

Lessons from Positive Psychology for Developing Advocacy Skills¹

Nancy L. Schultz²

INTRODUCTION

My career in public speaking and advocacy began when I was 15. I took a class in public speaking as a high school sophomore because I was terrified to get up in front of people to talk. My knees would shake, my hands would shake, my voice would shake, I could feel the blood rushing to my face—who knew what color it was as a result? The teacher was Karl Kocher. He changed my life.

I got through the semester somehow, not really feeling like I was any better or more confident at the end of it. But Mr. Kocher saw something he liked; he asked me to join the Forensics team, which he coached. For those not familiar with the term, Forensics is competitive public speaking—everything from oratory to extemporaneous speaking to poetry interpretation. Being invited to join the West Bend East Forensics team was no small matter. The team won most events it entered; our biggest competition in the state of Wisconsin was usually West Bend West.

But back to Mr. Kocher, the coach. He spent time with me, helping with the nerves, the squeaky voice, what to do with my hands, all the stuff we struggle with, the stuff that makes public speaking more terrifying to many people than death. I don't remember there ever being an angry word directed at me. And a funny thing happened—I got good at it. I started to win trophies, I moved up from the Public Address category to Oratory. And for everyone on the team, Mr. Kocher was always there, with a smile and an encouraging word, even with all the

¹ For purposes of this article, I define advocacy as any communication a lawyer does on behalf of a client, or even with a client—it might be inside or outside the courtroom.

² Professor of Law, Chapman University School of Law. Many thanks to Britni Falter, Austin Underhill, and Jeremy Jass for research assistance. And thanks to Jean Sternlight of UNLV for her encouragement and suggestions.

superstitions that athletes bring to their games—Mr. Kocher wore the same socks to every tournament.

The rest, as they say, is history. I went on to major in Speech Communication at the University of Wisconsin; to join the Moot Court Board at the University of Pennsylvania Law School, where we helped teach the Appellate Advocacy course; to teach Public Speaking at the Community College of Philadelphia while I was a law student; and finally to coach at the high school, undergraduate, and law school levels—I have coached teams in Mock Trial, Moot Court, Negotiations, Mediation, Client Counseling, Arbitration, and Pretrial Advocacy.

So I have come full circle; I have made a career out of what I learned to love at 15, because of Mr. Kocher. I became Coach³. In 20+ years of coaching (not counting my time as a law student), I have learned many things about inspiring law students to become better advocates. I have also learned some things about how not to inspire them. Either way, I have gone by instinct, by learning from what worked and what didn't. I have made friends, with my students and with other coaches. My teams have had success and failure, as teams do. I have always tried to make it about learning first and winning second. There have been extraordinary highs and devastating, frustrating lows.

As time went on, I wondered—is there scientific method to this madness? There are lots of successful law school coaches out there who are happy to share their philosophies and tactics, in books and at conferences.⁴ There are the great sports coaches—Vince Lombardi, Bear Bryant, Lou Holtz, Phil Jackson—all different, but all successful. In recent years, we hear about “life coaches.” What does that even mean? So I decided to investigate whether there is a scientific foundation for what we do. And I found that there are several areas of psychological research

³ Still my favorite title ever.

⁴ Special thanks to Harry Caldwell (Pepperdine), Eddie Ohlbaum (Temple), and Charlie Rose (Stetson) for insights and inspiration over the years.

that can apply to what we do. There is even a field called “coaching psychology,” although interestingly enough, it is a relatively new field, and not one that seems to have caught on in the United States. This article does not pretend to offer an in-depth analysis of any of the psychological research discussed, but it does attempt to explore and synthesize some of the lessons we can glean from experts and research that has been done.

This article will combine what I’ve learned about coaching in my personal experience with some of the insights I gained from researching coaching psychology, positive psychology, strengths coaching, and other research related to education and psychology, connected disciplines that may offer some scientific underpinning to what many of us do by instinct. The overwhelming emphasis in the research I looked at, and in this article, is on positive psychology. The lessons from positive psychology for developing advocacy skills clearly apply outside of the coaching context—to clinics, course work, and law practice. But the focus of this article is on what I know best—coaching law students to develop their advocacy skills in the competition context.

I. THE PSYCHOLOGICAL RESEARCH THAT RELATES TO COACHING

This section of the article will identify the various areas of psychology that clearly relate to coaching, and summarize some of the findings that might help us to become better coaches.

A. Definition of Coaching

It seems that beginning with a definition of coaching might be useful. What do we mean when we speak of “coaching” students? One proposed definition suggests that “coaching consists of observing students and offering hints, feedback, reminders, new tasks, or redirecting a student’s attention to a salient feature – all with the goal of making the student’s performance

approximate the expert's performance as closely as possible."⁵ Another proposes that "coaching is unlocking a person's potential to maximize their own performance. It is helping them to learn rather than teaching them."⁶

These definitions capture my view of coaching—unlocking potential by using tools that help our students achieve mastery. Coaching is a strategic mix of instruction and support, finding and expanding natural talents and abilities⁷ to create a performance that moves the student closer to excellence and professionalism.

B. Coaching Psychology

What does this phrase mean? Is there such a thing? For the most part, the coaching psychology materials come out of the United Kingdom and Australia and seem to focus on "life coaching," or coaching professional clients to learn to function better in whatever setting they work in. Coaching psychology has been defined as being "for enhancing wellbeing and performance in personal life and work domains underpinned by models of coaching grounded in established adult learning or psychological approaches."⁸ As we will see, some of the principles that have been applied in this context apply just as well to our particular brand of coaching.

C. Positive Psychology

Much of the discussion of coaching psychology relates back to something called "positive psychology." So it seems useful to define that term as well. "Positive psychology is

⁵ DANIEL DRUCKMAN & ROBERT A. BJORK, IN THE MIND'S EYE: ENHANCING HUMAN PERFORMANCE 61 (1991).

⁶ JOHN WHITMORE, COACHING FOR PERFORMANCE 8 (1992).

⁷ There is disagreement among psychologists as to the degree to which what we think of as talent, ability, or intelligence dictates performance, as opposed to environmental or contextual factors. This debate will be briefly touched on later in the article.

⁸ P. Alex Linley & Susan Harrington, *Strengths Coaching: A Potential-Guided Approach to Coaching Psychology*, 1 Int'l Coaching Psychol. Rev. 37, 41 (2006) (quoting A.M Grant & S. Palmer (2002, May 18). *Coaching Psychology*. Meeting held at the Annual Conference of the Division of Counselling Psychology, British Psychological Society, Torquay, England).

the study of the conditions and processes that contribute to the flourishing or optimal functioning of people-groups, and institutions.”⁹ The idea of positive psychology is that we can learn much about human functioning from what makes people happy and satisfied; the entire focus does not need to be on what is not working. There are corollaries here for coaching—I think we have a tendency to focus on what needs improving, when we also need to emphasize and reinforce what works. As we help our students to see what they are good at, we make it easier for them to fix what is not working:

People who see desired outcomes as attainable continue to strive for those outcomes, even when progress is slow or difficult. When outcomes seem sufficiently unattainable, people withdraw their effort and disengage themselves from their goals. Thus, people’s expectancies provide a basis for engaging in one of two very different classes of behavior: continued striving versus giving up.¹⁰

Psychologists have looked at the effects of optimism and pessimism on coping strategies. Research into optimism suggests that it is a relatively stable characteristic in individuals and “changes little with the vagaries of life.”¹¹

One promising line of inquiry concerns differences between optimists and pessimists in how they cope with stress. Research from a variety of sources is beginning to suggest that optimists cope in more adaptive ways than do pessimists. Optimists are more likely than pessimists to take direct action to solve their problems, are more planful in dealing with the adversity they confront, and are more focused in their coping efforts. Optimists are more likely to accept the reality of the stressful situations they encounter, and they also seem intent on growing personally from negative experiences and trying to make the best of bad situations. In contrast to these positive coping reactions, pessimists are more likely than optimists to react to stressful events by trying to deny

⁹ Shelly L. Gable & Jonathan Haidt, *What (and Why) is Positive Psychology*, 9 Rev. Gen. Psychol. 103, 104 (2005). “The original ‘three pillars’ of positive psychology (citation omitted) were positive subjective experience, positive individual characteristics (strengths and virtues), and positive institutions and communities.” *Id.* at 108.

