

Positive Legal Education: Flourishing Law Students and Thriving Law Schools

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POSITIVE LEGAL EDUCATION: FLOURISHING LAW STUDENTS AND THRIVING LAW SCHOOLS

DEBRA S. AUSTIN*

I. INTRODUCTION

*Culture takes years to create and years to change. Illnesses rarely respond in days to a treatment. Organizations that are drowning need to learn to swim. . . . There are innovations and moments that lead to change. But that change happens over time, with new rules causing new outputs that compound. The instant win is largely a myth.*¹

There is a well-being crisis in the legal field and legal education may be the catalyst. “Law students regularly top the charts as among the most dissatisfied, demoralized, and depressed of graduate-student populations.”² The in-class Socratic method of case discussion is infamous for inducing anxiety in law students.³ Law school grades are often determined by a single final exam at the end of a grueling fifteen-week semester.⁴ When reflecting on law school, many graduates “cite competition, grades, and workload as major stressors.”⁵ If legal educators ignore law school stressors, they will likely suppress learning and fuel illness.⁶

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1. Seth Godin, *The Myth of Quick*, SETH’S BLOG (Dec. 5, 2016), http://sethgodin.typepad.com/seths_blog/2016/12/the-myth-of-quick.html.

2. Abigail A. Patthoff, *This Is Your Brain on Law School: The Impact of Fear-Based Narratives on Law Students*, 2015 UTAH L. REV. 391, 424 (2015).

3. See, e.g., ANDREW J. MCCLURG, 1L OF A RIDE: A WELL-TRAVELED PROFESSOR’S ROADMAP TO SUCCESS IN THE FIRST YEAR OF LAW SCHOOL 33 (2d ed. 2013); SCOTT TUROW, ONE L: THE TURBULENT TRUE STORY OF A FIRST YEAR AT HARVARD LAW SCHOOL 25–26, 119 (1977); THE PAPER CHASE (Twentieth Century Fox Film Corp. 1973).

4. Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 79 (2010) (“In most law school courses, particularly in the critical first year, the only assessment most students experience is a three or four hour end-of-the-semester final exam.”).

5. REBECCA NERISON, LAWYERS, ANGER, AND ANXIETY: DEALING WITH THE STRESSES OF THE LEGAL PROFESSION 68 (2010).

6. Patthoff, *supra* note 2, at 424.

Law students start law school with strong mental health and high life satisfaction measures, and within the first year of law school, experience a significant increase in anxiety and depression.⁷ Law professors describe students as “the walking wounded,” and they observe students devolve to become insecure, downcast, and disengaged.⁸ Some law students deal with stress by self-medicating. In a 2014 study across fifteen law schools and including over 11,000 law students, researchers found that:

- 90% of law students had consumed alcohol within 30 days;
- 53% of law students consumed sufficient alcohol to get drunk in the last thirty days, compared to 39% of other graduate students;
- 43% participated in binge-drinking at least once in the previous two weeks, compared to 36% of other graduate students; and
- 22% participated in binge-drinking twice in the prior two weeks, compared to 21% of other graduate students.⁹

In the same study, 37% of law students reported anxiety, compared to 15% of other graduate students, and 17% of law students reported depression, compared to 14% of other graduate students.¹⁰

The impairment in well-being continues beyond the first year of law school and into the early years of legal practice.¹¹ A recent study surveyed 12,825 lawyers and discovered that 23% of licensed, employed attorneys identify as problem drinkers, 28% experience depression, and 19% suffer from symptoms of anxiety.¹² Lawyers rank fourth in suicides among professionals, behind dentists, pharmacists, and doctors, and many recent lawyer suicides are linked to depression.¹³ Females in the legal profession rank second in suicide rates behind female first responders and corrections officers.¹⁴ From July 2014 through February 2015, there were seven law student

7. 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, 113–15 (2002).

8. *Id.* at 113.

9. 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, 123–24, 127–29 (2016).

10. *Id.* at 136–37.

11. Krieger, *supra* note 7, at 114–15.

12. Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTIVE MED. 46, 46–52 (2016).

13. Rosa Flores & Rose Marie Arce, *Why Are Lawyers Killing Themselves?*, CNN (Jan. 20, 2014), <http://www.cnn.com/2014/01/19/us/lawyer-suicides/>.

14. *These Jobs Have the Highest Rate of Suicide*, CBS NEWS (June 30, 2016), <https://www.cbsnews.com/news/these-jobs-have-the-highest-rate-of-suicide/> (summarizing results

suicides and one law professor suicide.¹⁵ “Something distinctly bad is happening to the students in our law schools,” and the well-being crisis bleeds into legal practice.¹⁶

The lawyer well-being crisis is acknowledged by the American Bar Association, which responded by coalescing the National Task Force on Lawyer Well-Being in August 2016.¹⁷ The Task Force released its comprehensive report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, on August 14, 2017.¹⁸ The report makes recommendations to improve lawyer well-being that focus on five key themes:

(1) identifying stakeholders and the role each of us can play in reducing the level of toxicity in our profession, (2) eliminating the stigma associated with help-seeking behaviors, (3) emphasizing that well-being is an indispensable part of a lawyer’s duty of competence, (4) educating lawyers, judges, and law students on lawyer well-being issues, and (5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.¹⁹

The Path to Lawyer Well-Being report provides thirteen recommendations for all legal profession stakeholders, and then offers specific recommendations for judges, attorney regulators, legal employers, law schools, bar associations, professional liability carriers for lawyers, and lawyer assistance programs.²⁰ The recommendations seek to acknowledge the legal profession’s mental health and substance use problems, and to change the cultures in which law students are educated and lawyers practice law.²¹ The report argues there are three reasons to address the lawyer well-being crisis: to enhance the effectiveness of legal organizations; to improve the professional and ethical behavior of lawyers; and to help individual lawyers thrive in the physical, emotional, intellectual, occupational, social, and spiritual domains of life.²²

from the 2012 Centers for Disease Control and Prevention study on suicide rates by occupational group).

15. Organ et al., *supra* note 9, at 117.

16. Krieger, *supra* note 7, at 114–15.

17. NAT’L TASK FORCE ON LAWYER WELL-BEING, *THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE* 1 (2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf>.

18. *Id.*

19. *Id.* at 2; *see also id.* at 10–11 (detailing the five core steps to enhancing lawyer well-being).

20. *Id.* at 4–6.

21. *Id.* at 7, 12.

22. *Id.* at 8–9.

The report begins with a call to leadership within each facet of the legal profession, urging a shift from ignoring well-being problems to taking action to create cultural change.²³ The recommendations for law schools include:

- Identifying organizational practices that may contribute to well-being problems, and assessing changes that can be made;
- Educating faculty on well-being issues in the legal profession;
- Providing a well-being curriculum to students;
- Promoting student resources that address mental health and substance use disorders;
- Surveying student well-being anonymously;
- Facilitating networks to support students in recovery; and
- Discouraging alcohol-centered social events.²⁴

I argue that legal educators must undertake the following initiatives in order to innovate and improve legal education and law practice:

- Examine the legal education-well-being relationship with the goal of minimizing the negative well-being effects of law school;
- Examine the law practice-well-being relationship with the goal of minimizing the negative well-being effects of law practice; and
- Incorporate Positive Psychology, neuroscience, and Positive Education-informed interventions to improve the law student experience and optimize learning, and to inform law schools and legal employers about methods and mechanisms to heal sick lawyers and to better develop healthy lawyers.

Furthermore, I propose a new field of inquiry called Positive Legal Education that leverages research findings from Positive Psychology, neuroscience, and Positive Education to inspire innovation in legal education and curate a culture of well-being in the legal field.

II. LEGAL EDUCATION AND ITS IMPACT ON LAW STUDENT AND LAWYER WELL-BEING

“I don’t remember anything from my 1L year.” Troy, 2L Spring 2015, former U.S. Marine, Machine Gunner, and Squad Leader with service experience in the Middle East.

23. *Id.* at 12.

24. *Id.* at 35, 38–40.

Law school trained leaders are ubiquitous in society throughout the legal system, political system, governance, business, finance, nonprofit management, news media, entertainment, and philanthropy.²⁵ Scott Curran, social-responsibility consultant to nonprofits and companies, says “[e]verything you see happening in the world, whether it’s in philanthropy, whether it’s social innovation . . . it’s all driven by lawyers.”²⁶ Still, the media, public, and students are questioning the value of legal education. Lawyers have significant societal responsibilities, yet they also have a negative societal reputation from continuing business and legal scandals, which may be related to their well-being problems.²⁷

Legal educators have begun looking at the problems of plummeting enrollments and skepticism about the value of legal education, but what are they *seeing*? Laws and law schools are slow to change. Organizations today need to be innovative and nimble. This fundamental paradox is the reason we must change the questions we are asking about how law students are educated and about how law school pedagogies impact law student and lawyer well-being and performance. Neuroscience and psychology research demonstrates that the collective effects of training to become a lawyer under chronically stressful conditions may weaken law student learning capacity and undermine professional identity development.²⁸ Stress in law

25. See, e.g., JENNIFER E. MANNING, MEMBERSHIP OF THE 114TH CONGRESS: A PROFILE 4–5 (2016), <https://www.fas.org/sgp/crs/misc/R43869.pdf> (reporting that, in 2015, just under 40% of Congress members were lawyers, with 36% of the House and 54% of the Senate holding law degrees); Nick Robinson, *The Decline of the Lawyer Politician* 10–11 (HLS Ctr. on the Legal Prof., Research Paper No. 2015-10, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2684731&download=yes (reporting that, since U.S. independence, when twenty-five of the fifty-six signers of the Declaration of Independence were lawyers, 63% of the Cabinet members have also been lawyers); Bureau of Labor Statistics, *Occupational Outlook Handbook: Lawyers*, U.S. DEP’T OF LABOR, <https://www.bls.gov/ooh/legal/lawyers.htm#tab-3> (last modified Jan. 30, 2018) (reporting that, in 2016, 48% of lawyers provided legal services and 18% of lawyers were government employees); *Jobs in Business and Industry—A 20-Year Perspective—1994–2014*, NAT’L ASS’N FOR L. PLACEMENT (Feb. 2016), <http://www.nalp.org/0216research> (reporting that law graduates who take jobs in business and industry after law school number about 18%); Debra Cassens Weiss, *Lawyers No Longer Dominate Congress; Is Commercialization of Profession to Blame?*, A.B.A. J. (Jan. 20, 2016), http://www.abajournal.com/news/article/lawyers_no_longer_dominat_congress_is_commercialization_of_profession_to_b (“59 percent of U.S. presidents have been lawyers, as well as 68 percent of vice presidents and 78 percent of secretaries of state”); Mike Myatt, *Infographic: DNA of Fortune 100 CEOs*, FORBES (Aug. 13, 2013, 12:06 AM), <http://www.forbes.com/sites/mikemyatt/2013/08/13/infographic-dna-of-fortune-100-ceos/#735d7cd52104> (reporting that 20% of Fortune 100 CEOs have law degrees).

26. Rebecca Blair, *Helping Nonprofits Grow*, 38 AM. LAW. 44, 44 (2016).

27. See, e.g., David Ray Papke et al., *Lawyers*, in LAW AND POPULAR CULTURE: TEXTS, NOTES, & QUESTIONS (2d ed. 2012).

28. See SANDRA AAMODT & SAM WANG, WELCOME TO YOUR BRAIN: WHY YOU LOSE YOUR CAR KEYS BUT NEVER FORGET HOW TO DRIVE AND OTHER PUZZLES OF EVERYDAY LIFE 86 (2008); DANIEL G. AMEN, CHANGE YOUR BRAIN CHANGE YOUR BODY: USE YOUR BRAIN TO

school may also prime law students for abnormally high rates of anxiety and depression as lawyers.

Lawyers suffer from serious well-being problems (anxiety, stress, depression, suicide risk, alcoholism, substance abuse, addiction, divorce, and mental illness), but many do not exhibit these disorders prior to law school.²⁹ The most recent report on legal education reform, the Carnegie Report, argues that deeply rooted aspects of the hidden legal curriculum may cripple legal education.³⁰ University of Chicago Education Professor Philip W. Jackson coined the phrase “hidden curriculum” in 1968.³¹ Hidden curriculum is defined as “[t]he norms, values and social expectations indirectly conveyed to students.”³² Elliot Eisner, Professor Emeritus of Education and Art of Stanford University, argues that schools inadvertently teach more than they intend to teach students via the hidden curriculum.³³ The culture in which law students are educated encourages a “single-minded focus on competitive achievement.”³⁴ The hidden legal curriculum permeates the culture of both classroom and school, and it socializes law students to the values of law practice.³⁵ Major obstacles to legal education reform enumerated in the Carnegie Report are characteristics of the hidden legal education curriculum and sources of law student chronic stress: the competitive environment and the grade curve.³⁶

Douglas Litowitz believes that “most lawyers hate[d] law school,” describing it as a hazing ritual where law school graduates emerge with increased mental health problems.³⁷ He argues that rather than a transformative educational experience, law school is traumatic: “When I say that law

GET AND KEEP THE BODY YOU HAVE ALWAYS WANTED 215 (2010); RITA CARTER, *MAPPING THE MIND* 96 (rev. ed. 2010); NORMAN DOIDGE, *THE BRAIN THAT CHANGES ITSELF: STORIES OF PERSONAL TRIUMPH FROM THE FRONTIERS OF BRAIN SCIENCE* 240 (2007); JOHN MEDINA, *BRAIN RULES: 12 PRINCIPLES FOR SURVIVING AND THRIVING AT WORK, HOME, AND SCHOOL* 179 (2008); *FUNDAMENTAL NEUROSCIENCE* 804 (Larry R. Squire et al. eds., 4th ed. 2013).

29. See, e.g., Martin E.P. Seligman et al., *Why Lawyers Are Unhappy*, 23 *CARDOZO L. REV.* 33, 37 (2001); Krieger, *supra* note 7, at 113–15.

30. See, e.g., WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 31–32 (2007).

31. PHILIP W. JACKSON, *LIFE IN CLASSROOMS* 33–34 (1968) (“[T]he crowds, the praise, and the power that combine to give a distinctive flavor to classroom life collectively form a hidden curriculum which each student (and teacher) must master if he is to make his way satisfactorily through the school.”).

32. *Hidden Curriculum*, *ONLINE DICTIONARY OF THE SOCIAL SCIENCES*, <http://bitbucket.icaap.org/dict.pl?alpha=H> (last visited Mar. 13, 2018).

33. ELLIOT W. EISNER, *THE EDUCATIONAL IMAGINATION: ON THE DESIGN AND EVALUATION OF SCHOOL PROGRAMS* 87–97 (Debra A. Stollenwerk ed., 3d ed. 1994).

34. SULLIVAN ET AL., *supra* note 30, at 31.

35. See EISNER, *supra* note 33, at 88.

36. SULLIVAN ET AL., *supra* note 30, at 31.

37. DOUGLAS LITOWITZ, *THE DESTRUCTION OF YOUNG LAWYERS: BEYOND ONE L* 10, 19 (2006).

school *breaks* people I mean that almost nobody comes out of law school feeling better about themselves, although many come out much worse—caustic, paranoid, and overly competitive.”³⁸

The stresses of attending law school can lead to maladaptive behavior. Andrew J. McClurg asked University of Memphis law students about their 1L year and their responses were largely focused on anxiety and stress.³⁹ A common theme was “sheer, unrelenting exhaustion”—a “level of mental exhaustion [most] d[o] not know exist[s].”⁴⁰ One of these fatigued students habitually dropped off to sleep at his computer, rarely sleeping in bed.⁴¹

Law students may self-medicate to relieve stress. Research has shown that about 15% of lawyers suffer from alcoholism, compared to 10% of the general population.⁴² Substance abuse is involved in between 50% and 75% of attorney disciplinary actions.⁴³ Law school, where school events and post-class socializing encourage students “to drink like a lawyer,” might serve as the launching pad for substance problems.⁴⁴ Law students experience pervasive distress over final exams and grades, and persistently worry about failing out of law school.⁴⁵

Law schools often define student achievement in terms of grades, class standing, and journal participation.⁴⁶ Students may be introduced to “these prizes” as early as orientation, igniting the drive to perform.⁴⁷ They respond by trying to “obtain high grades as a form of credentialing,” marginalizing the development of domain knowledge and skill mastery.⁴⁸

The Carnegie Report describes three apprenticeships in legal education: the intellectual apprenticeship, where students acquire a knowledge base; the practice apprenticeship, where students learn practical legal skills; and the professional identity apprenticeship, where students cultivate the attitudes and values of the legal profession.⁴⁹ The Carnegie Report argues that ingrained characteristics of the hidden legal curriculum, the grade curve and competitive learning environment, may hobble legal education by in-

38. *Id.* at 30.

39. *See* MCCLURG, *supra* note 3, at 368–89.

40. *Id.* at 386.

41. *Id.*

42. Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy and Unethical Profession*, 52 VAND. L. REV. 871, 876 (1999).

43. Betty Reddy & Ruth Woodruff, *Helping the Alcoholic Colleague*, 3 PROF. L., May 1992, at 1, 4.

44. MCCLURG, *supra* note 3, at 345.

45. *Id.* at 385.

46. NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* 125 (2010).

47. *Id.*

48. *Id.*

49. SULLIVAN ET AL., *supra* note 30, at 28.

hibiting student professional identity development and focusing students on competitive achievement, while minimizing ethical maturation.⁵⁰ The socialization process of legal education incubates the law student professional identity.⁵¹ The Carnegie Report states:

In their passage through law school, students apprentice to a variety of teachers, but they also apprentice to the aggregate educative effects of attending a particular professional school and program. That is, they are formed, in part, by the formal curriculum but also by the informal or “hidden” curriculum of unexamined practices and interaction among faculty and students and of student life itself.⁵²

According to the Carnegie Report, the transformation of legal education is unlikely unless legal educators grapple with the aspects of the hidden legal curriculum that contribute to professional identity formation and a decline in student well-being:

- “The competitive classroom climate”;
- “The competitive atmosphere of most law schools”; and
- The grade curve.⁵³

In his book about how educational apprenticeships form professionals, David Williamson Shaffer argues that a curriculum of professional education should be intentionally designed to transmit the skills, knowledge, identities, and values of the profession.⁵⁴ “[L]earning to think like a professional means learning to value the things professionals think of as important, interesting, and meaningful.”⁵⁵ It requires the deliberate practice of imagining oneself as that kind of professional.⁵⁶ The knowledge, skills, and values transmitted in law school shape the professional identity development of law students. Law students adopt the cultural norms of law school and transfer them to law practice.

The *Foundations for Practice: The Whole Lawyer and the Character Quotient* report calls for law schools to develop programming that increases the character quotient of law students.⁵⁷ It is the result of a survey of more

50. *See id.* at 31–32.

51. *See id.*

52. *Id.* at 29.

53. *Id.* at 31.

54. DAVID WILLIAMSON SHAFFER, HOW COMPUTER GAMES HELP CHILDREN LEARN 12 (2006).

55. *Id.* at 105.

56. *Id.* at 135.

