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What I Learned about Teaching Law by Being an Art Student

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What I Learned about Teaching Law by Being an Art Student

Michael T. Colatrella, Jr.

I. Introduction

When was the last time you learned a skill? I'm not referring to the time your twelve-year-old daughter taught you how to use the latest social media platform. I mean when was the last time you learned to do something that takes months or years of concerted effort to reach a level of competence? A few years ago, I did just that. I learned to draw and paint. My goal was not to be a professional artist. My goal was to become competent in drawing and painting for pleasure. As with many of us, drawing and painting were parts of my childhood that I enjoyed. Particularly vivid are memories from childhood of my grandmother setting up painting supplies for me to use on our front porch, where I joyfully would paint for hours. It wasn't a fancy affair. My supplies consisted of two brushes, cut-up squares of cardboard for "canvas" and black and white acrylic paints.

Before I started my art studies seven years ago, I had not painted since my childhood; however, I did from time to time sketch, often while on vacation. These sketches were amateur attempts at capturing reality. But I nevertheless enjoyed the activity and often got blissfully lost in the experience. Drawing and painting provided for me a sense of what is today known as "flow," working in a way that so fully engages us that we lose track of time and experience the odd sensation of losing ourselves and finding ourselves all at once.¹ So, feeling

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1. ANDERS ERICSSON & ROBERT POOL, PEAK: SECRETS FROM THE NEW SCIENCE OF EXPERTISE 257 (2016).

a need to find an avocation that would be restorative, and a particular desire to draw and paint, I set about finding an art teacher.

Over the previous decade, I had attempted to find an art teacher several times but never found a good match; they were too far away or too expensive, or they taught a style of art that did not appeal to me. On this attempt, however, I had the good fortune to find Sadie Valeri. Sadie had recently opened a traditional atelier in San Francisco, commutable from where I live. Sadie draws, paints, and teaches in a “realist” art style.² The goal of the realist artist is to depict what one sees in nature accurately, albeit through one’s own unique perspective.³ This was the style of renaissance artists like Leonardo DaVinci, nineteenth-century artists like William Bouguereau, and many other well-known artists.⁴ The realist style of art is in contrast to more abstract styles of art like that of Pablo Picasso or impressionist artistic traditions like that of Claude Monet.⁵ In other words, as two of my favorite contemporary artists put it, the realist artist “paints stuff to look like stuff.”⁶

Although I pursued my art avocation as a diversion from my vocation as a professor, I became a better teacher along the way. That is the journey I wish to relate to you. It turned out that the atelier system of study has a lot in common with the study of law. Consequently, the system of teaching art has a lot to teach us, or at least remind us, about the best way to teach law. As I studied art, I found my own teaching changing for the better. I started thinking more precisely about the skills that I wanted my students to learn, and I was designing lessons to isolate those skills in distinct exercises, not trying to teach a jumble of skills as part of a larger exercise. I more fully embraced modeling the skill I was teaching to students, providing more frequent and better feedback to students and repeating the lesson, as needed, rather than teaching it once and “checking” that box in my mind so I could move on to the next skill or lesson, even if students hadn’t quite understood it the first time through. In short, I tried to make learning more “visible” to the students and to me throughout the semester and make use of what I saw in how I taught.

2. Sadie Valeri, *Welcome to Sadie Valeri’s Online Atelier: Virtual Painting and Drawing Classes*, Sadie Valeri Atelier Online (2018), <https://sadiesvaleriatelier.net>. I am using the term “realist” art to refer generally to any kind of art that tries to depict what the artist sees as it appears in nature. But within this realistic form, there are many subcategories, periods, and modes. These include Renaissance art, Baroque art, Rococo art, Neoclassicism, and much else. See ROBERT ZELLER, *THE FIGURATIVE ARTIST’S HANDBOOK: A CONTEMPORARY GUIDE TO FIGURE DRAWING, PAINTING, AND COMPOSITION* 13-79 (2016).
3. JULIETTE ARISTIDES, *CLASSICAL PAINTING ATELIER: A CONTEMPORARY GUIDE TO TRADITIONAL STUDIO PRACTICE* ix (2008) [hereinafter, ARISTIDES, *CLASSICAL PAINTING ATELIER*].
4. *Id.* at 224.
5. *Pablo Picasso*, Google Arts and Culture, https://artsandculture.google.com/entity/pablo-picasso/mofo_7?categoryid=artist (last visited May 21, 2020); *Claude Monet*, Google Arts and Culture, <https://artsandculture.google.com/entity/claude-monet/moixnj?hl=en> (last visited May 21, 2020).
6. Kate Stone & David Gluck, *Insomnia*, *Painting Stuff to Look Like Stuff* (Jan. 5, 2018), <http://paintingstufftolooklikerstuff.blogspot.com>.

Necessarily, and perhaps most importantly, I slowed down the pace of the courses that I taught, especially in the first few weeks, covering foundational material more thoroughly. My experience as an art student convinced me that it is better to teach fewer skills and material thoroughly than many more superficially, a philosophy, as we will see, that the teaching pedagogy and research support. What follows are lessons that I took about teaching law more effectively from learning a skill in another discipline in a highly systemized way almost from scratch. Before we get to lessons that I took about teaching law, however, it is important that you have an understanding of the atelier system that so profoundly changed the way I look at teaching and the world around me.

II. The Atelier System

The atelier system was at the height of its prominence in the eighteenth and nineteenth centuries as the primary engine for producing quality artists.⁷ Most of the successful artists of that period came through the atelier system.⁸ These include some of my favorite artists like Auguste Renoir, Edouard Manet, and the incomparable John Singer Sargent, who turned society portrait painting into high art.⁹ The growth of the atelier system was fueled by a growing middle and upper class in Europe that found that they could exude status and wealth through the ownership and display of fine art, creating, consequently, a need for a steady supply of skilled artists.¹⁰ The atelier system filled this need for artists by developing a highly effective method of producing quality artists in the relatively short time of about four or five years of full-time study.¹¹ The ateliers of the past, as now, were not populated with art prodigies.¹² Typical atelier students were “budding artists [who] often left home with little more than an aptitude for drawing and a sense that they could do more with it,” much in the same way that budding lawyers attend law school with an aptitude for logical analysis, a verbal intelligence, and a desire to develop these abilities as legal advocates.¹³

The secret of the ateliers’ success in producing large numbers of artists of consistently high quality was the focus on sound pedagogy that emphasized the importance of developing foundational skills before introducing more

7. Emilio Longo, *The Atelier in the Twenty-First Century*, Skill-Based Art: A Learning Resource for Art Students and Artist-Teachers (2018), <http://skillbasedart.weebly.com/the-atelier-in-the-twenty-first-century.html>.

8. JULIETTE ARISTIDES, CLASSICAL DRAWING ATELIER: A CONTEMPORARY GUIDE TO TRADITIONAL PRACTICE 8 (2006) [hereinafter ARISTIDES, CLASSICAL DRAWING ATELIER].

9. *Id.*

10. *Id.* at 6-7.

11. ARISTIDES, CLASSICAL DRAWING ATELIER, *supra* note 8, at 10-14.

12. ARISTIDES, CLASSICAL PAINTING ATELIER, *supra* note 3, at 2.

13. *Id.*

advanced skills.¹⁴ As we will see, this pedagogy has proved to be the “secret” of success in learning a skill in all disciplines.¹⁵ Although there were variations in the atelier system, most followed a core “progression of study that was designed to impart mastery of skills necessary to be in the [art] studio.”¹⁶ Most ateliers follow a four-year course of study that might be shortened, but more often extended, as the student mastered the foundational and then more advanced skills.¹⁷

In the first year of education in the atelier system, students focused only on mastering drawing, widely considered the foundational skill in all fine art, whether it be painting or sculpting.¹⁸ Students would spend the entire day drawing subjects from life, usually the human body.¹⁹ They would also do “cast” drawings, which entailed drawing plaster models of parts of the human body: plaster hands, plaster feet, and plaster torsos were common subjects.²⁰ During this process, and for all the next phases of learning, too, atelier teachers would first model or demonstrate the technique or skill being taught before asking the student to perform the task.²¹ The instructors then would provide frequent evaluation and assessment of students’ work and progress.²² Although I attended an atelier, I was not a full-time atelier student. I took discrete courses, but the general approach to teaching in these courses was the same.

At Sadie’s atelier, you could not take any other course until you took her basic drawing course. This course consisted of eight successive Saturdays in which all we drew were shapes—spheres, cubes, and cones. That’s it. I was surprised how simple she kept our subjects. I thought maybe we would get to draw a tree or a bird, something a little more interesting than the three shapes. But Sadie’s philosophy was that if you can competently draw these basics shapes so they look three-dimensional on a two-dimensional surface, like paper, you will have the skills to draw more complex objects. As it turns out, drawing a sphere to look round and three-dimensional is no easy task. Employing Sadie’s method, using pencils as long and sharp as hypodermic needles, drawing a passable sphere of about 3 inches in diameter takes a couple of hours. In that first drawing class, Sadie devoted about an hour to demonstrate drawing a sphere, taking it to the point that it began to look

14. *Id.* at 3.

15. JAIME ESCALANTE, *THE JAMIE ESCALANTE MATH PROGRAM* 9 (1990).

16. ARISTIDES, *CLASSICAL PAINTING ATELIER*, *supra* note 3, at 3.

17. ARISTIDES, *CLASSICAL DRAWING ATELIER*, *supra* note 8, at 10.

18. ARISTIDES, *CLASSICAL PAINTING ATELIER*, *supra* note 3, at 5.

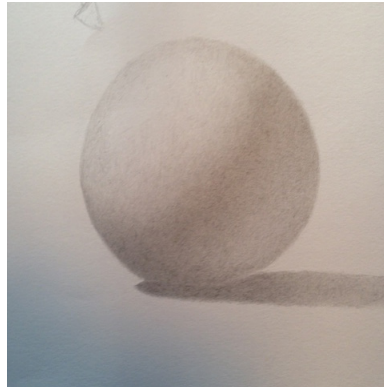
19. ARISTIDES, *CLASSICAL DRAWING ATELIER*, *supra* note 8, at 10.

20. *Id.*

21. *Id.*

22. Maria Quirk, *An Art School of Their Own: Women’s Ateliers in England, 1880-1920*, 34 *WOMAN’S ART J.* 39, 42 (2013).

three-dimensional. Then it was our turn. Here is one of my early spheres from the class.