¹⁰ Michael F. Scheier & Charles S. Carver, *On the Power of Positive Thinking: The Benefits of Being Optimistic*, 2 Current Directions Psychol. Sci. 26, 26 (1993).

¹¹ *Id.* at 27.

that they exist or by trying to avoid dealing with problems. Pessimists are more likely to quit trying when difficulties arise.¹²

Thus, the more we can help our students to feel that they can succeed, the more likely it appears that they will indeed find ways to succeed. If we convince them that they can work through frustration and adversity, they will emerge stronger and better. This is likely true of their long-term view of potential success, not just the immediate task at hand.

Positive psychology also suggests that mood has an effect on adaptive success.

Beyond their pleasant subjective feel, positive emotions, positive moods, and positive sentiments carry multiple, interrelated benefits. First, these good feelings alter people's mindsets: Experiments have shown that induced positive affect widens the scope of attention, broadens behavioral repertoires, and increases intuition and creativity (citations omitted).¹³

There are obvious advantages to increasing attention for students trying to develop lawyering skills. Increased attention enhances the likelihood that they will hear and internalize the lessons we want them to learn. Broadening behavioral repertoires suggests that they can add new tools to their skill sets. And intuition and creativity can only help in situations where students need to think on their feet and adapt to unexpected events.

The research even suggests that putting students in a positive frame of mind enhances the likelihood that what they learn will be accurate. As they pay attention, they learn what works and what doesn't, which can adjust their expectations; additional experience then confirms or denies those expectations. "Importantly, the personal resources accrued during states of positive emotions are durable—they outlast the transient emotional states that led to their acquisition."¹⁴

Research shows that initially positive attitudes—like interest and curiosity—produce more accurate subsequent knowledge than do

¹² *Id.* at 27-28.

¹³ Barbara L. Frederickson & Marcial F. Losada, *Positive Affect and the Complex Dynamics of Human Flourishing*, 60 *Am. Psychol.* 678, (2005).

¹⁴ *Id.* at 315.

initially negative attitudes—like boredom and cynicism. Positivity, by prompting approach and exploration, creates experiential learning opportunities that confirm or correct initial expectations. By contrast, because negativity promotes avoidance, opportunities to correct false impressions are passed by (citation omitted).¹⁵

As we work to increase our students' levels of interest and curiosity, we are also helping them to develop long-lasting improvements in their knowledge and skills.¹⁶ Barbara Frederickson, one of the leading researchers in the area of positive emotion, created the “broaden and build” theory of positive emotion, which suggests that positive emotions broaden our ability to respond to situations, which allows us to build our repertoire of strategies for success. She also coined the term “thought-action” to encompass the idea that emotions not only cause physical reactions and actions, but also thought processes that can lead to physical responses.¹⁷

Whereas many negative emotions narrow individuals' momentary thought-action repertoires by calling forth specific action tendencies (e.g., attack, flee), many positive emotions *broaden* individuals' momentary thought-action repertoires, prompting them to pursue a wider range of thought and actions than is typical (e.g., play, explore, savour, and integrate) (citations omitted).¹⁸

. . . positive affect promotes improved understanding of complex situations. Taken together, these experiments support the claim that positive emotions, though short lived, facilitate learning and mastery, the products of which can become part of the individual's enduring intellectual resources.¹⁹

In other words, over time and through the processes of learning and social connection, the broadened momentary thought-action repertoires sparked by positive emotions also build up an individual's store of physical, intellectual, and social resources.

¹⁵ *Id.* at 679.

¹⁶ “Interest, then not only broadens an individual's momentary thought-action repertoire as the individual is enticed to explore, but over time and as a product of sustained exploration, interest also builds the individual's store of knowledge. Again, this store of knowledge becomes a durable resource that can be accessed in later moments.” Barbara L. Frederickson, *What Good Are Positive Emotions?*, 2 Rev. Gen. Psychol. 300, 305 (1998).

¹⁷ Barbara L. Frederickson, *What Good Are Positive Emotions?*, 2 Rev. Gen. Psychol. 300, 303 (1998).

¹⁸ Barbara L. Frederickson & Christine Branigan, *Positive Emotions Broaden the Scope of Attention and Thought-Action Repertoires*, 19 Cognition and Emotion 313, 314 (2005).

¹⁹ *Id.* at 311.

Importantly, these resources are durable and can be drawn on in later moments.²⁰

An exploration of how these ideas can translate into specific coaching strategies for law students appears in the second part of this article.

D. The Corollary: The Effect of Negative Emotion

Narrowing the scope of attention can cause excessive focus on the trees rather than the forest.²¹ At least in my experience, we often see students focusing on details that may or may not matter. They seem to have trouble seeing the big picture—what are we trying to accomplish on behalf of our client? What is the overall strategy for the trial or the appellate argument? What is the heart of the case? Rather, these “tree people,” as I affectionately call them, focus on the details of cases or witness testimony, or gaps they see in the facts or the law that cause them trouble. When we ask why it matters, they look at us like we are speaking a different language. Is it possible that these students are responding to a fundamentally negative feeling about what they are doing? Their fear of failure rather than anticipation of success may cause them to be unable to consider the larger aspects of what they are doing. Their minds are not free to be creative and responsive.

Sometimes we do need to recognize the negative in our surroundings, and find ways to deal with it. Research suggests that certain forms of negativity are actually helpful and productive. Dealing with immediate and soluble negative events is healthy, while perceiving global, unsolvable negativity tends to cause us to shut down.

Building on this logic, we identify appropriate negativity as time-limited and soluble feedback connected to specific circumstances. By contrast, inappropriate negativity, often gratuitous or global, is

²⁰ *Id.* at 312.

²¹ *Id.* at 316.

an absorbing state that comes to dominate the affective texture of life (citation omitted).²²

This confirms the idea that we need to focus on behaviors and actions rather than people when we seek to correct student performances. If the student can see a way out, can see that the inappropriate action is easily susceptible to a solution, it will be much easier for the student to achieve the mastery we hope to teach. On the other hand, if we somehow convince the student that he or she is incapable at a more global level, the student may come to believe that there is no point in trying.

It may be all about how we react to the negative: “While people with a fixed mindset tend to see failure as purely negative—a sign that they aren’t talented enough for the task—those with a growth mindset see mistakes as an essential precursor to knowledge, the engine of education.”²³ When my students get frustrated about something that is not working in practice, or they talk about feeling like they should be farther along, I remind them that the reason we practice is because none of us does it right the first time—as long as there is progress, and learning from mistakes, all is good.

E. Strengths Coaching

Closely related to positive psychology is “strengths coaching.”²⁴ Strengths coaching starts with the premise that if we focus on what people are good at, we will help them to maximize their potential and to lead happier lives. Researchers in this field suggest that there is a difference between a strength and a talent²⁵:

²² Frederickson & Losada, *supra* note 13, at 685.

