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LAW STUDENT WELLBEING: BENEFITS OF PROMOTING PSYCHOLOGICAL LITERACY AND SELF-AWARENESS USING MINDFULNESS, STRENGTHS THEORY AND EMOTIONAL INTELLIGENCE

DR COLIN JAMES*

I INTRODUCTION

The legal profession is challenged by evidence showing that law students and lawyers at all levels of the profession are at risk of debilitating, work-related anxiety and depression.¹ Other research has provided several explanations for the psychological risks faced by lawyers and law students. The time has come for institutions to act, rather than repeating the refrain that it is up to individuals to find their own 'life balance'.² Authors such as Hall and Krieger argue that the 'business-as-usual' didactic teaching, focused on legal doctrine, represented by the Priestley 11,³ fails to provide what graduate lawyers need to begin developing as legal professionals or to survive in legal practice. It ultimately denies society a broadly skilled, informed and sensitised legal profession.⁴ In 2000, the Australian Law Reform Commission recommended that the focus of legal

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¹ Norm Kelk et al, *Courting the Blues: Attitudes towards Depression in Australian Law Students and Legal Practitioners* (Brain and Mind Research Institute, 2009); 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.

² T D Peterson and E W Peterson, 'Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology' (2009) 9(2) *Yale Journal of Health Policy, Law, and Ethics* 357; Massimiliano Tani and Prue Vines, 'Law Students' Attitudes to Education: A Pointer to Depression in the Legal Academy and the Profession?' (2009) 19 *Legal Education Review* 3.

³ Geoff Monahan and Bronwyn Olliffe, 'Competency-Based Education and Training for Law Students' (2001) 3 *UTS Law Review* 14.

⁴ Kath Hall, 'Do We Really Want to Know? Recognising the Importance of Student Psychological Wellbeing in Australian Law Schools' (2009) 9(1) *QUT Law and Justice Journal* 1; Lawrence S 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.

education should be ‘on providing law graduates with the high level professional skills and values they will need to operate in a dynamic work environment, and assume that lawyers will keep abreast of the substantive law as an aspect of professional self-development’.⁵ The message for law schools was to recognise that legal practice is dynamic: cases, legislation and procedure change. So teaching existing cases, legislation and procedure should not dominate at the expense of helping law students to develop as rounded professionals, not only informed about the law but also able to look after themselves in body and mind.

Watson and Field recently argued a strong case for promoting law student wellbeing through legal education, using strategies such as curriculum renewal and peer-assisted learning.⁶ This article continues the discussion by examining research on two strategies for law schools which may have long-term benefits, without significant cost or disruption to curricula. Part II examines literature on the potential benefits of improving students’ levels of psychological literacy, firstly, to help overcome prejudicial attitudes that perpetuate a stigma against people with depression and other forms of mental illness and, secondly, to provide students with an awareness of the cognitive benefits associated with a mindfulness approach to learning, development and practice. The research suggests that improving student awareness of significant findings in psychological science will help reduce prejudice and increase the willingness of students to notice risk factors in themselves, disclose and seek help, and to consider practices likely to improve resilience and extend their capacity for learning and development.

Part III reviews the discourse on improving self-awareness; in particular, how students can benefit, firstly, through the application of strengths theory and, secondly, by developing and using an awareness of emotional intelligence. This article argues that both of these approaches may strengthen resilience in students by improving their awareness of the sources of their own psychological stress and anxiety, and by enabling them to consider and choose the best responses consistent with their current abilities, hopes for the future and most suited to them as individuals.

The article draws on two fields of research relevant to depression among lawyers and law students which have made significant progress in the past two decades. The first is the field of neuroscience, especially behavioural and cognitive neuroscience, which offers valuable understandings of the brain and mind from different

⁵ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000).

⁶ 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.

perspectives relevant to how we learn, develop and cope with anxiety and frustration.⁷ The second is the field of positive psychology, which can be understood as the application of psychological research to help non-clinical individuals to optimise their life satisfaction in general, and their performance at work, in particular.⁸ Positive psychology focuses on positive emotions, positive character traits and enabling institutions. It represents a shift away from the clinical pathology focus that underpinned psychological research and application in the past.⁹ Unlike the older discourses in mainstream psychology, both positive psychology and applied neuroscience, as discussed here, are relatively accessible in popular discourse.¹⁰ While there are debates elsewhere on the wisdom of using applied positive psychology in some domains,¹¹ there appears to be no ethical or practical barrier to including positive psychology approaches in legal education, development and practice. This article advocates for institutional steps in that direction.

