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Normalizing Trepidation and Anxiety

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Normalizing Trepidation and Anxiety

*Christine Pedigo Bartholomew and Johanna Oreskovic**

“The only way to avoid being miserable is not to have enough leisure to wonder whether you are happy or not.” George Bernard Shaw

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I. INTRODUCTION

Law schools and law practice appear to be evolving in opposite directions. The law school experience is becoming less rigorous.¹ The Socratic method is increasingly a thing of the past, replaced by more gentle, “humanistic” approaches to teaching.² Students now select from a buffet of electives that include a number of “law and . . .” courses rather than primarily bar courses. In contrast, the practice of law has become more competitive, bottom-line driven, and hence, more rigorous. The divergent cultures of firms and legal education are only part of the story. Despite recent curricular changes designed in part to bridge the gap between legal

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¹See Robert M. Lloyd, *Hard Law Firms and Soft Law School*, 83 N.C. L. REV. 667, 681 (2005) (detailing curricular changes that have resulted in a softening of the law school curriculum and to less academic rigor in the law school experience).

2. *Id.* at 681-82.

education and practice, many commentators believe young law graduates lack the requisite skills for practice.³ Perhaps more disturbingly, however, the data on law student satisfaction and well-being indicate that these recent curricular changes have done little to improve the quality of students' law school experience. This discontent continues in young associates, many of whom leave practice after only a few years.⁴

At first glance, the outlook for future associates appears little more than gloom and doom. However, interestingly, a subset of attorneys enjoys practice. Those lawyers who report career satisfaction list intellectual challenge as the most significant factor.⁵ In addition, some commentators contend attorneys continue in practice not because they are well-paid or enslaved by student loan debt but because they derive considerable satisfaction from the competitive challenges of law practice.⁶

These results raise an interesting question: assuming some aspects of law school and law practice generate high levels of interest, engagement, and satisfaction, how can law professors nurture these qualities while also offering students strategies to cope with the more destructive and alienating characteristics of law school and practice? To answer this query, we build on Allison Martin and Kevin Rand's scholarship on using hope theory in law education.⁷ Specifically, we attempt to show how legal writing professors can begin to lay a foundation for hope in the first year that

3. William R. Trail & Daniel D. Underwood, *The Decline of Professional Legal Training and a Proposal for Its Revitalization in Professional Law School*, 48 BAYLOR L. REV. 201, 222 (1996) (surveying the development of legal education; noting that law schools are becoming more like graduate schools with professors teaching to their own intellectual preferences, not to specific doctrinal content with the result, for example, that a course in contracts may be taught as a course in microeconomic theory; and concluding that "[t]he content of student's legal education has simply not prepared [them] for the highly competitive practice of law").

4. Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 887 (1999) (discussing studies and surveys demonstrating that many young associates are interested in working elsewhere and that less than one percent were strongly committed to remaining at their firms for at least two years); see also *id.* at 928-29, 933.

5. *Id.* at 928-29, 933 (identifying the most fulfilling aspects of the profession for partners in large firms as the intellectual stimulation and challenging nature of the work (citing TASK FORCE ON PROFESSIONAL FULFILLMENT, BOSTON BAR ASS'N, REPORT OF THE BOSTON BAR ASS'N TASK FORCE ON PROFESSIONAL FULFILLMENT (2008))).

6. *Id.* at 905-06 (explaining the satisfaction some attorneys take from the competitive nature of law practice).

7. 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 (2010).

can ultimately translate into a more meaningful, satisfactory adjustment to practice.

In Section II, we explore the nature of and reasons for the gap between legal education and law firm practice. Then, in Section III, we demonstrate how this gap makes room for utilizing hope theory in legal research and writing pedagogy. Finally, Section IV provides a set of “best practices” for legal research and writing (LRW) courses aimed at increasing students’ hope. These topics are handpicked from our own practice, as well as countless anecdotes from fellow practitioners. By recasting the hardships of private practice as new legal skills learned in part through LRW, students will find the transition into practice less traumatic.

We acknowledge up front that few of our proposals are radical or, for that matter, necessarily original. Many professors are likely already adopting some combination of or variation on these proposals. Our approach is, however, unique because we consider these best practices, collectively, as a means of normalizing some key aspects of legal practice while students are still in law school. Hence, it is not the practices themselves that are most significant. Rather, we demonstrate how the practices fit into two larger, interrelated goals: remedying some of the criticisms of legal education while simultaneously increasing our students’ potential for success by arming them with transferable skills.

II. HOW A GAP BETWEEN LEGAL EDUCATION AND PRACTICE DEVELOPED

A. *How Legal Education Has Become Less Practice-Orientated and, Arguably, Less Rigorous*

Unlike other forms of professional education, the American law school is founded upon, and has perpetuated, a clear division between academia and practice. A quick survey of the history of legal education shows how the initial adoption of the case method approach created a gap between legal education and actual practice that continues today. While law schools are attempting to bridge this gap, the remedies may be too little, too late. Despite some significant curricular and cultural changes within American law schools, the data show students remain disenchanting and increasingly suffer depression and related ailments.

1. *Law Schools' Adoption of the Case Method Approach Distances Them From Practice*

Early American legal education relied heavily on practitioners to train young lawyers.⁸ However, by the mid-nineteenth century, legal education increasingly occurred more at university-affiliated law schools rather than through apprenticeships.⁹ University-based legal education primarily utilized the case method approach. By design, the case method approach deliberately segregates legal education from the development of professional skills.¹⁰ Christopher Langdell, architect of the case method approach, believed law was a science whose "truths" are revealed through rigorous application of the Socratic dialogue to particular appellate opinions.¹¹

Rhetoric, analysis of narrative, and study of the relationship between writer-advocate and audience had no place in Langdell's legal universe. Nor, for that matter, did practitioners or legal practice.¹² In Langdell's words, "What qualifies a person . . . to teach law is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of cases, not experience, in short in using law, but experi-

8. At its beginning, American legal education relied heavily on its relationship with legal practitioners. Even in its earliest form, legal education was modeled on learning by watching and doing. Donald B. King, *Old and New Models of Legal Education: Proposals for Change*, in *LEGAL EDUCATION FOR THE 21ST CENTURY* 5 (Donald B. King ed., 1999). A true, traditional apprentice model was subsequently adopted. *Id.* Under this model, actual legal practice was the main focus, with potential attorneys drafting writs and discussing legal cases with their mentors. *Id.* at 5-6.

9. Universities did not begin to establish a monopoly over legal education until the mid-nineteenth century. *Id.* at 5-6. To compete with apprenticeships and proprietary law schools, universities began to offer their own legal training. *Id.* This training focused primarily on theory, history, and philosophy. Universities providing legal education continued to grow through the mid-twentieth century. *Id.* at 7.

10. *See id.* at 5-6 (describing the differences between apprenticeship and university based legal education). While apprenticeships focused primarily on practice skills, the case method approach used by universities focused on the study of cases as a science. *Id.*

11. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 53 (1983).

12. *See* Kristin Konrad Robbins, *Philosophy v. Rhetoric in Legal Education: Understanding the Schism Between Doctrinal and Writing Faculty*, 3 *J. ALWD LEGAL WRITING DIRECTORS* 108, 120 (2006). Robbins states:

In 1873, Charles Eliot, then President of Harvard University, stated in his annual report for academic year 1873-74 that "[a] false analogy between medical education and legal education . . . has led many to believe that practitioners would make the best teachers of law." Medicine, Eliot said, could be learned from the bodies of the sick and wounded; law, on the other hand, "is to be learned exclusively from books in which its principles and precedents are recorded, digested, and explained."

Id. (internal citations omitted).

ence in learning law.”¹³ Over time, the case method became—to greater or lesser degrees—the dominant means of educating future lawyers in American law schools. After the widespread adoption of the case method approach, “apprenticeships,” and therefore instruction in skills needed for legal practice, received relatively little attention in formal legal education.

2. *Recent Changes in Legal Education Further Widened the Gulf Between Practice and Law School*

The case-dialogue method was not without its critics.¹⁴ Some argued that “[a]s the legal academy sought to establish its academic credentials through the casebook method, it turned a cold shoulder on the profession it exists to perpetuate.”¹⁵ In part as a response to criticisms of the case method and in part as an effort to increase law students’ satisfaction with their legal education, the last thirty years have seen changes in legal education. First, the Socratic method is decreasingly used. This development may, in some ways, be regrettable. For instance, even though the case method approach divorced many of the skills needed for practice from studies in law school, the Socratic method arguably does prepare young students for the rigors of practice.¹⁶ The Socratic method helps students: (1) develop analytical skills; (2) think on their feet; (3) develop intellectual rigor; (4) learn about the legal

13. *Id.* at 121 (quoting Christopher C. Langdell, *Teaching Law as a Science*, 21 AM. L. REV. 123-24 (1887)); *see also, e.g.*, George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 164 (1973-74).

14. Yale, for example, was reluctant to adopt the case method approach. *See, e.g.*, Mark Bartholomew, *Legal Separation: The Relationship Between the Law School and the Central University in the Late Nineteenth Century*, 53 J. LEGAL EDUC. 368, 386 (2003). However, as with any attempt to generalize history, over-generalizations are inherent. For example, while many have criticized the case method approach, others continue to tout its worth. In fact, the 2007 *Carnegie Report* takes great pains to highlight the worth of this approach. *See* WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 74-75 (2007) [hereinafter *CARNEGIE REPORT*] (contending the case-dialogue method works as a “potent form of learning-by-doing”).