²³ Jonah Lehrer, *The Art of Failing Successfully*, Wall St. J., October 28, 2011, <http://online.wsj.com/article/SB10001424052970204644504576651323346219428.html>.

²⁴ Linley & Harrington, *supra* note 8, at 37.

²⁵ There is another view that suggests that talent is less internal and more external, or context-dependent, than is generally thought to be the case. Sasha A. Barab & Jonathan A. Plucker, *Smart People or Smart Contexts? Cognition, Ability, and Talent Development in an Age of Situated Approaches to Knowing and Learning*, 37 *Educ. Psychologist* 165 (2002). “The central challenge for educators is to develop participatory structures that bring

Clifton used the term *talent* to refer to a “naturally recurring pattern of thought, feeling, or behavior that can be productively applied,” while *strength* referred to “the ability to provide consistent, near-perfect performance in a given activity.” Understood in this way, strengths are produced through the refinement of talents with knowledge and skill . . . (citations omitted)²⁶

. . . a strength [is] “a natural capacity for behaving, thinking, or feeling in a way that allows optimal functioning and performance in the pursuit of valued outcomes.”²⁷

So how do we take this conception of strengths and employ it in our coaching? We start by observing our students, really listening to them, to figure out what they are good at. Some students have a really nice presence, but need to work on their understanding of technical rules. Some students are very quick to spot what matters in forming a strategy. Others are very good at analyzing detail. “. . . [T]he two most prevalent assumptions about people are: (a) that each person can learn to be competent in almost anything; and (b) that each person’s greatest room for achievement is in their area of greatest weakness.”²⁸ This last comment seems rather obvious, but

together the individual, environment, and sociocultural relations.” *Id.* at 176. “. . . the focus is on contextualized participation and not simply knowledge acquisition. It is through supporting and researching participation in context that we can best foster and recognize talent.” *Id.* at 177. “. . . schools are encouraged to create a resource-rich environment in which students can pursue their interests and eventually create a product by modeling the rituals and practices of practicing professionals in the domain of interest.” *Id.* at 178. *See also* Robert J. Sternberg, *Abilities are Forms of Developing Expertise*, 27 *Educ. Researcher* 11, 16-18 (1998) (stating that “. . . individuals are constantly in a process of developing expertise when they work within a given domain. They may and do, of course, differ in rate and asymptote of development. The main constraint in achieving expertise is not some fixed prior level of capacity, but purposeful engagement involving direct instruction, active participation, role modeling, and reward. . . . The model of developing expertise has five key elements (although certainly they do not constitute an exhaustive list of elements in the development of expertise): metacognitive skills, learning skills, thinking skills, knowledge, and motivation.” “The key to developing expertise is the purposeful and meaningful engagement in a set of tasks relevant to the development of expertise, something of which any individual is capable to some degree.”) The central thesis of this approach seems to be that we should not limit our expectations of people based on traditional measures of intelligence or talent. Rather, we should expect that, places in the right learning environment and given the right experience, almost anyone can succeed at learning to function successfully in a specific environment. This approach certainly has implications for coaching—given the right context, maybe even our apparently hopeless cases can succeed.

²⁶ *Id.* at 38.

²⁷ *Id.* at 39.

²⁸ *Id.*

it does provide a way to frame the need for improvement that is more positive: the only way to go is up!

. . . it is arguably a large part of coaching and coaching psychology to strive to re-engage the individual with their natural self, to help them to identify, value and celebrate their inner capacities and strengths, to help them understand why sometimes they feel “in their element” at work, and at other times they feel tired, disengaged and de-motivated. Adopting a strengths approach allows people to engage with themselves in what they do best, and to begin to discover the power within them that coaching so often sets out to release.

From this basis, “strengths are produced when talents are refined with *knowledge* and *skill*” (original italics; Clifton and Anderson, 2002, p. 8).²⁹

The focus here is obviously on the broader aspects of “life coaching.” But we can apply it as well: if we figure out when our students are feeling comfortable, and try to add elements of skill to broaden that zone of comfort, we can use their strengths and talents to add to their repertoire and help move them toward mastery. I always tell my students that comfort comes from confidence, and confidence comes from knowing that you can handle the situation, whatever it is. The more experience they get, the more they see that they can add to their strengths, the more that comfort and confidence will get them through.

The literature on strengths coaching comes full circle to where we began with positive emotions:

In each case, there is a strong emphasis on the fact that talents are natural, they come from within, and we are urged to use them, develop them, and play to them by an inner, energizing desire. Further, that when we use our strengths, we feel good about ourselves, we are better able to achieve things, and we are working toward fulfilling our potential.³⁰

²⁹ *Id.*

³⁰ *Id.*

Playing to our strengths enhances wellbeing because we are doing what we naturally do best, and generating feelings of autonomy, competence, confidence, and self-esteem there from (citation omitted)³¹

All of this—the benefits of positive emotion, the value of strengths-based coaching—suggests a relatively simple approach to coaching: “Overall, though, the crux of the strengths perspective is that it changes the nature of the questions one asks as a coach from being diagnostic and problem—focused to potential-guided and solution-focused” (citation omitted)³² This framework was intended in the context of life coaching, but it has obvious application to the coaching of lawyering skills. We are not asking questions designed to find out what will make our “clients” happy, but we are looking at what our students do well and where they need improvement. If we start with the potential for success, we can look for solutions to get closer to that level of achievement.

This gets us to the question of feedback—do we start with positive comments, or do we just focus on what needs fixing? The vast majority of the literature suggests that the simple act of starting with the positive will reap immense rewards: it will make our students feel better, it will encourage them to believe that their goals are within reach, and it will make it easier for them to process the comments about what needs fixing.

And when this feedback is delivered in a way that is potential-guided, being focused on future achievement on the basis of past success, building on the foundations of what the client does well and the successes that have propelled him or her this far, then the whole nature of the coaching conversation changes. From being defensive, closed, and insular, clients become engaged, open, and receptive. They leave the coaching session feeling celebrated, valued, and appreciated, with a re-engaged enthusiasm, energy, and motivation, being keen to get back to work, or life, and perform even better.

³¹ *Id.* at 41-42.

³² *Id.* at 43.

This should be the hallmark of good coaching psychology, we suggest, not least because again it is premised on sound psychological models. As Frederickson's work on positive emotions has shown, the experience of positive emotions serves to broaden our thought-action repertoires (increasing creativity and stimulating mental flexibility), and build cognitive resources that act as buffers against subsequent negative events, as well as being integral to human flourishing. This being the case, it should arguably be the role of the coaching psychologist to facilitate the positive emotions of their clients, not least because positive emotional experience has been shown to increase performance success.³³

A more detailed analysis of the feedback process in the context of lawyering skills coaching appears later in the article.

While much of the research on strengths coaching seems to focus on more macro issues such as what career choice might be best, or how to be successful in the workplace, I see a more micro application. If focus on strengths creates the satisfaction and broadening described above, then making our students feel positive and successful in their strengths should also give us more room to work on their weaknesses. Clearly we can't just say to our students, go do what you do well and forget about the rest. But we may be able to get them in a better frame of mind to absorb and do something with feedback about what needs improvement. And they may be better able to achieve that improvement if they are in a more positive place—more creative and able to see more options.