II PSYCHOLOGICAL LITERACY

Psychological literacy involves an understanding of the basic subject matter of contemporary psychology. It has also been

⁷ S Marc Breedlove, Neil V Watson and Mark R Rosenzweig, *Biological Psychology: An Introduction to Behavioral, Cognitive, and Clinical Neuroscience* (Sinauer, 2010); Norman Doidge, *The Brain That Changes Itself: Stories of Personal Triumph from the Frontiers of Brain Science* (Viking Adult, 2007); E A Stanley, 'Neuroplasticity, Mind Fitness, and Military Effectiveness' in R E Armstrong et al (eds), *Bio-Inspired Innovation and National Security* (National Defense University Press, 2010).

⁸ P Alex Linley et al, 'Positive Psychology: Past, Present, and (Possible) Future' (2006) 1(1) *Journal of Positive Psychology* 3; Martin E P Seligman and Mihaly Csikszentimihalyi, 'Positive Psychology: An Introduction' (2000) 55(1) *American Psychologist* 5; Martin E P Seligman et al, 'Positive Psychology Progress: Empirical Validation of Interventions' (2005) 60(5) *American Psychologist* 410; Shelly L Gable and Jonathon Haidt, 'What (and Why) Is Positive Psychology?' (2005) 9(2) *Review of General Psychology* 103.

⁹ Seligman and Csikszentimihalyi, above n 8.

¹⁰ Popular neuroscience texts include Doidge, above n 7; Jonah Lehrer, *The Decisive Moment: How the Brain Makes Up Its Mind* (Text Publishing, 2009). Popular texts in positive psychology include Sonja Lyubomirsky, *The How of Happiness: A New Approach to Getting the Life You Want* (Penguin, 2008); Nick Powdthavee, *The Happiness Equation: The Surprising Economics of Our Most Valuable Asset* (Icon Books, 2010); Martin E P Seligman, *Authentic Happiness: Using the New Positive Psychology to Realize Your Potential for Lasting Fulfillment* (Free Press, 2004); Martin E P Seligman, *Flourish: A Visionary New Understanding of Happiness and Well-Being* (Heinemann Australia, 2011). In addition, annual conferences on positive psychology such as *Mind and Its Potential* <<http://www.mindanditspotential.com.au/index.htm>> and *Happiness and Its Causes* <<http://www.happinessanditscauses.com.au/>> have been attracting large audiences in Australia since 2005.

¹¹ Sean Phipps, 'Positive Psychology and War: An Oxymoron' (2011) 66(7) *American Psychologist* 641; Martin E P Seligman, 'Helping American Soldiers in Time of War: Reply to Comments on Comprehensive Soldier Fitness Special Issue' (2011) 66(7) *American Psychologist* 646.

described simply as enabling the ‘capacity to cope with the mental demands of modern life’.¹² Hannah and Leicester suggest that a psychologically literate person is ‘a critical thinker, someone who welcomes intellectual exchanges dealing with questions or problems linked with behavior’.¹³ This article argues that there are at least two substantial reasons for helping law students improve their psychologically literacy. The first is to help overcome prejudicial attitudes in themselves and in others towards mental health issues. The second reason is to help students improve their own cognitive and affective development through learning how to use their minds to best effect.

A Reducing Prejudice

Despite historical shifts in culture and law against prejudice and discrimination in many forms, Thornicroft argues that attaching stigma to mental illness remains prevalent, based on antiquated presumptions, false beliefs and a fear of the unknown.¹⁴ Like everyone, law students are at risk of both perpetuating the prejudice that fuels this stigma and fearing it. This leads to a reluctance to seek help, discrimination against those at risk, and delay in identifying and responding to students at risk or in need of help.

The impact of stigma is either public — the overt discriminatory reaction we have towards people with mental illness — even ourselves.¹⁵ Wahl argues that popular culture tends to exacerbate prejudicial attitudes by giving the impression that people with mental illness are potentially dangerous, have child-like perceptions, reduced cognitive capacity or a weak character.¹⁶ It is understandable that law students at risk of depression or anxiety disorder may be sensitised to public stigma and not seek help because they fear damaging their reputation as a competent professional person and an aspiring officer of the court.¹⁷ Similarly, law students suffering depression may be

¹² Margaret Hannah and Graham Leicester, *The Enlightened Corporation: Psychological Literacy and the Future of Human Resources* (2006) International Futures Forum <http://www.internationalfuturesforum.com/projects.php?go=dl&id=1&file_ref=obphqewsq&bounce=0>.