15. Margaret Martin Barry et al., *Introduction to Clinical Legal Education* 15 (Partners in Justice: A Colloquium on Developing Collaborations Among Courts, Law School Clinical Programs and the Practicing Bar, Working Paper, 2005), available at <http://www.nycourts.gov/ip/partnersinjustice/Clinical-Legal-Education.pdf>.

16. Prior to the Socratic method, young lawyers learned primarily through the passive reading of cases and rules, with the occasional lecture discussing the rules. Cynthia G. Hawkins-León, *The Socratic Method-Problem Dichotomy: The Debate Over Teaching Method Continues*, 1998 BYU EDUC. & L.J. 1, 4-5 (1998). In contrast, the Socratic method uses directed questioning to develop students’ analytical skills. Instead of simply memorizing rules, students “were required to read cases, extrapolate significant rules and the court’s analysis, and articulate their understanding of the rules of laws and judges’ policy considerations.” *Id.* at 5.

process; and (5) learn about the lawyer's role or function.¹⁷ Each of these tools is directly transferable from law school into legal practice. Despite its utility, however, the Socratic method increasingly has been displaced by more gentle, and thus potentially less rigorous, teaching methodologies.¹⁸ Students no longer wait tensely to see if they are on the hot seat for a given course. Instead, more students are given notice of when they are on call or can defer participation to another day if not prepared.¹⁹

The slow decline of the Socratic method contributes to the gap between legal education and practice. As one law school dean explained, this change in pedagogical approach fostered students less prepared for the real world:

One of the major differences [a group of students] identified between the classroom and the law firm was the level of tolerance for weak analysis and incorrect conclusions. If, for example, a student failed to make a solid argument in class, a professor may still find it interesting for pedagogical reasons. In the law firm, however, wrong responses had real consequences; "interesting" had little place in a setting where "billable" was the barometer of performance.²⁰

Yet, the demise of the Socratic method is only one of many sources exacerbating the gap between legal education and practice. The list also includes the rise of "law and . . ." classes, law schools' increasing reliance on student evaluations as part of the

17. *Id.*

18. Increasingly, the Socratic method has become the scapegoat for the stress and alienation associated with law school. Michael Vitiello, *Teaching Effective Oral Argument Skills: Forget About the Drama Coach*, 75 MISS. L.J. 869, 894 (2006) (summarizing commentators' attacks on the Socratic method). One often cited study chastised the Socratic method because it "alienates, oppresses, traumatizes, and silences women." *Id.* (quoting Ronald Chester & Scott E. Alumbaugh, *Functionalizing First-Year Legal Education: Toward a New Pedagogical Jurisprudence*, 25 U.C. DAVIS L. REV. 21, 24 (1991)). Others criticize the method from a less gender-orientated stance, contending it leads students to think legal arguments are more about what can be argued and less about what is actually right. *Id.*

19. See Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB L. REV. 63, 82 (1995) (suggesting professors give introverted students advanced notice of when they are on call, advanced notice of the questions for a discussion, or time to think about answering to improve their performance); Sarah E. Ricks, *Some Strategies to Teach Reluctant Talkers to Talk about Law*, 54 J. LEGAL EDUC. 570, 573-83 (2004) (discussing ways teachers can modify the Socratic method to encourage class participation).

20. Christine M. Szaj, *Building Bridges and Connecting Dots: Easing the Transition from Law School to Law Practice*, in LEGAL EDUCATION FOR THE 21ST CENTURY, *supra* note 8, at 124.

tenure process (thus, unintentionally encouraging easier grading and spoon-feeding to help ensure better evaluations),²¹ generalized grade inflation,²² the increased hiring of professors with limited legal training,²³ and the move in legal scholarship away from practice-orientated materials to more theoretical and interdisciplinary scholarship.²⁴

21. Studies of student teaching evaluations show that students give higher ratings when they expect higher grades and find the teacher's presentations entertaining. Lee C. Rice, *Student Evaluation of Teaching: Problems and Prospects*, 11 TEACHING PHIL. 329, 335-36 (1988); Robin Wilson, *New Research Casts Doubt on Value of Student Evaluations of Professors*, CHRON. HIGHER EDUC., Jan. 16, 1998, at A12; Anthony G. Greenwald & Gerald M. Gillmore, *Grading Leniency is a Removable Contaminant of Student Ratings*, 52 AM. PSYCHOL. 1209, 1214 (1997); Nalini Ambady & Robert Rosenthal, *Half a Minute: Predicting Teacher Evaluations from Thin Slices of Nonverbal Behavior and Physical Attractiveness*, 64 J. PERSONALITY & SOC. PSYCHOL. 431, 431-34 (1993).

22. See generally Steve Sheppard, *An Informal History of How Law Schools Evaluate Students, with a Predictable Emphasis on Law Schools Final Exams*, in 2 THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES 815 (Steve Sheppard ed., 1999) (describing the advent of grading curves and distributions, reduced rigor in grading, and diminishment in academic attrition); Harvey C. Mansfield, *Our Coddled Students: How Harvard Compromised Its Virtue*, CHRON. HIGHER EDUC., Feb. 21, 2003, at B7 (comparing grade inflation to parents spoiling their children).

23. STEVENS, *supra* note 11, at 38 (stating that with the change to the case method approach came the need for the "academic lawyer . . . who was appointed for his scholarly and teaching potential," rather than practice experience). Some law schools go so far as to view having practice experience as a detriment to one's chance of an academic placement. Trail & Underwood, *supra* note 3, at 211.

24. Amy B. Cohen, *The Dangers of the Ivory Tower: The Obligations of Law Professors to Engage in the Practice of Law*, 50 LOY. L. REV. 623, 631 (2004). In the 1980s and 1990s, legal scholarship and the curriculum for some of the more selective law schools moved further away from the needs of practice by focusing more on theoretical and interdisciplinary scholarship. *Id.* As one commentator explains:

This theoretical scholarship tends to fall within one of two categories. "The first kind is not directly prescriptive: it does not address a problem that some practitioner or governmental decision maker must resolve. The second kind of impractical scholarship is directly prescriptive, but wholly theoretical: it prescribes a decision but ignores the applicable sources of law."

Trail & Underwood, *supra* note 3, at 212 (quoting Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 36 (1992)).

Each of these subjects is worthy of lengthy discussion and could result in law review articles by themselves. But, as just one example, consider the changes in legal education when it comes to electives. Electives were originally added to curriculums to address emerging areas of law. For example, electives in the 1920s and 1930s included topics like tax or administrative law. See *id.* at 215-16. In contrast, current curricular design sees law school electives' focus on interdisciplinary topics, such as law and literature or law and films. Admittedly, the study of such subjects could increase a lawyer's analytical aptitudes. See *id.* However, such classes also often supplant classes with more direct application to practice. See *id.* at 216 ("While examination of other disciplines and other forms of analysis can be useful to the development of a lawyer, adding these new electives and persons qualified to teach them consumes resources that otherwise be available for instruction more directly relevant to new lawyers.").

Some critics contend that these changes have created an increasingly “soft” law school environment.²⁵ While this label is debatable, this perceived softness does add to the overall impression that law school and legal practice are divergent, leaving a gap where young graduates are not prepared for the harsh rigors of legal practice.

3. *Studies Confirm the Perceived Gap Between Legal Education and Practice*

Unlike the more subjective evaluation of whether law school has gotten “too easy,” the gap between practice and legal education is well-documented. In the late 1970s, the cry for legal education reform received increased legitimacy from the *Cramton Report*, which denounced the disconnect between legal education and legal practice.²⁶ The push toward reform continued with the *MacCrate Report* in 1992.²⁷ In response to the *MacCrate Report*, the ABA changed its accreditation policy, adding a requirement that law schools not only prepare graduates for admission to the bar but also “prepare them to participate effectively in the legal profession.”²⁸

25. For a thorough summary of the evolution of legal education as contrasted to legal practice, see generally Lloyd, *supra* note 1. Legal education is not isolated in its move towards a more gentle and, hence, more watered-down approach. Murray Sperber, *How Undergraduate Education Became College Lite—and a Personal Apology*, in DECLINING BY DEGREES: HIGHER EDUCATION AT RISK 138 (Richard H. Hersh & John Merrow eds., 2005) (“A non-aggression pact exists between many faculty members and students: Because the former believe that they must spend most of their time doing research, and the latter often prefer to pass their time having fun, a mutual non-aggression pact occurs with each side agreeing not to impinge on the other. The glue that keeps the pact intact is grade inflation.”).

26. See SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, AM. BAR. ASS'N, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS (1979).

27. See SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, AM. BAR ASS'N, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>. “One of the problems that continually has been raised is how to bridge the gap between law schools and education and practice. This was the subject of the Cramton Report produced in the late 1970s and again the subject of the much more recent MacCrate Report.” King, *supra* note 8, at 9.

28. See Robert MacCrate, *Legal Education and Conduct: Selected Observations*, in LEGAL EDUCATION FOR THE 21ST CENTURY, *supra* note 8, at 135 (“On the motion of several state bar associations, the ABA House of Delegates in August 1993 adopted a change, recommended by the task force, in the accreditation standard regarding a law school’s education program to clarify the reference to qualifying ‘graduates for admission to the bar’ by adding: ‘and to prepare them to participate effectively in the legal profession.’”).