F. The Need to Preserve Individuality

If it is true that students who learn to use their strengths regularly are happier and more successful, then we as coaches must stay away from the "one-size-fits-all" model of advocacy. I have always watched my students perform before deciding how and where to intervene for improvement. Most of us believe that it makes no sense to ask a student to mimic someone else,

³³ *Id.* at 44-45.

no matter how successful the model might be. Each advocate needs to use his or her own personality and develop his or her own voice. The low-key conversationalist can be just as effective as the more dramatic person with the big voice and presence. The key is making it feel authentic—credibility comes with projecting that what your audience is seeing and hearing is the real you.³⁴

I have always been appalled at the coaches who simply write openings and closings, or directs and crosses, for their teams, such that the teams from one school will put on exactly the same case, question by question and word by word. Aside from the ethically questionable nature of the approach, I always wondered what these students were learning—acting maybe, but not how to be a lawyer. Now I see yet another downside to this approach—these students are not being allowed to develop their strengths and the satisfaction that comes with it. Even if they win, they are not doing it themselves, not in a meaningful way—how much can that contribute to self-confidence and satisfaction with the performance? And what skills are they learning that will make them better lawyers through their careers?

II. APPLYING THE RESEARCH TO COACHING LAW STUDENTS

There has been some research and writing on how these ideas of positive psychology fit into the law school environment. In this part of the article, I will touch on some of that research as well as the content of coaching—what are we actually trying to teach our students? How can we motivate them to reach their highest potential? What tools are most effective? What can we learn from research in psychology that may assist in reaching these goals?

Clearly, one article cannot begin to cover the myriad of topics that must be taught in the context of lawyering skills competitions. But I will discuss some of the larger lessons, and try to incorporate the ideas discussed above. Before getting into the specifics of coaching, I look at

³⁴ This is the basic premise of Aristotle's ethos—part of the fundamental logos, pathos, ethos triumvirate.

some of the research that has applied the ideas of positive psychology and related topics to legal education specifically.

One team of researchers discussed the application of positive psychology to the law school environment, not always a positive place, and came up with some surprising results. The authors had hypothesized as follows:

An optimistic explanatory style³⁵ seems most conducive to academic achievement. First, the student is confronted with the task of learning new and challenging material often requiring persistence and motivation. Secondly, most academic environments employ clear evaluative criteria repeatedly highlighting successes or failures. The optimistic student would be more motivated, more persistent in the face of challenge, greatly encouraged by success, and more resilient to failures.³⁶

But instead found that:

. . . students scoring in the pessimistic and midrange of explanatory style significantly outperformed optimistic students. On other success measures including moot court performance, law review membership, community involvement, or classroom participation our primary composite measures of explanatory style were not predictive.³⁷

It is intriguing to note that explanatory style did not seem to be predictive in the areas most relevant to the world of coaching. Thus, the optimistic or pessimistic viewpoint that a student naturally brings to the process may not predict the likelihood of success in the type of communication skills required in the various lawyering competitions. Nevertheless, it is worth considering the hypotheses of the study's authors as to why a pessimistic orientation might be useful in law school.

³⁵ Explanatory style refers to the way an individual explains the causes of events. A pessimistic explanatory style is based on the belief that the causes of negative events are stable, far-reaching, and internal, while an optimistic explanatory style relies on the belief that the causes of negative events are external, unstable, and highly specific. Jason M. Satterfield, John Monahan, & Martin E. P. Seligman, *Law School Performance Predicted by Explanatory Style*, 15 Behav. Sci. & L 95, 95-96 (1997).

³⁶ *Id.* at 96.

³⁷ *Id.* at 98.

It is possible that in some domains pessimism or non-optimism may be a strength. Seligman (1990) speculated that pessimism might be advantageous in professions which require more caution and reality appreciation than initiative or creativity. Perhaps pessimism is associated with traits such as realism or conservatism—in short, the prudence which may loom large in a good legal mind. Of course, we must remember that in our data, the “pessimistic” profile was linked to achievement in law school and might not hold for achievement in the practice of law. We will suggest below that what can be seen as pessimism in other contexts may be better viewed as prudence, skepticism, or caution in the case of legal education.³⁸

Prudence, or more generally, “good thinking” is a likely candidate to explain the benefits derived from pessimism in our sample. Perhaps under the more rigorous demands and specific intellectual requirements of law school, diligent students who develop a sense of healthy skepticism are the highest achievers. In fact, careful attention to detail, considering all sides of an argument, seeing all potential pitfalls or catastrophes, attention to precedent rather than salutatory creativity, and thoroughness are typically seen as important traits for the successful lawyer.³⁹

I will not delve much further into whether caution and prudence are what define or contribute to the success of law students—that is a subject for another article.⁴⁰ I will, however, suggest that a healthy balance of the attributes described above, including attention to detail and anticipation of potential pitfalls, with a broad-minded approach to possibilities and options, is what the good lawyer really needs. So maybe we need a balance of the optimist and pessimist in order to be successful.⁴¹

³⁸ *Id.* at 103.

³⁹ *Id.*

⁴⁰ See, e.g., Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 *Yale J. Health Pol’y L. & Ethics* 357, (2009).

⁴¹ This conclusion is supported by a more recent article, which suggested that “Professors can teach students that they ought to employ flexible optimism, turning on their optimism when they consider the academic tasks that make up a legal education, and off when they find themselves in situations better handled with a healthy dose of pessimism. Law professors, who in many ways teach law students what and how to think, can model task-oriented optimism during both in-class discussion and in written feedback. That way, professors can help students to think optimistically about their performance, helping students to improve their grades and realize their potential, rather than seeing themselves as defeated from the outset.” Corie Rosen, *Creating the Optimistic Classroom: What Law Schools Can Learn from Attribution Style Effects*, 42 *McGeorge L. Rev.* 319, 340 (2011).

Yet another aspect of student orientation toward the positive is hope. “Hope is more strongly related to expectations for outcomes within a person's control, whereas optimism is more strongly related to expectations outside of a person's control.”⁴² In their study, Martin and Rand concluded that hope was the second-strongest predictor of first-semester law school GPA after undergraduate GPA. LSAT scores and optimism were not significant predictors of first semester GPA, though hope and optimism both correlated with life satisfaction.⁴³

As a result of their study, Martin and Rand created “five principles of engendering hope in law students: (A) help them formulate or reframe goals; (B) increase their autonomy; (C) model the learning process; (D) help them understand grading as feedback rather than as pure evaluation; and (E) model and encourage agentic thinking.”⁴⁴ Consistent with many of the other recommendations that come from the study of positive psychology, the important aspects of teaching seem to revolve around giving students a sense of control and specific goals to work toward. These ideas will be further developed below in the discussion of coaching techniques.

A. Law School and Creativity

A final aspect of positive emotion and positive thinking is the relationship to creativity. Law school is not exactly a bastion of creativity, but the practice of law and client representation can certainly benefit from creative and imaginative thinking. In observations reminiscent of the previously discussed study on explanatory styles, one article offers the following criticisms of legal education in terms of the way it stifles creativity:

In legal training the critical analysis starts immediately, and the imagination is not allowed time to roam. Psychologists have noted the clash between the judicial mood and the creative. Unless properly coordinated, each mars the working of the other. The

⁴² Allison D. Martin & Kevin L. Rand, *The Future's So Bright I Gotta Wear Shades: Law School Through the Lens of Hope*, 48 Duq. L. Rev. 203, 209 (2010).

⁴³ *Id.* at 213.