57. ALLI GERKMAN & LOGAN CORNETT, FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 1 (2016), http://iaals.du.edu/sites/default/files/reports/foundations_for_practice_whole_lawyer_character_quotient.pdf.

than 24,000 lawyers practicing in fifty states, taken between 2014 and 2015.⁵⁸ The *Foundations for Practice* report recommends that law schools teach:

- Character attributes including courtesy, humility, respect, tact, diplomacy, sensitivity, tolerance, and compassion; and
- Self-care and self-regulation skills such as positivity and managing stress, exhibiting flexibility, adaptability, and resilience during challenging circumstances, and decision-making under pressure.⁵⁹

Stress is a key characteristic of law school and legal practice cultures, and the stressors experienced by law students and lawyers result in a significant decline in their well-being, including increased anxiety, panic attacks, depression, substance abuse, and suicide risk.⁶⁰ Stress hormones are present in the brain during fight-or-flight activation.⁶¹ Lawyers and law students can spend months or years in fight-or-flight overdrive, many believing their performance is enhanced by stress hormones.⁶² However, neuroscience research reveals that chronic stress diminishes cognitive capacity.⁶³ This may be because, according to brain scans, the hippocampi shrink in people who experience stress, low self-esteem, major depression, and post-traumatic stress disorder (“PTSD”).⁶⁴ The impact of stress on cognition includes impaired concentration, memory, problem-solving, and language and math processing.⁶⁵ Motivation, creativity, and curiosity are also diminished.⁶⁶ The process of memory formation and the impact of emotion on cognition indicate that stress can weaken or kill brain cells needed for law school and life-long learning.⁶⁷

58. *Id.*

59. *Id.* at 30, 33.

60. See LEVIT & LINDER, *supra* note 46, at 6–8; LITOWITZ, *supra* note 37, at 16–26; MCCLURG, *supra* note 3, at 333–41; Krieger, *supra* note 7, at 113; Corie Rosen, *The Method and the Message*, 12 NEV. L.J. 160, 161 (2011).

61. See RICK HANSON, BUDDHA’S BRAIN: THE PRACTICAL NEUROSCIENCE OF HAPPINESS, LOVE, & WISDOM 52 (2009).

62. GAYATRI DEVI, A CALM BRAIN: HOW TO RELAX INTO A STRESS-FREE, HIGH-POWERED LIFE 6 (2012).

63. See *supra* note 28.

64. Talitha Best & Louise Dye, *Good News Story: Nutrition for Brain Health*, in NUTRITION FOR BRAIN HEALTH AND COGNITIVE PERFORMANCE 4 (Talitha Best & Louise Dye eds., 2015); Bruce S. McEwen, *The Brain on Stress: The Good and the Bad*, in SYNAPTIC STRESS AND PATHOGENESIS OF NEUROPSYCHIATRIC DISORDERS 7 (Maurizio Popoli, David Diamond & Gerard Sanacora eds., 2014); ROBERT M. SAPOLSKY, WHY ZEBRAS DON’T GET ULCERS: AN UPDATED GUIDE TO STRESS, STRESS-RELATED DISEASES, AND COPING 220–21 (1998).

65. MEDINA, *supra* note 28, at 178.

66. DAVID PERLMUTTER & ALBERTO VILLOLDO, POWER UP YOUR BRAIN: THE NEUROSCIENCE OF ENLIGHTENMENT 61 (2011).

67. See *supra* note 28.

Individual law students and lawyers have the power to improve brain function, mindset, and well-being.⁶⁸ Rules 1.1 and 1.3 of the American Bar Association's Model Rules of Professional Conduct require lawyer competence and diligence, respectively, during the representation of clients.⁶⁹ Rules 4.1 through 4.4 govern professional behavior when working with others in the legal system.⁷⁰ The brain changes with each experience, and that change can be directed by personal effort and choice.⁷¹ Brain plasticity allows us to keep the skills we practice but also forces us to lose the ones we do not.⁷² As law students, law professors, and lawyers strive to operate with competence and diligence, they can learn to thrive by developing an understanding of how to optimize their performance, productivity, and well-being with recommendations based on neuroscience and Positive Psychology research.⁷³

There is no widespread movement in legal education to address the limitations posed by the hidden legal curriculum or to improve the well-being crisis in the legal field. However, some law schools have instituted programs to improve student well-being.⁷⁴ Additionally, legal scholarship dealing with issues of law student and lawyer well-being is situated in the Balance in Legal Education section of The Association of American Law Schools, and organized in a robust online bibliography.⁷⁵ Positive organizations and cultures emerge from positive leadership. Law schools whose faculty and administration learn of Positive Psychology and neuroscience research findings, and infuse their curriculum and cultures with Positive Education practices, are likely to improve both the well-being and the performance of their students.⁷⁶ We must leverage research findings from Pos-

68. See Debra S. Austin, *Killing Them Softly: Neuroscience Reveals How Brain Cells Die from Law School Stress and How Neural Self-Hacking Can Optimize Cognitive Performance*, 59 LOY. L. REV. 791, 827–28 (2013).

69. MODEL RULES OF PROF'L CONDUCT r. 1.1, 1.3 (AM. BAR ASS'N 2016).

70. *Id.* r. 4.1, 4.4.

71. DOIDGE, *supra* note 28, at 47.

72. *Id.* at 59–60; EDWARD M. HALLOWELL, SHINE: USING BRAIN SCIENCE TO GET THE BEST FROM YOUR PEOPLE 28 (2011).

73. See MARGARET GLICK, THE INSTRUCTIONAL LEADER AND THE BRAIN: USING NEUROSCIENCE TO INFORM PRACTICE 13 (2011).

74. Susan Swaim Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795, 813 (2012); see generally Gretchen Duhaime, *Practicing on Purpose: Promoting Personal Wellness and Professional Values in Legal Education*, 28 TOURO L. REV. 1207 (2012).

75. See AALS *Balance in Legal Education Bibliography*, UNIV. OF DENVER, STURM COLL. OF LAW, <http://www.law.du.edu/index.php/aals-balance-in-legal-education-bib> (last visited Mar. 13, 2018).

76. See Stanford Graduate School of Business, *Kathryn Shaw: Three Things All Good Bosses Do*, YOUTUBE (June 22, 2016), <https://www.youtube.com/watch?v=CGJtZwWBdqo> (asserting that positive work environments improve employee performance).

itive Psychology, neuroscience, and Positive Education to reexamine our pedagogies and assessment practices, and we must reconsider our goals for educating law students to give greater focus on developing critical thinking, problem-solving, leadership, and well-being skills.⁷⁷

III. NEUROBIOLOGY OF PERFORMANCE

Lawyers who learn how the mind and the brain work have an opportunity to increase well-being and improve performance.⁷⁸ Research shows that undertaking a plan to improve mindset and brain health can optimize cognitive function.⁷⁹ The first step is to develop neuro-intelligence, or brain health literacy.⁸⁰

A. Brain Health Literacy

The human brain weighs only three pounds, yet it consumes 25% of the body's calories and 20% of its oxygen.⁸¹ It evolved from the spine upward into three functional regions: the primitive, emotional, and thinking brains.⁸² To imagine the structure of the brain, look at the open palm of the hand.⁸³ The primitive brain, including the brain stem and cerebellum, sits atop the spine and is located on the hand example where the hand and wrist meet.⁸⁴ The primitive brain manages many of the automated functions for the body such as breathing, heartbeat, and digestion.⁸⁵ The emotional brain rests above the primitive brain, and facilitates emotion, hunger, and sleep

77. Legal educators can learn from the Positive Computing movement which has been examining the technology-wellness relationship and transforming design to create a positive user experience. Rafael A. Calvo et al., *Editorial for "Positive Computing: A New Partnership Psychology, Social Sciences, and Technologists"*, 6 PSYCHOL. WELL-BEING, July 4, 2016, at 2–3, <https://psywb.springeropen.com/track/pdf/10.1186/s13612-016-0047-1?site=psywb.springeropen.com>.

78. SHAWN ACHOR, *THE HAPPINESS ADVANTAGE: THE SEVEN PRINCIPLES OF POSITIVE PSYCHOLOGY THAT FUEL SUCCESS AND PERFORMANCE AT WORK* 22–23 (2010).

79. *Id.* at 28–31.

80. Debra S. Austin, *Drink Like a Lawyer: The Neuroscience of Substance Use and Its Impact on Cognitive Wellness*, 15 NEV. L.J. 826, 829 (2014).

81. GERALD M. EDELMAN, *WIDER THAN THE SKY: THE PHENOMENAL GIFT OF CONSCIOUSNESS* 15 (2004); CARTER, *supra* note 28, at 14; AMEN, *supra* note 28, at 17.

82. JUDITH HORSTMAN, *THE SCIENTIFIC AMERICAN: DAY IN THE LIFE OF YOUR BRAIN* 4–6 (2009).

83. HEIDI HANNA, *THE SHARP SOLUTION: A BRAIN-BASED APPROACH FOR OPTIMAL PERFORMANCE* 26 (2013).

84. *Id.*; JUDITH HORSTMAN, *THE SCIENTIFIC AMERICAN: BRAVE NEW BRAIN* 3 (2010); BARRY J. GIBB, *THE ROUGH GUIDE TO THE BRAIN* 36–37 (Duncan Clark & Ruth Tidball eds., 2007).

85. GIBB, *supra* note 84, at 36–37; HORSTMAN, *supra* note 84, at 3.

rhythms.⁸⁶ Fold the thumb across the hand to signify the number four with the fingers, and the thumb now represents the emotional brain.⁸⁷ Located deep within the head are some of the emotional brain's significant components: the amygdala, hippocampus, thalamus, nucleus accumbens, and ventral tegmental area.⁸⁸ The thinking brain is the wrinkled, walnut-shaped top section of the brain that is sub-divided into two hemispheres and four lobes: occipital (vision), temporal (hearing), frontal (language, reasoning, and planning), and parietal (movement, taste, temperature, and touch).⁸⁹ Close the fingers over the thumb to make a fist, and this is how the thinking brain wraps around the emotional brain.⁹⁰ The thinking brain is charged with executive functions, reasoning, and higher-order thinking.⁹¹

Brain cells that facilitate communication within the brain, and from the brain to the body, are called neurons and those that support the neurons are glial cells.⁹² Neurons are shaped like trees, with information-input dendrite branches at the top, long axon trunks, and output roots called axon terminals.⁹³ Information moves through the neuron as an electrical impulse from the dendrite branches, through the axon trunk, to the axon terminals, and crosses a synaptic gap between neurons via chemical neurotransmitters.⁹⁴ Networks of approximately 100 billion neurons convey information by forming trillions of synaptic connections.⁹⁵ The thinking brain has an outer layer consisting of densely packed neurons that process information (gray matter) and an inner layer where information moves between areas of the brain (white matter).⁹⁶ Scientists have identified over 100 neurotransmitters such as Dopamine (motivation, associative learning), Glutamate (learning, memory), Gamma-aminobutyric acid or GABA (calm), and Serotonin (mood, sleep), all of which travel between as many as 10,000 neurons.⁹⁷

86. GIBB, *supra* note 84, at 38; HORSTMAN, *supra* note 84, at 4; HORSTMAN, *supra* note 82, at 4.

87. HANNA, *supra* note 83, at 26.

88. HORSTMAN, *supra* note 82, at 4–5; RITA CARTER ET AL., *THE HUMAN BRAIN BOOK* 64, 128 (Peter Frances et al. eds., 2009).

89. CARTER ET AL., *supra* note 88, at 66; CARTER, *supra* note 28, at 14; GIBB, *supra* note 84, at 40–41; HORSTMAN, *supra* note 82, at 6.

90. HANNA, *supra* note 83, at 27.

91. PERLMUTTER & VILLOLDO, *supra* note 66, at 19–20.

92. CARTER ET AL., *supra* note 88, at 69. About 10% of our brain cells are neurons and around 90% are support glial cells. *Id.*

93. *Id.* at 68; MICHAEL S. SWEENEY, *BRAIN: THE COMPLETE MIND: HOW IT DEVELOPS, HOW IT WORKS, AND HOW TO KEEP IT SHARP* 10–11 (Amy Briggs ed., 2009).

94. JOSEPH LEDOUX, *SYNAPTIC SELF: HOW OUR BRAINS BECOME WHO WE ARE* 47 (2002).

95. NAT'L GEOGRAPHIC SOC'Y, *YOUR BRAIN: A USER'S GUIDE* 27 (2012).

96. CARTER, *supra* note 28, at 14–15; GIBB, *supra* note 84, at 40, 118–22.

97. CARTER, *supra* note 28, at 16, 29 (explaining the transfer of neurotransmitters and how such transfer is reflected in observable action, and describing Dopamine and Glutamate); HORSTMAN, *supra* note 82, at 6, 8 (describing Glutamate, GABA, Dopamine, and Serotonin);

Each neurotransmitter can only bind to a specific receptor on the information-receiving neuron's dendrite, thereby either stimulating or inhibiting it.⁹⁸ Neurotransmitters can excite or stimulate the receiving neuron, which continues the electrical impulse and the transmission of information along the neural network, or they can calm or silence the post-synaptic neuron, stopping the signal.⁹⁹ Approximately 80% of the information signaling traffic in the brain is directed by glutamate, which activates information and GABA, which suppresses brain activity.¹⁰⁰

The brain has the lifelong capacity to grow and change through processes called neurogenesis and neuroplasticity. Neurogenesis is the growth of new brain cells in the hippocampus, which is the brain's memory processor and part of the emotional brain.¹⁰¹ Neurogenesis can be encouraged with learning and exercise, but it can also be inhibited by stress.¹⁰² Aerobic exercise increases the production of brain-derived neurotrophic factor ("BDNF"), a protein that fertilizes hippocampal neurons, enhancing neuron growth, protecting existing neurons, and boosting synapse formation.¹⁰³ On the other hand, there are ample stress hormone receptors in the hippocampus, making it extremely susceptible to stress.¹⁰⁴ High levels of stress hormones cause hippocampal neuron damage and death, and leave remaining neurons less functional.¹⁰⁵ Neuroplasticity describes the phenomenon where the brain evolves continuously, rewiring its network of neurons with

PRINCIPLES OF NEURAL SCIENCE 213, 294 (Eric R. Kandel et al. eds., 5th ed. 2013) (detailing the transmission of Glutamate); JOHN J. RATEY & ERIC HAGERMAN, SPARK: THE REVOLUTIONARY NEW SCIENCE OF EXERCISE AND THE BRAIN 37 (2008) (describing Glutamate, GABA, and Serotonin); SWEENEY, *supra* note 93, at 15 (describing Dopamine, GABA, Glutamate, Serotonin, and the transfer of neurotransmitters).

98. CARTER, *supra* note 28 at 28–29; SWEENEY, *supra* note 93, at 15.

99. MEDINA, *supra* note 28, at 55–56.

100. RATEY & HAGERMAN, *supra* note 97, at 37, 92.

101. HORSTMAN, *supra* note 84, at 8, 10; CARTER ET AL., *supra* note 88, at 64. Neurogenesis can also take place in the olfactory lobes that are involved in the sense of smell. HORSTMAN, *supra* note 84, at 10.

102. SWEENEY, *supra* note 93, at 294; *see also* SAPOLSKY, *supra* note 64, at 217–18 (describing how the impact of stress on neurogenesis is reflected in a reduction of brain cell growth in rats after only a few hours of exposure to glucocorticoids).

103. DEEPAK CHOPRA & RUDOLPH E. TANZI, SUPER BRAIN: UNLEASHING THE EXPLOSIVE POWER OF YOUR MIND TO MAXIMIZE HEALTH, HAPPINESS, AND SPIRITUAL WELL-BEING 35 (2012); PRINCIPLES OF NEURAL SCIENCE, *supra* note 97, at 1202–03; AAMODT & WANG, *supra* note 28, at 89; AMEN, *supra* note 28, at 110; DOIDGE, *supra* note 28, at 255; MEDINA, *supra* note 28, at 22; PERLMUTTER & VILLOLDO, *supra* note 66, at 87; RATEY & HAGERMAN, *supra* note 97, at 50–53.

104. PRINCIPLES OF NEURAL SCIENCE, *supra* note 97, at 1320; MEDINA, *supra* note 28, at 177.

105. FUNDAMENTAL NEUROSCIENCE, *supra* note 29, at 804; HORSTMAN, *supra* note 82, at 57; SAPOLSKY, *supra* note 64, at 215–220; SWEENEY, *supra* note 93, at 124.

every experience, thought, and action.¹⁰⁶ Habits and practices, whether helpful or harmful, become entrenched via our network of neurons that “fire together” and “wire together.”¹⁰⁷

B. Motivation, Reward and Habit Learning

Motivation and reward, which can result in the formation of habits, involve a complex interaction between the emotional and thinking brains.¹⁰⁸

The six stages of reward seeking are:

- Incentive (or stimulus), such as the smell of a favorite food;
- Desire to obtain that food, which you believe will bring pleasure or satisfaction;
- Motivation—the drive to obtain the food;
- Action—the necessary activity taken to obtain the food;
- Learning—the wiring in the brain that results when the food is acquired; and
- Pleasure—when the food brings gratification.¹⁰⁹

For example, if you smell popcorn at the movie theater, that can act as an incentive to stimulate the brain’s motivation and reward system. The desire to purchase a bag of popcorn is registered in the emotional brain, in neurons in the ventral tegmental area (“VTA”) that produce dopamine.¹¹⁰ The VTA neurons have long axon trunks that release dopamine to multiple areas of the thinking and emotional brain.¹¹¹ When the emotional brain registers the desire to purchase popcorn and the VTA releases dopamine, the dopamine reaches:

- The thinking brain’s prefrontal cortex, which controls reasoning, judgment, and planning;
- The emotional brain’s: Amygdala, which assesses emotional content; Hippocampus, which processes memory; Dorsal

106. CARTER ET AL., *supra* note 88, at 193; RATEY & HAGERMAN, *supra* note 97, at 36; SWEENEY, *supra* note 93, at 17.

107. LEDOUX, *supra* note 94, at 79. A Canadian psychologist described long-term potentiation, stating, “[c]ells that fire together wire together.” *Id.*

108. CARTER ET AL., *supra* note 88, at 128.

109. *Id.*; JERROLD S. MEYER & LINDA F. QUENZER, *PSYCHOPHARMACOLOGY: DRUGS, THE BRAIN, AND BEHAVIOR* 250 (2d ed. 2013); DALE PURVES ET AL., *PRINCIPLES OF COGNITIVE NEUROSCIENCE* 472 (2008).

110. *See* WILLIAM A. MCKIM & STEPHANIE D. HANCOCK, *DRUGS AND BEHAVIOR: AN INTRODUCTION TO BEHAVIORAL PHARMACOLOGY* 115–19 (Jessica Mosher et al. eds., 7th ed. 2013).

111. DAVID J. LINDEN, *THE COMPASS OF PLEASURE: HOW OUR BRAINS MAKE FATTY FOODS, ORGASM, EXERCISE, MARIJUANA, GENEROSITY, VODKA, LEARNING, AND GAMBLING FEEL SO GOOD* 16–18 (2011); GIBB, *supra* note 84, at 176–77.

