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December, 1998**\*524 LESSONS LEARNED: LEGAL EDUCATION AND LAW STUDENT DYSFUNCTION**

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I dreamed that it was the first day of school, and all the first-year law students were invited to a big picnic on a lovely sloping lawn outside the law school. The grills were fired up, frisbees were flying, it was a beautiful fall day. We were all aware that, one by one, our classmates were being taken into the building, but we were not at all clear about what was going on inside. There might have been a slight sense of unease and anxiety about the goings-on inside, but mostly we were all enjoying the sunshine and fresh air. I was approached by someone who told me it was my turn to go in. I went, apprehensive but willing. I was escorted to a small room, squarish, with a tall window facing into a basement window well. There was a small desk that filled most of the room. I was seated in a chair on the side of the desk and put my arm on the desk, almost as though I were to have blood drawn. A professor, a gruff man, asked me a question about interpretation of contracts. Having had no previous legal training or background, I simply said I didn't know the answer. The professor nodded and smiled, and then chopped my arm off. Then I was ushered out of the room. [FN1]

After one of my colleagues related this dream to me, my first response was to laugh. On reflection, however, I realized that the dream contained some elements of truth. Students enter law school feeling slightly anxious but optimistic about their new endeavor. Significant numbers of them find law school a puzzling and isolating experience and, on being "ushered out," have vague fears that they may have lost something in the process.

Studies indicate that practicing lawyers struggle with an unusually high incidence of alcoholism and various emotional disabilities. Although the practice of law may exacerbate these problems, there is evidence that they begin during the first semester of law school. This article examines the role of law schools in creating emotional dysfunction and the possibility that they \*525 might produce healthier law students and lawyers and, perhaps, a more functional legal system. [FN2]

**Lawyer and Law Student Dysfunction**

[A] significant percentage of practicing lawyers are experiencing a variety of significant psychological distress symptoms well beyond that expected of the general population. These symptoms are directly traceable to law study and practice. They are not exhibited when the lawyers enter law school, but emerge shortly thereafter and remain, without significant abatement, well after graduation from law school. [FN3]

A number of empirical studies have shown that men and women lawyers suffer from alarmingly high rates of alcohol abuse and many forms of psychological distress. The study just quoted found that, in a sample of practi-

cing lawyers, the percentages of both men and women scoring “above the clinical cutoff” for interpersonal insensitivity, anxiety, social alienation and isolation, depression, obsessive-compulsiveness, paranoid ideation, phobic anxiety, and hostility were much higher than the percentages in the population generally. [FN4]

Emotional dysfunction arises long before the stresses of legal practice are encountered. In 1985 the *Journal of Legal Education* published a study indicating that law students also experience dysfunctional levels of distress. Except for somaticism, law students were considerably more dysfunctional in all categories of psychiatric distress than the general public. [FN5] Moreover, “law students scored significantly higher than medical students on *all* the subscales.” [FN6] Although this study recognized that the law students might have been relatively more dysfunctional *before* entering law school than both medical students and the general population, a different study controlled for incoming levels of dysfunction. It demonstrated that law students were within normal psychological ranges when they started law school, but became disproportionately\*526 dysfunctional soon thereafter, and experienced increasing dysfunction as they progressed through their legal education.

[T]he results of the ... analyses suggest that law students showed a significant symptom increase between the period before law school begins and the few months after the start of law school; symptoms significantly worsened as law students proceeded from the first year to the third year of the program; finally, the elevated symptom levels did not lessen significantly between the spring of third year and the next two years of legal practice. [FN7]

It is clear that law students become candidates for emotional dysfunction immediately upon entry into law school and face continued risks throughout law school and subsequent practice. [FN8]

### **The Role of Law Schools in Creating Emotional Dysfunction**

Both the empirical and the anecdotal reports I have cited serve a diagnostic rather than prescriptive function. [FN9] Although all the authors surmise that law schools contribute directly or indirectly to law students' and lawyers' dysfunction, they provide no empirical evidence demonstrating what specific factors in the law school environment are causing the dysfunction; but a profusion of anecdotal evidence—as well as common sense—suggests a number of contributory factors. The fact that law students suffer from more psychological dysfunction than medical students, in an equally demanding course of study, provides important clues.

There is an intimate relationship between students' psychological state and academic performance. That performance problems may adversely affect students' emotional well-being (creating, for example, anxiety and depression) is beyond argument. [FN10] It is less obvious, however, that the converse is also true: psychological states, both positive and negative, have a profound influence on performance. For example, high levels of hope, optimism, perseverance, and motivation may be stronger predictors of academic achievement than SAT scores or previous grades. [FN11] Conversely, negative feelings are \*527 likely to interfere with academic performance. Expectations of failure are liable to become self-fulfilling prophecies. [FN12] Because emotional state and academic performance are so closely related, and because law school contributes to emotional dysfunction, students may get caught in a downward spiral of emotional and academic problems.

The typical response of law schools is, at best, to deal with only the academic aspect of students' problems through academic support programs. Although such programs, which focus on legal doctrine and test-taking skills, help many students, they fail to address and remedy a fundamental problem faced by law students in general: a lack of the “balance” essential to optimal academic performance and emotional health.

