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Transferability: Helping Students and Attorneys Apply What They Already Know to New Situations (Part 2)

By Ted Becker

Part 1 of this column (January 2019) described several ways that professors and supervisors can help young attorneys transfer their knowledge of legal skills and legal practice to new situations. The pedagogical techniques discussed in Part 1 look *forward*, helping novice lawyers make connections between what they learn today and how to put those lessons into play tomorrow.

This month's column changes direction. Successful knowledge transfer also looks to the past. When young lawyers and law students are introduced to what might first appear to be brand-new legal skills, their ability to quickly make sense of that new information is enhanced when the instructor can connect what they already know to what they're being asked to learn. This might seem counterintuitive.

When people think about transfer, it is common to think first about learning something and then assessing the learner's abilities to apply it to something else. But even the initial learning phase involves transfer because it is based on the knowledge that people bring to any learning situation....The principle that people learn by using what they know to construct new understandings...can be paraphrased as "all learning involves transfer from previous experiences."¹

That is, individuals who are learning something new do so, in part, by transferring their hard-earned knowledge to the current learning opportunity. This makes it

easier for learners to situate new knowledge or skills in the mental scaffolding they've already constructed. Professors and supervising attorneys can help young lawyers make this transfer more effectively and productively. By using *rearward-facing* pedagogical techniques, instructors reduce the heavy cognitive load that's inherent any time people learn new tasks.

Educators have identified many pedagogical techniques that look to the past.² Of particular interest to lawyers and legal educators are:

- Reminding students what they already know
- Explicitly connecting today's task to yesterday's task
- Encouraging students to reflect on their previous knowledge and experiences to identify connections on their own
- Anticipating where students will likely go off track

"You already know how to do this"

Students are exposed to a flood of doctrinal information and experiential skills in their three years of law school. That exposure doesn't end after graduation. Given the constant influx of new information, lawyers-in-training in both the classroom and the workplace may have difficulty recognizing that new tasks overlap with work they've already done, much less identifying how the old and new experiences overlap.

An experienced attorney can aid transfer by making that overlap more apparent. Consider this example from my classroom: Students working on an assignment involving court or ethics rules may not immediately see that their research and interpretive tasks parallel work they've already done when finding and analyzing statutes. The research techniques for finding these sources of primary authority are similar, as are the interpretive moves that courts and lawyers use

in discerning the meaning of the sources' language. A student who doesn't recognize the overlap between the earlier and current projects may waste time pursuing inefficient research paths or reach an inaccurate substantive conclusion after trying to interpret court rules using inapt methods. With explicit guidance regarding how the current task bears similarities to what they've already done, however, students are less likely to flail about and grow frustrated, and can instead focus on reinforcing skills they've already started to master while also learning the nuances that the current task adds to their toolbox. In the same way, a supervising attorney can help a junior attorney shift gears to a new task by pointing out similarities to work that the junior has already done.

Analogies aren't just for case analysis and argument

When a young attorney draws on her experience to build connections with a new skill she's learning, the overlap between past and present is unlikely to be perfect. If it were, the novice would simply be repeating a task she'd already performed. That can certainly be valuable—practice helps develop skills—but as mentioned in January's column, practice without guidance can be ineffective. To help increase the odds of successful transfer, a professor or supervisor can use metaphors and analogies to past experiences to help make connections clear and solidify the relationship in the student's mind between old and new.

As a simple example, a professor can analogize between a type of legal document that students wrote previously—say, an office memo—and a new type of document they're currently working on, such as a client letter. The audiences are different: one document will be read by a seasoned lawyer, the other by a client who might lack any legal background. But taking these differences into account, a helpful analogy can still be drawn between the characteristics

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the two audiences share and how those shared characteristics influence the way the documents should be prepared, including such things as the order in which both documents convey information to the reader.

How might this play out in practice? Here's an example: A supervisor trying to help a young attorney make the shift from litigator to mediator can build on the young lawyer's preexisting knowledge of what a lawyer typically does when representing clients in disputes, and analogize from that to the new skills and strategies the novice is learning. As a litigator, the young lawyer was a staunch advocate for her clients. As a mediator, she'll need to adopt a more neutral persona. The supervisor helping prepare the young attorney for her new role can draw analogies between the "litigator hat" she wore in the past and the "mediator hat" she's trying on.

