

Better to Light a Single Candle than to Curse the Darkness: Promoting Law Student Well-Being through a First Year Law Subject

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Australian law teachers are increasingly recognising that psychological distress is an issue for our students. This article describes how the Queensland University of Technology Law School is reforming its curriculum to promote student psychological well-being. Part I of the article examines the literature on law student psychological distress in Australia. It is suggested that cross-sectional and longitudinal studies undertaken in Australia provide us with different, but equally important, information with respect to law student psychological well-being. Part II describes a subject in the QUT Law School - Lawyering and Dispute Resolution – which has been specifically designed as one response to declines in law student psychological well-being. Part III then considers two key elements of the design of the subject: introducing students to the idea of a positive professional identity, and introducing students to non-adversarial lawyering and the positive role of lawyers in society as dispute resolvers. These two areas of focus specifically promote law student psychological well-being by encouraging students to engage with elements of positive psychology – in particular, hope and optimism.

INTRODUCTION

The Australian tertiary sector is becoming increasingly concerned about the psychological well-being of its students. In 2011 the University of Melbourne's Centre for the Study of Higher Education hosted a National Summit to assist 'the sector to develop improved policy and practice responses to the growing incidence of mental health difficulties and mental illness on campus.'¹ This Summit was prompted by research across a range of disciplines that demonstrates a need to work to promote the psychological well-being of tertiary students. This work has important implications for the well-being of the professions.² Building on this developing general concern in the tertiary sector, and also on the scholarship of legal academics in the US, Australian law teachers are increasingly recognising that psychological distress is an issue for our students.

This article examines the current Australian scholarship on law student psychological distress, and describes a first year law subject that has been designed as a response to clearly established high levels of psychological distress. The ways in which the subject seeks to

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¹ The National Summit was held on 4-5 August 2011 in Melbourne. See www.cshe.unimelb.edu.au.

² Catherine Leahy et al, 'Distress Levels and Self-Reported Treatment Rates for Medicine, Law, Psychology and Mechanical Engineering Students: Cross-Sectional Study' (2010) 44(7) *Australian and New Zealand Journal of Psychiatry* 608; Beaton Research & Consulting, *2011 Annual Business and Professions Study* (2011): http://www.beatonglobal.com/pdfs/2011_Annual_Business_and_Professions_Study.pdf.

promote law student well-being are articulated and analysed, with reference to both legal and psychological literature dealing with law student mental health. The subject, *Lawyering and Dispute Resolution*, has been developed at the Queensland University of Technology Law School as part of Field's 2010 Australian Learning and Teaching Council Teaching Fellowship, and is offered as a possible strategy for the promotion of student psychological well-being in Law Schools in Australia.

I LAW STUDENT WELL-BEING AND THE ROLE OF THE FIRST YEAR CURRICULUM

In considering the issue of law student psychological well-being, Krieger is honest, but confronting, when he suggests that something 'distinctly bad' is happening in law schools.³ For decades, academics, psychologists and lawyers in the US have anecdotally and empirically explored the nature and extent of the psychological problems being experienced by law students,⁴ and have sought explanations for law student psychological distress.⁵ The US research has clearly established that whilst law students enter law school at least as psychologically well as the rest of the population, they experience elevated levels of psychological distress having studied law, and the deterioration of law student well-being begins in the first year of study.⁶

Increasingly, members of the Australian legal academy are also acknowledging the importance of awareness and action in response to the high levels of psychological distress that our students are experiencing.⁷ The number of law teachers who appreciate the gravitas of the 2009 Brain and Mind Research Institute into depression and law is growing.⁸ That research empirically confirmed that Australian law students (just like their American counterparts) experience elevated levels of psychological distress whilst at law school.⁹ A

³ Lawrence Krieger, 'Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence' (2002) 52 *Journal of Legal Education* 112, 115.

⁴ See for example from the US literature: Kennon M. Sheldon & Lawrence S. Krieger, 'Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being' (2004) 22 *Behavioral Sciences and Law* 261; Matthew M. Dammeyer & Narina Nunez, 'Anxiety and Depression Among Law Students: Current Knowledge and Future Directions' (1999) 23 *Law and Human Behavior* 55.

⁵ See for example, Ruth Ann McKinney, 'Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?' (2002) 8 *Legal Writing: The Journal of the Legal Writing Institute* 229; Susan Daicoff, 'Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism' (1997) 46 *Am. University Law Review* 1337

⁶ Andrew Benjamin et al, 'The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers' (1986) 11(2) *American Bar Foundation Research Journal* 225.

⁷ Some of the first and influential Australian literature exploring this issue included: Judy Allen and Paula Baron, 'Buttercup Goes to Law School: Student Well-being in Stressed Law Schools' (2004) 29(6) *Alternative Law Journal* 285; Colin James, 'Seeing Things as We Are. Emotional Intelligence and Clinical Legal Education' (2005) 8 *Clinical Legal Education* 123; Martin Seligman, Paul Verkuil and Terry Kang, 'Why Lawyers are Unhappy' (2005) 10(1) *Deakin Law Review* 49; and Massimiliano Tani and Prue Vines, 'Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?' (2007) 19(1) *Legal Education Review* 3; Kath Hall, 'Do We Really Want to Know? Recognising the Importance of Student Psychological Well-being in Australian Law Schools' (2009) 9 *QUT Journal of Law and Justice* 1.

⁸ Norm Kelk, et al, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers*, (2009) Brain & Mind Research Institute

Monograph: <http://www.cald.asn.au/docs/Law%20Report%20Website%20version%204%20May%2009.pdf>.

See also,

Norm Kelk, Sharon Medlow and Ian Hickie, 'Distress and Depression Among Australian Law Students: Incidence, Attitudes and the Role of Universities' (2010) 32 *Sydney Law Review* 113. The funding for this research was provided by the Tristan Jepson Memorial Foundation.

⁹ See also, for example, Helen Stallman, 'A Qualitative Evaluation of Perceptions of the Role of Competition in the Success and Distress of Law Students' (2011) *Higher Education Research and Development* (forthcoming).

number of Australian legal academics have collaborated with psychologists to independently and empirically investigate the psychological state of students at their own law schools.¹⁰ Others have written about co-curricular and curricular strategies that might be harnessed to promote resilience and well-being.¹¹ Importantly, one of the newly developed Threshold Learning Outcomes for legal education specifically concerns the skill of student self-management.¹² The issue has also been considered from a clinical and practical legal education perspective.¹³ PhD research has begun in Australian law schools on the issue.¹⁴ Further, law students themselves are acting to address student depression and anxiety,¹⁵ and a broader 'Wellness Network for Law' has been established.¹⁶ Many in the academy have

¹⁰ See for example, Kath Hall, Molly Townes O'Brien and Stephen Tang, 'Developing a Professional Identity in Law Schools: A View from Australia' (2010) 4 *Phoenix Law Review* 19; Molly Townes O'Brien, Stephen Tang and Kath Hall, 'No Time to Lose: Negative Impact on Law Student Well-being May Begin in Year One' (2011) 2(2) *International Journal of the First Year in Higher Education* 49; Molly Townes O'Brien, Stephen Tang and Kath Hall, 'Changing our Thinking: Empirical Research on Law Student Well-being, Thinking Styles and the Law Curriculum' (2011) 21(2) *Legal Education Review* 149; Natalia Antolak-Saper, Lloyd England and Anthony Lester, 'Health and Well-being in the First Year: The Law School Experience' (2011) 36(1) *Alternative Law Journal* 47.

¹¹ See, for example, Dominic Fitzsimmons, Simon Kozlina and Prue Vines, 'Optimising the First Year Experience in Law: The Law Peer Tutor Program at the University of New South Wales' (2006) 16 *Legal Education Review* 99; Kate Galloway and Rachel Bradshaw, 'Responding to Changed Parameters of the Law Student: A Reflection on Pastoral Care in the Law School' (2010) 3(1/2) *Journal of the Australasian Law Teachers Association* 101; Rachael Field and Sally Kift, 'Addressing the High Levels of Psychological Distress in Law Students Through Intentional Assessment and Feedback Design in the First Year Law Curriculum' (2010) 1(1) *International Journal of the First Year in Higher Education* 65; Nikki Bromberger, 'Enhancing Law Student Learning – The Nurturing Teacher' (2011) 20 *Legal Education Review* 45; Kate Galloway et al, 'Academic Identity, Pastoral Care and Student Well-being' (2011) *Legal Education Review* 233; Penelope Watson and Rachael Field, 'Promoting Student Well-being and Resilience at Law School' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 389; James Duffy, Rachael Field and Melinda Shirley, 'Using Student Engagement Strategies to Promote the Psychological Wellbeing of Law Students' (2011) *Alternative Law Journal* 250; Prue Vines, 'Working Towards the Resilient Lawyer: Early Law School Strategies' in Leon Wolff and Maria Nicolae (eds), *First Year Experience in Law: A New Beginning?* (Halstead Press, forthcoming). See also generally the special edition for 2011 of the *Legal Education Review* on this issue including the work of Colin James, Asmi Wood and Mathew Ball.

¹² Sally Kift, Mark Israel and Rachael Field, *Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement December 2010* (11 February 2011) Australian Learning and Teaching Council: http://www.altc.edu.au/system/files/altc_standards_LAW_110211.pdf; Anna Huggins, Sally Kift and Rachael Field, 'Implementing the Self-Management Threshold Learning Outcome for Law: Some Intentional Design Strategies from the Current Curriculum Toolbox' (2011) *Legal Education Review* 85. See also, Judith, Marychurch, *Good Practice Guide: Threshold Learning Outcome 6 Self-Management* (Working Paper, Australian Learning and Teaching Council, 30 September 2011).