One's life consists of a net of complex interrelationships, both internal and external, that provide support, encourage growth, and help define the self. One's "interconnections" involve relationships with family, friends, and community. One's "intraconnections" involve internal relationships between one's intellectual, emotional, physical, and spiritual dimensions.

Law school allows (or even encourages) students to sever most of these connections. Law school's arguable focus on a narrow definition of success-getting high grades and securing prestigious employment-undermines the foundation that previously gave students a sense of self-worth, purpose, and personal fulfillment. Ironically, while the students' worth becomes increasingly identified with intellectual ability, their intellectual ability comes into question, perhaps for the first time. Most students enter law school with superior academic records. In law school, however, they are pitted against a select group of other talented students. For the first time, many will receive below-average grades, and a few will face the possibility of failure. While the students are struggling with threats to a formerly dependable source of positive ego reinforcement, they often are turning away from other sources of support. Their nonintellectual connections often have atrophied. Now the relationships that added meaning to their lives and supported them during difficult times may be unavailable to them.

#### *Loss of Interconnections*

Before law school, most students enjoy family, friendship, and community networks that provide social and emotional support, as well as a sense of belonging and personal value. [FN13] During law school students often lose contact with these networks. First, the inordinate amount of time required for study leaves little time for family and friends. Second, students' preoccupation with \*528 their new environment (including people, terminology, teaching methods, and thinking style) may cut them off from those outside law school. Third, use of their new skills may alienate the "outsiders" in their lives. "Anyone who has had a spouse, sibling, friend, or child go through law school needs no convincing ... that a legal education instills greater disputatiousness. The process of learning to 'think like a lawyer' is fundamentally the development of a critical skepticism about any proposition, no matter how seemingly straightforward." [FN14]

While law students are losing their former support networks, law school affords few opportunities to develop new ones. Students tend not to establish close relationships with their teachers because of the relatively high student/faculty ratio, [FN15] the predominance of large classes (particularly in first-year courses), the lack of regular feedback, and the common perception that the faculty are distant and unsupportive. Perhaps more important, law school is so competitive that students may have difficulty developing supportive relationships even with their peers. Students are acutely aware that their ranking in the class will affect their employment prospects. [FN16]

Typical law school pedagogy does nothing to mitigate the students' isolation. A recent survey corroborated that, particularly in the first-year curriculum, "Socratic dialogue dominates law teaching methodology." [FN17] The focus is on individual effort. Alternative teaching methods that encourage students to collaborate, such as role playing and small-group exercises, are used very little in traditional courses. [FN18]

#### *\*529 Loss of Intraconnections*

Law school interferes not only with students' maintenance and development of interconnections, but also with their intraconnections-emotional, spiritual, and physical.

Both men and women students report that, at least partially because of law school's intellectual emphasis, they learn to suppress their feelings and come to care less about others. [FN19] They learn that their value systems are irrelevant. "The underlying highest value taught, even if implicitly, is the ability to come up with convincing reasons in support of any argument, whether one personally agrees with them or not, and to defend those reasons with cogent and convincing logic, on behalf of anybody"-a process that may lead to a moral neutering of the students. [FN20] Carl A. Auerbach observes "that the subordination of their personal values in their professional role is the most perplexing personal problem [law students and young lawyers] face." The adversarial environment of law schools

"exalts the side of lawyering that calls for aggressive competitiveness, role differentiation, and subjugation of personal values." The adversary system undoubtedly helps promote the "hired gun" or mercenary conception of the lawyer's role, that of an "amoral technician whose peculiar skills and knowledge ... are available to those with whom the relationship of a client is established." This conception makes it easy for the lawyer to subordinate personal values and be a vigorous advocate "without regard to the moral quality of the client or the cause." [FN21]

Strangely enough, law school's impact on students' *physical* intraconnections may be particularly detrimental to their overall ability to function. Although the tendency of law students to run out of time for regular exercise is well known, its impact is not sufficiently appreciated. There is compelling evidence that exercise would help relieve most of the emotional dysfunctions that lawyers and law students suffer, including depression, anxiety, and low self-esteem. Both epidemiological and experimental research has shown that physical activity has a positive effect on psychological as well as physical functioning. [FN22] For example, after reviewing twenty years of studies, one author \*530 concluded that people may benefit substantially from even one exercise session. [FN23] Although exercise will not cure such disorders as psychoses, alcoholism, and somatoform symptoms, it may help manage some of the symptoms associated with those disorders, such as depression and anxiety. [FN24] A few studies claim that exercise actually may help people decrease alcohol consumption. [FN25]

Although most law students are at an age and educational level which should make them among the most likely to engage in physical activity, only about 20 percent meet the recommendations of the Centers for Disease Control, and an equal number are completely sedentary. [FN26] The time pressures of law school are likely to discourage all but the most dedicated exercisers, but students who decrease their physical activity may experience significant mood disturbances, confusion, and loss of vigor as a result. [FN27]

In short, the law school environment encourages emotional dysfunction in students even as it isolates them from the people and activities that are essential to the maintenance of a healthy emotional status.