Striatum, which develops habit learning; and Nucleus Accumbens (NAC), which registers pleasure.¹¹²

The NAC responds to the dopamine by releasing an opioid-like neurotransmitter in the VTA, forming a circuit.¹¹³ In that circuit, dopamine inspires motivation and effort to obtain the popcorn¹¹⁴ promoting repeat behavior, and then pleasure is experienced in tiny hedonic hot spots in the NAC.¹¹⁵ The movie theater acquires incentive salience for popcorn, which in turn helps create the pattern of consuming popcorn each time you see a movie there.¹¹⁶ The brain's motivation and reward system, mediated by dopamine, is designed to ensure repeat behaviors, and thus, is the basis for the development of habits.¹¹⁷ Law students who self-medicate with comfort food and alcohol, such as pizza and beer, are risking a pattern of behavior becoming a habit, which is established deep in the reward-processing emotional brain. Good choices can also become habits, leveraging the power of this brain system.

C. Memory, Knowledge, and Skill Acquisition

Cognition requires the intricate combination of consciousness, attention, intelligence, memory, and knowledge and skill acquisition.¹¹⁸ Learning is the accumulation of new knowledge and skills, and memory is how that information is stored in the brain.¹¹⁹ Like habit learning, deliberate learning also involves an elaborate synergy between the emotional and thinking brains.¹²⁰

The first step in memory formation is encoding, which is when sensory information is processed by the thinking brain.¹²¹ Visual information is processed in the occipital lobe; sound in the temporal lobe; language in the frontal lobe; and touch, movement, and taste in the parietal lobe.¹²² These

112. GIBB, *supra* note 84, at 176–77; HORSTMAN, *supra* note 82, at 77; LINDEN, *supra* note 111, at 16–18; SWEENEY, *supra* note 93, at 177.

113. MCKIM & HANCOCK, *supra* note 110, at 115.

114. *Id.* at 115, 119.

115. MCKIM & HANCOCK, *supra* note 110, at 118–19.

116. MEYER & QUENZER, *supra* note 109, at 250.

117. MCKIM & HANCOCK, *supra* note 110, at 118–19; PURVES ET AL., *supra* note 109, at 470.

118. Valentina A. Andreeva & Emmanuelle Kesse-Guyot, *Nutrition and Cognition in the Context of Ageing: Role of Dietary Patterns*, in NUTRITION FOR BRAIN HEALTH AND COGNITIVE PERFORMANCE 12, 14 (Talitha Best & Louise Dye eds., 2015).

119. SWEENEY, *supra* note 93, at 236.

120. *See id.* at 248–52.

121. CARTER ET AL., *supra* note 88, at 156; TRACEY TOKUHAMA-ESPINOSA, MIND, BRAIN, AND EDUCATION SCIENCE: A COMPREHENSIVE GUIDE TO THE NEW BRAIN-BASED TEACHING 261 (2011).

122. CARTER ET AL., *supra* note 88, at 66; GIBB, *supra* note 84, at 40; HORSTMAN, *supra* note 82, at 6.

sensory information traces move from the thinking brain lobes to the thalamus in the emotional brain, where they are sorted and shuttled to the amygdala and hippocampus.¹²³ The amygdala screens the memory traces for emotional content and stores any emotionally charged information.¹²⁴

The emotional brain's memory processor, the hippocampus, begins the next step in memory formation by starting to consolidate the memory before it loops back to the sensory lobes in the thinking brain.¹²⁵ Fragile (new) memory traces move along the loop from the thinking brain's sensory lobes, to the emotional brain's hippocampus, and back to the sensory lobes through a circuit of neurons.¹²⁶ If new information is not revisited or reconsidered, it does not become stable in the brain, and is likely to be forgotten. Consolidation takes place when fragile memory traces repeatedly circle the thinking-emotional brain circuit, as a result of study or practice, and become stable in the brain.¹²⁷ Memory is stabilized in the brain via long-term potentiation, the same firing and wiring together of neurons that occurs with habit learning.¹²⁸

Recall of episodic memories (autobiographical) and semantic memories (learned knowledge, such as facts and concepts) require effortful processing by the brain.¹²⁹ Early in the consolidation process, memories are stored in and recalled from the thinking-emotional brain loop.¹³⁰ Complete consolidation of a fragile memory to a stable memory takes from two to ten years and likely takes place mostly during sleep.¹³¹ When the memory consolidation process is complete, the hippocampus in the emotional brain releases its relationship with the sensory lobes in the thinking brain, and stable memories reside in the thinking brain in a network called the

123. CARTER ET AL., *supra* note 88, at 60; Edelman, *supra* note 81, at 19–21.

124. CARTER ET AL., *supra* note 88, at 158–59; SWEENEY, *supra* note 93, at 242, 252.

125. SWEENEY, *supra* note 93, at 252.

126. CARTER ET AL., *supra* note 88, at 159; CARTER, *supra* note 28 at 159.

127. MEDINA, *supra* note 28, at 125; PRINCIPLES OF NEURAL SCIENCE, *supra* note 97, at 1447.

128. CARTER, *supra* note 28, at 159–60; SWEENEY, *supra* note 93, at 248.

129. CARTER, *supra* note 28, at 162 (describing episodic and semantic memories); SWEENEY, *supra* note 93, at 243 (same); GIBB, *supra* note 84, at 69 (describing the process required for recall); MEDINA, *supra* note 28, at 131–32 (same).

130. See MEDINA, *supra* note 28, at 112–13 (explaining that the brain uses the same space to store information early on and permanently); *supra* text accompanying notes 121–128 (describing the emotional-thinking brain loop and how it becomes the permanent holding place for information).

131. CARTER ET AL., *supra* note 88, at 159; see CARTER, *supra* note 28, at 162; GIBB, *supra* note 84, at 68; MEDINA, *supra* note 28, at 138, 140–42; SWEENEY, *supra* note 93, at 246.

connectome.¹³² The connectome is a web of connected neurons in the brain.¹³³

On one hand, law students and new lawyers are retrieving memories from the thinking-emotional brain loop to complete law school assessments, pass the bar exam, and perform their early-career work duties, demonstrating the importance of a healthy hippocampus.¹³⁴ On the other hand, experienced lawyers recall stable memories from the connectome, along with retrieving newly learned information from the thinking-emotional brain loop, when advising and representing clients.¹³⁵ The neural network connectome is unique to every attorney because it evolves with every thought, emotion, and experience.¹³⁶

D. Emotion, Stress, and Cognition

Joseph LeDoux, the New York University neuroscientist who studies memory and fear, theorizes that the emotional brain has more influence over behavior than the thinking brain, because his research has shown that more information travels upward from the emotional brain to the thinking brain than the converse.¹³⁷ Many of the brain discoveries researchers have made are the result of research using rodents because it is possible to conduct invasive studies on them.¹³⁸ There have been so many parallel discoveries in rodent and human brain studies that rodent research findings can also be assumed to apply to law students and lawyers.¹³⁹

Hans Seyle and Walter B. Cannon were early stress researchers.¹⁴⁰ Seyle routinely dropped, chased, and recovered his lab rats, and he used the term “stress” to describe the general unpleasantness of his rats’ experiences with their habitual mishandling.¹⁴¹ He also noticed that extended exposure

132. MEDINA, *supra* note 28, at 138 (describing the connectome as the cortex in the thinking brain).

133. See SEBASTIAN SEUNG, *CONNECTOME: HOW THE BRAIN’S WIRING MAKES US WHO WE ARE* xii–xv (2012).

134. See CARTER ET AL., *supra* note 88, at 159–60 (describing the sensory lobe-hippocampus circuit); CARTER, *supra* note 28, at 162–65 (same).

135. CARTER, *supra* note 28, at 162; MEDINA, *supra* note 28, at 138.

136. SEUNG, *supra* note 133 at 79–80; MEDINA, *supra* note 28, at 66, 112; Mark I. Sirkin, *Managing Your Brain—A User’s Guide*, 82 N.Y. ST. B. ASS’N J. 38, 39 (2010).

137. CARTER, *supra* note 28, at 98 (quoting JOSEPH LEDOUX, *THE EMOTIONAL BRAIN* (1996)); SAPOLSKY, *supra* note 64, at 323 (describing LeDoux’s research on the role of the amygdala in anxiety).

138. LEDOUX, *supra* note 94, at 218; *PRINCIPLES OF NEURAL SCIENCE*, *supra* note 97, at 1409.

139. See LEDOUX, *supra* note 94, at 220.

140. See SAPOLSKY, *supra* note 64, at 7–12.

141. *Id.* at 8–9.

to stressors made them sick.¹⁴² Law students report negative impacts of law school stressors over which they feel they have no control, including exhaustion, lingering anxiety, and stress.¹⁴³ Cannon, on the other hand, described the stress response in rats as the fight-or-flight system.¹⁴⁴ In law students and lawyers, the stressors of law school and law practice can cause fight-or-flight overdrive, which may inhibit learning and memory.¹⁴⁵

Researchers have been particularly interested in studying learning¹⁴⁶ and emotional response.¹⁴⁷ Key components of the emotional brain, the amygdala and the hippocampus, have been the focus of rodent research.¹⁴⁸ Emotional information is processed along two parallel routes in the brain.¹⁴⁹ The quick and dirty route takes input straight to the “brain’s panic button,” the amygdala, for threat assessment.¹⁵⁰ If trouble is identified, the amygdala initiates the fight-or-flight system and prepares the body for combat, escape, or appeasement.¹⁵¹ When the amygdala perceives a threat, it sends signals to three systems to respond: the endocrine, autonomic, and skeletal motor systems.¹⁵² The slower route takes emotional information to the memory processor hippocampus.¹⁵³ If no threat is detected, the hippocampus overrides the amygdala and inhibits the fight-or-flight response.¹⁵⁴

The presence of a threat, whether physical or emotional, initiates the fight-or-flight system, which is the body’s stress response.¹⁵⁵ Jeansok Kim and David Diamond developed a three-prong test for stress in humans:

142. *Id.* at 9.

143. *See* LITOWITZ, *supra* note 37, at 10, 19 (describing the lawyer’s lack of control over job-choice and work-life balance); *see also* MCCLURG, *supra* note 3, at 368–89 (recounting students’ descriptions of law school as “draining both emotionally and physically,” and an environment full of pressure); MEDINA, *supra* note 28, at 173–74 (asserting that one is under stress when they have a response to the stressor that is observable by others, they would avoid the stressor if they could, and they feel that they lack control of the stressor).

144. SAPOLSKY, *supra* note 64, at 12.

145. *See* LITOWITZ, *supra* note 37, at 10, 19.

146. HORSTMAN, *supra* note 84, at 15–16; *see also* SAPOLSKY, *supra* note 64, at 232 (describing a study of depression in the context of thought).

147. *See* LEDOUX, *supra* note 94, at 218.

148. HORSTMAN, *supra* note 84, at 15–16; LEDOUX, *supra* note 94, at 218–25.

149. CARTER, *supra* note 28, at 83.

150. RATEY & HAGERMAN, *supra* note 98, at 62; CARTER, *supra* note 28, at 83.

151. CARTER ET AL., *supra* note 88, at 125; SUSAN GREENFIELD, *THE PRIVATE LIFE OF THE BRAIN: EMOTIONS, CONSCIOUSNESS, AND THE SECRET OF THE SELF* 18 (2000).

152. *PRINCIPLES OF NEURAL SCIENCE*, *supra* note 97, at 1079. The endocrine system releases and regulates hormones, the autonomic system controls physiological changes, and the skeletal motor system promotes body action such as immobilization or facial expressions. *Id.* at 1080.

153. CARTER ET AL., *supra* note 88, at 125; CARTER, *supra* note 28, at 83.

154. SWEENEY, *supra* note 93, at 215.

155. RATEY & HAGERMAN, *supra* note 98, at 61–64.

- There is a physiological response to the stressor that is measurable by another person;
- The stressor is perceived as undesirable; and
- The individual feels he has no control over the stressor.¹⁵⁶

There are two kinds of stress: acute stress such as that caused by physical exertion, where the fight-or-flight system is initiated temporarily in order to deal with a short-term challenge; and chronic stress such as that caused by daunting monetary responsibilities, where long-lasting life challenges prolong fight-or-flight system activation.¹⁵⁷

When activated by stress, the panic button amygdala initiates the fight-or-flight response by signaling the thalamus to focus attention and the hypothalamus to release stress hormones.¹⁵⁸ The endocrine system releases adrenalin (also known as epinephrine) and glucocorticoids—the key glucocorticoid is cortisol.¹⁵⁹ Cortisol elevates heart rate and blood pressure, slows digestion, and suppresses immune responses.¹⁶⁰ The purpose of the fight-or-flight system is to promote an immediate reaction to a threat to ensure survival and to address problems that can be resolved within seconds or minutes.¹⁶¹ Long-term exposure to stress can cause panic attacks, breathlessness, dizziness, chest pain, abdominal problems, sweating, chills, or muscle tension.¹⁶² A consistently activated fight-or-flight system produces a steady stream of stress hormones and results in impaired immune response; a decrease in muscle mass and bone density; an increase in appetite and body fat; an increase in premenstrual syndrome and menopause symptoms; and an increase in irritability, mood swings, anger, anxiety, and depression.¹⁶³

Jessica Minahan believes anxiety is a transient learning disability that interferes with a student's working memory and ability to complete tasks.¹⁶⁴ Students are not always anxious, but when they are, learning is extremely

156. MEDINA, *supra* note 28, at 173–74.

157. PERLMUTTER & VILLOLDO, *supra* note 66, at 59–60.

158. HANSON, *supra* note 61, at 52.

159. CARTER ET AL., *supra* note 88, at 232; SWEENEY, *supra* note 93, at 40; PRINCIPLES OF NEURAL SCIENCE, *supra* note 97, at 1409.

160. PERLMUTTER & VILLOLDO, *supra* note 66, at 60; FUNDAMENTAL NEUROSCIENCE, *supra* note 28, at 804; *see also* SAPOLSKY, *supra* note 64, at 13.

161. MEDINA, *supra* note 28, at 175.

162. *See* CARTER ET AL., *supra* note 88, at 232.

163. *See* CARTER ET AL., *supra* note 88, at 232; SAPOLSKY, *supra* note 64, at 16; SHAWN TALBOTT, THE CORTISOL CONNECTION: WHY STRESS MAKES YOU FAT AND RUINS YOUR HEALTH—AND WHAT YOU CAN DO ABOUT IT 30–33 (2007).

164. Katrina Schwartz, *20 Tips to Help De-Escalate Interactions with Anxious or Defiant Students*, MIND/SHIFT (Apr. 21, 2016), <https://ww2.kqed.org/mindshift/2016/04/21/20-tips-to-help-de-escalate-interactions-with-anxious-or-defiant-students/>.

difficult for them.¹⁶⁵ Anxious students can devolve into negative thinking cycles that impair their executive function and increase the likelihood of unproductive behavior.¹⁶⁶ If a student is complaining or withdrawing, a professor should consider the possibility that the student is succumbing to anxiety and unable to participate fully in learning activities.¹⁶⁷

Rodent studies have shown that new brain cells born in the memory processor hippocampus integrate into existing neural circuits.¹⁶⁸ The presence of stress hormones in the brain suppresses the birth of new neurons in rodent hippocampi.¹⁶⁹ Stress hormones also cause damage to existing hippocampal neurons, which causes a destructive cycle where the hippocampus releases additional stress hormones, causing self-destruction.¹⁷⁰

In the lawyer brain, the hippocampus is extremely vulnerable to damage from stress hormones because it has extensive glucocorticoid receptors.¹⁷¹ Chronic high levels of glucocorticoids cause hippocampal neuron degeneration and death.¹⁷² The hippocampal brain cells that remain after damage from stress are not as effective, and the complexity of neural networks is degraded as the synapses are weakened or disconnected.¹⁷³

Human brain scans indicate that hippocampi shrink in people who experience stress, major depression, and PTSD.¹⁷⁴ Research shows that cognitive performance deteriorates during the fight-or-flight stress response.¹⁷⁵ The negative effects of stress on cognition include impaired concentration, memory, problem-solving capability, and language and math processing.¹⁷⁶ Motivation, creativity, and curiosity are inhibited as well.¹⁷⁷

Brain cells in the hippocampus, critical to memory processing and recall, can be weakened or killed by exposure to stress hormones creating significant implications for individual law students and lawyers, and the

165. *Id.*

166. *Id.*

167. *Id.*

168. PRINCIPLES OF NEURAL SCIENCE, *supra* note 97, at 1409.

169. *Id.*; *see* SWEENEY, *supra* note 93, at 294.

170. PRINCIPLES OF NEURAL SCIENCE, *supra* note 97, at 1409; SAPOLSKY, *supra* note 64, at 387.

171. PRINCIPLES OF NEURAL SCIENCE, *supra* note 97, at 1320; MEDINA, *supra* note 28, at 177; FUNDAMENTAL NEUROSCIENCE, *supra* note 28, at 804.

172. FUNDAMENTAL NEUROSCIENCE, *supra* note 28, at 804; HORSTMAN, *supra* note 82, at 57; SWEENEY, *supra* note 93, at 124.

173. SAPOLSKY, *supra* note 64, at 215–17.

174. *See id.* at 221.

175. HANSON, *supra* note 61, at 52–60; RATEY & HAGERMAN, *supra* note 98, at 67–68; *see* DEVI, *supra* note 62, at 83–86.

176. MEDINA, *supra* note 28, at 178.

177. PERLMUTTER & VILLOLDO, *supra* note 66, at 61.

stress-saturated cultures of law school and law practice.¹⁷⁸ Cultural expectations such as the intense workload, competitive environment, technology overload, and the demand of 24/7 availability, likely contribute to stress and may cause a decline in attorney performance.¹⁷⁹ Consistent activation of the panic button amygdala creates a negativity bias, and the mind can trigger a stress response by simply imagining a threatening situation, such as fretting about failing an exam or worrying about a client outcome.¹⁸⁰ Thinking brain capacity is impaired during the stress response, making it very difficult to curb anxiety.¹⁸¹ The legal profession is replete with stressors, and emotional reactions to challenges can spark the stress response as effectively as the presence of an actual threat.¹⁸²

The damage caused by exposure to chronic stress can be healed, thanks to neuroplasticity, when lawyers learn to control stress and empower their “‘rest-and-digest’ system.”¹⁸³ This brain-body system conserves energy, promotes calm, and restores equilibrium.¹⁸⁴ It lowers heart rate, reduces blood pressure, promotes digestion and nutrient absorption, and halts the release of stress hormones.¹⁸⁵ Where the fight-or-flight system empowers arousal, escape, and defense, the rest-and-digest system promotes nourishment and procreation, and reestablishes brain-body balance.¹⁸⁶ Lawyers can foster resilience and develop practices that protect against the damage caused by stress.¹⁸⁷ Healing habits include adequate sleep, exercise, and restorative contemplative practices.¹⁸⁸ In light of the science on stress and cognition:

- Researchers should study law students and lawyers to determine the precise impact of stress on legal study and work, and

178. See DOIDGE, *supra* note 28, at 248; LEDOUX, *supra* note 94, at 223; MEDINA, *supra* note 28, at 179; PERLMUTTER & VILLOLDO, *supra* note 66, at 62; SAPOLSKY, *supra* note 64, at 215–23.