⁴⁴ *Id.* at 218.

tendency, however, is to criticize too soon, thus seriously threatening creative effort.⁴⁵

They [law students] have internalized a legal standard of perfection which requires that they anticipate every possible counterargument before they advance a positive thesis of any sort. This norm discourages innovation which risks provoking criticism and produces an intensely conservative atmosphere.⁴⁶

The ability to take risks and an internal focus of evaluation are two characteristics which psychologists find necessary for creative functioning. To the extent that the Socratic method fosters external evaluation, and legal training causes one to be overly careful, to see all sides of the issues, to leave no stone unturned in one's analysis, they may also inhibit risk-taking.⁴⁷

When our entire adversary system is based on the idea that lawyers for opposite sides will take the same facts and law and try to convince a decision-maker to reach opposite results, the need for creative thinking and the ability to manipulate⁴⁸ facts and authority for persuasive effect becomes paramount. Why then does law school seem to stifle those abilities? Why would we not want to encourage freer thinking about alternative interpretations and arguments? And of course, as coaches, we do. We know that it is the unique perspective, the unusual phrasing, the creative argument, that wins the day. And this is as true when representing real clients as it is in our "mock" world. "A good lawyer should be more than a technician applying the rigors of logic and theories learned in law school."⁴⁹

Not every facet of a legal education, however, is harmful to creative functioning. Hopefully, three years of legal training make one more verbally fluent with an increased ability to conceptualize, both of which are affirmatively linked to creativity. The creative person has also been described as possessing a desire to excel,

⁴⁵ David R. Culp, *Law School: A Mortuary for Poets and Moral Reason*, 16 *Campbell L. Rev.* 61, (1994).

⁴⁶ *Id.* at 67.

⁴⁷ *Id.* at 68.

⁴⁸ I use this word in its primary sense of handling skillfully rather than in the pejorative, ethically questionable sense.

⁴⁹ *Id.* at 89.

having determination, being energetic, industrious, thorough, and unwilling to accept anything on a mere say-so.⁵⁰

Because of the complicated problems, value judgments, and skills involved in the practice of law, Watson asserts a very high order of creativity is essential.⁵¹

Our job as coaches, in preparing students to function effectively in the world of practice, is to help them see when to exercise caution in their presentation of the law, and when to apply broader perspective and more creative applications. We may sometimes forget that much of the rest of what they learn in law school contributes to that fear of being original; in many ways the law is conservative, since it relies so heavily on precedent, and students whose comments don't fit the mold are likely to be shut down in class. Their focus is on learning what the professor wants, not how to think for themselves. On the other hand, attention to detail is an important lawyering skill in any context. So we must teach them the balance between using the law creatively and using it appropriately.

B. Law School and the Human Element

What about the role of emotion in being a lawyer? Law is a fundamentally human enterprise—it depends on the interactions of lawyers, clients, judges, witnesses, juries, etc. Humans have emotions and often make decisions based on them. Why, then, do we pretend that law is all about rationality and the analytical?

One of the dramatic effects of legal education is to produce a division between thought and feeling . . . Law school, then, is a continual attempt to suppress one's emotions, and this has an effect (and perhaps a profound effect) on the development of the attorney's persona.⁵²

Legal education, at least in the professional role, leads to a highly controlled personality and distrust of feelings. For example, the

⁵⁰ *Id.* at 84.

⁵¹ *Id.* at 89.

⁵² *Id.* at 77.

concept drummed into law students that they must learn to “think like an attorney” is an attempt to divorce emotion from logic.⁵³

Studies of creative people have shown them to be more open than most to the whole range of experience, to their feelings and emotions; they tend to be more intuitive, more feeling than thinking. This does not comport with the law school (or professional) experience.⁵⁴

Law students feel or have learned that law is all about logic and being rational. And those are important. But emotion is part of it—anger at injustice, sympathy for a victim, frustration with an unprofessional opponent. Whether the emotions are ours or others’, they are an important part of what we do. We need to be able to handle them, not be put off by them, and sometimes use them for persuasive effect.

There is another aspect of humanity that seems to be prevalent in law students, arguably as a product of the educational process—the need for certainty and stability:

Other studies have shown that the noncreative person is “more anxious, insistent on securing a safe and stable environment, desirous of avoiding ambiguity and uncertainty at any cost.” Those persons having higher originality appear to feel less need for discipline and orderliness. By contrast, Watson, in discussing the psychodynamics of legal education, has found among law students a greater than average need for order and security, a factor which plays a critical role in their functioning both in the academic environment and later in their professional lives. Additionally, at least two legal scholars believe that law students develop an intolerance for ambiguity and are afflicted with indecision and self-doubt. (citations omitted)⁵⁵

We see this in our students—the need for “right” answers, the desire for bright-line rules. But when you consider the ubiquitous ambiguity present in a common-law adversary system, and the importance of advocacy to litigated and non-litigated results, it seems counterintuitive that we would reward such rigid thinking in law school. I believe that it is this insecurity and

⁵³ *Id.* at 78.

⁵⁴ *Id.* at 83.

⁵⁵ *Id.* at 86.

intolerance for ambiguity that causes at least some of the forest/tree problem. The students are so focused on the small things that frustrate them or that they don't quite understand that they cannot step back and see what really matters. I frequently tell my students that the sooner they learn to be comfortable with ambiguity, the happier they will be as lawyers.

If the law is fundamentally a human process—created by humans, managed by humans, governing humans—human foibles are a natural part of the process. We must anticipate them and work with them. If students are looking for absolutes, and black and white answers, the law is not the place to find them for the most part. Sure, there are questions that have clear answers, and decisions or actions that seem definitively right or wrong, but our entire adversarial system is premised on the idea that advocacy to a neutral intermediary somehow produces truth. The advocates are human, and the intermediaries are human—they have feelings, experiences, and understanding that guide their actions and decisions. We must teach our students to function in this human environment—with all its uncertainties and emotional realities.

C. The Application of Positive Emotion in a Specific Lawyering Context

Positive emotion has been studied in another area related to lawyering: negotiations. Not terribly surprisingly, positive emotion in negotiation is linked to a more positive experience, and to agreements that are more likely to withstand the test of time.

A general finding is that induced positive emotion and good mood increase cooperative tactics and enhance the quality of agreements. . . . Negotiators experiencing positive emotion subsequently reached more mutually beneficial outcomes in a face-to-face bargaining task than did the control group. Subsequent studies that similarly manipulated positive affect reported similar findings, and together these suggest that positive negotiators realize higher individual and joint gains on both integrative and distributive negotiation tasks than do negotiators in a neutral affect condition. (citations omitted)

Creativity in problem-solving is also a fundamental negotiating skill. If it is true that law school does not foster this skill, then we must bring it back into the repertoire. The research suggests that creativity and positive emotion are linked to better negotiated outcomes.

Favorable negotiated outcomes are attained because positive affect influences how people process information and promote creative thinking, which, in turn, makes negotiators more likely to engage in innovative problem solving. People in a positive mood set higher goals so that they may be able to claim a larger slice of the increased pie. (citations omitted)⁵⁶

Positive emotions also increase the likelihood of future positive interactions. “Negotiators who displayed positive emotion were more likely to anticipate a long-term relationship than negotiators who displayed negative or neutral emotions.”⁵⁷ In a profession where reputation is highly important, and where lawyers interact repeatedly with each other, this ability to make future interactions positive is an important one.