¹³ Colin James, 'Lawyer Dissatisfaction, Emotional Intelligence and Clinical Legal Education' (2008) 18 *Legal Education Review* 123; Colin James, 'Lawyers' Well-being and Professional Legal Education' (2008) 42 *The Law Teacher: International Journal of Legal Education* 85.

¹⁴ Anna Huggins's PhD at QUT Law School, under the supervision of Dr Rachael Field and Prof Sally Kift, is exploring how law schools can best implement the Threshold Learning Outcome on self-management. See Huggins, Anna, 'The Threshold Learning Outcome on Self-management in the Discipline of Law: A Proposed Focus for Teaching Strategies in the First Year Law Curriculum' (2011) 2(2) *International Journal of the First Year in Higher Education* 23.

¹⁵ See, for example, Australian Law Students' Association, *Depression in Australian Law Schools: A Handbook for Law Students and Law Student Societies* (2011): <http://www.alsa.net.au/images/2011/ALSA%20Depression%20Handbook.pdf>; and Australian Law Students' Association, *LSS Mental Health Supplement* (Australian Law Students Society, 2011): http://www.alsa.net.au/images/2011/2011_ALSA_Mental_Health.pdf; Boag, Annan, et al, *Breaking the Frozen Sea: The Case for Reforming Legal Education at the Australian National University* (18 April 2011) Law School Reform: http://lawschoolreform.com/files/lsr_breakingthefrozensea.pdf

¹⁶ This Network has been established as part of Field's ALTC Teaching Fellowship and is hosted on the Tristan Jepson memorial Foundation website.

also become aware of the story of Tristan Jepson, and the work of the Memorial Foundation established in his name to promote mental health in the legal profession.¹⁷ Indeed, concern for the psychological well-being of the profession is indelibly tied to the psychological well-being of students when they leave law school and enter that profession.¹⁸

There is, therefore a demonstrated awareness of the problem in Australia, and a developing and genuine commitment to working to improve the psychological well-being of Australian law students. However, it is also true that there remains a level of resistance amongst law academics to recognising that we have a problem in legal education.¹⁹ Some continue to downplay the significance and/or extent of the problem and their own potential contribution to it; some resist the possibility of their role in addressing the problem.

Hall suggests that for law school academics, psychological phenomena exist which can undermine an efficient and effective response to the problem.²⁰ Cognitive dissonance and rationalisation tendencies may mean that legal academics are unwilling to confront the possibility that the content, delivery and assessment practices of their own classes is contributing to the psychological distress of their students.²¹ Krieger argues that such institutional denial about the 'dark side' of law school can only exacerbate the problem:

There are obvious sources of discomfort that encourage our avoidance of these issues. It is inherently unpleasant to reflect on one's darker side; and we may fear that we undermine our own enterprise, or create unwanted anxiety, if we acknowledge openly with our students the significant problems apparently occurring in law schools and awaiting many graduates when they enter practice. Further, we are not clear on the precise causes of the problems, nor do we have ready solutions to offer. It is also true that we are not trained academically for such discussions, and most of us are unaccustomed to dealing with the kind of non-rational, non-analytical matters such discussions will inevitably entail. We may feel put upon as well. After all, we are basically reproducing the system of legal education which we experienced and for which we had great aptitude as students. And human nature suggests that some of us simply avoid the substantial effort that helpful changes might require-particularly if they come at a cost to our own comfort or convenience. Regardless of individual motives for inertia, the collective result is clear: few faculties address these problems to any greater extent than if the problems did not exist at all.²²

The increasing sophistication of Australian scholarship on the psychological health of law students highlights the important role that law schools must play in addressing student

¹⁷ This story and the work of the Foundation can be found on the Tristan Jepson Memorial Foundation website available at www.tjmf.org.au.

¹⁸ See, for example, Colin James and Jennifer Anne Finlay-Jones, 'I Will Survive: Strategies for Improving Lawyers' Workplace Satisfaction' (2007) 15(1) *Legal Education Digest* 32; Christopher Kendall, *Report of the Ad Hoc Committee on Psychological Distress and Depression in the Legal Profession* (March 2011) The Law Society of Western Australia; Law Council of Australia, *Depression in the Legal Profession* (2010): http://www.muls.org/index.php/download_file/view/265/87/; LexisNexis, *The Pace of Change in the Australian Legal Industry* (August 2011): <http://www.lexisnexis.com.au/paceofchange>; Orenstein, Joel, 'The Mindful Lawyer: Meditation and the Practice of Law' (2011) 85(7) *Law Institute Journal*: <http://www.liv.asn.au/News-and-Publications/Law-Institute-Journal/Archived-Issues/LIJ-July-2011/The-mindful-lawyer-meditation-and-the-practice>.

¹⁹ Ruth Ann McKinney, 'Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?' (2002) 8 *Legal Writing: The Journal of the Legal Writing Institute* 229.

²⁰ Hall, above n 7.

²¹ *Ibid* 4.

²² Krieger, above n 3, 116.

psychological distress. There now exists an essentially unrebutted body of empirical findings related to the decline of law student psychological well-being during their time at university. It is time for the nay-sayers to front up. For those who think the methods, the data, or the academy's collective analysis of that data is overstated, meet us in print and explain why our concerns for law student stress levels, anxiety and depression are exaggerated, or should not be acted upon.

The developing sophistication of law student psychological well-being scholarship is shown through the shift from anecdotal reporting of law student distress, towards empirical evidence of the phenomenon. In particular, lessons can be taken from both cross-sectional empirical studies and longitudinal empirical studies on the issue. Cross sectional studies in Australia typically compare the psychological well-being levels of law students, with students from other disciplines and members of the public at large (who are of a similar age).²³ These studies tell us, at a single point in time, the extent to which these groups are suffering from symptoms of psychological distress. They also tell us whether law students are experiencing these symptoms at a higher rate than students from other degrees and general members of the population. In Australia, the BMRI report on depression in the legal community and studies conducted by the University of NSW²⁴ and the University of Adelaide²⁵ can all be classified as cross sectional empirical research.

The headline statistics that emanated from the BMRI report were shocking. Intuitively, many law academics probably appreciated that student psychological distress was an issue. What many underestimated was the magnitude of the problem. The BMRI surveyed 741 law students studying at 13 Australian law schools.²⁶ The study revealed that 35.2% of law students experience high levels of psychological distress. This was almost twice the level of psychological distress found in medical students (17.8%), and significantly higher than the 13.3% of people aged between 18-34 in the general population who experience psychological distress.²⁷ The BMRI report candidly acknowledges that the precise causes of depression and psychological distress are not known.²⁸ It tentatively however, points to the highly competitive nature of law students (competing for good grades and limited jobs) and suggests that such competition may reduce levels of support and feelings of camaraderie within a cohort.²⁹ Additionally, the report suggests that legal thinking styles which are pessimistic by nature (adversarial, risk adverse, searching for a problem, focussing on the negatives of a situation, and contemplating worst case scenarios) may transfer into the realms of everyday life, further promoting psychological distress.³⁰

Tani and Vines' cross sectional study of students at the University of New South Wales was not specifically aimed at law student psychological well-being. The survey was designed to investigate students' expectations and experiences of their university education.³¹ The results of the study showed that at statistically significant levels, law students in contrast to all other university students (including those studying medicine):

- Are more likely to be studying their course for reasons external to themselves;

²³ Kelk, Medlow and Hickie, above n 8, 114.

²⁴ Tani, and Vines, above n 7.

²⁵ Leahy et al, above n 2.

²⁶ Kelk et al, above n 8.

²⁷ Ibid 12.

²⁸ Ibid 43.

²⁹ Ibid 46.

³⁰ Ibid.

³¹ Tani and Vines, above n 7, 3.

- Are less likely to find their studies intrinsically interesting;
- Have less interest in group work;
- Are more likely to view friendships as future networking and career advancing opportunities;
- Are disproportionately concerned about their grades.³²

According to Tani and Vines, these results indicate that law students experience a lack of autonomy, high levels of competitiveness and a lack of social connectedness during their law degree.³³ These factors have all been linked with (and are possible explanations for) the development of depression, anxiety and psychological distress.³⁴

Finally, in terms of cross sectional studies, in 2010 Leahy et al conducted research at the University of Adelaide to test the prevalence of psychological distress amongst different faculties. Of the 955 students surveyed, 48% were classified as being psychologically distressed. Law students were worst affected (58%), followed by mechanical engineering (52%), medicine (44%) and psychology (40%) students. The ambit of this study did not include any exploration of the possible contributing factors for this psychological distress, or why law students appear to be suffering more than their university counterparts.

Law schools can learn several lessons from these cross sectional studies. First, the incidence of psychological distress in law students is uncomfortably high. Second, we cannot identify with precision the exact factors that are causing this psychological distress. Third, cross sectional studies (by themselves) cannot tell us whether it is law school that is creating these levels of psychological distress, or whether prospective law students already possess these attributes. Fourth, if law school is somehow causing or contributing to this psychological distress, cross sectional studies (by themselves) cannot tell us *when* in the law degree psychological distress is most likely to occur.

Longitudinal empirical studies on law student psychological well-being in Australia, can address some of the shortcomings of cross sectional studies identified in the paragraph above. Longitudinal studies in Australia and the US have focussed on a particular cohort of law students and assessed their levels of psychological well-being at different points in time. If a group of students is surveyed before they begin law school, and surveyed again (using the same instruments) at different points in time during the law degree, researchers can assess whether the psychological well-being of these law students differs significantly from the general population and other undergraduate populations *prior* to entering law school.³⁵ That is, we can assess whether law school is the causal agent of law student distress.³⁶ We can also assess *when* in the law degree the psychological well-being of law students deteriorates.