The 2007 *Carnegie Report* evaluated whether the problems in legal education identified thirty years earlier had been remedied. Unlike the *MacCrate Report*, the *Carnegie Report* directly evaluated the case-method approach. The report, in part, praised the case method approach and concluded that law schools are successful in teaching first year students legal analysis skills. However, the report went on to find that the emphasis on analytical thinking, taught primarily through the case method approach, had unintended consequences: the case method approach over-simplified factual and legal issues.²⁹ Combining this deficiency with legal education's limited emphasis on practice "prolong[ed] and reinforce[d] the habits of thinking like a student rather than an apprentice practitioner, [and] convey[ed] the impression that lawyers are more like competitive scholars than attorneys engaged with the problems of clients."³⁰

Legal education is moving to correct these problems. But, law schools are inherently slow at implementing change.³¹ Nonetheless, the law school curriculum now contains a number of practical, skills-based courses designed to bridge the gulf between instruction in legal principles of law and skills needed to practice law. Law schools have expanded clinical programs, increased first-year and upper-level legal research and writing courses, trial or advocacy skills programs, and courses in appellate advocacy. But, these effects alone are insufficient in developing the requisite skills. Hence, for now, the gap between law school and legal practice is the reality.

4. *Recent Curricular Changes Have Minimal Effect on Law Students' Satisfaction or Well-Being*

A lack of practical skills accounts for only a portion of law students' problems. Despite the recent changes in the traditional law school curriculum, student satisfaction with law school remains low. Although students enter law school with high levels of enthusiasm, law students' levels of subjective well-being plunge substantially within the first several months of law school and do not

29. WILLIAM M. SULLIVAN ET AL., SUMMARY, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, available at http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf [hereinafter CARNEGIE SUMMARY].

30. *Id.* at 6. For a helpful summary of the *Carnegie Report* and its findings, see Toni M. Fine, *Reflections on U.S. Law Curricular Reform*, 10 GERMAN L.J. 717, 720-25 (2009).

31. See GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 84 (2000).

rebound before graduation.³² Further, law students experience levels of depression, anxiety, alcohol consumption, drug use, and stress far in excess of other graduate students.³³ One study reports that forty-four percent of law students meet the criteria for clinically significant levels of psychological distress.³⁴ Another contends twenty to forty percent of law students suffer from clinical depression by the time they graduate.³⁵ The data also indicates that the law school experience results in a shift away from intrinsic values to extrinsic, competitive, and success-driven goals.³⁶

High rates of student dissatisfaction and alienation appear independent of law school or teaching method.³⁷ Some commentators identify the process of teaching students to “think like lawyers” as the main culprit.³⁸ Others contend additional factors con-

32. See Kennon M. Sheldon & Lawrence S. Kreiger, *Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Well-Being*, 22 BEHAV. SCI. & L. 261 (2004); Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 244-47 (2001); Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 75-76 (2002).

33. 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, 358-59 (2009); see also Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution*, 8 J. LEGAL WRITING INST. 229, 229-30 (2002) (discussing study finding that forty percent of law school students may experience depression or other symptoms as a result of their law school experience and that “self reports of anxiety and depression are significantly higher among law students than either the general population or medical students” (quoting Matthew M. Dammeyer & Narina Nunex, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 L. & HUMAN BEHAV. 55 (1999)).

34. Peterson & Peterson, *supra* note 33, at 359.

35. Pamela Taylor, *Stress Relief*, J. KAN. B. ASS'N, Oct. 2009, at 14, 14.

36. Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 265 (2008).

37. In a study conducted under the auspices of the American Bar Foundation, legal anthropologist Elizabeth Mertz analyzed and recorded the language of full-semester contracts classes at eight diverse law schools. The classes included not only demographically diverse teachers, but also, tellingly, teaching styles ranging from Socratic method to open discussion. Mertz found that irrespective of school, teacher, or teaching style, the traditional law classroom had strongly dehumanizing effects. According to Mertz, the process of training students to “think like lawyers,” was the main source of the problems. ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* 9, 94-96 (2007).

38. Specifically, Mertz hypothesized that “thinking like a lawyer” requires students to discount the human context of events unless specifically relevant to the legal issue under discussion and then only by filtering human concerns through legal constructs. Students are then taught to parse legal authority, frame strategic arguments, and argue both sides of an issue—a process, which she contends, encourages and promotes an instrumental amoral mindset. Law schools, thus, erase key aspects of the social experience and to reshape thinking in much the same way as early schooling socializes a child. In the legal

tribute to student unhappiness. First, the increasing acceptance of external yardsticks to weed and categorize students negatively impacts students' well-being. Despite the relative homogeneity of students at any given school,³⁹ forced curves and class ranks artificially sort students who do not differ markedly from one another, thus teaching students that their success comes only at the expense of others.⁴⁰

Second, some argue that discontent results from the infantilizing nature of legal education.⁴¹ Students who had enjoyed the freedom to select their own course of study as undergraduates are faced with increasing numbers of required courses, particularly in the first year. Similarly, despite some changes in techniques for evaluation, in too many cases, a semester's grade continues to "turn on the role of the dice in a closed book exam."⁴²

Thus, although the data suggests that law schools may be becoming softer places, these changes and curricular modifications appear to have had virtually no impact on law student satisfaction, levels of intrinsic motivation,⁴³ or mental health. Hence, students leave law school not fully prepared to practice law⁴⁴ and in far worse emotional condition than other professional students.⁴⁵

classroom, however, the yardstick for success is winning, and students increasingly accept winning as the only legitimate goal. *Id.* at 106, 126-27.

39. See John Henry Schlegel, *A Damn Hard Thing to Do*, 60 VAND. L. REV. 371, 376 (2007) (noting that the LSAT and *U.S. News* rankings have combined to make student ability more uniform within each school); John Henry Schlegel, *Eighteen or Thirty, But not Twenty-Two*, 43 HARV. C.R.-C.L. REV. 629, 630 (2008) [hereinafter *Eighteen or Thirty*].

40. See Emily Zimmerman, *An Interdisciplinary Framework for Cultivating Law Student Enthusiasm*, 58 DEPAUL L. REV. 851, 897 (2009) (noting that curved grading has been criticized for demoralizing students and fostering competition among them); McKinney, *supra* note 33, at 230 (discussing studies that attribute law students' dissatisfaction to reliance on class rank as an evaluation and hiring tool).

41. See *Eighteen or Thirty*, *supra* note 39, at 630 (comparing the contemporary law school to middle school).

42. *Id.*; see also Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249, 272 (1997) (noting the highly stressful nature of one final examination as the sole determinant of a student's grade).

43. Intrinsic motivation is the "propensity of an organism to seek out novelty and challenges and exercise one's capabilities, to explore and to learn." Richard M. Ryan & Edward L. Deci, *Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development and Well-Being*, 55 AM. PSYCHOL. 68, 70 (2000).

44. See *supra* Part I.A.3.

45. See McKinney, *supra*, note 33, at 229-30.

B. *The “Culture” of the Practice of Law Has Become More Competitive, Individualistic, and Bottom-Line Oriented*

1. *The History of Law Firm Culture*

Legal education is not the only part of law undergoing change. Over the past thirty years, the large corporate law firm, often considered the prototype for law practice, has undergone extreme, jarring, and, many believe, profoundly negative cultural changes.

During the “golden age” of large firm practice, from 1920 to 1960, lawyers saw themselves as learned professionals who maintained a statesman-like disengagement from the competitive and crass behavior of the marketplace.⁴⁶ A number of unspoken rules, many of which ultimately rested on conceptions of proper gentlemanly conduct, governed how lawyers perceived themselves and did business. Firms maintained a stable portfolio of business because clients rarely changed law firms.⁴⁷ In fact, respectable attorneys refrained from wooing clients away from other firms.⁴⁸ Instead, the practice of law focused on the cultivation of personal relationships between the firm and its clients.⁴⁹ In turn, corporate clients paid relatively little attention to billing issues, focusing more on attorneys’ competency in doing the job correctly.⁵⁰

Attorneys considered it boorish to be concerned with “efficiency, productivity, marketing and competition.”⁵¹ Advertising—even in the form of business cards—was seen as unethical and unseemly.⁵² As late as the 1960s and 1970s, it would have been in unthinkable bad taste for an attorney to discuss income, clients, or fees.⁵³ In fact, many attorneys did not have set charges for the hours billed.⁵⁴

46. See MARY ANN GLENDON, *A NATION UNDER LAWYERS* 33-37 (1994) (identifying the period between 1920 and 1960 as a period of superior virtue in the legal profession).

47. Lloyd, *supra* note 1, at 676.

48. *Id.*; see also Robert W. Hillman, *Professional Partnerships, Competition, and the Evolution of Firm Culture: The Case of Law Firms*, 26 J. CORP. L. 1061, 1063 (2001) (discussing the ABA’s 1961 declaration that a firm’s anti-competition covenant in employment agreement with associates was improper because it was not needed due to the fact that “[l]eaving a firm and taking its clients, in short, was improper professional conduct”).

49. Lloyd, *supra* note 1, at 675.

50. *Id.*

51. *Id.* at 674 n.38 (quoting MARK STEVENS, *POWER OF ATTORNEY: THE RISE OF THE GIANT LAW FIRMS* 9 (1987)).

52. See PAUL HOFFMAN, *LIONS IN THE STREET* 71-72 (1973).

53. Schlitz, *supra* note 4, at 914.

54. See Lloyd, *supra* note 1, at 676 n.49. Lloyd cites JAMES B. STEWART, *THE PARTNERS: INSIDE AMERICA’S MOST POWERFUL LAW FIRMS* 376-77 (1983), for the proposi-

This sense of stability, decency, and unspoken loyalty also applied to relationships within the firm.⁵⁵ Attorneys shared a real sense of camaraderie and solidarity when their partners faced difficult personal or medical situations.⁵⁶ Associates entered firms with the expectation that if they worked hard and demonstrated loyalty to the firm, they would be made partners.⁵⁷ Senior attorneys could also devote more time to training associates because they could write off this time or bundle it into bills that clients rarely questioned.⁵⁸ Thus, after an initial six- or seven-year training period, young attorneys could look forward to virtual lifetime security.⁵⁹ Indeed, it was considered a poor reflection on a lawyer's character to change firms. Workloads, as well, were relatively light.⁶⁰

2. *Law Firm Culture Began to Change Radically in the 1980s*

Although some commentators question whether a "golden age" of practice ever actually existed,⁶¹ it is undeniable that the practice of law has changed radically over the course of the last thirty years. Law firms are no longer pristine, civilized bastions of gen-

tion that "large law firms of the time [set] billing rate by fiat, as opposes to the way they are set in competitive markets."