### *Special Issues for Women*

There is some evidence that the negative effects of legal education may be more pronounced in female than in male students-in their academic performance and also in their emotional state.

There is persuasive empirical evidence that women do not perform as well as men in law school, despite equivalent academic credentials at the time of their admission. [FN28] In 1996 the Law School Admission Council published an empirical study comparing the academic performance of over 6,000 male and female law students. The mean of the first-year grade point averages of the women was lower than that of the men. Although the difference was statistically significant, it was modest. [FN29] A comparison between these results and the results that would have been predicted by the undergraduate records was more interesting. The study

found that while “undergraduate performance is consistently and significantly higher for women in nearly every field,” [FN30] that pattern was reversed when these students entered law school. “The data comparing undergraduate and law school performance after controlling for UGPA, suggest that while women tend to do less well in law school than would \*531 be predicted by their undergraduate academic records, men may tend to do better.” [FN31]

Anecdotal evidence suggests that, while law school affects both men and women students adversely, the emotional impact on women is significantly more acute. [FN32] Lani Guinier and her coauthors at Pennsylvania reported: “The women students we interviewed almost universally expressed stronger and more passionate feelings of alienation and outrage than the male students .... In particular, almost all the women we interviewed described their first-year experience as a radical, painful, or repressive experience .... [FN33]

Empirical data lend some support to the anecdotal evidence. In one study, women law students showed higher levels of distress in nearly all areas of dysfunction. [FN34] Since male and female medical students do not exhibit such differences, the authors concluded that “high levels of distress in women are not an inevitable part of professional training.” [FN35]

Women may react more negatively to law school both because they are more sensitive than men are to the stressful environment and because they are subjected to additional stresses. [FN36] First, the environment may be more isolating for them than for the men. In general, women may find the predominant methods of classroom instruction more alienating than men. They may be more predisposed to work collaboratively, for example. [FN37]

According to the difference hypothesis, women's difference makes them less equipped for law school. The way things are done in law school (the Socratic method, issue-spotting exams, large classrooms, unpatrolled and \*532 informal networks) devalues and distorts those characteristics traditionally associated with women such as empathy, relational logic, and nonaggressive behavior. In this understanding, law school unintentionally uses a male-oriented baseline to measure male/female differences. [FN38]

Women students also may have a more difficult time establishing strong relationships with their teachers. “Whereas male students report that they are comfortable approaching faculty of either gender, female students apparently require friendliness ‘cues’ before they seek out faculty after class.” [FN39] Similarly, although “finding a mentoring relationship positively correlates with institutional success,” women students are less likely to have faculty members as mentors. [FN40]

First, male students are more willing to approach male faculty than female students because male students perceive male faculty to be generally respectful and friendly. Second, mentoring relationships more often form between people who share similar values, attitudes, or backgrounds, including gender. Third, many faculty do not view mentoring as part of their job. As a result, they mentor only selected students and only those students who initiate the relationship. Although the faculty may be treating both male and female students alike in this regard, the failure to initiate mentoring relationships disproportionately discourages female students. In the absence of overt friendliness cues, female students often do not seek out mentors in a male-dominated faculty. [FN41]

Second, it is possible that women's relatively greater discomfort is caused, at least in part, by differences in treatment. Guinier and coauthors observed that “white men, more than women of all colors, are encouraged and allowed to speak more often, for longer periods of time, and with greater positive feedback from the professor

and peers.” [FN42] Law teachers have long assumed that class participation helps students develop reasoning and communication skills. If women have fewer opportunities to participate in class in a meaningful way, they have less chance to develop these essential skills. They may also experience a less direct although ultimately more devastating impact: “low levels of class participation in the formal, structured pedagogy correlate with weak performance on the formal, structured evaluation system.” [FN43]

### Solutions

It stands to reason that if students' loss of inter- and intraconnections creates and aggravates emotional dysfunction, their development and maintenance of such connections should help prevent emotional dysfunction.

#### *\*533 Maintaining Interconnections*

Law schools should encourage students to form healthy relationships with other members of the law school community. All of the following suggestions may be implemented without fundamental changes to a school's operations. While some of them are clearly within the traditional scope of the legal academy's duties, others stretch the boundaries. Because of the potential positive impact on students' education and careers, law schools and faculty should seriously consider expanding their traditional roles. [FN44]

Positive student/faculty relationships are important to the success of many law students. Law faculty not only teach doctrine and legal reasoning; they are also instrumental in serving as mentors and providing encouragement. Although law schools may not be able to offer the low student/faculty ratios of medical schools, efforts by individual law teachers could be quite effective in creating a more supportive environment. Relatively few students take advantage of the office hours offered by the faculty, probably because they are somewhat intimidated by their teachers and because they are reluctant to admit to any difficulty with the material. [FN45] Teachers should tell their students that confusion is common and invite the students to come speak with them outside class. They should tell students that developing relationships with one or more of their teachers is important to their academic and professional success. [FN46] They also should let students know if they are willing to discuss nonacademic matters, such as career development. Such “friendliness cues” are particularly important to women students.