This is my second attempt at a sphere. My first one wasn't even round! This one is round(ish), and one can begin to get a sense of a three-dimensional form. What Sadie's drawing course lacked in the opportunity to draw interesting subjects, however, it more than made up for by enabling students to learn the skill of creating the illusion of a three-dimensional object on a flat surface, the most foundational skill of the fine artist.²³

Once students have mastered drawing, in the second stage of the atelier system, using the same models and casts, they apply their knowledge of creating a three-dimensional image on a flat surface using the medium of oil paint.²⁴ They do so, however, using only *one color*, usually a form of brown, like burnt umber.²⁵ This "grisaille" method of painting provides the student with "familiarity with handling a different medium, which provides a transition between drawing and color painting."²⁶ My own painting class with Sadie progressed along similar lines, albeit in a more compressed time frame. In the first "painting" class, we *drew* a sphere!

Once the student has learned how to control the varying degrees of lightness and darkness of objects, what artists call "value," the visual characteristic that creates the illusion of three-dimensionality, the student is ready to learn about color.²⁷ Color is complex, perhaps more so than any other aspect of painting.²⁸ Representing a color on canvas of the thing you are painting is such an advanced skill that there are still competing theories of creating color.²⁹

23. ARISTIDES, CLASSICAL PAINTING ATELIER, *supra* note 3, at 5.

24. *Id.* at 6.

25. *Id.* at 5.

26. ARISTIDES, CLASSICAL DRAWING ATELIER, *supra* note 8, at 11.

27. ARISTIDES, CLASSICAL PAINTING ATELIER, *supra* note 3, at 11.

28. RICHARD SCHMID & KATIE SWATLAND, *ALLA PRIMA II: EVERYTHING I KNOW ABOUT PAINTING - AND MORE* 179 (2013).

29. ARISTIDES, CLASSICAL PAINTING ATELIER, *supra* note 3, at 11. For a discussion of competing

Dealing with color is akin to learning how to craft a competent legal argument. You can learn the basics in a few months and spend the rest of your life trying to get better at it.³⁰ So the art student spends the third year of the atelier system learning how to work with color.³¹

The last days of my own painting class culminated in students painting a brown egg, using the indirect style of painting, where each layer of paint is permitted to dry before applying a succession of additional layers, or glazes.³² Again, not too exciting a subject, but more than a challenge, as it turned out, for a novice art student. In two separate five-hour sessions, I was not even able to complete my egg on a small 6-by-8-inch canvas. Here it is, with its unfinished bottom half.



theories of color, see JAMES GURNEY, *COLOR AND LIGHT: A GUIDE FOR THE REALIST PAINTER* 74-75 (2010).

30. RICHARD SCHMID & KATIE SWATLAND, *ALLA PRIMA II* 35 (2013).

31. ARISTIDES, *CLASSICAL PAINTING ATELIER*, *supra* note 3, at 11.

32. Sadie taught this class in an “indirect style” of realist painting. This style of painting, widely used by Dutch painters like Rembrandt van Rijn and Johannes Vermeer, “builds up” a painting through successive layers. See, e.g., ERNST VAN DE WETERING, *REMBRANDT: THE PAINTER AT WORK* 27-28 (1997). This is in contrast to the more common method of “direct painting,” in which the artist applies wet paint into wet paint the way a landscape artist in an afternoon of painting a pastoral scene usually works. SCHMID & SWATLAND, *supra* note 28, at 179. Indirect painting, on the other hand, is like a microcosm of the atelier system itself. The artist first does a drawing that she transfers to the canvas. Over this drawing, she then creates an “open grisaille” that is the monochrome painting using one color, usually a form of brown. ARISTIDES, *CLASSICAL PAINTING ATELIER*, *supra* note 3, at 46. Once this dries, she then paints over this image using a “closed grisaille,” using just black and white paint. *Id.* Once this layer dries, she then adds color by applying successive layers of thin “glazes” of paint, allowing each layer to dry before applying the next layer. Depending on the effect desired, an artist might apply four or five or more layers of glaze. *Id.* at 104. Indirect painting creates a dramatic depth and luminosity that is impossible to achieve any other way. Michael Chesley Johnson, *Indirect Painting Route*, Artists Network (2019). The other dramatic impact of indirect painting is its effectiveness as a way to teach painting. Each painting takes the student through the major phases of the atelier system.

The fourth and last step in the atelier process is a year in which the student brings all of the previous three years of training together to create more complex artwork, much of it original design.³³ Students work in color from subjects in life, painting still-lives, portraits, and figures in interiors.³⁴ By this point in their education, the atelier has equipped students with the skills to start a new chapter in their training, a chapter that they can write for themselves, guided by their interests and skill level. On a more modest scale, that is what happened to me. It would be two years before I was able to take another formal art class, but the drawing and painting classes that Sadie taught were so well-structured and well-executed that I was able to meaningfully progress in my art studies on my own. Here is the first painting that I created a few weeks after I completed Sadie's painting course.³⁵



Over the next seven years, I pursued art when I could. One of the most important lessons that I took from the atelier system is that, with proper instruction and dedication, most people can learn most skills. This is consistent with the concept of a “growth mindset” that instructs that acquiring skill or ability is largely a function of hard work and application and not “fixed” abilities.³⁶ This is a concept that we will return to later that has, thankfully, found a foothold in some corners of legal education. The atelier system embraces the growth mindset fully and, to my mind, it is the only legitimate approach to teaching art, law, and most else besides. Sadie began my first drawing class by saying that we all could learn to draw well. It was just a matter of following the appropriate techniques that she would teach us and practicing. And she was right. Daniel Parkhurst, the famous nineteenth-century art teacher, wrote that “talent is just another name for the love of the thing.”³⁷ Contemporary artist

33. ARISTIDES, CLASSICAL DRAWING ATELIER, *supra* note 8, at 13.

34. *Id.*

35. Michael T. Colatrella, Lemon Study.

36. CAROL S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS 6 (2007).

37. ARISTIDES, CLASSICAL PAINTING ATELIER, *supra* note 3, at 6.

and teacher Juliette Aristides, who operates one of the most respected ateliers in the United States, elaborates on this sentiment when she says, “[t]his love gives a person the desire to pursue an objective in spite of obstacles that arise and provides him or her with the stamina necessary for extended study.”³⁸ Like learning to become a competent artist, learning to become a lawyer involves overcoming obstacles and requires stamina and extended study. We can make this long and often arduous journey easier and more accessible to more people if we approach the legal educational model with greater emphasis on the foundational skills we are teaching and a greater awareness for how well we are teaching them.

III. The ‘Secret’ to Teaching

A. Introduction

As a starting point, it is important to be clear about the core intellectual skills that we are teaching in law school that permeate the curriculum regardless of the course subject. Here are four foundational skills, in the most general sense, that are at the heart of what we are trying to teach our students, particularly in the first year of study: (1) “read to infer / interpret / draw conclusions”; (2) “support statements with evidence”; (3) “resolve conflicting views encountered in source documents”; and (4) “solve complex problems with no obvious answer.”³⁹ Reading this list of skills, you may think that they are from a treatise on legal pedagogy, but in fact they are standards of success that arose from a comprehensive and well-regarded study done by researcher David Conley of the skills necessary for students to succeed in college.⁴⁰ But, of course, these learning outcomes are precisely what we are trying to achieve in law school too, even if the language that we sometimes use to describe them may differ from how Conley described them.⁴¹ Indeed, many of us teaching law believe that a legal education is so versatile because it is an advanced degree in “thinking and communicating” that is useful in any professional pursuit that involves intellectual analysis and communicating that analysis.⁴² The skills of

38. *Id.*; see also Juliette Aristides, *Juliette Aristides*, Aristides Arts https://www.aristidesarts.com/Juliette_Aristides_Atelier_website).

39. MICHAEL J. SCHMOKER, *FOCUS: ELEVATING THE ESSENTIALS TO RADICALLY IMPROVE STUDENT LEARNING* 55 (2d ed. 2018); see also ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* 106, 278 (2007) (“[first-year law students should learn] broader problem-solving skills, grounding analysis in facts, comprehensive spotting of relevant issues and concerns, search for governing rules, principles, or standards by which to make decisions . . .”). Although Schmoker’s book is not aimed at law schools, the first four chapters should be required reading for all law faculty and administrators.

40. SCHMOKER, *supra* note 39, at 55; see also STUCKEY ET AL., *supra* note 39, at 44 (desired outcomes for law students written both content-focused and outcome-focused).

41. SCHMOKER, *supra* note 39, at 39; see also Stuckey et al., *supra*, at 39; John Calvin, *John Calvin on Talent*, SJHCALVIN.COM, <http://www.sjhalvin.com/talent.html>.

42. John Dickson, *Legal Education and the Law*, 79 U. PA. L. REV. 424, 428 (1931); see also STUCKEY ET AL., *supra* note 39, at 42 (asking whether a Wall Street lawyer needs the same training as

reading, analyzing, and communicating are ones that many researchers have identified as the most important in a modern workforce. Howard Gardner, the world-renowned Harvard professor and psychologist, says that “[t]he most valued people in the 21st century are those that can survey a wide range of sources, decide which is the most important and worth paying attention to, and then put this information together in ways that make sense to oneself and, ultimately, to others . . . [they] will rise to the top of their pack.”⁴³ This is precisely the set of skills that are foundational in law school and that good lawyers possess.

Law school also confers foundational substantive legal knowledge. The first-year law school curriculum is relatively the same at most United States law schools.⁴⁴ The common substantive first-year courses include contracts, civil procedure, torts, criminal law, and property, and often constitutional law.⁴⁵ In each of these courses, we are teaching careful reading and logical analysis, but each also has its own substantive concepts, many of which are complex enough that students benefit from guided exploration of them by an expert in that subject. One example of such a complex concept might be the need to establish “proximate cause” to prove negligence, where a person’s act might have factually and directly caused harm to another, but where he might nevertheless not be liable under the tort of negligence because the act was so attenuated that it cannot be deemed the legal cause of the injury.⁴⁶

Becoming a competent fine artist, like becoming a competent lawyer, requires the acquisition of both skill-based knowledge and substantive knowledge. For example, to produce a realistic portrait, an artist must have not only an adequate degree of drawing skill, but also a basic substantive understanding of facial anatomy.⁴⁷ Likewise, to produce a competent legal argument on why one’s client did not legally cause an injury and therefore is not liable to pay money damages to another, a lawyer must possess not only an adequate degree of skill in crafting a cogent legal argument, but also a substantive understanding of the law of negligence. Both types of knowledge can be effectively taught, and we are about to explore the “secret” of how to teach them.

