addition, students may have the opportunity to consider their subjective experience of advocating for or against a position they personally agree or disagree with.¹⁸⁹ These can be powerful synergistic episodes as students come to know—and feel—in new ways, how process can affect substance, and personal can affect professional.¹⁹⁰

3. Methodological Doubting and Believing

Peter Elbow has written extensively about the “doubting” and “believing” games—two complementary practices for helping people to understand arguments more thoroughly.¹⁹¹ The games are grounded in the premise that “[w]hen faced with an idea, especially a controversial or threatening one, people are quick to pick camps—the believing camp or the doubting camp. Whichever one they are in, folks tend to get real comfortable and even go so far as to completely forget that there is another game/camp.”¹⁹² The two methods are flip sides of the same conceptual coin, and both should be used to help bring a thinker full cycle on the issue under scrutiny.

The doubting game is “the disciplined practice of trying to be as skeptical and analytic as possible with every idea we encounter. By doubting well, we can discover hidden contradictions, bad reasoning, or other weaknesses in ideas that look true or attractive. We scrutinize with the tool of doubt.”¹⁹³ The idea behind the doubting game is fairly straightforward: it “invites students to engage in a systematic, disciplined effort to inquire into or doubt a point of view no matter how familiar and

189. *Id.* at 338 (“[R]ole assumption elevates to the fore the intersection of our professional and our personal selves.”).

190. Another distancing device is the “people/idea distinction.” This requires students to bear in mind that the proponent of the idea is not himself the idea or may not even endorse the idea he espouses. This detachment between the speaker and the spoken may encourage other students to talk more candidly if they feel free to disagree with the idea rather the person who offered it. Conversely, the person who offered the idea may feel less vulnerable or defensive if he can separate himself from the idea being criticized.

191. See PETER ELBOW, *WRITING WITHOUT TEACHERS* (1973); Peter Elbow, *Bringing the Rhetoric of Assent and The Believing Game Together—and Into the Classroom*, *COLLEGE ENGLISH*, Mar. 2005, at 388-99; PETER ELBOW, *EMBRACING CONTRARIES: EXPLORATIONS IN LEARNING AND TEACHING* 254-300 (1986).

192. Randall Grayson, *The Believing and Doubting Game* (2002), available at http://www.visionrealization.com/Resources/Organizational/Believing_and_doubting_game.pdf (last visited Dec. 2, 2012).

193. PETER ELBOW, *The Believing Game and How to Make Conflicting Opinions More Fruitful*, in *NURTURING THE PEACEMAKERS IN OUR STUDENTS: A GUIDE TO TEACHING PEACE, EMPATHY, AND UNDERSTANDING* 15 (Chris Weber ed., 2006).

reasonable it may seem.”¹⁹⁴ Used properly, the method makes clear the difference between “blanket, naive, unthoughtful skepticism that rejects everything” and “the use of doubting as a methodological tool where the goal is not rejection but testing.”¹⁹⁵ The overarching goal is to ask probing questions, attack faulty logic, point out inadequate evidence, and provide information that rebuts.¹⁹⁶ These skills should be quite familiar to law students.

But disbelieving is only half the task. While systematic doubting is useful, it does not work as well to uncover valuable aspects of ideas or positions with little surface appeal.¹⁹⁷ Elbow thus offers the “believing game” (also referred to as “methodological belief”) as the “mirror image” of the doubting game and as a countervailing force to ferret out the good in the apparently bad: “[It’s] the disciplined practice of trying to be as welcoming as possible to every idea we encounter: not just listening to views different from our own and holding back from arguing with them . . . but actually trying to believe them.”¹⁹⁸ Elbow postulates that we can use the tool of believing to scrutinize not for flaws but to find “hidden virtues” in ideas that are “unfashionable or even repellent. Often, we cannot see what’s good in someone else’s idea (or our own) until we work at believing it.”¹⁹⁹ Like the doubting method, the believing method aims not to demonstrate that ideas are inherently true or false, but rather to use them as tools for better thinking: “[b]y believing an assertion,” writes Elbow, “we can get farther and farther into it, see more and more things in terms of it or ‘through’ it, use it as a hypothesis to climb higher and higher to a point from which more can be seen and understood.”²⁰⁰

194. Alan Shapiro, *Teaching Critical Thinking: The Believing Game and the Doubting Game*, BIG IDEAS: AN AUTHENTIC EDUC. E-JOURNAL (June 13, 2008), available at <http://www.authenticeducation.org/bigideas/article.lasso?artid=86>.