55. See, e.g., *id.* at 675 n.42. Lloyd cites HOFFMAN, *supra* note 52, at 60, for the idea that "many large firms did not have written partnership agreements because partners trusted each other."

56. James F. Fitzpatrick, *Legal Future Shock: The Role of Law Firms by the End of the Century*, 64 IND. L.J. 461, 463 (1989). In slack times, lawyers at large firms sometimes went without salaries to avoid laying off associates, and at one firm a partner covered for a young associate suffering an embarrassing psychological problem. See GLENDON, *supra* note 46, at 21.

57. Lloyd, *supra* note 1, at 675; see also Fitzpatrick, *supra* note 56, at 463 (discussing fluidity in law firms and remarking that one of the biggest changes in the last third of the century is the loss of loyalty and family in law firms).

58. Schlitz, *supra* note 4, at 926-28.

59. See Ronald J. Gilson & Robert H. Mnookin, *Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567, 571 (1989).

60. In the 1970's, for example, most lawyers could expect to bill only between 1200 and 1500 hours per year. Schlitz, *supra* note 4, at 891. Today, virtually all members of large firms bill in excess of 2,000 per year. *Id.* at 892-93. For a more detailed discussion of billable hours requirements in contemporary law practice, see *infra* notes 73-79 and accompanying text.

61. See, e.g., Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 DICK. L. REV. 549, 555 (1996) (critiquing Mary Ann Glendon's conception of a golden age of law firm practice articulated in *A NATION UNDER LAWYERS*, *supra* note 46, as an "essentialist argument, well-suited to produce vivid contrasts and to suppress continuities"). Galanter goes on to note that these essentialist views of law as a civil, gentlemanly profession neglect to account for "golden age" concerns about the commercialism of law practice. See *id.* at 551-52, 556.

tlemanly behavior; they have become businesses. The practice of law has become highly competitive, driven by an “eat what you kill” compensation system.⁶² Although the reasons for this transformation are not entirely clear, generally speaking, a more competitive, bottom-line oriented business environment is thought to have forced change upon the legal profession.⁶³

The changes reflect a “hardening” of law firm culture.⁶⁴ More entrepreneurial lawyers began to compete for clients.⁶⁵ In the increasingly competitive legal marketplace, productivity was measured in terms of “billable hours.” Emphasis on billable hours led to other, more sweeping changes in law firm culture. Mentoring of new associates often became too costly to justify.⁶⁶ Instead, associates were expected to pay for themselves from the time of hire.⁶⁷ Thus, firms expected young attorneys to enter the firm (and implicitly to leave law school with) the knowledge and skill to handle their work loads with minimal supervision or feedback.

In fact, junior associates, particularly at large, bottom-line-driven firms receive very little mentoring or feedback,⁶⁸ have virtually no client contacts or exposure, and—at least in the first years of practice—focus almost exclusively on library-based research and writing projects or drafting and responding to discovery demands.⁶⁹ They rarely have the opportunity to sit in on depositions to learn from more experienced attorneys.⁷⁰ They do not

62. GLENDON, *supra* note 46, at 24.

63. See Lloyd, *supra* note 1, at 675-76.

64. *Id.* at 674-76 (noting that law practice in the middle of the twentieth century was relatively soft and then detailing the process by which the practice of law became “harder”).

65. *Id.* at 676; see also Hillman, *supra* note 48, at 1065-66 (noting that in the 1980s law firms interested in rapidly building their business began to recruit attorneys with established “books of business” and that firms solicited attorneys and sometimes entire practice groups).

66. See, e.g., Schlitz, *supra* note 4, at 927-28 (describing reasons for decline in mentoring and relating this development to the pressures of billing hours). “The ‘training and development’ promised by big firms is, as I have explained, largely illusory.” *Id.* at 934.

67. *Id.* at 937.

68. See Task Force on Lawyers Quality of Life, Ass’n of the Bar of the City of New York, *Report of the Task Force on Lawyers’ Quality of Life*, 55 REC. ASS’N B. N.Y. 755, 782-83 (2000), available at <http://www.abcny.org/Publications/record/12.%20nov-dec00pp.1.pdf> [hereinafter *Task Force Report*] (noting time pressures and billable hours requirements have resulted in senior attorneys having no time to mentor your associates).

69. Schlitz, *supra* note 4, at 927.

70. See Hillman, *supra* note 48, at 1077 (noting that law firms abandoned practice of having associates sit in on meetings, witness depositions, and observe skilled lawyers because these training activities were too costly).

participate in mediations or negotiations. And they almost never go to trial.⁷¹

Competition among law firms has also had perverse and dramatic effects on attorney workload. The pressure to recruit the best legal talent has resulted in firms engaging in bidding wars for top students.⁷² One consequence of these wars is an increase in salaries across the board.⁷³ But to offset the costs of higher salaries, firms are forced to bill more hours, with the result that everyone—with perhaps the exception of senior partners—works more hours.⁷⁴ In short, as one commentator puts it, “Basically, what happens is that big law firms ‘buy associates’ time wholesale and sell it retail.”⁷⁵ The result has been a dramatic increase in the hours all large firm attorneys, but particularly associates, normally work.⁷⁶ In the 1970’s, attorneys in large firms normally billed between 1200 and 1500 hours per year; by the 1990’s the number had risen to 2000 to 2200.⁷⁷

Although a 2000 hour billable requirement translates into 40 hours of billable time per week, large chunks of an attorney’s time

71. Schlitz, *supra* note 4, at 928; cf. *Task Force Report*, *supra* note 68, at 782-83 (“In the pressure to meet tight time lines or keep billable hours within budget, partners . . . tend to exclude junior associates from key discussions, making them feel as though they are not part of the team.”).

72. Fitzpatrick, *supra* note 56, at 463.

73. Schlitz, *supra* note 4, at 898-99; see also Peter H. Huang & Rick Swedloff, *Authentic Happiness & Meaning at Law Firms*, 58 SYRACUSE L. REV. 335, 337-38 (2008). Huang and Swedloff note that in order to reduce dissatisfaction, law firms have resorted to providing attorneys with increased financial incentives. Huang & Swedloff, *supra*, at 337. However, in their opinion, this approach “ignor[es] both non-financial incentives and the quality or nature of work that people do.” *Id.* at 338. The authors argue that “[l]aw firms would do well to consider people’s intrinsic, non-financial motives for work, such as engagement, identity, meaning, self-signaling, and self-validation.” *Id.*

74. Schlitz, *supra* note 4, at 898-900.

75. *Id.* at 901.

76. See *id.* at 902-03 (explaining the relationship between increased salaries and need to increase billable hours). As one commentator explains the demands placed on firms to keep growing by generating more billable hours:

A firm of 300 lawyers will have another 450 employees on its support staff. There are immense pressures to keep growing. Law firms work on the Marxist theory of surplus value, transferring earnings from the bottom of the enterprise to the top. A young associate will bill 2000 hours, which will bring in \$200,000 of gross revenue to the firm. That associate’s salary might be \$60-70,000 a year. A partner could bill 1,500 hours a year, bringing in \$300,000 plus to the firm; the salary of many senior partners will exceed that amount. One immutable law is that all of us keep getting older—and more senior. As that process goes on, one expects to make more money. The only way more money can come to a firm, barring rate increases which have strong limitations, is to have a larger pool of people below helping to finance a richer salary structure for those above.

Fitzpatrick, *supra* note 56, at 464.

77. See *supra* note 60.

simply cannot be billed.⁷⁸ For instance, as part of the change in law firm culture, associates frequently are evaluated on their ability to attract new business. Often, these contacts are made and cultivated as a result of membership on boards and other community organizations. But investing this time in cultivating possible business is not billable. In addition, time spent attending to the myriad of other personal and familial obligations (like doctor's appointments or car repairs) with which an attorney must deal during the business day cannot be billed.⁷⁹ The result is that a 2000 hour quota virtually necessitates working many nights and weekends.⁸⁰

The burden to bill ever more hours also places associates under significant ethical pressure.⁸¹ To meet monthly billing quotas, the temptation to inflate hours billed becomes increasingly strong. Once the first step down the path of an inflated time sheet is made, it becomes easier to justify further "enhancements" to time sheets.⁸²

In addition, the once relatively secure track from associate to partner has given way to an "up or out culture"⁸³ in which very few associates—only an estimated ten percent of associates at large firms—can expect to be made a partner.⁸⁴ Associates who do not make partner are simply fired.⁸⁵ An associate today can expect to make at least three to four job changes over the course of her career, with talented lawyers treated like athletic free agents who sell their services to the highest bidder.⁸⁶

Under these conditions, it is not surprising that associates whose research, writing, or analytical skills lag behind their peers often do not survive for more than a few years in a large law firm. Nor can a young associate expect any meaningful feedback, guidance, or mentoring. If the work product is sub-standard, the associate, quite simply, will find herself unemployed.

78. See Schlitz, *supra* note 4, at 894-95.

79. *Id.* at 895.

80. *Id.*

81. *Id.* at 915-20 (describing pressure to bill unethically).