When I use the word “secret” of effective teaching, I am, of course, being ironic. We have known for hundreds of years, as we explored in the atelier system above, what effective instruction looks like. If only hard science will convince you, however, it is worth noting that since at least the 1960s researchers have identified the teaching methods that produce the greatest benefits for our

a small-town matrimonial lawyer, as law school does not have the time necessary to teach students to become experts in every field).

43. SCHMOKER, *supra* note 39, at 34.

44. Dickson, *supra* note 42, at 425; *see also* STUCKEY ET AL., *supra* note 39, at 276.

45. John C. Weistart, *The Law School Curriculum: The Process of Reform*, 1987 DUKE L.J. 317, 321 (1987).

46. *Palsgraf v. Long Island Railroad Co.*, 248 N.Y. 339 (1928).

47. ARISTIDES, *CLASSICAL DRAWING ATELIER*, *supra* note 8, at 6.

students of any age in any discipline of any learning style.⁴⁸ Moreover, it turns out that good teaching does not consist of some “rare or complex combination of skills unique to each teacher or their circumstance.”⁴⁹ What is rare is the degree to which we employ optimal teaching methods in the classroom.⁵⁰ We can summarize good teaching in five elements:

- (1) Set clear learning objectives of what students will learn in the class and how you will assess whether or not they learned them;
- (2) Explain or demonstrate each “manageable step, one at a time” regarding the process or concept that you are teaching;
- (3) Guide the students in “imitating or practicing each small, manageable step” as you observe them;
- (4) Check that the students have understood each step before moving on to the next one; and
- (5) Adjust your teaching based on the information you learn in checking for understanding through assessments.⁵¹

It is not my purpose to go through each of these elements in detail, but rather to explore three of these elements that law schools need to embrace in the curriculum more fully and widely. These elements are as follows: (1) committing to teaching material in more manageable chunks step by step, (2) checking for student understanding more frequently, and (3) adjusting our teaching based on how well students are learning.

B. Teach Step by Step

As we saw in the atelier system, one of the elements of good teaching is isolating subskills and teaching them one at a time before asking students to do them all together or move on to more advanced skills. This is why, in the atelier system, drawing simple shapes comes before drawing complex shapes, and why painting using one color comes before painting using multiple colors. In other words, a lesson should be organized around “a sequenced set of subskills . . . [in] step-by-step building blocks.”⁵² Students achieve higher learning outcomes when instruction is scaffolded in this way.⁵³ Yet rarely do we see this type of scaffolding in doctrinal law school courses, especially in

48. SCHMOKER, *supra* note 39, at 55; *see also* STUCKEY ET AL., *supra* note 39, at 106.

49. SCHMOKER, *supra* note 39, at 55.

50. *Id.*

51. *Id.* at 92; *see also* MICHAEL HUNTER SCHWARTZ ET AL., TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 23 (2009) (where students were surveyed regarding how to improve their learning, including the desire to be treated with respect; to have different perspectives presented in class; and to have professors learn their names).

52. SCHMOKER, *supra* note 39, at 7–20, 64 (emphasizing that simplicity and focus on structured lessons creates deeper understanding for students).

53. *Id.* at 66.

the first-year curriculum, where scaffolded lessons would be most valuable. First-year doctrinal texts are organized around legal doctrine, not the subskills essential to becoming a good legal analyst.⁵⁴ A typical torts text, for example, might start with the law of negligence and then break down that topic into its elements of duty, breach, proximate cause, and damages.⁵⁵ There is nothing wrong with this approach, so far as it goes, because part of good course design is deciding the most appropriate order to teach the substantive material.⁵⁶ But this limited course design ignores that we are also teaching a set of skills that too often textbooks do not acknowledge or capture, even though these skills are arguably more important than the substantive material that we are teaching.

For example, one of the most common and most important skills that we are teaching law students in the first weeks of law school is how to read and understand case law.⁵⁷ Indeed, reading and interpreting case law occupies much of the first-year curriculum.⁵⁸ But reading a case consists of a bundle of subskills, which include at least the following: identifying the issue or issues in dispute, relevant facts, the rule of law, and the holding; understanding the procedural posture of the dispute; and being able to articulate the court's reasoning for its decision.⁵⁹ But most doctrinal textbooks and many first-year teachers try to teach these skills all at once and do not isolate them. From the first day of school, students are asked to read and digest complex case law.⁶⁰ The system of briefing cases is often taught the first week of school in just one class session, or sometimes in a few hours before school starts during orientation; but even this is trying to teach too much at once. Some professors seem to take joy, and believe they are doing students a service, in assigning difficult or obtuse case law the first week of school. This would be analogous to, on our first day of drawing class, if instead of asking us to draw a sphere Sadie unveiled a reproduction of one of Rembrandt's self-portraits and said to us, "OK, we're going to throw you into the deep end right away. Let's see if you can reproduce a copy of this as best you can in the next couple of hours." I will tell you, if something like that happened my first day of art class, I would never have learned to draw or paint. I would have felt so inadequate,

54. Andrea Curcio, *Moving in the Direction of Best Practices and the Carnegie Report: Reflections on Using Multiple Assessments in a Large-Section Doctrinal Course*, 19 WIDENER L.J. 159, 160 (2009).

55. See, e.g., JOHN L. DIAMOND ET AL., UNDERSTANDING TORTS 179 (6th ed. 2018).

56. ERICSSON & POOL, *supra* note 1, at 148.

57. Judith Welch Wegner, *A Legal Education Prospectus: Law Schools and Emerging Frontier - Reframing Legal Education's "Wicked Problems"*, 61 RUTGERS L. REV. 867, 882 (2009).

58. *Id.*

59. HELENE S. SHAPO ET AL., WRITING AND ANALYSIS IN THE LAW (4th ed. 1999); see also SCHMOKER, *supra* note 39, at 39 (primary intellectual skills for students).

60. Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 457 (2003); see also STUCKEY ET AL., *supra* note 39, at 276 (essential skills for first-year law students).

discouraged, and unequal to the task that I would have given up. I think many law students experience this type of discouragement when we ask them to perform complicated analyses with inadequate instruction, such as when we fail to isolate and teach legal skills appropriately in a scaffolded, step-by-step approach.

One place in the law school curriculum that does a good job, in general, of isolating legal subskills is in our legal research and writing courses. But even here is considerable variation in how well legal skills are unbundled as we teach them. One of my favorite legal writing books, *Writing and Analysis in the Law*, understands the need to teach subskills separately before asking students to work with them all at once.⁶¹ In its chapter on how to analyze a case, for instance, the first way it helps students is by not using an actual case, which is bound to be too complex. It uses a simple “case,” of the authors’ own drafting, of only two or three paragraphs.⁶² After explaining the different parts of the case or modeling their use, the authors have created a set of exercises that allow students to practice the subskills of briefing a case in isolation.⁶³ For example, one exercise using a created case lists a set of new facts and asks students to determine which one would change the outcome of the case.⁶⁴ Another exercise, using a different short, especially crafted case, asks students to select a sentence from several choices that they think best captures the holding of the case.⁶⁵ Each subpart of briefing a case is taught and assessed separately before the student is asked to do all of it at once. This is scaffolded teaching.

The process of scaffolded, skill-based teaching that I experienced at Sadie’s atelier profoundly affected the way I teach my mediation course. Mediation, as you likely know, is the process of a third-party neutral assisting parties in a dispute to negotiate their differences in a mutually agreed-upon resolution.⁶⁶ The goals of my course are not just to train students to serve as mediators, but also to be good advocates in any collaborative problem-solving process. I teach a facilitative, five-stage mediation model and divide the course into two distinct parts. In the first half of the course, I teach students the overarching five-stage mediation process. In the second half of the course, among other things, I introduce more advanced techniques a mediator might use within the problem-solving phase of the process to assist the parties in arriving at a negotiated agreement. Over the years, I have often been disappointed with the results among students in the second half of the course who still struggle understanding the overarching five mediation stages, sometimes skipping entire stages in the simulations. My internal dialogue when encountering this would be, “Why are they still struggling when we went over this thoroughly

61. SHAPO ET AL., *supra* note 59, at v.

62. *Id.* at 58-59.

63. *Id.* at 66-71.

64. *Id.* at 66-67.

65. *Id.* at 72-73.

66. LAURENCE J. BOULLE ET AL., *MEDIATION: SKILLS AND TECHNIQUES I* (2008).

weeks ago?” As I reflected on this phenomenon after my experience as an art student, however, I realized that I was moving too fast through the model in the first weeks of the course and not properly breaking down each step. So, I redesigned the first half of the course to include greater care and time teaching the fundamentals.

To better understand how I more effectively taught mediation fundamentals, let me briefly describe the five-stage facilitative mediation model that I teach. The five-stage facilitative mediation model provides a general road map on how a mediator should approach his or her task of helping parties to better understand the dispute, so as to be in a better position to make settlement decisions.⁶⁷ Here are the five stages of the model. Stage One is the mediator’s opening.⁶⁸ In this stage, the mediator explains the nature of the process and how he or she will conduct the mediation.⁶⁹ In Stage Two, the mediator invites the participants to provide a brief summary of their dispute to the mediator.⁷⁰ In Stage Three, the mediator consolidates the issues the parties have raised and creates an agenda of items to address in the mediation, being sure to highlight not only where the parties have a disagreement, but also on which points or facts the parties agree.⁷¹ Stage Four is the problem-solving phase where the parties work through the list of issues and negotiate resolution.⁷² Finally, in Stage Five, the parties either reach a resolution or they do not, but the mediator has a role in this stage either way.⁷³

One of the changes I made was that I doubled the amount of time that I spent teaching the foundational model by introducing a set of exercises for each stage of the process that isolated the essential skills for each. A second important change that I made was to consistently and thoroughly demonstrate, or “model,” each skill before asking students to perform it. I typically would spend about nine hours of a forty-three-hour course introducing the model, but now I spend about eighteen hours working through each stage of the model.

The additional time that I now spend on the foundational mediation model is in part because of the increased use of exercises that I introduced into the class that isolate specific skills in the same fashion that an atelier teacher isolates the drawing of shapes as a fundamental skill. For example, in the mediator’s opening, the first stage of the mediation process, I constructed an exercise in which students would get a one-page fact pattern of a dispute and convene in groups of three. Each student, in turn, would give a mediator’s

67. *Id.* at 61.

