WHAT DO LAWYERS REALLY DO?[1]

NANCY L. SCHULTZ[2]

I. INTRODUCTION

Nearly thirty years ago, I wrote the article *How Do Lawyers Really Think?,* in which I explored my frustration with the apparent divide between skills and doctrine in the teaching of law. Since then, there has been much progress in developing the teaching of lawyering skills and in understanding that one cannot teach skills in any meaningful way without teaching law at the same time.[3] Nevertheless, a recent study concluded that law schools have—to some extent—replaced core education with specialized and "boutique" courses that fit the desires of faculty.[4]

Now, as we have faced the most recent crisis in legal education,[5] with fewer students applying to law schools and a job market that struggles to accommodate those who do graduate, we have heard the increasing call to

---

[1] This article is a sequel of sorts to my 1992 article, *How Do Lawyers Really Think?*, 42 J. LEGAL EDUC. 57 (1992). I want to thank EIC Kelsey Gee for really thoughtful, skillful editing. The article is better because of her.

[2] Kennedy Professor of Dispute Resolution at Fowler School of Law, Chapman University.

[3] *See generally* William M. Sullivan, *After Ten Years: The Carnegie Report and Contemporary Legal Education*, 14 UNIV. ST. THOMAS L. J. 331 (2018); Susan J. Hankin, *Bridging Gaps and Blurring Lines: Integrating Analysis, Writing, Doctrine, and Theory*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 325 (2011); Russell Engler, *The MacCrate Report Turns 10: Assessing its Impact and Identifying Gaps We Should Seek to Narrow,* 8 CLINICAL L. REV. 109 (2001).

[4] William J. Carney, *Curricular Change in Legal Education*, (Emory Univ. Sch. Of Law Research Paper No. 20-15), https://ssrn.com/abstract=3642875 [https://perma.cc/6ZQ8-Q8E7].

[5] Richard E. Redding, *The Legal Academy Under Erasure*, 64 CATH. U. L. REV. 359, 416 (2015) (arguing for a legal education model that more closely approximates medical education); for the argument that this is just the latest downturn in a cyclical process, *see* Deborah M. Hussey Freeland, *The Demand for Legal Education: The Long View*, 65 J. LEGAL EDUC. 164, 164 (2015).

graduate "practice-ready" lawyers.[6] What does that mean exactly?[7] There has been a great deal of thoughtful scholarship on this topic[8] and calls from

---

[6] *See generally* Margaret Martin Barry, *Practice Ready: Are We There Yet?,* 32 B.C. J. L. & SOC. JUST. 247 (2012); Jay Gary Finkelstein, *Practice in the Academy: Creating Practice Aware Law Graduates*, 64 J. LEGAL EDUC. 622 (2015); Kate Walter, *Six Ways Law School Can Make Students More Practice Ready*, THOMSON REUTERS (Jan. 23, 2017), https://www.legalexecutiveinstitute.com/six-ways-law-schools-students/ [https://perma.cc/CK89-BZAD]; Chad Asarch & Phil Weiser, *Why Law Schools Need to Teach More than the Law to Thrive (Or Survive)*, ABA J. (June 23, 2016, 8:00 AM), https://www.abajournal.com/legalrebels/article/why_law_schools_need_to_teach_more_than_the_law_to_thrive_or_survive [https://perma.cc/46P4-CYZ2].

[7] "[S]tudents need to recall and apply what they have learned in law school not just at the end of the class or even for the bar exam, but for the benefit of their clients years later. The call for 'practice-ready attorneys' that has pervaded discussions about improving legal education for decades is directly tied to long-term learning. In short, the 'practice-ready' attorney is one whose legal education has 'stuck.'" Elizabeth Adamo Usman, *Making Legal Education Stick: Using Cognitive Science to Foster Long-Term Learning in the Legal Writing Classroom*, 29 GEO. J. LEGAL ETHICS 355, 357 (2016). Echoes of this point will appear in the current article as well.

For practical answers to this question, *see* Eli Salomon Contreras, *The Skills We Wish We Learned in Law School*, ABA J. https://www.americanbar.org/groups/young_lawyers/publications/after-the-bar/professional-life/the-skills-we-wish-we-learned-in-law-school/ [https://perma.cc/YP5N-77PZ]; Mark Cohen, *Skills and Education for Legal Professionals in the 2020s*, FORBES (July 1, 2020,7:54 AM), https://www.forbes.com/sites/markcohen1/2020/07/01/skills-and-education-for-legal-professionals-in-the-2020s/?sh=1a7fe7472702 [https://perma.cc/8TM7-ATRC].

[8] *See generally* Joni Larson, *To Develop Critical Thinking Skills and Allow Students to Be Practice-Ready, We Must Move Well Beyond the Lecture Format*, 8 ELON L. REV. 443 (2016); Christine Cerniglia Brown, *Is Experiential Education Simply a Trend in Law School or is it Time for Legal Education to Take Flight?*, THE FED. LAW. (Aug. 2013), https://www.fedbar.org/wp-content/uploads/2013/08/feature1-aug13-pdf-1.pdf [https://perma.cc/J9SY-XVXY]; Michael R. Cassidy, *Beyond Practical Skills: Nine Steps for Improving Legal Education Now*, 53 B.C. L. REV. 1515 (2012); Robert J. Condlin, *Practice Ready Graduates: A Millennialist Fantasy*, 31 TOURO L. REV. 75 (2014); Neil J. Dilloff, *Law School Training: Bridging the Gap Between Legal Education and the Practice of Law*, 24 STAN. L. & POL'Y REV. 425 (2013); Sheldon Krantz & Michael Millemann, *Legal Education in Transition: Trends and Their Implications*, 94 NEB. L. REV. 1 (2015) https://digitalcommons.unl.edu/nlr/vol94/iss1/2/ [https://perma.cc/J84J-57BQ]. *But see,* Peter Toll Hoffman, *Teaching Theory Versus Practice: Are We Training Lawyers or Plumbers?*, 2012 MICH. ST. L. REV. 625, 627-28 (2012).

various sources to teach particular skills.[9] A relatively recent American Bar Association task force report concluded that "law schools have a basic societal role: to prepare individuals to provide legal and related services. [Many, if not most,] law schools today do not sufficiently develop core competencies that make one an effective lawyer, particularly those relating to representation of and service to clients."[10]

The idea of core competencies is an important one for education.[11] It questions what basic functions students must be able to perform as lawyers and what they need to be able to do to excel at their chosen profession. "[A] law school moving toward a 'competency-based curriculum' can provide graduates who have more of the competencies that legal employers need."[12] One article looked at empirical studies of the skills law firms want in their employees, and compared those to the skills useful for forming a professional identity.[13] The article lists the "values, virtues, capacities, and skills" that employers and clients want (beyond "technical legal skills") as:[14]