179. See DEVI, *supra* note 62, at 22–33.

180. RATEY & HAGERMAN, *supra* note 98, at 63.

181. See HANSON, *supra* note 61, at 50–57.

182. *Id.* at 50; LITOWITZ, *supra* note 37, at 10, 19.

183. See HANSON, *supra* note 61, at 52–60; *see also* RATEY & HAGERMAN, *supra* note 98, at 67–71 (suggesting that one way to control stress is through exercise); DEVI, *supra* note 62, at 83–86.

184. HANSON, *supra* note 61, at 58–59; FUNDAMENTAL NEUROSCIENCE, *supra* note 28, at 734.

185. DEVI, *supra* note 62, at 53; SWEENEY, *supra* note 93, at 41; FUNDAMENTAL NEUROSCIENCE, *supra* note 28, at 734.

186. PRINCIPLES OF NEURAL SCIENCE, *supra* note 97, at 353, 1066.

187. See DEVI, *supra* note 62, at 37; LINDA GRAHAM, BOUNCING BACK: REWIRING YOUR BRAIN FOR MAXIMUM RESILIENCE AND WELL-BEING 241 (2013).

188. AMEN, *supra* note 28, at 167; HANSON, *supra* note 61, at 110; MEDINA, *supra* note 28, at 15, 159–63; HORSTMAN, *supra* note 84, at 15; RATEY & HAGERMAN, *supra* note 98, at 49–50.

identify interventions to protect against and heal the effects of the damage; and

- Leaders in legal education and law practice should ascertain the sources of stress and seek to limit them, as well as institute training programs that teach law students and lawyers how to minimize the negative impacts of stress.

IV. POSITIVE PSYCHOLOGY

Positive Psychology examines the conditions under which individuals flourish and communities thrive.¹⁸⁹ In 2000, Martin Seligman and Mihaly Csikszentmihalyi challenged the field of psychology to create a science of human strength that would shift the focus from pathology to the study of attributes that protect against mental illness.¹⁹⁰ Subjective well-being is comprised of two elements: the cognitive (life satisfaction) and the emotional (the frequency of positive or negative emotions).¹⁹¹ Positive Psychology incorporates both hedonic pleasure and eudaimonic optimal functioning.¹⁹²

Seligman expanded his theory of well-being in 2011.¹⁹³ He described five elements that produce well-being to which he assigned the acronym PERMA: positive emotion; engagement; positive relationships; meaning; and accomplishment.¹⁹⁴ Positive emotion is comprised of happiness and satisfaction with life.¹⁹⁵ Engagement involves being deeply consumed by an activity, also known as experiencing flow.¹⁹⁶ Positive relationships are rewarding connections to other people.¹⁹⁷ Participating in and serving an endeavor that is larger than oneself is the path to finding meaning, and accomplishment is proficiency or mastery that is pursued for its own sake.¹⁹⁸

189. Jeana L. Magyar-Moe, *Positive Psychology 101*, in POSITIVE PSYCHOLOGY ON THE COLLEGE CAMPUS 57, 57 (John C. Wade et al., eds., 2015).

190. Martin E. P. Seligman & Mihaly Csikszentmihalyi, *Positive Psychology: An Introduction*, 55 AM. PSYCHOLOGIST 5, 7 (2000).

191. SHANNON M. SULDO, PROMOTING STUDENT HAPPINESS: POSITIVE PSYCHOLOGY INTERVENTIONS IN SCHOOLS 3 (2016).

192. *Id.* at 5. Eudemonic optimal functioning means finding meaning, purpose, and using strengths to reach full potential and achieve satisfaction with life. POSITIVE PSYCHOLOGY BY AND FOR PP PROFESSIONALS, *What is Eudaimonia? The Concept of Eudaimonic Well-Being and Happiness*, <http://positivepsychology.org.uk/the-concept-of-eudaimonic-well-being/> (last visited Apr. 10, 2018).

193. See MARTIN E. P. SELIGMAN, *FLOURISH: A VISIONARY NEW UNDERSTANDING OF HAPPINESS AND WELL-BEING* (2011).

194. *Id.* at 14–20.

195. *Id.* at 16.

196. *Id.* at 16–17.

197. *Id.* at 20.

198. *Id.* at 17–20.

Professors Peter H. Huang and Corie Rosen Felder have called for the PERMA elements of well-being to be applied to legal education in order to improve its effectiveness and to reduce the stress, anxiety, and depression of law students.¹⁹⁹ “Law school, with its sometimes competitive, isolating, and alienating environment, directly undermines PERMA.”²⁰⁰ Negative emotions result from the intense workload and stressful learning environment, and relationships sour between students forced to compete for grades.²⁰¹ Engagement, meaning, and achievement are hindered by the mandatory grade curve and the frustration and learned helplessness it foments.²⁰² The dominant culture in legal education is achievement-driven, and because of their training, lawyers may propel this perspective throughout American society.²⁰³ Seligman argues that well-being will not be enhanced if achievement is the only thing that is valued.²⁰⁴ For law students to flourish and law schools to thrive, legal education must transform the “culture of dehumanizing competition” into a new Positive Legal Education environment that increases positive emotions, enhances relationships in the legal community, intensifies meaning and engagement in legal studies and practice, and improves well-being along with achievement.²⁰⁵

V. POSITIVE EDUCATION

A. *Challenges in Higher Education*

The initial mission of higher education in the United States was to develop the intellect and build the character of the elite class.²⁰⁶ After World War II, the goals of higher education were to prepare masses of returning veterans for professional and management roles, and to produce scientific knowledge.²⁰⁷ The student-centered movement in the 1980s inspired a consumer mentality where college became a career-enhancing commodity.²⁰⁸ Currently, a higher education is viewed by students and their parents as a credential leading to a good job and a position in the middle-class.²⁰⁹ In re-

199. Peter H. Huang & Corie Rosen Felder, *The Zombie Lawyer Apocalypse*, 42 PEPP. L. REV. 727, 758 (2015).

200. *Id.* at 760.

201. *Id.* at 761.

202. *Id.* at 761–62.

203. *Id.* at 770.

204. SELIGMAN, *supra* note 193, at 231.

205. Huang & Felder, *supra* note 199, at 771.

206. Laurie A. Schreiner, *Positive Psychology and Higher Education*, in POSITIVE PSYCHOLOGY ON THE COLLEGE CAMPUS 2 (John C. Wade et al. eds., 2015).

207. *Id.*

208. *Id.*

209. *Id.* at 3.

sponse, market-driven colleges and universities have focused on admitting the best students, improving national reputation and ranking, and developing a two-tier faculty where the most powerful and secure tenure-track faculty are rewarded more for scholarly production than for teaching.²¹⁰

While consumers now shop for a college education just as for any other product, the challenges faced by higher education institutions include:

- A decrease in revenue;
- The expectation that a college education should be affordable;
- The most diverse student population in U.S. history;
- The replication in college of the achievement gap across ethnicity, begun in K-12 education; and
- The arrival of students diagnosed with an unprecedented array of mental health issues that overwhelm university counseling and treatment providers.²¹¹

It is in this context that Positive Psychology theory, research, and interventions could transform higher education into a system that better prepares a wider range of students for the intellectual and social demands of an unceasing rate of social change and a global knowledge economy.²¹² Positive Psychology strives to develop the “fulfilled individual and the thriving community,”²¹³ which translate in higher education to “student success and institutional effectiveness.”²¹⁴

B. Student Success and Academic Thriving

Student success is currently defined as grades attained and graduation achieved, causing institutions to use admissions selectivity to attract students who have shown prior academic success.²¹⁵ Selection criteria include impressive test scores, advanced parental education, and high socioeconomic status, which can limit access to higher education for traditionally marginalized groups.²¹⁶ Once in college, the educational approach is a deficit remediation model that assumes there is a narrow set of abilities and skills a student must possess to graduate.²¹⁷ This approach is ineffective for

210. *Id.*

211. *Id.* at 1, 3 (finding Asian and Caucasian students have much higher graduation rates than Hispanic, African American, and Native American students).

212. *Id.* at 3.

213. *Id.* at 4 (quoting Seligman & Csikszentmihalyi, *supra* note 190, at 5).

214. *Id.*

215. *Id.* at 5.

216. *Id.*

217. *Id.* at 6–7.

many students because it likely reduces the chances of graduation for those participating in remedial education.²¹⁸

Positive Education can be defined as “the development of educational environments that enable the learner to engage in established curricula in addition to knowledge and skills to develop their own and others’ well-being.”²¹⁹ Positive Education posits that every student can learn and develop in the right conditions, and it focuses on expanding student talent into strengths, increasing student motivation, and extending the likelihood of success for students from every ethnic and economic background.²²⁰ In Positive Education, academic thriving is achieved when a student is “intellectually, socially, and emotionally [engaged] in the [educational] experience.”²²¹ The five factors that are critical to academic thriving include:

- Engaged Learning (intrinsic motivation, goal-setting, time management, and meta-cognition);
- Academic Determination (strength identification, effort regulation, and environmental mastery);
- Social Connectedness (positive relationships);
- Diverse Citizenship (openness, cultural curiosity, respect for multiple perspectives, and desire to contribute to the community); and
- Positive Perspective (optimism, satisfaction, and well-being).²²²

These Positive Education factors relate to the Positive Psychology PERMA well-being framework in this way:

- Positive emotions—positive perspective;
- Engagement, meaning, and achievement—engaged learning, academic determination, and diverse citizenship; and
- Positive relationships—social connectedness and diverse citizenship.²²³

A national research project involving 14,067 college student participants yielded a “25-item Thriving Quotient,” designed using the five factors of academic thriving, which can be used to measure whether students are

218. *Id.*

219. Lindsay G. Oades, Paula Robinson, Suzy Green & Gordon B. Spence, *Towards a Positive University*, 6 J. POSITIVE PSYCH. 432, 432 (2011).

220. Schreiner, *supra* note 206, at 7–8.

221. *Id.* at 8 (quoting Laurie A. Schreiner, *Thriving in the Classroom*, 15 ABOUT CAMPUS 2, 2 (2010)).

222. *Id.* at 8–11, 13.

223. *Id.*; SELIGMAN, *supra* note 191, at 14–20.

benefiting fully from their university experience.²²⁴ Although Positive Education is a nascent science, there are empirically validated interventions and programs that improve student well-being, provide a buffer against mental health decline before it happens, and improve academic achievement.²²⁵

1. *Engaged Learning and Academic Determination*

In Positive Education, “student success starts with an institutional mission that espouses the importance of talent development and then enacts this vision.”²²⁶ An institution seeking to incorporate Positive Education must examine “how students engage with the curriculum, how they view the learning process, and how they perceive themselves as learners.”²²⁷

Students are engaged in their learning when they are motivated and invested in the learning process.²²⁸ They pay attention and are involved in learning activities, and meaningfully process knowledge and skills.²²⁹ Students with strong academic determination develop mastery over the academic environment because they can set goals, regulate their efforts, and apply their strengths to academic tasks.²³⁰

Factors that enhance engaged learning and academic determination are family support of the student’s academic goals, student certainty about academic concentrations or programs of study, a strong sense of campus community, and rewarding interactions with faculty.²³¹ In class, faculty can increase student engagement by providing clear expectations, facilitating active and collaborative learning activities, designing assessments that encompass an optimal level of challenge, and supplying timely and rich feedback.²³² During student advising by either faculty or staff, students can be

224. Schreiner, *supra* note 206, at 9. Institutions can learn more and sign up to use the Thriving Quotient instrument at <http://www.thrivingincollege.org/>.

225. Mathew A. White & A. Simon Murray, *Building a Positive Institution*, in EVIDENCE-BASED APPROACHES IN POSITIVE EDUCATION: IMPLEMENTING A STRATEGIC FRAMEWORK FOR WELL-BEING IN SCHOOLS 7–8, 14 (Matthew A. White et al. eds., 2015).

226. Michelle C. Louis, *Enhancing Intellectual Development and Academic Success in College*, in POSITIVE PSYCHOLOGY ON THE COLLEGE CAMPUS 115 (John C. Wade et al. eds., 2015) (quoting GEORGE D. KUH ET AL., STUDENT SUCCESS IN COLLEGE: CREATING CONDITIONS THAT MATTER 266 (2005)).

227. *Id.* at 99.

228. Schreiner, *supra* note 206, at 8–9.

229. *Id.* at 9, 12.

230. *Id.* at 9.

231. *Id.* at 9–10. Research indicates that the benefits of faculty interactions vary depending on ethnicity: Asian students respond best to working with or conducting research with faculty from their academic department; African American students engage most successfully with faculty in ethnic organizations or as advisors; and Latino students garner the most benefit from social interfaces with faculty. *Id.* at 10.

232. *Id.* at 12–13.

guided to develop environmental mastery with training on mindset, hope skills, optimistic explanatory style, and strengths identification.²³³ Mindset training helps students focus on learning, improving through effort, and developing mastery over time.²³⁴ Hope building involves teaching students how to set realistic goals and brainstorm multiple routes to achieving them.²³⁵ Students with an optimistic explanatory style are able to reframe setbacks as challenges that are manageable given sufficient effort, and they use hope skills and persistence to develop resilience.²³⁶ Strengths development is an approach that emphasizes potential rather than survival and failure prevention.²³⁷ Students are taught to identify personal talents or assets that can grow into strengths with knowledge and skill acquisition.²³⁸ Michelle C. Louis writes,

[R]esearch indicates that the psychological components of engaged learning—including *meaningful processing* and *focused attention*—are significantly more predictive of reported gains in critical thinking skills, academic performance, and student satisfaction with learning and the college experience as a whole than are the behavioral aspects of engagement (such as active participation in class discussions or asking questions during a class session).²³⁹

Educational institutions that invest in programs and curricula that explicitly teach education environmental mastery will likely improve student academic performance along with student well-being.

a. Mindset

Carol Dweck studies mindset and she discovered that the people who start out the smartest do not always end up at the front of the pack.²⁴⁰ Some learners believe they are endowed with a certain level of intelligence, a stable personality type, and a particular moral character.²⁴¹ These people possess a fixed mindset.²⁴² Many education programs galvanize a fixed mindset in students when high-stakes test scores, grades, and grade point averages (“GPA”) are the only metrics valued as students move through

233. *Id.* at 13–14.

234. Louis, *supra* note 226, at 102.

235. Schreiner, *supra* note 206, at 14.

236. *Id.*

237. *Id.*

238. *Id.*

239. Louis, *supra* note 226, at 109.

240. CAROL S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS 5 (Ballantine Books 2008) (2007).

241. *Id.* at 6.

242. *Id.*

their schooling.²⁴³ Fixed mindset students evolve into leaders, employees, and significant others with the all-consuming goal of proving themselves in order to look smart, gain acceptance, and come out a winner.²⁴⁴ Students with fixed mindsets tend to overestimate their abilities, and they can react negatively to feedback as it is viewed as an attack on their key traits.²⁴⁵ These students are caught up in confirming their aptitude because to them, a fixed ability must be proven.²⁴⁶

When students with a fixed mindset encounter challenging learning situations, they often respond by limiting their efforts, claiming they lack talent in the subject area, or blaming their teachers.²⁴⁷ These responses are designed to protect their egos because they believe they should not have to work hard to prove their abilities.²⁴⁸ When challenged with high standards or constructive criticism, these students are likely to complain to administrators or in course evaluations, which can harm the careers of educators who have high expectations for their students.²⁴⁹ In the face of a setback at school, they tend to give up or to assume that the subject area is not in their wheelhouse.²⁵⁰ “The fixed mindset limits achievement. It fills people’s minds with interfering thoughts, it makes effort disagreeable, and it leads to inferior learning strategies. What’s more, it makes other people into judges instead of allies.”²⁵¹

Some people manage to get through their education with a growth mindset intact, a belief that they can expand their aptitudes, enhance their talents, and improve their temperament with practice and experience.²⁵² These people look for challenges that stretch their capacities, focus on gradual improvement, and develop a passion for learning.²⁵³ Students with a growth mindset possess a much more accurate appreciation for their abilities and they crave feedback to stimulate their growth and to learn effectively.²⁵⁴ A growth mindset helps students persevere in the face of setbacks because they believe their efforts lead to improvement.²⁵⁵ They believe their abilities are malleable and can be upgraded in the learning process.²⁵⁶ They

243. *Id.*

244. *Id.*

245. *Id.* at 11.

246. *Id.* at 16.

247. *Id.* at 57–58, 61, 76.

248. *Id.* at 58.

249. *Id.* at 193.

250. *Id.* at 58, 61.

251. *Id.* at 67.

252. *Id.* at 7.

253. *Id.*

254. *Id.* at 11.

255. *Id.* at 11–12.

256. *Id.* at 15.

take the view that the purpose of education is growth, rather than proof, of capacity.²⁵⁷

Students with a growth mindset take responsibility for their motivation and take charge of their learning.²⁵⁸ They develop strategies to understand their mistakes, strive to recognize themes and principles in the material, and persist through difficult or boring content.²⁵⁹ Learning—not the grade—is the point.²⁶⁰ They identify goals, make plans, develop strategies, work hard, and power through obstacles.²⁶¹ And these students find ways to incorporate all lessons and feedback as a means to empower their education objectives.²⁶²

When it comes to performance, research indicates that students with a growth mindset out-perform students with a fixed mindset.²⁶³ This is true for the college chemistry course that determines acceptance to a pre-med program, MBA negotiation courses, and business leadership resulting in long-term strong stock performance.²⁶⁴ In a study of top performers in music, art, academics, and athletics, researcher Benjamin Bloom discovered that these once “average” children developed into world class talents via motivation, commitment, and a robust support network.²⁶⁵ He concluded that most people can learn nearly anything given appropriate learning conditions.²⁶⁶ Maximizing student achievement requires intense learner effort, numerous learning strategies, and supportive and creative allies.²⁶⁷

Strengths can be cultivated.²⁶⁸ If you combine a student growth mindset with great teaching, students have an abundant capacity to learn and grow.²⁶⁹ Jaime Escalante, made famous by the movie *Stand and Deliver*, taught inner-city Los Angeles Latino students college-level calculus by thinking about how his students could best learn and how he could successfully teach them.²⁷⁰ Marva Collins took urban Chicago second graders, some designated as learning disabled or emotionally disturbed, and increased their reading level by three grades in one year by treating them like

257. *Id.*

258. *Id.* at 61.

259. *Id.*

260. *Id.*

261. *Id.* at 80–81.

262. *Id.* at 76–77.

263. *Id.* at 61.

264. *Id.* at 61, 109–10, 138–39.

265. *Id.* at 65.

266. *Id.* at 65–66.

267. *See id.* at 65, 67.

268. *Id.* at 10.

269. *Id.* at 64.