The overall utility of positivity in the negotiation setting is hard to dispute:

In a dispute setting, negotiators strategically displaying positive emotion were more likely to reach an interest-based agreement that included parameters for a continued business relationship. In an ultimatum setting, negotiators who strategically displayed positive emotion were more likely to persuade their opponents to accept their offers and close a deal. In a distributive negotiation setting, negotiators strategically displaying positive emotion were better able to extract concessions from the opposing party.⁵⁸

However, as with other lawyering tasks, some negative emotion may be useful in negotiation: “Contrary to our hypothesis, negotiators strategically displaying negative emotions were not more likely to reach an impasse and, thus, were as successful as the positive and neutral negotiators in avoiding costly alternatives such as declaring bankruptcy or taking the battle to

⁵⁶ Shirli Kopelman, Ashleigh Shelby Rosette, and Leigh Thompson, *The Three Faces of Eve: Strategic Displays of Positive, Negative, and Neutral Emotions in Negotiations*, 99 *Organizational Behav. and Hum. Decision Processes* 81, 83 (2006).

⁵⁷ *Id.* at 89.

⁵⁸ *Id.* at 96.

court.”⁵⁹ In the case of both positive and negative emotion, the researchers speak of “strategically displaying” emotion, rather than actually feeling such emotion. The strategic use of negative emotion can be very useful in negotiation, but as I always tell my students, genuine anger can make you stupid—it causes you to lose some of your ability to think rationally and perform effectively. If an advocate is feeling genuinely angry, that is usually a good time to step away and take a deep breath.

This research offers support to teaching a positive and constructive approach to negotiations in a competition as well as a practice setting, and also offers general support to the idea that overall performance in a communicative setting is enhanced by a positive outlook. It does, again, leave room for the possibility that a certain amount of negativity, appropriately applied, is also useful. So how do we take all of this and apply it to what we do?

III. TRANSLATING THE RESEARCH INTO EFFECTIVE COACHING

The first part of this section of the article will discuss in general terms the content of coaching. What are our goals? What do our students need to learn? What are the phases of coaching in any competition? The second part of this section will move to incorporating the lessons of psychological research into the coaching process. How can we present the content in a way that encourages our students to become confident, effective advocates, as well as reflective practitioners?

A. What Are We Trying to Teach?

1. Skills

The primary thing we teach is “skills.” What do we mean by that? There are so many different competitions—moot court, mock trial, negotiations, client counseling, mediation, arbitration, etc. and each involves particular skills that are unique to the environment—

⁵⁹ *Id.* at 89.

answering questions, designing cross examinations, asking open questions of clients, planning opening offers and demands in negotiation, and on and on. When we speak of skills, we mean the narrow, specific skills students must master to perform in various legal environments—cross examination, mediation, interviewing, responding to questions from the bench. But we also mean much larger skills—listening, analysis, strategizing, and communication.

At the heart of all of these competitions and skill sets is one thing—communication. All of the competitions, and everything we do as lawyers, hinges on that one thing—the effective transmission of ideas from one person to another. The communication may be written or oral; it may be direct or indirect, but it must be done clearly and in a way that is interesting and compelling to whomever the audience might be—jury, judges, clients, opposing teams.

Communication includes both presentation skills and content. It ranges from the simple act of speaking loudly and slowly enough to be understood, to the more complex ability to answer a moot court question in a way that segues back into the argument and advances it effectively. We need to work with our students on communication at every level—to each other, to us, to competition judges. We need to emphasize clarity—in organization, word choice, and speaking style.

2. Problem Analysis: The Whole vs. the Parts; Forests and Trees

Regardless of the type of competition, keeping the big picture in mind is crucial. Students have a way of getting lost in the trees and focusing on details; it might be the details of cases in moot court, or fact details in mock trial, but they often lose sight of their goals. When this happens, they create arguments, or witness exams, that seem to have no identifiable purpose, or even a recognizable beginning and end. As we listen, it seems like we have wandered into the middle of a story and we are lost.

To get students to that point where they can understand the significance of the details and how to use them, we need to guide their analysis of whatever problem they are facing for a particular competition. It is important to see the details—to go line by line through the problem, the depositions, or the confidential information—but first they must understand what is at issue, and what they need to do to effectively represent their client.

Thus we must help the students stay focused on what they should be trying to accomplish—who is the client? What does the client need or want? Why is the client entitled to that? What is the theory of the case? How does each witness help or hurt that theory? Making students answer these questions repeatedly can help keep them focused and improve their performance. As discussed previously, it is a very different focus than they have in the rest of law school, where the details of cases, and the words of the various courts, are the holy grail of classroom preparation. Is it any wonder our students find it difficult to take a step back and figure out how to use the legal and factual details in the service of their clients? As the research suggests, this may be another byproduct of the reinforcement of pessimism that law school seems to foster. So we need to help them incorporate some of the more positive outlook that allows them to broaden their viewpoints and build their skills.

3. Strategy; Theme; Theory

This is the first part of the problem analysis—find the overarching goal in representing the client. Do we need to raise a defense? Do we need to get the Supreme Court to reverse the lower court? Do we need to achieve specific articulated interests in a negotiation? We need to identify the strategy that will accomplish the goal. We need to be able to articulate the theory of the case—what happened? How do we account for the available evidence, good and bad? What are the argument points that will convince the court to rule in our favor?

Once we have a strategy and theory of the case, and after we have had a chance to play with the problem for a while, then we can look for the theme, or hook, that will introduce and conclude the case and help the presentation hang together. It might be a quote, a phrase, a song lyric, or an image. But it needs to cut to the heart of the case as we see it. Finding a theme is what I often describe as an “organic” process—it is frequently difficult to identify an appropriate theme early in the study of the competition problem. It takes time and playing with the case to find the “phrase that pays.”⁶⁰ The right theme will flow throughout the case and help the judges to share our perspective on the case. And it requires creative, free thinking to find it.

4. Structure

I sometimes think this is the most important part of preparation for any presentation, and it is sometimes the hardest sell for students. They are used to communicating in sound bites, to sitting down at their computers and just writing until they are done. Persuading them to create outlines, that roadmaps of their arguments matter, and that the order in which they present ideas makes all the difference, can be daunting. They want to rush to the finished product, and all this structuring stuff stands in the way. Of course, when they get to the competition and the judges compliment them on their roadmaps, or on the clarity and ease of understanding of the performance, they see what we mean. But how do we get them there in the first instance? We can just insist on outlines, of course, but as with all things educational, it is better if we can help them to see the benefits in a way that gives them positive motivation to do it on their own.

5. Context—Physical and Human

This is, of course, the crux of all communication—context—audience and purpose. Why are we communicating with this particular group or person today? What do we need to

⁶⁰ A lovely phrasing that I have often heard from my friend Mary Beth Beazley, Director of Legal Writing at The Ohio State University School of Law.

accomplish? Persuasion? Information? Do we need the jury to acquit or convict? Do we need the client to make an informed decision about how to proceed? Do we need the parties in a mediation to agree to resolve their dispute and move on with their lives?

Depending on the audience and purpose, we may take a very different approach to communicating—we use one level of language for a jury or a lay client and another for a panel of appellate judges. We speak with varying degrees of formality or emotion. Understanding context is one of the fundamental lessons we need to impart to our students.

6. “Seeing With Ears”—All We Have are Words

I am fond of telling my students that the only real tools lawyers have are words. Surgeons have scalpels, carpenters have hammers and nails—we have words. And we need to use them with the same precision that surgeons use scalpels. If we don’t, the end result may be less literal bloodshed than would happen with a badly aimed scalpel, but the consequences can nevertheless be devastating for our clients.

