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## Students Critiquing Novice Writing: Building Hope by Building Bridges

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# Students Critiquing Novice Writing: Building Hope by Building Bridges

Terri L. Enns\*

I.	INTRODUCTION .....	403
II.	THEORETICAL BACKGROUND: HOW HOPE THEORY CAN INFORM THE LEGAL WRITING CLASSROOM .....	405
	A. <i>Barriers to Learning</i> .....	405
	B. <i>Building Hope in the Legal Writing Classroom</i> .....	408
III.	THE EXERCISE: STUDENTS CRITIQUING NOVICE WRITING.....	411
IV.	BUILDING HOPE BY BUILDING BRIDGES .....	412
	A. <i>Adopting the Role of the Reader Helps Students Set Appropriate Goals for Legal Writing</i> .....	413
	B. <i>Critiquing the Novice Writing of a Successful Legal Professional Models Learning as a Process</i> .....	415
	C. <i>Adopting the Role of the Person Critiquing Helps Students Better Understand the Assessment Process</i> .....	417
	D. <i>Critiquing the Novice Writing of a Successful Legal Professional can “Model and Encourage Agentic Thinking”</i> .....	419
	E. <i>Critiquing the Legal Writing Faculty’s Novice Writing Builds a Relationship of Trust</i> .....	421
V.	CONCLUSION.....	422

## I. INTRODUCTION

The article that spurred this conference, *The Future’s So Bright I Gotta Wear Shades: Law School Through the Lens of Hope* by Allison D. Martin and Kevin L. Rand, argues that legal educators should aim to instill hope in their students because hope and optimism are critical for law student success, both during law school

and beyond.<sup>1</sup> Because numerous writers have described the negative psychological impact of the law school experience,<sup>2</sup> few legal educators can claim ignorance of the issue. A whole group of academic researchers are focused, at least in part, on finding ways to mitigate that negative experience, and even to change it into a positive one.<sup>3</sup> This paper offers one way to engender hope in the legal writing classroom through an exercise that builds bridges between students and their legal writing faculty.

Martin and Rand's descriptions of the impacts of hope and optimism, as well as their five principles for engendering hope in law students, provide a rich resource for all legal educators wishing to improve their students' experiences.<sup>4</sup> While Martin and Rand's suggestions are aimed at the general legal education community, the conference itself was firmly rooted in the legal writing community, as the title—"The First 'Colonial Frontier' Legal Writing Conference"—should prove.

This paper focuses on the role of hope in the legal writing classroom, and provides an in-class critiquing exercise that can have a positive impact on the students' sense of hope during that difficult first experience as a legal writer. The paper analyzes the benefits of the critiquing exercise by drawing on Martin and Rand's framework as well as the work of other legal scholars. Part II describes how that framework can inform the legal writing classroom, with a focus on research that explains the challenges faced by novice legal writers and how increasing students' sense of hope can help them with those challenges. Part III describes a critiquing exercise that aims to engender hope early in the legal writing learning process. Part IV describes five potential outcomes that

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1. 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, 203-05 (2010).

2. In addition to Martin & Rand, *supra* note 1, see, e.g., 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 (2002).

3. See, e.g., Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112 (2002); Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357 (2009).

4. Martin & Rand, *supra* note 1, at 203-05, 218-31.

can arise from the exercise, tying them to hope theory and surveying additional scholarship that explains the reasons for these outcomes. The exercise improves writing by helping students set appropriate goals, better understand assessment, view learning as a process, think about steps to take toward their goals, and build a relationship of trust with the legal writing professor, each of which instills hope in the student.

## II. THEORETICAL BACKGROUND: HOW HOPE THEORY CAN INFORM THE LEGAL WRITING CLASSROOM

As Martin and Rand state, “[L]aw student well-being is in the best interests of students, educators, legal employers, and, ultimately, the public at large.”<sup>5</sup> Engendering hope promotes this well-being. Thus, by paying attention to building hope, legal educators can improve performance and psychological well-being during law school, as well as promote responsible, pro-social behavior in the future. As law school faculties work toward the broader goal of training competent lawyers who contribute in a positive way to the public at large,<sup>6</sup> the narrower goal of helping law students learn to be lawyers reaps benefits from paying attention to the role of hope and optimism.<sup>7</sup> Awareness of the impact of hope and optimism on learning should lead law faculties to examine how the experiences in their own classrooms can provide students with a greater sense of hope.

### A. *Barriers to Learning*

Legal education involves the difficult task of moving students from being novices to being experts, or at least to some level of mastery. This task is shared across the curriculum, and research on the role of hope can provide useful strategies for helping students in every law school setting—from the traditional Socratic classroom, to clinics, to the legal writing classroom—as they experience the unique academic challenges of law school. The legal writing classroom, for a variety of reasons outlined below, is par-

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5. *Id.* at 231.

6. *See, e.g.*, WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 4 (2007) (“That is the challenge [for legal education]: linking the interests of legal educators with the needs of [legal] practitioners and [with] the public the profession is pledged to serve—in other words, [fostering what can be called] civic professionalism.”).

7. Martin & Rand, *supra* note 1, at 203-05.

ticularly ripe for an infusion of both hope theory and the resulting practical applications as a means to improve student learning.

