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Bad Therapy: Conceptualizing The Teaching of “Thinking Like a Lawyer” as Cognitive Behavioral Therapy

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ARTICLE

BAD THERAPY: CONCEPTUALIZING THE TEACHING OF “THINKING LIKE A LAWYER” AS COGNITIVE BEHAVIORAL THERAPY

CHELSEA M. BALDWIN*

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ABSTRACT

Law students and lawyers experience mental illness and substance abuse at higher rates than the general population and other learned professions. This is bad for an individual's wellbeing as well as their clients and society because mental illness and substance abuse increases stress which in turn decreases effective decision-making and judgment, and in worst case scenarios leads to attrition as individuals choose death by suicide which has cascading social and economic impacts. This Article identifies practices in legal education that likely combine in a causal mechanism, although not a sole cause, to the higher rates of mental illness and substance abuse experienced by students and lawyers and proposes a series of alternatives and mitigations to lessen impact. This work builds upon that done by Lawrence Krieger and Kennon Sheldon, as well as Jeremy Organ, David Jaffe, and Janet Stearns et al. on the subject of law student well-being. This is a multi-factor and multi-causal problem, and where prior work focused on students' self-determination and subjective well-being, this Article looks at the educational practices that results in administering cognitive behavioral therapy en masse to law students without the protective mechanisms that surround intended therapy with a professional.

After providing a brief primer on the regulatory system that applies to counselors and therapists, the A-B-C model underlying human psyche and the various orientations that help individual's change their psyche, this Article examines how legal education administers a course of cognitive behavioral therapy to law students without the

surrounding protections that exist when a trained therapist administers CBT. The Article concludes with a number of ways to introduce protective mechanisms to legal education, reduce the harmful applications of cognitive behavioral techniques in the course of education, and suggestions for future research.

I. INTRODUCTION

What about law school or law practice causes, stimulates, or exacerbates mental illness or substance abuse in otherwise healthy adults? There is fairly extensive literature indicating that the legal profession has a problem, and another body of literature exists indicating that the problem, whatever it may be, begins in law school.¹ Broadly speaking, this particular problem is excessive rates of mental illness and substance abuse amongst law students and lawyers that exceed the rates of occurrence for those problems in the general population.² The existing literature offers

1. See Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. L. 261, 263 (2004) (discussing issues in the legal profession related to substance abuse and emotional distress); see also Michael S. Webb, *Dissenting from Death: Preventing Lawyer Suicide*, A.B.A. (Nov. 24, 2021), https://www.americanbar.org/groups/senior_lawyers/publications/voice_of_experience/2021/voice-of-experience-november-2021/dissenting-from-death-preventing-lawyer-suicide/ [<https://perma.cc/UT8C-83Y4>] (providing statistical data on new lawyer and law student depression rates); Debra C. Weiss, *About One-Fifth of Lawyers and Staffers Considered Suicide at Some Point in Their Careers, New Survey Says*, A.B.A. J. (May 10, 2022), <https://www.abajournal.com/news/article/19-of-surveyed-lawyers-and-staffers-said-they-considered-suicide-at-some-point-in-careers> [<https://perma.cc/RX68-FYME>] (reporting high anxiety and depression rates among Big Law attorneys); Daniel T. Lukasik, *The Suicide of a Law Student Hits Home*, LAWS WITH DEPRESSION (July 4, 2019), <https://www.lawyerswithdepression.com/articles/the-suicide-of-a-law-student-hits-home/> [<https://perma.cc/9J96-MCUD>] (expanding on the depression-suicide connection and high depression rates in law schools); Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 119 (2016) (quoting a study in which BYU students reported on the negative mental health impact experienced by first-year law students); Janet Thompson Jackson & Susan R. Jones, *Law & Entrepreneurship in Global Clinical Education*, 25 INT'L J. CLINICAL LEGAL EDUC. 85, 133 (2018) (listing mental health, alcohol use, and recreational drug usage among the areas where lawyers and law students should self-assess).

2. See Organ et al., *supra* note 1, at 118–19, 121 (noting the empirical data suggests law students experience more mental health issues than the general population and other graduate students); see also Webb, *supra* note 1 (comparing rates at which graduate and medical students experience stress with the higher rate at which law students reportedly experience stress); Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among Attorneys*, 10 J. ADDICTION MED. 46, 46 (2016) (identifying the prevalence of substance use and other mental health concerns among licensed attorneys). See generally Press Release, State Bar of Texas, Texas Lawyers' Assistance Program Debuts New Film Targeting Depression and Suicide Among Lawyers (May 4, 2021) (on file with author) (describing the purpose of TLAP's new video and education program is "to educate the legal community about the signs that someone may be suffering from depression and vulnerable to suicide"); Ginger O'Donnell, *Dave Nee Foundation Supports Lawyers, Law Students Who Suffer from Depression*, INSIGHT INTO DIVERSITY (June 24, 2019),

sufficient evidence of correlation to suggest that the relationship is actually one of causation.³

Establishing causation is a complicated question because there is no single cause of mental illness or substance abuse.⁴ However, for purposes of this Article, we are going to focus on factors relating to situationally-nurtured incidents of mental illness and substance abuse.⁵ Other contributing factors that are beyond the scope of this Article include the fact that our understanding of mental illness and substance abuse is a comparatively nascent field of empirical medicine, although significant advances in understanding are made on a near monthly basis.⁶ Other factors arise from the fact that humans are complicated packages of hormones, biomass, and electricity, so the internal, biologically-based mechanisms of mental illness and substance abuse are also still in discovery phases.⁷ Some of the complications arise from the fact that

<https://www.insightintodiversity.com/dave-nee-foundation-supports-lawyers-law-students-who-suffer-from-depression/> [<https://perma.cc/JD3B-Q4SG>] (providing estimated depression rates among legal professionals).

3. See Sheldon & Krieger, *Does Legal Education Have Undermining Effects*, *supra* note 1, at 273–74 (noting the correlation between levels of subjective well-being in first-year law students with changes in motivations and values which may occur in the first year of law school).

4. “[T]he etiology of mental illness or disorder is not yet understood or known, despite the widespread belief in a biological, genetic, or neurobiological model.” Teresa L. Scheid & Eric R. Wright, *Introduction to Part I*, in *A HANDBOOK FOR THE STUDY OF MENTAL HEALTH: SOCIAL CONTEXTS, THEORIES, AND SYSTEMS* 1, 4 (Teresa L. Scheid & Eric R. Wright eds., 3d ed. 2017). “Mental health and mental disorder represent two different areas of theory research, and policy implications, reflecting our common tendency to dichotomize healthy and sick, normal and abnormal, sane and insane.” *Id.* at 1. See generally NAT’L INST. ON DRUG ABUSE, COMMON COMORBIDITIES WITH SUBSTANCE USE DISORDERS RESEARCH REPORT 6 (2020) (“Both substance use disorders and other mental illnesses are caused by overlapping factors such as genetic and epigenetic vulnerabilities, issues with similar areas of the brain, and environmental influences such as early exposure to stress or trauma.”).

5. Moreover, “[E]vidence demonstrates that the social environment influences both the course and the outcome of psychosis.” Scheid & Wright, *supra* note 4, at 1.

6. That is not to say that the concept of mental illness is new or lacking empirical support for the many instances and varieties that exist, but rather, we were slow to begin documenting what mental wellness is. So, for a definition of illness that is at its base a “deviation from normal,” we have less information about what normal is. See Organ et al., *supra* note 1, at 121 (highlighting the gaps in empirical studies on how law students are affected by mental health and substance use issues); see also Scheid & Wright, *supra* note 4, at 1 (“Mental health is not merely the absence of disease or disorder; it involves self-esteem, mastery, and the ability to maintain meaningful relationships with others.”).

7. See Gai-zhi Li et al., *A Resting State fMRI Study of Major Depressive Disorder with and Without Anxiety*, 315 *PSYCHIATRY RSCH.* 1, 7 (2022) (stating the factors contributing to or correlating with

some forms of mental illness and definitions of substance abuse are based on cultural definitions of disordered behavior and non-conforming thought processes as opposed to universally understood diagnostic criteria.⁸

This Article seeks to establish a qualitative framework that demonstrates law school is an incubator of mental illness and substance abuse. The program of education has agents applying therapeutic interventions, particularly those from cognitive behavioral therapy, en masse without adequate training or understanding of human development or sound educational practices to protect the recipients of those interventions.⁹ Arguably, most law students get through the experience without permanent harm. However, the students that *are* harmed require legal educators to learn different ways to teach these students how to “think like a lawyer” without incubating the cognitive processes that are the hallmarks

anxious depression are understudied); *see also* Desmond J. Oathes et al., *Neurological Signatures of Anxiety and Depression in Resting-State Functional Magnetic Resonance Imaging*, 77 *BIOLOGICAL PSYCHIATRY* 385, 391 (2015) (raising issues which make understanding the neurobiology of disorders more complicated).

8. *See* Glorisa Canino & Margarita Alegría, *Psychiatric Diagnosis—Is It Universal or Relative to Culture?*, 49 *J. CHILD PSYCH. & PSYCHIATRY* 237, 237 (2008) (expanding on how cultural or contextual factors affect the core definitions of psychiatric disorders and syndromes); *see also* Debbie L. Stowen, *Nature, Nurture, and Mental Health Part 1: The Influence of Genetics, Psychology, and Biology*, 63 *CANADIAN VETERINARY J.* 427, 427–29 (2022) (giving an overview of some of the research about the impact of factors such as neurodiversity, sensitivity, high IQ and giftedness, perfectionism, self-esteem, personality, optimism, and membership in minority groups on mental health).

9. There are many factors that contribute to people attending law school and emerging with poor mental health and subjective well-being outcomes, but one of the overlooked or understated reasons is that, quite simply, law school is therapeutic in nature and people emerge having become ill through misapplication of cognitive restructuring techniques. There is at least one person at every single law school in this country who will say that law school teaches students to “think like a lawyer.” As a matter of definition, cognitive restructuring is taking an individual who is prone to thinking about the world and events in one way and teaching students to think about the world and events in another way. *See APA Dictionary of Psychology: Cognitive Restructuring*, *AM. PSYCH. ASS’N*, <https://dictionary.apa.org/cognitive-restructuring> [<https://perma.cc/HP78-GRBP>] (defining cognitive restructuring as a method of altering self-defeating beliefs “so that they are adaptive and reasonable”). By taking a group of individuals and teaching them how to “think like a lawyer,” legal education and professors are bringing people who think about the world in a variety of ways into a profession where they will think about the world differently than they did before law school. By doing so, these individuals will be able to think about the world in a way that generally allows them to act within the “acceptable bounds” of the profession.

of certain types of mental illness. Lawyering is the only profession that does not recognize “do no harm to others” as part of its core oath.¹⁰

Part II of this Article provides guidelines for what therapy is and the regulatory mechanisms that protect consumers while establishing minimum standards for therapy professionals. Part III maps the hallmarks of therapy onto the traditional modes of legal education in schools that follow the Langdellian model to demonstrate how legal education ends up putting students through a course of cognitive behavioral therapy (CBT) without the consumer protections or professional standards in place. Part IV discusses the evidence of harms to law students—current and former—that may be particularly attributable to poorly administered CBT. Part V offers a number of potential measures that could reduce the risk of harm or provide interventions to shortcut antitherapeutic processes and disrupt the incubation of mental illness in some of our students and future members of the profession.

II. CHANGING THOUGHT PATTERNS AND BEHAVIORS, AKA “THERAPY”

To change someone’s patterns of thought through repetition, reinforcement, and practice involves subjecting them to cognitive restructuring.¹¹ Many of the current empirically validated therapy

10. See U.S. COURTS, AO 153, ATTORNEY OATH ON ADMISSION (1996) (stating an attorney shall conduct themselves “uprightly and according to law”); Margaret Robb, *Oaths of Admission for All 50 States*, <https://cdn.ymaws.com/www.inbar.org/resource/resmgr/litigation/Oaths.pdf> [<https://perma.cc/ZCG5-6UQY>] (identifying the word “harm” is not incorporated in any state oath of admission). Additionally, the Hippocratic Oath may say “do no harm,” see *Hippocrates: Translation of the Hippocratic Oath*, NAT'L LIBR. MED., <https://www.nlm.nih.gov/hmd/topics/greek-medicine/index.html#case1> [<https://perma.cc/5DRK-R5K7>], but it is generally understood to mean “do the least harm needed to provide aid.”

11. This includes a course of education that engrains a repetitive pattern of thinking and problem-solving that follows discourse conventions. Generic class discussion questions include: Given this set of facts, what are the legal issues to address? What legal standards exist to help us sort out this dispute? Are we bound by an existing and codified standard, or is this a question of first impression for the decision-making body? If there is an applicable legal standard, can it be guided into something different that better serves (a) this particular client, (b) the common scheme of the rule of law, or (c) society as a whole? If the standard is not available to retooling, then what are the ethically permissible ways we can argue the standard that favors our client’s desired outcome? What relief can the adjudicatory body provide to the disputants under its granted authority and the applicable legal standards? See also GERALD COREY, THEORY AND PRACTICE OF COUNSELING AND PSYCHOTHERAPY 294 (Seth Dobrin et al. eds., 9th ed. 2009) (defining cognitive restructuring).

modalities, such as cognitive behavioral therapy,¹² rely heavily upon cognitive restructuring to help patients and clients improve mental health and day-to-day functioning.¹³ If it is possible to reprogram someone's thinking to relieve the symptoms and experience of mental illness, then it necessarily follows that cognitive restructuring or other interventions done poorly can cause or exacerbate mental illness in extreme cases, and produce emotional distress in sub-clinical cases for some number of individuals.

In this section, we will spend some time exploring what therapy is and how law school employs techniques known to produce therapeutic outcomes in its curriculum.

A. "I Know It When I See It"¹⁴

Popular culture has done a fair job of ingraining into the public's eye images of a person lying on a couch talking to an out-of-sight person about their childhood.¹⁵ Alternatively, therapy is something provided to people suffering from severe mental illness in institutional settings.¹⁶ While these two scenarios are both examples of what therapy might look like for some people, they are not the exclusive modalities and settings, or

12. See Tom J. Johnsen & Oddgeir Friberg, *The Effects of Cognitive Behavioral Therapy as an Anti-Depressive Treatment is Falling: A Meta-Analysis*, 141 PSYCH. BULL. 747, 747-48 (2015) (reviewing the current literature on cognitive behavioral therapy); see also Addie Weaver & Joseph A. Himle, *Cognitive-Behavioral Therapy for Depression and Anxiety Disorder in Rural Settings: A Review of the Literature*, 41 J. RURAL MENTAL HEALTH 189, 190 (2017) (stating cognitive behavioral therapy is the gold standard for evidence-based mental illness treatments).

13. Weaver & Himle, *supra* note 12, at 191 (highlighting cognitive restructuring as one of the most common cognitive behavioral therapy intervention methods).

14. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). Like obscenity and pornography, therapy evokes a certain sense of "well, I can't define it, but this is it." And similar to how Justice Stewart's quote on obscenity is subject to individual arbitrariness, so too is relying on lay people's understandings of therapy to determine whether something is therapy or not.

15. See *Seinfeld: The Pick* (NBC television broadcast Dec. 16, 1992) (depicting George's therapy visit with Dana Foley to discuss a problem he is having with his ex-girlfriend); *The West Wing: Night Five* (NBC television broadcast Feb. 6, 2002) (showing the interaction between the President and a psychiatrist). *Contra* THE THOMAS CROWN AFFAIR (Metro-Goldwyn-Mayer 1999); *In Treatment* (HBO television broadcast).

16. See GIRL, INTERRUPTED (Columbia Pictures 1999) (characterizing an eighteen-year-old's experience in a mental institution after attempting suicide); ONE FLEW OVER THE CUCKOO'S NEST (United Artists 1975) (portraying the institutionalization of a war veteran who pleads guilty to a crime); THE BELL JAR (AVCO Embassy Pictures 1979) (showing a young woman being sent to a mental hospital for her unusual behavior).

even examples of the dominant modalities and settings, used to provide therapy services to individuals. There are a large number of approaches for a trained professional to try to help an individual in distress that are considered therapy.¹⁷

Psychotherapy, or counseling, is often focused towards helping an individual who is experiencing emotional or mental distress and wants help ameliorating that distress, although sometimes a person is ordered by some authority to seek services, such as court-ordered anger management.¹⁸ A recent perusal of Psychology Today's informational website listed more than sixty-five different types of therapies that are available to individuals seeking therapy.¹⁹ This Article is concerned with the theoretical grouping of therapeutic philosophies and techniques, such as cognitive behavioral therapy, that rely upon cognitive restructuring as a key tool to produce therapeutic change in an individual.²⁰ More specifically, cognitive behavioral therapy is a theoretical framework that begins with the premise that people are physical beings with thoughts and emotions, and that it is the interplay of the three systems—thoughts, feelings, and behaviors—particularly the interplay between cognition and behavior, which allows individuals to choose to improve their own mental health effectively.²¹

Additionally, therapy is not limited to treatment offered in a one-on-one setting. Therapy can be administered in group settings.²² Group therapy and group cognitive behavioral therapy are accepted and validated delivery

17. See COREY, *supra* note 11, at 483–85 (listing the different techniques of therapy available and noting when each would be the appropriate approach); see also GOOD WILL HUNTING (Lawrence Bender Productions 1997) (displaying routine interactions between a janitor and psychologist in an outdoor setting).

18. See *State v. Schmeck*, 990 P.2d 472, 475 (Wash. Ct. App. 1999) (upholding an order requiring “completion of an anger management program”).

19. See generally *Types of Therapy*, PSYCH. TODAY, <https://www.psychologytoday.com/us/types-of-therapy> [<https://perma.cc/H56C-824M>] (listing various types of therapies available).

