Using Scaffolding Techniques for Legal Research Instruction

Abstract

Learning theory in legal education cover methods of transferring knowledge in both doctrinal and clinical courses. The scholarship advocates pedagogical techniques for advanced, adult education, and discusses both effective techniques. Scholarship about legal research instruction covers techniques like flipped classrooms and experiential instruction, and also the substance of what is taught, usually in response to what employers think students and graduates should know. This article focuses on one instructional technique to connect what is taught, i.e. the substance, with how it is taught for improving the transfer of knowledge.
INTRODUCTION (TO LEARNING THEORY)

Legal research scholarship covers both how we teach and what we teach. Scholarship about how research instruction is taught covers learning theory in terms of instructional design, like traditional and flipped classrooms,\(^1\) to formative assessment techniques, like in-class questions and at-home research problems.\(^2\) Scholarship about what to teach typically involves the subject-matter of research covered, like administrative law research or tax research. This scholarship is often backed by the studies of information providers,\(^3\) practitioners,\(^4\) and firm librarians.\(^5\) This scholarship might also discuss the reason behind substance, design, and

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assessment, sometimes citing to the critics of legal education.  However, few discuss how we teach what we teach.  As an exception, Paul Callister wrote about adapting Bloom’s Taxonomy for legal research instruction. This article hopes to show how to this taxonomy is present when using scaffolding strategies for teaching legal research instruction.

Scaffolding is a technique that enables a learner to understand concepts that might otherwise be outside their scope of comprehension without the direct guidance or support of the instructor. Scaffolding in education was first introduced by David Wood and his colleagues in 1976 for teaching problem-solving skills. Wood synthesized his scaffolding process into a six-step sequence. The sequence was designed for the instructor to show learners how to solve a problem in a way such that the learner would later be able to perform that or a similar task without guidance or support. Wood’s technique further recognized that “comprehension of the solution must precede production” for scaffolding to be effective. With respect to legal research, students must know or have an idea about what information they need, e.g. statute or regulation. This idea will guide the student efficiently to information resources might be available, e.g. Code of Federal Regulations and Federal Register for researching regulations. From there, students should know where to find those information resources, and also how to look for relevant information therein.

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6 See generally e.g. Dennis Kim-Prieto, The Road Not Yet Taken: How Law Student Information Literacy Standards Address Identified Issues in Legal Research Education and Training, 103 LAW LIBR. J. 605, 630 (2011).
7 E.g., Paul D. Callister. Time to Blossom: An Inquiry into Bloom’s Taxonomy as a Hierarchy and Means for Teaching Legal Research Skills. 102 LAW LIBR. J. 191 (2010) has been the only article advancing learning theory for legal research instruction.
8 Callister developed a legal research skills taxonomy that follows a sequence of six steps. Those steps are: (1) recognizing, (2) anticipating, (3) exercising, (4) simulating, (5) resolving, and (6) accessing.
9 David Wood, et al., The Role of Tutoring in Problem Solving, 17 J. CHILD PSYCHOL. AND PSYCHIAT. 89, 90 (1976). (Wood and his colleagues designed a tutoring experiment involving small children whereby a teacher would guide students through problem solving techniques. The purpose of this experiment was to demonstrate and practice to mastery so that in subsequent attempts, the students would be able to solve similar problems without assistance. Wood called this process scaffolding.)
10 These steps, in order, are: (1) recruitment, (2) reduction in degrees of freedom, (3) direction maintenance, (4) marking critical features, (5) frustration control, and (6) demonstration.
11 Id.
Before scaffolding can be employed, it is also important to understand the “zone of proximal development” as the place where the scaffolding applies. Vygotsky wrote about the Zone of Proximal Development (ZPD) in 1978.\textsuperscript{12} The ZPD is described as the gap in knowledge between what a learner can do alone, and what they can do with instruction or support.\textsuperscript{13} The way the instruction or support is conducted creates the scaffold, and connects what the learner already knows with a solution. That is, the instructor puts it (i.e. the scaffold) into place to help students make the connections between existing knowledge and the answer. It is the role of the instructor to bridge that gap through instruction. The scaffolding is “removed” when students are ready to and employ the knowledge and skills without the instructor or a new context. Vygotsky concluded that what the learner can do presently with instructor guidance or support will enable that learner to perform that task alone in the future.\textsuperscript{14} Furthermore, the scaffolding is effective if the students can apply the knowledge and skills in new, potentially unknown, contexts.