For multiple reasons, the legal writing classroom is often an early focus of law student frustration.<sup>8</sup> First, legal writing comes early in the law school curriculum and thus can greatly impact how students view their abilities to navigate successfully the entire law school experience.<sup>9</sup> Some institutions provide legal writing training during orientation, even before other first-year courses begin.<sup>10</sup> Most law schools begin the process during the first semester, and by the beginning of the second semester, law students across U.S. law schools will be immersed in the process of learning to analyze legal problems and to convey their analyses in written form.<sup>11</sup> These tasks of research, analysis, and writing, faced early in the law school experience, are often more difficult than the student anticipated, leading to disappointment and frustration.<sup>12</sup>

Another reason that student frustration may focus on the legal writing curriculum is because the legal writing course is often the class in law school during which students receive their first significant feedback.<sup>13</sup> In other first-year courses, some feedback comes when students verbally answer questions during class and the professor immediately responds to that answer. The entire interaction is oral, short-lived, and the student has little time to invest in the answer that he or she gives. Thus the stakes are relatively low. Students who are not called on may escape even

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8. 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* 1 (Aug. 21, 2009) (unpublished article, available at [http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=miriam\\_felsenburg](http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=miriam_felsenburg)).

9. Positive reinforcement is “[p]articularly relevant to teaching the first-year legal writing course, where confidence in both writing skills and overall academic capability can be at an all-time low for students.” Kirsten K. Davis, *Building Credibility in the Margins: An Ethos-Based Perspective for Commenting on Student Papers*, 12 J. LEGAL WRITING INST. 73, 86 (2006).

10. See, for example, the description of orientation at the University of San Francisco School of Law. University of San Francisco School of Law—Orientation Fall 2010, <http://www.usfca.edu/law/admissions/jd/admitted/orientation.html> (last visited Mar. 11, 2010).

11. ASSOCIATION OF LEGAL WRITING DIRECTORS & LEGAL WRITING INSTITUTE, 2009 SURVEY RESULTS ii (2009), available at <http://www.lwionline.org/uploads/FileUpload/2009SurveyResults.pdf>.

12. Felsenburg & Graham, *supra* note 8, at 35.

13. “I have sat with students who couldn’t even begin to read, much less comprehend, comments attached to the lowest grade they had ever received in their lives . . . .” Jesse C. Grearson, *From Editor to Mentor: Considering the Effect of Your Commenting Style*, 8 J. LEGAL WRITING INST. 147, 168 (2002).

that form of feedback. In contrast, feedback in a legal writing course is a direct response to written work. That work is often the result of much struggle, resulting in a product that feels personal and in which the student is highly invested. That feedback may be the first indication to law students, most of whom were high achievers in previous academic settings, that they may not be as successful in law school as they had originally assumed.

As for the frustrations, Felsenburg and Graham identified four “commonalities”<sup>14</sup> as keys to the frustrations experienced by beginning legal writing students: (1) lack of a professional context in which to place the study of law and specifically the skills of legal writing;<sup>15</sup> (2) inexperience with, and resistance to, the analytical thinking required for good legal writing;<sup>16</sup> (3) “eroding confidence when they realize that their previous successes in other disciplines do not guarantee quick mastery of legal writing”;<sup>17</sup> and (4) disillusionment when they realize that they incorrectly assessed their own writing skills.<sup>18</sup> The third and fourth of these roadblocks, with their focus on loss of confidence and disillusionment, show the need for engendering hope in our students as they encounter the hurdles of their first year-legal writing classes.

Some of the difficulties described by Felsenburg and Graham occur because the students are entering a new “community of knowledge.”<sup>19</sup> This new community requires learning a new body of knowledge, learning new ways of thinking, and learning to understand how that new community communicates within itself.<sup>20</sup> One of the distinctions between experts and novices is that experts are able to find patterns within a body of knowledge in order to solve problems, while novices do not yet have enough knowledge to recognize those patterns.<sup>21</sup> Because they are negotiating that difficult transition from novice to expert, novice legal writers can be expected to exhibit some of the following characteristics: (1) focusing on the concrete features of a problem rather than refining or rephrasing in any way; (2) writing “self-evident banalities,” things

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14. Felsenburg & Graham, *supra* note 8, at 13.

15. *Id.*

16. *Id.* at 28.

17. *Id.* at 35.

18. *Id.* at 46.

19. Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 J. LEGAL WRITING INST. 1, 13 (1991).

20. *Id.* at 14.

21. Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313, 318 (1995).

that those already within the discourse community do not need to be told; (3) “bad” writing that focuses on the concrete and “tend[s] toward episodes of incoherence”; and (4) overuse of professional language.<sup>22</sup> Because they are novices, students do not understand why these behaviors do not elicit the positive responses they have received in the past and that they expect from their legal writing professors, leading to frustration.

An additional characteristic of the legal writing process, the recursive nature of writing, can also thwart hope. Most legal writing instruction breaks the writing process into stages,<sup>23</sup> which can be summarized as the research and analysis stage, the writing stage, and the revising and editing stage. The process is recursive, rather than linear,<sup>24</sup> and thus students must continue cycling through previous stages until their document is complete. Because students keep returning to previous stages, instruction informed by hope theory can help them feel successful rather than doomed to experience the same frustrations over and over as they revisit earlier stages of the process.