20. See generally Philip C. Kendall et al., *Cognitive-Behavioral Therapy*, in 2 ENCYC. PSYCH. 135 (Alan E. Kazdin ed., 2000) (summarizing the cognitive factors and behaviors implicated in cognitive behavioral therapy).

21. See *id.* at 135 (noting cognitive behavioral therapy provides patients with skills to identify and solve problems for themselves).

22. COREY, *supra* note 11, at 301–02 (expanding on the application of cognitive behavioral therapy to group counseling).

methods that provide support for living with and overcoming various mental illnesses.²³

B. *But, It's Just Talking About Personal Problems, Right?*

While therapy is sought as a tool to help people solve personal and interpersonal problems, and it is often referred to as “talk therapy” in common discourse, it involves more than just talking; otherwise, our friends and family, spiritual advisors, bartenders, and hairstylists would be sufficient and the state would not need to regulate the field.²⁴ Therapy is a regulated service, so there are legal and ethical requirements as to which people can: (a) be licensed to provide therapy services,²⁵ (b) receive pay from medical insurance companies for providing therapy services,²⁶ (c) be held to minimum standards of care in providing services,²⁷ (d) be held liable for malpractice or wrongful death at the hands of a patient or client,²⁸ and so on.

Outlining this regulatory system of therapy providers will establish a framework to help understand the claim that the modern approach to delivering legal education is a form of therapy that is being undertaken by

23. Judy Iwens Eidelson, *Cognitive Group Therapy for Depression: “Why and What”*, 13 INT’L J. MENTAL HEALTH 54, 55–58 (1985) (identifying how a “group format . . . encourag[es] vicarious learning and provid[es] greater resources for members to draw on in challenging their beliefs”).

24. See generally *States’ TeleMental Health Laws, Rules, and Regulations*, TELEHEALTH CERTIFICATION INST., <https://telementalhealthtraining.com/states-rules-and-regulations#spbb-tab1-2> [<https://perma.cc/YZ84-6VMF>] (providing listings of state boards and additional quick reference information related to a professional’s duty to warn, mandatory reporting, privacy, age of consent, breach notification, and telehealth).

25. See generally *id.* (click “Licensing Boards’ Contact Information”) (summarizing regulatory frameworks by state).

26. See CTRS. FOR MEDICARE & MEDICAID SERVS., MEDICARE BENEFIT POLICY MANUAL CHAPTER 15—COVERED MEDICAL AND OTHER HEALTH SERVICES § 80.2 (2024), <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c15.pdf> [<https://perma.cc/L8GY-J9S7>] (providing payment details concerning psychological and neuropsychological tests); see also CTRS. FOR MEDICARE & MEDICAID SERVS., MEDICARE CLAIMS PROCESSING MANUAL CHAPTER 5—PART B OUTPATIENT REHABILITATION AND CORF/OPT SERVICES § 100.11 (2021), <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c05.pdf> [<https://perma.cc/HTM2-LUYR>] (providing information on billing for social work and psychological services).

27. See COREY, *supra* note 11, at 187 (explaining qualities such as respectfulness and patience make both professional and paraprofessional people effective in group therapy settings).

28. See generally *Mental Health Professionals’ Duty to Warn*, NAT’L CONF. STATE LEGISLATURES (Mar. 16, 2022), <https://www.ncsl.org/health/mental-health-professionals-duty-to-warn> [<https://perma.cc/9VA3-3SRR>] (outlining how states have codified the duty to warn).

insufficiently trained professionals. More specifically, current law school practices generally misapply techniques of cognitive restructuring²⁹ for students, which in turn contributes to poor outcomes regarding rates of mental illness and substance abuse among law students and lawyers.

Licensed and pre-licensure therapists have obligations to their clients including competent information gathering,³⁰ competent clinical decision-making,³¹ obtaining informed consent,³² maintaining documentation as required by law and ethics,³³ making outward referrals for clients who do not fit within current competencies,³⁴ avoiding dual or multiple relationships with clients,³⁵ and maintaining confidentiality.³⁶ The four aspects of these obligations of relevance to this Article's central claim are competent information gathering,³⁷ competent clinical decision-making,³⁸ obtaining informed consent,³⁹ and making outward referrals for clients who are not matched to a clinician's current competencies.⁴⁰ While

29. See DEBORAH DOBSON & KEITH S. DOBSON, EVIDENCE-BASED PRACTICE OF COGNITIVE-BEHAVIORAL THERAPY 128 (2009) ("Once you have identified a cognitive target for intervention, you can use three general questions to try to modify a negative thought: (1) What is the evidence for and against this thought? (2) What are the alternative ways to think in this situation? (3) What are the implications of thinking this way?").

30. ETHICAL PRINCIPLES OF PSYCHS. AND CODE OF CONDUCT § 9.01 (AM. PSYCH. ASS'N 2017); ACA CODE OF ETHICS § E.1.a (AM. COUNSELING ASS'N 2014).

31. ETHICAL PRINCIPLES OF PSYCHS. AND CODE OF CONDUCT §§ 2.01, 9.06; ACA CODE OF ETHICS §§ C.2, E.1.a.

32. ETHICAL PRINCIPLES OF PSYCHS. AND CODE OF CONDUCT § 3.10; ACA CODE OF ETHICS § A.2.

33. ETHICAL PRINCIPLES OF PSYCHS. AND CODE OF CONDUCT §§ 6.01, 6.02; ACA CODE OF ETHICS § B.6.

34. ETHICAL PRINCIPLES OF PSYCHS. AND CODE OF CONDUCT § 2.01(b); ACA CODE OF ETHICS § A.11.a.

35. ETHICAL PRINCIPLES OF PSYCHS. AND CODE OF CONDUCT § 3.05; ACA CODE OF ETHICS § A.5. *Contra* MODEL RULES OF PROF'L CONDUCT R. 1.8(j) (AM. BAR ASS'N 2023) (explicitly acknowledging circumstances under which an attorney can represent someone with whom they also have a sexual relationship).

36. ETHICAL PRINCIPLES OF PSYCHS. AND CODE OF CONDUCT § 4; ACA CODE OF ETHICS §§ A.2.e, B, F.1.c, F.2.c, F.5.c; see generally COREY, *supra* note 11.

37. ETHICAL PRINCIPLES OF PSYCHS. AND CODE OF CONDUCT § 9.01; ACA CODE OF ETHICS § E.1.a.

38. ETHICAL PRINCIPLES OF PSYCHS. AND CODE OF CONDUCT §§ 2.01, 9.06; ACA CODE OF ETHICS §§ C.2, E.1.a.

39. ETHICAL PRINCIPLES OF PSYCHS. AND CODE OF CONDUCT § 3.10; ACA CODE OF ETHICS § A.2.

40. ETHICAL PRINCIPLES OF PSYCHS. AND CODE OF CONDUCT § 2.01(b); ACA CODE OF ETHICS § A.11.a.

maintaining confidentiality is of course a professional obligation of both therapists⁴¹ and lawyers,⁴² albeit with slightly different parameters, the lack of adequate information gathering prior to administering cognitive restructuring to law students means that the confidentiality implications of the claim and upon the proposed solution merits its own article.

1. Competent Information Gathering

Like attorneys in practice who collect sensitive information, a therapist must also educate potential clients about confidentiality, the boundaries of confidentiality, and the circumstances under which confidentiality must be broken.⁴³ As a quick primer, in many jurisdictions, therapy providers are generally obligated to break confidentiality when clients threaten to harm themselves or identifiable others,⁴⁴ disclose abuse or neglect of children or other vulnerable people,⁴⁵ or pursuant to a court order.⁴⁶ Pre-licensure

41. ETHICAL PRINCIPLES OF PSYCHS. AND CODE OF CONDUCT § 4; ACA CODE OF ETHICS §§ A.2.e, B, F.1.c, F.2.c, F.5.c; *see generally* COREY, *supra* note 11 (highlighting the importance of confidentiality in the client-therapist relationship).

42. MODEL RULES OF PROF'L CONDUCT R. 1.6 (AM. BAR ASS'N 2023).

43. DEBORAH R. LEDLEY ET AL., MAKING COGNITIVE-BEHAVIORAL THERAPY WORK: CLINICAL PROCESS FOR NEW PRACTITIONERS 40 (3d ed. 2018) (outlining the information regarding confidentiality which should be discussed with clients).

44. *See Mental Health Professionals' Duty to Warn*, *supra* note 28 (identifying state-mandated rules concerning the duty to warn); *see generally* Glen Weissenberger, *The Psychotherapist Privilege and the Supreme Court's Misplaced Reliance on State Legislatures*, 49 HASTINGS L.J. 999, 1000–02 (1998) (discussing state and federal views of psychotherapist privilege and the need for exceptions); Christopher A. Tumminia & Marshall A. Glenn, *The Duty to Warn in Oklahoma: A Survey of Law Across Licensed or Certified Psychotherapists*, 38 OKLA. CITY U. L. REV. 81 (2013) (this article was chosen out of the dozens available on the subject because Dr. Glenn was one of the author's professors in her counseling degree program).

45. *See* NAT'L INST. CORRECTIONS, FIFTY STATE SURVEY OF MANDATORY REPORTING STATUTES (2014), <https://nicic.gov/resources/nic-library/all-library-items/fifty-state-survey-mandatory-reporting-statutes> [<https://perma.cc/R2DA-6ASH>] (summarizing how each state has codified reporting statutes for sexual abuse); *see also* CHILD WELFARE INFO. GATEWAY, MANDATORY REPORTING OF CHILD ABUSE AND NEGLECT (2023), <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/manda/> [<https://perma.cc/CKD5-5JSX>] (differentiating between what different types of professionals are required to report in different states); *What Is a Mandated Reporter?*, NAT'L ASS'N MANDATED REPS. (2021), <https://namr.org/news/what-is-a-mandated-reporter> [<https://perma.cc/AQR7-CNUD>] (defining different types of abuse and the professionals mandated to report these across all states); Richard Thomas & Monique Reeves, *Mandatory Reporting Laws*, NAT'L LIBR. MED. (July 10, 2023), <https://www.ncbi.nlm.nih.gov/books/NBK560690/> [<https://perma.cc/K2SP-PYQC>] (outlining types of abuse which are required to be reported, the populations vulnerable to these harms, and the professions commonly required to report them).

therapists will additionally discuss client matters with their supervisors to strive for optimal effectiveness, notwithstanding relative lack of experience.⁴⁷

Also, like many attorneys in practice, the professional relationship is built and executed over serial interactions between client and provider. A competent therapist maintains files on clients, documents interactions with clients and with others on the client's behalf, and lays out a strategy for helping a client meet his or her therapeutic goals.⁴⁸ Some schools of therapy, particularly those that are considered cognitive behavioral therapy, involve negotiated homework assignments and exercises that the client is responsible for completing to reinforce progress towards the goals of therapy.⁴⁹ So rather than collecting information about the specifics of the law(s) relevant to a client's file and the facts that can be proven up through the relevant dispute resolution mechanisms to create a theory of the case, a therapist is collecting information about the client, the client's context, and the diagnosable conditions, if any, to validate protocols for treating those conditions.⁵⁰ Even in group therapy settings, a therapist will conduct an intake session or two with an individual client to gather information needed to create a case conceptualization and ensure that the client is funneled into a group with complementary needs and goals.⁵¹

46. See e.g., *In re Lucas H.*, 634 S.W.3d 1, 15 (Tenn. Ct. App. 2021) (finding a juvenile court's order to disclose improper because the "court had no legal basis to invade [a] [m]other's psychologist-patient privilege").

47. See LEDLEY ET AL., *supra* note 43, at 38 ("Tell your clients that you will not speak about them with anyone except your supervisor . . .").

48. See COREY, *supra* note 11, at 252–53 (commenting on the approach which should be taken by therapists in documenting client data to remain ethical and effectively reach the client's goals); see also 45 C.F.R. § 164.501 (2024) (providing the special definition of "psychotherapy notes" as part of the HIPAA privacy rule).

49. See JUDITH S. BECK, *COGNITIVE BEHAVIOR THERAPY: BASICS AND BEYOND* 135–36 (New York: Guilford Press 3d ed. 2021) (ebook) (describing the benefits of incorporating action plans in CBT).

50. Jon Sperry & Len Sperry, *Case Conceptualization: Key to Highly Effective Counseling*, COUNSELING TODAY (Dec. 7, 2020), <https://www.counseling.org/publications/counseling-today-magazine/article-archive/article/legacy/case-conceptualization-key-to-highly-effective-counseling> [<https://perma.cc/X3DS-9GLW>] (explaining a clinical method for "obtaining and organizing information about a client, understanding and explaining the client's situation and maladaptive patterns, guiding and focusing treatment, anticipating challenges and roadblocks, and preparing for successful termination").

51. See Claudia Drossel, *Group Interventions*, in *COGNITIVE BEHAVIOR THERAPY: APPLYING EMPIRICALLY SUPPORTED TECHNIQUES IN YOUR PRACTICE* 238–39 (William O'Donohue & Jane

By contrast, law professors receive a roster of students enrolled in their class with names, contact information, and occasionally a generalized descriptive report that describes a cohort's attributes in terms of LSAT performance, geographic origins, fields of study, and age.⁵² From there, law professors set up courses to achieve the requirements of the course description and their professional judgment of what the core knowledge, skills, and abilities of the subject matter are. Some professors lecture, others use Socratic dialogues, and others use other tools of the trade. However, regardless of the dominant andragogical method selected by any one faculty member, a student's experience of law school will be a repetitive inculcation through modeling and practicing of a series of steps that are the essence of "thinking like a lawyer."⁵³ The business model of legal education thus has a consequence where there is minimal consideration for whether the student's point of origin with respect to the knowledge, skills, and abilities of the subject matter is complementary enough that putting them in the same class with the other students makes sense to help them achieve a professorially dictated destination vis-à-vis skills, knowledge, and abilities.

2. Competent Clinical Decision-Making

Clinical decision-making is predicated upon a clinician's ability to come up with a case conceptualization that fits the client's experiences and behavior.⁵⁴ A case conceptualization looks at the client's past experiences as well as modern understanding of where the boundaries of normal and disordered coping are, as codified in the Diagnostic and Statistical Manual of Mental Disorders (DSM)⁵⁵ to create a theory to help with the selection

E. Fisher eds., 2d ed. 2008) (identifying the importance of conducting a "functional assessment of client repertoires" to determine the efficacy of using group intervention).

52. See MICHAEL HUNTER SCHWARTZ ET AL., WHAT THE BEST LAW TEACHERS DO 18 (2013) (stating law teachers "know their students' names, backgrounds, and personal experiences").

53. See generally Michael Maslanka, *Thinking Like a Lawyer: A Back to the Future Proposal for a Practitioner Based and Taught Pedagogy*, 97 U. DETROIT MERCY L. REV. 12 (2020) (explaining the practice of teaching law students how to think like lawyers); *Educational Goals & Learning Outcomes*, UNIV. OF NOTRE DAME, <https://law.nd.edu/about/educational-goals-and-learning-outcomes/> [<https://perma.cc/WZR8-YR39>] (characterizing "thinking like a lawyer" as a professional skill and core competency).

54. See generally Sperry & Sperry, *supra* note 50 (detailing the process for case conceptualization).

55. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013); see also Scheid & Wright, *supra* note 4; Owen Whooley, *Defining Mental*

of treatments that are likely to deliver relief to the client—helping them move to closer approximations or actual normal functioning.⁵⁶ Clinical decision-making also involves evaluating research to learn what kinds of techniques are contra-indicated if an individual presents with certain constellations of experience, behavior, and diagnoses.⁵⁷

Thus, in order to effectively treat a client, a therapist has to elicit a personal history that identifies the current source of a client's distress, historical antecedents to that distress, third-party verification in some cases, and comorbid diagnoses that may necessitate avoiding certain treatment tools. Then, the clinician has to filter all that information to see if it fits into a mold of empirically-validated treatment protocols.⁵⁸

This process is similar to the consult and retainer process for clients and lawyers. A client is referred to an attorney or calls seeking legal representation, an assistant or attorney does some preliminary screening to ensure there is no conflict of interest,⁵⁹ as well as for matching current or developable expertise.⁶⁰ Then after a bit of conversation or document review as well as reviewing the law, the attorney decides whether to offer

Disorders: Sociological Investigation into the Classification of Mental Disorders, in A HANDBOOK FOR THE STUDY OF MENTAL HEALTH: SOCIAL CONTEXTS, THEORIES, AND SYSTEMS 45 (Teresa L. Scheid & Eric R. Wright eds., 3d ed. 2017); Jason Schnittker, *What Outcomes Should the Study of Mental Health Try to Explain?*, in A HANDBOOK FOR THE STUDY OF MENTAL HEALTH: SOCIAL CONTEXTS, THEORIES, AND SYSTEMS 82 (Teresa L. Scheid & Eric R. Wright eds., 3d ed. 2017).

56. See BECK, *supra* note 49, at 28 (claiming conceptualization enables clients to recognize their strengths, which leads to behavioral improvements and better functioning).

57. "There is no absolute contraindication to CBT; however, it is often reported that clients with comorbid severe personality disorders such as antisocial personality disorders and subnormal intelligence are difficult to manage through CBT. Special training and expertise may be needed for the treatment of these clients." Manaswi Gautam et al., *Cognitive Behavioral Therapy for Depression*, 62 INDIAN J. PSYCHIATRY S223, S224 (2020).

58. At this point, a reader might be thinking, but law students are not people in distress, so the analogy between student and client breaks down before it even begins. And while the author concedes that most law students do not begin law school in psychological distress meriting a clinical diagnosis, the data shows a significant number of students get there within the first year. Moreover, even for the students who get through law school without clinical levels of psychological distress, a significant number of those students are living under a degree of stress that it would only take one or two personal catastrophes to push them over the line.