Advanced legal research courses are designed to better prepare students for practice; the skills learned in research courses prepare students to be more efficient in practice. The scholarship discussing design and assessment methods for research instruction are informed by studies capturing what knowledge and skills employers want most in students and graduates. Scaffolding is a technique that enables knowledge and skills learned in research courses to be utilized and executed in real-world practices.

Students coming into advanced legal research have knowledge from, at least, an entire first year of law school; the knowledge and skills from those foundation courses plus general knowledge about civics provide the requisite footing for using scaffolding techniques. Advanced

\textsuperscript{13} Id.
\textsuperscript{14} Id.
legal research courses teach students both about information sources and publications and processes to develop sharper skills for finding relevant information. “Four clinical professors and one psychologist”\(^{15}\) believe that it is important to teach for more than comprehension, but rather for future uses of the knowledge, outside of the classroom. Using scaffolding techniques, legal research instructors can connect students’ existing knowledge to both answers and the process for finding answers in a way that can be understood, recalled, and transferred to future, variable applications. This article will address how to scaffold the zone of proximal development for students in advanced legal research.

**LEARNING THEORY IN LEGAL EDUCATION**

Michael Hunter-Schwartz introduced learning theory in legal education.\(^{16}\) Schwartz points out that most law professors know little, if any learning theory and nothing about instructional design.\(^{17}\) So, to begin, Schwartz defines instructional design as the systematic and reflective process of *translating principles of learning and instruction* into plans for instructional materials, activities, information resources and evaluation.\(^{18}\) He goes on to say that this process “allows instruction to be tailored to the learning characteristics of the learners”\(^{19}\) such that an instructor can “determine the point at which instruction should begin.”\(^{20}\) Instruction should begin with what the student already knows, and should be tailored based on a method that effectively expands on the existing knowledge of each student. To that end, Schwartz’s application of

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\(^{17}\) *Id.* at 365.

\(^{18}\) *Id.* at 356, emphasis added.

\(^{19}\) *Id.* at 356.

\(^{20}\) *Id.* at 358.
learning theory is based on different behavioral models of the learner;\textsuperscript{21} he suggests that instruction can be adapted to the behavioral model of relevant to how particular students learn. That is, first the instructor must understand the different ways in which students learn in order to tailor the instruction for effective transfer.\textsuperscript{22} The tailored instruction is the necessary scaffolding, and effective transfer happens when the students can recall and use learned knowledge and skills in the future without that scaffolding support.

Regardless of the behavioral model in play, Schwartz recognized that “instruction should be sequenced so that students can master early steps and easier problems early in instruction only then to move on to more difficult and complex problems.”\textsuperscript{23} However, where Schwartz went on to discuss the behavioral models that affect how students learn, Tonya Kowalski focused in and expanded on the sequence, or the process, of instructional transfer, itself.\textsuperscript{24} Kowalski’s discussion of models and methods of transfer inform how the instruction should be sequenced for better understanding, recall, and application of the new knowledge and skills. The process of sequencing instruction is called teaching for transfer.

Kowalski proposed a transfer theory for legal education called the “Core Skills Approach.”\textsuperscript{25} This four-step sequence includes (1) integrating the curriculum, (2) applied skills guides, (3) hugging, bridging, and motivational strategies, and (4) utilizing knowledge and skills for the present assignment.\textsuperscript{26} Kowalski’s four-step sequence is synthesized from core lawyering