> Internalized commitment to grow toward excellence in all competencies, plus initiative/ambition/drive/strong work ethic; integrity/honesty/trustworthiness; seeks feedback and is responsive to feedback to foster self-development; good judgment/common sense/problem-solving; pro bono/community/bar association involvement; client relationship skills including dedication to client

---

[9] *See generally* Lynnise Pantin, *Deals or No Deals: Integrating Transactional Skills in the First Year Curriculum*, 41 OHIO N.U.L. REV. 61 (2014); Douglas N. Frenkel & James H. Stark, *Improving Lawyers' Judgment: Is Mediation Training Debiasing?* 21 HARV. NEGOT. L. REV. 1 (2015), https://www.hnlr.org/wp-content/uploads/sites/22/HNR101_crop-1.pdf [https://perma.cc/89L2-GZP3].

[10] Jay Conison, *The Report and Recommendations of the ABA Task Force on the Future of Legal Education: Its Significance for Bar Admissions and Regulation of Entry into the Legal Profession*, 83 THE BAR EXAM'R, 12, 15 (2014), https://ncbex.org/assets/media_files/Bar-Examiner/articles/2014/830414-abridged.pdf [https://perma.cc/5RMF-A3H2].

[11] Neil W. Hamilton et al., *Encouraging Each Student's Personal Responsibility for Core Competencies Including Professionalism*, 21 PROF. LAW. 1, 1–2 (2012).

[12] Neil Hamilton, *Law Firm Competency Models & Student Professional Success: Building on a Foundation of Professional Formation/Professionalism*, 11 U. ST. THOMAS L.J. 6, 7 (2013).

[13] *Id.* at 32.

[14] *Id.*

> service/responsiveness to client, business development/marketing/client retention; initiates and maintains strong work and team relationships; project management; effective written and oral communication skills.[15]

The most comprehensive study of the skills new lawyers need was conducted by the Institute for the Advancement of the American Legal System.[16] As the title *The Whole Lawyer and the Character Quotient* suggests, some of the most important skills relate to character.[17]

In this article, I focus on what I believe may be the most important core competency of all: advocacy. I fear that the increasing complexity of the definitions of "practice ready" and the increasing focus on discrete aspects of teaching and learning may become overwhelming to both teachers and students. So, I take a step back in this article and look at the big picture of what lawyers really need to do effectively: advocate.

As I discussed in a previous article,[18] I am a coach. I teach advocacy. I also taught Legal Writing for about 15 years.[19] I have taught communication, in one form or another, for my entire teaching career. As it happens, my undergraduate major at the University of Wisconsin was Speech Communication, and I began my competitive speaking career in high school. Thinking about communication and advocacy has occupied a large part of my life.

I coach teams in appellate advocacy, trial advocacy, pretrial advocacy, arbitration, mediation, negotiation, and client interviewing and counseling. Some of my coaching colleagues think I am a bit (or a lot) crazy for trying to coach teams in so many disciplines. They know that they have their hands full coaching trial teams, appellate moot court teams, or dispute resolution

---

[15] *Id.*

[16] *See generally* Alli Gerkman & Logan Cornett, *Foundations for Practice: The Whole Lawyer and the Character Quotient*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYSTEM, 1 (2016), https://iaals.du.edu/sites/default/files/documents/publications/foundations_for_practice_whole_lawyer_character_quotient.pdf [https://perma.cc/A5J8-WYFT].

[17] *Id.*

[18] Nancy L. Schultz, *Lessons from Positive Psychology for Developing Advocacy Skills,* 6 J. MARSHALL L.J. 103, 106 (2013).

[19] Nancy Schultz, *The Integrated Curriculum of the Future: Integrating First-Year Legal Writing with Other Lawyering Skills*, 7 ELON L. REV. 405, 407 (2015). In truth I still teach it in all my classes and to all my teams—I just do not teach the first-year class anymore.

teams. And they do. I hope to build bridges that will allow us all to share what we know for the benefit of our students.[20]

My approach comes back to what I said earlier about the challenges of focusing on complexity and specificity. For me, it is all about advocacy and communication. While one can get very deep into discrete aspects of advocating to judges, juries, clients, and colleagues, one can also take a step back and work from the idea that it is all an exercise in figuring out who your audience is and what you are trying to accomplish with that audience. This article explores that bigger picture approach, while simultaneously understanding and respecting the viewpoints and accomplishments of those who dig deeper and focus on specifics.

It is my hope that having an umbrella concept, under which to conduct the more detailed explorations, will offer a useful perspective and a means of encouraging transfer from one advocacy context to another. The goal is that students can take lessons in advocating effectively in one context and build on them in another context, rather than starting from scratch every time. When I have students who have competed in one context express concern about having to do something brand new in a different competition, I often say, "all communication begins with thinking about who your audience is and what you are trying to accomplish—so, let's start there." Students frequently respond with something along the lines of "that's true," and it seems to take the edge off.

II. THE IMPORTANCE OF ADVOCACY TO BEING A LAWYER

Few would dispute the importance of communication skills to the practice of law.[21] Advocacy is the essence of lawyering; even the word

---

[20] NALAE (National Association of Legal Advocacy Educators) is a new national organization bringing together advocacy teachers from all disciplines. This exemplifies a growing recognition that we can all learn from each other, and that we have much in common. *See* Kent Streseman, *The National Association of Legal Advocacy Educators* APP. ADVOC. BLOG (Sept. 11, 2021, 7:06 PM), https://lawprofessors.typepad.com/appellate_advocacy/2020/07/the-national-association-of-legal-advocacy-educators.html [https://perma.cc/XNW3-Y3GS].

[21] Audra Petrolle, *Communication Tips for Young Lawyers,* PRAC. POINTS (Jan. 5, 2017), https://www.americanbar.org/groups/litigation/committees/consumer/practice/2017/communication-tips-for-young-lawyers/ [https://perma.cc/4FMN-M2QX].

lawyer frequently suggests as much—twenty-seven different languages equate lawyer to advocate.[22]

I suggest that a simpler focus on audience and purpose offers a unified way to think about all of our communications. If we teach students to consider their audience and the purpose of their communication reflexively as a starting point when they open their mouths or touch their keyboards, we could move them more efficiently along the road to effective advocacy.