59. See MODEL RULES OF PROF'L CONDUCT R. 1.7 (AM. BAR ASS'N 2023) (describing the conflict of interest rule concerning current clients); see also *id.* R. 1.8 (listing the specific rules regarding conflict of interest for current clients); *id.* R. 1.9 (stating the duties an attorney possesses toward former clients); *id.* R. 1.10 (detailing the general rule for conflict of interest within a firm setting).

60. See *id.* R. 1.1 cmt. 4 ("A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation.").

to undertake representation or not, and if not, to whom to refer the potential client.

Looking at the way classes and cohorts of law students are formed, and building from the points above about information gathering, the process of legal education generally does not have room for outliers or atypical origin stories among its students—although nearly every school likes to highlight its exceptionality through the stories of exceptional students. Rather, the system and processes of legal education assume a one-size-fits-most, and if that size does not fit, it is an indictment of the student's abilities rather than the system's flaws. And far too often, the successes of these outliers for whom the system was *not* designed, and who succeed nonetheless, are held up as self-congratulatory examples of how the system is not broken.⁶¹

3. Obtaining Informed Consent

Clinicians also are required to obtain informed consent from their clients before beginning any treatment, including an intake session to collect information about the potential client. The nature of the therapeutic relationship also requires an ongoing conversation negotiating the boundaries of that consent.

The basic requirements of informed consent, which is a legal construct imposed upon helping professions, are that a clinician provides a patient with several necessary pieces of information, such as the nature of the treatment process, the risks and benefits of the process,⁶² the reasonable alternatives to the process, and the risks and benefits of the alternatives.⁶³ Then, the clinician has to assess how well the patient understood the information provided, and if necessary, provide it again in ways designed to ensure understanding.⁶⁴

61. *But see* Fisher v. Univ. of Texas at Austin, 570 U.S. 297, 332–33 (2013) (Thomas, J., concurring) (accepting the “Mismatch Theory” as proposed by Richard Sander regarding how minority students admitted via affirmative action are harmed because they are “placed in a position where underperformance is all but inevitable because they are less academically prepared than the white and Asian students with whom they must compete”).

62. Tim Balder et al., *Side Effects in Psychodynamic and Cognitive Behavior Therapy*, in JOURNAL OF CONTEMPORARY PSYCHOTHERAPY (2024).

63. Parth Shah et al., *Informed Consent*, NCBI BOOKSHELF, [HTTPS://WWW.NCBI.NLM.NIH.GOV/BOOKS/NBK430827/](https://www.ncbi.nlm.nih.gov/books/NBK430827/) [<https://perma.cc/P5SL-XNR3>].

64. *See id.* (explaining the exceptions to informed consent).

The law imposes the requirement of informed consent on clinicians because there is a societal good in protecting individual patient autonomy and decision-making. The construct of informed consent also creates recourse for people who are victims of malpractice or clinical negligence.

States also set the legal standard for determining whether there is adequate informed consent, such as the subjective patient standards, reasonable patient standards, or reasonable physician standards.⁶⁵

By contrast, higher education assumes consent through contract. If a student is admitted, accepts the offer of admission, and pays the fees, the student has consented to whatever content and methods may be employed in courses for their degree or other educational program. Readers of this Article are likely among those who hold a view that quality education leads to moments of cognitive dissonance, discomfort, questioning of reality, and opportunities for growth. However, while quality education does require individuals to experience and work through events of cognitive dissonance, discomfort, and reality questioning,⁶⁶ leading students up to such content and experiences wholesale without tailored support and protective mechanisms is not in the long-term interest of our students or enterprise.

4. Outward Referrals for Clients Whose Needs Do Not Match a Clinician's Current Competencies

As is evident from the brief description of clinical decision-making and the process of informed consent in therapy, it follows that not every clinician can treat every client who shows up in the clinician's practice. Upon identifying that a client's needs require treatment modalities and tools that are outside the clinician's current competencies or the zone of proximal development, which is clinician competency they can timely attain, a clinician must refer a client on to another clinician known to have the relevant expertise. Unlike attorneys, except for the pre-licensure professionals operating under the conditions of supervised practice, the option of bringing a competent professional on board through association⁶⁷ is not available due to various privacy, licensure structures,

65. *Id.* (highlighting the “three acceptable legal approaches to adequate informed consent”).

66. Beth A. Brennan, *Explicit Instruction in Legal Education: Boon or Spoon?*, 52 U. MEM. L. REV. 1, 18–19 (2022).

67. *See* MODEL RULES OF PROF'L CONDUCT R. 5.3 cmt. 3 (AM. BAR ASS'N 2023) (“A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client.”).

standards of care, and insurance reimbursement considerations for health practice professionals.

Taken together, the requirements of quality information gathering, competent clinical decision-making, informed consent, and outward referrals for clients whose needs do not match the clinician's competencies create a system where potential harms from therapeutic cognitive restructuring are minimized for any given client. First, by tailoring implementation of therapy to individual needs. Second, by supporting autonomy and individual decision-making. Lastly, by controlling who is sanctioned to perform this kind of work and who is not.

In the education setting, particularly the first-year law curriculum, many schools assign students to a section to balance out the blend of abilities based on gross indicators such as LSAT and UGPA. The section is then assigned to a particular professor for each of the 1L courses. At best, a member of the faculty might recognize that their ability to help a student navigate the material and learning difficulties is limited, and the faculty member may generate a referral to student services or academic support to address those needs. However, most schools lock both students and faculty into a single path of advancement through the curriculum and with particular personnel. In other words, there is no tailoring to individual student needs. A student's individual decision-making and autonomy support is highly restricted to binary decisions such as enroll or disenroll, attend or not attend, do assignments or do not do assignments. And the main criteria for who may perform the work of law teaching tend to be: (1) does this person have a juris doctor and other indicia of competitive prestige, and (2) does this person know a lot about a handful of legal subjects, so that (3) they can produce scholarship on various topics.

5. Fulfilling Therapist Obligations in a Group Setting

Group therapy can be a cost-effective way for people to get the benefits of therapy without the expense of one-on-one sessions with a therapist.⁶⁸ Moreover, group therapy has several beneficial factors supporting its use, including an opportunity to provide and receive feedback from others as well as a sense of not being alone in one's struggles or different from other

68. Conversely, group therapy is a way for a therapist to scale-up the number of clients they are able to serve and increase revenue streams.

people.⁶⁹ However, to competently funnel an individual into a group treatment setting, it is incumbent upon a therapist to conduct an initial intake interview and engage in preliminary decision-making to ensure that group therapy is not contraindicated.⁷⁰

C. *The A-B-Cs of People and Therapy*

“Emotion is a basic component of human experience inexorably interwoven with thought and action.”⁷¹

While the core claim I intend to assert in this Article is that too many faculty and law schools⁷² are engaging their students in bad therapy under the guise of transforming them into competent members of the legal profession. It would help to understand the theoretical model about people's psyches that underpins this claim. Many schools of therapeutic orientation acknowledge that in addition to one's physical self are one's **A**ffect (emotions and presentation thereof),⁷³ one's **B**ehaviors, and one's **C**ognitions.⁷⁴

Each one of those things—**a**ffect, **b**ehavior, and **c**ognition—is a thing that is susceptible to measurement, flawed though the measurement may be, and once you can measure a thing, you can take intentional action to change the thing. However, if change is made to any one of affect, behavior, or cognition, there will be corresponding changes to the other two because they are co-related constructs of human language, experience, and biology.⁷⁵

69. DOBSON & DOBSON, *supra* note 29, at 90.

70. Some clients with eating disorders or other self-harming behaviors may not be suitable for group therapy because, if the group dynamic goes wrong, the groupthink processes might lead to an increase in severity rather than extinguishing undesired behaviors.

71. Bethany A. Burum & Marvin R. Goldfried, *The Centrality of Emotion to Psychological Change*, 14 CLINICAL PSYCH. SCI. & PRAC. 407, 407 (2007).

72. Of course, my claim is not that all legal educators do this or that all law schools do it in a way to produce an objectionable outcome for every student. But, a large enough portion of legal academia does and enough students are measurably harmed to a degree where the issue needs to be discussed and addressed.

73. See Sheldon & Krieger, *Does Legal Education Have Undermining Effects*, *supra* note 1, at 267–68 (“Positive and negative affect refer to happy and unhappy mood states . . .”).

74. DOBSON & DOBSON, *supra* note 29, at 20.

75. See Debra Austin, *Windmills of Your Mind: Understanding the Neurobiology of Emotion*, 54 WAKE FOREST L. REV. 931, 937, 943 (2019) (discussing cognition, emotion, and the interplay of human

Adding a layer of complexity to the model, there are also what researchers have characterized as primary and secondary emotions.⁷⁶ Primary emotions are “hard-wired” and serve an evolutionary function.⁷⁷ These primary emotions “carry action potentials . . . organizing our behavior to help us survive,” which can then be “co-opt[ed] . . . to serve new survival functions.”⁷⁸ Secondary emotions are an individual’s responses to primary emotions that are mediated by past experiences and cognitive processes experienced within a set of cultural norms.⁷⁹ The confluence of past experiences and cultural norms can combine so that people may learn to ignore their emotions.⁸⁰ Failing to recognize emotions can lead to pathology⁸¹ and have negative interpersonal consequences.⁸² For example, failure to recognize anger can be a precursor to panic attacks.⁸³ Failure to engage in emotional regulation, i.e., only displaying “acceptable” amounts of emotion in a sea of people experiencing and

mental processes); *see also* DOBSON & DOBSON, *supra* note 29, at 117 (“[B]ehavior change techniques do not just change behavior. [Students] are active observers of their own behavior, and they draw conclusions about what they see themselves doing.”).

76. Burum & Goldfried, *supra* note 71, at 408–09 (citing LESLIE S. GREENBERG & JEREMY D. SAFRAN, *EMOTION IN PSYCHOTHERAPY: AFFECT, COGNITION, AND THE PROCESS OF CHANGE* (New York: Guilford Press 1987)) (defining primary and secondary emotions).

77. *Id.* at 408. The construct of primary and secondary emotions is a method of categorizing which emotions are situational responses (state) or a generalized default baseline of a person (trait). Disney’s *Inside Out* contains the premise that a person has multiple emotional entities—Joy, Sadness, Disgust, Fear, and Anger—that can be in the driver’s seat of a person’s actions and speech is a masterful distillation of the competing models and conceptualizations of which emotions are primary and secondary. *See generally* *INSIDE OUT* (Walt Disney Pictures 2015) (portraying the inner workings of a young girl’s emotions and their ability to adapt to changing circumstances).

78. Burum & Goldfried, *supra* note 71, at 409 (citing LESLIE S. GREENBERG & JEREMY D. SAFRAN, *EMOTION IN PSYCHOTHERAPY: AFFECT, COGNITION, AND THE PROCESS OF CHANGE* (New York: Guilford Press 1987)).

79. *Id.*

80. *See id.* (“People . . . may even actively learn to ignore [their emotional experiences] if their upbringing discourages the expression and/or experience of certain feelings (such as anger or sadness).”).

81. *Id.* (citing Denise M. Sloan & Ann M. Kring, *Measuring Changes in Emotion During Psychotherapy: Conceptual and Methodological Issues*, 14 *CLINICAL PSYCH. SCI. & PRAC.* 307 (2007)).

82. *Id.* (first citing Denise M. Sloan & Ann M. Kring, *Measuring Changes in Emotion During Psychotherapy: Conceptual and Methodological Issues*, 14 *CLINICAL PSYCH. SCI. & PRAC.* 307 (2007); then citing Cynthia Suveg et al., *The Role of Emotion Theory and Research in Child Therapy Development*, 14 *CLINICAL PSYCH. SCI. & PRAC.* 358 (2007); and then citing Janice Zeman et al., *Measurement Issues in Emotion Research with Children and Adolescents*, 14 *CLINICAL PSYCH. SCI. & PRAC.* 377 (2007)).

83. *Id.* at 409–10 (citing BARBARA MILROD ET AL., *MANUAL OF PANIC-FOCUSED PSYCHODYNAMIC PSYCHOTHERAPY* (Am. Psychiatric Ass’n Publ’g 1997)).

regulating, or failing to regulate, their own emotions based on contextual and cultural norms, is often thought to be some kind of pathology.

These framings are confirmed by modern neuroscience, the brain's functions which promote thought or produce emotions are not separate from one another; but rather, several of the structures that interpret stimuli and produce emotion are also structures that are activated and used for more deliberative decision-making.⁸⁴ Antonio Damasio, a neurologist, proposes a cognitive theory of emotion that helps us conceptualize the interplay between feelings and thoughts.⁸⁵ Damasio discusses two types of emotions that are nearly universal to humans across time, culture, and experience: primary and secondary.⁸⁶ Primary emotions include "Happiness, Sadness, Anger, Fear, and Disgust."⁸⁷ By modern standards, these seem to skew towards "negative" feelings, but from an evolutionary standpoint, these are the things that would activate fight, flight, or freeze responses, allowing people to survive another day and procreate.⁸⁸ Secondary emotions grow from experiences that allow an individual to pair categorical assessments of objects and situations with primary emotions felt in response to earlier objects and situations.⁸⁹ These secondary emotions are not only influenced by an individual's experiences, but also by the cultural norms that make things more or less desirable for building standing and influence within the culture.⁹⁰

Thus, among other things, the work of therapy involves both helping clients to understand and become aware of their emotional state, and also to teach skills to help clients consciously alter their emotional experiences.⁹¹ In some circumstances, emotional regulation is cultivated by helping an individual experience certain "problematic" emotions with

84. See Kristen K. Tiscione, *Feelthinking Like a Lawyer: The Role of Emotion in Legal Reasoning and Decision-Making*, 54 WAKE FOREST L. REV. 1159, 1172–73 (2019) (identifying the different brain structures responsible for decision-making).

85. See ANTONIO R. DAMASIO, DESCARTES' ERROR: EMOTION, REASON, AND THE HUMAN BRAIN 131 (1994) (outlining a theory for perceiving emotion and feeling).

86. See *id.* (characterizing the "early" and "adult" human emotional experiences as primary and secondary).

87. *Id.* at 149.

88. *Cf. id.* at 132 ("[T]he emotional response can accomplish some useful goals: speedy concealment from a predator, for instance, or display of anger toward a competitor.").

89. *Id.* at 134.

90. See Burum & Goldfried, *supra* note 71, at 409 (describing secondary emotions as reactions to the primary emotions that are innate).

91. *Id.* at 410.

less frequency or intensity, or with more frequency or higher intensity.⁹² There are therapeutic orientations that focus on cultivating emotional regulation through emotion,⁹³ behavior,⁹⁴ cognition,⁹⁵ or some combination thereof.

Generally speaking, cognitive behavioral therapists develop interventions designed to reduce unwanted secondary emotions such as anxiety and depression.⁹⁶ Cognitive behavioral therapy is an umbrella term that includes several schools of practice.⁹⁷ The common characteristics shared amongst these schools are a combination of cognitive and behavioral practices focused on (1) problem-solving in the present where there is a collaborative relationship between the therapist and the client, and (2) the therapist traces the source of the client's distress to disturbances in current thought process, and through time-limited and educationally focused sessions, helps the client change thought patterns so they can then change their behaviors, or change behaviors to moderate thought patterns.⁹⁸ CBT practitioners also seek to empower clients with the tools they need to identify cognitive distortions and disrupt the feedback loops between thought and behavior when it becomes maladaptive in the future.⁹⁹

Some of the most prevalent techniques in reducing unwanted secondary emotions are “[1] repeated exposure, [2] relaxation techniques, and [3] cognitive restructuring.”¹⁰⁰ And there is a wide body of empirical literature indicating that CBT can be effective in achieving a reduction of

92. *See id.* (citing Susan L. Wiser & Marvin R. Goldfried, *Comparative Study of Emotional Experiencing in Psychodynamic-Interpersonal and Cognitive-Behavioral Therapies*, 61 J. CONSULTING & CLINICAL PSYCH. 892 (1993)) (describing the effects of CBT on clients' emotional experiencing).

93. *See id.* (assessing the regulation of emotions through therapeutic interventions).

94. *See id.* (“The tradition within behavior therapy . . . has been to develop interventions primarily designed to reduce emotions—particularly unwanted secondary emotions such as anxiety and depression.”).

95. *See id.* (“Within cognitive-behavioral praxis, therapists reduce such emotions using . . . cognitive restructuring.”).

96. *Id.* Or, behavioral responses to emotion such as insomnia or disordered eating.

97. Including Albert Ellis's Rational Emotive Behavior Therapy (REBT), Aaron Beck's Cognitive Therapy (CT), and Donald Meichenbaum's Cognitive Behavioral Modification (CBM). COREY, *supra* note 11, at 274.

98. *Id.*

99. *Id.* at 306.

100. Burum & Goldfried, *supra* note 71, at 410.

unwanted secondary emotions like anxiety and depression.¹⁰¹ However, there is also research indicating that process-experiential therapy is as effective as CBT in reducing depression and improving clients' interpersonal problems.¹⁰² The experiential approach guides clients to activate and experience their primary emotions so that they can better recognize them and modify the meaning structures attached to experiencing a particular emotion.¹⁰³

Regardless of a therapist's orientation as to whether a client's work is done with experiencing primary emotions or reducing secondary emotions, both schools require the use of cognitive examination to achieve those goals. In broad strokes, cognitive examination is identifying thoughts and scrutinizing those thoughts with a lens of inquiry, whether that lens is nonjudgmental curiosity, Socratic examination, or some other paradigm of critical thinking. Generally, the process is to identify a distressing thing, identify the context in which the distressing thing happens, and question whether the context itself or one's thoughts about the context can be changed to reduce distress and increase functioning.