Some but not all teachers are comfortable providing emotional support for their students. Many are unwilling to do so for a variety of reasons, including a lack of expertise. But for students experiencing mild depression or anxiety, intervention by a friendly teacher may be effective. One study, in fact, found “no significant difference in outcome between the [mildly troubled] students \*534 treated by the [professional psychotherapists] and those treated by the college professors.” [FN47] Because “cognitive distortion” is a major cause of both anxiety and depression, [FN48] law teachers are able to help students by encouraging them to replace unreasonably negative thoughts with more accurate interpretations. [FN49]

Law schools, of course, have less control over and responsibility for student/student relationships than for student/faculty relationships, but they can make positive peer relationships more likely by de-emphasizing those aspects of legal education that present barriers to the establishment of strong peer relationships and by taking affirmative steps to encourage peer support groups.

First, positive peer relationships would be more likely if law schools could lessen the competition among

students. Very few law schools are willing or able to discontinue all grades, but it would be practical to offer first-year students at least one opportunity to learn in a small ungraded setting. [FN50] For example, most law schools teach legal writing to small groups of students—an ideal situation for a collaborative, ungraded learning experience. Although legal writing instructors may fear that the students will take an ungraded course less seriously than their graded courses, such fears could be mitigated by using, for example, an honors/pass/fail system. This system also would alleviate concerns about grading consistency among sections, as long as honors \*535 are limited. [FN51] Even graded courses could be more conducive to collaborative interactions if they used methods such as drafting exercises, small-group exercises, and role play, in addition to the Socratic method.

Second, law schools could take affirmative steps to encourage peer support groups. Shanfield and Benjamin suggest a number of possibilities:

Sanctioned peer support groups as well as other types of support groups, led by outside leaders aimed at helping students to anticipate and master the problems in law school, can be helpful for women and men alike. A committee, funded and supported by the law school, to provide a forum for the advocacy of student concerns, would also be helpful in dealing with issues of student stress. Finally, these findings lend support for experiments with different methods of teaching, particularly in smaller groups, that can produce similar or even improved academic outcomes and at the cost of less distress. [FN52]

#### *Maintaining Intraconnections*

Law schools could encourage the maintenance of intraconnections as well as interconnections. Students have reported the loss of personal values as one of the most disturbing aspects of their legal education. Their concern is shared by the rest of the legal profession. Many if not most law teachers believe that “[l]aw schools should be as concerned about the personal values of law students as they are about their intellectual development.” [FN53] The MacCrate Report supports this emphasis. [FN54]

There are problems inherent in teaching values; for example, there is considerable controversy over the extent to which teachers' personal values should be imposed upon their students or reflected in their teaching and research. [FN55] But some areas are scarcely controversial. First, it is incomprehensible “how any law school course can be taught without exploring the values sought to be realized by the particular branch of the law under study.” [FN56] Second, law schools should encourage students to integrate their personal value systems into their legal education and into the practice of law. [FN57]

\*536 Law schools could even encourage students to maintain their physical health as an important factor in maximizing academic success and emotional health. Although exercise is not a traditional part of the law curriculum, schools should consider offering an exercise program. For example, a law school could establish a walking club for students, faculty, and staff. [FN58] The Centers for Disease Control and Prevention along with the American College of Sports Medicine endorsed a Special Communication on Physical Activity and Public Health, which recommended that “every U.S. adult should accumulate 30 minutes or more of moderate-intensity physical activity ... on most, preferably all, days of the week.” [FN59] The communication defined “moderate physical activity” as “the equivalent of brisk walking at 3 to 4 mph for most healthy adults.” [FN60] Walking at moderate speeds may be the most logical physical activity for many students. One can walk alone, in a group, at any time, in any weather. Walking requires no special equipment other than appropriate footwear.

Because a walking program is amenable to flexibility and spontaneity, it would encourage the maintenance of physical activity. Maintaining regular physical activity may be harder than initiating it. “Even among adults

who take up exercise, 50% of men and women are likely to drop out within 6 months.” [FN61] Accordingly, in designing an exercise program it is important to consider factors that encourage maintenance. [FN62] Because lack of time is the reason most \*537 often given for failure to exercise regularly, [FN63] making exercising more feasible is one of the most effective ways to encourage the behavior. [FN64] Fortunately, even exercise of less-than-optimal duration, intensity, and frequency may be helpful in alleviating psychological dysfunction. [FN65]

*The Collaborative Legal Studies Program: One Small Step*

William Mitchell College of Law has instituted a number of programs designed to deal directly with issues of student dysfunction. First, it has established the counseling center mentioned above, which is available to students, staff, and faculty. Second, it requires first-year students to attend a certain number of programs dealing with professionalism issues. Some of the programs deal with stress, balance, and chemical dependency.

Finally, the college is developing a program specifically designed to help students maintain personal balance in law school, the Collaborative Legal Studies Program. [FN66] CLSP is a pilot project: a small group of volunteers from the first-year class meet weekly to discuss issues such as maintaining healthy personal relationships, coping with stress, and managing time. The small-group setting is intended to allow open discussion.