While we must obviously further develop the ability to communicate effectively once we determine audience and purpose in a specific context, having a clear idea of your overarching communication goals can simplify that process. It is easier to communicate a well-thought-out, clearly designed message than it is to communicate ideas that have not been thoughtfully developed in a focused way. So how do we do that effectively and consistently to allow our students to internalize the lessons we teach in a way that they can apply when we are not there?

III. ADDING RESEARCH ON LEARNING TO THE MIX

My teams do well in new competitions. I believe this may be at least in part because in my coaching, I am consistently applying basic audience/purpose analysis. As time goes on, competitions—like other communication contexts—develop their own traditions and modalities, where continued success depends on learning those.[23] But, as an early guiding principle, using big-picture, abstract skills is a highly successful strategy. As it happens, the science of learning supports that conclusion.[24] Here, I offer brief glimpses into some of the research that has been done, emphasizing that it all supports a holistic approach to teaching that uses spaced repetition to ensure that true internalized learning is happening.

---

[22] Here, I note that the word lawyer equates to advocate in at least 27 languages. *See, e.g.*, Jonathan Goldberg, *Attorney, Lawyer, Barrister, Solicitor and Notary (English),* LE MOT JUSTE EN ANGLAIS (May 9, 2010), https://le-mot-juste-en-anglais.typepad.com/le_mot_juste_en_anglais/2010/05/this-article--was-originally-published-in-its-french-version----------in-several-languages-the-words--meaning.html [https://perma.cc/D885-DVY2].

[23] *See A Primer to Oral Argument*, TIPS ON ORAL ADVOC. https://law.duke.edu/life/mootcourt/tips/ [https://perma.cc/7976-ZGK9] (last visited Mar. 24, 2022) (discussing the tips and tricks for new Moot Court competitors).

[24] *See* Josette Akresh-Gonzales, *Spaced Repetition: The Most Effective Way to Learn,* NEJM KNOWLEDGE+ (May 17, 2019), https://knowledgeplus.nejm.org/blog/spaced-repetition-the-most-effective-way-to-learn/ [https://perma.cc/G827-G9RH] (explaining the efficacy of spaced repetition for learning new information).

A. Teaching for Transfer

One of the big challenges we all face is how to show students that skills they learned in one context apply in another.[25] A couple of years ago, I had an exceptionally intelligent student who competed on a moot court team. She then competed in client counseling and was really struggling, feeling like she had to learn a whole new skill set. I explained to her that all lawyering falls on a continuum of client representation and that the skills we worked on in the appellate context, like maintaining a conversational approach and using simple language, applied at least as much in the client counseling context. Similarly, asking and answering questions are an important part of both contexts. The proverbial light bulbs were flashing all over. In her words, "I never thought of it that way!".

On the other hand, students can try to transfer skills from one context to another in ways that do not work. For example, I recently had a client counseling team turn in a superb performance in one practice, only to do the exact same thing in another practice with disastrous results. They were looking for a formula and thought they had found one. But, even in the same general context of client counseling, they discovered that clients are different and have different problems that require different approaches. The umbrella approach I advocate for here is not a formula—it is a starting point.

"Teaching for transfer" is something that educators aim for, and there has certainly been plenty of research on how to accomplish it.[26] Here, I describe a few articles that detail and summarize research on the subject, with the purpose of exposing the commonalities in the research that can help our teaching achieve more effective transfer. Those who are interested in the details of the research can read the articles; here, I merely attempt a brief introduction to the concepts.

One study of third-grade math students found that teaching for transfer improved student learning.[27] Teaching for transfer was accomplished by using broad categories to group problems together, and then prompting

---

[25] *See* Jose Mestre, *Transfer of Learning: Issues and Research Agenda*, REP. OF A WORKSHOP HELD AT THE NAT'L SCI. FOUND, 4 (2002) https://www.nsf.gov/pubs/2003/nsf03212/nsf03212.pdf [https://perma.cc/44JR-NY4L].

[26] Winston Sieck, *How to Promote Transfer of Learning*, GLOB. COGNITION: GC BLOG (Sep. 16, 2021), http://www.globalcognition.org/transfer-of-learning [https://perma.cc/V8AY-7PEB].

[27] Lynn S Fuchs et al., Explicitly Teaching for Transfer: Effects on Third-Grade Students' Mathematical Problem Solving, 95 EDUC. PSYCH. 293, 301 (2003).

students to search for these broad categories in new problems.[28] In other words, teachers give students big picture concepts to help them organize their work, and then challenge them to look for those concepts in new assignments.

Another article offers similar thoughts on accomplishing transfer in the areas of planning and problem management skills, computer programming instruction, and literacy-related cognitive skills.[29] Transfer depends on extensive practice and occurs when the learner takes something that has been learned in a previous context and applies it in a new one.[30] Such transfer can either be of the forward-reaching kind, where one learns elements in anticipation of later application, or of the backward-reaching kind, where one faces a new situation and searches for relevant knowledge already acquired.[31] The latter is the situation my previously-described student found herself in.

An additional article explores the cognitive science literature of the transferability of skills.[32] The literature reveals that skills are transferable under certain conditions.[33] That is, learning principles and concepts facilitates transfer because it creates more flexible mental representations, while rote learning of facts discourages transfer.[34] Training in reasoning and critical thinking is only effective for transfer when abstract principles and rules are coupled with examples.[35] Transfer is also enhanced where learning takes place in a social context and where there is feedback on performance with specific examples.[36] Furthermore, transfer is improved if students are shown how problems resemble each other, if they are aware of how to apply skills in different contexts, if their attention is directed to the underlying goals of comparable problems, if examples are varied and are accompanied by rules or principles—especially if the rules and principles are discovered

---

[28] *Id.* at 293.

[29] Gavriel Solomon & David N. Perkins, *Rocky Roads to Transfer: Rethinking Mechanisms of a Neglected Phenomenon*, 24 EDUC. PSYCH. 113, 113 (1989).

[30] *Id.*

[31] *Id.*

[32] David Billing, *Teaching for Transfer of Core/Key Skills in Higher Education: Cognitive Skills*, 53 HIGHER EDUC. 483, 483 (2007).