\textsuperscript{21} Behaviorism, cognitivism, and constructivism.
\textsuperscript{22} Schwartz, supra note 16 at 366.
\textsuperscript{23} Id. at 368. This sequencing follows Callister’s taxonomy for developing legal research skills.
\textsuperscript{24} Tonya Kowalski. True North: Navigating for the Transfer of Learning in Legal Education. 34 Seattle U. L. Rev. 51 (2010).
\textsuperscript{25} Id. at 53.
\textsuperscript{26} Id. at 86. (These four steps are a synthesis of the original 6-step-sequence that Wood identified as: (1) recruitment; (2) reduction in degrees of freedom; (3) direction maintenance; (4) marking critical features; (5) frustration control; and (6) demonstration. See supra note 9, at 98.)
skills identified by the Carnegie and MacCrate Reports. These themes are professionalism and ethics, critical reasoning, advocacy, and formal analysis, envisioned as overlapping clusters. Kowalski’s transfer sequence is proposed for an academic context, as it is intended to address a gap in learning theory applicable in legal education, and so by highlighting the identified lawyering themes, that transfer sequence can extend to have applicability in practice, long after students leave the academy.

In school, law professors should integrate the curriculum by being proactive about addressing similarities between coursework, whether substantive or cognitive. In legal research instruction, students learn that legal information resources tend to all work in similar ways, and in turn, the process for finding information is similar, regardless of resource, medium, or platform. This familiarity should help to calm a student in the face of an unknown practice area. Kowalski’s applied skills guides serve to “help students determine when and how they can practice their developing skill sets” by recognizing how different knowledge and skills apply in different contexts, from classrooms to exams to practice, for example. Legal research instruction can use the various practice environments, from clerkships to big law firms, for showcasing variations in applications or research strategies and processes. Hugging, bridging, and motivation strategies draw on existing knowledge and skills to give the new information context. These strategies expand on the applied skills guides by analogizing the new information to familiar information. Likewise, these strategies help to inspire a “thirst for knowledge” by

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28 Kowalski, supra note 24, at 90.
29 E.g. how what is learned in a contracts course ties in with a property or business associations course.
30 E.g. how the thought process for synthesizing a common law rule for application with new facts is the same, regardless of the subject matter.
31 Kowalski, supra note 24, at 112.
32 Id. at 92.
knowing how new information might be relevant to their careers. Finally, the new knowledge is put into practice for the present assignment. The practice, coupled together with the other strategies, better help the student to understand in the present for recalling and making use of the information in various, future applications.

But for the transfer of learning process to have applicability in practice, students not only have to learn the information, but they also need to learn how they are learning the information. By teaching students the process of how research instruction is delivered and why, instructors are empowering students to be able to use the sequence on themselves in future settings, without instructor guidance. The process of gradually removing the instructor support from the transfer sequence process is scaffolding. Scaffolding instruction works well for legal research instruction.

LEARNING THEORY IN LEGAL RESEARCH INSTRUCTION

Schwartz discussed learning theory as applicable in doctrinal legal education. Callister developed a taxonomy that brings to light how legal research skills instruction is sequenced. This sequence is visible in the literature that implements learning theory and describes it in action. Kowalski did this by expanding on what Schwartz identified as transfer theory, and proposed a four-step sequence for teaching for transfer in clinical legal education. Kowalski’s work addressed a gap in learning theory in legal education scholarship, and developed a process informed by studies that have continue to propel the “legal-education renaissance.”33 Kowalski recognizes that the transfer sequence proposal can be adapted for other courses, including skills courses. However, Kowalski never expressly recognizes its applicability in legal research instruction.

33 Id. at 82.
Kowalski defined scaffolding by the apprenticeship model, where the degree of support offered by the expert fades over time as the student gains proficiency to act independently.\textsuperscript{34} Clinical legal education more easily allows for this apprenticeship process, but legal research courses have, too, been adapting to address employers’ desires for more practical education.\textsuperscript{35} This degree of support can occur outside of apprenticeship models, and can be present in other legal education instruction. Scaffolding is especially for effective transfer in legal research instruction.

The scaffolding process, explicated by Kowalski’s transfer sequence proposal, encapsulates and puts into practice the Boulders Statement on Legal Research Education.\textsuperscript{36} “The Statement expresses a comprehensive approach to legal research instruction that, when implemented, will significantly improve the preparation of law students for their legal careers.”\textsuperscript{37} Where the Carnegie Report identified “legal education’s signature pedagogy,”\textsuperscript{38} The Boulder Statement the goes on to apply those findings to legal research instruction. The Signature Pedagogy Statement\textsuperscript{39} includes suggested approaches, techniques, and processes for transferring knowledge within the various structures laid out in the Carnegie Report.\textsuperscript{40} The studies call for applying learning theory to legal research. This article furthers the discussion.