### B. *Building Hope in the Legal Writing Classroom*

Martin and Rand’s discussion of the “three interrelated components of hope: goals, pathways thinking, and agentic thinking,”<sup>25</sup> provides a useful starting point to examine ways to meet the chal-

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22. Williams, *supra* note 19, at 18. Williams further discusses each of the listed characteristics on subsequent pages. *See id.* at 18-23.

23. *See, e.g.*, LINDA H. EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION* xxvii-xxviii (4th ed. 2006) (enumerating four stages of the legal writing process: (1) structuring: outlining the working draft; (2) drafting: writing the working draft; (3) converting the working draft into required product; (4) revising for the final draft); RICHARD K. NEUMANN, JR., *LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE* 53 (6th ed. 2009) (outlined four stages of the legal writing process: (1) analyzing issues and raw materials; (2) organizing information; (3) producing the first draft; (4) writing through drafts until achieving the final product); HELENE S. SHAPO ET AL., *WRITING AND ANALYSIS IN THE LAW* 164 (rev. 4th ed. 2003) (providing a four-step process: (1) get ready to write; (2) then draft; (3) revise for organization and analysis; (4) revise for fluidity and clarity).

24. *See, e.g.*, EDWARDS, *supra* note 23, at xxviii (“Rather, the process is recursive; it requires you to circle back to earlier stages again and again as you understand more about your legal issue, your client’s facts and goals, and the available legal strategies.”); NEUMANN, *supra* note 23, at 53 (“To some extent, these stages overlap.”); SHAPO ET AL., *supra* note 23, at 164 (“The writing process, however, is recursive, and at any point along the way, you may find you have to go back, either to reassess some of your primary authorities, to take account of new insights, or to add or omit something from an earlier discussion.”).

25. Martin & Rand, *supra* note 1, at 207-08 (citing C.R. SNYDER, *HANDBOOK OF HOPE: THEORY, MEASURES, & APPLICATIONS* 125 (2000)).

lenges faced by beginning legal writers. Other legal educators emphasize similar concepts, using slightly different language, to analyze ways to help students with that difficult transition from novice to expert. The high level of interest in this area of research and its application to the legal writing classroom is amply demonstrated by the well-attended conference devoted to the topic and the related scholarship that informed both the conception of the conference and the ensuing presentations.

Writing about the first component of hope, Martin and Rand define goals as “mental targets that guide human behaviors.”<sup>26</sup> They refine their suggestions for legal educators further, suggesting that educators should help students adjust those targets by: “(1) formulat[ing] learning rather than performance goals, (2) set[ting] more concrete rather than abstract goals, and (3) set[ting] approach rather than avoidance goals.”<sup>27</sup> Likewise, Felsenburg and Graham suggest that students need help with adjusting their goals in several ways.<sup>28</sup> First, rather than expecting the mastery that was possible in their undergraduate studies, students should “seek to achieve competence in finding, understanding, and using the law,”<sup>29</sup> which aligns their goals with learning rather than performance. Additionally, Felsenberg and Graham suggest that students should view their legal writing professor as a “stand-in for the legal reader,”<sup>30</sup> leading students to write for readers’ needs rather than writing in order to be favorably evaluated for grading purposes. Legal writing professors are in a powerful position to help students make those goal adjustments, leading not only to better writing because the students better understand the process, but also to a more positive overall law school experience.

Martin and Rand’s second component of hope, pathways thinking, is “the ability to create strategies to reach a goal.”<sup>31</sup> Felsenburg and Graham reflect a similar concept in their discussion of metacognition, which suggests that students need to assess their prior writing habits and determine when those habits need to be adjusted in order to be successful with their new writing tasks.<sup>32</sup> Ruth Ann McKinney, in her related work on self-efficacy—defined as “the personal belief that you can control an outcome—that you

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26. *Id.* at 208.

27. *Id.* at 218.

28. Felsenburg & Graham, *supra* note 8, at 56-57.

29. *Id.*

30. *Id.* at 57.

31. Martin & Rand, *supra* note 1, at 208.

32. Felsenburg & Graham, *supra* note 8, at 60.



can achieve a desired result,”<sup>33</sup>—writes that increased self-efficacy leads to students who will “try harder, experiment more, be persistent in the face of early failures, and be tolerant of constructive criticism.”<sup>34</sup> Likewise, Felsenburg and Graham ask legal writing professors to “empower” students to take charge of their own learning by being more aware of earlier writing habits and strategies and how those strategies benefit or hinder the legal writing process.<sup>35</sup> Students who persist and are willing to experiment exhibit pathways thinking as they try different approaches to reach their goals. Those students are more likely to succeed at the writing task, given that its recursive nature provides repeated opportunities to refine strategies.

Citing C.R. Snyder’s work on hope, Martin and Rand describe the third component of hope, agentic thinking, as “the motivational component to propel people along their imagined routes to goals.”<sup>36</sup> For example, they note that people with high hope use positive and encouraging language in their internal dialogues, reinforcing the need for legal educators also to use positive and encouraging feedback.<sup>37</sup> Likewise, McKinney argues that legal educators need to “increase the self-efficacy of our students in relation to a specific task necessary for their ultimate success and we will increase the chance that they will not only succeed, but will excel.”<sup>38</sup> Carol L. Wallinger similarly drew on self-determination theory when she investigated the impact of perceived “autonomy support,” which professors can provide by offering students choices about how to meet course goals, by providing rationales for those goals, and by empathizing with student perspectives on those goals.<sup>39</sup> She encourages legal writing faculty to think about providing autonomy support as a means for students to internalize what they are learning about legal writing.<sup>40</sup>

In addition to discussing the three main components of hope, Martin and Rand challenge legal educators to action with their

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33. McKinney, *supra* note 2, at 233.