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

by the students—, and if students are required to articulate the lessons learned.[37]

Scholars in legal education report similar findings:

> Before transferring information or ideas from a class to a new situation, one must first anchor the concept in the mind. To do this, the student must attach the new information to the existing scaffolding in the student's memory. Attached to the wrong structure, the new information cannot easily be used in a later application.
>
> In reaching backward, a student thinks back to past experiences or concepts to find existing mental scaffolding that can be used to "bear the weight" and provide an accessible resting place for the new material that is being taught. In stretching forward, a student consciously envisions potential future applications of the material being learned.[38]

This article explored the same concepts twenty years ago:

> Over and over again, researchers have found that transfer is more likely to occur when students have been presented with a number of different examples that have similar underlying structures and problem solutions but different surface features. In such situations, students are likely to develop general schemata that are not tied to specific facts, which increases the chances that the student will be able to retrieve an analogous example during the search process.[39]
>
> If we want our students to be able to transfer what we have taught them to a new situation, we must change the ways in which we teach. We must provide our students with multiple examples, we must teach the underlying structures of those examples, and we must teach our students to look for the similarities between the problem that they are working on and other problems that they have encountered.

---

[37] *Id.*

[38] Shaun Archer, et al., *Reaching Backward and Stretching Forward: Teaching for Transfer in Law School Clinics*, 64 J. LEGAL EDUC. 258, 259 (2014).

[39] Laurie Currie Oates, *I Know That I Taught Them How to Do That*, J. LEGAL WRITING INST. 1, 7 (2001).

> If we teach in this way, instead of simply teaching our students how to research a particular issue or how to write a specific memo, we will be teaching them how to research a variety of issues and to write a wide array of memos and briefs.[40]

It seems fairly obvious that these approaches work beyond the context of applying them to new issues and new forms of written expression. They work across all forms of advocacy. Note that the research on transfer consistently emphasizes the importance of multiple opportunities to practice, accompanied by explicit instruction on the umbrella principles.[41] The science also reinforces the importance of self-guided learning, in a social setting, with feedback.[42] It is hard to come up with a better description of how advocacy classes and competitions work. For those looking for a step-by-step guide to teaching for transfer, one organization has come up with one.[43]

If we can be more effective at teaching our students to transfer advocacy skills from one context to another, we can help them learn that understanding basic principles of communication and advocacy in one setting puts them on the road to being more effective lawyers across the board. For example, being a good trial lawyer gives you more negotiating leverage, understanding your client as much as possible makes you a better advocate, and, as one of my students wrote in a paper, being a lawyer is much more than writing a legal brief—it requires constant practice of communication skills and empathy.

B. Interleaving/Spaced Repetition

Interestingly, and consistent with the research on transfer, studies show that "interleaving"—teaching concepts in a way that is spread out over time and woven into the teaching of other concepts—is more effective at ensuring

---

[40] *Id.* at 16.

[41] Y.B. Chung & Mantak Yuen, *The Role of Feedback in Enhancing Students' Self-Regulation in Inviting Schools,* 17 J. OF INVITATIONAL THEORY AND PRAC. 22, 22 (2011).

[42] *Id.* at 23.

[43] *Tips on Teaching for Transfer: A "BDA" Framework*, DEL. SOC. STUD. EDUC. PROJECT RSCH. CORNER, https://www1.udel.edu/dssep/transfer/Tips%20on%20Teaching%20for%20Transfer.pdf [https://perma.cc/NTV5-9YZ3].

long-term retention than teaching everything once in a "massed" approach.[44] Here are excerpts from a posting by one expert on the subject:

> The silo approach (a unit on the Commerce Clause, followed by a unit on the Spending Clause, and so on) presumes that it would be unduly confusing for students to shift gears, hurting their comprehension. But, studies show the opposite: interleaving the presentation of related but distinct topics results in better mastery of each topic. Learners understand the relationships among silos better, and also—perhaps unexpectedly—they understand each silo better.
>
> However, the studies showing the power of interleaving also reveal a cognitive illusion: students who learn interleaved material routinely underestimate their progress when compared to the silo method. This is largely because the advantages of interleaving tend to reveal themselves slightly later in time.
>
> In my experience, students actually do not dislike the type of interleaving described in these blog posts and in my casebook, so long as I am transparent with them about the logic. A few months into the semester they can feel the benefits of better comprehension and retention as they solve problems across silos. By the end of a semester, they know they are further ahead than they would have been, despite the initial feeling of unfamiliarity.
>
> Why is spaced practice more effective than massed practice? It appears that embedding new learning in long-term memory requires a process of consolidation, in which memory traces (the brain's representations of the new learning) are strengthened, given meaning, and connected to prior knowledge—a process that unfolds over hours and may take several days. Rapid-fire practice leans on short-term memory. Durable learning, however, requires time for mental rehearsal and the other processes of consolidation. Hence, spaced practice works better. The

---

[44] Steven C. Pan, *The Interleaving Effect: Mixing It Up Boosts Learning*, SCIENTIFIC AM. (August 4, 2015), https://www.scientificamerican.com/article/the-interleaving-effect-mixing-it-up-boosts-learning/ [https://perma.cc/E64T-2D8X].

> increased effort required to retrieve the learning after a little forgetting has the effect of retriggering consolidation, further strengthening memory.[45]

This research suggests that teaching advocacy skills throughout the curriculum, on a regular basis, is much more likely to ensure that students retain the lessons and can apply them later in a wider variety of contexts. The same logic, as explained by the author, applies to learning content—i.e., the law.[46] When we consciously incorporate advocacy opportunities with learning the law, we enhance the learning, retention, and performance in both aspects.

Another way of describing the teaching process that enhances transfer by embedding lessons over time is spaced repetition. Louis Schulze is a major advocate for spaced repetition who has written copiously on the subject.[47] Here, I reproduce some of that analysis:

> Spaced repetition is the simple fact that learning is enhanced when information is distributed over time instead of learned in a "massed" (or crammed) fashion. This phenomenon is one of the most consistently replicated effects in experimental psychology, and a robust literature exists confirming the effect in many different contexts. It works like this: If students learn a concept on September 14th and ignore that concept until just a week before their exam on December 2nd, that approach constitutes massed practice and is dramatically inferior to interleaving multiple retrievals at certain specific intervals.
>
> The neuroscience behind this effect is instructive. Neurogenesis is the generation of neurons over time in the areas of the brain involved in learning. Between the neurons are spaces called synapses, whose job is to communicate between neurons. This is the basis of memory. If unused,

---

[45] Aaron Caplan, *Strange Bedfellows #12: Closing Thoughts on The Science of Learning*, PRAWFSBLAWG (June 30, 2015, 11:38 AM), https://prawfsblawg.blogs.com/prawfsblawg/2015/06/strange-bedfellows-12-closing-thoughts-on-the-science-of-learning.html [https://perma.cc/3W83-GAH8].

[46] *Id.*

[47] Scott Fruehwald, *Weekly Legal Education Roundup*, TaxProf Blog (Dec. 30, 2016), https://taxprof.typepad.com/taxprof_blog/2016/12/weekly-legal-education-roundup-3.html [https://perma.cc/LJ8J-LY7E].