\textsuperscript{34} Id. at 74.
\textsuperscript{35} See generally, Alyson Drake. The Need for Experiential Legal Research Education. 108 LAW LIB. J. 511 (2016), for variations on course design in providing more practical research instruction.
\textsuperscript{36} Susan Nevelow Mart, ed. THE BOULDERS STATEMENTS ON LEGAL RESEARCH EDUCATION: THE INTERSECTION OF INTELLECTUAL AND PRACTICAL SKILLS, (2014).
\textsuperscript{37} Id.
\textsuperscript{38} See generally, William M. Sullivan et al., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (John Wiley & Sons, Inc. 2007).
\textsuperscript{39} Mart, supra note 36.
\textsuperscript{40} See generally Sullivan, supra note 38. These structures include the surface, deep, tacit, and shadow structures. These four structures are a different representation of what Kowalski calls the overlapping legal-career-themes.
SCAFFOLDING THEORY

Scaffolding instruction allows students to use the sequence learned in academia to self-scaffold for new applications of existing knowledge and skills in practice. “Scaffolding is the idea that people integrate new information into existing frameworks of knowledge.”

Scaffolding as a stand-alone learning theory is very like teaching for transfer as detailed by Kowalski, putting more emphasis on the steps in the middle of the sequence, and less on first and last steps, with the addition, and eventual gradual removal of, instructor support. Due to the perceived similarities, it follows, then, that the implementation process for scaffolding would be similar to the implementation process for implementing Kowalski’s core skills approach.

The first step to implementing scaffolding theory is by using the four recurring lawyering skills—i.e. formal analysis, advocacy, critical reasoning, professionalism and ethics—to help orient the students to research instruction. Orienting students is a form of formal analysis and includes integrating the curriculum because “[s]tudents should not be left to make this connection… when it would be fairly simple for the faculty to point out and demonstrate how [this instruction] pervade[s] the curriculum.” When students are about to learn something new in legal research, the instructor should try to approach the new material by pointing out how students may already be familiar with it, or why it is like something with which they are familiar. This analytical, orienting thought process is one that is likely to occur in practice in the face of an unfamiliar subject area. For example, students who are not familiar with administrative law

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41 Archer, et al., supra note 15.
42 The author is a visual-type math person, and so the author envisions this relationship as overlapping bell curves where the acme of either curve may be adjusted left or right depending on the degree of instruction necessary at any given step. The horizontal axis represents the steps through Kowalski’s sequence from integration through application and the vertical access represents the time and depth of instruction spent at any given step. Kowalski’s teaching for transfer would be a more evenly-portioned bell-curve while the scaffolding theory bell-curve is taller in the middle and does not stretch as far into the first and last steps of the sequence. A mock-up visual representation of this relationship is in the appendix.
43 Kowalski, supra note 24, at 93-103.
44 Id. at 93.
research can be oriented to regulations by way of what they already know about statutory research and interpretation; simply, regulations are also laws that may also be interpreted by judges within the agency that promulgated the regulation. Advocacy is like the applied skills guidance wherein the instructor poses different potential scenarios for when, and to what extent, the new information would be applicable. The instructor explains techniques verbally, which will gradually build into a developed intuition. Engaging in critical reasoning next helps students to “understand and perceive both context and subtext within legal authorities, as part of the process of formal legal analysis.” It is also important for the instructor to point out how critical reasoning overlaps with both advocacy and the next step, professionalism and ethics, “to connote the resources needed to reflect critically on a client’s unstated needs [or] on the biases within the legal system.” Again, it is up to the professor to help the student make these connections, which will serve as the groundwork for how students should think about and approach legal issues in practice. Finally, with respect to professionalism and ethics, the instructor should always be mindful to address how students’ “life and interpersonal skills … incorporates and dovetails with the formal rules of professional responsibility” and especially how these skills and rules “extend into other areas,” like research.