III. LEGAL EDUCATION AS THERAPY GONE WRONG

The one nearly universal promise of law school is to teach students how to "think like a lawyer."¹⁰⁴ In broad strokes, that process requires identifying situations that pose legal issues, recognizing the context(s) in which the situation has problematic legal issues, and determining whether the legal issue can be resolved by changing the context the situation arises in or changing the actor's behaviors so the situation does not arise.¹⁰⁵ Although the operational differences between law practice and providing therapy diverge greatly, the process of training one to think like a lawyer

101. *Id.*

102. *Id.* (citing Jeanne C. Watson et al., *Comparing the Effectiveness of Process-Experiential with Cognitive-Behavioral Psychotherapy in the Treatment of Depression*, 71 J. CONSULTING & CLINICAL PSYCH. 773 (2003)).

103. *See id.* at 409 (explaining how the process-experiential method uses "emotional enhancement as a means of modifying meaning structures").

104. Susan A. McMahon, *What We Teach When We Teach Legal Analysis*, 107 MINN. L. REV. 2511, 2513 n.9 (2023) ("[A]fter navigating the first year of law school, many law students classify the lawyer's role as primarily using deductive reasoning to anticipate legal conclusions based upon applicable legal doctrine, not engaging broader principles of justice." (quoting Etienne C. Toussaint, *The Miseducation of Public Citizens*, 29 GEO. J. ON POVERTY L. & POL'Y 287, 328 (2022))).

105. *See generally id.*

and begin to practice law has more parallels with undergoing a course of therapy if a student, or administering it if an educator, than it does with the actual practice of law.¹⁰⁶

Thus, legal education contains elements of therapy—especially group cognitive-behavioral therapy—and other forms of cognitive restructuring, with none of the safety precautions of a planned and intended course of therapy.¹⁰⁷ As a result, legal education incubates and possibly causes harm to a measurable number of students each year.¹⁰⁸ This harm can then persist or germinate in former law students once they enter the profession itself.¹⁰⁹

Legal education in its current form grants admission to students based on standardized test scores, achievement in prior educational endeavors, a persuasive essay, and recommendation letters.¹¹⁰ While this is arguably sufficient information to decline admission to some individuals for whom legal education is not a good fit, it also has well-documented problems in denying access to other individuals who would both benefit from and provide benefit to the legal profession.¹¹¹ And, while this is a standard educational practice that has persisted for decades with minimal change, it is a practice that gathers insufficient information before embarking on a

106. *See id.* at 2559 (“[Making rule-based and analogical reasoning skills] the only pedagogy imposes costs that law schools often fail to recognize. Students . . . have little experience imagining a new world and little practice in how to bring it into being.”).

107. Legal education does not secure a student’s informed consent, nor does legal education have a training program to ensure those ultimately selected to be law professors are educated in the needs of adult learners, classroom management, or possess competencies that match the needs of a particular student body. Moreover, with a course-by-course taken semester-by-semester (or quarter-by-quarter) system, students’ opportunities to hop into and out of legal education are far more rigid than those of a client pursuing therapy.

108. *See* Sheldon & Krieger, *Does Legal Education Have Undermining Effects*, *supra* note 1, at 271 (“The most important thing to take from these analyses is that the law students appeared quite happy and healthy at the beginning of their career, with relatively intrinsic and prosocial values.”).

109. *See* Organ et al., *supra* note 1, at 144–45 (detailing survey data concerning alcohol and substance abuse); Krill et al., *supra* note 2, at 46 (highlighting the substance abuse struggles within the legal profession); *see generally* NAT’L TASK FORCE ON LAW. WELL-BEING, *THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE* (2017).

110. Pettit College of Law, *Law School Admissions 101: Typical Law School Requirements & Prerequisites*, OHIO N. UNIV., <https://law.onu.edu/news/law-school-admissions-101-typical-law-school-requirements-prerequisites> [<https://perma.cc/XP42-NGTN>].

111. *See* Emma Plante, “*What, like it’s hard?*”: *The Systemic Barriers to Law School Applications*, NE. UNIV. POL. REV. (Jan. 27, 2022), <https://nupoliticalreview.org/2022/01/27/what-like-its-hard-the-systemic-barriers-to-law-school-applications/> [<https://perma.cc/593E-RXRK>] (describing how the law school admissions process disfavors low-income and minority applicants).

journey of cognitive restructuring.¹¹² Moreover, the admissions department and committee frequently operate in a silo from the rest of the faculty; thus, while an *institution* may have knowledge about students' past experiences that would be relevant to assessing which paths of cognitive restructuring would be appropriate to individual students, that information is not shared with or used by the faculty members who are providing the instructional environment and therapeutic interventions that are teaching students to "think like a lawyer."¹¹³

Once admitted, a student goes through a series of contractual processes to enroll and matriculate into law school with minimal education as to the potential downsides of the course of education on one's thought processes, physical health, emotional health, interpersonal relations, and overall well-being.¹¹⁴ However, some schools bring in professionals from their jurisdiction's lawyer assistance program or university counseling services to orientation to provide advance notice of resources¹¹⁵ for when some portion of the students inevitably begin to experience mental and emotional distress.¹¹⁶ This is not enough to secure informed consent concerning the course of educationally administered cognitive restructuring that the student is opting into.¹¹⁷ Implementing an informed

112. See discussion *supra* Part II.B (detailing the protective mechanisms required of licensed therapy providers).

113. And given the current lack of training among law faculty about human development and andragogy, this practice should NOT change because sharing the information poses more risk of misuse of the information than likelihood of producing beneficial effects. Once the professoriate has more training and understanding of human development, andragogy, and cognitive restructuring, then this practice can be modified.

114. And it can, and has been, argued that more can be done to educate new attorneys about the potential financial implications of financing law school through student loans. Cf. *Rethinking Law School Financing*, HARV. L. SCH. CTR. ON THE LEGAL PRO., <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/student-debt/rethinking-law-school-financing/> [<https://perma.cc/GHE9-ET7L>] (exploring alternative methods concerning legal education financing).

115. See David Jaffe, *Law Schools Should Take on Students' Mental Health and Substance Use from Day One*, A.B.A. J. (May 17, 2023, 1:31 PM), <https://www.abajournal.com/voice/article/the-legal-profession-has-a-drinking-problem> [<https://perma.cc/7HES-TT9V>] ("The [well-being] messaging starts at orientation and continues with commonplace walk-by tabling with giveaways and wellness resources.").

116. See Shawn Achor, *The Happy Secret to Better Work*, TED, at 08:43, https://www.ted.com/talks/shawn_achor_the_happy_secret_to_better_work/transcript [<https://perma.cc/HB64-UTCF>] (explaining speaking at a school about a current or potential future mental health issue is more akin to a "sickness week" than a "wellness week").

117. Very few students are given a sufficiently detailed overview of the process that they will undergo in terms of changes to their physical health, interpersonal relationships, thought processes,

consent requirement on higher education would look different than it does for healthcare or as defined by the MRPC—but more on that idea below in Part IV where various ideas for mitigating or eliminating harm are offered.

Once a student moves through matriculation, the student begins the actual work of learning to “think like a lawyer.” Inherent in both therapeutic relationships and in legal education are power differences between the provider, whether a therapist or professor, and the recipient, whether a patient or student. Moreover, providers exert their power in a method intended to produce lasting change in the recipient by (1) increasing the recipient’s knowledge about some feature of life according to modern understanding of how it works, (2) nudging or molding the recipient’s behavior into different patterns that will fit within a specified set of norms that will reduce or prevent problems for the recipient, and (3) changing how the recipient’s brain engages in thought. Like therapy, legal education is providing time-limited education sessions in a context that will create behavioral and cognitive change in students. And while some instruction involves examining how law developed historically and evolved into its present formulation, law school is also very present-focused—what is the law right now that governs the analysis and disposition of a defined dispute. The key points of praxis difference are that instead of sourcing individual students’ pre-existing foundations and crafting individualized case conceptions to guide the delivery of material, law professors make assumptions about both. These assumptions are guided by individual notions of what level of delivery complexity will reach the most students and still challenge the students with early mastery of skills and materials.¹¹⁸

and emotional health expressed in terms of risks and rewards and the available alternatives as required for informed consent to an acknowledged medical treatment.

118. Cf. Christine Perkins, *You come in here with a skull full of mush. You leave thinking like a lawyer* In Memoriam: John Jay Osborn Jr. ‘70, Author of “The Paper Chase,” 1945–2022, HARV. L. TODAY (Oct. 28, 2022), <https://hls.harvard.edu/today/you-come-in-here-with-a-skull-full-of-mush-you-leave-thinking-like-a-lawyer/> [https://perma.cc/MS87-MG7J] (reflecting on how *The Paper Chase* “defined legal education for generations of students”).

A. *Increasing Knowledge About Law Inevitably Includes New Knowledge About Humanity and Human Relationships While Neglecting the Mechanisms that Drive People's Behavior*

Law is a human response to human problems, and as a consequence, it contains human shortcomings such as in-group and out-group bias, desires to consolidate power to members of the in-group, and prevailing democratic prejudices supporting those efforts.¹¹⁹ Moreover, law intersects and touches on other human responses to human problems such as religion,¹²⁰ family formation,¹²¹ and economics,¹²² and has a tendency to grow and shift much like the English language, which is to co-opt and adopt that which it perceives as useful without the context that made it a useful construct in its home domain.¹²³ By extension, students are exposed to a wide variety of material and alternative methods of establishing a shared “objective” reality which can, in turn, conflict with students’ core beliefs or schemas, that is, their broad, stable, and core ways of thinking about themselves or the world.¹²⁴

1. Passing Normative Judgment on Behaviors Through Law

As a response to human problems, law also has some limited power to change human behavior and establish norms. There are often-touted examples such as the Civil Rights Act, Same-Sex Marriage Legalization, and Environmental Protection Act that affect how government and businesses treat classes of people which eventually leads to individuals treating one another differently. Then there are additional examples in setting standards for conduct that is expected of all people occupying

119. Cf. Jessica Fink, *Unintended Consequences: How Antidiscrimination Litigation Increases Group Bias in Employer-Defendants*, 38 N.M. L. REV. 333 (2008) (explaining despite the passage of the Civil Rights Act of 1964, discriminatory animus continues in more elusive and harder to prove ways).

120. U.S. CONST. amend. I.

121. U.S. CONST. amends. V, XIV; *Smith v. Org. of Foster Fams.*, 431 U.S. 816, 862–63 (1977); *Troxel v. Granville*, 530 U.S. 57, 61 (2000); *Obergefell v. Hodges*, 576 U.S. 644 (2015).

122. U.S. CONST. art. I, § 10, cl. 1; *id.* § 8, cl. 1; *id.* § 8, cl. 3.

123. See generally Nicky Priaux & Martin Weinel, *Behaviour on a Beer Mat: Law, Interdisciplinarity & Expertise*, 2014 J.L. TECH. & POLY 361, 361 (2014) (addressing shifts in behavioral economics); Paul E. McGreal, *Social Capital in Constitutional Law: The Case of Religious Norm Enforcement Through Prayer at Public Occasions*, 40 ARIZ. ST. L.J. 585, 588–89 (2008) (arguing “the government can violate the Constitution when a private group uses government power or property to enforce the group’s norms, and thereby its social capital”).

124. DOBSON & DOBSON, *supra* note 29, at 141.

public spaces such as seatbelt laws and smoking bans. Those are examples of the legislative process where elected officials are acting on behalf of some portion of their constituents and stakeholders for exercising law's directive power. Meanwhile, most of a law student's acculturation into the tools lawyers are going to use come from judicial opinions, model laws, and commentary thereon and focus heavily on the sub-communities of litigation and jurisprudence within the wider profession.¹²⁵ The listed text-types tend to follow very formulaic approaches to framing problems and identifying the tools available to solve those problems. The methods and tools used in communicating the application of law, and law-adjacent material, used to resolve disputes given a particular set of facts are also very formulaic, although susceptible to a bit more variation of form than issue statements or rule explanations. The analysis of these formulaic texts are reinforcing "preferred" thought processes, and overemphasizing situations and perspectives centered on litigators' and jurists' practice of law that then get internalized by the students in both adaptive and maladaptive ways.

2. Use of Diagnostic,¹²⁶ "Othering," and Dehumanizing Language

An obvious example of law's coopting other domain terminology is the "insanity defense."¹²⁷ But then there are the more subtle deployments of advocates' and jurists' terminology to characterize often-replicated circumstances within human experience¹²⁸ to suggest that the outcome was driven by a party's innate or moral characteristics. These subtle linguistic choices accumulate as students are exposed to them in the dozens or

125. Cf. Suzanne B. Goldberg, *Constitutional Tipping Points: Civil Rights, Social Change, and Fact-Based Adjudication*, 106 COLUM. L. REV. 1955, 1957–58 (2006) (explaining the Court's role in shaping norms when the view of particular social groups are in flux).

126. See *Diagnosis*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/diagnosis> [https://perma.cc/V9Q5-UCCR] (defining diagnosis as "the art or act of identifying a disease from its signs and symptoms").

127. See *Insanity Defense*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/insanity_defense#:~:text=The%20insanity%20defense%20refers%20to,rather%20than%20a%20partial%20defense [https://perma.cc/7YC3-86DQ] (recognizing the defense is derived from psychology and analyzing an actor's cognition).

128. As Judge Knox stated, "She, like many other females, has vague intentions of marrying some day . . ." *Gordon v. Steele*, 376 F. Supp. 575, 577 (W.D. Pa. 1974). Granted, it was 1974, but apparently men of the era did not ever have "vague intentions of marrying some day" according to this jurist. And this is a case where the court found in favor of the young woman. *Id.* at 578.

hundreds of opinions that are read in pursuit of a juris doctorate and can infiltrate a student's cognitions about themselves and others.¹²⁹

B. *Behavioral Molding Requires Adherence to a Set of Cultural Norms*

In addition to the subtle, and not-so-subtle, linguistic choices reflected in judicial opinions are problematic things some law professors use their podium to say. One of the statements¹³⁰ that led to Professor Amy Wax's disciplinary proceedings at Penn Carey Law was, on its face, an othering statement¹³¹ that disproportionately affects some students' ability to remain engaged with the course and its materials.¹³² Contingencies of identity and stereotypes have been invoked, which according to research by Claude Steele and Joshua Aronson is a trigger for stereotype threat and highlights predictable performance losses by individuals who care deeply about their identity as a law student and future lawyer but are now in a position of having to disprove this negative stereotype. And for the students that are not othered by such statements, there is reinforcement of the notion that it is okay to exclude people from opportunity, and society, on the basis of beliefs about theoretically immutable incidents of birth¹³³ rather than individual conduct. Beyond obvious concerns of outright

129. Cf. Russell A. McClain, *Helping Our Students Reach Their Full Potential: The Insidious Consequence of Ignoring Stereotype Threat*, 17 RUTGERS RACE & L. REV. 1 (2016).

130. Vimal Patel, *UPenn Accuses a Law Professor of Racist Statements. Should She Be Fired?*, N.Y. TIMES (Mar. 13, 2023), <https://www.nytimes.com/2023/03/13/us/upenn-law-professor-racism-freedom-speech.html> [<https://perma.cc/DU5J-C45E>] (Wax's statement was "on average, Blacks have lower cognitive ability than whites").

131. It also shows an appalling lack of critical thinking since a substantial portion of the data such claims are based on was collected from the generation, and the two immediately following it, living through school desegregation, the civil rights movement, and attendant social unrest. IQ tests administered in those years have so many outside factors affecting their validity that they should not be the basis for any conclusions beyond the snapshot they provide of the time they represent.

132. A study has found that underrepresented minority students in classes with STEM faculty who hold a fixed mindset with regards to ability have an achievement gap that is 50% larger than the average and nearly twice the gap in classes taught by faculty with a growth mindset. Elizabeth A. Canning et al., *STEM Faculty Who Believe Ability Is Fixed Have Larger Racial Achievement Gaps and Inspire Less Student Motivation in Their Classes*, SCI. ADVANCES, Feb. 15, 2019, at 1, 4.

133. "Intelligence" and measures of "cognitive ability" are social constructs and not genetic traits. A person's perceptive abilities, physical control, and ability to form durable memories are factors with a significant genetic component that tie into constructs of cognitive ability, but measures of intelligence favor the activities that the test developers are good at themselves and that tend to be rewarded in the dominant culture of a society. Cf. STEPHEN MURDOCH, *IQ: A SMART HISTORY OF A FAILED IDEA* (2007).

discrimination or the cultivation of discriminatory norms, there are subtler repercussions of such modeling by faculty¹³⁴ in that they may trigger stereotype threat and artificially depress the performance of students who belong to groups that have negative stereotypes about a groups' ability to succeed at particular tasks and execute particular skills.¹³⁵ Moreover, this promotes a tendency to engage in labeling,¹³⁶ which is a problematic set of cognitions because labels are often stereotypes rather than considered reason applied to a specific problem and an individual set of facts.

Legal education is also a method of acculturation into the community of lawyers. Acculturative processes require molding behavior so that it fits within a set of norms; however, law is a profession that by definition cannot aim its members at a single objective.¹³⁷ And legal education has to operate so that its beneficiaries have the flexibility to adopt at least one, or more, positions in furtherance of a client's objectives within the processes and constraints of a larger set of regulatory and legal systems, or to adopt positions based on reproduceable fairness through the system's operation. Thus, application of behavioral molding, without a case conception to understand how those shifts in behavior will affect and alter a given student's cognitions and emotions, risks harm to the student.¹³⁸

134. Canning et al., *supra* note 132, at 4–5 (noting a fixed mindset affects course design and all the downstream interactions that affect students' sense of belonging, trust in the institution and its personnel, more anxiety, and a reduction of interest in the subject matter).