¹³ Dana S Dunn, ‘Thinking about Psychological Literacy’ on Dana S Dunn, *Head of the Class* (21 September 2009) <<http://www.psychologytoday.com/blog/head-the-class/200909/thinking-about-psychological-literacy>>.

¹⁴ Graham Thornicroft, *Shunned: Discrimination against People with Mental Illness* (Oxford University Press, 2006).

¹⁵ Patrick W Corrigan and Amy C Watson, ‘Understanding the Impact of Stigma on People with Mental Illness’ (2002) 1(1) *World Psychiatry* 16.

¹⁶ O F Wahl, *Media Madness: Public Images of Mental Illness* (Rutgers University Press, 1995).

¹⁷ In the 2009 Brain and Mind Research Institute study, more than 30 per cent of law student respondents thought their friends might discriminate against them if they suffered depression, and 67 per cent thought their employer was likely to do so: Kelk, Medlow and Hickie, above n 1, 119.

susceptible to what Corrigan and Watson call ‘self-stigma’, because they internalise the prejudice they see expressed among their peers and in popular culture.¹⁸ At-risk students may feel guilty or ashamed at appearing weak and not coping with the demands of law school. Some might also fear that having a record of mental illness could be raised against them in the future as a professional impediment, such as a reason for being not considered of ‘good fame and character’ or a ‘fit and proper person’ to be admitted to legal practice.¹⁹

There are several reasons why improved psychological literacy would help law students understand why they may be prone to depression and anxiety and what they can do about it. As many law students were high-achievers at school, some have a tendency towards perfectionism and may judge themselves harshly for lower-than-expected academic results in law school, which can aggravate their anxiety, producing a vicious cycle.²⁰ In addition, law schools often encourage critical thinking broadly as a useful cognitive tool, without discussing how it can be self-destructive if applied without care to one’s self-conception.²¹ As well, it can be argued that some aspects of legal education might promote a degree of pessimism. Developing a student’s ability to engage in critical analysis through searching for and focusing on faults in arguments or risks for clients may promote a pessimistic attitude. Yet, it is rare for law schools to caution that such an attitude should not be brought to bear on all aspects of one’s social or personal life.²² A program on psychological literacy may help prevent these problems. To be effective, such a program would have to encourage law students to think about and anticipate the risk factors that are peculiar to working in legal processes — which are apparently common among both law students and lawyers — and to discuss these risks in a supportive environment using strategies for raising self-awareness and skills enhancement.

¹⁸ Patrick W Corrigan and Amy C Watson, ‘The Paradox of Self-Stigma and Mental Illness’ (2006) 9(1) *Clinical Psychology: Science and Practice* 35.

¹⁹ For example, the *Legal Practice Act 2004* (NSW) s 9 requires applicants for legal practice to be of ‘good fame and character’, and the *Legal Profession Act 2004* (Vic) s 2.4.4 requires the Legal Practice Board to be satisfied that an applicant is ‘fit and proper’ to hold a practising certificate.

²⁰ Kennon M Sheldon and Lawrence S Krieger, ‘Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory’ *FSC Col Public Law Research Paper No. 206*, 2006.

²¹ Lawrence S Krieger, *The Hidden Sources of Law School Stress* (2006) Florida State University <<http://mailer.fsu.edu/~lkrieger/images/lawschoolstress.pdf>>; Joshua E. Perry, ‘Thinking Like a Professional’ (2008) 58 *Journal of Legal Education*; Hall, above n 4.

²² M Seligman, P Verkuil and T Kang, ‘Why Lawyers are Unhappy’ (2005) 10(1) *Deakin Law Review* 49; 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(2) *Duquesne Law Review* 203, 209.

B Improved Cognition through Mindfulness

Legal education is, and should remain, intellectually demanding with a broad curriculum of law subjects and rigorous assessments to preserve the high quality of graduates and the certified competencies of those entering the profession. Students must develop high-level reasoning and memory functions to learn, understand and apply the legislation, cases and competing arguments in complicated fact situations. The best legal education will also require students to solve problems in ways likely to achieve the best outcomes for clients and it will assist students to develop excellent communication skills, including listening, speaking, comprehension and professional written expression. All these capacities have cognitive aspects that can be developed with awareness and conscious effort.