> synaptic connections weaken. But, if more learning occurs, the strength of the signal (called synaptic plasticity) returns.
>
> By spacing repetitive memory interventions, the learner essentially keeps the neurons, and the synaptic signals between them, alive by repeatedly activating them… It turns out that as the neurons are reactivated and the synapses again carry signals to each other, they increase their durability and need less frequent stimulation until they begin to decline again; this is known as "the lag effect." Also, materials that the learner knows well require less review than the materials students know less well, thus allowing yet more spacing. These two features—longer intervals and prioritizing less well-known material—make the spaced repetition process more efficient than otherwise would be the case.
>
> [W]e know that spaced repetition not only positively impacts memory, but also aids understanding. Learning occurs not through some literal recording mechanism but instead by the relationship between the meaning of one bit of information to the meaning of and associations with preexisting knowledge.[48]

Schulze and Caplan are essentially saying the same thing: spaced repetition of learning opportunities makes it more likely that the lessons will end up in long-term memory and be retrievable by the learner. More efficient retrieval means less time spent by teachers trying to reteach things we think we have already taught. It also means less frustration on the part of students who can now see both the relationships among contexts and the big picture principles that will allow them to build bridges to enhance their own learning.

IV. APPLYING THE SCIENCE

All of this science gives us a blueprint for our approach to training advocates. The science applies both to teaching content and the means of

---

[48] Louis Schulze, *Using Cognitive Psychology to Improve Student Performance, Part Three: Spaced Repetition*, FACULTY LOUNGE (Oct. 12, 2016, 2:41 PM), https://www.thefacultylounge.org/2016/10/using-cognitive-psychology-to-improve-student-performance-part-three-spaced-repetition.html [https://perma.cc/5ECV-AFY3].

expression.[49] This article focuses more on the latter, but they are inextricably intertwined in many ways. You cannot communicate effectively about the law without understanding it, and you will understand the law better by communicating about it.

If we use the science of learning and transfer to train our students more effectively and consistently to be better advocates, we give them a number of advantages: bigger picture understanding of the lawyer role; greater confidence moving between the phases of a case; greater flexibility in adapting to different audiences and contexts; and greater employability.

Before getting into specific methodologies, we need to take a look at those umbrella concepts that that will make transfer easier for our students. Science tells us that we need to be explicit about teaching these concepts.

V. THE FUNDAMENTALS OF COMMUNICATION—AUDIENCE AND PURPOSE

As alluded to earlier, if we hope to communicate effectively, we must always consider to whom we are communicating and what we hope to accomplish with our communication. Trying to win an argument with a significant other involves different communication strategies than trying to convince a boss we deserve a raise. The level of formality of the discourse, the nature of the arguments we believe will be persuasive, and the tone of the argument are all likely to vary widely in these two examples. Lawyers need to communicate with a variety of audiences, but all communications involve the same elements: a sender, a receiver, and a message.[50] The trick is making sure the message gets from the sender to the receiver in such a way that the receiver perceives the message as intended, and hopefully reacts as desired.

A. Audience

1. General Audience Categories

When studying communications in college, we learned that different strategies and techniques apply depending on the size of the audience—we learned about interpersonal, small-group communications and about public

---

[49] Chris Loper, *Spaced Repetition*, NW. EDUC. SERV. (Jan. 4, 2016), https://www.nwtutoring.com/2016/01/04/spaced-repetition/ [https://perma.cc/4S6G-QRLD].

[50] Richard Nordquist, *The Basic Elements of the Communication Process*, THOUGHTCO. (Apr. 6, 2020), https://www.thoughtco.com/what-is-communication-process-1689767 [https://perma.cc/6QV8-6SHR].

speaking.[51] You use a different approach when speaking to one person than when speaking to an auditorium full of people.

Lawyers engage in various forms of communication. We talk one-on-one with clients, colleagues, and opposing counsel. We have small, group communications in negotiations and mediations. We use our public speaking skills in court and in presentations of various kinds. Tone, volume, and vocabulary should all be adapted to the size and type of audience.

2. Legal Audiences

Lawyers communicate with clients, judges, juries, other lawyers, mediators, and arbitrators.[52] Legal education has traditionally focused on communicating with judges, juries, and—to some extent—clients.[53] More recently, communications with other lawyers, mediators and arbitrators have been added.[54] Each of these audiences presents a different context for advocacy.[55] You use a different vocabulary with a judge than with a client or a jury.[56] You also use a different tone depending on your audience and your purpose.[57] Different audiences have different expectations.[58]

These communications take place in offices, courtrooms, hearing rooms, conference rooms, and in written forms: briefs, memos, letters, emails, texts.[59] Without building bridges between the various forms of communication, we can overwhelm our students if we try to teach them detailed strategies for communicating with all of these audiences in different scenarios. While students need to learn all the facets of communication,

---

[51] Stephen Lucas, THE ART OF PUBLIC SPEAKING 103 (13th ed., McGraw Hill 2019). I should note here that I took multiple courses from Steve Lucas when I was an undergraduate student at the University of Wisconsin. To say that I learned a great deal from him is a gross understatement.

[52] Jacqueline M. Nolan-Haley et al., *ADR and the Professional Responsibility of Lawyers*, 28 FORDHAM URB. L.J. 887, 892 (2001).

[53] A.B.A., LEGAL EDUC. AND PRO. DEV.: AN EDUC. CONTINUUM 6 (1992).

[54] Katherine R. Kruse et al., *Client Problem Solving: Where ADR and Lawyering Skills Meet*, 7 ELON L. REV. 225, 226–227 (2015).

[55] *Id.* at 226.

[56] *Id.*

[57] Tenielle Fordyce-Ruff, *Know Your Audience: Writing to Non-Lawyers*, 58 ADVOCATE 44, 45 (2015).

[58] Susan R. Kaplan, *Finding Your Audience*, 183 N.J. LAW 34, 34 (Mar./Apr. 1997).

[59] RICHARD K. NEUMANN, JR. ET AL., LEGAL REASONING AND LEGAL WRITING 61 (Wolters Kluwer, 8th ed. 2017).

learning will be easier if we can give them an overarching set of principles that apply in all contexts.

Thus, we can teach the similarities in communication between clients and juries and between judges and arbitrators. We can also show our students that all communications with a particular audience have commonalities. This can help create that scaffolding that they can build upon in specific contexts.