In a day and age when we see students unconcerned about grammar and spelling and proper word usage, convincing them of the importance of word choice can be a challenge. They genuinely do not seem to understand that it matters whether you choose one word or another, and that it matters how you put them together. The power of words to create emotion is frequently lost on the YouTube generation. They are all about the visual, and the beat. But words can create internal visions and they have a beat.

B. How Should We Teach It?

The above list of content to be internalized makes clear that our task can be daunting. We need our students to learn a significant amount of content, but more importantly, they must be able to use that content effectively in the service of their clients.

Professor Gerald Hess studied models of effective teaching in an effort to identify ways to improve the learning environment in law schools.⁶¹ He began by analyzing the increasing concern among some academics with law student stress and anxiety. There is a growing movement in legal education to “humanize” the process and to look seriously at the sources of law student unhappiness, especially in light of the larger problem of lawyer depression and discontent. Consistent with the above-described research on positive and negative emotion, Professor Hess observed that:

Stress inhibits students from receiving and processing information when anxiety distracts them from the learning task. For example, they may cope with anxiety by focusing on what they perceive to be the primary task (learning legal rules) and may ignore other relevant parts of the task (the social, historical, and political aspects of a case). Stress also interferes with students’ abilities to organize and store information.

Not only can stress hinder students’ learning particular tasks, it can limit their capacity to learn in general. Anxiety causes some students to reduce their involvement in their own learning. Prolonged exposure to stress can cause burnout and withdrawal from active engagement in their education. The detachment of many second- and third-year students from law school may be evidence of burnout from stress.⁶²

Professor Hess identifies eight aspects of effective teaching: respect (mutual), expectations (high and clear), support (mentoring), collaboration (shared responsibility), inclusion (diverse perspectives), engagement (teacher presence, listening, active learning), delight (teacher enthusiasm), and feedback (formative—“specific, corrective, positive, and timely” p. 106). Even a cursory glance at the list makes clear how coaching naturally involves all of these attributes.

⁶¹ Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. Legal Educ. 75, (2002).

⁶² *Id.* at 80.

1. Respect and Expectations

The student/coach relationship only works well if there is mutual respect—we must treat our students as the adults they are, and they will only learn from us if they believe we have something useful to teach. We must set high expectation for our students—if we ask for mediocrity, we will surely get it. And those expectations must be clear—how can they know what to do if we cannot explain it or demonstrate it effectively?

If our students feel respected, they are much more likely to bring the positive attitude and emotion that will open their minds to learning what we need them to learn. When we tell them that words matter, that organization is key, and that they must never lose sight of the overall goal of whatever we are doing in representing our clients, they will hear us better and apply their skills more effectively if we communicate with respect for their ability to grasp and master these concepts.

2. Support, Collaboration, and Inclusion

As much as some law students try not to show it, they are vulnerable. They are insecure in their knowledge of the law and what to do with it. Sometimes that very insecurity is what causes them to be “cocky” and aggressive, and act like there is nothing we can teach them, because they know it all.⁶³ These students trust us to teach them and build their confidence.

The coach/student relationship is inherently a collaborative one. We cannot perform for our students on the day—we can only help them develop the tools necessary to succeed. I once heard Lou Holtz, the extraordinary college football coach, say on television that coaches don’t

⁶³ Of course, there are those students who really do think they know it all, and they require a different approach. Some students only respond to a strongly negative presence or response to what they do, at least initially. I try to treat all my students with respect, and I begin by assuming they are all there to learn. But when you see the student who just doesn’t listen, especially when that student is poisoning the practice environment, you sometimes have no choice but to take a stand and assert your authority. I will normally not do this in a public way, unless I sense that the rest of the team is frustrated too, and is waiting to see if I will take control. Some students actually seem to learn better in an atmosphere of open conflict, where we disagree and argue. The key is to not let it disrupt other students’ learning, and to make sure it does not degenerate into personal attacks as opposed to professional disagreements.

win games. All a coach can do is put the team in a position to win. That statement stuck with me—it is so simple and so true. So we must be willing to give responsibility and decision-making power to our students, for it is up to them to do what needs doing when the competition rolls around.

In doing this, we naturally build the mentoring relationship—many of our students become our friends, and we help them find jobs and deal with issues at work and in life, and often they return and give back to current students after they have graduated. All of this only works if diverse viewpoints are respected, and if we don't try to build a single model of effective lawyer. If we give our students support to be the individual lawyers they must be, then they will enter the profession with optimism and confidence, which can only make them more effective.

3. Engagement and Feedback

Engagement and feedback are additional inherent aspects of the coaching process. Students on competition teams cannot be disengaged. The only performance that counts in the end is theirs. So they must be trying and failing, then succeeding, from the beginning. We can model appropriate actions and behaviors, but they must internalize them and make them their own. The way we help them get to where they need to be is feedback. It is obviously a critical, if not the most critical, aspect of the coaching process.

The research suggests an interesting dichotomy in legal education. Some negative emotions or perspectives seem to predict success in law school. But overwhelmingly, the evidence is that positive emotion promotes learning, mastery, and creativity. So how do we balance these findings, along with the reality that some negative training is almost always going to be part of the coaching process? How do we give feedback to our students in a way that fosters positive emotion and helps them to develop their strengths? Do we start positive, to build

and broaden the range of thought-action responses, and then offer more negative feedback, with the idea that the student may be more receptive to learning in general? Or do we start negative, with the idea that when the positive feedback comes it will be more appreciated and have a greater effect? Or do we alternate in different cases as different challenges present themselves? Some students seem to be better motivated by positive feedback, while others only seem to react if the feedback is strongly negative⁶⁴.

An obvious way to start, and one that many coaches I know use, is to always begin comments with something the student did well. The common sense understanding of the reason we do that is that students may be more receptive to more negative, or “constructive,” feedback once they have received comments that make them feel appreciated and like they are “getting it.” It is sometimes hard to remember to do this, because we tend to focus on what the students need to work on, rather than what they are executing successfully. But positive psychology supports the idea that this “positive first” approach makes sense.

My natural tendency is to start positive, especially with new competitors, on the assumption that it is unfair to expect them to know much, so I should be patient. I sometimes find that this builds unjustified confidence, with the result that I have to shift to a more negative approach to get the students to realize they still have much to learn. As with almost any human interaction, the process is complex, and requires individualized attention. We also need to recognize the students who will shut down or break down if we are too negative.

⁶⁴ A former student recently said to me that he never really paid attention to me until I got angry. It is difficult to know what to make of this statement. I know that when I get openly frustrated, sometimes to the point of walking out of a practice so I don't say something I'll regret, it makes a big impression, and often the performance and work ethic improve at the next practice. But that can hardly be a desirable strategy. It does suggest, however, that some students react more strongly, and perhaps even more productively, to negative emotion and feedback, and so we need to take that into account when building our coaching repertoires.

I always give my students written feedback—detailed notes on what they have done well and what they can improve. My idea has been that if they try to process comments in a purely auditory way, they are likely to miss much of what we say, even if they are trying to take notes as they listen. Writing the notes myself ensures that the words are what I meant them to be. I try to be as concrete and specific as possible—vague notes about something working or not working are not terribly helpful. I have been gratified to see that my students have kept their notes, sometimes long after the competition is over. I see them reading them during practice, and before competition rounds. I also see them realize later that something I wrote is more helpful than they originally thought.⁶⁵

Some students have told me that I need to talk more, and so I try to reinforce the major points in my notes with oral comments. I also try to figure out what is in my notes that might benefit everyone on the team and make sure to say those things out loud.