Students who have at least a basic level of psychological literacy, and understand some of the cognitive and affective theories on how we learn and develop, may be motivated to practise strategies that both improve their legal education and protect their mental wellbeing. Some of these practices are not traditionally associated with legal education but have a growing body of supportive empirical research, such as mindfulness training using meditation to improve motivation and goal-setting.²³ Educational psychology researchers now understand more about how the human brain changes structurally in response to mental habits, and can help facilitate a person's desired thinking style²⁴ and contribute to cultivating wellbeing and emotional balance.²⁵ Based on this research, it is likely that the more we enable students to understand the implications that mindfulness practices have on learning, development and wellbeing, the more likely they

²³ Christian Gaden Jensen et al, 'Mindfulness Training Affects Attention — Or Is It Attentional Effort?' (2011) 140(4) *Journal of Experimental Social Psychology: General* 1; Rhonda V Magee, 'Educating Lawyers to Meditate?' (2011) 79(3) *UMKC Law Review* 535 <<http://ssrn.com/abstract=1689769>>. Improved mindfulness also enables awareness of intrinsic goals, the pursuit of which are positively related to psychological health: Christopher P Niemiec, Richard M Ryan and Edward L Deci, 'The Path Taken: Consequences of Attaining Intrinsic and Extrinsic Aspirations in Post-College Life' (2008) 43 *Journal of Research in Personality* 291.

²⁴ For example, researchers have found that meditation training changes brain function to enable enhanced abilities of concentration and to reduce susceptibility to distraction: Antoine Lutz et al, 'Mental Training Enhances Attentional Stability: Neural and Behavioral Evidence' (2009) 29(42) *The Journal of Neuroscience* 13 418; Christopher Moyer et al, 'Frontal EEG Asymmetry Associated with Positive Emotion is Produced by Very Brief Meditation Training' (2011) 22(1) *Psychological Science* 1277; Sally A Marik et al, 'Axonal Dynamics of Excitatory and Inhibitory Neurons in Somatosensory Cortex' (2010) 8(10) *Plos Biology* 1, which suggests that cortical circuits in the mammalian brain are continually modified by experience.

²⁵ A P Jha et al, 'Examining the Protective Effects of Mindfulness Training on Working Memory Capacity and Affective Experience' (2010) 10(1) *Emotion* 54; Antoine Lutz et al, 'Attention Regulation and Monitoring in Meditation' (2008) 12(4) *Trends in Cognitive Sciences* 163.

will take steps and orient their behaviour towards achieving their academic, personal and professional goals.

Mindfulness of how we think is an important part of being able to reflect, without rumination, on how we feel.²⁶ Mindfulness research suggests that students who can reflect on their feelings and think about *how* they think will have a significant advantage — not only in the effectiveness of their learning strategies, but also in coping with the frustrations and demands of law school and their later experiences in legal practice.²⁷ Further, recent studies suggest that students who learn how their thinking style affects their mood will at least have the opportunity for insights into their attitudes and behaviour and an improved capacity to become better communicators and negotiators.²⁸

Students can develop mindfulness directly through practising meditation or indirectly through journaling or reflecting on their learning and practising experiences.²⁹ For some students, it is sufficient to keep a journal of reflections that are focused not merely on descriptions of events, but on how they feel about those events. For many, it will be the first time that they have been asked to think about and record their emotions; for some, it will lead to an epiphany in their development.³⁰

²⁶ Shian-Ling Keng, Moria J Smoski and Clive J Robins, 'Effects of Mindfulness on Psychological Health: A Review of Empirical Studies' (2011) 31(6) *Clinical Psychological Review* 1041. Rumination can aggravate depression and lead to negative moods: Susan Nolen-Hoeksema, Blair E Wisco and Sonja Lyubomirsky, 'Rethinking Rumination' (2008) 3(5) *Perspectives on Psychological Science* 400; Ronald M Epstein, 'Mindful Practice' (1999) 282(9) *Journal of the American Medical Association* 833.

²⁷ Anne Brockbank and Ian McGill, *Facilitating Reflective Learning in Higher Education* (Open University Press, 2007); Donald A Schon, *The Reflective Practitioner: How Professionals Think in Action* (Basic Books, 1983).