34. *Id.* at 236.

35. Felsenburg & Graham, *supra* note 8, at 60.

36. Martin & Rand, *supra* note 1, at 208 (quoting SNYDER, *supra* note 25, at 11).

37. *Id.* at 228.

38. McKinney, *supra* note 2, at 236.

39. Carol L. Wallinger, *Moving from First to Final Draft: Offering Autonomy-Supportive Choices to Motivate Students to Internalize the Writing Process*, 54 LOY. L. REV. 820, 833-34 (2009) (quoting Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test and Extension of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883-897 (2007)).

40. *Id.* at 849.

“five principles of engendering hope”: “(A) help law students formulate appropriate goals; (B) increase law students’ autonomy; (C) model the learning process; (D) help law students understand grading as feedback rather than as pure evaluation; and (E) model and encourage agentic thinking.”<sup>41</sup> The focus of these principles is on the role of legal educators and what they can do to increase the three components of hope—goals, pathways thinking, and agentic thinking—in their students.<sup>42</sup> The rest of this paper will describe and analyze an exercise that confirms ways in which these principles can advance the creation of hope in the legal writing course. Although all of the law school curriculum could benefit from attention to hope theory, these principles can be especially useful to those teaching legal writing, given the particular struggles students face in that course.

### III. THE EXERCISE: STUDENTS CRITIQUING NOVICE WRITING

This exercise asks students to step into the legal writing professor’s role by critiquing a sample memorandum that contains obvious structural and analytical weaknesses. The students are asked to complete the exercise after they have written and received critiques on the first draft of their office memo. I begin the exercise by passing out to all students an identical writing sample, as well as the criteria sheet that accompanies the second draft of an office memo. The criteria sheet is the rubric by which I grade the students’ drafts. Because I provide criteria sheets in advance of each draft to tell students exactly what is being critiqued, the students’ first draft experience means they are already familiar with the criteria sheet and how it is used.

The exercise is based on the use of a sample document, a teaching method regularly used in legal writing classrooms.<sup>43</sup> The use of samples implicates many of the five principles of engendering hope, including helping students formulate appropriate goals by seeing the kinds of deep thinking and precise writing required of legal writers, and modeling the learning process by using both strong and weak examples from legal writers at various stages of

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41. Martin & Rand, *supra* note 1, at 205.

42. *Id.* at 218.

43. Some writers distinguish between “samples” and “models,” but I will use the terms interchangeably. See, e.g., Christine N. Coughlin et al., *See One, Do One, Teach One: Dissecting the Use of Medical Education’s Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. L. REV. \_\_\_\_ (forthcoming 2010), available at [http://works.bepress.com/lisa\\_mcelroy/8](http://works.bepress.com/lisa_mcelroy/8).

expertise, from novice to expert. Additionally, samples and models can provide antidotes to some of the common problems identified by Felsenburg and Graham by reducing the impact of students' lack of context and of the inadequate understanding of the deep analytical thinking required of legal writers.<sup>44</sup>

I introduce the exercise by explaining that I believe students see many examples of good writing in their legal writing texts and that the process of critiquing weaker writing can help them see how applying the structures we discuss in class can make writing clearer for readers. I assure the students that the document was not written by one of them.

I ask them to read the memo and then put themselves in my shoes as the person providing the critique. I ask them to identify both strengths and weaknesses in the memo, and to think about how they would talk with the writer about improving the piece. I remind them that they will need to prioritize what they consider to be the most important issues on which to focus, and also that they should emphasize to the writer some positive aspects of the memo. All of these tasks are represented on the criteria sheet, and I ask them to refer to the criteria sheet while they read the document. I encourage them to talk with their neighbors or to work alone, whichever is more comfortable for them.

After about fifteen minutes of working in small groups or individually, we critique the writing as a group. I ask the students first to identify some of the strengths of the document, and then some of the weaknesses. We focus on the goals described on the criteria sheet and how well the student has accomplished those goals. After we have thoroughly discussed what makes the memorandum difficult to read and what changes would improve it, we discuss what suggestions they would make to the writer.

At the end of the exercise, I reveal that the document is *my* first piece of legal writing.

#### IV. BUILDING HOPE BY BUILDING BRIDGES

Student response indicates that the exercise accomplishes several goals related to engendering hope. Broadly, the exercise gives students hope that someone whose writing showed weakness on numerous levels can improve enough to successfully graduate

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44. See, e.g., Judith B. Tracy, "I See and I Remember; I Do and Understand" *Teaching Fundamental Structure in Legal Writing Through the Use of Samples*, 21 *TOURO L. REV.* 297, 300 (2005).

from law school and have a career, even one teaching legal writing. Second, students state that it makes it easier to take criticism from me because I have opened myself to criticism from the students.