68. *Id.* at 63.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

opening to the other two students playing the role of parties. For this exercise, I also created a simple feedback checklist that asks the students serving as parties in that exercise to provide specific and guided feedback to the student serving as the mediator. For example, in the opening stage at the beginning of the course, items on the feedback checklist included the following: "Did the mediator explain the mediation process?" "Did the mediator explain your role in the process?" "Did the mediator ask if you had any questions about the process?" Indeed, for every stage of the mediation model, I developed an exercise and feedback checklist so that every student practiced that stage and received guided feedback on his or her performance before he or she had to perform the task in a complete simulated mediation.

After finishing my lesson plan on mediator openings, I moved to the second stage of the mediator process, the parties' statements; I would first demonstrate that stage and then have students participate in an exercise that gave them an opportunity to practice just those skills connected with that stage. Then I would provide a different factual scenario, and the groups of three students would conduct a mediation from the beginning, going only up through stage two of the mediation. I would then introduce stage three, creating the issue list, and have the students conduct an exercise just on this stage. Then I would start a new mediation from the beginning, going just through stage three of the process. I would proceed in this fashion all the way through all five stages, building the model slowly and repetitively, providing feedback and answering questions throughout.

Before building the mediation model through exercises and repetition in this fashion, I simply conducted short simulated mediations in which students would rotate as mediators. But these simulations, while valuable, asked students to perform whole sets of complicated skills without providing them an opportunity to practice any one stage in isolation. I used whole simulated mediations, surmising that students would be disappointed to not complete a mediation. But I found this was not the case. Students were content with the process because they could see themselves gaining competency in a new skill, even if the educational process seemed painfully slow to me.

I also modeled the skills associated with each stage of the mediation in a more consistent and effective way. For every stage of the mediation, I modeled the skill at least twice, sometimes using a video clip from a real or simulated mediation and sometimes modeling it myself in class, and often both.⁷⁴ There is a strain of thinking in legal education, especially in clinical education, that learning by doing should be the exclusive way that students learn legal skills.⁷⁵

74. Before this time, I tended to show longer segments of mediation videos that encompassed more than one stage of the mediation. Now, I show a short mediation at the first class to provide students a sense of how a mediation is conducted from beginning to end to provide context for our examination and practice of each stage that is to follow. But thereafter, I model only stages on which we are working.

75. Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 186 (1989).

Learning by doing, also known as role assumption, is surely an indispensable aspect of legal pedagogy. But, in many instances, expert modeling can enhance learning of legal skills. Educational researcher John Hattie explains that “when observers have the opportunity to watch carefully, their learning can be greater than in people who perform the same task in the absence of social modeling.”⁷⁶ Anders Ericsson, one of the world’s experts on learning, also views modeling as a central benefit of having an expert teacher.⁷⁷ The science is consistent with the centuries-old atelier practice of the master modeling how to draw and paint in the early stages of the students’ education. Modeling is also an important component in music education.⁷⁸ Music teachers model complex rhythms, tempo, phrasing, the proper way to hold an instrument, and fingerings on string instruments, just by way of example.⁷⁹ So, too, modeling is an effective pedagogy in teaching legal skills.

Isolating subskills, modeling, practicing, providing individualized feedback, and engaging in repetition of those skills are essential to learning foundational skills in any discipline.⁸⁰ We should take this approach in all first-year subjects in the first few weeks of classes, using examples and exercises in their respective subjects. In other words, law schools should start instruction by asking students to draw spheres, not paint Rembrandts.

C. Make Learning Visible by Checking for Understanding

There is an unfortunate tradition in law schools that has rendered student learning invisible. With invisible learning, neither the students nor the teachers know whether students are adequately learning the material during the semester.⁸¹ This phenomenon of students and teachers not knowing whether learning is occurring as we wish it would is a result of a lack of checking for understanding frequently and systematically throughout the semester.⁸² One cannot imagine this type of instruction in an atelier, which is the apotheosis of visible learning. In the atelier system, both instructor and student know precisely in real-time how the student is progressing in his or her artistic development. The art student’s work is continually on display, and

76. JOHN HATTIE & GREGORY YATES, *VISIBLE LEARNING AND THE SCIENCE OF HOW WE LEARN* 78–79 (2013); see also Harriet Katz, *Reconsidering Collaboration and Modelling: Enriching Clinic Pedagogy*, 41 GONZAGA L. REV. 315 (2006).

77. ERICSSON & POOL, *supra* note 1, at 148.

78. Warren Haston, *Teacher Modeling as an Effective Teaching Strategy*, MUSIC EDUCATORS J. (March 2007).

79. *Id.*

80. ESCALANTE, *supra* note 15, at 16–17.

81. JOHN HATTIE, *VISIBLE LEARNING: A SYNTHESIS OF OVER 800 META-ANALYSIS RELATING TO ACHIEVEMENT* 23 (2008).

82. Emily Zimmerman, *What Do Law Students Want? The Missing Piece of Assessment*, 42 RUTGERS L.J. 1, 3, 11 (2010); see also STUCKEY ET AL., *supra* note 39, at 240; see also Herbert N. Ramy, *Moving Students from Hearing and Forgetting to Doing and Understanding: A Manual for Assessment in Law School*, 41 CAP. U. L. REV. 837, 839 (2013).

the instructor is continually providing feedback and guidance on ways that the student can improve.⁸³ This is the gold standard for which law schools should strive. But many of us teaching law are products of a legal education in which the only form of assessment in most courses that we took as students was one assessment at the end of the semester or, even worse, at the end of the entire year, upon which our entire performance in that course was judged.⁸⁴ We received little or no individualized feedback along the way. While most law schools have abandoned this “one assessment per course” model, frequent assessment and appropriate feedback are still not the norm in law schools.⁸⁵ Accordingly, student learning in law schools should be made more visible by implementing best practices around frequent assessment and feedback.

A helpful way to think about the role of assessment in law school is to make student learning visible.⁸⁶ John Hattie, the world-renowned education researcher, who coined the phrase “visible learning,” explains it this way: With visible learning, teachers “have a good understanding of where the students are and where they are meant to be.”⁸⁷ Visible learning cannot be achieved by simply having a midterm and a final; one must check for understanding every week or nearly so.⁸⁸ This checking for understanding does not always need to be in a formal written assessment, but it must credibly assess whether students know what you want them to know and can do what you want them to do.⁸⁹

Frequent and appropriate checking for understanding through assessments leads to powerful learning results. Formative assessment is a useful way that teachers can check for understanding throughout the course. Unlike summative assessments, which count toward a student’s grade, formative assessments give students an opportunity to practice what they are learning in a way that makes their “thinking visible to both teachers and students.”⁹⁰ Formative assessments can take a myriad of forms, such as multiple-choice questions, short essays, oral presentations, mock arguments, skits, role-playing, and outlining exercises.⁹¹ The key to good formative assessments is that they

83. ARISTIDES, *CLASSICAL PAINTING ATELIER*, *supra* note 3, at 3.

84. Zimmerman, *supra* note 82, at 4; *see also* STUCKEY ET AL., *supra* note 39, at 236.

85. Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law School Performance*, 67 J. LEGAL EDUC. 139, 145 (2017).

86. HATTIE, *supra* note 81, at 25; *see also* SCHWARTZ ET AL., *supra* note 51, at 325; STUCKEY ET AL., *supra* note 39, at 235.

87. HATTIE, *supra* note 81, at 23; *see also* SCHWARTZ ET AL., *supra* note 51, at 144 (where designing a student assessment only works if the professor knows exactly what their learning goals are for their students).

88. *See* HATTIE, *supra* note 81, at 23.

89. *Id.*; *see also* SCHWARTZ ET AL., *supra* note 51, at 137 (“In an assessment centered environment, students have repeated opportunities to practice and receive feedback.”).

90. Herbert N. Ramo, *Moving Students from Hearing and Forgetting to Doing and Understanding: A Manual for Assessment in Law School*, 41 CAP. U. L. REV. 837, 839 (2013).

91. SCHWARTZ ET AL., *supra* note 51, at 315.

allow the student to demonstrate whether they have understood the material or can perform the skill, as well as having the opportunity to improve through guided instruction by the teacher.⁹²

The efficacy of formative assessments in improving learning is well established. In recent decades with the advent of “meta-analysis,” we can harness the lessons of hundreds of research studies in guiding our work as teachers.⁹³ A meta-analysis converts the effects of many studies into a “common measure (effect size), such that the effects could be quantified, interpreted, and compared . . .”⁹⁴ One of the most well-known meta-analyses on formative assessment demonstrated that formative assessment improves learning and does so dramatically. Researchers Paul Black and Dylan Williams performed a meta-analysis using nine years of studies on the efficacy of formative assessment that encompassed 250 different research studies.⁹⁵ These studies were across a variety of subjects and involved students ranging from 5-year-olds to undergraduate students.⁹⁶ The study found that the use of formative assessment showed impacts on learning that were “larger than most of those found for educational interventions.”⁹⁷ Of particular importance for law schools, which have as at least one of their ultimate goals enabling students to pass the bar exam, the study found that formative assessments can “help low achievers more than other students—and so reduce the range of achievement while raising achievement overall.”⁹⁸ The positive and substantial learning impact of the use of formative assessment has also been quantified in John Hattie’s landmark book *Visible Learning*, which purports to be “the largest collection of evidence-based research on what actually works in schools to improve learning.”⁹⁹ Incredibly, *Visible Learning* is based on 800 meta-analyses of over 50,000 educational research studies.¹⁰⁰ One of the most prominent of Hattie’s takeaways from this monumental education research endeavor is that the “teacher must know when learning is correct or incorrect—in order to provide additional instruction or guidance.”¹⁰¹

Consistent with the findings in Hattie’s and others’ work, the few studies of the efficacy of formative assessment in law school have all shown that assessment that provides individualized feedback improves student performance on final exams when compared with that of students in courses that used no such

92. STUCKEY ET AL., *supra* note 39, at 235.

93. HATTIE, *supra* note 81, at 3.

94. *Id.*

95. W. JAMES POPHAM, TRANSFORMATIVE ASSESSMENT 19 (2008).

96. *Id.*

97. *Id.*

98. *Id.*

99. SCHMOKER, *supra* note 39, at 66.

100. *Id.*; HATTIE, *supra* note 81, at 25.

101. HATTIE, *supra* note 81, at 25.

feedback. In the most recent of these studies, published in 2017 by Professors Daniel Schwarcz and Dion Farganis at the University of Minnesota, the use of individualized feedback had a profound impact on law student first-year performance.¹⁰² The researchers report that after “controlling for students’ LSAT scores, undergraduate GPA, gender, race, and country of birth,” students in a section who received individualized feedback on average outperformed students in a section who did not receive individualized feedback.¹⁰³ More surprisingly, perhaps, “the students from the section receiving individualized feedback outperformed the students from the section that did not *in every single class.*”¹⁰⁴ The magnitude of the improvement averaged 0.12 on a 4.0 grading scale, which had the equivalent impact of increasing entering LSAT scores by 3.7 points under their model.¹⁰⁵ This is the power of formative assessment.