The next step to implementing scaffolding theory is “maneuvering” by using techniques that include, but are not limited to “modeling, problem solving, anticipation, generalization, analogizing, and metacognitive reflection.” These techniques can be generally classified into

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45 Id. at 94.
46 Id.
47 Id. at 95.
48 Id.
49 Id. at 97.
strategies called “reaching backward and stretching forward.”50 These strategies align well with scaffolding theory because “in reaching backward, a student thinks back to past experiences or concepts… that can be used to “bear the weight” and provide an accessible resting place for the new material that is being taught.”51 That is, students integrate the new information by relating it to existing knowledge. Sticking with the administrative law research example, students will have learned about codification, i.e. the way that statutes are organized, during the statutes lecture, and can use that existing knowledge to make sense of how regulations are organized and accessed. Then, when students are looking at regulations, they will know to look at the table of contents of a specific regulation for context, just like they are taught to do in statutory research. This is an important step because it sets up the student to be able to establish like relationship in the future, without instructor guidance. “In stretching forward, a student consciously envisions potential future applications of the material being learned.” By helping the student to make these connects in class, and with the instructor explaining how and why they are making the connections, provides the necessary framework for students to recall that information or process or skill at a future time.

The final step to integrating the core skills approach is to motivate the students. “Motivation is known to enhance the ability to retain, access, and adapt information for later use within different contexts.”52 Research instructors can motivate students by engaging them with in-class questions that allow the students to immediate use and apply the new information or by explaining to the students how some new piece of information learned in class will help them with an upcoming homework assignment. Instructors can also motivate students by emphasizing

50 Archer, et al., supra note 15, at 259. (Kowalski, one of the co-authors, initially used the terms “hugging” and “bridging” to classify these techniques. Kowalski listed five strategies each for hugging and bridging which informed the non-exhaustive list from note 49. See Kowalski, supra note 24.)
52 Kowalski, supra note 24, at 102.
growth or how mastery of the material or process will serve them well in practice. These motivational ideas are contextual such that the instructor is giving purpose to the information and to the instruction and making it worthwhile for the students to learn. For instance, when students are introduced to the Federal Register, they learn about the current awareness service that delivers the table of contents of each issue to their inbox; they are told that, when practicing within an industry that is regulated, this alert service for this publication will keep them on top of new regulatory developments. Additionally, in the course of instruction, the instructor emphasizes using the summary of comments from final rules publications, casually mentioning that those comments might assist with their homework. Such motivational strategies should be revisited more than once during the course of instruction. It can even be argued that these motivational strategies are present at each state of implementing the core skills approach, including integrating the curriculum and applied skills guidance.

By utilizing these strategies, in overlapping sequence, and by articulating to the class why such strategies are being used along with the result of the various strategies, the students will be able to develop their own applied skills guides. This will enable the students to be able to self-scaffold in future, unfamiliar scenarios. At the same time, using these strategies will build connections in students’ minds about the way they should think in the face of unfamiliar areas of practice. This means that as instructor support is gradually removed, students are more capable of adapting their knowledge.

SCAFFOLDING ADVANCED LEGAL RESEARCH

An advanced legal research course such as this that covers various topics is designed in a way such that new material consistently builds upon previous weeks’ materials. This class

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53 This section provides only a sample of examples to illustrate scaffolding concepts. This is the experience of one advanced legal research course, and is not meant as a prescription for putting those concepts into practice.
began with search techniques. This integrates the curriculum by making clear that online database searching will be performed in each class and for each homework problem, and that the techniques, processes, and skills that they learn will be transferrable to other research databases. The instructor further explains that this practice will make them more proficient in practice, saving both time and money, and potentially a malpractice suit. This is especially true when the students are given different scenarios in which their research must be, more than efficient, done under a quick deadline. This real-world perspective orients them to the work that they will have to put in while also motivating them to do so. Furthermore, this is a good time to familiarize the students with the contexts in which the skills will be applied in the course (i.e. Kowalski’s applied skills guides): in hypotheticals, in class exercises, and in homework problems. These techniques orient the students in a way such that they can anticipate how they will learn information for future recall.