One longitudinal study and one quasi-longitudinal study have been conducted on Australian law student well-being. In 2011, Lester, England and Antolak-Saper published the results of a study at Monash University which examined whether changes occurred in law students' levels of depression, anxiety, stress and physical well-being, throughout the first year of law

³² Ibid 24-25.

³³ Ibid 30.

³⁴ Kennon Sheldon et al, 'What is Satisfying about Satisfying Events? Testing 10 Candidate Psychological Needs' (2001) 80 *Journal of Personality & Social Psychology* 325.

³⁵ Kelk, Medlow and Hickie, above n 8, 114.

³⁶ Benjamin et al, above n 6, 228.

school.³⁷ Students completed questionnaires at the beginning of semester 1 2009 and at the end of semester 2 2009. The results showed that at the beginning of the year, 8.5 percent of students reported symptoms indicating moderate to very high levels of depression, with an additional 6 percent reporting mild symptoms. At the end of first year, more than 15 percent fell into the moderate to very high category, with a further 12 percent reporting mild symptoms of depression.³⁸ As a result, it was concluded that there was a statistically significant increase in symptoms of depression between the beginning and end of the first year of law school.³⁹

In 2011, Townes O'Brien, Tang and Hall also published empirical research aimed at documenting the extent of psychological distress amongst first year law students at the Australian National University. They further aimed to discover whether law student distress levels changed during the first year of law school. One group was surveyed at the end of 2009 (cohort 1) and the following year a different cohort was surveyed at the beginning of the year (cohort 2a) and again at the end of the year (cohort 2b). For the purpose of their analysis, the results from cohort 1 and cohort 2b were combined, so that comparisons could be drawn between a start of year group and an end of year group only. With respect to depression, the start of year group results indicated that 14.3 percent of law students suffered from moderate to extremely severe symptoms of depression. The end of year group showed 31.5 percent of students fell into the same categories.

When taking into account other results that were generated by their use of the DASS-21 survey instrument (related to anxiety and stress) and general population data also gathered through the DASS-21, Townes O'Brien, Tang and Hall were able to conclude that:

1. Law students in their first week of study had similar, or lower, levels of psychological distress compared with Australians aged 18-24;
2. Law students towards the end of their first year of study had more symptoms, or a greater intensity of symptoms, of depression and stress, compared with both beginning of year students and young Australian adults generally;
3. Beginning of year law students had slightly higher levels of anxiety compared with young Australians, with small increases in the intensity of, or number of, symptoms over the academic year.⁴⁰

The results from these Australian longitudinal studies are consistent with US longitudinal studies on law student well-being that have been conducted since 1986. The work of Benjamin et al at the University of Arizona Law School,⁴¹ Pritchard and McIntosh at the University of Denver College of Law⁴² and Sheldon and Krieger at Florida State University⁴³ all confirm and support the lessons we must learn as law academics in Australian Universities. There are no significant psychological differences between law students and the general population before they begin law school. Symptoms of psychological distress appear soon after law school begins with negative affect and depression being more prevalent at the

³⁷ Antolak-Saper, England and Lester, above n 10.

³⁸ Ibid 48.

³⁹ Ibid.

⁴⁰ Townes O'Brien, Tang and Hall, 'Changing our Thinking: Empirical Research on Law Student Well-being, Thinking Styles and the Law Curriculum' above n 10, 161.

⁴¹ Benjamin et al, above n 6.

⁴² Mary Pritchard and Daniel McIntosh, 'What Predicts Adjustment Among Law Students? A Longitudinal Panel Study' (2003) 143(6) *The Journal of Social Psychology* 727.

⁴³ Sheldon and Krieger, above n 4.

end of first year, compared to the beginning of the year.⁴⁴ Worryingly, the more advanced US empirical research suggests that symptomology of psychological distress in law students does not significantly decrease throughout the law degree or into the first few years of legal practice.⁴⁵ An argument can certainly be made that the psychological distress suffered by the legal profession, characterised by high incidences of depression, anxiety and substance abuse, may have a strong genesis in the law school experience.⁴⁶

It is critically important in citing and working with this data that the legal academy carefully and properly interprets the statistical figures. In this regard it is apposite to remember that different psychological instruments are being used by different researchers to measure law student well-being. This is a positive outcome, so long as headline statistics and percentages are understood in the context of the particular psychological instrument/s being used. For example, the figures of psychological distress that come from the BMRI report and from the University of Adelaide are both derived from the Kessler Psychological Distress Scale (K10). The K10 is a screening battery for non-specific psychological distress,⁴⁷ with questions focussing on symptoms of anxiety and depression.⁴⁸ Results from the K10 can range from a score of 10 (no distress) to 50 (severe distress). A K10 score of ≥ 22 would mean that a participant is suffering from high distress (22-29) or very high distress (30-50) under the BMRI bandings. This same threshold is adopted by Leahy et al in their University of Adelaide study, where a K10 score of ≥ 22 meant that a participant was classified as psychologically distressed. The percentage figures of law student psychological distress from these studies (35.2% and 58% respectively), does not mean that these individuals are necessarily suffering from a diagnosable mental illness. Research however does point to a strong association between high scores on the K10 and a current DSM-IV (Diagnostic and Statistical Manual of Mental Disorders 4th ed) diagnosis of anxiety and/or affective disorders.⁴⁹ It is for this reason that we must remain cautious when explaining what these eye-catching percentages actually represent.

The focus on law student psychological well-being must now rightly turn to the individual and institutional responses of law academics and faculties around Australia.⁵⁰ It seems that there are three potential ways forward. The first option is to pretend that law student psychological distress is not a problem in Australia. However, it is difficult to justify this position in the light of clear and, as yet unrefuted, empirical studies that say the exact opposite. The second option is to acknowledge that there is a problem, but downplay its significance, or our own ability as legal academics to combat it. If we adopt this approach, we fall prey to the psychological phenomena that Hall has warned about: cognitive dissonance and rationalisation tendencies. The net result to law students is the same as if we ignore the problem. At best, law academics would be exhibiting a sympathetic or well intentioned inertia that is worthless to law students suffering from psychological distress. The third possible option is that the legal academy claims ownership of the problem. This

⁴⁴ Pritchard and McIntosh, above n 42, 739.

⁴⁵ Benjamin, above n 6, 246; Pritchard and McIntosh, above n 42, 728.

⁴⁶ Sheldon and Krieger, above n 4, 283.

⁴⁷ Gavin Andrews and Tim Slade, 'Interpreting Scores on the Kessler Psychological Distress Scale' (2001) 25(6) *Australian and New Zealand Journal of Public Health* 494.

⁴⁸ *Ibid* 496.

⁴⁹ *Ibid* 495-496.

⁵⁰ Just as scholarship on the nature and prevalence of law student psychological distress has progressed from anecdotal accounts, to cross-sectional study, to longitudinal study, we anticipate a similar progression in scholarship when academics and practitioners are suggesting potential solutions to the Law student well-being problem.

does not necessitate a blame-game; rather it requires the legal academy to collectively embrace the need to act, and to acknowledge our agency in supporting the psychological well-being of our students.

This potential solution (which we propose is the only truly viable option) rests in explicit, honest and collaborative attempts by legal academics to find creative solutions to a difficult problem. We must be open to the idea that as law academics, we may or may not be individually contributing to the problem. Regardless of that, we must be prepared to acknowledge that we are collective members of a greater law school community that is most certainly contributing to the problem. In light of damning empirical evidence, we have an ethical obligation to do no harm to the law students we teach and to promote well-being throughout the legal curriculum.⁵¹

The following parts of this article describe how one Australian law school - the Queensland University of Technology Law School - is reforming its curriculum in response to the established knowledge about student psychological distress through the introduction of a first year elective subject entitled *Lawyering and Dispute Resolution*. Part II describes the subject, its learning objectives and its assessment regime. Part III then considers how two key elements of the design of the subject – introducing students to the idea of a positive professional identity, and introducing students to non-adversarialism and the positive role of lawyers in society as dispute resolvers - specifically promote law student psychological well-being by encouraging students to engage with elements of positive psychology – hope and optimism. Student feedback provided through the formal university subject evaluation process (LEX) is offered as evidence to suggest that the subject has been successful in achieving some of its primary aims.

II LAWYERING AND DISPUTE RESOLUTION

The subject *LWB150: Lawyering and Dispute Resolution* was written as part of the program of activities of Field's 2010 Australian Learning and Teaching Council Teaching Fellowship.⁵² That Fellowship is focussed on harnessing aspects of the legal education curriculum to address the clearly established high levels of psychological distress experienced by law students.⁵³ Hess has noted that legal academics have not capitalised on the opportunities presented by curriculum design to promote the psychological well-being of students.⁵⁴ *Lawyering and Dispute Resolution* was developed to pilot model approaches to curriculum interventions that engage, motivate and support students, and thereby promote student psychological well-being.

LWB150: Lawyering and Dispute Resolution is intended to promote student psychological well-being by encouraging students to engage with the notion of their own emergent professional identity, and the positive place that non-adversarial practice might have in that identity. These components of the subject can be said to instil in students a sense of hope and optimism about their legal studies and future professional role as lawyers that, based on the

⁵¹ Duffy, Field and Shirley, above n 11, 250. See also, Watson and Field, above n 11.