Formative assessment is the central feature of the atelier system. As art students work and complete assignments, instructors are providing continuous and specific formative feedback so students know what aspects of the work they need to improve.¹⁰⁶ In Hattie’s words, the art instructors know when “learning is correct or incorrect—in order to provide additional instruction or guidance.”¹⁰⁷ If it is a drawing, a student needs to know if his proportions are correct and if light and dark values have been correctly rendered so that the object appears three-dimensional.¹⁰⁸ If the student is working on a painting, proportion and values may be correct, but the student’s colors may be “muddy” so as to render the painting dull and lifeless. Novice students in art or in law do not have the skill to self-correct.¹⁰⁹ That’s why they need teachers. The guidance and feedback that teachers provide must be specific and tailored to the individual student.¹¹⁰ Importantly, in an atelier system, the instructor doesn’t review an art student’s work and pronounce it just “good” or just “bad,” but rather provides helpful, specific critique to guide the student’s skill development in the proper direction.

Providing specific feedback to students is a crucial aspect of expert learning. Anders Ericsson explains that not every form of practice is equally

102. Schwarcz & Farganis, *supra* note 85, at 139-40.

103. *Id.* at 139.

104. *Id.* at 142 (emphasis in the original).

105. *Id.*

106. ARISTIDES, CLASSICAL PAINTING ATELIER, *supra* note 3, at 5.

107. HATTIE, *supra* note 81, at 25.

108. *Id.*

109. Dan Scott, *What Are Muddy Colors and How Can You Avoid Them in Your Paintings*, Draw Paint Academy (Aug. 1, 2018), <https://drawpaintacademy.com/muddy-colors/>.

110. Corie L. Rosen & Hillary Burgess, *More than Merely Doing: Deliberate Practice, Feedback, and Academic Success*, AALS Section on Academic Support: The Learning Curve 2, 3 (2011).

meaningful.¹¹¹ The most effective kind of practice is “deliberate practice.”¹¹² Deliberate practice is both “purposeful and informed,” as it is designed to “improve a specific aspect of performance.”¹¹³ Ericsson further explains that the key to engaging in deliberate practice is to have an expert instructor “who knows the best order in which to learn things, who understands and can demonstrate the proper way to perform various skills, [and] who can provide feedback.”¹¹⁴ Ericsson’s groundbreaking work on expert learning illuminates how we should be providing feedback in law schools.

Ericsson explains that the crucial factor that separates experts from nonexperts in every discipline, including law, “is that years of practice have changed the neural circuitry of their brains to produce the incredible memory, pattern recognition, problem-solving . . . that are needed to excel in their particular specialties.”¹¹⁵ These “mental representations” are “preexisting patterns of information—facts, images, rules, relationships . . . that are held in long-term memory and that can respond quickly and effectively to certain types of situations.”¹¹⁶ Effective teachers assist students in creating appropriate mental representations by providing feedback that renders their practice “informed” and, thus, more meaningful and effective.¹¹⁷

But Ericsson tells us that for feedback to be most effective it must be primarily aimed at performance, not knowledge. Ericsson writes that “deliberate practice . . . focuses on performance and how to improve it.”¹¹⁸ “Students pick up the knowledge,” Ericsson explains, “in order to develop the skills.”¹¹⁹ Thus, when law teachers set learning objectives for their courses, these objectives should be framed as what students should be able *to do* after each lesson, not as what they *should know* after each lesson.¹²⁰ For example, instead of a lesson’s learning objective being “understand formation of a contract,” the learning object is more productively framed “learn how to analyze a formation-of-contract legal issue.” This is precisely the approach that an atelier takes. When atelier students are learning how to draw the human form, the focus is on actually being able to draw the human form, not being able to name all the parts of the human anatomy. To be sure, one must also have a basic understanding of human anatomy to draw a human form well. But Ericsson has found that

111. ERICSSON & POOL, *supra* note 1, at 111.

112. *Id.*

113. *Id.*

114. *Id.* at 148.

115. *Id.* at 63.

116. *Id.* at 60–62.

117. *See id.* at 148.

118. *Id.* at 131.

119. *Id.* at 250.

120. *Id.* at 251.

when student focus is on performance, “[i]t turns out that knowledge comes along for the ride.”¹²¹

Framing course learning objectives to emphasize what students should be able to do, rather than what students should know, would be a major philosophical shift for many law professors who teach doctrinal courses, especially first-year courses like torts, contracts, civil procedure, and property, where the focus has traditionally been on knowledge-building and not skill-building.¹²² Yet, if we are committed to training experts, we must emphasize skill-building, which means we must provide frequent and appropriate feedback to help students develop efficient mental representations that will transform them into experts.¹²³ The feedback we provide must inform student practice.¹²⁴ This means that it must explain why an analysis is wrong or incomplete.¹²⁵ And it must acknowledge when an analysis is correct and why it is correct.¹²⁶ When we provide written feedback, we must view ourselves as coaches—critiquing, informing, advising, approving, and, above all, supporting, student work.¹²⁷ But this is not the tradition of law schools, or of many other learning institutions, for that matter. Ericsson states that “the traditional approach has been to provide information about the right way to proceed and then mostly rely on the student to apply that knowledge.”¹²⁸ Sadly, relying on students to apply that knowledge for themselves has been the tradition of law schools as well. Let me provide an example of why placing an emphasis on students’ applying the knowledge to their performance without appropriate feedback is flawed, based on Ericsson’s decades of research.

A common and, by itself, largely unhelpful practice among law schools in a student’s first year of study is providing a model answer to exam essay questions. Professors often provide model answers that they either construct themselves or construct from exemplary student exam answers. Providing a model answer can be a useful tool if the professor also provides meaningful individualized feedback that helps students process why the model answer is better than their answer. By itself, however, the practice of supplying a model answer doesn’t meaningfully help most students because, at this early stage of their education, students have underdeveloped mental representations in both quality and quantity to know just from looking at it why one answer is

121. *Id.*

122. *Id.*

123. *See id.* at 148.

124. *Id.* at 98–99.

125. *Id.*

126. *Id.*

127. *See* Paula J. Manning, *Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes*, 43 CUMB. L. REV. 225, 243–50 (2013).

128. ERICSSON & POOL, *supra* note 1, at 131.

better than the other. As hard as it is for us as experts to imagine, students cannot ascertain the important differences between their amateur answer and the better, or even expert, one. Let me try to recreate that experience for you in a different discipline, still-life painting.

Below are two still-life paintings of the same subject done by my art teacher, Sadie Valeri.¹²⁹ When looking at the paintings below, first ask yourself which is the most successful painting. Then, see if you can specifically articulate the important ways one painting is more successful than the other.



Even if you have no art training, you can probably tell that the bottom painting is more expertly executed.¹³⁰ These images are from an art training video that illustrates and explains common painting errors.¹³¹ The more difficult task for the nonexpert in comparing the images above, lacking the

129. Images used with permission from Sadie Valeri from her video *Direct Oil Painting: Common Errors*.

130. *Id.*

131. *Id.*

necessary expert “mental representations,” is identifying why the top painting is not so successful and how to make it more so.

One of the more obvious problems with the top still-life is that the “edges” are not handled well. The real world contains few hard edges, meaning abrupt visual changes where one object or part of an object ends, and another begins. In real life, edges are softer and less distinct. A common error of novice painters is making edges too obvious. For example, look at the right edges of the glass bottle in the two paintings. In the top painting, the bottle’s right edge is distinct and “hard.” The right edge of the bottle in the bottom painting is more realistic because it is “softer” and less distinct, as it would appear if you were looking at the real thing. In fact, the upper-right edge of the bottle in the bottom painting almost “disappears,” creating a more realistic illusion of the glass’s transparency, what artists call a “lost edge.” The bottom still-life also handles the highlight on the bottle more expertly than the top still-life in at least two important ways. Again, the top painting’s highlight has hard edges, almost geometrical in design. The bottom still-life’s edges “bleed” more realistically into the surrounding color. The bottom highlight also uses several colors to create the illusion of the reflective quality of glass, whereas in the top painting the highlight is nearly pure white. The background is more expertly executed in the bottom painting, as is the foreground. The interior of the metal bowl in the top painting doesn’t realistically depict the direction of the light. There is much else we can learn about painting by contrasting the successful elements of the bottom painting with the less successful ones in the top painting. But for a novice to learn these lessons, the teacher must point them out in the students’ individual work and not leave students to work it out for themselves. Unlike legal experts, most first-semester law students do not yet have the capacity to comprehend why a superior legal argument is better than a conclusory one, any more than you could identify why one still-life above was more successful than the other.

Nor do generalized statements of praise or rejection provide meaningful guidance to students. For example, how much help would it provide the art student if the art teacher painted a big “X” over the glass bottle in the top still-life, instead of explaining the deficiencies of the bottle as I did above? Or, how much would an art student learn if the instructor painted a big “Good” next to the peach in the top still-life? There are some good qualities to this peach, to be sure, most notably the vibrancy of the colors. However, the peach doesn’t feel as three-dimensional as the peach in the bottom painting because of the hard edges used in depicting how the light falls on the “round” surface of the peach. Yet, “Xs,” “Nos,” and “Goods” have been the staple of law professors’ feedback on essay exams for generations, when they provide feedback at all.¹³² Because such comments fail to provide why an aspect of performance is bad or good, they do little to improve future student performance.¹³³

132. For excellent guidance on how to provide (and how not to provide) feedback, see Manning, *supra* note 127, at 245-54.