The results of this exercise also show that it furthers many of Martin and Rand's five principles of engendering hope, thus supporting the value of their paradigm, as well as the work of other legal writing scholars. Specifically, the outcomes can be tied to four of Martin and Rand's principles: (1) setting appropriate goals, (2) modeling the learning process, (3) understanding grading as feedback, and (4) modeling and encouraging agentic thinking. The first four sections below discuss each of these outcomes in turn. An additional outcome—building trust—is not discussed specifically in Martin and Rand's analysis but is also included in a fifth section below as another important contributor to student learning. Although that outcome is possible only when students review the legal writing professor's own early written work, the first four outcomes are easily achievable no matter whose early written work the students review. Each section below begins with written feedback I have received from students, using their own words to show the value of the exercise.<sup>45</sup>

A. *Adopting the Role of the Reader Helps Students Set Appropriate Goals for Legal Writing*

"What I learned from the exercise is how to efficiently organize a memo so that readers can understand the content easily."

"This helps me see the importance of taking a step back and rereading my work objectively as an unfamiliar reader would."

"I learned perils of assuming knowledge of background info."

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45. During the spring semester of 2010, I asked the students to do a "minute paper" at the end of the exercise, responding to the prompt question: "What did you learn from this exercise?" I gave them small pieces of paper so they would not feel pressured to write lengthy responses and told them the answers should be anonymous and could be in any form they wanted. These responses are on file with the author. Additionally, I have spoken with individual students in the past, and some of the statements in Part IV reflect those informal conversations rather than the more formal quotes gleaned from the minute papers.

According to Martin and Rand, one way to help students set appropriate goals is to move the focus from performance goals to learning goals.<sup>46</sup> The goal of the legal writing class is to write effectively, and “effective writing is writing that is situated within the community expectations of the audience.”<sup>47</sup> Thus one of the values of the exercise is that it puts the students in the role of a professional reader.

Reading a poorly-written legal document and experiencing the effect of weak writing on the reader can help students understand more deeply what makes a piece of legal writing effective.<sup>48</sup> By experiencing the confusion caused by such writing and then assessing that writing against the goals in the criteria sheet, the students learn to internalize the standards for effective writing.<sup>49</sup> As Judith B. Tracy notes in her work on the use of samples, “Students are more receptive to understanding and applying structure in legal writing if they can see for themselves why it is needed.”<sup>50</sup> Internalizing the standards means that the students can later apply them to their own writing.

By making students evaluate writing on an unfamiliar topic, the exercise reinforces the value of the doctrine they are learning in the course.<sup>51</sup> For most students, the course doctrine is most explicitly laid out in the text. Because the students are not evaluated on their understanding of the text’s doctrine in the traditional manner—in the form of an exam—students have a tendency to read the text casually, if at all. Wallinger suggests that professors reinforce textbook explanations about the needs of legally trained readers, “[t]hereby providing a meaningful rationale for each of the skills that need to be learned.”<sup>52</sup> This exercise not only

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46. Martin & Rand, *supra* note 1, at 218.

47. Susan L. DeJarnatt, *Law Talk: Speaking, Writing, and Entering the Discourse of Law*, 40 DUQ. L. REV. 489, 503 (2002).

48. “When students are provided with a sample memorandum on a subject with which they are unfamiliar, they will react to it as the reader. . . . They will know immediately whether the document successfully educated them and, if it did, they will be able to dissect how the author achieved that and apply those techniques as they become the writer.” Tracy, *supra* note 44, at 316.

49. “[B]eing able to assess writing is an important part of being able to write well.” Brian Huot, *Toward a New Discourse of Assessment for the College Writing Classroom*, 65 C. ENGLISH 163, 165 (2002).

50. Tracy, *supra* note 44, at 317-18.

51. However, different levels of familiarity with the material will evoke different responses. My exercise focuses on showing students how a reader reacts to unfamiliar information. Students reading a sample on a familiar topic will see more structural information. See Coughlin et al., *supra* note 43, at 29-30.

52. Wallinger, *supra* note 39, at 839.

explains to them the rationale, but also shows them the validity of the doctrine for their immediate task, and into the future.

Additionally, reading novice writing can reinforce the benefits of using the analytical heuristic<sup>53</sup> that the text is asking the students to use.<sup>54</sup> While it may be difficult for students to recognize when their own writing adequately reflects the use of the heuristic, it is quite clear to them when they encounter writing that does not use the “formula” provided by the text.

In sum, when students read the memo, they read it as professional legal readers (fledgling though they may be) encountering new material, and they immediately grasp the value of the analytical and organizational structures that they are being told they need in their own writing. This understanding refocuses their goal on their need to learn how to communicate successfully in writing, rather than on their need to perform well on exams.

#### *B. Critiquing the Novice Writing of a Successful Legal Professional Models Learning as a Process*

“It was helpful to see how you can obviously improve and not to worry about one bad draft.”

“It allowed me to see if I truly was grasping the principles of the paper, which cast some light on which parts of the memo process I am comfortable with.”

“I learned that great improvement is possible in legal writing skills.”