⁵² See www.olt.gov.au/altc-teaching-fellow-rachael-field.

⁵³ Other aspects of the Fellowship include the development of the Wellness Network for Law. See: www.tjmf.org.au.

⁵⁴ Gerard F Hess, "Heads and Hearts: The Teaching and Learning Environment in Law School" (2002) 52 *Journal of Legal Education* 75.

scholarship of the field of positive psychology, can help promote student well-being. In this part of the article, we describe the philosophy behind the subject, its learning and teaching objectives and the delivery and assessment approaches used.⁵⁵

Lawyering and Dispute Resolution was first delivered by the authors in semester 2 of 2011, as part of the QUT Law School's elective offerings for first year students (although many latter year students also chose to enrol, with just under a total of 300 students in the final enrolment).⁵⁶ The subject is designed and delivered at an introductory level. It is compatible with the latter year elective offered at QUT Law School – *LWB498 Dispute Resolution Practice* – which provides a more advanced level of learning about the role of lawyers in dispute resolution practice.

The subject provides an introductory foundation for students about the contemporary context of legal professional practice. The focus in the subject on the professional legal environment, and on supporting students as they develop an emergent professional legal identity, aims to empower students by introducing them to positive lawyering knowledge and practices early in their law degree. The subject seeks to develop a realistic understanding of the rigours and stresses of legal study and of legal practice, whilst also offering an understanding of the important and positive aspects of that practice, along with strategies for resilience and well-being. In this way, the subject aims to promote student psychological health by offering students hope and optimism that a positive pathway is possible for being an effective, successful law student and subsequent legal practitioner.

An important aspect of the subject is that it emphasises the positive nature of a lawyer's role in society; specifically the relational and helping roles inherent in non-adversarial lawyering and dispute resolution.⁵⁷ There is also strong recognition in the subject of the importance of skills for students learning law.⁵⁸ In keeping with the recently developed threshold learning outcomes for law, communication skills, critical thinking skills, reflective practice skills, self-managements skills and dispute resolution skills are posited as significantly relevant to

⁵⁵ Further detailed information can be provided by the authors at their contact addresses.

⁵⁶ Comments from latter year students about the efficacy of the subject in QUT formal subject evaluations include: 'Even as a 5th year I have certainly taken a lot away from it.' 'This subject was nothing like what I thought it would be, but I have been blown away about how interesting and resourceful this subject is (as a 5th year).' 'I really enjoyed this subject. I am in my final year of study and it would have been very helpful if I had studied this subject in my first or second year.' 'This subject has been so helpful to me as a 4th year student, if it was available to me as a first year it would have been fantastic as a base subject. It is helpful in talking about and offering solutions to the challenges of law school and being in the legal profession.' 'Students who are in their final year at law school have commented in class that they wish they had this type of subject at the beginning. That is something for the Law Faculty to consider perhaps in the future.' 'I REALLY enjoyed this subject as I am in my 4th year now and I have always wondered why there wasn't a subject available that could open law students' eyes to the stressors/aggression that is in legal practice. I think that more law students need to do this subject in first year so that they are not such perfectionists, which can often cause them to be very hard on themselves and their fellow students.' 'I wish this had been available in my first year of law school (I'm in my final year).'

⁵⁷ See discussion below.

⁵⁸ See, for example, S Kift, 'Lawyering Skills: Finding their Place in Legal Education' (1997) 8 *Legal Education Review* 43; D Weisbrot, 'What Lawyers Need to Know, What Lawyers Need to be Able to Do: An Australian Experience' (2001) *Journal of the Association of Legal Writing Directors* 21; Kift, Israel and Field, above n 12; R MacCrate et al, *Legal and Professional Development – An Educational Curriculum*, American Bar Association (1992). See also R Stuckey et al, *Best Practices for Legal Education: A Vision and A Road Map* (Clinical Legal Education Association, 2007); http://law.sc.edu/faculty/stuckey/best_practices/best_practices.pdf; William L Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law*, Jossey-Bass Publishing, 2007 (the Carnegie Report).

supporting student learning throughout the law degree, equipping students with the capacity to self-manage their studies, and also their professional practice on graduation.⁵⁹

The learning and teaching objectives of the subject are articulated as follows:

At the completion of this subject students should be able to:

1. Explain the range of dispute resolution processes available to lawyers: (Graduate Capability (GC): Problem Solving, Reasoning and Research; Threshold Learning Outcome (TLO) 1 (knowledge) and 3 (thinking skills));
2. Explain selected dispute resolution skills, including communication, negotiation and mediation skills: (GCs: Discipline Knowledge, Effective Communication; TLOs: 1 (knowledge), 3 (thinking skills), and 5 (communication and collaboration));
3. Analyse legal disputes and your clients needs in order to choose the most appropriate dispute resolution process for those needs: (GCs: Discipline Knowledge, Problem Solving, Reasoning and Research; TLO: 3 (thinking skills));
4. Evaluate the range of advocacy roles that lawyers play in contemporary legal professional contexts: (GCs: Discipline Knowledge, Effective Communication, Professional, social and ethical responsibility; TLOs: 1 (knowledge), 2 (ethical and professional disposition), 5 (communication and collaboration));
5. Reflect on your own performance, assume responsibility for your own learning and display resilience: (GC: Life Long Learning; TLO: 6 (self-management));
6. Use communication, legal analysis and critical thinking skills in the context of dispute resolution. (GCs: Problem Solving, Reasoning and Research, Effective Communication; TLOs: 3 (thinking skills) and 5 (communication and collaboration)).

The content of the subject is delivered over 13 weeks. It is broken down into the following weekly components:

Week 1:	Introduction to the Subject, The Diversity of Legal Practice, A Positive Professional Identity for Lawyers
Week 2:	What Lawyers Need to Know and What Lawyers Need to be Able to Do
Week 3:	Lawyers as Reflective Practitioners
Week 4:	Lawyers as Managers and Resolvers of Disputes
Week 5:	Lawyers as Advocates (Adversarial and Non-Adversarial)
Week 6:	Skills Practical Workshop - Communication Skills
Week 7:	Lawyers as Critical Thinkers
Week 8:	The Psychology of Legal Practice
Week 9:	Resilience for Law Students and the Legal Profession
Week 10:	Introduction to Positive Lawyering – Part 1: Alternative Dispute Resolution
Week 11:	Introduction to Positive Lawyering – Part 2: Innovative Legal Practices
Week 12:	Skills Practical Workshop – Dispute Resolution Role-plays
Week 13:	Exam preparation.

The teaching delivery approach of the subject is intentionally designed to contribute to the subject's aims of engagement and motivation. It is made up of the integrated use of an interactive workbook, lectorials (lecture and tutorial approaches to active learning combined)

⁵⁹ Kift, Israel and Field, above n 12.

and materials provided through the Blackboard site. This design is also intended to support a range of flexible learning alternatives that take account of the different learning needs of students, and their complex life matrices and personal circumstances (including concurrent family, work and other commitments outside the university).

The interactive workbook is central to student learning in the subject as it provides students with the core content of the subject. It is augmented by the prescribed text and other provided resources (predominantly journal articles), providing students with a clear roadmap to the subject.⁶⁰ The workbook also guides students through the readings each week and provides them with activities and discussion points to develop their understanding of the key subject concepts. Students are asked to prepare for the lectorials (whether they engage in-person or by audio) by reading the workbook and thinking about the activities and discussion points for each week.

The lectorial component of the subject involves 12 face to face sessions held across the course of the semester. Lectorials are audio-taped and made available on the subject's Blackboard site for all students immediately after the lectorial has been delivered. The design of the lectorials intends to assist students to understand (deeply) the content of the subject; for example, by encouraging students to make connections with their own previous life experience, to unpack and analyse difficult concepts, and to seek additional support for understanding if required. To achieve this, lectorials are delivered in an interactive way, with a co-lecturer model, and with intentionally designed opportunities for active learning and discussions.⁶¹ Two weeks of the semester are also devoted to small group skills workshops with a focus on practising and developing dispute resolution and communication skills. An optional workshop for external students replicating these workshops is run during the semester external attendance school. An optional online discussion forum also provides all students, whatever their study mode, with an opportunity to engage in discussions about the subject content, concepts and issues.

The subject assessment involves, first, a 40% reflective practice exercise on the theme of developing a 'positive professional identity'. The trigger for the reflection is an (approximately) 20 minute interview with a lawyer about what being a legal professional means for them. Hearing the career story of a current professional is intended to provide an associative and vicarious learning experience to inform the students' learning through reflection.⁶² Floyd and Gallagher assert that engaging with narratives about lawyering 'can be

⁶⁰ The prescribed text for the subject is: M King, A Frieberg, B Batagol, R Hyams, *Non-Adversarial Justice*, Federation Press, Sydney 2009.

⁶¹ See for example, R Field and B Kent, 'Engaging First Year Students with an Effective Learning Environment: Combining Laurillard's Conversational Framework and Active Learning with Blended Delivery' 9th First Year in Higher Education Conference, Gold Coast, June 12–14, 2006. See also, S Kift and R Field, 'Intentional first year curriculum design as a means of facilitating student engagement: Some exemplars' 12th Pacific Rim First Year in Higher Education Conference, Townsville, June 29 – July 1, 2009, and R Field, 'Favourable Conditions for Effective and Efficient Learning in a Blended Face-to-Face/Online Method' 22nd Annual Conference of the Australian Society for Computers in Learning in Tertiary Education (ASCILITE), December 4–7, 2005.