133. Syllabus for *The Legal Profession* course is on file with the author and available upon request. It

In my own teaching, as a result of my art studies, I have taken seriously the responsibility of providing students an opportunity to enhance skills by “doing” and to receive as much individualized feedback on what they do as is practical. One class that I teach that was substantially transformed with these goals in mind was The Legal Profession. The Legal Profession is a one-credit graded course that our students take in the spring term of their first year of school. One of the main goals of the course is to help students to embrace the role of a professional and to prepare them for working as a lawyer in the first summer after law school.¹³⁴ As a way to emphasize skill-building and feedback, we transformed the course into a team-based learning environment. Briefly, in team-based learning, students work in small teams of five or six students throughout the semester, with the final grade based on not only their individual performance, but also on their performance as a team and how their team members rate them as a team member.¹³⁵

Though this is not an article about team-based learning, you need to know a little bit about it. In team-based learning, class time is spent mostly on students actually doing work in the classroom and getting feedback on it, much in the tradition of the “flipped classroom.”¹³⁶ After each topic, students take an individual quiz and then immediately afterward they take the same quiz as a group, with both scores counting for some percentage of the final grade.¹³⁷ After this, professors assign student teams to perform an exercise that is intended to demonstrate that the students can use this knowledge.¹³⁸

As mentioned above, one goal of the course is to help students find summer legal employment after their first year of school. Here are the ways that The Legal Profession course supports this goal through student performance and feedback: During the first week of class, students must turn in a resume and draft cover letter, based on reading and examples of how these documents should be structured. As part of the class, our Career Development Office staff provides detailed, individualized feedback on *every* student resume and cover letter. Students must then incorporate the feedback and turn in updated documents. In class, using the written materials about how to write good legal resumes and cover letters, students, working in their teams, participate in a simulation as a law firm “hiring committee” to evaluate a set of resumes and

is also of note that at McGeorge a group of faculty teach this course in a highly collaborative way, working together to create a signal syllabus for all sections. In recent years, faculty with whom I have worked to co-develop this course include Professors Lindsey Blanchard, Cary Bricker, Dan Croxall, Dorothy Landsberg, and Jeff Proske.

134. *Id.* Other topics we cover in The Legal Profession include ethics, cultural competency, growth mindset, and interpersonal problem-solving. *Id.*

135. See D.G. MULCAHY ET AL., TEAM-BASED LEARNING: A TRANSFORMATIVE USE OF SMALL GROUPS 27-44, 75 (Larry K. Michaelsen et al., eds., 2002).

136. *Id.* at 42.

137. *Id.*

138. *Id.*

cover letters of prospective “job applicants” and rank them in the order in which they would wish to interview the candidates.¹³⁹ Then each group reports to the entire class the order in which they rank the applicants by explaining the strengths and weaknesses of each applicant’s application, which might include quality of writing, structure, appropriateness of descriptions, degree to which materials were tailored to the law firm, and much else.

Additionally, about six weeks into the course, professors meet individually with each student for at least one-half hour, in part to review students’ summer job search goals and strategies, providing feedback and advice. This focus on “doing” and individualized feedback regarding summer jobs has paid off. Before we introduced The Legal Profession course into the curriculum, we did not even track rising 2L summer employment, but our best estimate was that it was at or below sixty percent. The first year we offered the course, using a more traditional style of teaching and testing, rising 2L summer employment rate was about seventy percent.¹⁴⁰ Once we increased specific feedback and performance exercises, that rate grew to eighty-four percent. In the past three years, ninety percent of our rising 2L students have worked in legal jobs in the summer after their first year of law school, reaching a high of ninety-four percent summer employment in 2019. We attribute high summer job employment rate in significant part to the lessons we offered students in coordination with our Career Development Office by helping them develop job search skills, instead of just explaining those skills to them.

In addition to making learning more visible, frequent assessment and feedback help to mitigate a common learning obstacle called the fluency illusion. Fluency illusion arises when a student confuses familiarity with a concept with the mastery of it.¹⁴¹ This is a particular trap for law students who think rereading cases and rules again and again is a path to gaining a facility with using them in legal analysis.¹⁴² But the research shows that being able to understand a concept that is well explained in a text or by a professor in class has little to do with one’s having the skill to apply it in a legal analysis.¹⁴³ Practicing recalling and using concepts through assessment with proper feedback provides students valuable information on how well they actually know the material or can perform a skill.¹⁴⁴ Law schools are particularly bound to provide frequent and detailed feedback because of the difficulty of the skills and the substantive law that professors are teaching their students. In

139. We adapted this exercise, with permission, based on one provided by Ms. Annabrooke Temple.

140. This number is also an estimate from incomplete data reported. Collecting this data from 150 or so students once they leave your class is a time-consuming and labor-intensive process that we perfected in the following year.

141. PETER C. BROWN ET AL., *MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING* 116 (2014).

142. *Id.*

143. *Id.* at 202.

144. HATTIE, *supra* note 81, at 178–79.

Visible Learning, Hattie emphasized that “[t]he greater the challenge, the higher the probability that one seeks and needs feedback, and the more important it is that there is a teacher to ensure that the learner is on the right path to successfully meet the challenge.”¹⁴⁵

In 2015, the American Bar Association (ABA), American law schools’ principal accrediting body, for the first time recognized the essential role formative assessment and feedback should play in legal education. ABA Standard 314 requires a law school “to utilize both summative and formative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.”¹⁴⁶ But the standard and its explanatory comments provide little guidance or explanation of formative assessment and feedback best practices. Indeed, one of its interpretation comments to the standard raises more questions than it answers. Comment 2 states: “A law school need not apply multiple assessment methods in any particular course. Assessment methods are likely to be different from school to school. Law schools are not required by Standard 314 to use any particular assessment method.”¹⁴⁷ So while the presence of Standard 314 is a welcome evolution in legal education, each law school will need to determine how formative assessment and student feedback fits into its curriculum. With their long history of providing little feedback to students and embracing—sometimes celebrating—a culture of invisible learning, law schools must look critically at their educational practices in light of science-based educational principles on feedback discussed above.

D. Teacher, Know Thy Impact

Teachers should also embrace the nearly radical concept that assessment is as much for them as it is for their students.¹⁴⁸ When the majority of their students do not reach their learning objectives, professors should adapt their teaching methods until their learning goals are met.¹⁴⁹ One of John Hattie’s most powerful insights from his decades of research on visible learning is that student feedback is as much for the teacher as it is for the students. Hattie concludes that the “remarkable feature of the evidence is that the biggest effects on student learning occur when teachers become learners of their own teaching and when students become their own teachers.”¹⁵⁰ It is not enough for teachers to set a goal of “I want to teach a good lesson.”¹⁵¹ Ideally, teachers

145. JOHN HATTIE & KLAUS ZIERER, 10 *MINDFRAMES FOR VISIBLE LEARNING: TEACHING FOR SUCCESS* 12 (2017).

146. *ABA Standards and Rules of Procedure for Approval of Law Schools: Standard 314*, American Bar Association.

147. *Id.*

148. HATTIE & ZIERER, *supra* note 145, at 38.

149. *Id.*

150. HATTIE, *supra* note 81, at 22.

151. JOHN HATTIE, *VISIBLE LEARNING FOR TEACHERS: MAXIMIZING IMPACT ON LEARNING* 2 (2012).

should set as their goal to have specific learning impacts on their students and then “know thy impact.”¹⁵² When teachers adopt such a mindset, Hattie concludes, “the students are the major beneficiaries.”¹⁵³

The main point here, of course, is that teachers are the beneficiaries of assessment, too. While the fluency illusion obstacle explained above relates to a student’s perception of understanding, another common obstacle to student learning is the “curse of knowledge.” The curse of knowledge relates to the teacher’s insufficient appreciation for how difficult a topic is or how long it will take for students to gain a mastery of it.¹⁵⁴ Professors who spend years or decades teaching and writing about a particular concept, whether it be a notoriously difficult topic such as future interests in property or confusing standards of review in constitutional law, can forget that mastery of these topics comes neither quickly nor easily for most novices.¹⁵⁵ So it is not uncommon for some professors to unwittingly move too quickly or too superficially through complex topics to stay “on task” or “on schedule.”¹⁵⁶ And then when students perform poorly on these topics on major summative assessments, professors lament the students’ lack of diligence or intelligence. This is, of course, the trap that I fell into by teaching the foundational mediation model too quickly and too superficially.

I can think of no better way to demonstrate the power of “teachers becom[ing] learners of their own teaching and . . . students becom[ing] their own teachers” than the story of the high academic performance of Jaime Escalante’s students at Garfield High School in Los Angeles during the 1970s and ’80s. These types of success stories are valuable for us to explore because they can remind us of what is possible in the classroom with our current students and the tools available to all of us right now. The story of Escalante’s eighteen high school calculus students, which represented his entire class, who all passed the 1982 Advanced Placement (“AP”) calculus exam, is well known because it was depicted in the popular 1988 movie *Stand and Deliver*.¹⁵⁷ But Escalante’s success as a teacher is more impressive and profound than even a Hollywood movie was able to capture, and his achievements are worth knowing more fully.

Let’s start with the fact that the AP calculus exam is a tough test.¹⁵⁸ The College Board set up the Advanced Placement examinations in 1954 for the benefit of elite high schools like Exeter, Groton, and Andover so that a “few bright high school seniors in extremely wealthy or competitive schools” could

¹⁵². *Id.*

¹⁵³. *Id.*

¹⁵⁴. MAKE IT STICK, *supra* note 141, at 115.

¹⁵⁵. *Id.*

¹⁵⁶. *Id.*

¹⁵⁷. *Stand and Deliver* (1988).

¹⁵⁸. ESCALANTE, *supra* note 15, at 2.

earn college credit for college-level work that they had mastered in high school.¹⁵⁹ Eventually, the College Board opened up the Advanced Placement examinations, or “AP exams,” to all high school students.¹⁶⁰ While all AP exams are known to be difficult assessments, the AP calculus exam was notorious for its difficulty, consisting of both a multiple-choice part and a handwritten part requiring students to show their calculations in solving complex math problems.¹⁶¹ So the fact that an entire calculus class from Garfield High School passed the AP calculus exam was nothing short of astounding to many, and to some, as we shall see, unbelievable.

Established in 1925, Garfield High School by 1975 was on the verge of losing its accreditation.¹⁶² Situated in East Los Angeles, the school comprised more than ninety-five percent Latino students, many of whom were undocumented immigrants or the children of undocumented immigrants, and for nearly all of whom Spanish was the primary language spoken in the home.¹⁶³ At the time of the 1982 AP calculus exam, eighty percent of all Garfield High School students qualified for federal free or reduced-price lunches.¹⁶⁴ All of the eighteen students who sat and passed the 1982 exam were at least part Mexican.¹⁶⁵ Escalante himself was a Bolivian immigrant.¹⁶⁶ So, when eighteen students in the same class from a poor school district with mostly Latino surnames passed one of the most difficult AP exams, people noticed. Some of the people who noticed were the exam graders and officials from the College Board who invalidated Garfield’s scores because of suspected cheating.¹⁶⁷

Because of the large number of students who sit for AP exams each year, schools proctor their own AP exams.¹⁶⁸ Thus, all eighteen of the Garfield students took the AP calculus exam in the same room at the same time.¹⁶⁹ The AP exam graders had found that the answer to one of the questions on the handwritten portion of the exam was similar for several of the students, which heightened their suspicion that the students had cheated.¹⁷⁰ During the College Board’s ensuing investigation of the Garfield AP calculus exam, Escalante argued that it was perfectly understandable that students might approach the

159. JAY MATHEWS, *ESCALANTE: THE BEST TEACHER IN AMERICA* 108 (1989).

160. *Id.* at 199.