82. *Id.* at 918-19.

83. See Gilson & Mnookin, *supra* note 59, at 571 (explaining that attorneys who will not make partner are let go at the end of their seven-year audition).

84. See David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1603 (1998).

85. *Id.*

86. Fitzpatrick, *supra* note 56, at 463.

3. *Small Firms and Solo Practitioners Also Suffer from the Gap Between Legal Education and Practice*

Although the large corporate law firm continues to be the prototype for legal practice and a promised land that many law students ultimately aspire to inhabit,⁸⁷ an estimated one-third of law school graduates enter small firm or solo practice.⁸⁸ In a small firm or solo practice setting, attorneys must hit the ground running and are often responsible for an entire case or trial within months of graduation from law school. The gap between legal education and legal practice is particularly salient in this context since a young associate's lack of practice skill will be evident much sooner than in a large firm.

4. *The Change in Law Firm Culture Has Resulted in Dramatic Decreases in Attorney Well-Being and Job Satisfaction*

The lack of well-being evidenced in law students continues into practice. Legal employment, particularly as an associate, exacts a heavy toll on physical and psychological health, personal development, and job satisfaction.⁸⁹ A study performed in 1990 by researchers at the Johns Hopkins University demonstrated that of 104 occupations surveyed, lawyers topped the list for major depressive disorders.⁹⁰ Another study of depression rates of lawyers in Washington and Arizona revealed that the base rate for major affective disorders, including depression, among male attorneys

87. Positions at large law firms are generally available only to the top students in a given law school class; in addition, the overwhelming majority of law students want to be within the top ten percent of their law school classes. See Lawrence S. Krieger, *What We're Not Telling Law Students—and Lawyers—That They Really Need to Know: Some Thoughts in Action Toward Revitalizing the Profession from Its Roots*, 13 J.L. & HEALTH 1, 11 (1999) (noting that when the author asked the entire first year class at his law school who wanted to be in the top ten percent of the class, ninety percent of the class responded affirmatively). Krieger argues that falling within the top ten percent is perceived as more of a need than a want; the result is that the overwhelming majority of law students are destined to see themselves as failures. *Id.*

88. Trail & Underwood, *supra* note 3, at 224.

89. See Martin E.P. Seligman et al., *Why Lawyers are Unhappy*, 23 CARDOZO L. REV. 33, 37 (2008) ("In addition to being disenchanting, lawyers are in remarkably poor health. They are at much greater risk than the general population for depression, heart disease, alcoholism, and other drug use.")

90. See Schiltz, *supra* note 4, at 874 (discussing 1990 study conducted by researchers at Johns Hopkins University finding that as an occupational group, lawyers had among the highest rates of major depressive disorder (MDD) and, in fact, were significantly more likely to suffer from MDD than non-lawyers who "shared their sociodemographic traits").

was nearly three times that of the general population.⁹¹ The suicide rate for white male lawyers may be twice as high as the rate for non-attorneys.⁹² Other studies indicate lawyers suffer from anxiety, alcohol, and other substance abuse problems at levels far higher than the general population.⁹³ A study of North Carolina lawyers found twenty-five percent had experienced symptoms of extreme anxiety at least three times per month in the past year.⁹⁴ Attorney rates for obsessive-compulsive disorder and generalized anxiety disorder were also significantly elevated compared to the general population.⁹⁵ Similarly, divorce rates among lawyers are higher than average.⁹⁶

Lawyers also appear to suffer from physical problems, particularly ulcers, coronary artery disease, and hypertension, at greater than average rates.⁹⁷ Equally disturbingly, a study of female graduates of the University of California at Davis between 1968 and 1985 found that for pregnant attorneys who worked more than forty-five hours per week (a relatively low number of hours for a large firm attorney), miscarriage was three times more likely than for women who worked thirty-five hours or less.⁹⁸

Attorney job satisfaction also declined precipitously between the 1980s and the 1990s. One study found that in 1984, forty percent of lawyers were "very satisfied" with their work; by 1990, the number had dropped to twenty-nine percent and by 1995, only about one in five or twenty percent of lawyers reported being "very satisfied." Among new attorneys, the 1995 data indicated that twenty-seven percent were somewhat or very dissatisfied with their legal careers and almost one-third reported that they would

91. See Schlitz, *supra* note 4, at 875 (finding that among the general population, 8.5 percent of males and 14.1 percent for females scored higher than the clinical cut off for major depression; among lawyers, the rates were 21 percent for males and 16 percent for females).

92. *Id.* at 880.

93. See Kreiger, *supra* note 87, at 3-4 (citing studies); Connie J.A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1, 2 (1995).

94. See Schlitz, *supra* note 4, at 876 (describing the study).

95. See *id.* (summarizing results of Washington study finding that the base rate in the general population for obsessive-compulsiveness was 1.4 to 2 percent, and that among lawyers nearly 21 percent of males and 15 percent of females scored above the clinical cut off; the study found similar results for generalized anxiety disorder: the base rate within the general population is 4 percent but climbs to 30 percent among male and 20 percent among female lawyers).

96. See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 90 (2007).

97. Schlitz, *supra* note 4, at 880.

98. *Id.*

strongly consider leaving their current position during the next year.⁹⁹ Studies also show that many lawyers are unhappy with their career choice and report that if they had to choose a profession again, only about half would chose law.¹⁰⁰

The practice of law, therefore, has become increasingly competitive, offers less mentoring, and, some would argue, contributes to the decreased well-being of young graduates. Yet, this development is occurring at precisely the time law schools are striving to make the law school experience less brutalizing, more interesting for law students, and more closely related to practice. On the one hand, therefore, law school and practice appear to be moving in opposite directions, with law schools generally becoming “softer” while practice becomes “harder.” On the other hand, however, changes within the law school culture do not appear to have altered the downward trajectory of dissatisfaction and unhappiness that begins in law school and continues in practice. While a thorough analysis of this apparent paradox is beyond the scope of this paper, the next section of this paper examines how hope theory might apply in the LRW classroom both to narrow the gap between law school and practice, and to immunize law students against the many stressors they will experience in law school and in practice.

III. THE GAP BETWEEN LAW SCHOOL AND LEGAL EDUCATION MAKES ROOM FOR HOPE THEORY

While it would be easy enough to bemoan the worrisome state of legal education and practice, the focus of this article is on what to do given these realities. Hope theory offers a promising framework to analyze how to achieve the dual goals of educating students for the demands of law school while simultaneously preparing them for their future practice. Further, trust, an inherent precept to hope theory, ties directly to the role of LRW teacher and student.¹⁰¹

99. *Id.* at 884.

100. One of the principle hypothesized reasons for dissatisfaction is the low decisional latitude and high pressure that associate at large firms experience. Associates do not control their own workload or workflow and thus have little control over the work that they do or when they do it. See Seligman, *supra* note 89, at 41-42.

101. See Hal S. Shorey et al., *Somewhere Over the Rainbow: Hope Theory Weathers Its First Decade*, 13 PSYCHOL. INQUIRY 322, 323 (2002) (noting centrality of trust to hope theory).

A. *The Basic Tenets of Hope Theory*

Hope theory is part of the larger movement in contemporary psychology known as “positive psychology.”¹⁰² Unlike other theoretical and clinical perspectives, positive psychology does not focus on pathology and dysfunction but rather on conditions that enable psychologically normal individuals to flourish.¹⁰³ However, unlike some of its positive psychology counterparts, hope theory sees cognitive development as the path to fulfillment and emotional welfare.¹⁰⁴ Hope theory focuses on developing three cognitive strategies for building hope: goals, pathways thinking, and agentic thinking. As Martin and Rand explain these components:

Goals are “the endpoints or anchors.” They represent mental targets that guide human behaviors. Pathways thinking is a person’s perceived ability to produce ways to reach a goal. In other words, pathways thinking involves the ability to create strategies to reach a goal. The more strategies a person can generate, the stronger that person’s pathways thinking is. Agentic thinking is “the motivational component to propel people along their imagined routes to goals.” It relates to “willpower” or determination.¹⁰⁵

Hope theorists postulate that more hopeful attitudes should “decrease the probability of subsequent negative life events and increase positive life events as the client begins to experience more success in attaining goals.”¹⁰⁶ In keeping with this primarily cognitive orientation and in contrast to other positive psychology theories such as self-efficacy and optimism that do not directly focus on goal-directed planning,¹⁰⁷ goal setting is a central component of increasing hope. But having goals alone does not necessarily translate into any specific behavior. Instead, as people view themselves as capable of implementing action to pursue a goal,

102. For definitions and a survey of approaches to positive psychology, see Martin E.P. Seligman & Mihaly Csikszentmihalyi, *Positive Psychology: An Introduction*, 55 AM. PSYCHOL. 5 (2000).

103. See *id.* at 6.

104. C. R. Snyder et al., *Hope and Academic Success in College*, 94 J. EDUC. PSYCHOL. 820-826 (2002) (“[H]ope is not an emotion but rather a dynamic cognitive motivational system. In this sense, emotions follow cognitions in the process of goal pursuits.” (internal citations omitted)).