270. *Id.*

geniuses.²⁷¹ Rafe Esquith tells his Los Angeles second graders that he is “no smarter than they are—just more experienced.”²⁷² He consistently highlights their growth by reminding them that practice makes hard school work easier over time.²⁷³ There is a significant amount “of intelligence out there being wasted by underestimating students’ potential to develop.”²⁷⁴

Innovative educators and education institutions will evolve to teach and assess a growth-oriented perspective in students and growth-development outcomes for learning because they result in better academic and employment performance.²⁷⁵

b. Academic Self-Efficacy and Positive Perspective

In order for students to optimize their learning experience, they need the psychological constructs of hope, perceived academic control, curiosity, and positive perspective. Hope has two components: agency, which is the motivation and willpower to pursue a goal; and pathways, which involve the capacity to craft multiple strategies for achieving the goal.²⁷⁶ Students who are high in hope attain higher academic achievement, including GPA and graduation rates, but also enjoy better mental health.²⁷⁷ They are better problem-solvers, capable of deploying numerous strategies for meeting challenges.²⁷⁸ They also enjoy their educational experiences more.²⁷⁹ Low-hope students experience higher test anxiety, are easily distracted, tend toward negative self-talk, and cope with stress via social withdrawal.²⁸⁰

Perceived academic control is possible when a student has self-efficacy and an internal locus of control.²⁸¹ Self-efficacy is the confidence that your actions influence an outcome.²⁸² Internal locus of control is the belief that your efforts have a greater impact on outcomes than external forces, such as the actions of others, institutional requirements, or cultural conditions.²⁸³ Research shows that students with high perceived academic control achieve higher academic performance, including better grades and

271. *Id.* at 64–65, 194–95.

272. *Id.* at 195.

273. *Id.*

274. *Id.* at 64.

275. See Schreiner, *supra* note 206, at 13 (asserting that teaching elements of positive psychology causes students to thrive).

276. Louis, *supra* note 226, at 105–06.

277. *Id.* at 106.

278. *Id.* at 106–07.

279. *Id.* at 106.

280. *Id.*

281. *Id.* at 104.

282. *Id.*

283. *Id.*

higher GPAs.²⁸⁴ They “tend to work harder, report lower levels of anxiety and boredom, react to setbacks with greater resilience, and use more effective cognitive strategies than do their low-control classmates.”²⁸⁵

Curiosity requires students to stretch—to be motivated to seek new experiences and develop capacities, and embrace—to welcome enthusiastically the uncertain or unpredictable.²⁸⁶ Curious students deliberately pursue challenges and novel experiences.²⁸⁷ “Heightened curiosity is associated with deeper information processing and better recall of that information.”²⁸⁸ Finally, optimistic students are resilient and gritty, with high levels of well-being and satisfaction.²⁸⁹

High-hope educators design courses that teach pathway and agency thinking.²⁹⁰ They teach strategies for identifying clear goals and creating plans for achieving them (pathway thinking), and methods for sustaining the motivation to follow through with their objectives (agency thinking).²⁹¹

284. *Id.* at 105, 115.

285. *Id.* at 105.

286. *Id.* at 107–08.

287. *Id.* at 108.

288. *Id.*

289. *See* Schreiner, *supra* note 206, at 8, 10.

290. Jeana L. Magyar-Moe, *Positive Psychology in the Classroom*, in *POSITIVE PSYCHOLOGY ON THE COLLEGE CAMPUS* 156 (John C. Wade et al. eds., 2015).

291. *Id.* at 155.

They explain how to break goals down into tasks, track progress toward completion, and celebrate milestones.²⁹² In their teaching, high-hope educators:

- Care deeply about students;
- Invest significant time in their students;
- Cultivate an environment of reciprocal respect;
- Develop collaborative learning activities;
- Motivate students to appreciate collaborative learning and to value the well-being of their classmates;
- Develop clear and concrete learning goals; and
- Break down learning goals into smaller tasks, modeling pathway thinking.²⁹³

High-hope educators exude a passion for their discipline and they teach the process of learning how to learn in their content area.²⁹⁴ To help students on their trajectory toward graduation and employment, they explicitly teach how to prepare for exams, track progress, and solve problems.²⁹⁵ They reward students for working at learning how to learn.²⁹⁶ They “set up learning experiences so that a maximal number of students can participate cooperatively versus setting up a highly competitive atmosphere focused upon the pursuit of grades and potentially vicious social comparisons and competitions among students.”²⁹⁷

One way to teach pathway and agency thinking is by utilizing Personal Growth Initiative (“PGI”) Theory.²⁹⁸ This theory is applicable to self-improvement and change across a lifetime.²⁹⁹ There are four aspects of PGI:

- Readiness for change—the capacity to identify opportunities for growth and to ascertain the appropriate time to initiate change;
- Planfulness—the ability to craft and tailor a plan designed to create change;

292. *Id.* at 156.

293. *Id.* at 156–57.

294. *Id.* at 158–59.

295. *Id.* at 159.

296. *Id.* at 158.

297. *Id.*

298. Christine Robitschek & Megan A. Thoen, *Personal Growth and Development, in POSITIVE PSYCHOLOGY ON THE COLLEGE CAMPUS* 220–25 (John C. Wade et al. eds., 2015).

299. *Id.* at 220–21.

- Resource use—the skill to discover and deploy helpful resources; and
- Intentional behavior—the commitment to follow through on a plan and engage in self-change.³⁰⁰

Students with strong PGI skills have rewarding personal relationships, possess successful career planning abilities, and tend to have high GPAs and elevated levels of well-being.³⁰¹ College students with robust PGI abilities have low levels of anxiety and depression.³⁰² Teaching pathway and agency thinking improves student academic achievement and well-being, and should be a priority for educators and education institutions.³⁰³

One method for increasing student perceived academic control is through strength-oriented education.³⁰⁴ This process begins by assisting students to identify their strengths using instruments such as the Clifton StrengthsFinder and StrengthsQuest, and the Values in Action Survey based on the VIA Character Strengths Classification System.³⁰⁵ Strength-oriented academic programs are designed to nurture and develop strengths.³⁰⁶ Institutions help students find the right strength-academic program fit and train students to leverage their strengths to enhance academic growth and achieve education goals.³⁰⁷ This could be achieved with strengths-based advising and academic coaching.³⁰⁸ Students report “elevated levels of academic motivation after learning about their personal strengths, a better understanding of how to apply their strengths to meet academic challenges, and a positive impact on their ability to form social networks,” which all contribute to a positive perspective.³⁰⁹ Students with a positive perspective thrive because they are optimistic and enjoy strong subjective well-being.³¹⁰ This includes a buoyant outlook, frequent positive emotions, high levels of life

300. *Id.* at 221–22.

301. *Id.* at 223–25.

302. *Id.* at 226.

303. *Id.*

304. Louis, *supra* note 226, at 115.

305. *Id.* at 115–16; Magyar-Moe, *supra* note 290, at 136–43, 146. This system is based on twenty-four character strengths present in most people to varying degrees. Individuals who take the VIA Survey, online at <http://www.viacharacter.org/www/Character-Strengths>, can obtain a character profile assessing the presence of creativity, curiosity, judgment, love-of-learning, perspective, bravery, honesty, perseverance, zest, kindness, love, social intelligence, fairness, leadership, teamwork, forgiveness, humility, prudence, self-regulation, appreciation of beauty, gratitude, hope, humor, and spirituality.

306. Louis, *supra* note 226, at 115.

307. *Id.* at 116.

308. *Id.* at 118.

309. Magyar-Moe, *supra* note 290, at 147.

310. Schreiner, *supra* note 206, at 10.

and education satisfaction, and the capacity to “reframe[e] negative events into learning experiences.”³¹¹

Greater levels of self-control improve student study habits, homework submission, grades, and adult education attainment, health, and wealth.³¹² High levels of grit, the capacity to persevere while pursuing long-term goals, predict retention in elite academic military programs and grades at top universities.³¹³ Self-discipline is better at predicting long-term academic success than IQ, and a meta-analysis of 213 studies showed students who received social and emotional training scored over 11% higher on achievement tests than their untrained peers.³¹⁴ Teaching students skills to increase their well-being (communication, mindfulness, emotional regulation, decision making, and critical thinking) enhances student performance on standardized tests.³¹⁵ The Penn Resiliency Program works to decrease anxiety, depression, and hopelessness in diverse students ages eight to fifteen by teaching “assertiveness, creative brainstorming, decision making, relaxation,” and problem-solving skills.³¹⁶

2. *Social Connectedness and Diverse Citizenship*

Social connectedness results when students can form and maintain healthy relationships, feel supported by and connected to their friends, and are satisfied with these associations.³¹⁷ Diverse citizenship occurs when students are open to and curious about people who are different than they are, believing diversity enhances relationships.³¹⁸ They are inclined to help others and to make a contribution to the wider community.³¹⁹

Since collaborative learning is an important characteristic of high-hope education cultures and since colleges and universities are admitting the most diverse student populations in history, empathy-building for marginalized groups and understanding of social causes can reduce bias and discrim-

311. *Id.*

312. White & Murray, *supra* note 225, at 8.

313. *Id.*

314. *Id.*

315. Alejandro Adler & Martin E. P. Seligman, *Using Wellbeing for Public Policy: Theory, Measurement, and Recommendations*, 6 INT’L J. WELLBEING 1, 17 (2016), https://ppc.sas.upenn.edu/sites/neutron_ppc/files/wellbeingpublicpolicy.pdf.

316. Martin E. P. Seligman et al., *Positive Education: Positive Psychology and Classroom Interventions*, 35 OXFORD REV. ED. 293, 297–300 (2009). The Penn Resiliency Program training is available for educators, military, and business at <https://ppc.sas.upenn.edu/services/penn-resilience-training>.

317. Schreiner, *supra* note 206, at 11.

318. *Id.*

319. *Id.*

ination, and foster tolerance and understanding.³²⁰ Empathy is “the ability to understand and enter into another’s feelings, emotions, and experiences.”³²¹ It can be modeled by educators through empathic treatment of students.³²² Empathy and conflict resolution skills are forms of pathway and agency thinking that aid students in problem-solving and navigating relationships.³²³

The most vigorous high-hope programs will teach leadership, pathway, and agency thinking, where difference and diversity are valued and student leaders are prepared for the interconnected world.³²⁴ Three elements will help students to prize diversity: they must increase their awareness and improve their knowledge, serve others, and cultivate a social justice perspective.³²⁵ The first step is to expose students to as much diversity as possible, including age, ethnic, gender, socioeconomic, and religious differences.³²⁶ The goals are to become aware of one’s culture, views, privileges, and presumptions, and to develop an understanding of what it is like to experience life from a different perspective.³²⁷ The second step is to serve others.³²⁸ Service experiences bring to light stereotypes and significant social and institutional problems.³²⁹ Serving others inspires a drive toward social justice by illustrating that social change is a process that requires continuous efforts.³³⁰ Finally, a social justice orientation pushes student leaders to discover systemic social issues and undertake action plans for change.³³¹

C. Institutional Effectiveness and the Thriving Education Community

Higher education institutions currently determine their success using variables such as student satisfaction, high graduation rates, and strong job placement records.³³² Alternatively, Positive Education uses positive organizational behavior and campus climate to build a thriving higher education community.³³³ Researchers, including the father of Positive Psychology

320. Sarah L. Hastings & Tracy J. Cohn, *Social Development and Relationship Enhancement*, in POSITIVE PSYCHOLOGY ON THE COLLEGE CAMPUS 244 (John C. Wade et al. eds., 2015).

321. Magyar-Moe, *supra* note 290, at 154.

322. *Id.* at 154–55.

323. Hastings and Cohn, *supra* note 320, at 248.

324. Sharra Durham Hynes, *The Intersection of Positive Psychology and Leadership Development*, in POSITIVE PSYCHOLOGY ON THE COLLEGE CAMPUS, *supra* note 320, at 292.

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.* at 293.

329. *Id.*

330. *Id.*

331. *Id.* at 294.

332. Schreiner, *supra* note 206, at 17.

333. *Id.*

gy, Martin Seligman, argue that well-being should be taught in schools to improve learning, enhance human satisfaction, and to prevent depression.³³⁴ Schools are the best places to reach the greatest number of students with well-being training because students spend so much time in schools and schools already provide some mental health services.³³⁵

Higher education organizations can become “positively deviant” by evolving into positive institutions in order to improve the learning and working experiences of their constituents.³³⁶ This represents a very different way of structuring an institution that empowers stakeholders to leverage their strengths and well-being to pursue individual and institutional objectives.³³⁷ Well-being skills can be taught in colleges and universities, and Seligman invites us to imagine a new prosperity where citizens experience positive emotion, engagement in their work, and meaning throughout their lives.³³⁸ His new prosperity vision, of a future where all citizens experience financial security along with well-being, can be achieved with Positive Education.³³⁹

Two components of a thriving education institution implementing Positive Education are positive organizational behavior and a sense of community.³⁴⁰ An institution that practices positive organizational behavior strives to develop psychological capital in its constituents.³⁴¹ School personnel develop psychological capital by enhancing the same well-being skills that are important for students: hope, efficacy, optimism, and resilience.³⁴² Positive authentic leaders cultivate a climate of support, inclusion, and trust, and they foster a culture of ownership, collaboration, interdependence, equitable reward structures, and shared information.³⁴³ Campus climate is enhanced by a strong sense of community when leaders promote:

- Community Membership, where constituents feel valued and a sense of belonging;
- Member Ownership, where stakeholders have a voice and contribute;
- Positive Relationships, where members interact and connect; and

334. Seligman et al., *supra* note 316, at 297–300.

335. *Id.*

336. Oades et al., *supra* note 219, at 433.

337. *Id.* at 432–33.

338. Seligman et al., *supra* note 316, at 308.

339. *Id.* at 307–08.

340. Schreiner, *supra* note 206, at 17.

341. *Id.* at 18.

342. *Id.*

343. *Id.*

- Synergistic Partnership, where the community collaborates on shared goals and community achievements.³⁴⁴

VI. POSITIVE LEGAL EDUCATION

*It turns out that what actually separates thriving organizations from struggling ones are the difficult-to-measure attitudes, processes, and perceptions of the people who do the work. Culture defeats strategy, every time.*³⁴⁵

A law school seeking to transform into a Positive Legal Education Institution must examine student perception of the learning process and curriculum.³⁴⁶

A. Millennial Law Students

Education transitions, such as entering high school, college, or law school, sometimes create crises for students whose identity is challenged.³⁴⁷ Research shows that students with a fixed mindset have higher levels of depression than students with a growth mindset.³⁴⁸ These fixed mindset students often cogitate over their setbacks, assume they are unworthy or incompetent, fail to study, and stop submitting homework assignments.³⁴⁹ The transition into law school may be the point where students without prior depression become depressed.³⁵⁰

Millennial students, those born after 1981, have the potential to thrive in Positive Education settings.³⁵¹ They are optimistic, pragmatic, and they value differences and diversity.³⁵² They have been criticized for being sheltered, but they did not choose to be the most wanted generation of children.³⁵³ Because they enjoy strong relationships with their parents, they are ripe for mentoring by caring educators who are willing to train them on the

344. *Id.* at 19.

345. Seth Godin, *Let's Stop Calling Them 'Soft Skills': They Might Be Skills, But They're Not Soft*, IT'S YOUR TURN BLOG (Jan. 31, 2017), <https://itsyourturnblog.com/lets-stop-calling-them-soft-skills-9cc27ec09ecb#.gdetbwa5n>.

346. Louis, *supra* note 226, at 99.

347. DWECK, *supra* note 240, at 57, 60.

348. *Id.* at 38.

349. *Id.*

350. *See, e.g.*, Seligman et al., *supra* note 29, at 33; Krieger, *supra* note 7, at 113–15; Krill et al., *supra* note 12, at 46–52.

351. Frank Shushok Jr. & Vera Kidd, *Millennials in Higher Education: As Students Change, Much About Them Remains the Same*, in POSITIVE PSYCHOLOGY ON THE COLLEGE CAMPUS 28, 34 (John C. Wade et al. eds., 2015).

352. *Id.* at 27, 38.

353. *Id.* at 41–42.

skills and norms of their profession.³⁵⁴ They are idealistic, possess a service mentality, and they care about the world and sustainable global practices.³⁵⁵ They are social, connected, and able to form virtual tribes.³⁵⁶ They have a social justice orientation, and they expect fairness and equality in their environments.³⁵⁷ They seek balance in their adult lives, perhaps because they have grown up in a fixed mindset, competitive world where fear of failure has led to anxiety and depression.³⁵⁸

Millennials will be interested in discovering their strengths and how they can put those strengths to work in fields where they can make a difference in the world. They will respond to programs that integrate knowledge, skill, and well-being training.³⁵⁹ The rate of change in their world will require creativity, critical thinking, and lifelong learning.³⁶⁰ The most innovative legal education programs, which are likely highly desired by millennial students, will be those that develop the professional identity of well-being, along with a knowledge-base and relevant practical skills.

B. Law Student Success and Academic Thriving

1. Developing Growth Mindset in Law Students

A fixed mindset will limit the potential achievement of law students.³⁶¹ Law schools traditionally define student success in terms of grades, GPA, journal participation, and class rank, and this narrow definition of achievement is known to inculcate a fixed mindset.³⁶² Research has shown that students with a growth mindset outperform students with a fixed mindset, and that leaders at top-performing organizations possess growth mindsets.³⁶³

Neuroscience research supports the educational objective of cultivating growth mindsets in law students because neuroplasticity translates into the accepted principle that law student brains grow and evolve with every thought, action, and experience.³⁶⁴ The Carnegie Report states that the “single-minded focus on competitive achievement” that legal education so-

354. *Id.* at 41–42, 46–50.

355. *Id.* at 27, 32, 45.

356. *Id.* at 36, 39–40.

357. *Id.* at 38.

358. *Id.* at 43, 49–50.

359. *Id.* at 45–50.

360. *Id.* at 34–35.

361. DWECK, *supra* note 240, at 67.

362. *Id.* at 6; *see* LEVIT & LINDER, *supra* note 46, at 125.

363. DWECK, *supra* note 240, at 61, 109–10, 138–39.

364. CARTER ET AL., *supra* note 88, at 193; RATEY & HAGERMAN, *supra* note 97, at 36; SWEENEY, *supra* note 93, at 17.

cializes into law students produces student stress and hinders the learning process.³⁶⁵ The Report also argues that the major obstacles to legal education reform, which also happen to be the greatest sources of student stress, are the competition-saturated law school atmosphere, the competitive classroom environment, and the grade curve.³⁶⁶

Anxiety among students regarding academic success as the prerequisite to the good life in America has been fueled by the competitive education marketplace where students, teachers, and schools all compete against each other.³⁶⁷ Ranking students necessarily pits them against one another where for one student to win, another must lose.³⁶⁸ “[C]ompetition stokes panic and a desperate sense that every student is on his or her own, left to hack a solitary path through a dangerous educational jungle.”³⁶⁹

Psychologist Joy Paul Guilford developed the theories of convergent thinking, which is the identification of a single answer to a problem, and divergent thinking, the development of as many solutions as possible to address a challenge.³⁷⁰ The American education system incentivizes convergent thinking and marginalizes divergent thinking, largely through its obsession with standardized testing and the ranking and sorting of students.³⁷¹ Psychologists Teresa Amabile and Beth Hennessey have identified five common educational practices that impair creative thinking: having students perform for a reward, focusing them on an upcoming evaluation, creating a culture of competition, restricting student autonomy, and intensively monitoring student progress.³⁷²

Grading on a curve, which is common in law school, arbitrarily restricts the number of students who can excel.³⁷³ This hypercompetitive grading system discourages students, dis-incentivizes studying, creates a toxic classroom environment, and teaches students that life is a zero-sum game where for one person to be successful, another person must fail.³⁷⁴ Dog-eat-dog education cultures reduce the social connections and sense of belonging that students seek, which can increase the risk of anxiety, depres-

365. SULLIVAN ET AL., *supra* note 30, at 29–32.

366. *Id.* at 31.