161. *Id.* at 108–09; 146–47.

162. *Id.* at 2.

163. *Id.* at 3.

164. *Id.* at 2.

165. *Id.* at 139.

166. *Id.* at 11.

167. *Id.* at 1.

168. *Id.* at 144.

169. *Id.*

170. *Id.* at 147–48.

calculus problems in similar, even identical ways, because he taught them very specific techniques for solving those equations.¹⁷¹ The College Board rejected these arguments and would reinstate the original scores only if the students sat and performed well on a second, different exam.¹⁷² Ultimately, twelve of the original eighteen students chose to sit for the new exam, which many felt was more difficult than the first, and, because the College Board deemed their level of performance adequate, it reinstated all twelve students' original scores.¹⁷³

Less well known, but even more important for our purposes, is that the triumph of Garfield students who passed the 1982 AP calculus exam was only a small part of a larger educational success story. Escalante started his calculus program at Garfield in 1978 with just five students.¹⁷⁴ He built up the program slowly, creating quality courses in basic math so that he would have a sufficient student pool prepared to take his calculus courses.¹⁷⁵ By 1986, ninety-three Garfield students sat for the AP calculus exam, and eighty-four percent of them passed.¹⁷⁶ The following year, 129 Garfield students sat for the exam, and sixty-six percent passed.¹⁷⁷ Despite the drop in pass rate, in 1987, Garfield—one of the poorest school districts in the country—had more students sit for the AP calculus exam than all but three public schools.¹⁷⁸ To put that statistic in even greater relief, in 1987, Garfield produced twenty-six percent of *all* Mexican American students in the country who passed the AP calculus exam.¹⁷⁹ That statistic at once quantifies a remarkable educational achievement and an educational failure of thousands of other school districts.¹⁸⁰

Escalante believed that the methods he used in his math program at Garfield High School to achieve such a high level of success were not innovative or new.¹⁸¹ Indeed, it was just the opposite. He felt that his success with his math program was the rigorous implementation of time-tested teaching methods, just like the ones that art instructors have been using in the atelier system for hundreds of years.¹⁸² Escalante stated, “[i]f we were to study the methods of

171. *Id.* at 164.

172. *Id.* at 166. (One of the students had already been accepted to Columbia and didn't feel that he would need the credit for his program. *Id.* Another had enlisted in the Army and would not have received any benefit from passing the test. *Id.*)

173. *Id.* at 171.

174. *Id.* at 114.

175. ESCALANTE, *supra* note 15, at 6-7.

176. MATHEWS, *supra* note 159, at 301.

177. *Id.* at 301.

178. *Id.* at 288.

179. *Id.*

180. *Id.* at 288-89.

181. ESCALANTE, *supra* note 15, at 6.

182. *Id.*

a hundred effective teachers, my guess is that we would find their approaches to be rather simple and direct, with many common denominators.”¹⁸³ He lamented that when “someone suggests that my program is dependent upon one teacher’s personality (my own) and could never serve as a model for use in other schools [,i]t just shows how far away we have drifted from fundamentals of teaching.”¹⁸⁴

A fundamental component to Escalante’s teaching strategy was a commitment to knowing his impact on student learning—visible learning. Escalante’s students had a quiz every day.¹⁸⁵ If he wasn’t satisfied with the results, students got more questions.¹⁸⁶ He would put a math problem on the chalkboard for students to complete and “noted the number of incorrect answers.”¹⁸⁷ He would put new problems on the board to drill the concept until the wrong answers approached zero.¹⁸⁸ Repetition and responding to student performance were critical components of his teaching.¹⁸⁹ He gave a cumulative quiz at the end of each week.¹⁹⁰ Escalante’s mantra was “practice, practice and more practice.”¹⁹¹ While he prepared each lesson carefully, he believed that improvisation was an important part of good teaching. He explained that intense advance planning allowed him “to spend time and energy working out a more important problem, exactly how to present a particular concept and spark interest, considering the personalities and preparation of my students and the chemistry of a particular class.”¹⁹²

As in the atelier system, Escalante also believed scaffolded learning and modeling were the keys to high educational achievement.¹⁹³ He looked for textbooks that “offer a gradual approach, which enables the student to understand one concept fully before going on to the next.”¹⁹⁴ Modeling math problems and keeping those examples interesting and relevant were of great importance to him.¹⁹⁵ In the article that he wrote on his teaching method, he explains that “math teaching should be peppered with lively examples,

183. *Id.*

184. *Id.*

185. MATHEWS, *supra* note 159, at 96, 111.

186. *Id.* at 97–98.

187. *Id.* at 46.

188. *Id.*

189. *Id.* at 118.

190. *Id.* at 120.

191. ESCALANTE, *supra* note 15, at 4.

192. *Id.* at 8.

193. *Id.* at 9, 13.

194. *Id.* at 4.

195. *Id.* at 7.

ingenious demonstrations of math work, and linkages between math principles and real-world applications.”¹⁹⁶

Moreover, Escalante’s policy was that no student who was confused should go home without clearing up the confusion first.¹⁹⁷ And he took a personal interest in the success of every student. “If a student continuously fails,” Escalante explained, “I roll up my sleeves and find out what is behind the failure.”¹⁹⁸ Escalante explained that “[s]ince my first year of student teaching in Bolivia, I have felt an obligation to make myself a better teacher and to profit from my mistakes.”¹⁹⁹ Escalante’s philosophy echoes Hattie’s research findings on best teaching practices. Hattie explains that “[w]hen teachers seek, or are at least open to, feedback as to what students know, what they understand, where they make errors, when they have misconceptions, when they are not engaged—then teaching and learning can be synchronized and powerful.”²⁰⁰ There is nothing overly complex or innovative in Escalante’s method of teaching. He simply followed the time-tested model of setting clear learning goals; providing good instruction, frequent assessment, and frequent individualized feedback; and adapting his teaching interventions based on the results of those assessments. His method, which he developed over time, is an example of the power of visible learning in action in ways that benefit student and teacher alike.

When a teacher knows her impact on student learning, she is also best positioned to fuel student motivation. Motivation refers to “the personal investment that an individual has in reaching a desired status or outcome.”²⁰¹ Motivation is a function of two factors. First, students remain motivated when they can connect the “hard work to something important and beyond the task at hand.”²⁰² Second, students who remain motivated believe that they can succeed and that the work they are doing can help them succeed.²⁰³ The first factor of motivation is personal in that each student will have a particular life history that has inspired him or her to attend law school, such as a passion for social justice or a way to make a good living. While teachers can help remind students to reconnect with whatever purpose brought them to law school, a teacher’s more direct path to motivation is through implementing an instructional design that works. When students see improvement in their

196. *Id.*

197. *Id.*

198. *Id.* at 7, 9.

199. *Id.* at 6.

200. HATTIE, *supra* note 81, at 173.

201. SUSAN A. AMBROSE ET AL., *HOW LEARNING WORKS: 7 RESEARCH-BASED PRINCIPLES FOR SMART TEACHING* 69 (2010); *see also* Cassandra L. Hill, *The Elephant in the Law School Assessment Room: The Role of Student Responsibility and Motivating Our Students to Learn*, 56 *HOW. L.J.* 447, 450 (2013).

202. ERICSSON & POOL, *supra* note 1, at 171.

203. *Id.* at 173.

performance as a result of coursework, they are motivated to continue investing time in that work. Jaime Escalante understood this, and his ability to motivate his students was a key factor in his success.²⁰⁴ Escalante's commitment to undertaking frequent assessments, learning from those assessments, and adjusting his teaching based on student performance on those assessments promoted student learning and progress.²⁰⁵ That progress motivated his students to work hard. His calculus students solved equations both before school officially started and long after it officially ended.²⁰⁶ In significant part, it was student progress that motivated an extraordinary work ethic.

Escalante also fueled student motivation by believing in his students, which supported student belief that they could succeed in his classes. Escalante's motto, which he displayed prominently in his classroom, was: "Calculus need not be made easy; it is easy." This motto may have overpromised, but the sentiment he was trying to convey to his students was clear: All his students could learn calculus. Escalante approached teaching calculus with what we now call a "growth mindset," long before Stanford University Professor Carol Dweck coined the term or published her groundbreaking research on how one's mindset affects teaching and learning.²⁰⁷ Escalante fostered a growth mindset in his students. A growth mindset, Dweck, explains, is one fostering a belief that "your basic qualities are things that you can cultivate through effort."²⁰⁸ A fixed mindset, conversely, is "[b]elieving that qualities are carved in stone."²⁰⁹ People with growth mindsets see challenges, intellectual or otherwise, as opportunities to learn and grow, and consequently, they learn and grow at higher rates, on average, than people with fixed mindsets.²¹⁰ People with fixed mindsets see challenge primarily as a way to demonstrate their talent and abilities to themselves and the world.²¹¹ But when they fall short in meeting a challenge, they will often give up, making excuses for the failure to protect their ego.²¹² A "fixed mindset limits achievement."²¹³ So Escalante approached teaching by asking about his students, "How can they learn best?" and not "Can they learn?"²¹⁴ One of the preeminent researchers in human achievement, Benjamin Bloom, who studied world-class athletes, accomplished musicians, and renowned scientists, found that the quality that was among the most

204. ESCALANTE, *supra* note 15, at 6.

205. See HATTIE, *supra* note 81, at 48.

206. *Id.* at 11.

207. *Id.* at 6.

208. DWECK, *supra* note 36, at 7.

209. *Id.* at 6; see also ERICSSON & POOL, *supra* note 1, at 121.

210. Dweck, *supra* note 36, at 33.

211. *Id.* at 21.

212. *Id.* at 36.

213. *Id.* at 67.

214. ESCALANTE, *supra* note 15, at 6.

salient in their success was “continued motivation and commitment.”²¹⁵ After a long professional life of studying learning, Bloom stated that “what any person in the world can learn, almost all persons can learn, if provided with the appropriate prior and current conditions of learning.”²¹⁶ This is the optimistic and growth mindset that we should bring to our classrooms.