To further orient the students and explain why a familiar search platform is coming first, the instructor explains:

There are two things that people always do: (1) they stick with a familiar resource even long after it is no longer useful for their current needs, and (2) they overwhelmingly tend to settle for the first two or three resources found, regardless of whether they are the best resources or not. The cure for both things is to start by not only becoming familiar with more resources, but also in understanding that all resources tend to work in very similar ways.55

The students will be motivated to learn about new resources and techniques because they will begin to understand that new material will not be hard to grasp if they find similarities with what

54 Course lessons, in the order in which they were given: (1) Electronic research techniques; (2) Secondary sources & case law review; (3) Researching statutes; (4) Legislative history; (5) Administrative law research; (6) International law research; (7) New Jersey research and court rules; (8) State Constitutional law & municipal law research.
55 This is a paraphrase of a portion of the first-class lecture given by the author’s co-professor, John Joergensen.
they already know. In this class, students learn techniques for efficient searching using Google. This is a familiar resource that is used long after it has exhausted its usefulness, and rarely do students go past the first page of results. Making students more efficient on Google should cure both of those habits. Additionally, students also learn that not all information is available on this platform, and will be consistently reminded throughout the semester that the techniques, processes, and skills learned will be adaptable to other research platforms.

At the outset of the course, or a relevant lesson, students are (re)introduced to the three branches of government. This is generally something law students are familiar with, and it gives context to the lessons. This context better enables student understanding of the material, but also sets up a framework for future, unfamiliar issues—they will realize that understanding from which branch of government the information originated will jump-start the process of figuring out where to look for information. Likewise, another strategy for orienting students to new information in research instruction is to review the citation format of the new material; in so doing, students might recognize having seen the citation elsewhere and that should help the student to feel more familiar with or anticipate the new material. One example of this comes from (re)familiarizing students with Statutes at Large and Public Law citations during the statutory research lesson. Even if students never understood the specific citations in the past, they know or are reminded that they have seen the citations when looking at statutes; using this context, students realize that they are seeing something familiar, and that makes the new material more readily understandable. This familiarity also helps motivate the student for learning the new material.

This familiar material is given further context. Students learn about why and when they might need these publications or versions of the statute. The instructor poses hypothetical
scenarios that enable students to make connections. For instance, one hypothetical might involve a situation where a prior version of a statute was in place at the time of an incident, because the statute had been recently amended. It is the task of the practitioner to find the law in force at the time of the incident. A different hypothetical could be where a practitioner is dealing with the most current version of a statutory issue, and wants to rely on an opinion where that judge is interpreting a prior version of the statute. The practitioner would need to know the text of that version to make an argument that the opinion could still be applicable. These hypotheticals call upon the student to tap into their developing analysis, reasoning, advocacy, and professionalism skills. In so doing, they will know in the future when, how, why, and where they might need to research prior versions of statutes. The instructor making these connections before and during instruction will enable students to recall this knowledge in the future, without instructor support. Furthermore, these strategies continue to motivate.

The instructor then goes into detail about how to find information using the Statutes at Large. While the students might be somewhat familiar with the United States Code (USC), they must still learn that the Statutes at Large contains “every law, that ever was a law, in the order in which it became a law.”56 Explaining this in detail helps students to better understand statutes and statutory amendments, and why they would need to use the Statutes at Large in the future. At this point in the lesson, the instructor wants to start to make a future connection, which will help students understand when they will need to recall this information. This further motivates the students to learn. When learning about Public Laws, the instructor should mention that this information is necessary for the next lesson on legislative history research. At the time of that lesson, students should be able to recall this information. This sets the stage for future orientation

56 Quoting co-professor, John Joergensen.
because at the time of the legislative history lesson, the professor will “reach back” to this material.

At the same time, a better understanding of the Statutes at Large provides a good framework for teaching strategies and best practices for using the USC. In so doing, students who think they know how to research statutes often learn something new because the new context allows them to make new connections for understanding, recalling, and using knowledge. The lesson begins with a hypothetical set back in time, before the USC. Statutes, and their subsequent amendments, were all published in chronological order. Statutes were easy enough to find, if they had not been amended. To have found the current version of the statute in force that had been amended several times, researchers would have had to review several volumes of the Statutes at Large. Likely, those volumes would not have been from consecutive years. This mundane process creates motivation for learning a resource that students might think they already know how to use. In this case, the students learn about codification.