One of the barriers for many new legal writers is their mistaken belief that writing is a linear process.<sup>55</sup> As encouraged by Martin and Rand, modeling the learning process so that students under-

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53. Mary Beth Beazley provides a discussion of heuristics—described as “generally effective” techniques for accomplishing certain common tasks.” Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the “Casebook” Classroom (Without Grading Papers)*, 10 J. LEGAL WRITING INST. 23, 46 (2004). Many legal writing textbooks provide a formula for structuring analysis, *see infra* note 54, but the concept of heuristic better captures the myriad strategies that are communicated and practiced during a legal writing course.

54. *See, e.g.*, EDWARDS, *supra* note 23, at 84 (explaining the CREAC method); NEUMAN, *supra* note 23, at 94 (stating the CRuPAC method); SHAPO ET AL., *supra* note 23, at 113 (outlining the following method: explanation of the applicable rule; examination of how the rule is applied; application of the law to facts and comparison with precedents; presentation and evaluation of counter arguments; conclusion.).

55. Sheila Rodriguez, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, 86 U. DET. MERCY L. REV. 207, 213 (2009).

stand that a deficient draft is not the end of the process and that persons starting with a low level of skill can continue to improve provides an antidote to some of the negative emotional impact of law school, and of the legal writing course in particular.

In the times I have done this exercise with my legal writing students, no student has ever expressed the opinion that the writer lacked talent.<sup>56</sup> While some have questioned whether the writer ever could have graduated from law school, most students quickly understand that this is the writing of a novice writer and earnestly approach the task of helping the writer to improve. The exercise thus provides an opportunity to point out that the students in the class should give themselves that same power to make mistakes, learn from them, and move to the next draft.

According to Martin and Rand, students need to learn “not to attribute a blockage to his or her lack of talent.’ Instead, a blockage should be considered merely information that a particular strategy does not work.”<sup>57</sup> All of us in the legal writing classroom understood that this was the early writing of a novice and that the writer would get better, and thus the exercise gives the faculty the opening to remind the students to give themselves that same space and confidence that they, too, will improve.

The exercise also provides an opportunity to talk with students about the work of revision. Having the students focus on the strengths and weaknesses in the paper, followed by a conversation of what the writer’s next steps should be, can show them that good writing requires multiple drafts, and going back to revise an earlier draft is just a part of the process, not a sign of weakness or inability. The students are already aware that many writers start with weak first drafts because I have read excerpts from Anne Lamott’s *Bird by Bird: Some Instructions on Writing and Life*, including from her chapter entitled “Shitty First Drafts.”<sup>58</sup>

Additionally, modeling writing as a process helps the students with pathways thinking.<sup>59</sup> Anzidei describes pathways thinking

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56. A view that has “crippled” legal writing programs is that writing is a talent, not a skill that can be taught. See J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 43 (1994); Beazley, *supra* note 53, at 28.

57. Martin & Rand, *supra* note 1, at 225 (quoting C. R. Snyder et al., *Hope Theory, Measurements, and Applications to School Psychology*, 18 SCH. PSYCHOL. Q. 122, 130 (2003)).

58. ANNE LAMOTT, *BIRD BY BIRD: SOME INSTRUCTIONS ON WRITING AND LIFE* 21 (1995).

59. “If writers’ ideas are always open to criticism, then they are also open to invention. . . . [T]he revision process frequently generates new ideas or better ways to present existing ideas because they revise with an eye toward organizing information for their readers.”

in his article on revising when he writes that “[t]he pleasure of revision often arises when you refine what you intend to say and even discover that you have more to say, a new solution, a different path, a better presentation.”<sup>60</sup> When novice legal writers understand the recursive nature of writing, they can see revision not as punishment because they got it wrong the first time, but rather as an integral part of the process of learning as they write.

Modeling learning as a process, rather than a talent that leads to fully formed ideas presented in clearly organized written form, gives the students hope that they too will improve as writers.

*C. Adopting the Role of the Person Critiquing Helps Students Better Understand the Assessment Process*

“Helped me to grade the paper so I can effectively evaluate my own paper in revising.”

“I learned how to think like a professor in editing my own memo.”

“The importance of objectively re-evaluating memo as a whole and *then* the individual problems. Also, at this stage, the value of prioritizing changes to make.”

“Also, grading is nasty.”

Discussions with students about the memo critiqued in the exercise have never focused on grades, nor have any students even brought grades into the conversation. When the students take on the role of the person critiquing, they focus instead on how to help the student improve the document. This exercise provides an opportunity to either introduce or to reinforce the concept of formative assessment as contrasted with summative assessment.<sup>61</sup>

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Christopher M. Anzidei, *The Revision Process in Legal Writing: Seeing Better to Write Better*, 8 J. LEGAL WRITING INST. 23, 47 (2002).

60. *Id.* at 44.

61. Professor Soonpaa states:

One way to distinguish comments is to divide them into two categories, formative and summative evaluation, which serve two different functions. Formative evaluation tries to assist in improvement of writing. It identifies problems and possibilities; its focus is ongoing and developing. Such comments help to create motivation for revision and fit in nicely with a process-oriented method of teaching. Summative evaluation measures ranking, grading, measuring up to expectations. It looks at text as a final product and assesses the writer's skills at a specific point in time.

Nancy Soonpaa, *Using Composition Theory and Scholarship to Teach Legal Writing More Effectively*, 3 J. LEGAL WRITING INST. 81, 96-97 (1997) (citations omitted).