⁶² Floyd and Gallagher refer to the 'many legal scholars (who) have urged the importance of narrative for legal ethics and legal analysis generally.': Tim Floyd and John Gallagher, 'Legal Ethics, Narrative, and Professional Identity: The Story of David Spaulding' (2006-2008) 59 *Mercer Law Review* 941 at 943 referring to Robert Coles, *The Call of Stories: Teaching and the Moral Imagination*, 1989; Thomas L Shaffer and Mary M Shaffer, *American Lawyers and their Communities: Ethics in the Legal Profession* (University of Notre Dame Press, 1991); Thomas L Shaffer, *Faith and the Professions* (Brigham Young University Press, State University of New York Press, 1987); James B White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (Little Brown & Co Law & Business, 1973); Kathryn Abrams, 'Hearing the Call of Stories' (1991)

fruitful, if not crucial, for law students as they develop their professional identity and purpose.’⁶³

The reflective exercise involves scholarly and informed reflection using the 4Rs reflective method developed by the ALTC DRAW Project.⁶⁴ This approach can be broken down as: (1) reporting on the interview, (2) relating and making connections between the interview discussions, the reflection theme and the student’s own skills, experience and knowledge, (3) demonstrating their understanding of the theme through reference to the relevant theory and literature, and (4) developing ideas for the student’s own future practice and understanding. Students are able to complete this assessment individually or in groups of up to three. A criteria referenced assessment sheet for the reflective practice exercise is negotiated with the students and made available on the subject's Blackboard site.

The second assessment item involves a 60% centrally administered exam which is designed to assess student understanding of the subject content covered across the semester. The exam is an open book examination – at QUT this means students can take any materials into the exam room except for library books. A range of Faculty support materials and also information sessions are made available to assist students with preparing for the exam.

The first offering of the subject also included a 30%, 2000 word assignment. A decision was made, based on students and staff feedback, to discontinue this assessment item in subsequent offerings of the subject on the basis that it imposed too heavy a workload on both students and on staff.

Students receive formative feedback through participating in lectorial discussions and through the skills workshops. Individual written feedback is also provided to students on their reflective practice exercise. Generic feedback on the reflective practice exercise and the examination is placed on the subject’s Blackboard site.

III PROMOTING STUDENT WELL-BEING THROUGH THE CURRICULUM DESIGN OF *LAWYERING AND DISPUTE RESOLUTION*

One of the key objectives of *Lawyering and Dispute Resolution* is to engage, motivate and support students in their first year of law school as a means of promoting their psychological well-being.⁶⁵ Student engagement is increasingly acknowledged as critical to student learning.⁶⁶ Martin Seligman, a proponent of positive psychology, has also highlighted

⁷⁹ *California Law Review* 971; Robert M Cover, ‘Foreword: Nomos and Narrative’ (1983) 97 *Harvard Law Review* 4; Carrie Menkel Meadow, ‘Telling Stories In School: Using Case Studies And Stories To Teach Legal Ethics’ (2000) 69 *Fordham Law Review* 787; Symposium, ‘Legal Storytelling’ (1989) 87 *Michigan Law Review* 2073; Symposium, ‘Pedagogy of Narrative’ (1990) 40 *Journal of Legal Education* 1.

⁶³ Tim Floyd and John Gallagher, ‘Legal Ethics, Narrative, and Professional Identity: The Story of David Spaulding’ (2006-2008) 59 *Mercer Law Review* 941, 942.

⁶⁴ This project is lead by Dr Mary Ryan and Dr Michael Ryan of the Faculty of Education, QUT. See QUT, *Developing Reflective Approaches to Writing (DRAW)* <<http://www.qut.edu.au/research/research-projects/developing-reflective-approaches-to-writing-draw>>. See also M Ryan, ‘Improving Reflective Writing in Higher Education: A Social Semiotic Perspective’ (2011) 16(1) *Teaching in Higher Education* 99; M Ryan, ‘Spaces of Possibility in Pre-Service Teacher Education’ (2011) 32(6) *British Journal of Sociology of Education* 881; M Ryan and M Ryan, ‘Theorising a Model for Teaching and Assessing Reflective Learning in Higher Education’ (2011) *Higher Education Research and Development*.

⁶⁵ See also Duffy et al, above n 11; and Huggins et al, above n 12.

⁶⁶ See, for example, the yearly Reports of the Australian Council for Educational Research (ACER) on the *Australasian Survey of Student Engagement*. Available at <http://www.acer.edu.au/documents/>.

engagement as a key element of well-being.⁶⁷ We believe, drawing on the work of Biggs and Ramsden, that motivation and support are critical to achieving student engagement.⁶⁸ By intentionally designing the subject to achieve high levels of student engagement, we aim to support high quality student learning, deep learning outcomes, student involvement and connectedness,⁶⁹ and thereby to promote student psychological well-being.

A range of approaches are employed in the subject to promote student engagement, and consequently, student psychological well-being. The subject is delivered using a co-lecturing model where the authors present and explore the material each week by way of a conversational technique with each other, and with the students, that is based on Laurillard's conversational framework.⁷⁰ This approach draws students into questioning and analytical discussion to promote understanding of the content of the subject, and keeps the classroom active and alive. Further, guest lecturers from the profession are invited to speak with the class to help students make connections between their learning and the real world of legal practice.⁷¹ The practical component of the subject explores dispute resolution and communication issues through the lens of authentic 'real world' examples.⁷²

Whilst each of these approaches is an important and integral part of the subject's engagement design, two of the most important strategies in the subject for achieving engagement are the focus on supporting students to develop an emergent positive professional identity, and the focus on the importance of non-adversarial approaches to lawyering. Both these approaches draw on the positive psychology scholarship of a framework of hope.⁷³

Martin and Rand recently asserted that 'law students need hope'⁷⁴ because research on hope has shown that it 'predicts academic performance and psychological well-being among undergraduate students.'⁷⁵ CR Snyder, a proponent of hope theory as an element of positive

⁶⁷ M Seligman, *Flourish: A Visionary New Understanding of Happiness and Well-Being*, Heinemann Australia, 2011, 16.

⁶⁸ See for example, J B Biggs and C Tang, *Teaching for Quality Learning at University*, Open University Press/Mc Graw-Hill Education, 2007; and P Ramsden, *Learning to Teach in Higher Education*, Routledge Falmer, 2nd ed, 2003.

⁶⁹ Duffy, Field and Shirley, above n 11. See also Queensland University of Technology. 'First Year Experience Program: A Sense of Belonging', Issues Paper No 3, Queensland University of Technology, 2002.

⁷⁰ See Diana Laurillard, *Rethinking University Teaching: A Conversational Framework for the Effective Use of Teaching Technologies*, Routledge Falmer, 2nd ed, 2002, 86-89. This co-lecturing, conversational approach was first trialled in the QUT Law Faculty by Field and Kent in 2006: see Field and Kent above n 61. A student commented in their formal evaluation of the unit: 'The lectorials were well put together - certainly not conventional (it is the first where there were 2 lecturers at the same time), but it works incredibly well, and makes the unit enjoyable, and provides a balance of opinions.' However, one student commented that: 'I found it a bit distracting having two lecturers at once.'

⁷¹ A student commented in their formal evaluation of the unit: 'it was wonderful to have a lawyer come in and field questions - the responses he gave were very informative and definitely gave some insight into the profession.'

⁷² A student commented in their formal evaluation of the unit: This subject 'clearly demonstrated the relevance that the skills we were learning were relevant for future practice in law. This provided me with more motivation to succeed.' Another commented: 'The subject provides students with key skills on how to cope with law school and also future practice. This unit should in fact be a core subject rather than an elective as it is that important in terms of the information it provides students.'

⁷³ This framework can be found in Allison D Martin and Kevin L Rand, 'The Future's So Bright, I Gotta Wear Shades: Law School Through the Lens of Hope' (2010) 48 *Duquesne Law Review* 203. See also, CR Snyder (ed), *Handbook of Hope: Theory, Measures, & Applications* (Academic Press, 2000).

⁷⁴ Martin and Rand, above n 73, 203.

⁷⁵ *Ibid*, 204 referring to the work of Dr CR Snyder. See CR Snyder et al., 'Hope Therapy: Helping Clients Build a House of Hope' in *Handbook of Hope: Theory, Measures, & Applications* (Academic Press, 2000) 125.

psychology, advocates that hope can provide a model for understanding and explaining cognitive approaches to motivation and goal setting.⁷⁶

It is a positive thing to engender hope in our students, particularly in their first year. Martin and Rand note the following characteristics that tend to be found in people who have hope:

- 'Hope has been shown to positively correlate with self-esteem, perceived problem-solving abilities, perceptions of control, and positive affect.'⁷⁷
- 'High-hope persons tend to experience better mental health.'⁷⁸
- People with hope have 'greater pain tolerance',⁷⁹ and recover better from illness and injury.⁸⁰
- Hope has also correlated positively with social competence and social awareness.⁸¹

In terms of the academic context research indicates that:

- Hope is a predictor of 'higher graduation rates and higher undergraduate GPAs, even above and beyond the levels predicted by intelligence.'⁸²
- 'High-hope students (are) more engaged in learning and employ less disengaged coping strategies' (for example, use of drugs or alcohol).⁸³
- 'High-hope students tend to use engaged coping strategies that are problem focused and deal directly with the stressor, such as studying for an exam or working on a paper.'⁸⁴
- High-hope students are able to remain goal focused and 'on task' and they are 'less likely to become distracted by self-deprecatory thinking and counterproductive negative emotions.'⁸⁵
- 'High-hope students use information about not reaching their goals as diagnostic feedback to search for other feasible approaches.'⁸⁶
- 'High-hope students tend to set their goals based on prior performances, stretching to reach the next, slightly more difficult standard.'⁸⁷

⁷⁶ Martin and Rand, above n 73, 207.