When learning about codification, students learn that laws are arranged by subject-matter, which some may have figured out, but again, it is up to the instructor to make these connections. By learning that sections of the Public Laws can be dispersed throughout the entire USC, students are motivated an index to find information or to look at the table of contents for giving a section of statute perspective within a larger corpus of law. The instructor makes clear to the students that simple research strategies like using an index or table of contents can for nearly all legal resources, print and online. This gives students some familiarity in the face of new resources in any medium. This lesson about codification and research strategies will be repeated during the lesson on administrative law research.57

57 During the administrative law research lesson, students will also learn about the Federal Register, which will “reach back” to what students learned in the statutory research lesson about researching in chronological
Once students better understand the resource and process for statutory research, the instructor can then attach that new material to existing knowledge with practice. In-class exercises allow the students to practice implementing their new knowledge. The first few exercises are done together as a class to so that the instructor can demonstrate the process of finding and using appropriate resources. The instructor demonstrates using an index to find relevant information. During this process, the instructor is reminding students how this process is utilizing some of the material just learned. The instructor can also demonstrate search techniques, explaining that this uses the same skills students learned and practiced on Google. This empowers the student to try the process on their own, under instructor guidance.

This is where the instructor support may begin to gradually recede—during the in-class exercises. When students first try the exercises on their own, instructor support might be limited to merely providing corrective guidance, or the support might go so far as to provide a short review of the new material. By reviewing the material quickly, the instructor can once again deliberately connect what the student knows with what the student just learned to find the answers involving similar search strategies. By going through this review and reinforcement process, students continue to develop substantive knowledge along with the strategies, techniques, and skills for implementing that knowledge. At the same time students are also developing a metacognitive process for approaching new scenarios. That process is “reaching back” (and being aware that they are “reaching back”) to what they already know and adapting that knowledge, technique, or skill to a new issue. The instructor support is completely removed when students use the knowledge, techniques, processes, and skills in completing an at-home research problem.

publications; this will also pull from the legislative history lesson as relating the daily publication of agency activities to those of the legislature, published in the Congressional Record.
This sampling of instruction from one advanced legal research class demonstrates the sequencing process of scaffolding instruction. The sampling should also demonstrate how each step in the sequence overlaps, and how more time and instruction may be spent in any step. While the process is repetitious, the repetition it is also effective because it helps to create the connections necessary for adapting knowledge, techniques, and skills to variable applications. In making those connections, the instructor will be able to gradually remove their support, allowing the student to implement on their own, adapting to new and unfamiliar contexts. While this process is highly dependent on the instructor, it does not depend on the instructor’s own knowledge of learning theory. The instructor should be mindful to continuously make connections for the students, and advise the students how those connections are being made, so that the students can employ similar strategies for future recall, without that support.

CONCLUSION
Instructors do not need to be experts on learning theory to make use of the techniques in their classes. At the same time, there is no one way to implement learning theory, and there might not even be a wrong way to do so, save for lack of trying. As a way to introduce new material, instructors can orient students to the new material by relating it to familiar material, and by giving it context for how they might use this knowledge in the future. These strategies are also motivational strategies that encourage students to better understand the material for future recall and applicability. This orientation also draws from the skills students have been learning consistently throughout the curriculum, like analysis, advocacy, critical reasoning, and ethics. Instructors must be flexible with respect to addressing the learning needs of a particular student or class. In so doing, regardless of knowing about learning theories, instruction can naturally fall in line with the scaffolding process presented. And while the techniques may occur naturally,
their purpose is deliberate: these techniques scaffold instruction while also teaching students how
to use these strategies in the future, on their own, in the face of unfamiliar subject matter.

How we teach what we teach is just as important as the substance or design of any
course. Doctrinal and clinical law faculty have already begun the conversation about learning
theory in legal education. Legal research is an integral portion of legal education and so legal
research instructors should, too, join the conversation. Employing some form of learning theory
for instruction, and contemporaneously teaching students about those techniques, helps to
advance the practice-readiness of the students by engaging them in techniques they, themselves,
will be able to use in practice.
Please note: This drawing is not to scale, meaning that the sequence along the horizontal axis is not actually representative of the time that should be spent on each step. This drawing was created by the author as the author’s own interpretation of the relationship between the two learning theories presented.