Both roles include core skills that, but for the practitioners' differing duties, appear very similar, if not identical; the ability to seek and interpret information in ways that will yield a complete picture of the problem; the ability to unpack the interests and emotions that may be driving the participants; the ability to assess the overall strengths and weaknesses of competing presentations in order to predict and advise; and the ability to understand competing perspectives in order to negotiate or advocate well.³

Self-reflection

In law school clinics, instructors often help their upper-level students reach back to the knowledge and skills they began developing in 1L courses such as legal writing. One effective way to speed the transfer of yesterday's knowledge to today's classroom is to ask students to explicitly reflect on specific lessons they learned in the first year that they think will be helpful to their clinic work, and why.⁴ This helps students make their own connections between yesterday's and today's knowledge. Professors can strengthen these connections by reminding students down the road about those reflections, reinforcing the lessons students had already started to teach themselves. Self-reflection can be an equally valuable habit for many practicing attorneys, seniors and juniors alike.⁵ It needn't adhere to the formal approach of a law school classroom where a professor might require written reflection.

The medium—whether written or not—is less important than the mental process of thinking back over one's experience.

Mind the gap

Young lawyers and law students make mistakes. That's no surprise; everyone does. One of the mistakes professors and practitioners can easily make when implementing any kind of pedagogical technique is expecting immediate success. "Professors should not necessarily expect students immediately to apply previous learning at a highly proficient level, but should instead look for improved use of previous learning to *develop* problem-solving skills."⁶ For example:

[S]tudents sometimes try to transfer prior experiences too directly, such as trying to treat any legal analysis as an elements problem when the underlying case law instead involves balancing factors. Or students writing a client advice letter for the first time may be inclined to include too much information about rule explanations and precedent cases.⁷

Put simply, pedagogical techniques to improve knowledge transfer are an effective means for helping new lawyers learn, but they're not perfect. Nothing is, as lawyers know all too well. Young lawyers aren't toy robots who can be wound up and let go without any supervision or guidance. Inevitably, problems (some foreseeable, some not) will arise any time a young lawyer or law student takes on new tasks. But what's ultimately more productive for a busy supervisor: expending the time up front to allow a novice attorney to produce better work product or expending the time later to fix things?

Don't hide the ball

One final suggestion, which aims more at the downstream effect of transfer rather than the immediate impact of a particular pedagogical method on the learning task immediately at hand: professors and practitioners should be explicit with their students or mentees about the value and goals of the pedagogical methods they're employing. The long-term goal is "teaching to transfer," which is helping students develop the meta-cognitive perspective to recognize for themselves how they think and learn. "Transfer can be improved by helping students be-

come more aware of themselves as learners who actively monitor their learning strategies and resources and assess their readiness for particular tests and performances."⁸ With this knowledge, students can be more aware of the traits and practices they must cultivate to become expert learners who can direct their own knowledge transfer without external guidance.

Conclusion

This column and the previous column have only briefly touched on the literature addressing knowledge transfer and ways to enhance it for adult learners. Readers seeking additional information are encouraged to contact the author. ■



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ENDNOTES

1. Bransford et al, *How People Learn: Brain, Mind, Experience, and School* (Washington, DC: The National Academy Press, 2000), p 68 <<https://www.nap.edu/read/9853/chapter/6>> [<https://perma.cc/DVQ4-HNZJ>]. All websites cited in this article were accessed February 8, 2019.
2. E.g., Bowman & Brodoff, *Cracking Student Silos: Linking Legal Writing and Clinical Learning Through Transference*, Clin L Rev (forthcoming Spring 2019), pp 41–44 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3234384> and Archer et al, *Reaching Backward and Stretching Forward: Teaching for Transfer in Law School Clinics*, 64 J Leg Ed 258, 279–280 (2014) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2495575> [<https://perma.cc/2ZCH-6FDM>].
3. Frenkel & Stark, *Improving Lawyers' Judgment: Is Mediation Training De-Biasing?*, 21 Harv Negot L Rev 1, 52 (2015), available at <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2681&context=faculty_scholarship> [<https://perma.cc/C6BV-K6BR>].
4. *Cracking Student Silos* at 45.
5. E.g., Wilkins, *Ignatian Reflection in an Externship Course: Helping Students Prepare for and Manage the Stresses of Practicing Law*, 97 Mich B J 46, 47 (July 2018) <<http://www.michbar.org/file/barjournal/article/documents/pdf4article3431.pdf>> [<https://perma.cc/V62H-5C8Y>].
6. *Reaching Backward and Stretching Forward* at 278.
7. *Cracking Student Silos* at 43.
8. *How People Learn* at 67.