⁷⁷ Ibid, 214 referring to CR Snyder et al, 'Hope and Academic Success in College' (2002) 94 *Journal of Education Psychology* 820, 820.

⁷⁸ Ibid referring to Kenneth M Cramer and Lisa Dyrkacz, 'Differential Prediction of Maladjustment Scores with the Snyder Hope Subscales' (1998) 83 *Psychology Reports* 1035.

⁷⁹ Ibid referring to CR Snyder et al, 'Hope Against the Cold: Individual Differences in Trait Hope and Acute Pain Tolerance on the Cold Pressor Task' (2005) 73 *Journal of Personality* 287.

⁸⁰ Ibid referring to David D Barnum et al, 'Hope and Social Support in the Psychological Adjustment of Children Who Have Survived Burn Injuries and their Matched Controls' (1998) 27 *Children's Health Care* 15; Timothy R Elliot et al, 'Negotiating Reality After Physical Loss: Hope, Depression, and Disability' (1991) 61 *Journal of Personality and Social Psychology* 608.

⁸¹ Ibid, 215 referring to CR Snyder et al, 'Hope Theory, Measurements, and Applications to School Psychology' (2003) 18 *School Psychology Quarterly* 122, 126.

⁸² Ibid referring to CR Snyder et al, 'Hope and Academic Success in College' (2002) 94 *Journal of Education Psychology* 820.

⁸³ Ibid referring to CR Snyder et al, 'Hope and Academic Success in College' (2002) 94 *Journal of Education Psychology* 820, 824 and also Edward C Chang, 'Hope, Problem-Solving Ability, and Coping in a College Student Population: Some Implications for Theory and Practice' (1998) 54 *Journal of Clinical Psychology* 953, 960.

⁸⁴ Ibid, 215-216 referring to CR Snyder et al, 'Hope and Academic Success in College' (2002) 94 *Journal of Education Psychology* 820, 824.

⁸⁵ Ibid, 215 quoting CR Snyder et al, 'Hope and Academic Success in College' (2002) 94 *Journal of Education Psychology* 820, 824.

⁸⁶ Ibid, 215 quoting CR Snyder et al, 'Hope and Academic Success in College' (2002) 94 *Journal of Education Psychology* 820, 824. See also CR Snyder, 'To Hope, To Lose, and Hope Again' (1996) 1 *Journal of Personal and Interpersonal Loss* 1 at 10.

- ‘High-hope students are better at breaking down a larger goal into smaller, sequential steps and setting markers to track their progress toward reaching that goal.’⁸⁸
- ‘High-hope students tend to be highly motivated.’⁸⁹
- High-hope students engage in positive self talk such as: ‘I will get this done!’ and ‘Keep going!’⁹⁰

Snyder’s *Handbook of Hope* explains that hope can be understood in terms of three key elements: goals, pathways thinking and agentic thinking. A person has hope when they are motivated and have strong will power (agentic thinking) to generate a range of strategies (pathways thinking) for achieving a goal (an endpoint).⁹¹ The next two sections of this part explain how hope theory provides a framework for teaching about both a positive professional legal identity and also the importance of non-adversarial lawyering in *Lawyering and Dispute Resolution*.

3.1. Promoting the Development of a Positive Professional Identity.

Explicitly encouraging students to think about, and to start to develop, a positive sense of professional identity supports them in beginning to know what sort of lawyer they want to become, and how they are going to *be* a lawyer.⁹² Asking students to engage with the notion of forming a ‘legal professional identity’ by reflecting on their emerging professional ideals and professional purpose, addresses one of the shortcomings of legal education identified by the influential US Carnegie Report - its almost exclusive focus on legal doctrine and analysis.⁹³

In our view, engaging students with starting to develop a positive professional identity supports them as emergent members of our profession, and it provides contextual and real-world motivation, by connecting students with a vision of potential professional pathways that offer the possibility of meaning and purpose. This is empowering,⁹⁴ and can contribute to a sense of well-being through developing a sense of fit in both the legal education and legal professional communities.⁹⁵

In *Lawyering and Dispute Resolution* we seek to employ the framework of hope by using the subject content, delivery approaches and reflective practice assessment to: (1) establish a goal of developing an emergent sense of professional identity, (2) support the students in generating strategies to achieve this goal (through understanding the importance of a positive

⁸⁷ Martin and Rand, above n 73, 216 referring to CR Snyder et al, ‘Hope and Academic Success in College’ (2002) 94 *Journal of Education Psychology* 820, 824 and CR Snyder et al, ‘The Roles of Hopeful Thinking in Preventing Problems and Enhancing Strengths’ (2000) 9 *Applied and Preventative Psychology* 249, 251.

⁸⁸ Martin and Rand, above n 73, 217 referring to CR Snyder et al, ‘Hope and Academic Success in College’ (2002) 94 *Journal of Education Psychology* 820, 824.

⁸⁹ Ibid.

⁹⁰ Ibid. See also CR Snyder et al, ‘Preferences of High-and Low-hope People for Self-Referential Input’ (1998) 12 *Cognition and Emotion* 807.

⁹¹ Snyder, above n 73, 10-11.

⁹² See Daisy Hurst Floyd, ‘Lost Opportunity: Legal Education and the Development of Professional Identity’ (2007) 30 *Hamline Law Review* 555 at 556.

⁹³ Charlotte S Alexander, ‘Learning to Be Lawyers: Professional Identity and the Law School Curriculum’ (2010 - 2011) 70 *Maryland Law Review* 465, 465. See also references at above n 58.

⁹⁴ Floyd and Gallagher, above n 62, 943.

⁹⁵ See Jill Howieson, ‘ADR Education: Creating Engagement and Increasing Mental Well-Being Through an Interactive and Constructive Approach’ (2011) 22 *Australasian Dispute Resolution Journal* 48.

professional identity, engaging with the literature, and speaking with real life lawyers in an interview about professional identity); and (3) create a learning environment that motivates students (or gives them the will-power) to achieve the goal of an emergent professional identity.

To achieve this, the content of the unit and its delivery method are important. However, the critical element of the subject for implementing this framework is the reflective practice assessment item.⁹⁶ The reflective practice assessment activity is made up of 2 components: Part 1 involves students conducting a 20 minute interview with a legal professional (or watching interviews provided on the Blackboard site) and Part 2 involves the writing of a 2000 word scholarly reflection on that interview.⁹⁷ Students can conduct the interview with a legal professional in any area of law, who is working in any capacity as a lawyer.⁹⁸ The task is focussed on exploring with the legal professional their own professional identity as a lawyer, which in turn informs the students' reflections on their own developing professional identity. In this way, similar to an approach used in the US, students learn 'through an 'apprenticeship of identity and purpose,' in which they reflect on 'the skills and inclinations and the ethical standards, social roles, and responsibilities that mark the professional.'"⁹⁹

Students are advised that the purpose of the assessment is to provide an 'opportunity to demonstrate your capacity to reflect on an interview with a legal professional and to make connections with the development of your own future professional identity.' To build connections and mutual support amongst students, as well as collaboration and communication skills, students are encouraged to complete the assessment in groups of up to three. It is emphasised to students that the reflection is a scholarly academic piece of work and therefore authority for views expressed in the reflection should be provided.

Students are asked to prepare their own questions to explore the issue of professional identity but are offered some possibilities to get them started. This is intended as a strategy to help students overcome the blank page and to support students who are unfamiliar with reflective practice.¹⁰⁰ The suggested questions provided are as follows:

- What words would you use to describe the sort of lawyer you are?
- How would you explain the importance of lawyers in society?
- What is the one thing you like most about being a lawyer?

⁹⁶ On the importance of reflective practice to a professional identity see Donald A Schön, *The Reflective Practitioner: How Professionals Think in Action* (Basic Books, 1983); Donald A Schön, *Educating the Reflective Practitioner*, Jossey-Bass, 1987; and JA Moon, *Reflection in Learning and Professional Development*, Kogan Page Limited, 1999. On the importance of reflective practice to legal education see, for example, RK Neumann, 'The Reflective Practitioner, and the Comparative Failures of Legal Education' (1999-2000) 6 *Clinical Legal Review*, 401; J McNamara, R Field, and C Brown, 'Learning to Reflect in the First Year of Legal Education: The Key to Surviving Legal Education and Legal Practice' (Paper presented at the 12th Pacific Rim First Year in Higher Education Conference, Townsville, June 29 –July 1, 2009) 6 <http://www.fyhe.com.au/past_papers/papers09/index.html>; and FM Anzalone, 'Education for the Law: Reflective Education for the Law' in N Lyons (ed), *Handbook of Reflection and Reflective Enquiry: Mapping Ways if Knowing for Professional Reflective Enquiry*, Springer Science + Business Media, LLC, 2010, 85.

⁹⁷ The approach to reflective practice taught to the students was based on the 4Rs method developed through an ALTC priority project entitled DRAW. For discussion of the method and teaching exemplars see <<http://www.altc.edu.au/project-developing-approach-reflective-writing-qut-2009>>.

⁹⁸ The interview can be conducted over the phone or via email, however students are encouraged to conduct a face-to-face interview where possible. In the first iteration of the subject, some students asked to be able to interview more than one legal professional, and this was allowed.

⁹⁹ Alexander, above n 93, 470 – using the language of the Carnegie Report, above n 58, 28.