CLSP also encourages the students to maintain inter-and intraconnections through a system of “connection points” that students award themselves for behavior that helps maintain intra- and interconnections. Every week, the students fill out a sheet tracking the time they spend engaged in activities in four categories: emotional/spiritual (for example, religious activities, meditation, or writing in a journal); family/friends/community; physical (moderate or vigorous exercise); and academic. “Academic” connection points are awarded for volunteering to speak in class, talking with a professor outside class, studying with a friend or in a study group, and attending law school events. \*538 Students are encouraged to earn points in each of the four categories to maintain balance.

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In 1984 Carl Auerbach wrote: “My spirit is vexed because the current debates about legal education echo so many past controversies and add so little that is new.” [FN67] The controversies Auerbach discussed included poor student-faculty relations, law school competitiveness, and the sacrifice of personal values on the altar of rationalism. These controversies, old in 1984, continue to vex legal academe nearly fifteen years later. Perhaps it is time to move past the questions of whether the legal profession is in crisis, whether law students are unhappy, and, if so, whether law schools bear any responsibility. Perhaps it is time to try new approaches to legal education.

In “The Shame of Professional Schools,” Andrew Hacker indicts professional schools, including law schools, for “car[ing] surprisingly little about the needs of their own students, or those of the larger society our professions supposedly serve.” [FN68] To put it more charitably, law schools have not dealt effectively with law student/graduate/practitioner dysfunction. If this is to change, law schools need to acknowledge at least partial responsibility for the dysfunction and, to the extent possible, reduce the causes.

[FN1]. **Ann L. Iijima** is Professor at William Mitchell College of Law. She thanks Richard R. Wagner, codirector of the Collaborative Legal Studies Program, for sharing enthusiasm and ideas. She also thanks Cynthia Waldt for providing both research assistance and an in-the-trenches perspective.

[FN1]. This dream was related to me by LauraSue Schlatter, who reports that her actual Contracts professor was “an excellent teacher and a gentle man, ... never known to chop off more than one or two toes.”

[FN2]. It is likely that dysfunction increases errors in the practice of law. See, e.g., Christopher T. Borgeson & Elizabeth M. Link, *Stress Management: Minimizing the Risk of Malpractice-Is Stress Affecting Your Competency?* 2(3) *Legal Malprac. Rep.* 11 (1991); Susan S. Locke, *Lawyer Distress: A Comment*, 10 *J.L. & Health* 87, 93 (1995-96).

[FN3]. Connie J. A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 *J.L. & Health* 1, 2 (1995-96) (footnote omitted).

[FN4]. *Id.* at 23, 25. See also Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 *U. Pa. L. Rev.* 1, 44 (1994). Moreover, careers of female lawyers may be more adversely affected by alcoholism than careers of male lawyers. Locke, *supra* note 2, at 88; see also G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 *Int'l J.L. & Psychiatry* 233 (1990); G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 *Am. B. Found. Res. J.* 225 [hereinafter Benjamin et al., *Role of Legal Education*]; Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 *J. Legal Educ.* 65, 68-69 (1985).

[FN5]. Shanfield & Benjamin, *supra* note 4, at 68. Law students in all three years suffered similar levels of distress, except that second-year students showed higher levels of hostility than the first-year students. The women students showed higher levels of distress except in regard to paranoid ideation and on one of the measurements of depression. *Id.*

[FN6]. *Id.* at 69.

[FN7]. Benjamin et al., *Role of Legal Education*, *supra* note 4, at 241.

[FN8]. Many commentators suggest that attitudes generally thought of as dysfunctional, such as paranoia and hostility, actually may be advantageous in the legal profession. Walt Bachman, *Law v. Life: What Lawyers Are Afraid to Say About the Legal Profession* 83-84 (Rhinebeck, N.Y., 1995); Beck et al., *supra* note 3, at 48, 53; Peter G. Glenn, *Some Thoughts About Developing Constructive Approaches to Lawyer and Law Student Distress*, 10 *J.L. & Health* 69, 71 (1995-96); Locke, *supra* note 2. I seriously question whether the practice of law truly requires marginally dysfunctional lawyers, at least as it could and should be practiced.

[FN9]. See, e.g., Beck et al., *supra* note 3, at 3; Bachman, *supra* note 8, at 139.

[FN10]. Even students who are doing well academically are not immune from emotional stress. It is even possible that, in some ways, the impact of legal education ultimately is more destructive for “successful” students. The positive reinforcement for academic performance may encourage them to focus on their academic endeavors at the expense of other dimensions of their lives. Moreover, as their self-worth hinges increasingly on grades, they may be more likely to judge others according to the same, arguably superficial standard, and less able to

create healthy relationships. Additionally, these students may be pressured to pursue positions considered more “prestigious” than the public interest positions they originally may have planned to pursue.

[FN11]. See Daniel Goleman, *Emotional Intelligence* 86-89 (New York, 1995).

[FN12]. Students who question their ability to succeed in law school are more likely to experience academic problems. See, e.g., Guinier et al., *supra* note 4, at 61. “Along with a formal link between classroom participation and examination success, we suspect that there exists a psychological link between self-confidence, alienation, and academic performance.” *Id.* at 62; see also Goleman, *supra* note 11, at 83-84.