B. *Purpose*

1. General Purposes

In teaching communication skills, we also need to examine our purpose: do we seek to inform our audience, persuade them, entertain them, or some combination of all three? Again, lawyers need to know how to perform all of these functions, sometimes in a single communication task, such as a trial.

2. Legal Purposes/Contexts

Lawyers engage in advocacy in many contexts: client interviews and consultations, mediation, negotiation, litigation, arbitration, meetings with colleagues, and settlement conferences with opposing counsel and judges.[60] In general, the purpose of communication in each context is to inform and persuade.[61] We sometimes add entertainment to the mix—we do not want to bore juries, for example.[62] But, we fundamentally want our audiences to understand the case we are discussing; therefore, we inform them as to the facts and the law. We try to persuade as well: should the client accept the settlement, should the jury convict our client, should the judge grant our motion?

Again, the process becomes overwhelming if we get too deep into the nuances of informing and persuading in every context in such a way that our students perceive that they are all completely different, potentially causing them to give up and believe they can never master everything that is required to be a lawyer.

---

[60] *A Lawyer's Responsibilities,* TEXAS CENTER FOR LEGAL ETHICS (last visited Apr. 3, 2022. 8:21 AM), https://www.legalethicstexas.com/Ethics-Resources/Rules/Texas-Disciplinary-Rules-of-Professional-Conduct/Preamble-(1)/A-Lawyer-s-Responsibilities [https://perma.cc/TL8E-D6KT].

[61] *See* Edmund J, Sikorski Jr., *The Difference Between Litigation Advocacy and Mediation Advocacy*, 22 ALT. DISP. RESOL. 20, 21 (2018); Julius Glickman, *Persuasion in Litigation*, 8 LITIG. 30 (1982).

[62] *See generally* Sonya Hamlin, *Who Are Today's Jurors and How Do You Reach Them?*, 27 LITIG. 9 (2001).

We make the process feel more manageable if we teach them that the fundamental question is determining the purpose in communicating with a specific audience and that there is only a limited range of available purposes.

VI. COMMUNICATION, ADVOCACY AND DISPUTE RESOLUTION, AND LAW SCHOOL

We should all understand and acknowledge the importance of advocacy and dispute resolution to being a lawyer[63]; the question is, what can law school do to put our graduates in the best position to advocate effectively? Law school has traditionally focused on advocacy in the litigation context, with a special emphasis on appellate litigation, an activity that very few of our graduates will ever engage in.[64] Over the last several years, the recognition that non-litigation and transactional skills are at least equally important has grown.[65]

Almost all law schools have advocacy programs of one kind or another. Some focus on trial advocacy, while others focus on appellate advocacy; some treat all forms of advocacy with equal respect and attention. Here, I argue for a broader definition of advocacy and for recognition that it is the most important part of a lawyer's required communication arsenal. I also argue for a broader definition of dispute resolution, a key context in which advocacy happens.

Law schools tend to separate advocacy and dispute resolution. Here, I try to bring them together. This is consistent with my sense and experience that we should look for bigger picture concepts that will allow our students to build bridges between lessons and enhance their overall learning.

A. What is Advocacy?

As mentioned, all law schools teach advocacy; the question is, what do they mean when they use the word? Trial practice teachers tend to mean trial advocacy; moot court coaches tend to mean appellate advocacy; others may

---

[63] *See generally* Curtis H. Barnette, *The Importance of Alternative Dispute Resolution: Reducing Litigation as a Corporate Objective*, 53 ANTITRUST L.J. 227 (1984); Lee E. Teitelbaum, *The Advocate's Role in the Legal System*, 6 N.M. L. REV. 1 (1975).

[64] *See generally* Paolo Butturini & Susan L. DeJarnatt, *Taking on the Role of Lawyer: Transactional Skills, Transnational Issues, and Commercial Law*, 44 S. ILL. U. L.J. 225 (2020); Eric J. Gouvin, et al., *Teaching Communication Skills in Transactional Simulations*, 20 TRANSACTIONS: TENN. J. BUS. L. 429, 431 (2018).

[65] Butturini, *supra* note 64, at 228; Gouvin et al., *supra* note 64, at 450.

use the term more generically.[66] Many people distinguish advocacy functions from other lawyering functions, such as client counseling or negotiation.[67] The term "soft skills" often includes the latter.[68] A moment's thought should reveal that advocacy is present in all of these contexts; i.e., it's all advocacy.

How is advocacy generally defined?

- The act of pleading for, supporting, or recommending; active espousal.
- The act or process of supporting a cause or proposal.
- Support for, backing of, promotion of, championing of.[69]

Lawyers advocate in all of the following contexts: advocating a strategy or a settlement to a client; advocating on behalf of a client in settlement or transactional negotiations, where such advocacy may take place face to face, in demand letters, in redlined documents, etc.; advocating in mediation to either the mediator, the opposing party or counsel, or the client; advocating in arbitration; advocating in trial to the judge or the jury; or advocating on appeal.[70]

B. What is Dispute Resolution?

Similar to my broad view of advocacy, I have a very broad view of dispute resolution (and I include it in my conception of advocacy). Simply

---

[66] *See* Gerald Lebovits, et al., *Winning the Moot Court Oral Argument: A Guide for Intramural and Intermural Moot Court Competitors*, 41 CAP. U. L. REV. 887, 889 (2013); Steven Lubet, *What We Should Teach (But Don't) When We Teach Trial Advocacy*, 37 J. LEGAL EDUC. 123, 126 (1987).

[67] Andrew Elowitt, *A Hard Case for Soft Skills*, LAW PRACTICE TODAY (Feb. 12, 2021), https://www.lawpracticetoday.org/article/hard-case-soft-skills/ [https://perma.cc/4CGV-ERUE].

[68] *Id.*

[69] *Advocacy*, Merriam-Webster Dictionary.com, https://www.merriam-webster.com/dictionary/advocacy [https://perma.cc/S65G-XP5E] (last visited Apr. 3, 2022); *Advocate*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/advocate [https://perma.cc/R73B-SBSZ] (last visited Apr. 3, 2022); *Advocacy*, Dictionary.com, https://www.dictionary.com/browse/advocacy [https://perma.cc/5LYC-7ZQU] (last visited Apr. 3, 2022).