195. Peter Elbow, *The Believing Game—Methodological Believing*, UNIV. OF MASS. – AMHERST, 3 (Jan. 2008), http://works.bepress.com/cgi/viewcontent.cgi?article=1019&context=peter_elbow. (draft of paper presented at the Conference on College Composition and Communication, New Orleans, Apr. 2008).

196. See Shapiro, *supra* note 194.

197. See Elbow, *supra* note 195, at 5.

198. *Id.* at 1 (emphasis omitted).

199. *Id.* at 2.

200. ELBOW, WRITING WITHOUT TEACHERS, *supra* note 191, at 163. As Elbow explains, “when the believing game asks us to believe all ideas—especially those that seem most wrong—it cannot ask us to marry them or commit ourselves to them. Our believing is [] methodological, conditional, provisional—unnatural. . . . The believing game gives us good evidence, but it doesn’t do our deciding for us.” ELBOW, *The Believing Game and How to Make Conflicting Opinions More Fruitful*, *supra* note 193, at 17.

Methodological doubting and believing are especially helpful in pulling out the critical inquiry, relational, and professionalism lessons that controversial moments contain. For example, both doubting and believing involve formulating questions with the goal of identifying and testing assumptions as well as understanding and articulating the difference between fact and opinion in assessing the soundness of a position or proposition—all classic features of critical thinking. Further, by requiring students to temporarily suspend doubt and enter into ideas or positions that conflict with their own, the practice of methodological belief pushes them to consider and weigh these positions—including their consequences, underlying values, and practical effects—more openly and fully. By provisionally adopting a view they reject, students are placed in a position similar to that of a lawyer who may not agree with her client’s goals and values, but who must nonetheless try to understand that client’s perspective as fully as possible in order to advocate effectively on her behalf. Ultimately, methodological belief also asks them to take stock of, with a critically calibrated eye, their own assumptions and views as they try another’s on for size. Having Jennifer, for example, argue for what might be Caitlin’s position on an accommodation issue, and vice versa, might facilitate this result.²⁰¹ “Becoming”—and intentionally attempting to understand—someone else might help students in developing their formative capacities for tolerance, open-mindedness, and empathy as well as make them wary of jumping to conclusions or ignoring the power of their preconceptions.

4. Reflective Writing

Reflective writing is another strategy that can be used to facilitate learning of the five types of lessons presented by a moment of controversy. The value of such writing is grounded in the principle that “a class . . . require[s] more than face-to-face interaction. [It] require[s] formal structures, mediated pauses, built-in distance, and explicit attention to our own rhetoric.”²⁰² The writing process encourages students to slow down and, in a moment of quiet, put words to the thoughts and emotional reactions generated by the controversy. Doing so in writing provides a

201. Adopting a belief that is profoundly at odds with one’s own is not an intuitive process. For example, Caitlin may have trouble seeing things from Jennifer’s point of view, especially given the pain that this comment has caused her. Jennifer may have similar difficulty adopting Caitlin’s perspective. But it is precisely this foreignness that provides the opportunity for deep learning about the ethical dimensions of professional representations, given that lawyers may be called upon to zealously advocate for those who think, act, and live differently from themselves.

202. Himley, *supra* note 116, at 129.

degree of privacy that can facilitate greater introspection about any of the five lessons, but particularly those involving critical thinking and professional values.²⁰³

Teachers can use reflective writing in a variety of ways—on its own or in conjunction with other strategies. Examples include everything from quick reflection pieces (where students are asked to spend 5-10 minutes writing in response to a question posed by the teacher) to longer reflective papers or journals.²⁰⁴ Of the utmost importance is providing guidance about the purpose and goals of the writing, which should be tied to one or more of the five lessons. Thus, students in the Employment Law class could be asked to write about how the ADA's reasonable accommodation provision differs from Title VII's (substantive law lessons); or what the role of the law should be when competing rights are at stake (policy/socio-justice lessons); or whether and how they could represent a client whose values are deeply at odds with their own (ethics/identity/professionalism lessons).²⁰⁵

5. Next Class Reflection Back

Sometimes a controversial exchange from one class period requires follow-up in the next. This may be especially true when that exchange either upsets the class equilibrium in a deep way, as in a case of “forum failure” (leaving the teacher uncertain about how to remedy the rip in the class fabric) or takes place at the end of the class period (leaving the teacher no time to address the situation in the moment). The reprieve of space between classes may be just what the situation calls for.²⁰⁶ In that time,

203. See, e.g., Ansley, *supra* note 145, at 1561 (students use reflection papers to “creatively handle and process at least some of the powerful currents that were affecting the group” and papers helped the teacher “gauge what was happening in the ‘underground’ classroom”); Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807, 1832 (1993) (“Ask students to prepare a reflection piece or keep a journal. Although class discussions on personal identification issues can be tremendously enlightening and helpful, I have found that students . . . further benefit from preparing a written reflection piece . . .”). But see Greg Johnson, *Controversial Issues in the Legal Writing Classroom: Risks and Rewards*, 16 PERSP.: TEACHING LEGAL WRITING & RESEARCH 12, 16 (2007) (cautioning that “students with an especially close attachment to an issue . . . might be distracted and even traumatized by being forced to discuss and to write on it.”).