105. Martin & Rand, *supra*, note 7, at 208 (internal citations omitted).

106. Shorey et al., *supra* note 101, at 322.

107. David Feldman et al., *Hope and Goal Attainment: Testing a Basic Prediction of Hope Theory*, 28 J. SOC. & CLINICAL PSYCHOL. 479, 481 (2009).

hope increases.¹⁰⁸ Hence, hope theory is more akin to a “learned thinking pattern.”¹⁰⁹ Further, one can have a high level of hope without necessarily achieving her goals.¹¹⁰

B. *The Intersection of Hope Theory and Trust*

Inherent in hope theory is the idea of trust.¹¹¹ In the therapeutic context, to learn to think hopefully, the therapist and client must enter into a “goal-corrected partnership.”¹¹² For this partnership to occur, however, the client must come to trust the therapist and, in effect, develop the equivalent of a child’s secure attachment to a caregiver.¹¹³ Where such secure attachments exist, the child learns hope because the caregiver is consistent, predictable, and reliable.¹¹⁴ This attachment helps the child develop a sense of trust that the world is a safe place, others can be counted on to act in a reasonable manner, and the individual herself is capable of functioning effectively in the world.¹¹⁵ Snyder and his colleagues suggest that children can learn hope from teachers in a similar manner.¹¹⁶ Trust, then, is a significant component of the process by which LRW professors can begin to infuse hope theory into their teaching.

C. *How Hope Theory Is Particularly Well Suited to the Unique Nature of Legal Research Writing Teaching*

LRW plays an important interstitial role in legal education, making it particularly well-suited to hope theory. As part of the academic legal world, LRW is well-positioned not only to bridge the gap between law school and law practice but also to begin building the cognitive strengths and flexibilities needed for both.

108. Snyder et al., *supra* note 104, at 821.

109. Shorey et al., *supra* note 101, at 323.

110. Snyder et al., *supra* note 104, at 821.

111. See Shorey et al., *supra* note 101, at 323 (“Although trust is not explicitly stated in the operational definition of hope, from the beginning it has been part of the theoretical model, as have positive support perceptions.” (citations omitted)).

112. *Id.* at 323.

113. *Id.* (“Snyder proposed that hope develops in the context of a secure and supportive care-giver in which children are taught to think and act hopefully.”).

114. C.R. Snyder, et al., *Hope Theory, Measurements, and Application to School Psychology*, 18 SCH. PSYCH. Q. 122, 131 (2003).

115. In this respect, hope theory borrows heavily from the work of attachment theorist, John Bowlby and Mary Ainsworth. See, e.g., JOHN BOWLBY, A SECURE BASE: CLINICAL APPLICATIONS OF ATTACHMENT THEORY (1988); MARY D. SALTER AINSWORTH ET AL., PATTERNS OF ATTACHMENT: A PSYCHOLOGICAL STUDY OF THE STRANGE SITUATION (1978).

116. Snyder et al., *supra* note 114, at 131.

Further, since most law schools offer LRW as part of the first year curriculum, LRW professors can reach students during the key time before students' levels of well-being first decline. In addition, first year students are experiencing a radical change in the way they think and analyze—a change for which their previous educational experiences have not prepared them.¹¹⁷ Rather than force students first to acclimate to legal education and then—three short years later—go through a second, more extreme acclimation, professors can treat LRW as more of a legal writing simulation geared primarily towards practice.

Cast in terms of hope theory, we do not muddle students' goal setting by detaching law school goals from professional end goals. Instead, we tether the two.¹¹⁸ Then, with these common goals in mind, LRW can help students generate pathways thinking that translates to both environments. In essence, by using the hope theory to focus the goals of the course, LRW can help normalize the inherent challenges of legal practice well before graduation.

Further, we believe the hope-engendering nature of the caregiver-child relationship¹¹⁹ is analogous to the LRW professor-student relationship. LRW is characterized by small classes that enable professors to get to know their students well.¹²⁰ Evaluation requires extensive one-on-one interaction between the professor and student.¹²¹ Indeed, the LRW class is virtually the only venue where first-year law students can expect immediate or direct feedback on their work.

The LRW instructor thus plays a critical role in introducing students to the radically new ways of thinking they learn in law school. Moreover, we ask students to produce materials based on these new understandings almost immediately. We also play a critical role in translating the content of the students' doctrinal

117. See generally Miriam E. Felsenburg & Laura P. Graham, *Beginning Legal Writers In Their Own Words: Why the First Weeks of Legal Writing are So Tough and What We Can Do About It* (Wake Forest Univ. Legal Studies, Working Paper No. 1460738, 2009) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1460738 (explaining the loss of confidence first-year students experience during the first several weeks of legal writing instruction and positing potential solutions).

118. See, e.g., Huang & Swedloff, *supra* note 73, at 346 (encouraging law professors to focus more heavily on teaching practice-related skills as a means to promoting greater satisfaction among law students and, ultimately, practitioners).

119. See *supra* notes 114-16 and accompanying text.

120. See McKinney, *supra* note 33, at 246 (noting the LRW professors are in the "envious position of being able to teach in small classrooms").

121. *Id.* (discussing how LRW professors can have "significant one-on-one student contact . . . give multiple assignments, many with rewrites, and control the grading environment").

classes into actual legal documents. Understandably, then, despite its value in relating the first-year curriculum to the demands of practice, the LRW class can be a source of great stress for the students and the LRW professor, who is the focal point of the students' distress and confusion.

All of these factors change the LRW professor's role from an individual who dispenses information and grades a final product, to a mentor who guides a student through the radical changes involved with learning how to conduct and communicate legal analysis.¹²² This, in essence, creates a goal-corrected partnership akin to that discussed in hope theory between a caregiver and child.¹²³ LRW instructors introduce the skills, define the goals, and help students implement the pathways to reach those goals. For this process to work effectively, though, the student must develop a sense of trust that the instructor is a capable guide, and recognize that while the professor will be the final arbitrator for the grade, she is an ally in the process along the way. Once this sense of trust is established, the LRW instructor can then begin to teach the pathways that will help to bridge the gap between law school and practice.

IV. INCREASING HOPE THROUGH LRW BEST PRACTICES

Incorporating hope theory and the special trust role of LRW professors, we have identified five "best practices" for LRW courses: (1) teaching the importance of feedback as constructive criticism; (2) creating comfort with ambiguity and malleability; (3) determining where to start a project; (4) determining where and when to stop; and (5) coping successfully with timelines.

These best practices serve multiple purposes. First, they help students create goals that are realistic not just for law school, but also for legal practice. Second, by working backwards from these goals, students are empowered with the requisite skills to help achieve these goals. Third, by learning these skills in the first year rather than in the sink or swim environment of the first few

122. See, e.g., *id.* at 247. McKinney states that LRW instructors can play essentially the role of a mentor by "drawing logical connections between . . . [students'] past intellectual successes" and the challenges of law school, in effect using past success as the fuel of future success. *Id.*

123. See Shorey et al., *supra* note 101, at 323.

years of legal practice, we aim to reduce some of the stressors for junior associates.¹²⁴

Admittedly, some hedging is needed. Neither author is a psychologist nor has either had any training in the field. We also acknowledge that hope theory is still a new area of study, with limited empirical data.¹²⁵ Our intent is solely to use hope theory as a framework for discussing curricular redesign and outcome goals. Additionally, the LRW course cannot teach all of the skills needed to practice in the course of a single year: a portion of the class must be devoted to building a common foundation of basic skills, like case reading and briefing. As a result, a portion of the course curriculum must remain devoted to building this foundation, thus limiting the amount of time any educator can spend on reaching the end goals needed for practice.

A. Best Practice #1: Teaching the Importance of Feedback as Constructive Criticism

Our first “best practice” focuses specifically on ways in which LRW professors can develop the trust needed to create a goal-corrected partnership with their students. The end goal of this process is for LRW professors to help students be open to, and understand the importance of receiving and incorporating constructive criticism.

Law students and novice attorneys, quite understandably, often are reluctant to seek help or accept criticism.¹²⁶ They perceive criticism as a negative personal evaluation rather than an oppor-

124. See generally CARNEGIE REPORT, *supra* note 14, at 108-11. Certainly, no single set of proposals will operate as a cure-all, but these proposals are at least a step in the right direction. Once the strangeness of law firms is accepted as the norm, the sooner the goals of practice become the goals of legal research and writing. This approach also helps LRW directly remedy some of the deficiencies identified by the recent *Carnegie Report* and its predecessors.

125. For example, our research turned up only one study directly testing whether hope predicts goal attainment. See generally Feldman et al., *supra* note 107, at 479-97. However, this study was promising, as it looked at college students and found a relationship between hope's agency component and later self-assessed goal attainment. It also found that students adjust their hope level depending on their success in pursuing their goals. Admittedly, though, college students and graduate students differ in many ways. Hence, whether hope theory's application varies based on the level of education remains unexplored.

126. Cf. Zimmerman, *supra* note 40, at 904 (noting that the kind of feedback students receive matters and that it might be particularly important to give students positive feedback during the beginning of the first year when they are the most anxious about their work).

tunity for professional growth.¹²⁷ For young associates, criticism—especially if it is given constructively—is one of the remaining relicts of firm mentorship. As a result, learning to seek and find within criticism that which is constructive (or which can be used constructively to improve work product) is key to success in the increasingly cut-throat world of law practice.

New law students' sensitivity to criticism is heightened by their lack of familiarity with legal reasoning, their anxiety about mastery of new skills, and the absence of any significant evaluation of their performance in their substantive classes. Of equal and perhaps greater significance, however, law students' sensitivity to, and vulnerability in the face of criticism is often the result of their own past success.¹²⁸ Law students come to law school having succeeded, often spectacularly, in their undergraduate classes or even in another profession. For the student, what was a secure ability and a source of identity is now far less certain. The tools that led to success in the past may no longer be adequate for the task at hand.¹²⁹

Further, the demand for high grades often demoralizes students.¹³⁰ In an environment in which everyone possesses roughly the same skills and attributes, the line between winners and losers is unclear at best, particularly during the first semester.¹³¹ The lesson law school, and then practice teaches, generally fairly brutally, is that line between winning and losing is quite fine. With forced curves, the difference between a B+ and A- on an exam is often slight.