[70] *See generally* Grant Gisondo, *What Does It Mean to Advocate for Your Client?*, GISONDO LAW (Sep. 20, 2018), https://gisondolaw.com/what-does-it-mean-to-advocate-for-your-client/ [https://perma.cc/HTT4-BW29]; *What Is Advocacy?*, LAWYER PORTAL, https://www.thelawyerportal.com/free-guides/legal-careers-deciding-on-law/what-is-advocacy/ [https://perma.cc/3RRN-QFBK] (last visited Apr. 3, 2022).

put, it is all dispute resolution. Way back in history, we resolved disputes by fighting: duels, trial by combat, etc.[71] We developed courtrooms in an effort to take a more civilized approach.[72] As the court system became overloaded, we developed alternative approaches, such as arbitration and mediation.[73] Interestingly, in 2019, a party to a divorce requested trial by combat.[74] Although this is an isolated incident, it suggests that in some way (or for some people) we may have come full circle in our view of how to resolve disputes. All of this suggests to me that attempts to separate advocacy and dispute resolution do not make much sense—there is advocacy in dispute resolution and dispute resolution in advocacy, and both are part and parcel of effective client representation.

C. Advocacy and Dispute Resolution Across the Curriculum

What does it look like to teach advocacy more broadly, using the fundamental principles discussed previously? It means that we look for opportunities to talk about communication and advocacy regardless of what we are teaching.

If we are teaching a communication-focused course, such as Trial Advocacy or Client Interviewing and Counseling, we can get deeper into the nuances of communicating specific messages to specific audiences, though the fundamental question of audience and purpose should provide the initial framework for teaching. If we are teaching a doctrinal[75] course, we can always take a moment in discussing cases, rules, and statutes to create a communication context; beyond the traditional approach of arguing both sides of the case, we can ask students to explain a decision to a client, to use

---

[71] Alex Mayyasi, *A Brief History of Trial By Combat*, PRICEONOMICS (Jul. 11, 2016), https://priceonomics.com/a-brief-history-of-trial-by-combat/ [https://perma.cc/9HHH-SJ86].

[72] Frank M. Johnson, Civilization, Integrity, and Justice: Some Observations on the Function of the Judiciary - In Honor of Judge Irving L. Goldberg, 43 SW L. J. 645, 646-648 (1989).

[73] Michael McManus & Brianna Silverstein, *Brief History of Alternative Dispute Resolution in the United States*, CADMUS , Nov. 1, 2011, at 100, http://www.cadmusjournal.org/article/issue-3/brief-history-alternative-dispute-resolution-united-states [https://perma.cc/KRS5-WPBE].

[74] Anna Spoerre, *Man Requests 'Trial by Combat' with Japanese Swords to Settle Dispute with Iowa Ex-Wife*, DES MOINES REGISTER (Jan. 29, 2020, 10:50 AM), https://www.desmoinesregister.com/story/news/crime-and-courts/2020/01/13/iowa-courts-david-ostrom-requests-trial-combat-swords-settle-dispute/4456079002/ [https://perma.cc/K3FV-GKGZ].

[75] Or whatever word one wishes to use—"podium," "casebook," etc.

the case in advocating for a settlement, or to explain how they might have counseled a client to avoid litigation in the first place. Not only will this reinforce the importance of all forms of communication to being a lawyer, but it will also ensure that the students really understand the material—you cannot communicate clearly about something you do not understand. In doing so, we should specifically reference the broader principles of advocacy that apply in all contexts.

These are some of the ways students may be learning communication skills in law school: making arguments in doctrinal classes[76]; negotiating in contracts class; representing clients in clinics; competing on interscholastic teams; making oral presentations in seminary; or handling a case from start to finish in legal research and writing.[77]

There are plenty of opportunities for teaching communication throughout law school, and students are certainly taking advantage of these opportunities—some more consistently than others. But, if students perceive the communications opportunities as discrete events involving separate sets of rules and content, they may not be internalizing the umbrella concepts discussed in this article and may be missing opportunities to use one communication opportunity to build on another. If they can begin to understand the key importance of good communication skills to every aspect of lawyering, perhaps they can start seeing the commonalities, using one communication success to create another, and developing better communication habits overall.

D. Recognizing the Skills Overlap in Various Advocacy Contexts[78]

The possibility of transferring lessons from one advocacy context to another becomes even more obvious when we look at the extensive overlap between skills used in the various settings. Here is a brief comparison of advocacy skills that may not initially seem connected.

Client Interview	**Direct Examination**
Build rapport	Build rapport

[76] *See generally* Stephen A. Newman, *Discussing Advocacy Skills in Traditional Doctrinal Courses*, 65 J. LEGAL EDUC. 207 (2016).

[77] *See generally* Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 STETSON L. REV. 1193 (2015).

[78] Thanks to Kelly Feeley of Stetson University College of Law and Lou Fasulo of Pace University School of Law. These comparisons were included in a presentation we did at the Coaches Clinic at American University Washington College of Law in August of 2019. The presentation was entitled "The Mediator and the Trial Lawyer Should Be Friends."

Ask open questions	Ask open questions
Listen	Listen
Follow up	Follow up
Develop a story/theme about the client's case	Weave in a story/theme about the client's case

Mediation/Negotiation	**Trial/Arbitration**
Allow parties a chance to tell their story	Allow parties a chance to tell their story (or for their lawyer to tell it)
Provide someone on party's side	Provide someone on party's side
Allow parties to face their opponent (not always the case in negotiation, since lawyers typically negotiate without their clients present)	Allow parties to face their opponent
Allow parties the opportunity to develop an understanding of their opponent's position	Allow parties the opportunity to develop an understanding of their opponent's position
Seek a resolution to the problem	Seek a resolution to the problem
Acknowledge and understand opponent's motivations, goals, pressures, etc.	Acknowledge and understand opponent's motivations, goals, pressures, etc.
See beyond this one meeting from both the parties' perspective and the attorneys'	See beyond this one meeting from both the parties' perspective and the attorneys'
Opportunities for information gathering	Opportunities for information gathering
Allow for creative solutions for a possible win/win*[79]	Allow for more limited solutions that will produce a win/loss*
Give parties control over the outcome**[80]	Give control of outcome to judge/jury or arbitrator**

[79] *Where the processes begin to diverge.

[80] **Where the processes clearly diverge.

Motion Practice	Appeals
Conduct legal research	Conduct legal research
Write memorandum of law to support motion; includes law and facts	Write brief to support appeal; includes law and facts
Judge will ask questions to test understanding of law and facts	If oral argument is allowed, judges will ask questions to test understanding of law and facts
Lawyers must think on their feet to respond to questions and hypotheticals posed by the judge	Lawyers must think on their feet to respond to questions and hypotheticals posed by the bench

Showing students these similarities helps them see how the questioning skills they learn in client interviewing can be applied to direct examination in a courtroom. Students can see that the research and writing skills they apply in motion practice are not that different from the skills they apply in appellate practice.