367. MARGARET HEFFERNAN, A BIGGER PRIZE: HOW WE CAN DO BETTER THAN THE COMPETITION 27–28 (2014).

368. *Id.* at 36.

369. *Id.* at 28.

370. *Id.* at 32.

371. *Id.* at 32–33.

372. *Id.* at 32.

373. Adam Grant, *Why We Should Stop Grading Students on a Curve*, N. Y. TIMES (Sept. 10, 2016), http://www.nytimes.com/2016/09/11/opinion/sunday/why-we-should-stop-grading-students-on-a-curve.html?_r=0.

374. *Id.*

sion, and suicide.³⁷⁵ Competitive grading systems can produce takers who perpetuate the zero-sum climate at work, cultivating distrust among coworkers and clients, and ultimately failing to make the kinds of contributions they could if they were givers.³⁷⁶ Educating students to be givers can cultivate a culture of improved motivation and learning.³⁷⁷

Research on motivation shows that a student's focus on extrinsic rewards, such as grades, extinguishes intrinsic initiative.³⁷⁸ External rewards such as GPA, standardized test scores, class rank, or college acceptances change learning from an inherently satisfying experience into a transaction where product is valued over process.³⁷⁹ When the product is privileged over the process, students may try to game the system by cheating.³⁸⁰ The shift from the education objectives of learning to think and building character, to the grade or class rank, has trained generations of students to care only about the external reward, no matter what behavior it takes to get it.³⁸¹

Competitive testing promotes playing it safe and the idea that there is always one right answer, privileging convergent thinking.³⁸² It fails to develop intrinsic motivation, creativity, or divergent problem solving in favor of selecting winners in a narrowly-tailored academic system and ranking those few victors.³⁸³ Every stage of schooling weakens intrinsic motivation, and the cost of rewarding only the students at the top is the unceasing demotivation of all other students.³⁸⁴ Top students then strive to attend luxury brand, top-ranked universities to secure their spot in America's elite,³⁸⁵ and the decisions and policies promoted by these leaders empowered by a system designed to exclude, reflect a lack of empathy for, or ability to work with, people outside their circle of privilege.³⁸⁶

Motivation can be enhanced in an education culture that presents students with appropriate challenges, positive feedback, opportunities to cultivate drive toward competence, student choice and autonomy, and minimal obsession with assessments.³⁸⁷ The concept of neuroplasticity supports the

375. *Id.*

376. *Id.*

377. *Id.*

378. HEFFERNAN, *supra* note 367, at 31.

379. *Id.* at 34.

380. *Id.* at 41–43.

381. *Id.* at 43.

382. *Id.* at 32–33.

383. *Id.* at 35.

384. *Id.* at 37.

385. *Id.* at 39.

386. *Id.* at 46.

387. *Id.* at 36.

development of this kind of education culture, and the premise that all students can learn and succeed in a growth-minded environment.³⁸⁸

Perhaps the best example of how a top-performing school system endeavors to better educate all students is that of Finland.³⁸⁹ In the 1960s, Finland decided the country was too small to waste any of its human capital, and through a collaboration of educators and representatives from all political parties, redesigned its education system to focus on the development of each Finnish student.³⁹⁰ Students receive written assessments, but they do not get grades or participate in standardized testing until they are eighteen years old.³⁹¹ National assessment of education is conducted on a random sampling of about 10% of the school population.³⁹² The result is that neither students nor schools can be ranked or compared.³⁹³

Teaching in Finland is regarded as one of society's best jobs and teachers garner great respect.³⁹⁴ A key characteristic sought in new teachers is empathy because Finnish teachers are expected to know their students on a deep level in order to help them succeed.³⁹⁵ Teachers are life-long learners who model continuous education, research, and professional growth.³⁹⁶ Teachers strive to limit student anxiety and hope not to lose a single student.³⁹⁷ Finnish schools educate every student and "Finnish educators don't accept that for there to be winners, there must be losers."³⁹⁸

Unlike the Finnish philosophy that there can be winning students without losing counterparts, the notorious zero-sum assessment practice of using a grade curve to assign grades for law student assessments likely contributes to a fixed mindset in students, because it measures student performance only in terms of comparison to the other students in the group. The curve is the yardstick that propels students to strive for superiority over their colleagues, rather than endeavor to learn, grow, and improve.³⁹⁹

Institutions designed around the ranking and sorting of people suffer from an inability to innovate which can lead to their failure.⁴⁰⁰ Law schools

388. CARTER ET AL., *supra* note 88, at 193; RATEY & HAGERMAN, *supra* note 97, at 36; SWEENEY, *supra* note 93, at 17.

389. HEFFERNAN, *supra* note 367, at 50–57.

390. *Id.* at 50–51.

391. *Id.* at 51.

392. *Id.* at 53.

393. *Id.* at 51.

394. *Id.* at 52.

395. *Id.* at 52–53.

396. *Id.* at 54, 57.

397. *Id.* at 54.

398. *Id.* at 56.

399. DWECK, *supra* note 240, at 118–19.

400. LANI GUINIER, MICHELLE FINE & JANE BALIN, *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* 17–19 (1997).

justify ranking law students in order to help large law firms screen students in their hiring processes.⁴⁰¹ Ranking individual students is designed to evaluate “an individual’s potential, to assess their performance, and to control their behavior.”⁴⁰² Standardized tests have been used to rank students, soldiers, factory workers, and corporate employees.⁴⁰³ “By classifying, creating hierarchies of ability and performance, and establishing what is ‘normal’ and what is not, disciplinary practices turn people into objects amenable to transformation.”⁴⁰⁴ The transformation that currently plagues law students subjected to the grade curve is a significant decline in their well-being because the mandatory curve allows only the top 10% of law students to gain a sense of achievement in law school.⁴⁰⁵ The remaining 90% of students are left to assume that no matter how hard they work, their efforts will always be inadequate.⁴⁰⁶

Students, parents, and employers turn to the U.S. News & World Report to shop for educational products.⁴⁰⁷ Law students use these rankings to determine where to apply and attend law school.⁴⁰⁸ Faculty rely on them to assess moving to a different institution.⁴⁰⁹ Alumni and donors use them to decide how to allot their contributions.⁴¹⁰ The U.S. News rankings have been widely criticized for flawed pseudo-science methodology that is deployed by journalists rather than educators, and that results in a misleading narrative about the quality of legal education.⁴¹¹ The rankings fail to account for the quality of faculty teaching and scholarship, diversity, student approval, and alumni activity.⁴¹² Rankings determine who gets to study to be a lawyer, how law students are assessed by colleagues and employers, how their professional identity and sense of status develops, and what kinds of legal practices are open to them.⁴¹³ Ranking systems determine who counts and who does not, who is noticed and for what. They also shape patterns of exclusion in politics, education, professions, and other arenas, and they set the terms under which those who are included are allowed to partic-

401. Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 886–87 (1997).

402. WENDY NELSON ESPELAND & MICHAEL SAUDER, ENGINES OF ANXIETY: ACADEMIC RANKINGS, REPUTATION, AND ACCOUNTABILITY 21 (2016).

403. *Id.*

404. *Id.* at 177.

405. Huang & Felder, *supra* note 199, at 762.

406. *Id.*

407. ESPELAND & SAUDER, *supra* note 402, at 11.

408. *Id.* at 28.

409. *Id.*

410. *Id.* at 28, 180.

411. *Id.* at 16–17, 105–06.

412. *Id.* at 106.

413. *Id.* at 179.

ipate. Even more, these structures play a quiet but influential role in dictating how we define good government, good education, good philanthropy, good health care, or any other social institution that is being measured.⁴¹⁴

Legal education has been criticized for being slow to innovate and change, and one result is a decline in applications by potential students.⁴¹⁵ Although law schools recognize the need to train lawyers to think critically and solve complex problems in innovative ways, and they have adapted programs to add value and control costs, they have not abandoned the Socratic discussion pedagogy or changed their competitive assessment model.⁴¹⁶

The American Bar Association now requires law schools to establish learning outcomes designed to achieve their education goals, to provide students with multiple student performance opportunities, and to assess and deliver feedback from faculty on those performances.⁴¹⁷ Law schools can develop competency-based grading at the same time they are developing their learning outcomes. To shift to competency-based grading, law schools will need to define what new lawyers need to know and describe the performance spectrum of developing, competent, and exemplary performance in domain knowledge attainment, legal skill acquisition, professional identity character attributes, self-care, and self-regulation skills.⁴¹⁸

Student feedback is one way to nurture a growth mindset.⁴¹⁹ Research shows that students who are praised for being smart or for having strong ability reject future challenging tasks, dislike difficult problems, and suffer a performance decline.⁴²⁰ Praising intellect or talent impairs both student motivation and performance.⁴²¹ Students who are praised for their effort and hard work invite challenging tasks, enjoy problems of increasing difficulty, and out-perform their ability-praised peers.⁴²² Developing growth-minded millennials involves rewarding initiative, perseverance, resilience,

414. *Id.* at 201.

415. Blake D. Morant, *The Continued Evolution of American Legal Education*, 51 WAKE FOREST L. REV. 245, 245–46 (2016).

416. *Id.* at 255–58.

417. STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. 2015–2016 §§ 301–304 (AM. BAR ASS'N 2015), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_aba_standards_for_approval_of_law_schools_final.authcheckdam.pdf.

418. Roy Stuckey, *The American Bar Association's New Mandates for Teaching Professional Skills and Values: Impact, Human Resources, New Roles for Clinical Teachers, and Virtual Worlds*, 51 WAKE FOREST L. REV. 259, 262 (2016).

419. DWECK, *supra* note 240, at 71–74.

420. *Id.* at 71–73.

421. *Id.* at 175, 177.

422. *Id.* at 72–73.

and acting on feedback.⁴²³ To minimize their addiction to praise and to build their confidence, professors should encourage students to embrace challenges, relish effort, probe mistakes, and work hard toward important goals.⁴²⁴ Faculty should establish an environment of trust, not judgment.⁴²⁵ Feedback should be honest and constructive, designed to help “fix something, build a better product, or do a better job.”⁴²⁶

Law schools that want to develop a professional growth mindset in their law students will:

- Eliminate the grade curve in favor of competency-based grading;
- Provide numerous small-scale assignments, including assessment of initiative and effort, along with rich and timely feedback; and
- Teach and assess for growth mindset, character attributes, self-regulation and self-care skills, along with domain knowledge and legal skills.

2. *Expanding Academic Self-Efficacy in Law Students*

In addition to a growth mindset, the expansion of hope and academic control skills produce academic self-efficacy in law students. High-hope legal educators emanate a passion for their discipline, but they also expressly teach the process of learning how to learn the domain knowledge in their field of expertise.⁴²⁷ They design courses that teach agency (motivation to pursue a goal) and pathway (capacity to brainstorm multiple strategies to achieve the goal) thinking in their specialty.⁴²⁸ They are explicit about the conceptual framework of the content; they are deliberate about exposing the categories of information within the framework; and they design class readings, discussions, exercises, and homework assignments that develop the ideas within the categories of information. Through this process, they model breaking goals down into tasks, tracking progress, and reaching milestones.⁴²⁹

High-hope law students who are educated in the hope skills of agency and pathway thinking are likely to realize greater academic achievement and higher graduation rates, but also to experience increased satisfaction

423. *Id.* at 137.

424. *Id.* at 176–77, 181.

425. *Id.* at 197.

426. *Id.* at 182.

427. Magyar-Moe, *supra* note 290, at 158–59.

428. Louis, *supra* note 226, at 105–06.

429. Magyar-Moe, *supra* note 290, at 156.

with their learning and a greater level of well-being.⁴³⁰ They will excel at divergent thinking, able to devise strategies to deal with challenges and to solve problems.⁴³¹ They will become self-regulated, life-long learners who are motivated to learn what they need to know, cognizant of the knowledge and skills they have or need to develop, and able to devise strategies for acquiring or implementing expertise.⁴³²

Legal educators who understand the importance of law student perceived academic control will evolve their evaluation systems from curve-based to competency-based grading.⁴³³ For law students to develop self-efficacy (confidence their actions influence an outcome) and an internal locus of control (belief their efforts have greater impact on their performance than external forces, such as law school culture, a forced grade curve, or the performance of their colleagues), they need to have power to effect the outcome of their efforts.⁴³⁴ If law students maximize their efforts, yet most often receive the mean and median score or grade, they will begin to lose motivation and conduct a cost-benefit analysis about expending their efforts in the future. Students with high perceived academic control get better grades and have higher GPAs.⁴³⁵

High-hope, growth-minded law students will expand their curiosity in high-hope growth-minded law schools. Law schools that embrace the neuroscience research that shows that law student brains grow and change with each new experience, action, and thought will strive to evolve into high-hope, growth-minded institutions.⁴³⁶ These law schools will produce graduates whose curiosity inspires life-long learning capacities, including deeper information processing, stronger recall of information, and the pursuit of novel and challenging work.⁴³⁷

Law schools can enhance the perceived academic control of law students by helping them identify and leverage their strengths.⁴³⁸ This process can begin with generalized strengths instruments, such as the Clifton StrengthsFinder or Values in Action Survey.⁴³⁹ An empirical study of 140 law students found that students who routinely utilized their top strengths

430. Louis, *supra* note 226, at 106.

431. Louis, *supra* note 226, at 106–07; HEFFERNAN, *supra* note 367, at 32–33.

432. Stuckey, *supra* note 418, at 263.

433. See Louis, *supra* note 226, at 104 (describing perceived academic control); Stuckey, *supra* note 418, at 262 (insisting that law schools should measure competence).

434. Louis, *supra* note 226, at 104.

435. *Id.* at 105, 115.

436. CARTER ET AL., *supra* note 88, at 193; RATEY & HAGERMAN, *supra* note 97, at 36; SWEENEY, *supra* note 93, at 17.

437. Louis, *supra* note 226, at 107–08.

438. *Id.* at 115.

439. *Id.* at 115–16; Magyar-Moe, *supra* note 290, at 136–43, 146.

throughout their daily activities had less stress and depression along with greater life satisfaction.⁴⁴⁰ Innovative law schools will develop their own program-based strength instruments to help law students find their academic program or concentration fit.⁴⁴¹ They will conduct strength-based academic advising and coaching, designed to assist students with academic and career planning.⁴⁴² As law schools draft learning outcomes and competency-based assessments, they can also examine how their education programs meet law student strengths and begin to design instruments that help match students with their programs.

Law schools that undertake a Positive Legal Education innovation process will incorporate positive perspective, resilience, self-regulation, grit, and well-being skills in their curriculum.⁴⁴³ The *Foundations for Practice Report* calls for this type of professional identity development training,⁴⁴⁴ when it urges law schools to teach character attributes including courtesy, humility, respect, tact, diplomacy, sensitivity, tolerance, and compassion; and self-care and self-regulation skills such as positivity and managing stress, exhibiting flexibility, adaptability, and resilience during challenging circumstances, and decisionmaking under pressure.⁴⁴⁵ The *Foundation for Practice Report* character attributes, self-care, and self-regulation skills map onto the Positive Psychology-PERMA well-being framework in this way:

- Positive Emotions
- Positivity & energy
- Stress management
- Engagement
- Intellectual curiosity & resourcefulness
- Flexibility, adaptability & resilience
- Positive Relationships
- Positive professional relationships
- Work cooperatively & collaboratively as part of a team
- Tolerance, sensitivity & compassion
- Humility & patience
- Meaning

440. Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y, L. & ETHICS 357, 408–11 (2009).

441. Louis, *supra* note 226, at 116.

442. *Id.* at 118.

443. See Schreiner, *supra* note 206, at 10; White & Murray, *supra* note 225, at 8.

444. GERKMAN & CORNETT, *supra* note 57, at 30, 33.

445. *Id.*

- Self-awareness (strengths, weaknesses, boundaries, preferences, sphere of control)
- Ownership, passion for work
- Achievement
- Commitment to excellence.⁴⁴⁶

Research on large populations of middle- and high-school students has shown that teaching well-being skills improves scores on standardized tests.⁴⁴⁷ Also, teaching well-being skills to law students is likely to improve scores on final exams and performance on the bar exam, in addition to improving law student well-being.

C. *Leveraging Social Connectedness and Enhancing Diverse Citizenship*

Millennial law students are social and connected, and they want to form strong bonds with friends and faculty.⁴⁴⁸ Social connectedness is enhanced when law students establish and maintain healthy relationships, and feel satisfied with, supported by, and connected to their peers, faculty, and mentors.⁴⁴⁹ Law schools and faculty that increase collaborative learning experiences and decrease competitive law school practices and cultures can enhance the social connectedness of their law students.⁴⁵⁰

Millennial law students are adept at forming virtual tribes devoted to areas of interest and passion.⁴⁵¹ They are idealistic, and they care about equity among people and sustainable practices that will safeguard the earth.⁴⁵² They value differences in people and diversity in groups.⁴⁵³ They are inclined to have a social justice orientation.⁴⁵⁴ What they may lack is exposure to people of many different backgrounds or the opportunity to explore their own culture, privileges, and assumptions.

These eventual lawyer-leaders will be charged with addressing the social problems that face the Nation and the world. Law school is the place where these students can enhance their cultural competency and improve their problem-solving skills. Law students must scrutinize their cultural awareness and increase their knowledge of the experiences of others.⁴⁵⁵

446. *Id.* at 30–34; SELIGMAN, *supra* note 193, at 14–20.

447. White & Murray, *supra* note 225, at 8; Adler & Seligman, *supra* note 315, at 17.

448. Shushok & Kidd, *supra* note 351, at 36; Schreiner, *supra* note 206, at 9–10.

449. Schreiner, *supra* note 206, at 11.

450. Magyar-Moe, *supra* note 290, at 158.

451. Shushok & Kidd, *supra* note 351, at 36, 39–40.

452. *Id.* at 27, 32, 38, 45–46.

453. *Id.* at 27, 38.

454. *Id.* at 38.