¹⁰⁰ McNamara, Field, and Brown, above n 96, 6.

- What is the one thing you like the least about being a lawyer?
- What would you change about the legal profession if you could?

Student responses to this aspect of the subject's design were positive. A sample of comments taken from the QUT administered student evaluation of the subject is as follows:

- It was interesting for me to think about how I would be in my job in the future.
- The subject provided new insight into the practice of law. It should be compulsory to all students in first year.
- I really enjoyed the unit as a whole because it shed some light on what I might want to become when I graduate :) Not so fearful of graduation now.
- This subject allowed me to take my mind off the pure law aspect of the course and focus on me in the course and my future career.
- Put the rest of my law units into a context.
- Reading about the mental health of law students, interviewing a solicitor and engaging with legal identity was simply brilliant.
- This subject provides an opportunity to think about and reflect on the whole of the purpose of lawyers. It helps you to have clarity about your path and I feel it has a bit of spiritual aspect, i.e. allowing you to connect with yourself in discovering yourself so that we can make better choices and not just be reactive to our changing environment and being influenced by external factors and becoming part of a rat race, losing oneself or losing one's awareness. I really am happy that such units have been created in a law school. It shows the awareness of the need for such practice to be balanced and happy, and thus more productive.
- I personally learnt a lot about myself as it required a degree of self analysis. For instance, the reflective assignment was a personal challenge as it was out of my comfort zone. However, it was a very worthwhile exercise.
- It helps me understand the studying of law from another perspective, humanised the university experience.

These student comments affirm that the curriculum design focus in *Lawyering and Dispute Resolution* on professional identity is a positive approach. In harnessing the framework of hope, it does appear to be engaging, motivating and supporting students. Our argument then, is that this approach to a first year law unit is one that can successfully promote the psychological well-being of law students. In the next section we argue that teaching non-adversarial approaches to lawyering is another design strategy employed in *Lawyering and Dispute Resolution* that can successfully work to promote law student well-being.

3.2. *Teaching Non-Adversarial Approaches to Lawyering and Alternative Dispute Resolution.*

Principles of non-adversarial justice have become quite prominent in many domains of current legal practice. Commentators have rightly noted that unless the current legal curriculum explicitly introduces students to the non-adversarial legal paradigm, students will be entering these areas with ill-equipped skill sets and mindsets.¹⁰¹ Current legal content and

¹⁰¹ Kathy Douglas, 'The teaching of ADR in Australian law schools: Promoting non-adversarial practice in law' (2011) 22 *Australasian Dispute Resolution Journal* 1; Howieson, above n 95; King et al, above n 60, 240. See also Judy Gutman, Tom Fisher and Erika Martens, 'Why Teach Alternative Dispute Resolution to Law Students Part 1: Past and Current Practices and Some Unanswered Questions' (2006) 16 *Legal Education Review* 125; Tom Fisher, Judy Gutman and Erika Martens, 'Why Teach ADR to Law Students Part 2: An Empirical Survey' (2007) 17 *Legal Education Review* 97.

teaching practice at law schools throughout Australia implicitly, if not explicitly ‘pedestals’ the adversarial paradigm.¹⁰² The court system and case law are presented as the first (and often only) method of dispute resolution, in contrast to being a means of last resort.¹⁰³ The focus on non-adversarial justice within LWB150 is an attempt to explain the study and practice of law in more holistic terms than adversarial approaches, which are characterised by conflict, competition and zero-sum outcomes (that is, when somebody wins, someone must lose). An in depth focus on non-adversarial justice allows students to critique the excesses and deficiencies of the adversarial system and take these lessons forward into the rest of their law degree. Exposure to the non-adversarial paradigm creates another pathway for students to envisage the positive professional role that lawyers play.

The terms ‘adversarialism’ or ‘adversarial paradigm’ are loaded concepts. Amongst other things they refer to the practical machinations of our common law system, where a judge decides a winner and loser of a case according to legal principle, after a positional contest between two (or more) parties. These terms could equally apply to the approach legal practitioners take when attempting to resolve disputes for their clients, the methods and pedagogies teachers adopt when teaching law students, or the mindsets and personas that law students adopt when studying law and interacting with their peers. With respect to these last two conceptions of adversarialism, our concern (shared by numerous other academics and practitioners) is that they are contributing to the decline of the psychological well-being of law students.

In LWB150, non-adversarial justice is described to students as an approach to legal practice ‘where non-curial options are privileged over litigation and holistic problem-solving is encouraged.’¹⁰⁴ By focussing on theories of non-adversarial justice (therapeutic jurisprudence, restorative justice and preventative law) and introducing students to the spectrum of alternative dispute resolution processes (from negotiation through to arbitration) we aim to situate adversarial practice and litigation as an important, but statistically less frequent means of dispute settlement. In this context, students are encouraged to consider how they might conduct themselves as lawyers and how they might perceive their future role in the legal system. In as early as first year, due to the use of Socratic and case-based teaching pedagogies and a focus on appellate decisions, our students are in danger of developing conflict orientations that privilege adversarialism and litigation as appropriate dispute resolution techniques.¹⁰⁵

By situating LWB150 in the first year of the law degree and focussing on non-adversarial justice and alternative dispute resolution, we aim to engender a conflict orientation in students that accepts and appreciates the benefits of less adversarial dispute resolution options.¹⁰⁶ If this successfully occurs,¹⁰⁷ it allows our students (from first year onwards) to view legal problems and the role of legal actors, through both adversarial and non-adversarial

¹⁰² Molly Townes O’Brien, ‘Facing Down the Gladiators: Addressing Law School’s Hidden Adversarial Curriculum’ (2011) 37(1) *Monash University Law Review* 43.

¹⁰³ King et al, above n 60, 4.

¹⁰⁴ Douglas, above n 101, 1.

¹⁰⁵ *Ibid* 2.

¹⁰⁶ K Douglas and R Field, ‘Teaching Non-Adversarial Practice in the First Year of Law: A Proposed Strategy for Addressing High Levels of Psychological Distress in Law Students’ 14th Pacific Rim First Year in Higher Education Conference, Fremantle, June 28 –July 1, 2011 <http://www.fyhe.com.au/past_papers/papers11/index.html>, 3.

¹⁰⁷ There is every reason to believe it will according to Fisher, Gutman and Martens, ‘Why Teach ADR to Law Students Part 2: An Empirical Survey’ above n 101.

lenses. The flow on effect is that students become equipped with a more complete legal problem-solving arsenal.¹⁰⁸ They are also better positioned to assess the appropriateness of adversarial practice as the dominant dispute resolution technique. When discussing the importance of interplay between adversarial and non-adversarial paradigms, Wexler notes that:

One can question the value of an argument culture without calling into question the indisputable value of argumentation as a crucial component of disciplined thinking. Similarly, one can question the value of a legal culture of adversarialism without calling into question the value – indeed, sometimes the therapeutic value, of adversarial litigation as a crucial tool of the lawyer.¹⁰⁹

This nuanced appreciation of the appropriateness and connection of adversarial and non-adversarial approaches to law is one of the messages highlighted in LWB150.

The specific focus on alternative dispute resolution and the teaching pedagogies employed in LWB150 were designed to increase the psychological well-being of our students. This design is based on the empirical findings of Howieson and Ford in 2007¹¹⁰ and Howieson in 2011,¹¹¹ where participation in an ADR course at the University of Western Australia was shown to increase a student's sense of belonging to the law school and create higher levels of student engagement.¹¹² Empirically, Howieson was able to show that there was a significant correlation between a law student's sense of belonging and their level of mental well-being.¹¹³ This finding is consistent with self-determination theory which posits that 'human beings require regular experiences of autonomy, competence and *relatedness* to thrive and maximise their positive motivation.'¹¹⁴ According to Sheldon and Krieger, autonomy, competence and relatedness are precisely the kinds of experiences that law students implicitly take into account when evaluating their own well-being.¹¹⁵ By offering LWB150 as a first year elective unit, we are potentially addressing the decline of law student psychological well-being when it is reported to be happening. There is also benefit in maximising student engagement with the law degree as soon as possible, so that it might flow into other subject areas in future years, decrease first year attrition rates and not arrive too late for some law students (that is, as an alternative dispute resolution subject offered as a stand-alone final year elective).

Student responses to the subject's focus on non-adversarial lawyering and skills were also positive:

¹⁰⁸ See for example the representation of this 'arsenal' in TLO3 on Thinking Skills – Kift, Israel and Field, above n 12, 10.

¹⁰⁹ King et al, above n 60, v.

¹¹⁰ Jill Howieson and William Ford, 'Teaching and Learning skills: Increasing a Sense of Law School Belongingness' in Student Engagement: Proceedings of the 16th Annual Teaching Learning Forum, Perth, January 2007. Available from <http://lsn.curtin.edu.au/tlf/tlf2007/refereed/howieson.html>. See also, K Douglas and R Field, 'Teaching Non-Adversarial Practice in the First Year of Law: A Proposed Strategy for Addressing High Levels of Psychological Distress in Law Students' 14th Pacific Rim First Year in Higher Education Conference, Fremantle, June 28 –July 1, 2011.

¹¹¹ Howieson, above n 95.

¹¹² Ibid, 59.

¹¹³ Ibid, 60.

¹¹⁴ Kennon Sheldon and Lawrence Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) 33(6) Personality and Social Psychology Bulletin 883, 885 [emphasis added].

¹¹⁵ Ibid.