Once the students can see the similarities, they can better appreciate and isolate the differences. For example, a major difference is the fact that, in litigation, the client hands over control of their matter and that there is going to be a win-loss outcome.

In the next two sections, I explore ways to create context that will hopefully allow students to see the larger picture of being a lawyer. I firmly believe that this approach will enhance learning in a way that discrete, isolated learning experiences cannot.

E. The Life Cycle of Representing a Client

In my years of teaching Legal Writing, I learned that students were more engaged, and delivered better work product, when they understood how their tasks fit into the representation of a single client. I described the way I taught the course in a recent article.[81] Fundamentally, it helps if we orient our students to where their communication task fits into the stages of client representation: initial review; research; client letter or other communications about the results of research results; communication with the opposing

[81] *See* Schultz, *supra* note 19.

counsel or party; negotiation; mediation; litigation or arbitration, including discovery, motion practice, and trial; and appeal.

Obviously, not all of these stages will take place in any given client matter. But, the communication tasks take on greater meaning if we understand the possibilities and the sequence. For example, I learned that if I had my students negotiate after writing their research memoranda, they understood the need to research adverse case holdings in order to respond to opposing counsel's arguments. Overall, the memoranda were better written, the analysis was clearer and more thorough, and I received fewer questions throughout.

Legal educators and practitioners over the years have bemoaned the absence of the client in much of legal education.[82] Traditional legal education typically presents legal issues as if they somehow magically appear in appellate courts.[83] We discussed "facts" as if they had nothing to do with people, when they have everything to do with people and their stories.[84] The importance of storytelling to being a lawyer has been written about extensively.[85] When I tell my negotiation teams they need to be prepared to talk about their clients' stories, they look confused. They just want to get straight into negotiating. But, how can you negotiate without context? You need to know what your client needs and wants, and what their interests are. Otherwise, how will you explain your proposed solutions?

Law students also somehow internalize that the facts are unimportant in appellate advocacy—that appellate courts only care about the law. But, every time you walk into a courtroom of any kind, you are there because you are advocating for a client. That client has a story, needs, and interests. Your

---

[82] *See* John Lande, *Study Finds That Law Schools Fail to Prepare Students to Work With Clients and Negotiate*, BEST PRACT. FOR LEGAL EDUC. BLOG (Nov. 9, 2020), https://bestpracticeslegaled.com/author/johnmlande/ [https://perma.cc/3ZJG-YNEM]; Howard Miller, *Legal Education for the 21st Century*, CAL. BAR J., https://www.calbarjournal.com/April2010/Opinion/FromthePresident (Last visited Apr. 3, 2022) [https://perma.cc/7ML7-VD9T].

[83] Miller, *supra* note 82.

[84] *Id.*

[85] *See* J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 LEGAL WRITING: J. LEGAL WRITING INST. 53, 53 (2008); *See generally* Steven J. Johansen, *Was Colonel Sanders a Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 J. ASS'N LEGAL WRITING DIRECTORS 63 (2010); Lori D. Johnson, *Redefining Roles and Duties of the Transactional Lawyer: A Narrative Approach*, 91 ST. JOHN'S L. REV. 845 (2017); Yadav Vikrant Sopan, *Importance of Storytelling in Legal Education and Profession: An Analysis*, 6 JETIR 60 (2019).

job is to connect those elements to the law and explain how the law supports your client.

One of the most frequent complaints I hear from judges is that lawyers do not know what they want. I get occasional texts from former advocates sitting in courtrooms telling me how frustrated judges are when lawyers do not answer their questions or do not know what relief they are seeking. It all comes back to audience and purpose—who are you talking to, and what are you trying to accomplish? If you do not know that, you have missed the point of why you are there.

The more we disentangle the law from the people we advocate for, the harder it becomes to answer these simple questions. The questions I always begin moot court practices with include: Who is your client? What does your client want? Why should your client get what they want? It is a hard sell to convince moot court teams that the answer to every question is not a court decision. I once had a student—whom I tried very hard to convince of that fact—say to me, "but doesn't it give me more credibility when I cite a case?" The obvious answer is that it does not when the answer to the question depends on your client's facts and circumstances, rather than a court decision.

F. Building Other Bridges for Transfer

Using the concepts of audience and purpose to build bridges for our students should enhance their ability to transfer skills from one context to another. One mantra I have used for many years is, "context is everything." That is to say, if you have a sense of context, which clearly includes audience and purpose, that bird's eye view allows you to make good choices in planning strategy and tactics. Below are some additional, specific ways to build contextual bridges that will hopefully improve our students' understanding of how to advocate effectively.

We can build bridges using skill sets. I mentioned earlier my student who used moot court skills to build her client interviewing skills. Looking at the chart presented earlier, we can use skills from direct examination to build client interviewing skills, and vice versa. Understanding the purpose associated with asking and answering questions provides the connective context.

Similarly, we can use the persuasive writing skills from motions as a foundation for writing appellate briefs. Using the facts and law to build a persuasive argument on behalf of a client is the underlying skill set. If the students can see the connection, they can then focus on adding the aspects that are specific to the individual contexts.

In all of these examples, we need to be explicit about contextualizing what we are asking our students to do. We need to help them see the connections and understand that they already know how to do much of what is required.

VII. CONCLUSION

We speak of teaching important concepts by the pervasive method: ethics, professionalism, and professional identity.[86] Clearly, advocacy needs to be taught pervasively, which is relatively simple if you keep the big picture in mind. Use the science: identify the context, find the target, and practice hitting it, all while improving lawyer effectiveness and client representation along the way.

---

[86] *See generally* Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL. EDUC. 31 (1992); Roger C. Cramton & Susan P. Koniak, *Rule, Story and Commitment in the Teaching of Legal Ethics*, 38 WM. & MARY L. REV. 145 (1996); Paula Schaefer, *Building on the Professionalism Foundation of Best Practices in Legal Education*, 14 U. ST. THOMAS L.J. 320 (2018); Louis D. Bilionis, *Bringing Purposefulness to the American Law School's Support of Professional Identity Formation*, 14 U. ST. THOMAS L.J. 480 (2018); Larry O. Natt Gantt & Benjamin V. Madison, *Self-Directedness and Professional Formation: Connecting Two Critical Concepts in Legal Education*, 14 U. ST. THOMAS L.J. 498 (2018); Omar Madhloom, *Educating for Well-Being in Law: Positive Professional Identities and Practice*, 54 LAW TEACH. 304 (2020); Charlotte S. Alexander, *Learning to Be Lawyers: Professional Identity and the Law School Curriculum*, 70 MD. L. REV. 465 (2011).