[FN13]. Studies indicate that social support helps lower anxiety and depression. Beck et al., *supra* note 3, at 6-7. Moreover, “[b]eing married or living with a significant other has [been] shown to have a significantly positive effect, often buffering or reducing the effects of stress when compared to persons living alone.” *Id.* at 7 (footnote omitted).

[FN14]. Bachman, *supra* note 8, at 54.

Nor is this tendency of law students towards gratuitous disputation merely a trivial irritant. What to the student is essentially an analytical mind exercise is often received by the listener as a personally aggressive verbal assault, or at least a coldly distancing diversion. Many a law student's friendship or even marriage has foundered over this issue ....

*Id.* at 55-56.

[FN15]. Shanfield & Benjamin, *supra* note 4, at 69-70. While a significant amount of the academic training in medical school involves small groups of five to twelve students, most law schools probably have a ratio of 20 to 30 students for each full-time faculty member. See American Bar Association Section of Legal Education and Admissions to the Bar, *Standards for Approval of Law Schools and Interpretations* (Chicago, 1997).

[FN16]. Shanfield & Benjamin, *supra* note 4, at 70-71 (contrasting law school with “many medical schools [which] have attempted to minimize competition by doing away with grades and instituting a pass-fail system”).

[FN17]. Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 *Seattle U. L. Rev.* 1, 28 (1996).

[FN18]. *Id.* at 27. In contrast to law students, who learn about the practice of law after graduation, medical schools put students in clinical situations early in their schooling. Medical schools also may be more concerned about pedagogical issues.

Medical schools also have individuals at the dean's level who have the task of responding to student and curricular problems. This can account for a responsive faculty and potentially fewer problems in students. Many medical schools also have full-time educational psychologists to assist faculty in enhancing their teaching effectiveness and to utilize instructional objectives in their teaching. This can lead to teaching that is tailored to the type of material presented and is part of a supportive network.

Shanfield & Benjamin, *supra* note 4, at 70 (footnote omitted). On the other hand, law schools view students as basically fungible, and treat them as if, “once the thinking process was revealed to students, all should have the necessary tools to utilize and incorporate that approach,” a relatively ineffective pedagogical approach. Friedland, *supra* note 17, at 21.

[FN19]. Guinier et al., *supra* note 4, at 49-50.

[FN20]. Bachman, *supra* note 8, at 56.

[FN21]. Legal Education and Some of Its Discontents, 34 J. Legal Educ. 43, 60 (1984) (quoting Howard Lesnick, Preface to Symposium on Legal Education, 53 N.Y.U. L. Rev. 293, 295 (1978); Richard Wasserstrom, Lawyers as Professionals: Some Moral Issues, 5 Human Rights 1, 2-22 (1975); Irving Younger, Professional Responsibility, 43 Brooklyn L. Rev. 863, 863 (1977)).

[FN22]. See, e.g., A. L. S. Foong, Physical Exercise/Sports and Biopsychosocial Well-Being, 112 J. Royal Soc'y Health 227, 228 (1992); Lise Gauvin et al., A Naturalistic Study of the Impact of Acute Physical Activity on Feeling States and Affect in Women, 15 Health Psychol. 391, 394 (1996); Russell R. Pate et al., Special Communication: Physical Activity and Public Health: A Recommendation from the Centers for Disease Control and Prevention and the American College of Sports Medicine, 273 JAMA 402, 403 (1995); Siegfried Weyerer & Brigitte Kupfer, Physical Exercise and Psychological Health, 17 Sports Med. 108, 111-12 (1994).

A recent study indicated that the psychological/physical connection is a two-way street. The immune systems of relatively optimistic students were healthier than those of relatively pessimistic students after the first two months of law school. Suzanne C. Segerstrom et al., Optimism Is Associated with Mood, Coping and Immune Change in Response to Stress, 74 J. Personality & Soc. Psychol. 1646 (1998).

[FN23]. Robert R. Yeung, The Acute Effects of Exercise on Mood State, 40 J. Psychosomatic Res. 123 (1996).

[FN24]. Thomas G. Plante, Getting Physical: Does Exercise Help in the Treatment of Psychiatric Disorders? 34 J. Psychosoc. Nursing & Mental Health Servs. 38 (1996).

[FN25]. *Id.* at 40.

[FN26]. See Pate et al., *supra* note 22, at 403.

[FN27]. See Gregory W. Mondin et al., Psychological Consequences of Exercise Deprivation in Habitual Exercisers, 28 Med. & Sci. in Sports & Exercise 1199 (1996).

[FN28]. Linda F. Wightman, Women in Legal Education: A Comparison of the Law School Performance and Law School Experiences of Women and Men (Newtown, 1996); see also Guinier et al., *supra* note 4, at 21-41.

[FN29]. Wightman, *supra* note 28, at 11.

[FN30]. *Id.* at 17.

[FN31]. *Id.* at 23.

[FN32]. Guinier et al., *supra* note 4; Suzanne Homer & Lois Schwartz, Admitted But Not Accepted: Outsiders Take an Inside Look at Law School, 5 Berkeley Women's L.J. 1, 37-38 (1989-90).