204. See, e.g., J. P. OGILVY, LEAH WORTHAM, & LISA G. LERMAN, *LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS*, ch. 11 (2d ed. 2007); J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLINICAL L. REV. 55 (1996); Michael Meltsner, *Writing, Reflecting and Professionalism*, 5 CLINICAL L. REV. 455 (1999).

205. But see STEPHEN D. BROOKFIELD, *BECOMING A CRITICALLY REFLECTIVE TEACHER* 100-01 (1995) (describing the potential misuse of journaling assignments).

206. See SCHWARTZ, SPARROW & HESS, *supra* note 76, at 127.

tempers may subside, hurt feelings resolve, and reasonableness triumph over irrationality. But there is equal opportunity in that time lapse for wounds to fester, bitterness to deepen, and talk among students to fan the flames of disagreement. In such cases, not addressing in the next class what has been left unsaid, unattended, or unresolved can be disastrous.

No matter how painful or precarious it may be from the teacher's perspective, he or she should assess, during or after class, whether to re-raise the controversial episode during the next class period. One device is to ask students, when next the class meets, for their "second thought" reactions to what occurred. This has the benefit of airing the tensions at a different, and perhaps less charged time, and giving the teacher and students the opportunity to reflect upon and then address those tensions as a group (perhaps with a reference back to any discussion guidelines and implicit understandings reached about constructive conversation and doubt-giving). This also enables the teacher, before that next class, to meet personally or in small groups with interested students.²⁰⁷ Additionally, the benefit of passed time may allow the teacher to employ the five-lesson framework in order to more clinically approach the situation from the perspective of the learning outcomes to be promoted and to remind students of the need to invoke more professional distance when entering sensitive territory.²⁰⁸

Importantly, whichever of the five strategies is deployed to capitalize on the integrative character of controversy, the hypothetical exchange between Jennifer and Caitlin did not hinder exploration of the subject under discussion. Rather, it provided a unique context for exploring the legal arguments and personal emotions implicated by the professor's original question. Moreover, as Michael Schwartz, Sophie Sparrow, and Gerald Hess have explained: "You may be concerned that addressing controversial issues will take up valuable class time that could otherwise be used to help students learn. We suggest that understanding others' perspectives and learning how to address controversy with respect and dignity is an important learning objective in any class."²⁰⁹

To that end, the strategies discussed above are designed to provide a framework to help students stay with, and learn from, moments of controversy. The pedagogic goal is not to eliminate the sudden controversy

207. *See id.* at 127 (discussing the "next class" reflection technique and its benefits).

208. Dulling the emotional edges of the situation, however, may seem inauthentic or disrespectful to those students deeply involved in the controversy, so the more dispassionate approach must be undertaken with care. In this regard, transparency on the teacher's part about her concern and her uncertainty about what to do might go a long way in helping the students to keep open minds about, and to assist in working to resolve, the sensitive situation.

209. *Id.* at 127-28.

per se, but to absorb it, as naturally as possible, into the larger lessons to be gained from confronting and understanding it in line with the overarching course learning goals. In sum, teaching through these moments can provide significant integrative dividends, facilitating in students the ability to draw intentional connections between learning domains, to apply learning to new situations or problems, and to exercise professional judgment in meaningful ways, both for their clients and for themselves.

III. THE MOMENT AS MICROCOSM

Carnegie posed a critical question for legal education: “How can we best combine the elements of legal professionalism—conceptual knowledge, skill, and moral discernment—into the capacity for judgment guided by a sense of professional responsibility?”²¹⁰ Integrative learning approaches provide a wise path forward.²¹¹ In the end, if we aspire to facilitate synergistic learning, our composite task as legal educators is to engage students and help prepare them:

- To see and make conscious connections between the basic dimensions of professional work
- In order to bring legal analysis, policy and socio-justice concerns, critical and metacognitive thinking, technical legal skills, other disciplines, emotional insight, intuition, communication capabilities, relational understandings, ethical standards, and practical wisdom²¹²
- To bear upon often uncertain or unfamiliar situations or problems
- In the crucible of theory and practice
- With the self-reflection and other-awareness necessary for sound decision-making and life-long, self-directed learning²¹³
- In order to balance the professional and personal concerns at stake for their clients and for themselves

210. EDUCATING LAWYERS, *supra* note 3, at 12.

211. *See supra* Part I.C (describing integrative learning approaches).