Hence, the challenge is to teach that law is not about the final grade but about mastery of craft.¹³² Reorienting students' focus

127. See generally Martin & Rand, *supra* note 7, at 225-28.

128. See McKinney, *supra* note 33, at 241 (discussing law student's prior success in previous academic environments and noting that many have received considerable reinforcement for thinking clearly; as a result, it is not surprising that students enter law school with high levels of confidence).

129. Cf. *id.* at 241-42. McKinney notes that as the academic year progresses, students tend to run out of steam, stop reading and briefing, and begin to experience stress symptoms, and that students quickly realize that the legal reasoning is "unlike anything they've done before. . . . Case reading and briefing are not like other homework assignments they've tackled in the past." As a result, students must "build new self-efficacy beliefs from scratch." *Id.*

130. See, e.g., *id.* at 230-31 (detailing the damaging effects of grading and ranking on student self-efficacy).

131. See *Eighteen or Thirty*, *supra* note 39, at 630.

132. In Martin and Rand's terminology, our challenge is to teach students to focus on learning goals—in other words, "a desire to learn new skills and to master new tasks"—rather than performance goals, focused on specific, often numerical outcomes. Martin & Rand, *supra* note 7, at 218-19.

and then keeping that focus on what is essentially an intrinsic goal is no easy task. Rather than identify any single best practice to achieve this goal, we “cheat” and offer three subparts to this best practice: (1) defer grading; (2) share experiences from practice; and (3) provide numerous opportunities for giving and receiving feedback.

1. *Deferring Grading Helps Students Learn to Accept Criticism*

Dispensing with virtually all grading during the first semester of the LRW course is fundamental to helping students learn to manage feedback and to focus on learning rather than performance goals.¹³³ While such an approach initially seems counter-intuitive and poor preparation for law school exams and practice, the absence of grading has profoundly beneficial effects not only in building trust but in teaching craft.¹³⁴ Specifically, if initial work product is not graded, the sole focus of a writing conference is on how the LRW professor and the student can work together to improve the work product. This can be achieved by working cooperatively to help the student articulate the goals of an assignment, explain what he or she was attempting to do in an unclear sentence or analogy, and to help the student articulate and work toward specific goals on the next assignment.¹³⁵ As students come to see their legal writing professor as less the judge and more the ally, their perception that feedback is evaluation begins to change. They learn to define, then refine the goal of an assignment. In so doing, they learn that legal analysis and writing is a developmental process mastered in stages, not an innate skill. This realistic goal setting, in turn, potentially increases hope.

133. *Id.*; see also Zimmerman, *supra* note 40, at 899 (advocating not grading the first semester of law school and that, instead, students be given feedback on assignments).

134. The authors are indebted to Prof. Jan Levine for his comments at his presentation to the LRW faculty at the University at Buffalo Law School on July 7, 2009. Prof. Levine discussed in detail his practice of not grading student work in the first semester of LRW until the final assignment. He also stressed the importance of building trust in the teacher-student relationship. The LRW faculty at Buffalo adopted Prof. Levine’s practice of not grading work product until the final assignment. The faculty, particularly those who have taught the course for many years, have noted a significant reduction in anxiety and far greater receptivity to feedback by the students. The faculty did not notice any diminished effort or quality as a result of not grading.

135. See Pamela Lysaght, *Writing Across the Law School Curriculum in Practice: Considerations for Casebook Faculty*, 12 J. LEGAL WRITING INST. 191 (2006) (explaining how individual teacher conferences allow students to discuss their writing as works in progress, thus teaching students how to make conscious choices about their writing).

2. *Sharing Experiences from Practice Helps Students Accept Constructive Criticism*

An additional part of building student trust is the instructor's ability to demonstrate that she is, in fact, a reliable source of information and advice.¹³⁶ In this respect, legal research and writing instructors have a real advantage over doctrinal faculty. Many of us have practiced for a number of years. We are intimately familiar with the work we ask students to do. This aids in explaining to students the importance of learning how to analyze and write about a legal problem. In this way, we can, as Martin and Rand suggest, engender greater hope in our students by sharing with them our own experiences in practice.¹³⁷

In this context, it is particularly important for a legal writing instructor to discuss their own practice experiences with students. If we are exacting, we are exacting for good reasons; if we insist that our students meet deadlines or comply with formatting rules, we do so because this is what courts or partners will require them to do. If they are anxious about speaking in public, we share with them lessons from our own first oral argument. In short, by acting as mentors who provide feedback, rationales, and explanations for the many bewildering aspects of law school and practice, we foster the kind of trust that makes students more open to constructive criticism.

By developing this sense of trust in the legal writing classroom, we can then begin to reframe the issue of criticism and feedback in practice. We do this by directing attention away from the young attorney's insecurities and teaching that law is a service industry: clients and supervising attorneys are the customers. Supervising attorneys, clients, and of course, judges are entitled to their subjective opinions. However, these opinions are not necessarily referendum on young attorneys. Once this lesson is learned, students create pathways that accept such feedback as a crucial part of both law school and practice. In this way, as well, we can reori-

136. See McKinney, *supra* note 33, at 250 (“[F]eedback has its greatest impact on efficacy when it comes from someone who is perceived to be an expert and is trusted and respected. . . . It is equally important that our students know why we are qualified to teach them, so we should let them know . . . our teaching credentials.”).

137. See Martin & Rand, *supra* note 7, at 229 (noting that telling hopeful stories can help to build agentic thinking). They argue that “[a]nalogizing to legal education, law students would benefit from hearing hopeful stories about others who have overcome adversity,” and that they might find war stories and stories of attorneys’ career development, particularly those who did not “ace” law school, hope-engendering. *Id.*

ent students away from performance goals toward learning goals.¹³⁸

3. *Extensive Feedback Helps Students Learn to Accept Criticism*

In addition, by providing extensive feedback and opportunities for peer editing,¹³⁹ we introduce the notion early that comments are subjective and not always uniform. In so doing, we reinforce pathways thinking by teaching that there is often more than one way to approach a problem; frequently, accepting and processing feedback will lead to a better work product.¹⁴⁰ As a result, we teach students to be flexible (and thus, open) to evaluating, and then reevaluating the strategic choices they make in preparing their work product. By learning how to accept evaluation early and in a non-threatening, but reality-focused manner, we believe that subjective and possibly less justified forms of criticism students may receive in the work place will not seem as intimidating.¹⁴¹

Feedback also teaches students how to set realistic goals, which is fundamental to hope theory. The goal is not simply to complete the assignment; instead, the goal becomes to complete the assignment, and then wait for and invite comments with the aim of improving future assignments. Learning to accept and incorporate feedback is essential to success in practice and law school. The LRW class can thus normalize anxiety over receiving feedback

138. *See id.*, at 218-21.

139. Peer editing is particularly key to teaching students how to receive and provide constructive criticism. As one scholar explains:

Students can gain additional experience in reading and revising by reading each others' writing. Peer review exercises, in which students read and comment on portions of documents written by other students in the class, offer opportunities for students to see how other writers approach a particular writing assignment, to evaluate the strengths and weaknesses of their approaches, and to learn from the critiques of their classmates. In addition, well-constructed peer-review exercises can help students learn to give and receive constructive criticism when collaborating with colleagues, as they will be asked to do in practice.

Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561, 587 (1997).

140. *See* Martin & Rand, *supra* note 7, at 225 ("Students need to learn that if one pathway does not work, they have alternative strategies to try.")

141. *See* McKinney, *supra* note 33, at 248. McKinney posits that effective feedback should be clear, give students realistic information about where they stand, and offer multiple chances to redraft. She states that "[w]ith each opportunity, we should strive to give express feedback, helping [students] know when they have succeeded and know what they need to do to succeed when they have failed." *Id.* *See also* Lysaght, *supra* note 135, at 191 (discussing the importance of feedback for writing in upper-division doctrinal courses).

by recasting it as the potential to produce more effective work product. As a result, feedback in the LRW class can promote the dual goals of decreasing student anxiety and preparing future attorneys for the realities of practice.

B. Best Practices #2: Comfort with Ambiguity and Malleability

The second best practice focuses on how to teach law students to accept the inherent ambiguity and malleability of the law. Law students and novice attorneys want certainty and clarity. Often, they are uncomfortable accepting that the law is malleable (within limits), uncertain of the limits of plausibility, and reluctant to attempt arguments based on their own reading of cases. By choosing fact patterns for class assignments that involve legal ambiguity, lack clear-cut answers, and require analogical reasoning, students can be conditioned early on to accept that legal analysis is fundamentally an interpretive act.¹⁴² In addition, using in-class and written assignments to underscore these lessons, students are required to argue both sides of issues, thereby preparing them to work competently with precedent.

Working with murky legal questions helps students create pathways that are directly transferable to practice. Instead of hanging on to a naïve belief that all legal problems have definitive answers, students learn from the start that law is more than a series of simple applications of black letter rules to facts. Instead, students begin to see legal analysis as an art of synthesis that includes drawing connections that are not always readily apparent. Hence, students learn the goal of legal analysis is not mere recitation of the law, but thorough and thoughtful analysis of a problem, including its legal, social, and policy ramifications. This lesson will carry through to practice and provide young associates with

142. Krieger, *supra* note 36, at 287 states:

There are good reasons for the discomfort that many law students experience in learning the craft of legal analysis. Students afforded a clear explanation . . . at the outset . . . will not become confused by it. In addition, the information provides a beginning awareness that will enable them to monitor their experience and respond appropriately both in law school and later in law practice when the same challenges present themselves.