Most feedback during law school is summative—either in the form of oral feedback during class or through a test at the end of the semester.<sup>62</sup> Because that is the form of feedback with which they are familiar, legal writing students may wrongly focus on grades and rankings rather than the learning process itself. Pointing out that the legal writing course will provide formative feedback, feedback that can impact the learning process while it is occurring, comports with Martin and Rand's encouragement to help students focus on learning rather than performance goals.

As they take on the role of the person providing the critique, the students see that they must prioritize and rank the concerns they want to share with the writer. Students identify numerous analytical and editorial suggestions to make, but recognize that they should not make all suggestions at once. This experience reduces student expectations that the professor will mark every deficiency on each draft of their papers.<sup>63</sup> The corollary is that the students learn that they too need to prioritize as they write, and not to spend all of their energy on fine-tuning the language until they are confident about their substance and their analysis.<sup>64</sup>

Students also learn about assessment by using the criteria sheet to organize their critique of the document. After applying the criteria to someone else's writing and seeing how the rubric helps guide thinking about the strengths and weaknesses of the memo, students learn to use the criteria sheet to assess their own writing.<sup>65</sup> Although novice writers are exposed to numerous examples of good writing, they do not understand what makes that writing good because they have not internalized the attributes of good writing.<sup>66</sup> This exercise gives them experience in assessing defi-

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62. Beazley, *supra* note 53, at 35.

63. "[N]ew legal writers and, indeed, their writing instructors, must realize that they cannot and should not expect to 'see' everything on the first draft." Anzidei, *supra* note 59, at 43. See also Rodriguez, *supra* note 55, at 210.

64. "The eighty law students who responded to my survey overwhelmingly focused their revising processes on micro-revisions . . ." Anzidei, *supra* note 59, at 38.

65. "Instructive evaluation involves students in the process of evaluation, making them aware of what it is they are trying to create and how well their current drafts match the linguistic and rhetorical targets they have set for themselves, targets that have come from their understanding of the context, audience, purpose and other rhetorical features of a specific piece of writing." Huot, *supra* note 49, at 179. The exercise provides some experience in using the rubric so that the students understand how it helps them meet those "targets."

66. Huot charges writing instructors to provide students with the "authority inherent in assessment." *Id.* at 169.

cient writing and helps them recognize how the standards from the criteria sheet can help them to assess their own writing.<sup>67</sup>

Additionally, after students experience the role of a reader they better understand the intent behind the comments I provide on their drafts. If they view the comments as reader response rather than as teacher evaluation, the students can better accept the comments as guidance toward a better paper rather than as backward-looking assessment of deficiencies.<sup>68</sup>

By having the students grapple with weak writing, the exercise helps them develop the confidence to assess the strengths and weaknesses of their own legal documents.<sup>69</sup> When students learn what makes a piece of writing work, they can apply that knowledge to their own writing. This process of internalizing the standards of good writing can shift students' understanding of the value of the criteria sheet. Rather than viewing it as a standard against which they are being judged, they can view it as a guide for their own work. Thus the students have moved from an avoidance goal to an approach goal, and the exercise meets another of Martin and Rand's suggestions for engendering hope.<sup>70</sup>

*D. Critiquing the Novice Writing of a Successful Legal Professional can "Model and Encourage Agentic Thinking"*

"I am SURE I communicate things less clearly in a paper than I actually understand them at times."

"I learned that it would/will be beneficial to critique my paper in this way (more formally) to find my own weaknesses. I will use the grading sheet and self-grading materials to improve my memo."

One response to the exercise is that the students feel hopeful when they learn that someone who began with such a deficient piece of writing can go on to graduate from law school, get a job, and even return to teach legal writing! Students do this exercise

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67. "One of our common goals as legal writing professionals should be to foster in them this ability to critically review their own writing." Grearson, *supra* note 13, at 150.

68. "[S]tudents tend not to see the marginalia as reader responses; rather, they see them as evaluator critiques." Davis, *supra* note 9, at 97. Seeing themselves in the role of readers helps students trust that I, too, am a reader, not solely an evaluator.

69. As Huot states, "Without the ability to know whether a piece of writing works or not, we would be unable to revise our writing or to respond to the feedback of others." Huot, *supra* note 49, at 165.

70. See Martin & Rand, *supra* note 1, at 222-23.

after their first serious attempt at legal writing, and are sometimes in a "crisis of confidence" about their abilities.<sup>71</sup>

Part of the reason for that crisis is that many students admitted to law school have always been highly successful academically, and find the entire law school experience to be more of an academic challenge than they expected.<sup>72</sup> Even those students who come with an academic background that did not require extensive writing assume that they will be successful legal writers.<sup>73</sup> Thus, they are unprepared for the feelings of confusion and distress that accompany the hard work of joining a new discourse community.<sup>74</sup>

The keynote address for this conference spoke of "agentic" thinking as critical for students' feelings of hope. This critiquing exercise proves to students that there are ways to get from where they are to where they hoped they would be. After making this realization, they can work on finding systems that work for them.<sup>75</sup>

Additionally, research indicates that people form beliefs about their own abilities to succeed by observing the experiences of models.<sup>76</sup> I try to be transparent about my experiences both as a law student and as a legal professional, because for some students I am the primary model of a legal professional that they will encounter during their first year of law school. Students will identify with my experience, and that experience of success can provide hope for their own success.<sup>77</sup> Additional stories of hope pro-

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71. Felsenburg & Graham, *supra* note 8, at 61.