212. As Palmer and Zajonc argue in support of integrative education: “Educate our students as whole people, and they will bring all of who they are to the demands of being human in private and public life. The present and future well-being of humankind asks nothing less of us.” PARKER J. PALMER ET AL., *supra* note 56, at 153.

213. *See* Judith Welch Wegner, *Lawyers, Learning, and Professionalism: Meditations on a Theme*, 43 CLEV. ST. L. REV. 191, 192 (1995) (“arguing that a commitment to learning is an appropriate and necessary professional value for lawyers”); Sturm & Guinier, *supra* note 14, at 545 (“We have come to believe that learning how to learn is the most important skill that people can have in the twenty-first century.”).

- Which will ultimately leave those students with a more holistic understanding about the situation or problem, in a better position to confront the next one, and with some sense of meaning-made, grounded in a conception of justice or social responsibility to those beyond self.²¹⁴

And all of this with integrity—the integrity of connection (in its structural sense) and the integrity of “ethical engagement”²¹⁵ (in its moral sense). Put another way, this long list of what we hope law school graduates will be able to do (or at least aspire to do) when they enter the legal profession can and should be a conscious by-product of teaching, integratively, how to exercise professional judgment with integrity.²¹⁶

Controversial moments provide a ready platform for helping students to become integratively-able in any course and at any time in their academic lives. Their student origin—and concomitant capacity for student impact—helps to ensure the type of engagement that fosters the self-consciousness necessary to connect the dots of professional thought, feeling, and action. Charged and provocative, they offer the chance to learn deeply. And their unexpectedness reinforces the depth of those lessons, given the need, in practice, for lawyers to master the unforeseen, often under great pressure and in times of personal vulnerability. In addition, they are complex, often

214. See Angela Olivia Burton, *Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm into the Clinical Setting*, 11 CLINICAL L. REV. 15 (2004) (exploring the many facets of independent professional judgment); Klein, *supra* note 13 (describing “a set of common abilities” characteristic of “an integrative thinker”). According to Carnegie, educating law students requires cultivating professional “knowledge, skills, and attitude” which in turn requires “six [educational] tasks,” each addressing a defining aspect of professional activity, and collectively known as the “commonplaces of professional work”:

(1) Developing in students the fundamental knowledge and skill, 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 community [and,] (6) Forming students able and willing to join an enterprise of public service.

EDUCATING LAWYERS, *supra* note 3, at 22. Carnegie concluded that the “more consciously” the educational program addressed all six purposes, the “more effective” the professional preparation would be. *Id.* For yet another formulation of the composite educational task, see GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* 13 (2000) (explaining, among other things, that “[l]earning law is a process that is experiential and integrative. That is, a law student learns in context, synthesizing a whole from all of the parts being experienced.”).

215. EDUCATING LAWYERS, *supra* note 3, at 129.

216. Of course, attempting to assess, both formatively and summatively, that law students can actually do or perform these aspects of legal learning is a vital part of the educational process, but one that is beyond the scope of this article. See generally MUNRO, *supra* note 214.

implicating the cognitive, practical, and ethical-social strands of professional being. In these ways, moments of controversy implicate many of the considerations facing the problem-solving professional. And exploring them amidst the intensity of sudden disagreement in a public context of shared responsibilities may add a sense of realism and urgency for students that can go a long way to promoting the synergistic lessons of integration in an experiential context.

Of course, these moments cannot be the only educational vehicles through which students experience the benefits of integrative learning. That must be done on a much more pervasive curricular scale, ideally in a progressive manner across the three years of law school. And of course any particular controversial moment may not be right to cultivate any or all of the potential lessons in the framework. But those lessons, whenever invoked, are portable. They are pertinent to much more than exigent episodes in the classroom. Whether in times of controversy or non-controversy, learning intentionally and integratively through a multi-lesson framework will help students to create crucial linkages between classroom learning and living a principled and productive professional life. Connecting it all—through exploration of law, policy, critical thinking and metacognition, communication and relational skills, and professional and personal values—will increase the likelihood of developing well-rounded legal professionals who understand, in both its structural and moral dimensions, the dual meaning of integrity.