135. Catherine M. Christopher, *Eye of the Beholder: How Perception Management Can Counter Stereotype Threat Among Struggling Law Students*, 53 DUQ. UNIV. L. REV. 161, 162–63 (2015) (explaining how grading curves and class ranks can result in stereotype threat); *see also* McClain, *supra* note 129, at 1, 5 (“As an explanation for dramatic suppression of minority performance, stereotype threat studies show that, in certain situations, African-Americans, Latinos, and others perform worse due to the psychological pressure caused by the fear of confirming negative group stereotypes.”).

136. *See* DOBSON & DOBSON, *supra* note 29, at 134 (“It is common for people to label themselves or others rather than to focus on the specific actions or attributes that underlie the label. Labeling can be an insidious process, because labels are like permanent attributions that make it hard for people to see how the labeled person can ever change.”); *see also* Bruce G. Link & Jo C. Phelan, *Labeling and Stigma*, in A HANDBOOK FOR THE STUDY OF MENTAL HEALTH: SOCIAL CONTEXTS, THEORIES, AND SYSTEMS 393 (Teresa L. Scheid & Eric R. Wright eds., 3d ed. 2017)

137. *See generally* *Definition of the Practice of Law Draft (9/18/02)*, AM. BAR ASS'N, https://www.americanbar.org/groups/professional_responsibility/task_force_model_definition_practice_law/model_definition_definition/ [<https://perma.cc/T3W9-2CKU>] (defining the practice of law as “the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law”).

138. Generally speaking, a significant portion of the work of cognitive restructuring is to build an individual's skills and ability to hold two or more conflicting or oppositional thoughts about a situation; however, the process of building those skills has an inherent tendency to require some time

1. Lawyers Are Human First, and Hold Many of the Same Biases and Irrational Fears as Other Humans¹³⁹

For reasons beyond the scope of this Article, there are society-wide fears about certain manifestations of mental illness, particularly those that if experienced, could result in one's own otherization and stigmatization, especially if confirmed with a diagnosis or label from a healthcare provider.¹⁴⁰ Diagnosis can be a double-edged sword, because the stigmatizing reactions of treatment providers have towards people living with mental illness are some of the most harmful.¹⁴¹ In 1999, the Surgeon General's Report on Mental Health noted, "[Stigma] leads people to avoid socializing, employing or working with, or renting to or living near persons who have a mental disorder"¹⁴²

Generally, we could posit that people fear the loss of control and self-determination,¹⁴³ as well as a loss of influence and connection with

working through phases of projection and self-recrimination, as well as transference and countertransference. Law school has no support built in to help students work through those features of cognitive restructuring or the emotional consequences thereof while it is helping cultivate skills to hold oppositional thoughts and multi-perspective understanding.

139. See Link & Phelan, *supra* note 136, at 397–98 (“[E]xisting data simply do not justify a continued debate concerning whether the effects of labeling are positive or negative—clearly they are both.”). Many members of the legal profession and the legal academy may hold biases that suggest individuals who experience psychological distress lack the necessary qualifications of reason to be members of the profession. But, who among them would say that it is improper to experience psychological distress when confronted with some of the evil that humanity has wrought from the abuse of individual, vulnerable members of society to the travesty of various genocides throughout human history? People who do not feel psychological distress at some point in their consideration of those topics may lie too far outside the empathetic spectrum to be trusted with a role in dispute resolution or policymaking.

140. See Emily E. Ahrend, *Structured Silence: Mental Illness Disability and Disclosure in the Workplace* 9–10 (May 10, 2021) (unpublished manuscript) (on file with author) (asserting “[m]ental illness creates frightening images in which individuals lose control over themselves, their language, and their ability to be peaceful”); see also Link & Phelan, *supra* note 136, at 400 (“[Stigma is an appropriate characterization] when elements of labeling, stereotyping, separation, status loss and discrimination co-occur in a power situation that allows them to unfold.” (citing Bruce G. Link & Jo C. Phelan, *Conceptualizing Stigma*, 27 ANN. REV. SOCIOLOGY 363, 367 (2001))).

141. Link & Phelan, *supra* note 136, at 398 (citing Sylvia Rosenfield, *Psychology and Education, Together Again*, 45 PSYCH. SCHOOLS 257 (2008)).

142. *Id.* at 399.

143. See Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCH. BULL. 883, 884 (2007) (employing self-determination theory to demonstrate “law students experience precipitous declines in their mental health during their 1st year”). Sheldon and Krieger anchored their inquiry and study into the measurable negative effects of legal education on

others,¹⁴⁴ and we can also assume that most people lack the knowledge to separate mental illness in its many different forms and levels of severity from larger questions of sanity that lead to legally determined loss of self-determination.¹⁴⁵ Some of the core stereotypes that persist about people with mental illness are those of “dangerousness and incompetence.”¹⁴⁶ As a group, law students, law professors, and lawyers have no specialized knowledge¹⁴⁷ that makes them more or less able to exercise the power of diagnosis,¹⁴⁸ but there are adjacent legal concepts that may induce a profession-wide *Dunning-Kruger* effect about one’s superior knowledge of what is mental health and what is mental illness.¹⁴⁹ A sense of false

individuals within a cohort in self-determination theory. “According to SDT, all human beings require regular experiences of autonomy, competence, and relatedness to thrive and maximize their positive motivation.” *Id.* at 885.

144. Link & Phelan, *supra* note 136, at 398 (reporting efforts to quantify the degree of reduction in interpersonal influence once a person has received a mental illness diagnosis).

145. See Ahrend, *supra* note 140, at 8 (explaining how sanity has two definitions). *Contra* DOBSON & DOBSON, *supra* note 29, at 9–10 (“Mental health literacy surveys have been completed, and the results have been surprising.”). In 2006, a random phone survey performed in Alberta, Canada found approximately 85% of people could accurately identify a depressed person in a standardized scenario. DOBSON & DOBSON, *supra* note 29, at 9.

146. Link & Phelan, *supra* note 136, at 393.

147. Granted there are individuals within the field that *do* possess this specialized knowledge, author included, but law school admissions requirements are generic enough that while a few psychology majors and social workers are in each cohort of law students, there are far more political science and criminal justice majors. *Cf.* Sheryl Grey, *The Top 13 Pre-Law Majors: What’s the Best Major for Law School Admissions?*, FORBES, <https://www.forbes.com/advisor/education/law/pre-law-majors/> [<https://perma.cc/3Z9F-PN2U>] (identifying political science as the “most common undergraduate major by far” in law school).

148. See Katie Hickey, *Why Law Students Need to Check in on Their Mental Health*, MINDWISE INNOVS., <https://www.mindwise.org/blog/mental-health/why-law-students-need-to-check-in-on-their-mental-health/> [<https://perma.cc/6RCT-WHZV>] (explaining a lack of knowledge and stigma among law students refrain many individuals from seeking help). Per Oxford English Dictionary, diagnosis is defined as “the identification of the nature of an illness or other problem by examination of the symptoms.” *Diagnosis*, OXFORD ENG. DICTIONARY, https://www.oed.com/dictionary/diagnosis_n?tab=factsheet#6915122 [<https://perma.cc/KDJ6-MNSN>]. People have to complete a series of educational, testing, and regulatory hurdles in order to be a provider with the power to make a diagnosis that will be recognized by insurance companies for the payment of benefits, the government for purposes of disability benefits, and even to serve as expert witnesses in a court of law. Yet, lawyers are casually using diagnostic language in daily conversation and practice as if they have crossed those hurdles themselves. “OP is a narcissist.” “OC is simply crazy, and fabricating events that never happened.”

149. The *Dunning-Kruger* effect is a cognitive bias where people with limited competence in a domain over-estimate their competence. Brian Duignan, *Dunning-Kruger Effect*, BRITANNICA, <https://www.britannica.com/science/Dunning-Kruger-effect> [<https://perma.cc/V69K-G96H>].

understanding of what mental illness entails and what judgments can be made about people with mental illness sets law students and lawyers up to perpetuate some of the mechanisms of discrimination that people with mental illness face such as direct individual-to-individual discrimination, social exclusion, self-directed discrimination based on stereotypes now being applied to the self, and structural stigma.¹⁵⁰ For example, some legal definitions of sanity hinge on one's "soundness of mind or judgment" or "ability to understand or appreciate one's acts."¹⁵¹ These definitions naturally give implicit precedence to the hyper-rationality that lawyers are aspiring toward with unemotional use of reason or logic.¹⁵² But, the erasure of emotion from reason is an institutionalized form of avoidance that creates and perpetuates stigma related to mental illness since mental illness is either a dysregulation of emotion that negatively affects cognition or a dysregulation of cognition that leads to extreme mood lability.¹⁵³ Stigma is a product of individual human fears manifested in a societal response.¹⁵⁴ Law is a social response to human concerns that can capture human fear as much as it does human potential.

The interplay between stereotypes, fear, stigma, and other human biases is the foundation upon which the "thinking like a lawyer" paradigm is built. When lawyers in training are taught that their emotional state is one to be divorced from their cognitive state in analyzing legal problems, it implicitly reinforces an idea that a fundamental aspect of human existence is wrong. For example, how many times over the course of a semester

150. Link & Phelan, *supra* note 136, at 393.

151. AM. PSYCH. ASS'N, APA DICTIONARY OF PSYCHOLOGY 933 (2d ed. 2015).

152. *See generally* Lucy Jewel, *Does the Reasonable Man Have Obsessive Compulsive Disorder?*, 54 WAKE FOREST L. REV. 1049, 1052–53 (2019) (assessing the predominant role ethos plays in the legal profession).

153. Ahrend, *supra* note 140, at 11 (citing OWEN WHOOLEY, ON THE HEELS OF IGNORANCE: PSYCHIATRY AND THE POLITICS OF NOT KNOWING (2019)); *see generally* Tiscione, *supra* note 84, at 1173 (detailing how learning to feel emotion helps manage stress and avoid similar stimuli); *see generally* Jewel, *supra* note 152, at 1053 (showing how certain legal thinking patterns are "symptomatic of mental illness in the reasonable man").

154. Ahrend, *supra* note 140, at 12 (citing Peter Conrad & Kristin K. Barker, *The Social Construction of Illness: Key Insights and Policy Implications*, 51 J. HEALTH & SOC. BEHAV. S67, S69 (2010)); *see generally* Link & Phelan, *supra* note 136, at 394 (establishing a framework for "examining extant issues and evidence concerning labeling and stigma as it pertains to mental illnesses").

does a 1L hear, “Don’t tell me what you feel, tell me what the law [court] says?” or some derivative thereof.¹⁵⁵

Other scholars, including Professor Kristen Tiscione, suggest that ancient understanding of emotion can help us find a mediator between one’s rational and irrational self.¹⁵⁶ Speaking of ancient understanding, Aristotle characterized emotion as “cognitive phenomena open to reason.”¹⁵⁷ He defined anger as the result of one’s thoughts about a situation such as where one perceives oneself to be slighted.¹⁵⁸

Scholars acknowledge that “emotions contain and rely on evaluative thoughts,”¹⁵⁹ so it is possible to change emotion via thought and also change thought via emotion. This moderate approach recognizes that people will change their judgments about a situation, in part, based on the emotional state that they are occupying at the time they are asked to pass judgment. Due to this common attribute of humanity, Aristotle argued that the law should define things as exactly as possible and leave as little as possible to judicial discretion, except for a determination of whether a law violation did or did not occur.¹⁶⁰

C. *Cognitive Restructuring Without Protection for the Adjacent Cognitive Structures Affected*

Underlying CBT case conceptualization is an understanding that not all cognitions have the same durability or degree of permanence.¹⁶¹ Usually, a client presents for therapy when they begin experiencing consequences for maladaptive behavioral choices or unpleasant emotional states following a situational-specific thought, or series thereof, that emerged after, or in anticipation of, some type of environmental trigger or event that activated

155. See DOBSON & DOBSON, *supra* note 29, at 120 (“Cognitive-behavioral therapists should be ready to discuss emotions in the present moment and to be comfortable with a client who expresses strong emotions [But] we discourage too much focus on in-session emotional experiences, because the general focus of this treatment is on solving problems in the client’s real world.”).

156. Tiscione, *supra* note 84, at 1171.

157. *Id.* at 1168 (quoting W.W. FORTENBAUGH, ARISTOTLE ON EMOTION 26 (2d ed. 2002)).

158. *Id.* at 1169 (citing W.W. FORTENBAUGH, ARISTOTLE ON EMOTION 12 (2d ed. 2002)).

159. *Id.* (quoting Terry A. Maroney, *Judicial Emotion as Vice or Virtue: Perspectives Both Ancient and New*, in ARISTOTLE ON EMOTIONS IN LAW AND POLITICS 11, 13 (Liesbeth Huppel-Cluysenaer & Nuno M.M.S. Coelho eds., 2018)).

160. ARISTOTLE, ON RHETORIC: A THEORY OF CIVIC DISCOURSE 32 (George A. Kennedy trans., 2d ed. 2006).

161. DOBSON & DOBSON, *supra* note 29, at 149.

a core belief or schema.¹⁶² The situational thoughts may be amenable to modification by themselves.¹⁶³ However, core beliefs or schemas are long-term aspects of the self that help us make sense of the world around us and construct meaning.¹⁶⁴ These beliefs and schema tend to be relatively permanent notions of categorical connections between ideas or one's self and relational position in the world.¹⁶⁵

Core beliefs and schema are thus both key components of one's personality and one's thinking and sense-making.¹⁶⁶ Core beliefs and schema "develop[ed] . . . [and] serve[d] a useful purpose [at the time of its formation], either to make sense of the world or to help the client adapt to the current situation."¹⁶⁷ Core belief or schema change work is not done with every client because it can come with some significant discomfort for the client either through the expenditure of time, energy, and money, or through the changes the process itself engenders.¹⁶⁸

There are two strategies therapists use to help clients work towards schema change: evidence-based and logical change.¹⁶⁹ Evidence-based methods all have some general parameters where work is done to identify the existing schema and contrast it with new or preferred schemas.¹⁷⁰ Once the costs and benefits of each schema have been analyzed, the therapist and client begin using evidence-based ideas to reinforce and emphasize the value this change poses for the client.¹⁷¹ Sometimes a schema has multiple categorical traits propping it up, so the approach involves recognizing, assessing, and restructuring each of those traits until they are no longer supporting the schema.¹⁷² The logical change strategies focus not on collecting evidence about the success of change efforts but

162. *Id.*

163. *Id.* at 4–5.

164. *Id.* at 152.

165. *Id.* at 151.

166. *Id.* at 152.

167. *Id.* at 156. "[E]ven the most crippling and apparently dysfunctional schema likely 'made sense' or was adaptive at the time of its development." *Id.* at 169.

168. *Id.* at 158–61.

169. *Id.* at 160.

170. *Id.* at 161.

171. *Id.* at 161.

172. *Id.* at 161. The specific techniques to accomplish this work can include keeping positive data logs, anticipating and getting ahead of obstacles, and using therapy to practice the actions a person using the new schema would take. This is merely a sampling of techniques and not an exhaustive list.

instead builds analyses and cases for why the old schema no longer serves and the new schema is the correct replacement schema.¹⁷³ Finally, as mentioned earlier, not all clients are going to engage in core belief or schema change work, so the task with them is to accept that they have made the choice that serves their current best interest and help them develop mindfulness and acceptance practices that will help them tolerate stress and negative experiences that are a normal part of human experience.¹⁷⁴

“Thinking like a lawyer” incorporates knowledge of doctrine, norms, and behaviors, and thus results in a cognitive restructuring that directly creates change in adjacent psychological structures. Moreover, the acculturative effects of this process leads to behaviors such as hyper-competitiveness,¹⁷⁵ pervasive distrust,¹⁷⁶ and harmful social comparisons.¹⁷⁷ People in a shared culture tend to have similar axes or orientations with respect to their self-esteem—social orientation, intelligence, and popularity—and while self-esteem is not synonymous with core belief or schema, changes to one’s self-esteem can produce changes in one’s core beliefs and schema.¹⁷⁸ Additionally, “our sense of well-being is sustained by membership in primary groups.”¹⁷⁹

The training law students undergo should be rigorous and provide opportunities for students to experience cognitive dissonance, frustration with difficult and complicated ideas and systems, and opportunities to cultivate perseverance.¹⁸⁰ But, while a certain degree of difficulty is a

173. *Id.* at 167–70.

174. *Id.* at 171–72.

175. *See* Austin, *supra* note 75, at 958 (noting, “Toxic competition drives survival emotions”). Austin elaborates that competition damages mental health, relationships, and learning outcomes. *Id.* at 950 (finding the law school environment “indoctrinates students to a zero-sum culture where for one person to be successful, another person must fail”).

176. *See id.* at 954 (acknowledging the public finds attorneys “[c]ompetent but not trustworthy,” and attorneys tend to distrust other attorneys).

177. *See id.* at 962 (indicating competitive work environments foster social comparisons that, in the long run, can result in a negative image of self-worth and lack of ability to build mental strength).

178. DOBSON & DOBSON, *supra* note 29, at 151.

179. Robyn L. Brown & Gabriele Ciciurkaite, *Understanding the Connection Between Social Support and Mental Health*, in A HANDBOOK FOR THE STUDY OF MENTAL HEALTH: SOCIAL CONTEXTS, THEORIES, AND SYSTEMS 207 (Teresa L. Scheid & Eric R. Wright eds., 3d ed. 2017).