Id. See also Jan M. Levine, *Designing Assignments for Teaching Legal Analysis, Research, and Writing*, 30 PERSP. 58, 60 (1995) ("Determine a progression of [LRW] assignments during the year; perhaps begin with an easy answer, work through a more complex answer and end with an assignment having no real answer (or at least much ambiguity)."); McKinney, *supra* note 33, at 247 (highlighting importance of structuring assignments so that students can learn legal analysis and reasoning in increasingly difficult steps, "building confidence with each success").

the skills needed to handle burgeoning areas of law or cases of first impression.

Once students successfully complete their analysis of an ambiguous legal issue, their ability to handle future less-than-clear-cut matters increases. In terms of hope theory, agentic thinking increases: students learn to develop a comfort with the absence of clarity and certainty. When they become practitioners, they will have a greater sense of trust in their own ability to interpret and generate arguments about a legal issue.

To achieve these end goals of agentic thinking and creation of pathways, trust is again a key factor. Frustration is inherent in dealing with difficult legal questions. For students to acknowledge their frustration and to work collaboratively with their classmates and their LRW professor, a high level of trust in both the classroom and in the relationship between professor and student is essential. Allowing students to work through the difficulty of a challenging legal issue in the relative safety of LRW will minimize some angst after graduation.

C. *Best Practices #3: Where to Start A Project*

The third best practice deals with teaching law students where to start on a new assignment. Frequently, the most daunting part of an assignment for a law student or novice attorney is determining where and how to start. To alleviate this anxiety, we help students create checklists that provide, if not exactly a roadmap, at least an outline for organizing work on a project or assignment.¹⁴³ We address the potential pitfalls associated with over-reliance on checklists—particularly how checklists may oversimplify legal analysis. We also stress, however, that checklists are a talisman for new attorneys against the crippling fear of not knowing how to handle a new assignment. By having students play an active role in creating these checklists, we teach them two critical skills: first, students learn how to brainstorm and develop

143. For a discussion of the value of writing checklists, see Parker, *supra* note 139, at 586 (“A variety of techniques may help students learn to make conscious choices when revising their writing. For example, teachers can provide a checklist of questions for students to answer as they read their own writing. Checklists help students develop an internal editorial voice by providing models for the questions students should ask themselves when they evaluate their writing.”). *But see* Terry Jean Seligmann, *Why is Legal Memorandum Like an Onion?—A Student’s Guide to Reviewing and Editing*, 56 *MERCER L. REV.* 729, 730-31 (2005) (discussing the dangers of writing checklists, such as leading legal writers “to neglect the big picture in favor of spending an inordinate amount of time on a relatively unimportant decision, such as how to abbreviate the party’s name in a citation”).

their own problem-solving techniques; and second, students come to understand the value of mapping a project from beginning to end to create a more complete final product.

Using checklists in this way also serves two hope-related functions. First, it helps students create pathways. Inherent in creating a thorough checklist is the process of breaking down a project to its most basic parts.¹⁴⁴ This breaking down process is called “stepping” under hope theory and can effectively help students develop pathways, while also building confidence.¹⁴⁵ Breaking assignments down to manageable chunks can also help procrastinators and perfectionists timely start assignments and enable them to meet deadlines.¹⁴⁶ The ability to create checklists (as well as other outline-based organizational structures) gives students tools that are directly transferable both to academic and practice-based projects.

Second, success in organizing a problem through checklists reinforces agentic thinking. Students start identifying the creation of checklists as a skill they can fall back on for future assignments. Because students have tackled a project using a checklist once, there is less reason to think that they cannot successfully tackle legal projects in the future. Once students are taught the skills to approach a variety of assignments, the gap between practice and legal education narrows, and young associates are freed from at least one source of anxiety commonly associated with practice.

D. Best Practices #4: Where and When Do You Stop

The fourth best practice is identifying how to determine when research on a project is complete. The tendency among law students, in particular, is to continue doggedly pursuing an on-point case that simply does not exist. Little about law school discourages that tendency. In particular, unlimited access to the proprietary legal databases often encourages endless searching and inefficient allocation of time. Accordingly, when new attorneys enter

144. For examples of useful checklists for student writing, see, e.g., LAUREL CURRIE OATES & ANNE ENQUIST, *THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING* §§ 7.9.5, 17.9.6 (4th ed. 2006); HELENE S. SHAPO ET AL., *LEGAL WRITING AND ANALYSIS IN THE LAW* 481-483 (5th ed. 2008); RICHARD K. NEUMANN, JR., *LEGAL REASONING AND WRITING: STRUCTURE, STRATEGY, AND STYLE* (4th ed. 2001) (inside cover provides checklists); Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 U. PITT. L. REV. 719 app. A at 748-49 (1997).

145. Snyder et al., *supra* note 114, at 129. See also Martin & Rand, *supra* note 7, at 224 (discussing the importance of stepping as a strategy for enhancing pathways thinking).

146. See Anne Enquist, *Defeating the Writer's Archenemy*, 13 PERSP. 145, 147 (2005).

the legal field, they often adopt this same approach to their new assignments.

Unfortunately, few firms can afford the time or resource luxuries associated with these never-ending searches. Many young attorneys are frustrated to learn that “good enough” is often the best result that can be achieved for legal research: they will not be able to find every single case, and as in all things legal, there is rarely a bright line answer to the question of when to stop.¹⁴⁷ To teach against this tendency, we require students to draft research plans that help ensure students learn to use the fundamental primary and secondary legal authorities.¹⁴⁸ But, in teaching how to design a plan, we emphasize that research is a less-than-perfect art. We teach that when cases begin to sound as though they are repeating themselves, the researcher has generally covered the field in a sufficiently comprehensive manner. Also, as discussed in above, we intentionally create research and legal analysis problems devoid of clear cut answers. This way, young graduates already have experience deciding when to end their research and rewrites.

By teaching research in this way, students learn early on in legal research and writing how important realistic goals are. They learn that they should not aim to find everything but rather enough material to analyze the given issue. Hence, by focusing on appropriate, attainable goals instead of the ever-elusive case “on all fours,” more students will be more successful in their research. This minor shift in the end goal increases students’ confidence that they will find “enough” to work with, hence reinforcing agentic thinking.

E. Best Practices #5: Timelines

The fifth best practice that incorporates hope theory is teaching LRW students how to handle timelines. Law students and novice attorneys find short timelines particularly daunting and anxiety-provoking. Frequently, the attorney’s own perfectionist tenden-

147. See, e.g., Levine, *supra* note 142, at 589 (“Research is rarely, if ever, so simple, and we do our students a disservice to suggest by example that it might be.”).

148. See, e.g., Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 STETSON L. REV. 1193, 1197 (2000) (discussing the importance of using research plans). For a further discussion on different types of research plans, see generally J.D.S. ARMSTRONG & CHRISTOPHER A. KNOTT, *WHERE THE LAW IS: AN INTRODUCTION TO ADVANCED LEGAL RESEARCH* 1-13 (3d ed. 2008); ROBERT C. BERRING & ELIZABETH A. EDINGER, *FINDING THE LAW* 327-37 (12th ed. 2005); KENT C. OLSON, *PRINCIPLES OF LEGAL RESEARCH* §1.4 (10th ed. 2009).

cies and conscientiousness combine to create paralyzing levels of anxiety.¹⁴⁹ By teaching how to “work backwards” from a deadline, students can learn the skills to break down last-minute assignments in practice into manageable deadlines. Here again, we stress that time constraints—not procrastination, laziness, or paralysis—often result in the need to do “good enough” work.

Timelines work hand-in-hand with student-drafted checklists. Once the checklist is in place, students need simply to allocate time to each task. Where the LRW professor can help is to use the time-allocating process as an opportunity to talk about what is a realistic time allocation. Inherent in this process is the notion of trust. If students do not trust their professor, they will not believe the timeline, thus undermining an important lesson.

Also, to help prepare students for the rigors of practice, it is helpful to let students know how much time a junior associate would have to complete an analogous task. This way, students know not only what is expected for their legal writing course, but also what an associate needs to do. This is not intended to scare or intimidate students, but rather to assist students in anticipating the time constraints of practice. Hence, upon graduation, this aspect of practice will already be something students understand and, hopefully, can handle.

In terms of hope theory, learning how to complete a project from a time manageability standpoint, develops pathways thinking by empowering students on how to handle future projects. Additionally, understanding how long each step of a process takes helps ensure students set realistic deadlines and, in turn, realistic goals. Once a student adopts realistic goals his chance of success, and agentic thinking based on this success, increases.

V. CONCLUSION

As law students leave law school and embark on their careers, there is plenty of reason for concern. Law graduates are already suffering from significant decreases in well-being, despite curricular reform efforts. Yet, little about the current law firm environment ameliorates this problem. In fact, evidence suggests the transition to law firms may simply increase the rate of the

149. For some, the negative effects of procrastination begin well before practice, harming their academic success even during undergraduate studies. See Enquist, *supra* note 146, at 145 (“[S]everal experts have suggested that between 65 percent and 90 percent of undergraduates procrastinate to the extent that it affects their academic performance.”).

downward trajectory, particularly for students who are not adequately equipped with the skills and psychological hardiness to handle the rigors of practice. We recognize that LRW is capable, at best, of having only a small impact on ameliorating the very serious problems outlined above, and our proposals are correspondingly modest. Hope theory allows one opening for such a discussion by focusing on how to solve some of these problems. However, applying hope theory is far from a panacea for the woes of law students and junior associates. But by beginning a discussion of how legal education, and LRW in particular, can better aid its students, perhaps the gap between law education and practice can narrow, leading to more hopeful, more emotional sustained new attorneys.