[FN33]. Guinier et al., *supra* note 4, at 42. The authors candidly acknowledge that some of their qualitative data may have been skewed. "Although the composition of these focus groups was representative by gender, year in law school, involvement in law school activities and journals, and class rank, the students we interviewed were arguably among the more alienated members of the school population." *Id.*

[FN34]. Shanfield & Benjamin, *supra* note 4, at 68.

[FN35]. *Id.* at 72 (footnotes omitted). The Law School Admission Council study conducted by Wightman purports to refute these conclusions. Wightman reported that there were no statistically significant differences between the women's and men's evaluation of the environment in law school. See Wightman, *supra* note 28, at 36. The study's findings, however, do not strongly support this conclusion; as Wightman admits, the ratings by the women and men were relative to their *initial expectations*, not absolute indications of whether or not they found the environment supportive. So Wightman's results cannot be said to refute the anecdotal and empirical evidence of the earlier studies.

[FN36]. Shanfield & Benjamin, *supra* note 4, at 72.

[FN37]. A recent study suggests that there is a genetic component to the phenomenon that “women are usually better than men at those aspects of cognition that enable smooth social interactions.” Peter McGuffin & Jane Scourfield, A Father's Imprint on His Daughter's Thinking, 387 *Nature* 652, 652 (1997). Women receive two X chromosomes, one from the mother and one from the father, whereas men receive an X chromosome only from the mother. This study identified a gene apparently associated with “smooth social interactions.” Although this gene exists on X chromosomes of both men and women, the gene on the X chromosome inherited from the mother is “switched off” when passed on to her offspring, while the gene from the father's X chromosome is “switched on.” The son, having received only an “off” X chromosome from his mother, may be at a relative disadvantage in social interactions.

[FN38]. Guinier et al., *supra* note 4, at 80 (footnotes omitted).

[FN39]. *Id.* at 72 (footnote omitted).

[FN40]. *Id.* at 73 (footnote omitted).

[FN41]. *Id.* at 74-75 (footnotes omitted). “Some women may simply need more encouragement to do well or to approach faculty in a male-dominated school where ‘merit’ is arguably still measured by attributes associated with maleness.” *Id.* at 79 (footnote omitted).

[FN42]. *Id.* at 63-64 (footnote omitted).

[FN43]. *Id.* at 61; see also Elizabeth Mertz et al., [What Difference Does Difference Make? The Challenge for Legal Education](#), 48 *J. Legal Educ.* 1 (1998).

[FN44]. Effective teaching should be a core concern. When students feel safe with their teachers and peers, they are more likely to enter into “deep learning states,” “positive classroom learning [experiences] where the learner believes she or he has moved beyond normal learning states into a significant, meaningful and lasting shift in cognitions, values, attitudes, and emotions accompanied by feelings of well-being.” Conversely, when students feel threatened, their brains switch into a fight-or-flight mode which may interfere with higher-level learning. Al McLeod, *Discovering and Facilitating Deep Learning States*, 5(6) *Nat'l Teaching & Learning F.* 1, 2-5 (1996).

Some law teachers argue that students have sole academic responsibility, and that students who have difficulty “getting it” probably should not be in law school. I am reminded of a question posed by Laurie Zimet at a program sponsored by the Academic Support Program Section of the AALS. Her paraphrasing of the tree-falling-in-the-woods conundrum—“If our students aren't learning, are we *teaching*?”—more appropriately recognizes the shared responsibility inherent in legal education.

[FN45]. When I have discussed this article with current law students and with lawyers, a common response by both men and women is to describe how uncomfortable and demoralized they are or were by law school, and how they assume(d) that they were the only ones in their classes who were confused by both the material and the process. Few were able to discuss their confusion with their peers, much less with their teachers.

[FN46]. I expect that all of us have been asked to write letters of reference for students of whom we know little beyond their grade in a course or two.

[FN47]. Phyllis W. Beck & David Burns, *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. Legal Educ. 270, 271 (1979). The law school with which I am associated has a counseling center where students are able to speak with counseling professionals. This resource is valuable because many of the faculty are not willing to discuss personal problems with students, many students are not willing to speak with their teachers about personal problems, and many of the students have problems that are more serious than mild cognitive distortion.

[FN48]. Cognitive distortion occurs when an individual interprets stimuli that are neutral or mildly negative in an unrealistically bleak fashion. This erroneous or inaccurate interpretation causes the individual to feel sad, hopeless and anxious. The cumulative effect of such distortion is that the individual views himself as a failure and in the case of the law student as inadequate to master professional training. The student's "internal communication system" (within his own psyche) further reinforces and escalates his negative view of himself. The internal communication system becomes self-generating and the student is unable to stem the tide of negative automatic thoughts and their concomitant counter-productive emotions. As part of his internal recurring, cognitive pattern, he globalizes and catastrophizes.

*Id.* at 273-74.

[FN49]. *Id.* at 284-85. Beck and Burns argue that, although a significant number of law students experience anxiety and depression, most do not. They conclude that the real problem is not the stressful environment of the law school, but rather the dysfunctional response of some of the students. *Id.* at 286. It is likely, however, that law student dysfunction is not an either/or phenomenon, but rather a complex problem for which a multiplicity of approaches would be appropriate.