One of the most important aspects of feedback is that it must explain as well as identify.⁶⁶ It is not enough to tell a student something is good or bad. In order for learning to result, the student must understand why a particular approach or technique is effective or not—it may be that one phrasing will draw a jury in while another will distract or repel them, or one answer to a question will directly respond to a judge’s concern while another will seem disrespectful or unresponsive. If the students understand why what they are doing works or does not work, they

⁶⁵ I had one student who was initially resistant to my comments, telling his partner after the first practice, “I can’t work with that woman.” At about the third practice, as I was getting frustrated with what seemed to be his stubbornness, I suddenly thought that the “problem” might be that he was too much like me—he needed to know “why,” not just “what.” So I wrote longer notes, explaining why what he was doing was not as effective as it could be, and why what I was suggesting should work better. He left that practice thinking that maybe I actually knew something useful, and he went back and looked at his notes from previous practices, and decided they might actually be helpful as well. I know all this because he told me later—we became friends, and he is now one of my adjunct coaches.

⁶⁶ Professor Charles Rose uses this feedback approach to great effect in the Stetson “What, How, Why” critiquing model. Students are told what is or is not working, how to make it better, and why it will work better as suggested.

can apply the lessons to other situations and build on what they are learning in more positive and long-lasting ways.

Additional research supports the basic approach to feedback that I outline above, and gives it more psychologically-based support, again coming from positive psychology. One recent article emphasizes the importance of autonomy and self-determination in educating law students, and suggests that effective feedback that supports self-determination includes these features: “(1) using noncontrolling informational language; (2) providing rationales; and (3) affirming competency.”⁶⁷

4. Delight

Teacher enthusiasm is a constant factor identified in positive student evaluations. Enthusiasm is contagious—if we love what we do, we pass that love on to our students. Given the long hours, including nights and weekends, that we put into this process, we must love it. There is no other explanation. I have met the occasional coach who only cares about winning, and seems to have no joy in the process, but most of us, and certainly the ones I admire, have a genuine passion for what we do. I often say that I have the best gig in the law school—I get to spend time with my students in a way that my colleagues generally do not; I get to know them as

⁶⁷ Paula J. Manning, *Use Your Words: Providing Informational Feedback as a Means to Support Self-Determination and Improve Law Student Outlook and Outcomes*, October 1, 2011, available at <http://ssrn.com/abstract=1967280>. “Noncontrolling, informational language provides students with the opportunity to understand and internalize instructor provided reasons for implementing feedback, and to experience implementing such feedback as a self-determined choice, rather than instructor directed action. Providing rationales, by explaining the reasons changes would be effective, and communicating the reasons that effort on the student’s part is a valuable investment of time and resources promotes internalization of the stated values. When students know the ‘why’ of what they are doing, it provides them with a sense purpose and importance, which generates engagement. Importantly, rationales will only increase self-determination and engagement when they are communicated with noncontrolling language or acknowledgment of negative feelings. Affirming competency by providing constructive criticism, and framing problems as temporary and fixable, encourages growth mindsets and optimistic attribution styles, helping students perceive themselves as able to become effective (competent) with additional effort. Such students will persist in the face of difficulty or failure, and will take on challenging tasks that might expand abilities.” *Id.* at 13.

people, and I get to watch them grow as lawyers. We laugh together, we eat and drink together, we get frustrated together. It is a source of constant delight.

But the delight is not ours alone. I'm sure many of us have heard our students say that their experience on competition teams was the highlight of their law school experience. Alumni have said that to me years after they graduated. They feel more connected to the school and to their teammates. It now seems likely that this sense of satisfaction may be at least partially related to the positive emotions and strengths development that occur in the competition setting. I was never terribly surprised by it—competition is fun—but I didn't have the insight to see that it may have been more important than I realized. We all know, and I always tell my students, that comfort comes from confidence, and confidence comes from practice and experience (and maybe a little coaching support now and then). It seems likely that confidence also comes from knowing that you are using your strengths and building upon them.

One other aspect of “delight” that I try to bring to the process is a sense of fun. One tool I use in this regard is visual cues for the verbal tics that we all possess. For example, I have a preserved alligator head that I got from New Orleans that appears on the bench when students begin all their questions with “and.” There is also an “um” unicorn, an “ok” octopus, an “ah” armadillo, and a few other toys with meaning. This simple tool works really well—I do not have to interrupt the performance because I can just put the cue up where they can see it, and they can instantly correct the tic. I know the students think this is fun—they tell me so, they buy me new toys to incorporate into the process, and sometimes they literally embrace the critters when they are having trouble letting go of a bad habit.

When we actually get to the competition, my attitude is all positive. At that point, I just tell my teams to have fun. There is little that we can do to fix things, so we just go with what we

have. The psychological research provides an underpinning for what I have almost always observed—most of my students do better at the competition than they have ever done in practice. They are running on adrenaline in competition, and I always tell them that running on adrenaline is like surfing—you need to ride the wave, and not get sucked under by it. If we have given our teams enough support and guidance in practice, they will bring confidence and a sense of accomplishment to competition. That positive emotion will translate into a better performance, and a better ability to function in the moment. The enjoyment of the whole process becomes dominant, and they will carry that into their careers.

C. One Last Connection: Ethics/Values, Professionalism, and Work Ethic

This is a huge topic in legal education, and indeed in society today. Are our students lazy? Do they feel entitled? Have they always been successful regardless of how hard they have worked? Are they used to winning at any cost? Discussions along these lines appear frequently on various blogs and listservs, and many educators have expressed concern. So what can we do in the competition arena? We all know there are coaches and teams that take the winning- at-all-costs approach, and the rest of us know how we feel about those teams—and how we talk about them in the halls. I always tell my students that we do NOT want to be talked about that way.

Whenever I hear a comment to the effect that other teams are happy to compete against us because we play fair, we put on a clean case, we are easy to get along with, or something similar, I make sure to repeat it to my students. It makes them feel good, and I want them to keep thinking about what a nice feeling that is.

Students frequently want to test the limits in competition: What is a reasonable inference? What do we do about a fact that hurts us? Or a case that has the same effect in moot court? What do we tell our students when the “cheating” teams never seem to get punished, and they are

successful? Why should we be different if that is what works? These are the questions we face on a daily basis, and we must draw a firm line in the sand. As our students enter a profession that for most of us feels noble and important, they are faced with the scorn of the public and the examples that justify that scorn.

We must find the right mix of encouragement and sternness that convinces our students that conducting themselves in an ethical and professional manner matters. The more we can associate positive emotion and professionalism, the more we should be able to build the response of behaving in a professional manner. If we teach them that it just feels good to work hard and behave like a professional, we use the teachings of positive psychology to mold their natural responses in a way that can only help our profession going forward.

CONCLUSION

So what are the lessons from positive psychology for developing advocacy skills? There is psychological research that suggests how to motivate students, that says instilling positive emotion and affect is for the most part the best way to put our students in the right frame of mind to learn and to achieve mastery. That research suggests that broadening their minds and building their skills in a positive environment will have lasting effects on their learning and skill development.

There is also research that says that some degree of pessimism, or negativity, in specific contexts is actually adaptive and a predictor of success. That an ability to exercise caution, and pay attention to details while looking for pitfalls, may be useful to being a lawyer.

In the end, we are left with what many of us probably already knew at some level—there must be balance, as is true in so many aspects of life. There must be balance between positive and negative, between support and expectations, between trying to apply what we know from

instinct and experience with what we learn from more formal educational sources. Coaching is at least as much art as science—it is a fully human experience, with all the joys and frustrations that suggests. But it is still the best gig around.