455. Hynes, *supra* note 324, at 292.

They must be exposed to as much diversity as possible including ability, age, ethnicity, gender, gender identity, religious, sexual preference, and socioeconomic differences.⁴⁵⁶ Law faculty might team with faculty experts from other departments on campus to develop curriculum around increasing awareness of one's own culture, views, assumptions, and privileges, and those of people with different backgrounds.⁴⁵⁷ Legal educators can mentor students as they cultivate empathy for marginalized groups and social causes, increase their understanding of the experiences of others, and commit to guiding the transformation of social systems to operate with less bias and discrimination.⁴⁵⁸

Millennial law students come to law school with a service mentality and a social justice orientation.⁴⁵⁹ Law school can provide service opportunities to raise awareness of substantial social and institutional problems.⁴⁶⁰ Students will learn that social change is a process and their leadership agency and pathway training, along with divergent thinking and well-being skills, will serve them well in constructing action plans to advance social change.⁴⁶¹

D. Institutional Effectiveness and Law School Culture

Law schools that seek to transform into Positive Legal Education Institutions will incorporate positive organizational behavior and curate a robust sense of community.⁴⁶² They will develop the psychological capital of faculty, administrators, and staff: optimism; high-hope agency and pathway thinking; and self-efficacy.⁴⁶³ They will cultivate a strong law school community by fostering:

- Community Membership, where every law student, professor, administrator, staff member, and graduate experiences a sense of belonging and feels valued;
- Member Ownership, where all Community Members contribute with their input and activities;
- Positive Relationships, where Community Members are empowered to interact; and

456. *Id.*

457. *Id.*

458. Hastings & Cohn, *supra* note 320, at 244.

459. Shushok & Kidd, *supra* note 351, at 32, 38, 45–46.

460. Hynes, *supra* note 324, at 293.

461. *Id.* at 292–94.

462. Schreiner, *supra* note 206, at 17.

463. *Id.* at 18.

- Synergistic Partnerships, where Community Members collaborate to work together on community objectives.⁴⁶⁴

A radical shift in legal education to become “positively deviant” will be disruptive because it requires turning away from a system that primarily serves lawyers at the top of the hierarchy, to a system that strives to leverage the power of all the human capital of the Community Members.⁴⁶⁵ It will mean coming to terms with the failure of the key characteristic of legal education, the competitive learning environment.⁴⁶⁶ It will mean acknowledging that competitive environments at school and work benefit the few and limit the capacity of the remaining Community Members.⁴⁶⁷

Our existing model of legal education is extremely ineffective for current students who seek innovative and collaborative environments in which to learn and work.⁴⁶⁸ In any organizational culture, the power-distance index describes “the steepness of a hierarchy and the emotional distance between those who have power and those who do not.”⁴⁶⁹ The higher the power-distance score, the steeper the hierarchy. The United States’ country score is 40, while Russia is 93, but countries with lower scores, such as Finland at 33 and Austria at 11, have flatter social hierarchies.⁴⁷⁰

In cultures with significant hierarchies, the wealth, power, and privilege is concentrated in a few people or families at the top.⁴⁷¹ Most of the community members experience the continuous social threat of being expelled, thus they are required to perform under extreme stress.⁴⁷² The costs to Community Members include impaired thinking and poor health, and the costs to the organization include diminished innovation, productivity, and credibility when Community Members game the system to survive.⁴⁷³ Extreme competition is antisocial because self-interest kills creativity and the ability to connect and cooperate with others.⁴⁷⁴ It creates a social structure replete with stress, corruption, and inequality.⁴⁷⁵ Law school is a steep hi-

464. *Id.* at 19.

465. Oades et al., *supra* note 219, at 433; Heffernan, *supra* note 367, at 35, 37, 39, 50–51.

466. SULLIVAN ET AL., *supra* note 30, at 31.

467. HEFFERNAN, *supra* note 367, at xii–xiii.

468. *Id.* at xiii–xiv.

469. *Id.* at 92.

470. *Id.* at 92, 97–98. Countries with steep ratings include: the United Kingdom 35; Canada 39; the United States 40; France 68; China 80; and Russia 93. *Id.* at 92. Countries with flatter hierarchy ratings include: Finland 33; New Zealand 22, and Austria 11. *Id.* at 97–98.

471. *Id.* at 92.

472. *Id.* at 93–94.

473. *Id.* at 93–97.

474. *Id.* at 86–87.

475. *Id.* at 95–98.

erarchy with extreme competition where law students experience punishing levels of stress and their cognitive abilities are compromised.⁴⁷⁶

The cultural components that guarantee extreme competition in law school are the grade curve and forced ranking of law students. Companies such as General Electric (“GE”), American International Group (“AIG”), and Lending Tree have used forced ranking of employees to attempt to improve performance.⁴⁷⁷ The most striking example of the failure of forced ranking was when Microsoft deployed stack ranking in 2002 under Steve Ballmer.⁴⁷⁸ Described as the most destructive process at Microsoft that drove employees to compete with each other rather than other companies, stack ranking forced every department “to declare a certain percentage of employees as top performers, then good performers, then average, then below average, then poor.”⁴⁷⁹ Employees made every effort to avoid being on projects with top performers so they would not be compared in performance evaluations.⁴⁸⁰ The evaluation cycle was every six months, so the focus was always on short-term thinking, and beyond failure to collaborate, some employees resorted to product sabotage to avoid being ranked at the bottom of the pack.⁴⁸¹ The emphasis for employees became the performance review rather than product design, innovation was debilitated, and Microsoft was crushed by its competition.⁴⁸²

Some American companies thrive by establishing collaborative cultures.⁴⁸³ Henry Ford believed the mission of every business was to serve others and his business practices elevated service over profit.⁴⁸⁴ Businesses that strive to develop all employees, raise everyone’s boat, and empower creative and cooperative cultures include W.L. Gore of Gore-Tex Fabrics, Morning Star, Nucor Steel, and Eileen Fisher.⁴⁸⁵ They have flattened or eliminated hierarchy, and enhanced connection, creativity, innovation, autonomy, and equity.⁴⁸⁶

A company that was built around a culture of connection and collaboration is Zappos, which sells clothing and shoes online.⁴⁸⁷ Started by a

476. Krieger, *supra* note 7, at 112–15; McCLURG, *supra* note 3, at 368–89.

477. HEFFERNAN, *supra* note 367, at 180–83.

478. Kurt Eichenwald, *How Microsoft Lost Its Mojo: Steve Ballmer and Corporate America’s Most Spectacular Decline*, VANITY FAIR (AUG. 2012), <http://www.vanityfair.com/news/business/2012/08/microsoft-lost-mojo-steve-ballmer>.

479. *Id.*

480. *Id.*

481. *Id.*

482. *Id.*

483. HEFFERNAN, *supra* note 367, at 290–91.

484. *Id.*

485. *Id.* at 101–11.

486. *Id.* at 109–11.

487. ZAPPOS.COM, INC., <http://www.zappos.com/> (last visited Mar. 13, 2018).

group of college friends, Zappos developed a devotion to customer service by committing to a culture of affiliation and teamwork.⁴⁸⁸ Zappos promotes growth mindset by providing a library of free books for employees and a Pipeline Team designed to train and develop employees.⁴⁸⁹ It maintains a newsletter entitled *Ask Anything* where employees ask questions and information transparency is assured.⁴⁹⁰ Employees are challenged to make one small improvement every week to make the company better.⁴⁹¹ Company employees were asked to identify key aspects of the Zappos culture and the result was the *Culture Book*, which is available for free online.⁴⁹² The ten Core Values detailed in the Zappos *Culture Book* are:

- Deliver WOW Through Service
- Embrace and Drive Change
- Create Fun and a Little Weirdness
- Be Adventurous, Creative, and Open-Minded
- Pursue Growth and Learning
- Build Open and Honest Relationships with Communication
- Build a Positive Team and Family Spirit
- Do More with Less
- Be Passionate and Determined
- Be Humble.⁴⁹³

The leaders at Zappos discovered that their Core Values and their company culture generated employee happiness because they provide connectedness (high quality and engaging relationships), perceived control (promotion options and advancement timing determined by each employee), perceived progress (numerous resources and opportunities to support professional growth), and meaning (the chance to contribute to a higher purpose, which is bigger than each employee individually).⁴⁹⁴ In 2008, after ten years in business, Zappos achieved its \$1 billion in gross merchandise sales goal and, in 2009, Amazon acquired Zappos for \$1.2 billion.⁴⁹⁵

Law schools can choose to flatten their hierarchies and transform legal education. This decision would improve law student and lawyer well-being and performance. But there is another reason for law schools to change: it

488. TONY HSIEH, DELIVERING HAPPINESS: A PATH TO PROFITS, PASSION, AND PURPOSE 134 (2010).

489. *Id.* at 122, 137.

490. *Id.* at 135–36.

491. *Id.* at 164.

492. *Id.* at 135–42. The Culture Book is available at <https://www.zapposinsights.com/culture-book>.

493. *Id.* at 157.

494. *Id.* at 232–36.

495. *Id.* at 137, 209, 226.

would be a significant step to making society more socially and environmentally sustainable because lawyers are leaders in government, business, media, and philanthropy.⁴⁹⁶ Lawyers shape policy, and when they are educated to believe that competitive models are the most productive, they promote replicating them throughout society.⁴⁹⁷

That we confront hard problems without skilled means of solving them is one of the higher prices we have paid for our long love affair with competition. That our political standoffs—sequesters, shutdowns, and filibusters—are embarrassing public rituals is bad enough; that they stymie creative thinking about critical problems is the bigger cost. Our politics are stalled because our problems are complex and our means of addressing them are crude and rigid. In the looming face-off between business, government, and society, a competitive mind-set can frame the contest, but doing so destroys all the mental maps that might lead us to a solution. The problem is a failure not of imagination but of courage: the willingness to relinquish fantasies of winning in exchange for the bigger prize of joint achievement and true progress.⁴⁹⁸

Lawyers are the purveyors of competitive zero-sum cultures, but with different training they can design a future where policies and organizations are creative, cooperative, and collaborative, and the well-being of stakeholders is enhanced.⁴⁹⁹ Progress toward a more equitable society will be enhanced when legal education is transformed to a collaborative model designed to train lawyer-leaders to be divergent thinkers whose focus is on problem-solving.

Law school culture may be most driven by the U.S. News & World Report rankings.⁵⁰⁰ Deans, administrators, and faculty consider how each decision might affect their school's ranking.⁵⁰¹ Rankings create significant anxiety for law school leaders who feel they must prioritize short-term objectives over long-term strategic planning.⁵⁰² Rankings constrain the professional discretion of law school leaders in the determination of the institutional mission and what constitutes excellence.⁵⁰³ The transformation of

496. See *supra* note 25.

497. See HEFFERNAN, *supra* note 367, at 303, 306 (suggesting that those in advantageous positions do not seek to challenge the structures that were in place when they gained those advantageous positions); *supra* note 25 (noting the lawyer's role in politics).

498. *Id.* at 321.

499. See *id.* at 300–06, 314–15 (explaining that indices of well-being are controlled by people of status); Oades et al., *supra* note 219, at 437 (acknowledging that changing long-standing structures to focus on well-being will require more effort than in other structures like startup companies).

500. ESPELAND & SAUDER, *supra* note 402, at 174–76.

501. *Id.* at 174.

502. *Id.* at 177.

503. *Id.* at 174–75.

legal education called for by this Article will require great courage from law school leaders.⁵⁰⁴

VII. LAWYERS AS LEADERS

*“There are more people, better off, with more freedom, more agency and more power than at any other time in our history. That’s not enough. As we use technology and culture to create more health, more access and more dignity for more people, we keep reminding ourselves how inadequate it is in the face of the injustice and pain that remains. That’s how we get better. We must focus on the less fortunate and the oppressed not because the world isn’t getting better but because it is. It’s our attention to those on the fringes that causes the world to get better.”*⁵⁰⁵

We need effective leaders to address challenges and work on solutions to current problems: social inequities, natural disasters, foreign relationships, and political division.⁵⁰⁶ Legal education can provide leadership training and experiential learning opportunities for law students to develop and use leadership skills.⁵⁰⁷

Buckminster Fuller said, “[y]ou never change things by fighting the existing reality. To change something, build a new model that makes the existing model obsolete.”⁵⁰⁸ Training lawyers to become leaders today requires transformative action.⁵⁰⁹

Researcher Scott Sherman spent ten years studying the science of social change—how ordinary citizens approach serious societal problems and change the world.⁵¹⁰ One of his projects was to study how Rocky Flats, a former nuclear weapons factory that pitted dedicated government workers and national security leaders against social and environmental activists, was cleaned up and transformed into a Colorado wildlife refuge.⁵¹¹ He discovered that adversarial legal tactics do not bring people together to solve problems.⁵¹² They tend to amplify differences, polarize opponents, and create

504. HEFFERNAN, *supra* note 367, at 321.

505. Seth Godin, *It’s Never Enough*, BLOG POST (Dec. 18, 2016), http://sethgodin.typepad.com/seths_blog/2016/12/its-never-enough.html.

506. Hynes, *supra* note 324, at 279.

507. *Id.*

508. Scott Sherman, *Changing the World: The Science of Transformative Action*, in POSITIVE PSYCHOLOGY AS SOCIAL CHANGE 329, 344 (Robert Biswas-Diener ed., 2011).

509. *Id.*

510. *Id.* at 332–33.

511. *Id.* at 329–332, 342. Rocky Flats is sixteen miles from Denver, Colorado and the former birthplace of America’s nuclear weapon arsenal. *Id.*

512. *Id.* at 334.

life-long enemies.⁵¹³ He also found that neither politics nor scientific arguments were successful, both further promoting antagonistic behavior and encouraging combative mentality, where winning meant defeating the rival.⁵¹⁴ This conduct plays out on our national political stage and stalls problem-solving efforts in our national and local governments.⁵¹⁵ This approach has led us to where we find ourselves in American society, caught in the eternal cycle of the never-ending feud, where all energies are spent on the battle and problems are rarely improved or solved.⁵¹⁶

Sherman's research revealed that achieving success in working to rectify the wickedest societal problems required people to leverage government and corporate institutions to work to improve the future.⁵¹⁷ He discovered three strategies for transformative action:

- Exposing injustice;
- Practicing "social aikido"; and
- Developing constructive programs.⁵¹⁸

The first strategy in Transformative Action Theory is to expose injustice in a way that speaks truth to power in order to address societal problems.⁵¹⁹ This approach strives to problem-solve while uplifting all constituents, and it makes deliberate the process of avoiding demonization and treating all members of the process with dignity.⁵²⁰

Injustice is present at many levels of American society, from corporate scandals, to income inequality, to unequal treatment in the legal system. Volkswagen cheated on emissions tests.⁵²¹ Takata airbags continue to kill and maim people, and the company may have known of the defect as early as 2004, but it chose to hide it from the government and the public.⁵²² The Economic Policy Institute reports that income inequality has increased in all

513. *Id.*

514. *Id.*

515. *Id.* at 335.

516. *Id.*

517. *Id.*

518. *Id.* at 335–342.

519. *Id.* at 335.

520. *Id.*

521. Russell Hotten, *Volkswagen: The Scandal Explained*, BBC NEWS (Dec. 10, 2015), <http://www.bbc.com/news/business-34324772>.

522. Clifford Atiyeh & Rusty Blackwell, *Massive Takata Airbag Recall: Everything you Need to Know, Including Full List of Affected Vehicles*, CAR & DRIVER (Oct. 6, 2017), <http://blog.caranddriver.com/massive-takata-airbag-recall-everything-you-need-to-know-including-full-list-of-affected-vehicles/>.

states since the 1970s.⁵²³ Between 2009 and 2013, when the economy was recovering from the 2008 crash:

- in 24 states, the top 1% netted at least half of all income growth;
- in 10 of those 24 states, the top 1% acquired all income growth; and
- for the entire country, the top 1% captured 85.1% of the total income growth of the United States.⁵²⁴

Although women make up approximately half the work force, they continue to be paid less than men for the same work.⁵²⁵ In 2015, women made eighty cents for every dollar paid to men, resulting in a 20% wage gap between genders.⁵²⁶ In our legal system, research indicates there are racial disparities at every stage in the process: “from arrest rates, to bail amounts, to sentence lengths, to probation hearing outcomes.”⁵²⁷

The second transformative strategy is “social aikido,” the social phenomenon of converting enemies into allies, commuting hatred into goodwill, and shifting the objective from win-lose to win-win.⁵²⁸ Anger, hostility, and adversarial tactics can mobilize people, but they are not successful strategies for problem solving because they focus on the parties, not the problem.⁵²⁹ Anger also results in significant health problems in chronically hostile people including increased risk of anxiety, depression, stroke, cancer, heart attack, and a five-to-seven times increase in risk of death before the age of fifty.⁵³⁰

Social aikido requires understanding and respect, and it involves negotiation and consensus-building.⁵³¹ Sixty-five studies examining competition versus collaboration concluded that people perform better and achieve higher success rates when joined together to work on a common goal, rather than competing against an adversary.⁵³² Researcher Alfie Kohn found that

523. Estelle Sommeiller, Mark Price & Ellis Wazeter, *Income Inequality in the U.S. by State, Metropolitan Area, and County*, Econ. Policy Inst. (June 16, 2016), <http://www.epi.org/publication/income-inequality-in-the-us/>.

524. *Id.*

525. PAY EQUITY AND DISCRIMINATION, INSTITUTE FOR WOMEN’S POLICY RESEARCH (2017), <http://www.iwpr.org/initiatives/pay-equity-and-discrimination>.

526. *Id.*

527. Andrew Kahn & Chris Kirk, *There’s Blatant Inequality at Nearly Every Phase of the Criminal Justice System*, BUS. INSIDER (Aug. 9, 2015), <http://www.businessinsider.com/theres-blatant-inequality-at-nearly-every-phase-of-the-criminal-justice-system-2015-8>.

528. Sherman, *supra* note 508, at 337.

529. *Id.* at 338.

530. *Id.* at 339.

531. *Id.* at 338.

532. *Id.*

competition “drags us down, devastates us psychologically, poisons our relationships [and] interferes with our performance.”⁵³³ On the other hand, when people address problem-solving cooperatively and work to improve the situation for all parties, communication improves, hostility recedes, and prejudices are reduced.⁵³⁴ And, happier people are more altruistic and likely to help others.⁵³⁵

One of the most public displays of social aikido took place during an episode of C-SPAN’s Washington Journal.⁵³⁶ A white male caller, who admitted to being prejudiced and fearful, asked Heather McGhee, President of Demos Action, what he could do to change and to be a better American.⁵³⁷ Ms. McGhee listened calmly while the caller described reading newspaper stories about young black males who are violent because they are trying to get money for drugs.⁵³⁸

McGhee began her response by thanking the caller “for being honest” and “for opening up this conversation because it is simply one of the most important ones we have to have in this country.”⁵³⁹ Her approach was to begin with gratitude for the caller’s willingness to admit to bias and his desire to improve and “be a better American.”⁵⁴⁰ She praised his question, described as “how do I get over my fears and my prejudices,” and his desire to change as one of the most powerful actions Americans can take at this point in our history.⁵⁴¹ She stated that we all have fears and prejudices about people we do not know and do not live with, and that “this fear and set of ideas that we only get from the worst possible news is tearing us apart.”⁵⁴² She smiled and gave him a list of things he could do to reduce his fears and prejudices:

- spend less time consuming the news since research shows that media over represents African American crime, while also underrepresenting crimes committed by white people;
- get to know black families;
- join a multi-racial church to facilitate developing relationships with black people;
- read about the history of African Americans; and

533. *Id.* (quoting ALFIE KOHN, NO CONTEST: THE CASE AGAINST COMPETITION 114 (1986)).

534. *Id.* at 339.

535. *Id.*

536. Paul Walter, *Caller Admits Racism and Is Gently Advised*, WASH. J. C-SPAN (Aug 18, 2016), <https://www.c-span.org/video/?c4618001/caller-ad> (edited clip).