180. *See* Brennan, *supra* note 66, at 10–11 (explaining the primary way to teach law students is through Socratic dialogue where professors question their students, guiding them to understand legal principles).

necessary precondition to learning and development, we should also consider the learner more fully and provide structures and supports to help them process various epiphanies, disillusionments, and feelings stemming from such. A person who enters law school with a “distrustful” schema may need to first work methodically on reducing the amount of time spent alone, accepting social approaches, giving people a chance to prove themselves trustworthy or not, and so on until there is room to move the schema to something like “ambivalent towards other people.”¹⁸¹ However, a school that actively discourages collaboration between and is very distrustful of its students is going to reinforce that person’s schema rather than help them develop schema that will make it easier for them to develop working relationships with other members of the profession. The cultivation of social supports is one of the three most important constructs in current mental health research, alongside stress and coping.¹⁸²

Fortunately, research indicates that there are actions that legal educators can take to reduce harmful effects and provide some protection to students as they undergo acculturation into the profession and have their cognitions rewired to operate according to professional norms. These actions include providing training for the balancing processes of reappraisal, also known as reframing, to reinterpret a situation and transform its emotional meaning.¹⁸³ Or, providing training in ways to structure life to reduce auto-pilotable decision-making so that the attention and energy resources consumed by exerting self-control are reserved for activities that help develop skills and abilities an individual is pursuing.¹⁸⁴

Some student struggle is not only to be expected, but it is also necessary and should be lauded. But many student struggles are not desirable; they are discouraging and dispiriting. In spite of investing significant time and effort, students spin their wheels, going nowhere. Rather than master their own thought processes, students spiral into deepening confusion and decreasing self-esteem. Their struggles do not inspire, they do not lead to long-term learning, and they offer no intrinsic reward.

.....

The cascade of thoughts that springs to one’s mind unbidden evidences what cognitive science refers to as “schemas.”

Id. at 18–19, 28.

181. DOBSON & DOBSON, *supra* note 29, at 161.

182. Brown & Ciciurkaite, *supra* note 179, at 207–08.

183. Austin, *supra* note 75, at 953.

184. *See id.* at 955–58 (noting “emotions drive decision-making”—and can use up limited cognitive resources that otherwise could be used for exerting self-control to achieve long-term goals).

Students can be taught “how to replace bad habits with good ones, such as learning about and leveraging their strengths, investing in experiences rather than possessions, savoring experiences, and expressing gratitude and kindness.”¹⁸⁵

D. *Potential Mechanisms of Anti-Therapeutic Harms Experienced in Law School*

Even if an individual does not subjectively perceive themselves to be distressed,¹⁸⁶ or their behaviors and mood disruption are not severe enough to be “clinically significant,” the individual will still adapt and change in response to the application of consistent pressure of new information against the individual’s beliefs, values, and thought processes.¹⁸⁷ Moreover, matriculation into law school contains several stressful features that directly target law students’ social support networks.¹⁸⁸

The harms law students experience as they undertake legal education are documented. In the scholarly literature alone, there is the work done in the 2000s by Lawrence Krieger and Kennon Sheldon¹⁸⁹ that built upon the

185. *Id.* at 959.

186. A person is feeling stressed when at the same time she is perceiving a measurable physiological response, a desire to avoid the stressor, and a loss of control. *Id.* at 942. A person is distressed when these characteristics begin interfering with functioning in day-to-day life or significant responsibilities.

187. DOBSON & DOBSON, *supra* note 29, at 160 (“It is also quite likely that clients gradually change their schema without direct interventions, by behaving and thinking differently over time.”).

188. Per Cobb (1976), social support belongs to one or more of the following classes of information: (1) leading the subject to believe they are loved and cared for; (2) they believe they are esteemed and valued; and (3) they believe that they belong to a network of communication and mutual obligation. Brown & Ciciurkaite, *supra* note 179, at 209–10. Given that many of our students are also moving away from the community in which their family support network is located, this is a duplicative, if not compounding, effect on a student’s resources for dealing with stress. *Cf. id.* at 211.

189. See generally 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) (exploring research on happiness, pervasive problems in the legal field, negative aspects of legal education, and approaches to address these issues); Sheldon & Krieger, *Does Legal Education Have Undermining Effects*, *supra* note 1 (evaluating law students’ intrinsic motivation and its correlation to high grades and different values); Sheldon & Krieger, *Understanding the Negative Effects*, *supra* note 143 (finding when students felt “greater perceived autonomy support by faculty,” the students experienced positive outcomes such as higher grades, better bar exam results, and increased intrinsic motivation); Lawrence S. Krieger, *Psychological Insights: Why Our Students and Graduates Suffer, and What We Might Do About It*, 1 J. ASS’N LEGAL WRITING DIRS. 258 (2002) (“[P]resent[ing] a number of recent psychological findings which clarify the components of a satisfying, emotionally healthy life.”).

work done in the 1980s and 1990s by Matthew Dammeyer et al.¹⁹⁰ and Andrew Benjamin et al.¹⁹¹ Additionally, there was the 2014 Survey of Law Student Well-Being (SLSWB), reported on by Jerome Organ, David Jaffe, and Katherine Bender, that collected data about substance use, mental health concerns, and help-seeking attitudes of law students.¹⁹² The findings of a follow-up SLSWB conducted in 2021 were reported in 2022 along with an updated literature review of new pocket studies,¹⁹³ dissertations, and international studies measuring law student mental health, illness, stress, and substance use.¹⁹⁴ If we look outside of academia, there are numerous first-hand accounts of harm that can be found in documentaries, periodicals, social media stories, and on blogs, as well as second-hand accounts of harm that are shared by the survivors or individuals who died by suicide.

In 2014, the SLSWB findings were that 53% of respondents had enough to drink to get drunk in the prior thirty days, 43% had engaged in binge-drinking at least once in the prior two weeks, and 22% had engaged in binge drinking two or more times in the prior two weeks.¹⁹⁵ A quarter of these respondents also reported using marijuana in the last twelve months.¹⁹⁶ Between 1 and 6% of respondents used other street drugs, such as cocaine, ecstasy, and LSD, in that same twelve-month period.¹⁹⁷ Respondents also reported their use of prescription drugs with a prescription in the prior year—9% used of sleeping medication, 12% used

190. See generally Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 LAW & HUM. BEHAV. 55, 55 (1999) (suggesting “self-reports of anxiety and depression are significantly higher among law students than among either the general population or medical students”).

191. See generally G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 AM. BAR FOUND. RSCH. J. 225, 225 (1986) (presenting empirical data to “suggest[] that the process of legal education impairs the maintenance of emotional well-being in law students”).

192. See generally Organ et al., *supra* note 1 (reporting “the results of the Survey of Law Student Well-Being (SLSWB) implemented in spring 2014 at fifteen law schools around the country”).

193. The author has characterized these studies as pocket studies merely as a consequence of having samples from one or two law schools rather than a dozen or more law schools. Pocket studies are gathering important cumulative data across numerous contexts and years for people and researchers approaching this problem from quantitative perspectives.

194. See generally David Jaffe et al., *“It’s Okay to Not Be Okay”: The 2021 Survey of Law Student Well-Being*, 60 UNIV. LOUISVILLE L. REV. 441, 453 (2022) (analyzing the results of the 2021 SLSWB).

195. Organ et al., *supra* note 1, at 129.

196. *Id.* at 133.

197. *Id.*

sedatives for anxiety, 13% used stimulants, 15% used pain medication, and 12% used anti-depressants.¹⁹⁸ The overall rate of prescription medication use without a prescription was 14%.¹⁹⁹ In addition to self-reports of substance use, the survey included screening questions for depression and anxiety.²⁰⁰ 17% of respondents screened positive for depression,²⁰¹ and 37% screened positive for anxiety.²⁰² 27% of respondents also screened positive for an eating disorder.²⁰³

The 2021 SLSWB found that a mere 44% of respondents had enough to drink to get drunk in the prior thirty days, only 33% had engaged in binge-drinking at least once in the prior two weeks, and only 16% had done so two or more times in the prior two weeks.²⁰⁴ But, while it is heartening to see the percentage of people reporting problem drinking behaviors decrease, this is a period of time that coincided with the passage of laws permitting recreational marijuana use and the rise of e-cigarettes. Thus, 38% of respondents reported using marijuana in the previous twelve months, and between 2 and 6% of respondents reported using other street drugs.²⁰⁵ The use of prescription drugs with a prescription fluctuated a bit with 7% reporting use of sleeping medication, 15% using sedatives for anxiety, 14% using stimulants, 10% using pain meds, and 23% using anti-depressants.²⁰⁶ As before, the survey had embedded screening instruments for depression, anxiety, disordered eating, and post-traumatic stress disorder (PTSD).²⁰⁷ 34% of respondents screened positive for depression,²⁰⁸ and 54% screened positive for anxiety.²⁰⁹ Additionally, the number of respondents reporting diagnoses of depression or anxiety in their lifetimes increased from 2014 to 2021—from 18% to 32.7% for depression, and from 21% to 38.9% for anxiety.²¹⁰ The numbers of

198. *Id.* at 134.

199. *Id.*

200. *Id.* at 136.

201. *Id.*

202. *Id.* at 137.

203. *Id.* at 138.

204. Jaffe et al., *supra* note 194, at 455.

205. *Id.* at 460–61.

206. *Id.* at 461–62.

207. *Id.* at 463–68.

208. *Id.* at 464.

209. *Id.* at 465.

210. *Id.* at 463–64.

individuals with disordered eating increased; however, this increase is due in some small part to changes in the diagnostic criteria and the introduction of a new diagnosis.²¹¹ The number of students reporting suicidal ideations likewise increased between 2014 and 2021, from 6 to 11% in the previous twelve months, and from 21 to 33% in one's lifetime.²¹² As the authors said in their discussion of their findings, "What is clear is that our law students need help. Perhaps starker than any other data point: nearly 70% of respondents reported needing help in the prior twelve months for emotional or mental health problems."²¹³

The 2021 study was also conducted in the midst of the global COVID-19 pandemic, so it is difficult to parse out what portion of the increase in incident and substance use rates are due to law school, and what portion is due to living through a politically contentious pandemic or other social changes wrought in the seven years since the first study.

Given that law school is a predominantly cognitive endeavor, and that cognitions operate at three different levels—automatic thoughts, intermediate beliefs, and core beliefs²¹⁴—it becomes apparent how law school drives some of the bad outcomes students experience. Core beliefs²¹⁵ may be modified through sustained thought testing, which creates changes in the automatic thoughts an individual's brain produces, and supplementation or modification of the underlying assumptions an

211. *Id.* at 465–66; *see also* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 329 (5th ed. 2013) (providing diagnostic criteria for feeding and eating disorders). Specifically, the 2021 survey aligned its diagnosis criteria to meet Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition) that released between the first study and the 2021 study. The revised manual now included binge eating and decreased the criteria needed for an anorexia diagnosis. Jaffe et al., *supra* note 194, at 465–66.

212. *Id.* at 467, 483.

213. *Id.* at 484.

214. *See* BECK, *supra* note 49, at 5 (explaining there are three levels of cognition: (1) automatic thoughts (most superficial), (2) intermediate beliefs (underlying assumptions), and (3) core beliefs (who "I" am, who "others" are, and "how" the world works)); *see also* DOBSON & DOBSON, *supra* note 29, at 152 (defining core beliefs as "cognitive structures of organized prior knowledge, abstracted from experience with specific instances; schemas guide the processing of new information and the retrieval of stored information" (quoting Maria Kovacs & Aaron T. Beck, *Maladaptive Cognitive Structures in Depression*, 135 AM. J. PSYCHIATRY 525, 527 (1978))).

215. A selected list of schemas that may undergird maladaptive functioning include: mistrust and abuse; social isolation and alienation; dependence and incompetence; failure; approval seeking and recognition seeking; negativity and pessimism; emotional inhibition; and unrelenting standards and hypercriticalness. DOBSON & DOBSON, *supra* note 29, at 159.

individual brings to problem solving.²¹⁶ Thus, an individual may come to law school with a core belief that the world is fundamentally just, only to read numerous opinions that conflict with their personally held notions of justice. And as schemas change, people may need to change their social circles, confront people from the past, and possibly face rejection for changing “too much.”²¹⁷ Schema change is often accompanied by a period of identity destabilization until a person reverts to the old schema or successfully integrates new ones into their core beliefs.²¹⁸ Add in that many students jump into the work of law school in a fully immersive way,²¹⁹ and the structure is in place for rewriting people’s schema without a warning that the process is occurring and may produce distress.²²⁰

1. Law School Grade Culture

One of the factors that applies pressure on law students’ schema is the general “law school culture.” While there is variation from school-to-school, there are also some features that are consistent regardless of institution. First, consider how our academic policies support or detract from our students’ needs for psychological²²¹ and emotional safety. Safety does not equate to the elimination of unpleasant thoughts, feelings, or experiences. Rather, psychological safety exists when individuals know they will not be subject to humiliation or punishment for making mistakes, but rather, they will receive logical consequences that flow from their choices and be given an opportunity to learn from those mistakes. Law school should set up conditions for struggle in the pursuit of learning

216. *Id.* at 156–70 (listing the evidence-based and logical change methods used in modifying core beliefs and schemas).

217. *Id.* at 159.

218. *Id.*

219. *See id.* at 164–65 (explaining the immersive “as if” method of modifying schema).

220. “[W]e believe we have an ethical obligation to obtain the client’s explicit consent for [schema modifying] work before going too far down this road. . . . [T]alk with clients about the implications and potential consequences of making schema changes, so that they understand their commitment.” *Id.* at 160.

221. In short, psychological safety, coined and framed by Amy Edmondson to describe one set of attributes of successful teams in the workplace, is a belief that one can take appropriate risks. Effective risk taking requires a setting where one can admit and discuss mistakes, openly address problems and tough issues, seek help and feedback, trust that efforts will not be undermined by others, and trust they are valued members of the team. *What Is Psychological Safety at Work? Here’s How to Start Creating It*, AM. PSYCH. ASS’N (Dec. 4, 2023), <https://www.apa.org/topics/healthy-workplaces/psychological-safety> [<https://perma.cc/PQ57-MMBE>].

difficult material and skills;²²² and, it can do those things without triggering stereotype threat or imposter syndrome in our students. At least, it can be done with less triggering of stereotype threat and imposter syndrome.²²³

Law schools' grade curve policies that focus on rank order grading rather than criterion-based grading often feel punitive to students for prior mistakes, particularly those who either end up on academic probation, or those who were only one point away from the "A." Rank order grading is an inherently competitive paradigm when applied to measuring educational outcomes.²²⁴ Prolonged time in competitive environments reduces individual resiliency.²²⁵ This grading paradigm also contributes to the loss of growth-mindset that students experience as they progress through the three years of the curriculum.²²⁶

Likewise, singular summative assessments at the end of term or the end of the year are counterproductive if the enterprise of legal education is trying to help students learn and retain material and skills.²²⁷ Learning is supported when students are given frequent, low-stakes testing.²²⁸

222. See Catherine M. Christopher, *Normalizing Struggle*, 73 ARK. L. REV. 27, 28 (2020) (recommending "legal educators reorient their attitudes toward struggle by forgiving and embracing student struggle, and even building opportunities for struggle into the curriculum").

223. See generally McClain, *supra* note 129; Paula J. Manning, *Word to the Wise: Feedback Intervention to Moderate the Effects of Stereotype Threat and Attributional Ambiguity on Law Students*, 18 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 99 (2018).

224. See generally Todd L. Cherry & Larry V. Ellis, *Does Rank-Order Grading Improve Student Performance?: Evidence from a Classroom Experiment*, 4 INT'L REV. ECONS. EDUC. 9, 17 (2005) (describing the benefits associated with rank-order grading). Although the authors' study showed that the undergraduate economics students in the rank-order condition sections performed objectively better than those in the criterion referenced section, this study is not big enough to support that rank-order grading will always improve student performance.

225. See Sue Shapcott et al., *The Jury Is In: Law Schools Foster Students' Fixed Mindsets*, 42 LAW & PSYCH. REV. 1, 6 (2018) ("One problem for those concerned with legal professionals' mental health is that competitive environments . . . are negatively associated with resiliency.").

226. *Id.* at 33 ("Between the first and the third year in law school, participants reported a significantly lower growth mindset."); see also McClain, *supra* note 129, at 40. *But see* Cherry & Ellis, *supra* note 224, at 17 ("Results herein suggest the incentive structure provided by rank-order grading can generate improved student performance relative to a criterion-reference grading system.").

227. Some researchers express student performances as "performance = ability + effort," see Cherry & Ellis, *supra* note 224, at 11 ("[G]rades are a signal about a student's ability and learned knowledge."); however, others would express it as "performance = ability - interference," see McClain, *supra* note 129, at 20 ("Stereotype threat affects working memory, cognition, and mental processing."). Researchers in the second view probably also have a secondary formula that approximates "ability = (effort + support + practice + background knowledge)*coefficient obstacle."

228. Christopher, *supra* note 222, at 55.

Implementing a curve exemption for small enrollment classes is both statistically sound and will allow students to be rewarded for growth, rather than locked into one specific outcome based on their first-year performance.

A natural consequence of receiving the benefits of growth by an individual is an increased sense of self-efficacy that can support one's resilience to future hardships.²²⁹ However, being locked into a subjectively undesirable path can foster a maladaptive or fixed mindset.²³⁰

2. Law School Faculty

For a significant number of our first-generation students, law faculty are the first lawyers the students encounter in their lives. And, it may not just be the first-generation students; a significant number of our students have never met a lawyer in their professional capacity prior to coming to law school. By contrast, there are also a fair number of legacy students whose parents, grandparents, and great-grandparents, as well as other elders in the family tree, are lawyers. This contrast of prior experience establishes dynamics that can impede some students' sense of belonging²³¹ because it is difficult for them to see themselves meeting with faculty while it appears the legacy students are cavalierly meeting and socializing with the professors and establishing their bona fides as members of the club.²³²

Moreover, as the sole representatives of the profession for many students, law faculty are the example provided of what a professional lawyer should look and behave as. But, law faculty are not a particularly representative sample of the profession.²³³ Nor are law faculty necessarily the best models of healthy and sustainable professionalism. The numbers of lawyers that experience mental illness and substance abuse are just as

229. See generally Sue Shapcott et al., *The Jury Is In: Law Schools Foster Students' Fixed Mindsets*, 42 LAW & PSYCH. REV. 1, 31 (2018) (identifying the link between mindsets and behaviors such as resiliency, persistence, and ethical behavior).