²⁸ Dejun Tony Kong, William P Bottom and Lee Konczak, 'Re-Examining the Role of Emotional Intelligence in Negotiations' (Paper presented at 24th Annual International Association for Conflict Management Conference, Istanbul, 3–6 July 2011) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1872141>; Nadia Alexander and Jill Howieson, *Negotiation: Strategy Style Skills* (LexisNexis Butterworths, 2010); Jochen Reb and Jayanth Narayanan, 'Mindfully Eating Raisins Improves Negotiation Success: The Effect of Mindfulness on Negotiation Performance' (Paper presented at the 24th International Association of Conflict Management Conference, Istanbul, 3–6 July 2011) <<http://ssrn.com/abstract=1872908>>.

²⁹ Silvia Jordan, Martin Messner and Albrecht Becker, 'Reflection and Mindfulness in Organizations: Rationales and Possibilities for Integration' (2009) 40(4) *Management Learning* 465; Polly Nugent et al, 'Clear(ing) Space: Mindfulness-Based Reflective Practice' (2011) 12(1) *Reflective Practice* 1; Magee, above n 23. See also Susan Carrell, *The Therapist's Toolbox: 26 Tools and an Assortment of Implements for the Busy Therapist* (Sage Publications, 2001).

³⁰ Russell R Rogers, 'Reflection in Higher Education: A Concept Analysis' (2001) 26(1) *Innovative Higher Education* 37; Leonard Riskin, 'The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers and Their Clients' (2002) 7 *Harvard Negotiation Law Review* 1; Naomi Findlay, Shane Dempsey and Helen Warren-Forward, 'Validation and Use of the Newcastle Reflective Analysis Tool: A Three-Year Longitudinal Study of RT Students' Reflective Journals' (2010) 11(1) *Reflective Practice* 83.

III IMPROVING SELF-AWARENESS

Positive psychology offers several ways for law students to learn about themselves in ways that can assist their academic performance as well as help them to cope with anxieties associated with legal education and legal practice. This section discusses two approaches to developing self-awareness: strengths theory and emotional intelligence. Each has a significant body of empirical and theoretical research that supports the relevance of these strategies for law students as well as lawyers.

A Strengths Theory

This is the message of the strengths based approach to student success: Do not try to be someone else. Strive to be the person you really are — fully and completely. This is your best avenue to achieving excellence.

— Edward Anderson³¹

A psychological strength in this theory is a person's natural capacity for behaving, thinking or feeling in a way that enables their optimal functioning and performance in the pursuit of valued outcomes.³² Strengths theory emerged as a perspective in social work discourse as an alternative to the psychoanalytic model of analysis and intervention.³³ In practice, strengths theory is now accepted broadly in health sciences, and adds a valuable dimension to understanding why we find some activities satisfying and energising and others frustrating and depleting.³⁴ In a major study published in 2004, a team led by Peterson and Seligman surveyed populations in many different cultures and countries to identify the most commonly valued personal strengths and qualities, and grouped them under six categories of virtue: wisdom, courage, humanity, justice, temperance and transcendence.³⁵ Within these categories, the researchers proposed 24 'Values in Action' (VIA) character strengths, which now have a significant body of corroborative research.³⁶ These character strengths are curiosity, love of learning, judgement, ingenuity, emotional intelligence, perspective, valour, perseverance,

³¹ Quoted in Peterson and Peterson, above n 2, 417.

³² P Alex Linley and Susan Harrington, 'Strengths Coaching: A Potential-Guided Approach to Coaching Psychology' (2006) 1(1) *International Coaching Psychology Review* 37.

³³ Wayne McCashen, *The Strengths Approach* (St Luke's Innovative Resources, 2005); Dennis Saleebey, *Strengths Perspective in Social Work Practice* (Allyn and Bacon, 5th ed, 2008).

³⁴ Christopher Peterson et al, 'Strengths of Character, Orientations to Happiness, and Life Satisfaction' (2007) 2(3) *Journal of Positive Psychology* 149.

³⁵ Christopher Peterson and Martin E P Seligman, *Character Strengths and Virtues: A Handbook and Classification* (Oxford University Press, 2004).