There are few gifts teachers can bestow on their students more valuable than a belief that they can learn the material and do the work.²¹⁷ The first day of my first drawing class, as I explained above, Sadie told all eight of us in her class that we could learn to draw. She emphasized that we should not worry about talent or aptitude for art and that drawing was a skill like any other that we could learn if we followed her instructions, based on a time-tested atelier method of teaching people to draw, and if we practiced. That introduction to formal art education made all the difference to me—someone who grew up with the idea that talent and aptitude for a thing were what mattered most. Belief in one’s students takes on particular importance in higher education because students have “greater autonomy of what, when, and how they learn.”²¹⁸ When the work gets difficult or seemingly unmanageable, as it often does in law school, it is motivation that will keep students working to improve their skills and that motivation, in part, is fueled by personal academic progress.²¹⁹

IV. Conclusion

I studied drawing and painting as a way to relax and to recharge, but I discovered so much more along the way. Pursuing the study of art as a serious avocation changed my perspective on my world and my work in ways that have enhanced both. As someone who draws and paints, I experience the world differently from the way I once did. This is akin to the transformation first-year law students undergo. Once law students have studied the foundational legal subjects, the conversations they have ever after with friends and family and the books and news articles they read abound with legal issues in contracts, torts, and constitutional matters that had previously been invisible to them. For me, as a consequence of studying art, the physical world is more sharply focused and more richly detailed, and it presents brighter, more varied colors. When I look across a pasture of spring grass in the Napa Valley, I don’t see just an expanse of green; I see four or five different types of green and variations of gray; I delight in the observation, and I think how I might paint it if given the chance. Winston Churchill took up painting in middle age too, and he commented on exactly the same phenomenon. In his short insightful book,

215. DWECK, *supra* note 36, at 65.

216. *Id.*

217. AMBROSE ET AL., *supra* note 201, at 71; *see also* SCHWARTZ ET AL., *supra* note 51, at 88.

218. *Id.* at 5–6; *see also* Vicki Zakrzewski, *How to Help Students Believe in Themselves*, GREATER GOOD SCI. MAG. (Dec. 13, 2017), https://greatergood.berkeley.edu/article/item/how_to_help_students_believe_in_themselves.

219. ESCALANTE, *supra* note 15, at 17–18.

Painting as a Pastime, he explained: “I think this heightened sense of observation of Nature is one of the chief delights that have come to me through trying to paint.”²²⁰ He noticed that his experience of becoming a painter had infused his countryside walks and drives with a “tremendous new pleasure.”²²¹ He elaborated on this pleasure by stating, “I found myself instinctively as I walked noting the tint and character of a leaf, the dreamy purple shades of mountains, the exquisite lacery of winter branches, the dim pale silhouettes of far horizons And I had lived for over forty years without ever noticing any of them except in a general way, as one might look at a crowd and say, ‘What a lot of people!’”²²² Elizabeth Gilbert echoes this sentiment in her book on the artistic process, *Big Magic*. She concludes that to live a life infused with creativity is to live “an amplified life.”²²³ That is precisely my experience.

As with law, there are many subjects in painting and drawing on which one may become expert. You may become an expert painter of landscapes, still-lives, nudes, or portraits, and many more. Each subject presents the artist with unique challenges and rewards. Although I have dabbled in many artistic subjects in the past half-dozen years, I fell in love with creating portraits. Where my passion for drawing and painting portraits comes from, I cannot say, but I find it endlessly fascinating and rewarding. Here is a portrait of my son, Jonathan, that I drew several years ago, a couple of years after I began studying art.



It’s a decent likeness, even with my rudimentary drawing skills at the time. But it’s hard to look back on early efforts in any skill-building pursuit without

220. Winston S. Churchill, *Painting as a Pastime* 51 (1932).

221. *Id.* at 49.

222. *Id.* at 51.

223. ELIZABETH GILBERT, *BIG MAGIC: CREATIVE LIVING BEYOND FEAR* 12 (2015).

cringing with embarrassment. I look at that portrait now, however, and combat my dissatisfaction with the thought that not long before I drew it the best I could do was little more than a smiley face.

A year or so after drawing, and then painting, a portrait of my son, I embarked on a more ambitious work of painting a portrait of my daughter, Anna. When my daughter is not engaged in the work of a high school student, her primary avocation is musical theater. So I decided to portray her as a character from the musical theater canon, following a nineteenth-century tradition of portraying actors in portraits as the character for which they are best known.²²⁴ In my daughter's case, I portrayed her as the character Millie Dumont from the musical *Thoroughly Modern Millie*.²²⁵ This meant that she would be garbed in a 1920s "flapper" outfit with a fringe dress and sparkling headband with an ostrich feather atop, none of which I had ever painted before. Here is the result.²²⁶



While an accomplished portrait artist would find a good deal to critique in the portrait, as can I, it represented a significant step forward for me as a portrait painter. Perhaps surprisingly, capturing the likeness of a person in a portrait is the easier task in a complex set of tasks. Likeness is all about geometry—getting the eyes, nose, and mouth in the right shapes and in the right places. But the more difficult and rewarding aspect in portrait painting is capturing a subtle expression that reveals a facet of the person's character.²²⁷

224. Here is a link to John Singer Sargent's portrait of the famous actress Ellen Terry as Lady Macbeth, one of her most celebrated roles. John Singer Sargent, *Ellen Terry as Lady Macbeth* (1889), https://www.jssgallery.org/Paintings/Ellen_Terry_as_Lady_Macbeth.htm.

225. *Thoroughly Modern Millie*, Wikipedia, [https://en.wikipedia.org/wiki/Thoroughly_Modern_Millie_\(musical\)](https://en.wikipedia.org/wiki/Thoroughly_Modern_Millie_(musical)) (last visited May 21, 2020).

226. Michael T. Colatrella, Jr., *My Anna as Millie*.

227. An excellent example of the importance of capturing the essence of a person in a portrait

The human face contains over forty muscles, making it capable of a near-limitless variation of expression.²²⁸ My accomplishment in this portrait of my daughter is that it suggests her sly intelligence, which is one of her defining qualities. I find great joy in painting the people I love, meditating on their features for weeks, sometimes months at a stretch. You realize how much you don't notice about a person in everyday encounters, especially someone with whom you interact frequently, until you paint or draw them.

In addition to changing my view of the physical world and providing unexpected personal joys, my study of art also changed the way I approach teaching. While I always cared deeply about teaching and strove to improve my teaching through discussions with colleagues, professional reading, and attending teaching conferences, it was my experience as an art student that prompted a serious, systematic interest in teaching pedagogy. It was this more extensive study of teaching pedagogy that revealed to me how far law schools have come in the past twenty years in greater effectiveness in educating their students. This line of study also revealed to me, however, how far law schools still have to go to catch up with many science-based educational best practices. When you compare what the science demonstrates, rather conclusively, works best in educating students with what most law schools do in much of their curricula, there is still too wide a gap. The three elements of good teaching that I reviewed above that I see as the areas to which law schools should pay the greatest attention are (1) teaching in manageable chunks step by step, (2) frequently checking for students' understanding to make learning visible throughout the semester, and (3) adjusting our teaching based on what in-term assessments reveal about how well we are achieving our learning objectives. These have not been sufficiently or consistently adopted by law schools. But as we have seen, these elements are the key to maximizing learning for our students in the time that we have with them.

The most surprising consequence of embarking on a study of art, and arguably the most important for my teaching, was the experience of being a novice learning a complex skill. This experience created a heightened sense of empathy for my students that continues to serve me well in the classroom. To once again experience the confusion, stress, and vulnerability of learning something difficult changes the way you teach and interact with your students. It renders you kinder and more understanding, and it gives you a shared, authentic, and finer-tuned language to support them through their inevitable struggles and self-doubts. This revelation was the most surprising to me because, like most academics, I consider myself a perpetual student, always learning, always studying. And while that is true, most of us are acquiring new information, not learning a new skill, which is something different entirely.

is John Singer Sargent's portrait of Theodore Roosevelt, the 26th president of the United States. See JOHN SINGER SARGENT, *THEODORE ROOSEVELT* (1903).

228. STEPHEN ROGERS PECK, *ATLAS OF HUMAN ANATOMY FOR THE ARTIST* 92 (1951).

Embracing the status of “novice” is an important paradigm, for both law professor and law student, with which to become comfortable. It is an important, indeed an essential, paradigm to accept, because neither group, as a general matter, easily embraces the idea of being a novice in my experience. Both groups have been successful academically, many exceedingly so. Thus, the concept that one might not be good right away at something considered an “academic” discipline, like law, is anathema. This is related to the idea of a “fixed mindset,” whereby many of us have seen ourselves as “smart and talented” throughout our academic studies.²²⁹ Carol Dweck reminds us that, with a fixed mindset, it’s not enough to “look smart and talented”; we have to be “pretty much flawless . . . and flawless right away.”²³⁰ In learning a difficult, complex skill, however, no one is flawless right away.²³¹ We need to remind our students, and ourselves, that the expectation of quick mastery of a difficult skill is a path to discouragement and the increased likelihood of abandoning the path altogether. We would do well to take to heart Julia Cameron’s advice from her extraordinary book *The Artist’s Way*: “Give yourself permission to be a beginner. By being willing to be a bad artist, you have the chance to *be* an artist, and perhaps, over time, a very good one.”²³² I would adapt this advice for our own purposes to say: “Give your law students permission to be beginners. By being willing to be bad lawyers, they have the chance to *be* lawyers, and perhaps, over time, very good ones.”²³³

Here is one of my more recent paintings, a copy of a Rembrandt self-portrait. When I look at it, I am impressed not by the quality of the work, but by how much my skills have grown in a few years of fitful study and what is possible for almost anyone with good instruction, practice, and motivation.²³⁴

229. DWECK, *supra* note 36, at 24.

230. *Id.*

231. *Id.*

232. JULIA CAMERON, *THE ARTIST’S WAY: A SPIRITUAL PATH TO HIGHER CREATIVITY* 30 (2016).

233. *Id.*

234. Michael T. Colatrella, Jr., *Rembrandt Self-Portrait* (1629).



I was able to become a capable portrait artist because I gave myself permission to draw misshapen spheres, paint muddy-colored fruit, and create portraits that were barely recognizable as human faces. I stuck to it because I trusted that practice would make me better, and because I loved the act of creating art, proving, at least to myself, that “talent is just another name for the love of the thing.”²³⁵ My wish for you is that you carve out time in your busy life to learn a new skill for which you have always had a yen and be a beginner again. And if you do, you will not only experience the joy of learning something new and the pride that comes with mastery of something difficult; you will, I assure you, become a better teacher.

235. ARISTIDES, *CLASSICAL PAINTING ATELIER*, *supra* note 3, at ix.