230. *Id.* at 6.

231. McClain, *supra* note 129, at 23. Implicit in a tendency to find bias is a lack of belonging, if there were belonging, the bias would be less apparent because the observer is not concerned about a potential negative impact from that bias.

232. Bonding over things like \$600 fountain pens.

233. See discussion *infra* Part IV.D.3.

concerning as the numbers provided by either the 2014 or 2021 SLSWB studies.²³⁴ And law faculty are mostly lawyers.

3. Anxiety Is an Adaptive Response²³⁵

Generally, diagnosable anxiety disorders are characterized by the presence of one or more of the following: extreme fear, recognition of the excessiveness of the response to the stimuli, patterns of stimuli avoidance, experiences of detachment or dissociation, or subjective stress.²³⁶ Each specific diagnosis has several other criteria to satisfy before making a diagnosis, but at least one item from the preceding list shows up on every differential checklist.

In law school, from roughly the time admitted students pay their seat deposits until about the time swearing in occurs, students are given truckloads of prescriptive messaging about what to do, or not do, and how to do it, or not, from administration, faculty, staff, upper-level students, and the random attorneys they meet who find out they are law students. Among other things, students are told that they should be working hard, reading cases, briefing cases, outlining, taking practice exams, using Quimbee, not worrying, and a multitude of other “tips” to succeed. Some people tell them that the absolute worst thing they can do is be the person who is unprepared when “Professor Kingsfield” calls on them; others tell them not to worry about reading for class and just focus on the exam. The volume of advice is an overwhelming amount of stimuli for some people. Couple in ego threats, identity threats, extrinsically motivated people, and it is a recipe for fear, excessive responses to that fear, stimuli avoidance, subjectively felt stress, and maybe a ride on the dissociation express.

234. Krill et al., *supra* note 2, at 46 (highlighting the pervasiveness of substance use and other mental health concerns among lawyers).

235. A lot of variations on this theme exist. See David W. Morris, *Adaptive Affect: The Nature of Anxiety and Depression*, 15 NEUROPSYCHIATRIC DISEASE & TREATMENT 3323 (2019); Frazer Meacham & Carl T. Bergstrom, *Adaptive Behavior Can Produce Maladaptive Anxiety Due to Individual Difference in Experience*, 1 EVOLUTION, MED., & PUB. HEALTH 270 (2016); Ana G. Gutiérrez-García & Carlos M. Contreras, *Anxiety: An Adaptive Emotion*, in NEW INSIGHTS INTO ANXIETY DISORDERS 21 (Federico Durbano ed., 2013); Adam M. Perkins & Philip J. Corr, *Anxiety as an Adaptive Emotion*, in THE POSITIVE SIDE OF NEGATIVE EMOTIONS 37 (W. Gerrod Parrott ed., 2014).

236. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 189–190 (5th ed. 2013).

Students are also instructed—sort of—to take what in modern times is a very formulaic genre of writing and distill it into another formulaic genre of document. Students are also widely encouraged to learn to write with various paradigms that will help them meet the conventions of writing exam answers, legal memoranda, and arguments to file with courts before they have ever seen a single example of any of those documents.²³⁷

Moreover, there is a pressure to seek perfection because of insidious implicit messaging that professionals are held to higher standards and therefore “do not make mistakes.” Explicit messaging includes some faculty delighting in sharing stories of typos and grammatical errors that cost clients millions of dollars and former lawyers their licenses. Other faculty are casually judgmental and make remarks in passing about some “thing” that lodges into a student’s brain and creates fear that the student is lacking because the student was unaware the “thing” was a problem.²³⁸

The curriculum and the profession correctly place high demands on individuals who seek membership in the community of lawyers. However, as communicated, living up to these demands would make one look more like the protagonist in a tall tale than a real human being choosing a helping profession. For example, a greatly truncated statement of the qualities that make a good lawyer goes something like, “good” lawyers have impeccable time and project management skills, can write at the drop of a pen, and know everything without having to research anything. Of course, that is bullshit. Good lawyers have robust time and project management skills because they have developed systems and redundancy to catch their mistakes before they become irreparably harmful. Good lawyers are also the ones who know how to say, “I do not know that yet, let me do some research to base my opinion and advice upon.” Although it is true that good lawyers can write copious amounts of verbiage at the drop of a pin, that is just a natural hazard of the repetitive and formulaic discourse of the profession. Great lawyers know how to edit to remove the chaff.

Given a narrative of “shoulds” without accompanying “hows” that our students are presented with throughout the curriculum, it is foreseeable

237. See the legal writing textbooks adopted by the legal writing faculty at your institution.

238. See Katie R.G. Pryal, *Front-Line Faculty and Systemic Burnout: Why More Faculty Should Attend to Law Students' Mental Health and the Inequities Caused by Faculty Who Opt Out*, 27 LEGAL WRITING 199, 201 (2023) (discussing some law professors blame students for their mental health problems and attribute the problems to the students' laziness or poor work ethic).

that many students will lapse into unhelpful, repetitive thought patterns that are easier to avoid than engage.

E. *What If Legal Education Is Just Unusually Attractive to People Predisposed to Mental Illness and Substance Abuse?*

Naturally, upon reading the data about how poorly law students fare with respect to mental health outcomes and substance abuse outcomes, and then to have voices such as mine say that legal education is in some degree responsible and thus bears an onus to change itself to change the situation, many ask questions. Questions like, “What if law school just attracts people who are predisposed to mental illness?”²³⁹ To which I ask the question in return, “What if law school attracts people who are predisposed to mental illness?” If that is true, knowing our students are especially predisposed to mental illness and substance abuse *increases* our responsibility. As educators, we must find ways to support our students so that they receive training in how to prevent (where possible), ameliorate, and manage their particular situation rather than conducting a course of education that is known to exacerbate mental illness and let our students be taken by surprise when they discover, “Oh, hey, I guess I’m one of the three out of ten predisposed to the unpleasant things.”²⁴⁰ This shift in our andragogy will help students be prepared to be ethical practitioners regardless of what their current and future levels of mental health or illness come to be.

However, the empirical data we have now is providing mixed signals on what the answer to the predisposition question is. There is at least one study that found that entering law students’ health, mental and physical, is

239. This particular question, or a variant thereof, came up every time the author presented the work-in-progress at conferences, job talks, and workshops. Usually from a torts professor. But sometimes a professor with the status to be open and forthcoming about mental health struggles framed it as “well, I have always been highly-strung, anxious, and neurotic since way before law school.” But also, due to the pervasiveness of the Langdellian model of legal education, *see generally* Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991) (analyzing Langdell’s case method of teaching the law to law students), and the elite proxies used to screen and hire faculty on the assumption those proxies will predict an aptitude for teaching, we need to recognize that modern law faculty are a nonrepresentative subgroup of the profession by either statistical measures or personal ambitions.

240. This Article is not arguing that the nexus of legal education and students’ decreases in mental health should give rise to cognizable claims for legal remedies. Rather, it is discussing factual harms that affect people’s health and well-being that may not rise to the level of a legal harm.

better than that of the general population when they enter law school.²⁴¹ However, the 2021 SLSWB, which showed a general increase in percentages of students experiencing depression, anxiety, and suicidal ideation, also had data indicating a higher percentage of students were aware they had those diagnoses or tendencies prior to starting law school than the earlier survey's respondents did.²⁴² Moreover, if you visit with the disabilities services coordinators at many law schools, they will report a perception, with varying degrees of data in support, that many more students are coming into law school seeking accommodations for disabilities and diagnosed learning differences such as ADHD than in prior years.²⁴³

Although the data is mixed, there are currently more studies showing that law students start off in a “better” position than the general population in terms of mental health at the start of law school and are in a worse position by the end²⁴⁴ than there are suggesting law school attracts more students with preexisting conditions or risk factors that active during law school.

IV. REDUCING HARM: SOME THOUGHTS

If you are persuaded by the foregoing sections that legal education in its current form results in the application of therapeutic techniques by untrained professionals, and it is causing individual harm to an identifiable

241. See Sheldon & Krieger, *Does Legal Education Have Undermining Effects*, *supra* note 1, at 270 (“Compared with the Missouri undergraduates, the entering law students evidenced higher positive affect and higher life satisfaction . . .”).

242. Jaffe et al., *supra* note 194, at 463–67 (identifying the mental health and trauma diagnosis rates among law students).

243. See DEBRA LANGER, 2022 FIRST-YEAR LAW SCHOOL CLASS: A FOCUS ON STUDENTS WITH DISABILITIES 7 (2023) (providing empirical data on the number of students with disabilities).

244. See NAT'L TASK FORCE ON LAW. WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 35 (2017) (recognizing “[l]aw students start law school with high life satisfaction and strong mental health measures” and then mentally deteriorate as the first year progresses); Krieger, *Institutional Denial*, *supra* note 189, at 113–15 (describing the high levels of anxiety and depression which plague many law students after starting their first year); Rachel Casper, *The Full Weight of Law School: Stress on Law Students Is Different*, LAWS. CONCERNED FOR LAWS. (Jan. 18, 2019), <https://www.lclma.org/2019/01/18/the-full-weight-of-law-school-stress-on-law-students-is-different/> [<https://perma.cc/ZM2H-KVFJ>] (“The best information we have suggests that prospective law students are similar to other Americans before their first day of school, but then the incidence of [anxiety and depression] problems skyrockets after they cross the threshold into law school.”).

percentage of students, albeit not a harm with a legal remedy at this point in time, let us discuss some of the ways in which we can reduce or mitigate the harm done to our students. Some of these suggestions are minimal in terms of implementation costs while others will require the personnel providing legal education to seek and receive additional training. Many of them are reiterations of ideas offered elsewhere by people approaching this and adjacent problems within legal education in search of solutions.²⁴⁵

A. *Investing in Individual Relationships with Students*

Numerous studies have found a significant driver of therapeutic effectiveness is the degree to which the relationship between client and therapist is seen as warm and supportive.²⁴⁶ Some analyses data suggest the underlying rapport between client and therapist is responsible for as much as thirty percent of the outcome of therapy.²⁴⁷

In legal education, there is preliminary data that students who receive individualized feedback in a single class in their first year of law school outperform students who do not.²⁴⁸ The effect size of this intervention is especially promising for students whose entering law school credentials place them below the median of their incoming class.²⁴⁹ Although it is possible to provide individualized feedback without formative assessment, given the noted benefits of formative assessment to learning mastery²⁵⁰ and curriculum agility, it is probably easiest to do so through a small assignment that requires a student to practice skills that will serve them

245. See generally Sheldon & Krieger, *Understanding the Negative Effects*, *supra* note 143; Organ et al., *supra* note 1.

246. See Tori DeAngelis, *Better Relationships with Patients Lead to Better Outcomes*, AM. PSYCH. ASS'N (Nov. 1, 2019), <https://www.apa.org/monitor/2019/11/ce-corner-relationships> [<https://perma.cc/7TJX-LGKC>] (“A good relationship . . . is essential to helping the client connect with, remain in and get the most from therapy.”).

247. See generally LEDLEY ET AL., *supra* note 43, at 3, 26 (detailing the importance of establishing rapport with new clients and how the initial contact can be daunting).

248. Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 J. LEGAL EDUC. 139, 139 (2017) (“[S]tudents in sections that have previously or concurrently had a professor who provides individualized feedback consistently outperform students in sections that have not received any such feedback.”).

249. *Id.*

250. See Jennifer M. Cooper & Regan A. R. Gurung, *Smarter Law Study Habits: An Empirical Analysis of Law Learning Strategies and Relationship with Law GPA*, 62 St. Louis U. L.J. 361, 391 (2018) (claiming “formative assessment, through practice application of the law, is critical to law student learning and academic success in law school”).

well on either the summative assessment for the course or in the practice of law. Additionally, investing in individual relationships provides bi-directional benefit. The students' social networks and social support, which are positively associated with flourishing mental health, are enlarged.²⁵¹ If the time invested includes one-on-one meetings where faculty communicate high expectations of students, and sincere faith in a student's ability to meet those expectations, students who are susceptible to stereotype threat will receive an intervention tailored to their needs.²⁵² These relationships also bolster faculty's social supports and begin cultivating a pool of alumni who might think fondly of the alma mater when the call for applications for team teaching positions goes out (more on that below).²⁵³

Different schools have different cultures of student involvement. There are some readers at schools that already commit to ensuring that as many students as possible have a minimum number of individual faculty relationships before graduation. Other schools lack a sufficient number of faculty, or do not have the faculty culture needed to implement this suggestion. This is but one of many options at the buffet for addressing the harms discussed in this Article.

B. *More Instructional Variety and Differential Grading Standards Tailored to the Learning Objectives and Student Development Level*

Above in Part III.B.1, it was noted that having students spin their metaphorical wheels in learning tasks they have never attempted before, without instruction, is a form of undesirable difficulty that inhibits learning rather than increasing educational rigor.²⁵⁴ Additionally, some of the presumed skills related to project management, use of technology, and critical thinking, as well as basic knowledge related to the branches of government and legislative process simply will not exist for some students.²⁵⁵

251. See generally Brown & Ciciurkaite, *supra* note 179.

252. See generally McClain, *supra* note 129.

253. See discussion *infra* Part IV.B.3.

254. Brennan, *supra* note 66.

255. See Kara Yorio, *A Look at Civics Education, State by State*, SCH. LIBR. J. (Feb. 3, 2020), [https://www.slj.com/story/a-look-at-civics-education-state-by-state#:~:text=The%2011%20states%20that%20have,exam%20as%20a%20graduation%20requirement \[https://perma.cc/6568-WQV5\]](https://www.slj.com/story/a-look-at-civics-education-state-by-state#:~:text=The%2011%20states%20that%20have,exam%20as%20a%20graduation%20requirement [https://perma.cc/6568-WQV5]) (“[D]ata shows us that not all states are providing or prioritizing

1. Use Explicit Instruction to Unlock Students' Domain-Specific Higher Order Thinking Skills

“Some amount of explicit instruction, especially early in the student’s learning, ensures that students build their understanding on a foundation of accurate knowledge.”²⁵⁶

While some students thrive in the Langdellian model of inquiry, which concerns discovery-based learning,²⁵⁷ many, if not most, do not. Providing a scaffolded process of instruction to gradually transfer control of the subject matter from the professor (expert) to the students (novices) provides better accuracy and thoroughness of understanding of foundational knowledge.²⁵⁸ Further, using explicit instruction as described above, and by Professor Beth Brennan, can “level the playing field among students who otherwise have significant difference in [1] prior background knowledge, [2] reading ability, and [3] working memories.”²⁵⁹ As described in educational research, the higher order thinking skills that legal education seeks to develop in students must be built upon a foundation of accurately understood knowledge about the legal domain.²⁶⁰ Although our “cultural mythology”²⁶¹ deems the acceptable path to mastering the skillset of “thinking like a lawyer” as nigh impractical, that is a choice that does not serve our students’ interests nor the larger profession’s.

Taking the time to lecture and test students on essential operational knowledge²⁶² frees up instructional time to be spent on actual higher order “thinking like a lawyer” problem-solving skills. The idea of explicit instruction is not to make the curriculum easier nor to water down its rigor

civics instruction for their students.”); Amanda Litvinov, *Forgotten Purpose: Civics Education in Public Schools*, NEA TODAY (Mar. 16, 2017), <https://www.nea.org/nea-today/all-news-articles/forgotten-purpose-civics-education-public-schools> [<https://perma.cc/4CS8-NRFG>] (“Only 25 percent of U.S. students reach the “proficient” standard on the NAEP Civics Assessment.”).

256. *Id.* at 6 (citing Robert J. Sternberg, *Foreword*, in CONSTRUCTIVIST INSTRUCTION: SUCCESS OR FAILURE? x–xi (Sigmund Tobias & Thomas M. Duffy eds., 2009)).

257. *See generally* Brennan, *supra* note 66. These students are largely those with privileges regarding pre-existing vocabulary, domain knowledge, or critical-thinking training.

258. *Id.* at 3–4.

259. *Id.* at 5–6.

260. *Id.* at 6.

261. *Id.* at 10.

262. Concerning branches of government, court hierarchies, hierarchy of authorities, an overview of the civil litigation process, and so forth.

but to ensure that the students we admit emerge with the skills and toolset we promised when they matriculated, worked towards attaining their Juris Doctor degree, passed the bar exam, and went on to do excellent work representing their clients.

The main barrier to implementing this is dependent on faculty will and politics. For faculty members with the status to exercise their academic freedom to use andragogical methods that serve to help students achieve course learning objectives, transitioning into an explicit instruction followed by additional time in the higher order problem-solving portions of the course can begin as soon as the class preparation commences.

2. Mix Up Instruction So There Are Modules with High-Volume Rapid Feedback and the Traditional Slow-Burn Minimal Feedback

Direct and timely feedback for our students is far too scarce. However, providing quality feedback in a timely manner is a skill that takes quite a bit of time to learn. Moreover, for every assignment given, it has to be multiplied by the number of members of the class to capture the workload it represents for the professor and assistants, if any. Given typical class enrollment sizes for the foundational doctrinal curriculum, timely feedback is made feasible with the adoption of technology such as polling or clicker solutions to formative assessment. Although, there are low tech variants such as using index cards for MCQ polling, minute memos, exit tickets and so forth.²⁶³ Even then, students will rarely walk away from a class session with more than one or two data points of feedback that indicate the strength of their understanding concerning the day's lessons.