³⁶ VIA Institute on Character, *Summary of Research* (2010) <<https://www.viacharacter.org/www/en-us/research/about.aspx>>.

integrity, kindness, ability to love and be loved, fairness, citizenship, leadership, self-control, prudence, humility, appreciation of beauty and excellence, gratitude, hope, spirituality, forgiveness, humour and zest. A person's signature strengths are their top strengths as scored on the VIA character strengths instrument.³⁷ Repeated empirical research has confirmed that people who identify and use their signature strengths report higher levels of happiness and lower levels of depression for up to six months after the intervention,³⁸ experience greater subjective and psychological wellbeing,³⁹ experience less stress,⁴⁰ and are more likely to achieve their goals.⁴¹

In a 2009 study of law students, Peterson and Peterson found that students who become aware of and use their top psychological strengths 'are less likely to suffer from depression and more likely to report satisfaction with life'.⁴² As the researchers acknowledged, they could not demonstrate a causal link, however, they argued, in conjunction with earlier research, that it is at least likely that a strengths focus would improve life satisfaction and decrease rates of depression in law student populations.⁴³ They concluded by recommending that law schools implement a strengths development program involving three stages: identification of students' individual signature strengths; integration of the strengths into each student's self-perception; and developing ways to capitalise on those strengths through behaviour.⁴⁴ Personal development models based on other strengths theories include Strengths-Finder⁴⁵ and Realise2.⁴⁶ Reports by both researchers and coaching practitioners indicate that these

³⁷ Ibid.

³⁸ Seligman et al, above n 8. In addition, much of the empirical and theoretical research on strengths to date has been collated by Ryan Niemiec and published at Ryan Niemiec, *Character Strength Summaries* (17 October 2011) VIA Institute on Character <<http://www.viacharacter.org/www/en-us/research/summaries.aspx>>.

³⁹ R Govindji and A Linley, 'Strengths Use, Self-Concordance and Well-Being: Implications for Strengths Coaching and Coaching Psychologists' (2007) 2 *Coaching Psychology Review* 143.

⁴⁰ A M Wood et al, 'Using Psychological Strengths Leads to Less Stress and Greater Self-Esteem, Vitality, and Positive Affect: Longitudinal Examination of the Strengths Use Questionnaire' (2011) 50 *Personality and Individual Differences* 15.

⁴¹ P A Linley et al, 'Using Signature Strengths in Pursuit of Goals: Effects on Goal Progress, Need Satisfaction, and Well-Being, and Implications for Coaching Psychologists' (2010) 5 *International Coaching Psychology Review* 6.

⁴² Peterson and Peterson, above n 2, 413.

⁴³ Ibid, citing among others Seligman et al, above n 8.

⁴⁴ Peterson and Peterson, above n 2, 416.

⁴⁵ Tom C Rath, *StrengthsFinder 2.0* (Gallup Press, 2007) <<http://www.strengthsfinder.com/home.aspx>>.

⁴⁶ Alex Linley, Janet Willars and Robert Biswas-Diener, *The Strengths Book: Be Confident, Be Successful, and Enjoy Better Relationships by Realising the Best of You* (CAPP Press, 2010) <<http://www.cappeu.com/>>.

different perspectives enable strategic applications of strengths theory for different contexts and situations.⁴⁷

The research confirms the relevance of strengths theory as a non-clinical response to anxiety-related depression and supporting at-risk groups such as law students. Simply knowing our signature strengths enables an engaged self-awareness, helping us to access our highest capacities for hope; to make use of our considered values; and to apply our best personal qualities in response to challenging situations.⁴⁸ A program that promotes psychological literacy by encouraging law students to identify, celebrate and practise their signature strengths may have measureable benefits to their psychological wellbeing and academic performance. It may go further, not only helping students to cope better with anxiety-provoking difficulties, but also to find enjoyment in meeting the challenges of the law school experience.

B Emotional Intelligence

Traditionally legal education has brow-beaten emotional reactions out of students. This must end.

— Marjorie A Silver⁴⁹

In 2008, the Legal Services Commissioner of NSW recommended that the undergraduate curriculum in law be amended to include training in emotional intelligence.⁵⁰ While there is little evidence that this has happened, and despite controversy around the practical usefulness of the concept of emotional intelligence,⁵¹ there is a growing acceptance of it as a necessary skill for successful legal life.⁵² Notably, in 2010, Kift, Israel and Field proposed emotional

⁴⁷ Ibid; Jim Asplund et al, *The Clifton StrengthsFinder 2.0 Technical Report: Development and Validation* (February 2007) Gallup <<http://strengths.gallup.com/private/Resources/CSFTechnicalReport031005.pdf>>; Govindji and Linley, above n 39.

