

## Meeting the Carnegie Report's Challenge to Make Legal Analysis Explicit—Subsidiary Skills to the IRAC Framework

Nelson P. Miller\* and Bradley J. Charles\*\*

### I. Accepting the Challenge

"No one asked how subject matter was transformed from the knowledge of the teacher into the content of instruction."

Lee Shulman

This article accepts the now-common assertion, recently repeated in the Carnegie Foundation report *Educating Lawyers*, that law professors should make explicit the analytical skills their students must learn.<sup>1</sup> Although the traditional view has been that teaching critical thinking is straightforward, more recently it has been suggested that the traditional view is seriously misleading.<sup>2</sup> Cognitive psychology has taught us that the best students and, for that matter, the best experts, are those who master the subsidiary skills of analysis.<sup>3</sup> The traditional view holds that students are expected to acquire analytical skills by immersion, which can mean sink-or-swim. Students do learn that way, although not as quickly or efficiently as they could if *what* they were learning—rules of law—and

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<sup>1</sup> William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* 11 (Jossey-Bass 2007) (legal analysis should "be made visible" so students can "be coached toward performing as professionals"); *id.* at 26 (law instruction should "mak[e] explicit important features of good performance through various conceptual models and representations).

<sup>2</sup> Richard W. Paul, *Critical Thinking: What Every Person Needs to Survive in a Rapidly Changing World* 376 (Found. for Critical Thinking, 3rd ed. 1993) (contrasting the traditional view represented by Bloom's Taxonomy with more recent studies showing the complexity of critical thinking); see also Paul MaHarg, *Transforming Legal Education: Learning and Teaching Law in the Early Twenty-First Century* 5 (Ashgate, 2007) (criticizing the uni-modal educational practices of traditional law schools).

<sup>3</sup> Paul, *supra* note 2, at 378 ("students (and experts) who do the best analyses, syntheses, and evaluations tend to do them mindfully with a clear sense of their component elements"); see also *Critical Reasoning in Contemporary Culture* 11, 19 (Richard A. Talaska, ed., SUNY Press, 1992) [hereinafter *Critical Reasoning*].

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christmas spirit from its over the top decor to its festive

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stanley s quencher h2 0 flowstate tumbler promises

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build brand awareness test new markets and increase