- This unit has been a refreshing change in respect to other law subjects that are completed. This unit has posed some serious and important questions which have helped view my law studies in a new light. A light that is more fully informed and connected with the real world.
- The lecturers throughout the course of the semester clearly demonstrated the relevance that the skills we were learning were relevant for future practice in law. This provided me with more motivation to succeed.
- The best aspect of this unit was the material. I believe that the information I learned from the material will help me in my future studies and practice.
- This unit should be compulsory for all first year students. The discussion of resilience and being mindful of your eventual career, and the possibilities of ADR are enormously helpful.
- Very interesting - new insight into the practice of law. It should be compulsory to all students in first year.
- I am a fourth year student, and was glad to get back to basics. The information about depression in the workplace and reflective practice was refreshing, and the fact that some readings really held the basic stuff (what lawyers actually do) was really good. It was also good to learn about dispute resolution - rather than merely litigation. I definitely think that this subject should be made core! The readings were excellent - they weren't difficult to get through but held very good information, just about the legal field in general.
- Really a great subject, guys. It has really helped me re my own mental health as a law student. Also, the ADR stuff has been great. I have been genuinely excited to sit down and do the readings/attend the lectures each week.
- Getting to know the different types of ADR more thoroughly was great (they seem to pop up in other subjects and you don't particularly get a very good/clear idea of the distinctions between them. Topics - interesting and relevant to study and life in general, particularly in relation to self-reflection.
- I wished to say thank you for an extremely informative, challenging, yet unforgettable semester. I believe your efforts to integrate ADR into an education already so laden with adversarial advocacy is nothing short of brave and admirable, and I wish you both every success as you endeavour to bring these courses closer to legal education. I have certainly learnt valuable lessons and will undoubtedly carry these with me for the rest of my law degree.

In terms of teaching pedagogy, Townes O'Brien has suggested that implicitly (if not explicitly) the way we teach law, the materials we use and the problem-solving techniques we impart, cultivates an overly adversarial approach to law within our students. This adversarial ethos is said to:

constrain the way that students conceptualise their future roles and limits the possible space available to them for legal creativity, constructive lawyering and peacemaking. The ethos may also contribute to a law school climate that is hostile and stressful for many students.¹¹⁶

Law students around Australia are often asked by their lecturers to engage with case law and legal problem-solving, by thinking like a lawyer. Somewhere along the line however, this method of legal thinking and problem-solving has become more needlessly adversarial and

¹¹⁶ Townes O'Brien, above n 102, 43.

less dignified than is proper.¹¹⁷ Many first year law curricula in the US and Australia are still subtly influenced by the approach of Langdell,¹¹⁸ who viewed law as a ‘science that could best be learned by treating cases as specimens and studying their unique and common characteristics.’¹¹⁹ Viewed in this light, the study of law should be logical, non-emotional and analytical.¹²⁰ To be successful in studying (and then practicing) law-as-science, qualities of detachment, adversarialism and neutrality are then required by law students and legal practitioners alike.¹²¹ Encouraging students to think like a lawyer is a productive yet dangerous enterprise. Meltsner, when critiquing the practice of ‘thinking like a lawyer’ states that:

While only an extreme anti-intellectual would disregard the importance of objective thought, rational deduction and empirical proof to the practice of law, a method of training lawyers which ignores the intuitive, the emotive and the personal belongs not to the history of science but to the history of pseudoscience.¹²²

With more force, Krieger criticises the traditional approach to thinking like a lawyer for ‘defining people (or ‘parties’) primarily according to their legal rights, and trying to understand, prevent or resolve problems by linear application of legal rules ... usually adopting a zero-sum competitive approach to outcomes.’¹²³ He argues that:

thinking like a lawyer is fundamentally negative; it is critical, pessimistic and depersonalising. It is a damaging paradigm in law schools because it is usually conveyed, and understood, as a new and superior way of thinking, rather than an important but strictly limited legal tool.¹²⁴

The traditional approach to ‘thinking like a lawyer’ is analysed and discussed critically in LWB150, during a week that focuses on critical legal thinking. Whilst the traditional approach to legal reasoning is acknowledged as one way (and perhaps the most common way) to analyse case law, legislation and to engage in some aspects of legal problem-solving, the students are challenged to see creativity, emotion and relational thinking as also relevant to how lawyers should ‘think’. Issues of balance and timing are posited as important in terms of deciding how, in any given context, a lawyer should approach the process of thinking like a lawyer.

Explicitly discussing and thinking critically about *how* to think like a lawyer in a subject that promotes non-adversarial justice, allows students to appreciate that traditional modes of legal thinking often do not translate well to non-adversarial environments. The use of experiential learning techniques such as negotiation and mediation role-plays, inevitably reveals to students, the emotion, psychology, perceptual error and judgmental bias that is inherent in

¹¹⁷ Julie MacFarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (University of British Columbia Press, 2008) 96.

¹¹⁸ Christopher Columbus Langdell was Dean of the Harvard Law School from the early 1870s through to 1895.

¹¹⁹ John Lande and Jean R Sternlight, ‘The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering’ (2010) 25(1) *Ohio State Journal on Dispute Resolution* 247, 254.

¹²⁰ King et al, above n 60, 244.

¹²¹ Hall, Townes O’Brien and Tang, ‘Developing a Professional Identity in Law Schools: A View from Australia’, above n 10, 38.

¹²² M Meltsner, ‘Feeling Like a Lawyer’ (1983) 33 *Journal of Legal Education* 624, 633.

¹²³ Krieger, above n 3, 117.

¹²⁴ *Ibid.*

human conflict.¹²⁵ These role plays, along with explicit instruction on the nexus between psychology and the law¹²⁶ and the role of emotion in conflict, counterpoint the detached nature of thinking like a lawyer, which de-emphasises the human elements of a legal narrative and removes personal and moral thought processes. Our concern is that if students are not exposed to ADR or other non-adversarial justice subjects until late in their degree (if at all), then the idea of thinking like a lawyer becomes euphemistic of a whole-of-lawyering approach that indiscriminately promotes the rational over the emotional, the IQ over the EQ and the hard skills over the soft skills.

By articulating and valuing the intuitive, the emotive and the personal reactions to law, we aim to alleviate the psychological distress that non-discriminate adversarial/thinking like a lawyer approaches are said to induce. Parker et al have suggested that if university students approach their studies with a blinkered focus on logical, non-emotional and analytical thought processes, they will find it increasingly difficult to identify and describe feelings, empathise with others and exercise their creative imagination.¹²⁷ Consistent suppression of a law student's personal beliefs, morals and values when thinking about the law may lead to psychological distress. In addition there is a strong irony involved in asking students to consistently knock their moral values and ethics into 'temporary anaesthesia',¹²⁸ under the guise of thinking like a lawyer, but expecting the highest levels of ethical awareness from these individuals when practising as a lawyer. Perhaps thinking like a lawyer contributes to law student psychological distress because it discourages students from being themselves.¹²⁹ If the overuse of a traditional legal thinking construct can be said to inhibit the way a law student might otherwise think, speak or act, then self-determination theory tells us that this lack of personal autonomy or self authenticity¹³⁰ will over time, decrease the motivation and psychological well-being of law students and practitioners.

III CONCLUSION

The challenge that lies before the legal academy is a difficult, yet exciting one. By taking ownership of the law student psychological distress problem, law faculties can reinvent themselves as strongly intellectual *and strongly humane* centres of learning. The next step for academics writing in the area of law student psychological well-being is to publish on the steps they have taken to mitigate the problem. Whether successful or not, the articulation of

¹²⁵ For a discussion of the use of role-plays in ADR education see Kathy Douglas and Clare Coburn, 'Students Designing Role-Plays: Building Empathy in Law Students' (2010) *Journal of the Australasian Law Teachers Association* 55 and Michele Ruyters, Kathy Douglas and Siew Fang Law, 'Blended Learning Using Role-Plays, Wikis And Blogs' (2011) 4(4) *Journal of Learning Design* 45. See also Daniel Druckman and Noam Ebner, 'Onstage or Behind the Scenes? Relative Learning Benefits of Simulation Role-play or Design' (2008) 39 *Simulation and Gaming* 465.

¹²⁶ The week on psychology in LWB150 focuses on cognitive, behavioural and neurobiological psychology.

¹²⁷ Parker et al describe this phenomenon as alexithymia. See Parker et al, 'Alexithymia and Academic Success: Examining the Transition from High School to University' (2005) 38 *Personality and Individual Differences* 1257, 1258.

¹²⁸ Stephen Wizner, 'Is Learning to Think Like a Lawyer Enough' (1998) 17 *Yale Law and Policy Review* 583, 586.

¹²⁹ Krieger, above n 3, 118. Silver is also particularly critical about suppression of emotions. See Marjorie Silver, 'Emotional Intelligence and Legal Education' (1999) 5(4) *Psychology, Public Policy, and Law* 1173.

¹³⁰ Krieger, above n 3, 119.

strategies to promote law student well-being will be of interest to the legal academy, if not the higher education sector more generally.

Legal education can, and should, rightly point to an optimistic future and positive professional identity for law students. It should do so explicitly. In the face of negative public perception surrounding the role of lawyers, it is the responsibility of law schools to promote to students the many positive characteristics of legal practice and legal practitioners. It is the responsibility of law schools to foster hope and optimism in their students. Law student well-being can be promoted in many ways and this article has suggested that the legal curriculum is currently an under-utilised tool. Big or small, our actions in promoting law student well-being will have positive consequences that may not be outwardly visible, or even anticipated. Big or small, it is better to light a single candle than to curse the darkness.¹³¹

¹³¹ Chinese proverb.