⁴⁸ Christopher Peterson, *A Primer in Positive Psychology* (Oxford University Press, 2006) 196–221; Govindji and Linley, above n 39; Linley et al, ‘Using Signature Strengths in Pursuit of Goals’, above n 41.

⁴⁹ Marjorie A Silver, ‘Emotional Intelligence and Legal Education’ (1999) 5(4) *Psychology, Public Policy and Law* 1173, 1202.

⁵⁰ Steve Mark, ‘Legal Education and the 21st Century Law Graduate’ (Paper presented at the Continuing Legal Education Association of Australasia 2008, Sydney, 16 October 2008).

⁵¹ J Antonakis, N M Ashkanasy and M T Dasborough, ‘Does Leadership Need Emotional Intelligence?’ (2009) 20 *Leadership Quarterly* 247.

⁵² Marc A Brackett, Susan E Rivers and Peter Salovey, ‘Emotional Intelligence: Implications for Personal, Social, Academic, and Workplace Success’ (2011) 5(1) *Social and Personality Compass* 88; Ronda Muir, *Emotional Intelligence for Lawyers* (2011) Law People Blog <<http://www.lawpeopleblog.com/uploads/file/LPM%20Emotional%20Intelligence%20for%20Lawyers.pdf>>; Robin Wellford Slocum, ‘An Inconvenient Truth: The Need to Educate Emotionally Competent Lawyers’ (Working Paper, Chapman University School of Law, 19 July 2011) <<http://ssrn.com/abstract=1889756>>; Joshua Freedman and Todd Everett (eds), *The Business Case for Emotional Intelligence* (6 Seconds, 2008).

intelligence as a key element of a teaching and learning outcome for legal education (TLO 6, 'self-management') and argued that it was 'critical to professional practice because it incorporates a capacity for resilience through personal awareness and coping skills that might include openness to assistance in times of personal and professional need'.⁵³

Historically, there has been a cognitive bias in legal education that assumes rigour in supporting a hierarchy which privileges knowledge of law over affective ability, so that what we think is always more important than how we feel.⁵⁴ Law schools traditionally aim to increase students' rational thinking styles at the expense of emotional processing styles,⁵⁵ and have rationalised this approach on the presumption that lawyers need to be able to 'put their emotions aside' in order to develop the clear thinking and high-level analytical skill needed for successful legal practice.⁵⁶ Huang and Swedloff, however, argue that emotions always play an important part in *how* we think, study and practise law.⁵⁷ It seems that the skills needed to recognise emotions in ourselves and others can

⁵³ S Kift, M Israel and R Field, *Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement December 2010* (2010) 23 <http://www.altc.edu.au/system/files/altc_standards_LAW_110211.pdf>. See also Slocum, above n 52. A meta-analysis of research on emotional intelligence among doctors found higher scores positively contributed to doctor–patient relationships, increased empathy, teamwork and communication skills, stress management, organisational commitment and leadership: S Arora et al, 'Emotional Intelligence in Medicine: A Systematic Review through the Context of the ACGME Competencies' (2010) 44(8) *Medical Education* 749.

⁵⁴ John E Montgomery, 'Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students' (2008) 39(2) *University of Toledo Law Review* 323.

⁵⁵ Kath Hall, Molly Townes O'Brien and Stephen Tang, 'Developing a Professional Identity in Law School: A View from Australia' (2010) 4 *Phoenix Law Review* 21, 39.

⁵⁶ William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 2007) Summary, Observation 3, 5, where the authors critique teaching methods that predominantly encourage development of abstract analytical thinking. <<http://lawweb.usc.edu/assets/docs/contribute/CarnegieReportExecutiveSummary.pdf>>

⁵⁷ Peter H Huang and Rick Swedloff, 'Authentic Happiness and Meaning at Law Firms' (Research Paper No 2008-52, Temple University Legal Studies, 27 February 2008) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1086675>. On a related issue, President Obama caused controversy when he called for Supreme Court judges to have empathy: Stanley Fish, 'Think Again', *The New York Times* (New York), 25 May 2009.