However, there is an entire sector of our profession that has the technology, tools, and data sets to help us strategically overcome this shortcoming in legal education—eDiscovery and document review. Conceivably, a data set of documents could be generated that is either sanitized from a real case, or a fair facsimile of what is in the universe of producible documents and put into platform link Relativity™ that has been modified for instructional and training purposes. Many document review projects have reviewers making determinations of responsiveness,

263. See generally Brennan, *supra* note 66; see also Chelsea Baldwin, Visiting Assistant Professor of Law at Washburn U. Sch. of Law, Panel Presentation on Inclusivity in Assessments at the 2024 AALS Annual Meeting (Jan. 4, 2024).

relevance, and privilege.²⁶⁴ Law school document review (LSDR hereinafter) also provides an opportunity to become conversant with the universe of document types that exist outside of legal memos and legal briefs. LSDR can help students develop an internal gauge for what is “publicly” available and what is not. LSDR can give students an opportunity to see how ill-advised people’s actions in the real world can be.

From the faculty side, create a universe of documents and law for instruction purposes. Have a panel of experts pre-code the documents for the relevant criteria. For purposes of this example, it is attorney-client privilege. Film a lecture or training session about the version of AC-P doctrine the students will use to analyze the documents to supplement the relevant reading assignment. Bring students into class, give them their access to the platform, and turn them loose on coding the documents.

Voila, it is a flipped classroom where students are engaging in the analytical process we purport to teach. Strategically, break the one-hundred document library of documents into several sets. The first set the students will complete is a set of ten so each individual student receives almost instant feedback on accuracy. And, once that set is complete, the group can discuss any issues with understanding of the relevant doctrine, the purpose of the task, factual vagaries, or how the software works. Afterwards, let them complete the next three sets. Twenty documents in the second. Thirty in the third, and forty in the fourth. One-hundred repetitions of figuring out whether the elements of attorney-client privilege are met to engrain the elements of a fundamental concept we want “minimally competent” attorneys to approach perfection in their understanding of and ability to analyze. This high-volume automated feedback will provide redirection in near real-time, and students can avoid encoding durable mistakes into their long-term memory. Moreover, students get reinforcement on the primary learning objective, applying the elements of attorney-client privilege to a standard that exceeds minimum competency. If the group is ready, there are opportunities to build in secondary and tertiary knowledge areas that can be scaffolded to increase the complexity before students get bored. Is this person an agent of John Doe to whom privilege attaches? Is sending the email to this point

264. *What Is Document Review?*, ZAPPROVED, <https://zapproved.com/blog/what-is-document-review/> [https://perma.cc/B6EJ-UJR6].

waiving privilege? Did representation end abruptly so that there are some communications outside of representation that are not covered by the privilege? It is likely that these systems could also be loaded with materials for dynamic practice sets to master shepardizing or key citing cases. And more. Maybe AI-generated video for practicing describing four-dimension events in writing?

3. Differential Grading Standards Tailored to the Learning Objectives of the Course with the Possibility of a Modifier Based on Student Developmental Level

The use of rank-order grading was discussed briefly above in Part III.D.1. While experimental evidence shows there are situations in which rank-order grading can entice students to greater performance,²⁶⁵ it is also obvious that after a certain inertial saturation point with a rank-order system, law students in the lower reaches of the curve cease to strive for the grade, and instead focus on survival while devoting their energy to pursuits that engender feelings of purpose and competency. Thus, schools should have tiered grading systems that expose students to curved classes, criterion-referenced classes, and pass-fail courses. The key thing is working out the mechanism where all students completing the ninety-hour JD have the same number of hours of curved classes used for rank ordering purposes when class rank is calculated.

This solution impinges on faculty governance. The key barrier to implementation is the work of educating and convincing faculty for why this solution might be a solid one for the institution based on its student demographics and then getting the votes to pass at a faculty meeting.

4. Have More Team-Taught Courses

The degree of experience and study required to ethically administer courses of cognitive restructuring are high. However, the processes of group therapy provide one potential solution to ensure that there is a better likelihood that students are matched with professors who have the skills and knowledge to best serve them, and that is to move away from

265. See Cherry & Ellis, *supra* note 224, at 17 (“Results herein suggest the incentive structure provided by rank-order grading can generate improved student performance relative to a criterion-reference grading system.”).

individually taught courses into team-taught courses. Team-taught courses allow for many useful acculturation and andragogical opportunities. More faculty means more networking opportunities for our students, and more bodies to help ensure every student has a meaningful opportunity to have a quality relationship with at least one member of the faculty. Having multiple instructors in the room also allows for more eyes to be on students to help identify who is struggling with material, or at cognitive overload for the day.

There are a number of barriers to this solution. Will these co-instructors be full adjuncts, full faculty, or something else? How will they be found, vetted, trained, paid, and supervised in this work? The answers to all of those questions are highly dependent on institutional particulars. Some institutions are beloved by their alumni and donors and will be able to strategically implement this in twelve to eighteen months, assuming no faculty objections to being assigned a co-teacher to share the joy and burden of teaching. This is an idea that will work for some but not all institutions.

C. *Slow Legal Education Down—Bring Back the Part-Time Program*

While there is an allure to committing to full-time studies and emerging with a degree and the ability to pass the bar in a mere three years and join the workforce, this also has an immersive impact²⁶⁶ that creates the opportunity for many of the harms discussed above. If legal education took a step back and encouraged students to remain members of the general population, or to join the community if a student relocated for law school, instead of a group of people set apart, many of the opportunities for the harms discussed above would be diluted or eliminated. Preliminary support for this idea was found in the research conducted by Kennon Sheldon and Lawrence Krieger in their comparative study between two law schools' student bodies to see if legal education has an undermining effect on students.²⁶⁷ The students in the second school studied had a higher age average for its class and a larger part-time cohort and less decline in community valuing²⁶⁸ than the students in the first

266. See generally Brennan, *supra* note 66; McClain, *supra* note 129.

267. Sheldon & Krieger, *Does Legal Education Have Undermining Effects*, *supra* note 1, at 273.

268. See *id.* at 269 (discussing how community contribution was assessed as part of the aspirations index the authors used to assess motivations and values).

school.²⁶⁹ Of course, further studies would be required to see if the greater age, the part-time program, the combination of the two, or something else entirely provided the slight protective effects on the second law school's students' community valuing.²⁷⁰

Unfortunately, market and regulatory forces seem to have spoken on this idea with the severe constriction, or elimination of several part-time JD programs in the last decade.

D. *Cultivating Mental Health Literacy Among Law School Personnel, Law Students, and Lawyers*

A mental illness label potentially subjects a person to stigma and exclusion.²⁷¹ Yet, data show that nearly every person will have one experience with mental illness in their adult life and that one in four people will have repeated experiences.²⁷² One of the first steps to reducing the stigmatizing effects of these labels is to ensure people are literate in mental health and aware of the prevalence of health concerns related to the mind as well as the body.

1. At a Minimum, Mental Health First Aid® or Similar Training for All Law Faculty and Staff with Student-Facing Roles

Mental illness is accompanied by stigma.²⁷³ In part, this is because many people are simply unaware of how prevalent mental illness is throughout the population.²⁷⁴ More importantly, many people are unaware that mental illness can be a once or twice in a lifetime occurrence, like the flu, rather than a lifetime sentence to infirmity and disability.²⁷⁵ On the other side of the coin, people also need more instruction and training in invisible disabilities that make an able-bodied person need accommodation to function in modern society with as much independence as possible.

269. *Id.* at 282.

270. *Id.*

271. *See generally* Link & Phelan, *supra* note 136.

272. Gregory Härtl, *The World Health Report 2001: Mental Disorders Affect One in Four People*, WORLD HEALTH ORG. (Sept. 28, 2001), <https://www.who.int/news/item/28-09-2001-the-world-health-report-2001-mental-disorders-affect-one-in-four-people> [https://perma.cc/42WZ-M96M].

273. Link & Phelan, *supra* note 136, at 393.

274. *See* Härtl, *supra* note 272 (detailing the global prevalence of mental health disorders).

275. *See generally* Mike Slade & Eleanor Longden, *Empirical Evidence About Recovery and Mental Health*, 15 BMC PSYCHIATRY 285 (2015) (“The view of ‘once ill, always ill’ has toxic consequences in a mental health context, and should be challenged.”).

Making sure that every employee with student-facing roles in law schools is provided with accurate, empirically-based information about what mental illness is, is an important precursor to ensuring that faculty members are not harming students in distress nor perpetuating the stigma many associate with mental illness. Additionally, simple tools and resources for approaching a completely foreseeable encounter with a student suffering from mental distress will also be beneficial.

There are several packaged curriculums available to fill these knowledge gaps and provide guidance for what to do at that possible, even likely, point in the future where one finds themselves the only person present and able to assist a person experiencing a mental health crisis. One such curriculum is Mental Health First Aid® (MHFA).²⁷⁶ Developed in Australia, MHFA was created to provide information and support about mental health crises that could be disseminated much like Red Cross First Aid training for physical health concerns. The course is eight hours long and can be delivered in one, two, or four-day scheduling by a certified MHFA instructor.

Over the course of the training, participants will receive information about depression, anxiety, psychosis, suicidality, and substance use and abuse. Additionally, they will learn a five-step process for helping individuals in distress get connected with appropriate community resources, which will be provided in a handout for future reference. There are numerous opportunities to role-play and practice the communication guidelines for helping an individual in emotional or mental distress. MHFA is a particularly useful option for people working in a law school setting because the training requirement is relatively short, and each year, several of our students will experience distress. Sometimes while they are in our building. This training is also useful for urban institutions that have public patrons who may also experience distress.²⁷⁷

276. *About MHFA*, NAT'L COUNCIL FOR MENTAL WELLBEING, <https://www.mentalhealthfirstaid.org/about/> [https://perma.cc/9E7W-H3GP]; see also Charla Bizios Stevens, *Mental Health First Aid: A Valuable Tool in the Well-Being Toolbox*, AM. BAR ASS'N (Feb. 22, 2024), <https://www.americanbar.org/groups/litigation/resources/newsletters/mental-health-wellness/mental-health-first-aid-valuable-tool-well-being-toolbox/> [https://perma.cc/63RX-WJ93].

277. Author is a lapsed MHFA trainer, so this paragraph is written from personal knowledge of the program.

Our profession also has a suicide problem. While MHFA works for suicidal individuals as well as other forms of mental and emotional distress, there is a program tailored especially towards interventions for someone who is suspected to be contemplating suicide. Question, Persuade, Refer (QPR) shares information about the prevalence of suicide as well as the emotional states that suicidal individuals tend to experience. There is a checklist of factors that help a person determine whether an individual is indeed contemplating suicide. If so, there is an action plan to try to get the individual connected with local resources until the impulse passes or other stabilization measures have taken effect.²⁷⁸

2. Provide Students with Training in Mental Health Literacy as well as the Tools So They Can Identify Their ACEs and PCEs and Be Aware of When to Proactively Reach Out for Help

Law schools can collaborate with their school's counseling services to help students identify their individual risk and protective factors as they head into known intellectual landmines²⁷⁹ in the curriculum. This might look like scheduling an in-building counselor, or extra walk-in clinic hours reserved for law students.

It might also involve collaboration with counseling services to provide education about protective factors, either those that some were fortunate enough to benefit from as children and what protective factors look like in different life phases since our student bodies can have emerging adults, secure adults (partnered and not), caretaking adults, and aging adults.

Some of the protective factors include the number and quality of interpersonal relationships, robust physical health, spiritual health, and sufficient economic resources to cover the lower portions of Maslow's hierarchy of needs concerning shelter, food, and safety. Some of the risk factors²⁸⁰ are a lack of quality interpersonal relationships, poor physical

278. *What Is QPR?*, QPR INST., <https://qprinstitute.com/about-qpr> [<https://perma.cc/35JY-HMZ3>] (“QPR stands for Question, Persuade, and Refer—the 3 simple steps anyone can learn to help save a life from suicide.”).

279. Examples of landmines include slavery, reproductive choice, rape, crimes against children, anti-gay and anti-trans legislation, etc.

280. See Alexandra D. Crosswell & Kimberly G. Lockwood, *Best Practices for Stress Measurement: How to Measure Psychological Stress in Health Research*, HEALTH PSYCH. OPEN, July–Dec. 2020, at 1, 6 (acknowledging the research concerning early life stress and physical health based on the Adverse Childhood Experiences (ACE) Study).

health, disconnection from spiritual identity,²⁸¹ and insufficient economic resources to meet basic physical and safety needs.

As a system, law schools generally assume all students achieving matriculation are situated above the physical and safety needs and operating at a level of pursuit of self-actualization. However, that is a patently untrue and harmful assumption given the proliferation of food pantries to ensure law students do not suffer from food insecurity or related stressors.²⁸²

There are possibilities of entering into partnerships with third parties for apps that provide tele-counseling services, or to remind people to take breaks at particular times, give a daily quiz on health-related topics, prompt a mindful minute, or conduct a weekly stress questionnaire. Apps could prompt students to fill out a weekly stress questionnaire (there are a couple that are only seven likert scale items long).²⁸³ This could be an aspect of encouraging students to pause for mindful moments to check in on themselves. And if the score on the stress questionnaire crept into concerning ranges, the student would have information to empower them on whether it is time to recalibrate and change something or determine it is a short-term acute thing that will resolve itself. This would also open up opportunities for information to be shared with appropriate personnel so that after three or four consecutive weeks of elevated stress levels, someone at the school could do a friendly check in and see if it is time to connect the student with other resources in the building or on campus.

There are a number of issues to work out with respect to privacy, staffing, funding, and so forth, but there are some students who would embrace interventions that come to them through the device they are glued to anyway.

281. See *Mental Illness*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/mental-illness/symptoms-causes/syc-20374968> [<https://perma.cc/WR6H-5ATJ>] (listing “withdrawal from friends and activities” and “significant tiredness, low energy or problems sleeping”). Spirituality is more encompassing than a belief in a deity or deities. It includes basic moral beliefs regardless of a religious affiliation or lack thereof, existential beliefs about the presence or lack of a soul, afterlife, and interconnectedness of living things.

282. *Texas Tech University School of Law Mental Health Wellness Toolkit*, TEX. TECH UNIV. SCH. OF L., https://www.depts.ttu.edu/law/Texas_Tech_University_School_of_Law_Mental_Health_Wellness_Toolkit.php [<https://perma.cc/9B8S-DYLD>].

283. See generally Crosswell & Lockwood, *supra* note 280.

3. Law Faculty Members Treating Their Own Mental Illness and Substance Abuse with Therapy, Medication, or Both

Becoming a faculty member at a law school does not render one immune to mental illness or substance abuse. Although data about rates of mental illness and substance abuse among law faculty are scarce,²⁸⁴ given that a majority of faculty were lawyers prior to entering academia, it is reasonable to infer that at a minimum law faculty have rates of mental illness and substance abuse similar to that of the legal profession at large.²⁸⁵ To make this idea concrete, three, maybe four, out of ten faculty members are engaging in teaching methodologies that perform cognitive restructuring on their students while they themselves are situated in a place of illness or addiction, that may or may not be treated. Thus, faculty members are modeling for students and shaping discourse according to an internal cognitive frame of reference that is not only shaded by the requirements of “thinking like a lawyer” but thinking like a lawyer while mentally ill or abusing substances. As has been illustrated by Lucy Jewel, at least one specific concept within the “thinking like a lawyer” toolkit, a reasonable man, is a concept that embodies and propagates diagnosable mental illness in the form of obsessive-compulsive disorder in the profession.²⁸⁶

The key issue with this proposal is that it is strictly based on the honor system. And the people who are inclined to treat their conditions are already doing so, and those who are not, will not until either the consequences of the leaving it untreated become too distressing or the

284. Cf. *Section on Law Professors with Disabilities and Allies*, ASS’N OF AM. L. SChS. (May 19, 2021), <https://www.aals.org/sections/list/section-on-law-professors-with-disabilities-and-allies/> [<https://perma.cc/X6HY-R258>] (showing the newly formed Association of American Law Schools section for law faculty with disabilities).

285. According to the David Nee Foundation, rates range from 20–40% of the profession. See Ginger O’Donnell, *Dave Nee Foundation Supports Lawyers, Law Students Who Suffer from Depression*, INSIGHT INTO DIVERSITY (June 24, 2019), <https://www.insightintodiversity.com/dave-nee-foundation-supports-lawyers-law-students-who-suffer-from-depression/> [<https://perma.cc/JD3B-Q4SG>] (identifying estimated depression rates among lawyers and law students). Given that the structures of academia are also noted as being hostile to mental health and well-being, it would be unsurprising to discover that law faculty experience mental illness and substance abuse at rates that far exceed that of the legal profession. Especially considering the status issues leading to multilevel hierarchy in many law schools where clinical, legal writing, and academic success faculty have heavier teaching and assessment loads with less pay and status than tenured faculty teaching podium classes and grading one or two assignments per semester.

286. Jewel, *supra* note 152, at 1060.

consequences bring the issue into public view. Although there is no tenable enforcement mechanism for this idea, law school administration can make sure that all people in student contact roles are reminded about the institution's Employee Assistance Program, the institution's telehealth provider, and mental health benefits on a quarterly or biannual basis. Awareness of resources is one of the first requirements to using resources. If the institution's finances are strong enough, set aside some money to cover deductibles and copays in case the pervasive low compensation of staff, contract, and adjunct faculty is the barrier standing between them and help.

V. CONCLUSION

In conclusion, in this Article, the parallels between law school and cognitive behavioral therapy has been identified. Likewise, the points of deviation between the two endeavors have been discussed. Now that this conceptual groundwork is in place, there are several avenues of investigation to pursue to identify the next steps towards reducing the emotional harms inflicted on our students. Another avenue of investigation is to do deep qualitative examination in the delivery of legal education to see how and where the untampered cognitive restructuring occurs and generate protective interventions. Another avenue is researching whether increasing mental health literacy rates among lawyers will act as a protective mechanism for the known risks of the profession with respect to mental health and substance abuse.

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