[FN50]. Courses commonly available to upper-level students are more conducive to collaborative relationships, such as clinics, internships, and seminars.

[FN51]. I am personally familiar with both the honors/pass/fail system and the mandatory grading curve. Although the latter system ensures that the students take the course seriously and that grading is consistent across sections, the disadvantages arguably outweigh the advantages. The students tend to work collaboratively during the first, ungraded exercises, but as soon as the mandatory grading curve is employed, collaboration breaks down, and intense competition commences. Reportedly, individuals or small cliques fail to share and occasionally hoard materials. And significant numbers of students apparently lose motivation when faced with the intensely competitive situation. Because this may be their only small-group experience in their first year, the students have no formal opportunity to form a tight-knit supportive group when they most need one.

[FN52]. Shanfield & Benjamin, *supra* note 4, at 73 (footnotes omitted).

[FN53]. Auerbach, *supra* note 21, at 61-62.

[FN54]. American Bar Association Section on Legal Education and Admissions to the Bar, Task Force on Law Schools and the Profession: Narrowing the Gap, *Legal Education and Professional Development—An Educational Continuum* (Chicago, 1992).

[FN55]. Auerbach, *supra* note 21, at 61-62.

[FN56]. *Id.* at 61.

[FN57]. For example, William Mitchell College of Law offers a seminar called Work of the Lawyer. One assignment requires the students to write a credo discussing their personal values systems, the source of those values, and how those values will influence their legal careers.

[FN58]. Those interested could meet for an introduction to the walking program: a brief (20-minute) lecture on the benefits of exercise followed by a demonstration of stretching exercises. The school could provide each participant with a personal log to record the type of exercise, duration, intensity, and frequency. An information sheet could summarize goals and benefits. The school could encourage students to form walking groups, provide maps of local walks of varying distances, and offer incentives and awards. The school might encourage the formation of a school team to participate in fundraising walks.

[FN59]. Pate et al., *supra* note 22, at 404.

[FN60]. *Id.* at 402. A number of physical activities qualify as “moderate”: walking briskly (3-4 mph), cycling up to 10 mph, moderate swimming, conditioning exercise, racket sports, table tennis, golf (pulling cart or carrying clubs), fishing (standing/casting), leisurely canoeing (2-3.9 mph), general housecleaning, mowing lawn (power mower), home repair, painting. *Id.* at 404 Table 2. But few of these activities are likely to be both enjoyable and readily accessible to law students. Cycling would be available to many students and, moreover, would provide them with transportation. On the other hand, cycling is weather-dependent: snow, rain, and cold render cycling less than pleasurable. And many students may be deterred by darkness and by inadequate security for their bicycles. Although table tennis could be made available at law schools, participation would require a partner, and the number of participants would be limited by space and equipment.

[FN61]. Bess H. Marcus et al., *Theories and Techniques for Promoting Physical Activity Behaviours*, 22 *Sports Med.* 321, 322 (1996).

[FN62]. In fact, the explicit creation of a balance sheet may be helpful in initiating and maintaining an exercise program.

The use of a decisional balance sheet procedure, in which the individual writes down anticipated consequences of exercise participation in terms of gains and losses to his or herself and others and approval or disapproval from others and from his or herself, may promote an awareness of the benefits and costs of exercise participation which are salient to the individual. This procedure can be used to discuss the content of these responses and devise ways to avoid or cope with the negative consequences of the behaviour change. Individuals with a positive decisional balance, who see more benefits to physical activity, or who value the benefits of physical activity above the costs, are more likely to participate in physical activity.

*Id.* at 326. Similarly, identifying situations likely to interfere with one's exercise program and developing plans to cope with these situations can help one maintain a program and prevent a short lapse in exercise from turning into a long lapse or even a complete relapse into sedentary habits. *Id.* at 327.

[FN63]. Pate et al., *supra* note 22, at 403.

[FN64]. Marcus et al., *supra* note 61, at 329.

[FN65]. “[I]t now appears that the majority of [the health benefits obtained through higher-intensity exercise] can be gained by performing moderate-intensity physical activities outside of formal exercise programs.” Pate et al., *supra* note 22, at 405. Moreover, the “amount of activity is more important than the specific manner in which the activity is performed (ie, mode, intensity, or duration of the activity bouts)” and “intermittent, short bouts [are] considered an appropriate approach to achieving the activity goal.” *Id.*

[FN66]. Richard Wagner and I are codirectors of CLSP; he is a social worker and director of the counseling center. We tried a different version of this program during the 1997-98 academic year with 14 first-year students. We are offering the 1998-99 program to another very small group. When the program feels right to us, we will offer it to the entire first-year class. At that point, we hope to have a sufficient number of participants for empirical research on the program's effectiveness. We will try to determine whether participation in the program has any impact on emotional functioning and academic performance.

[FN67]. Auerbach, *supra* note 21, at 43.

[FN68]. 32 J. Legal Educ. 278, 278 (1982).  
48 J. Legal Educ. 524

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