537. *Id.*

538. *Id.*

539. *Id.*

540. *Id.*

541. *Id.*

542. *Id.*

- foster conversations in the community about addressing fear and prejudice in our quest to become better Americans.⁵⁴³

McGhee closed by stating that in order to be united across race, class, gender, and age, we have to foster relationships and get to know each other authentically.⁵⁴⁴ She provided a social aikido blueprint: active non-judgmental listening; gratitude for a willingness to problem-solve; acknowledgment that the problem impacts all of us; and delivery of a set of suggestions as a starting point to working on the problem.

The third strategy is the development of a constructive program, one meant to provide an enhanced alternative that will improve the future.⁵⁴⁵ Creating a constructive program shifts the focus from protesting the problem to changing conditions in the community.⁵⁴⁶ Transformative revolutions have creative and positive objectives designed to construct the ideal community or society.⁵⁴⁷ Today's leading designers of constructive programs, social entrepreneurs, are crafting scientific experiments and applying their expertise to solve society's problems and create a better world.⁵⁴⁸ Social entrepreneurs are taking on problems such as genocide, human trafficking, poverty, and environmental degradation.⁵⁴⁹

In addition to exposing injustice, becoming masters of social aikido, and establishing constructive social programs, transformative lawyer leaders will need a growth mindset. In a five-year study designed to determine how organizations evolve and improve, Jim Collins discovered that in every case where an organization evolved from good to great, the leader had a growth mindset.⁵⁵⁰ The characteristics of growth mindset leaders include humility, an incessant desire to improve, a deep curiosity about what is and is not working, and a belief in human potential.⁵⁵¹ These leaders surround themselves with employees who confront failures head-on and identify solutions needed for improving the organization in the future.⁵⁵² They seek feedback, utilize data, and deploy multiple strategies for motivating employees and improving productivity.⁵⁵³ They support mentoring and professional development programs.⁵⁵⁴

543. *Id.*

544. *Id.*

545. Sherman, *supra* note 508, at 341.

546. *Id.*

547. *Id.* at 342.

548. *Id.*

549. *Id.*

550. DWECK, *supra* note 240, at 109–10.

551. *Id.* at 110.

552. *Id.*

553. *Id.* at 110–11.

554. *Id.* at 112–13.

Leaders of organizations who have a fixed mindset create strict hierarchies that perpetuate the theory of the genius at the top.⁵⁵⁵ They hire people they believe possess natural talent, they assume employees have fixed abilities, and they fail to acknowledge and improve organizational deficiencies.⁵⁵⁶ They boost their egos by being the biggest fish in a tank where some are superior and some are inferior.⁵⁵⁷ They surround themselves with people who flatter them and conceal problems, further validating their preeminence.⁵⁵⁸ They treat low-status workers with contempt and intimidation, judging them as either incompetent or unworthy.⁵⁵⁹ They need to be the smartest person in the room and they use the yardstick of comparison with their employees to prove their superiority.⁵⁶⁰ Their organizations suffer when they take credit for the ideas and work of their employees, or eliminate personnel that threaten their position at the top.⁵⁶¹ When their organizations start to fail, they deploy “the key weapons of the fixed mindset—blame, excuses, and the stifling of critics and rivals.”⁵⁶²

Law school is a fixed mindset culture designed to serve students, faculty, and employers at the top of the hierarchy and to perpetuate the social status quo. Lawyers hold powerful leadership positions in all segments of American society. Making a shift toward social justice and solving the pressing problems of our time will require the reverse engineering of legal education away from the competitive model that stifles lawyer thinking, stunts lawyer development, and impairs lawyer well-being, and toward a new exemplar of Positive Legal Education that fosters growth minded lawyer-leaders.

When growth mindset leaders confront new organizations they may need to uncover the fixed mindset and replace it with a culture of growth and teamwork.⁵⁶³ This process requires the humility to open pathways of communication and feedback, and to inspire candid conversations about problems.⁵⁶⁴ The shift from elitism, toxic politics, and turf wars necessitates reward systems that incentivize teamwork and helping others rather than individual accomplishments.⁵⁶⁵ New hires should be evaluated on their

555. *Id.* at 110, 112–13.

556. *Id.* at 108–09.

557. *Id.* at 112–13.

558. *Id.* at 122.

559. *Id.* at 119–120, 123, 139.

560. *Id.* at 118–19.

561. *Id.* at 114–17.

562. *Id.* at 117.

563. *Id.* at 125.

564. *Id.* at 127–29.

565. *Id.* at 129–130.

mindset, not their academic or employment pedigree.⁵⁶⁶ Employees should be mentored, nurtured, and developed.⁵⁶⁷ Research shows that organizations with growth mindset cultures outperform those with fixed mindset cultures, likely because they support open communication, confront problems, value feedback, and cultivate an environment of continuous learning.⁵⁶⁸ Organizations that want to tap into human potential embrace the research on Positive Psychology and the neuroscience of human development; value initiative, perseverance, and resilience; adopt teaching, learning, and feedback cultures; and accept obstacles as part of the growth process.⁵⁶⁹ Positive Legal Education provides the framework for a constructive transformative action program.

VIII. HEALING LAWYERS

*“It’s taken us 100,000 years to figure out that we are only as well off as the weakest ones in our tribe, and that connection and community and respect lead to a world that benefits everyone.”*⁵⁷⁰

The lawyer tribe is suffering from a well-being crisis. Some lawyers may be high-functioning, but also deeply depressed.⁵⁷¹ These accomplished individuals may appear to be very successful, while feeling anxious, irritable, stressed, or sad.⁵⁷² Because of their tendency toward perfectionism, they fail to seek help.⁵⁷³ Women are particularly susceptible because of their role as care-takers.⁵⁷⁴ High-functioning lawyers with depression are at risk for suicide and need to learn about treatment and interventions that can help them.⁵⁷⁵ Neuroscience- and Positive Psychology-based recommendations that enhance thriving and heal the lawyer’s mind and brain include exercise and restorative practices such as mindfulness, meditation, and gratitude.⁵⁷⁶

566. *Id.* at 127–28.

567. *Id.* at 126, 132.

568. *Id.* at 134.

569. *Id.* at 140–41.

570. Seth Godin, *...and It Bends Toward Justice*, BLOG (Jan. 16, 2017), http://sethgodin.typepad.com/seths_blog/2017/01/-and-it-bends-toward-justice.html.

571. Emily Laurence, *Why We Need to Talk about High-Functioning Depression*, HUFFINGTON POST (Sept. 21, 2016), http://www.huffingtonpost.com/wellgood/why-we-need-to-talk-about_b_12126160.html.

572. *Id.*

573. *Id.*

574. *Id.*

575. Amanda Leventhal, *We Cannot Continue to Overlook ‘High-Functioning’ Depression*, THE MIGHTY (May 23, 2016), <https://themighty.com/2016/05/high-functioning-depression-we-cant-overlook-the-overachievers/>.

576. *See* Austin, *supra* note 68, at 828–47; Austin, *supra* note 80, at 871–80.

A. Exercise

The lawyer brain evolves with each thought, action, and experience. Lawyers have the option to improve their brain function because their brains can grow new neurons in the hippocampi (neurogenesis), which improves memory processing, and they can grow and improve connections between the neurons (neuroplasticity).⁵⁷⁷

A 2011 meta-analysis of 1,603 articles on the relationship between cognition and exercise found that exercise can both prevent cognitive decline and heal cognitive impairment.⁵⁷⁸ Exercisers had significantly larger hippocampus volumes and greater synaptic connections.⁵⁷⁹ Exercise is the most powerful activity lawyers can undertake to enhance brain function.⁵⁸⁰ Any exercise that raises the lawyer heart rate improves the brain by increasing blood and oxygen flow; elevating and balancing important neurotransmitter levels; and releasing brain-derived neurotrophic factor (“BDNF”).⁵⁸¹ BDNF promotes neurogenesis by activating brain cell growth and it improves neuroplasticity by facilitating synapsis function.⁵⁸² Daily exercise elevates BDNF levels more than working out on alternative days, and the fitter the body, the greater the brain benefit.⁵⁸³

B. Mindfulness

Lawyers have the opportunity to improve their minds with restorative practices, such as mindfulness. Mindfulness has been defined as:

- “paying attention in a particular way, on purpose, in the present moment, nonjudgmentally,”⁵⁸⁴
- “being aware of the present moment without judgment or preference,”⁵⁸⁵ and
- “the love of being present.”⁵⁸⁶

577. CARTER, *supra* note 88, at 193; DOIDGE, *supra* note 28, at 45–47.

578. JOHN J. RATEY & RICHARD MANNING, GO WILD: FREE YOUR BODY AND MIND FROM THE AFFLICTIONS OF CIVILIZATION 105–06 (2014).

579. *Id.* at 107.

580. RATEY & HAGERMAN, *supra* note 97, at 245.

581. AMEN, *supra* note 28, at 110; MEDINA, *supra* note 28, at 22; RATEY & HAGERMAN, *supra* note 97, at 38.

582. AAMODT & WANG, *supra* note **Error! Bookmark not defined.**, at 89; DOIDGE, *supra* note 28, at 80; PERLMUTTER & VILLOLDO, *supra* note 66, at 87.

583. RATEY & HAGERMAN, *supra* note 97, at 245–51, 261.

584. GEORGE MUMFORD, THE MINDFUL ATHLETE: SECRETS TO PURE PERFORMANCE 65 (2016) (quoting Jon Kabat-Zinn).

585. JEENA CHO & KAREN GIFFORD, THE ANXIOUS LAWYER: AN 8-WEEK GUIDE TO A JOYFUL AND SATISFYING LAW PRACTICE THROUGH MINDFULNESS AND MEDITATION 62 (2016).

586. MUMFORD, *supra* note 584, at 202.

“Mindfulness is a practice, not a destination.”⁵⁸⁷ Yoga, tai chi, and qigong are mindful movement practices.⁵⁸⁸ Mindfulness practices help the lawyer to calm the racing “monkey mind”, develop poise, and cultivate flow.⁵⁸⁹ Flow is the experience where the challenge of the task meets the skill level, time seems to fly, and the work is accomplished in a zone of optimal performance.⁵⁹⁰ Flow is the state of complete immersion that results when a lawyer is one with a task or activity.⁵⁹¹

Research on mindfulness shows that it decreases distraction, improves information-processing and decision-making, and increases gray matter and connections between brain areas.⁵⁹² Secondary students who practiced mindfulness experienced a reduction of negative affect and an increase in calm and self-regulation.⁵⁹³

Mindfulness can enhance leadership capacity by augmenting metacognition (self-reflection and observation of one’s thinking), curiosity (inquisitive perspective about inner and outer world), and allowing (acceptance of the present as is).⁵⁹⁴ Possessing these meta-capacities assists leaders with emotion regulation, empathy, perspective-taking, adaptability, cooperation, and leadership in complex cultures.⁵⁹⁵ The most common practice to enhance mindfulness is meditation.⁵⁹⁶

C. Meditation

Mindfulness meditation can lead to a capacity to create calm on demand, empowering the meditator to respond rather than react.⁵⁹⁷ A focus on the breath is the core activity in meditation and it activates the rest-and-digest calming system.⁵⁹⁸ Meditation involves taking slow deep breaths, and when the mind wanders away from attention to the breath, noticing

587. *Id.* at 79.

588. *Id.* at 230.

589. *Id.* at 67–69, 136–37.

590. *Id.* at 67–69.

591. Oades et al., *supra* note 219, at 436.

592. GRAHAM, *supra* note 187, at 256; SRINIVASAN S. PILLAY, *YOUR BRAIN AND BUSINESS: THE NEUROSCIENCE OF GREAT LEADERS* 50 (2011); SCOTT L. ROGERS & JAN L. JACOBOWITZ, *MINDFULNESS & PROFESSIONAL RESPONSIBILITY: A GUIDEBOOK FOR INTEGRATING MINDFULNESS INTO THE LAW SCHOOL CURRICULUM* 22–23 (2012).

593. Oades et al., *supra* note 219, at 435.

594. Peter H. Huang, *Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership?*, 55 HOUS. L. REV. 63, 69–71, 74 (2017).

595. *Id.*

596. CHO & GIFFORD, *supra* note 585, at 7–8, 12.

597. MUMFORD, *supra* note 584, at 73–76, 92, 209.

598. DEVI, *supra* note 62, at 64–65; GRAHAM, *supra* note 187, at 215.

nonjudgmentally and returning the attention to the breath.⁵⁹⁹ Meditation induces both physiological and psychological calm.⁶⁰⁰ The rest-and-digest system is initiated with slow deep breathing, which reduces stress, decreases heart rate, and lowers blood pressure.⁶⁰¹ The psychological benefit is that focused attention on the breath makes it difficult to regret the past or worry about the future.⁶⁰²

Meditation reduces stress and improves illnesses.⁶⁰³ Research on meditators found that meditation improves attention, mood, compassion, and empathy; improves immune function, cardiovascular disease, Type II diabetes, asthma, chronic pain, insomnia, and anxiety; decreases the stress hormone cortisol; and increases gray matter in the thinking brain (prefrontal cortex) and emotional brain (hippocampus).⁶⁰⁴

Another form of meditation, known as lovingkindness, enhances empathy and compassion for others.⁶⁰⁵ Lovingkindness meditation is the desire for yourself and others to be happy, well, safe, peaceful, and at ease.⁶⁰⁶

D. Gratitude

Another restorative practice of the mind is the gratitude practice, which is a mindful awareness of what is going well.⁶⁰⁷ Cultivating a sense of appreciation is a way for lawyers to internalize the positive.⁶⁰⁸ Lawyers can journal about or reflect upon three things they are grateful for, three things they are proud of, or three things that went well every day.⁶⁰⁹ In over 100 studies, researchers have discovered that people with daily gratitude practices feel more alert, enthusiastic, energetic, and optimistic, and they sleep better, have lower blood pressure, and live an average of seven to nine years longer than people who do not practice gratitude.⁶¹⁰

Mindfulness, meditation, and gratitude are practices designed to lower lawyer stress and increase lawyer calm. They should help minimize regret

599. MUMFORD, *supra* note 584, at 103–05; ROGERS & JACOBOWITZ, *supra* note 592, at 17; CHO & GIFFORD, *supra* note 585, at 84–85.

600. CHADE-MENG TAN, *JOY ON DEMAND: THE ART OF DISCOVERING THE HAPPINESS WITHIN* 67 (2016).

601. *Id.*

602. *Id.*

603. MUMFORD, *supra* note 584, at 161; HANSON, *supra* note 61, at 85–86.

604. AAMODT & WANG, *supra* note 28, at 186; AMEN, *supra* note 28, at 167; HANSON, *supra* note 61, at 85–86.

605. TAN, *supra* note 600, at 264; HANSON, *supra* note 61, at 157–60.

606. Jack Kornfield, *A Meditation on Lovingkindness* (2017), <https://jackkornfield.com/meditation-lovingkindness/>.

607. MUMFORD, *supra* note 584, at 181–82.

608. HANSON, *supra* note 61, at 68–70.

609. CHO & GIFFORD, *supra* note 585, at 202–03, 211, 215.

610. GRAHAM, *supra* note 187, at 274.

about the past and worry about the future.⁶¹¹ A final mindfulness practice that can keep lawyers grounded in the present, based on a Tolstoy short story, is the Three Questions Practice:

- What is the most important time? It is the present, because that is the only time you have control over;
- Who is the most important person? It is the person you are currently connecting with; and
- What is the most important thing to do? The most important action to take is to do your best to serve the person you are interacting with.⁶¹²

611. TAN, *supra* note 600, at 67.

612. *Id.* at 264; *see* LEO TOLSTOY, THE THREE QUESTIONS (1885).

IX. CONCLUSION

“[W]hen individuals flourish, health, productivity, and peace follow.”⁶¹³

I propose a new field of inquiry called Positive Legal Education that leverages research findings from Positive Psychology, neuroscience, and Positive Education to inspire innovation in legal education and curate a culture of well-being in the legal field. It is possible for legal education entrepreneurs and scholars to transform legal education so that law students may flourish and law schools may thrive. Flourishing lawyers will be better prepared to provide the leadership necessary to fully leverage human potential by forming collaborative and interdependent well-being and achievement cultures and inspiring social progress.

A. *Legal Scholars*

There are many daring and inspired legal scholars who have been writing about law student and lawyer well-being for years and much of their work can be accessed at the online AALS Balance in Legal Education Section Bibliography.⁶¹⁴ Although Positive Psychology has been applied in higher education, there is a scarcity of literature and few studies on the effectiveness of Positive Psychology interventions in this population.⁶¹⁵ I call for an empirical research agenda that uses neuroscience and Positive Psychology technology, instruments, and interventions to:

- Examine the legal education-well-being relationship with the goal of minimizing the negative well-being effects of law school;
- Examine the law practice-well-being relationship with the goal of minimizing the negative well-being effects of law practice; and
- Incorporate Positive Psychology, neuroscience, and Positive Education-informed interventions to improve the law student experience and optimize learning, and to inform legal organizations and employers about methods and mechanisms to heal sick lawyers and to better develop healthy lawyers.⁶¹⁶

613. SELIGMAN, *supra* note 193, at 240.

614. *See supra* note 75.

615. Acacia C. Parks, *Towards the Establishment of Best Practices for Applying Positive Psychology in Higher Education*, in POSITIVE PSYCHOLOGY IN HIGHER EDUCATION 1, 3 (Acacia C. Parks ed., 2013).

616. *Id.* at 3.

B. Legal Education Entrepreneurs

There are many caring and creative legal educators who teach in ways that support law student academic thriving. For those educators who want to move closer to a Positive Legal Education model, I offer this list of action items:

- Draft the Learning Outcomes for your classes that are now required by the ABA;
- Outline the Conceptual Framework for your discipline or course;
- Describe the categories of information within the Conceptual Framework;
- Detail the ideas within each category of information;
- List the primary authority (cases, statutes, or regulations) that is relevant to each category of information;
- Identify readings that illuminate the Conceptual Framework, categories of information, and ideas within each category, and consider reducing the amount of reading you assign;
- Describe exercises that allow students to work collaboratively with the primary authority;
- Create short assessments that allow students to apply the primary authority and grapple with the Conceptual Framework;
- Create competency-based assessment rubrics that describe what a developing, competent, and excellent student performance looks like for each Learning Outcome covered by the assessment; and
- Consider constructing competency-based assessments that assess for knowledge, legal skills, and the character attributes, self-care, and self-regulation skills recommended by the *Foundations for Practice Report* that align with your discipline or course.

The most courageous legal education leaders will begin conversations at their law schools about the efficacy of the Socratic pedagogy, the mandatory grade curve, and the competition-saturated culture of legal education. They may also consider staging a mass boycott of the information requested by *U.S. News & World Report*, a strategy employed by the Council of Deans of the American Association of Dental Schools in the 1990s that blocked *U.S. News & World Report* from ranking dental schools.⁶¹⁷

These recommendations may seem radical, but social progress may depend upon legal education becoming positively deviant.

617. ESPELAND & SAUDER, *supra* note 402, at 190–91.