72. *Id.* at 16 n.36.

73. Felsenburg and Graham note that:

many students we surveyed—even those with much earlier and unrelated writing experience and with limited or no legal writing—came into their legal writing classes [and law school] expecting that they would be extremely successful early on. Eight weeks later, these same students were in the midst of a crisis of confidence. It follows that legal writing professors should be more deliberate about helping our students manage their expectations to avoid the frustration and resentment that often stem from the belief that they will easily and quickly master legal writing.

Felsenburg & Graham, *supra* note 8, at 61.

74. Rodriguez, *supra* note 55, at 212-13.

75. Because the Moritz College of Law teaches legal writing and analysis all in the second semester, I have the added emotional burden of the students receiving their first law school grades early in our semester together. This exercise occurs several weeks after the grades are released, so it provides another time to talk about learning from early attempts and finding new ways to approach their academic tasks if the initial approaches are not working as had they hoped.

76. "[P]eople make assumptions about their abilities to succeed or fail by watching others succeed or fail. Research shows that the more closely the observer identifies with the model, the more the model's experience will influence the observer's beliefs about his or her own abilities." McKinney, *supra* note 2, at 238.

77. McKinney writes:

vided by upper-class students and other faculty members can also be helpful.<sup>78</sup>

*E. Critiquing the Legal Writing Faculty's Novice Writing Builds a Relationship of Trust*

"I find myself thinking quite a bit even moments afterward of the implications this exercise has had on my perspective. Thank you for sharing."

One final lesson that comes from the exercise is available only if the legal writing faculty can use his or her *own* early writing. Students have told me that the fact that I open my own writing to criticism makes it easier to take the critiques that I give. Davis's work on ethos, known as "source credibility" among social scientists, indicates that ethos is an important part of the teacher's impact on the learning environment.<sup>79</sup> In describing ethos, Davis explains that it has three elements: intelligence, competence, and goodwill.<sup>80</sup> Davis described goodwill as "empathy, understanding, and responsiveness," and states that goodwill is critical to success in the classroom.<sup>81</sup> The exercise increases students' sense of my goodwill. Additionally, Davis goes on to state:

One role to bring to the commenting process is the "student self" role. By engaging the role of the student self, the writing professor makes it her priority to recall the experience of not being in full control of her own writing and possessing incomplete knowledge about the writing process.<sup>82</sup>

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[S]elf-efficacy theory teaches us that we should take every opportunity to help students learn that others have succeeded before them. . . . Perhaps even more effective [than bringing in students or using outstanding student work] is the use of less-than-stellar student work that has led to improvement and, ultimately, to excellence. The more we use examples of successful student work (especially showing progression of work from a novice to an expert stage), the more the fledgling students will come to believe that they, too, can make progress.

*Id.* at 249.

78. Martin and Rand encourage legal educators to share stories of hope. See Martin & Rand, *supra* note 1, at 229.

79. "Generally, ethos, or 'source credibility' as it is known in social scientific circles, is considered to be 'a very important element in the communication process' and is 'especially important in securing assent.'" Davis, *supra* note 9, at 79.

80. *Id.*

81. *Id.* at 82.

82. *Id.* at 85.

The exercise makes clear to students that I remember this role and its attendant struggles.<sup>83</sup>

This trust means that students are open to my feedback. According to McKinney, "Research on self-efficacy indicates that feedback has its greatest impact on self-efficacy when it comes from someone who is perceived to be an expert and is trusted and respected."<sup>84</sup> Learning requires taking risks, and, according to Martin and Rand, "students will not [take risks] unless they feel assured that the teacher will respect them and refrain from demeaning them—even if their performance falls short of expectations."<sup>85</sup> By sharing with students an example in which my performance fell short and allowing them to be the experts who apply their developing understanding to my own deficient work, the exercise helps develop an environment in which there is mutual respect and trust, which will hopefully lead to greater learning.

While Martin and Rand do not focus on the role of trust, the five principles for engendering hope would require students to trust their legal educators. Students have told me that by allowing my early work to be critiqued by them, they are more comfortable with feedback from me on their writing.

## V. CONCLUSION

Martin and Rand have identified five principles for engendering hope, challenging legal educators to take seriously their students' need for hope in order to succeed at the difficult task of moving from novice to expert. An exercise in critiquing novice writing provides one tool for legal writing faculty who wish to work on increasing hope in their students. The exercise embodies some of the five principles, and additionally builds a bridge of trust between the students and the teacher, especially when the teacher can use a sample of his or her own novice writing. That bridge can result in greater openness to feedback, and thus greater learning opportunities for the students.

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83. See Grearson, *supra* note 13, at 168 ("As writers ourselves, we can alert our students to the heavy work of revising and, perhaps even more important, we can empathize with them when they are in the throes of deep miseries. We can talk honestly with them about how we have coped with similar frustrations and lived to see future drafts.")

84. McKinney, *supra* note 2, at 250.

85. Martin & Rand, *supra* note 1, at 227 (quoting Snyder et al., *supra* note 57, at 131). According to Martin and Rand, "Indeed, students build hope through learning to trust their teachers." *Id.*