⁵⁸ Michel Tuan Pham, 'Emotion and Rationality: A Critical Review and Interpretation of Empirical Evidence' (2007) 11(2) *Review of General Psychology* 155, which discusses the influence of emotional states on rational processes; Katherine K Baker, 'Gender and Emotion in Criminal Law' (2005) 28 *Harvard Journal of Law and Gender* 447, which discusses the gendered and selective recognition of emotional responses in criminal law.

be learned.⁵⁸ For example, part of what we measure as emotional intelligence involves the capacity to distinguish emotions in others. Recent studies suggest that this aspect of emotional intelligence is adaptable and not as trait-like or tied to personality as previously thought.⁵⁹ The research discussed below suggests that, while we use our emotional intelligence throughout our professional development from law school into legal practice, as with most skills, the more we use it mindfully the more easily we will develop into competent and ethical professionals.

Emotional intelligence is one of the 24 VIA character strengths. It is a measure of a person's perception of their own emotions, and how they use, understand and manage their emotions to enhance their personal growth and social relations.⁶⁰ We might *think* we do things because of our logical reasoning, but the immediate driver of behaviour and decisions is our emotions.⁶¹ While our knowledge and reasoning often have a role, we do things we want to do because of how we feel about a situation and our desire to change it. Those feelings, however, are likely informed by the intrinsic values and inclinations that make up our character, as well as our conscious memory of experiences and other current hopes, thoughts and beliefs. We might often rationalise our decisions and actions with our cognitive beliefs, ignoring the complex affective drivers that inform our feelings, including our unconscious (or subconscious) emotions.⁶²

⁵⁹ T Banziger et al, 'Emotion Recognition from Expressions in Face, Voice, and Body: The Multimodal Emotion Recognition Test (MERT)' (2009) 9 *Emotion* 691; Jennifer Carson and Celia Moore, 'Respectful or Rude? How Small Differences in Negative Emotional Expression Affect Individuals in Teams and Team Viability' (Paper presented at the 24th International Association of Conflict Management Conference, Istanbul, 3–6 July 2011) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1872924>.

⁶⁰ John D Mayer et al, 'Emotional Intelligence as a Standard Intelligence' (2001) 1(3) *Emotion* 232, 234. An alternative and popular definition of emotional intelligence includes the capacities for self-awareness, self-management, social awareness and social skills: Daniel Goleman, Richard E Boyatzis and Annie McKee, *Primal Leadership: Learning to Lead with Emotional Intelligence* (Harvard Business School Press, 2002).

⁶¹ Antonio R Damasio, *Descartes' Error: Emotion, Reason and the Human Brain* (Putnam G P, 1996); Terry A Maroney, 'Law and Emotion: A Proposed Taxonomy of an Emerging Field' (2006) 30 *Law and Human Behavior* 119, which discusses the implications of law privileging reason at the expense of emotion.

⁶² Kirsten I Ruys and Diederik A Stapel, 'The Secret Life of Emotions' (2008) 19(4) *Psychological Science* 395; Piotr Winkielman, 'Bob Zajonc and the Unconscious Emotion' (2010) 2(4) *Emotion Review* 353; Mary Helen Immordino-Yang and Antonio R Damasio, 'We Feel, Therefore We Learn: The Relevance of Affective and Social Neuroscience to Education' (2007) 1(1) *Mind, Brain and Education* 3; Brackett, Rivers and Salovey, above n 52, who provide a review of current research on correlates of emotional intelligence and its effects in both academic and workplace settings; Pham, above n 58, who compares emotionality and rationality.

In legal practice, some research indicates that knowing about and using our emotional intelligence makes us better interviewers and negotiators, and may well also improve advocacy skills.⁶³

Three recent meta-analyses have helped clarify the roles and importance of emotional intelligence in our decisions and behaviour. In 2010, Joseph and Newman published their analysis of several projects that tested the incremental validity of emotional intelligence measures to explain job performance over and above cognitive ability and the 'Big Five' personality traits (five factor model or FFM).⁶⁴ They found that most types of emotional intelligence do have incremental validity above both FFM and cognitive ability, especially in jobs that are high in emotional demands. In 2011, Walter, Cole and Humphrey published their analysis of extant research on emotional intelligence with respect to leadership.⁶⁵ They concluded that 'published evidence contradicts extreme claims that EI [emotional intelligence] has no value for leadership theory and practice'⁶⁶ and that emotional intelligence education, training and development should proceed, providing it is evidence-based.⁶⁷ The third recent meta-analysis incorporated the largest number of studies on emotional intelligence yet to be published,⁶⁸ and concluded that 'the present data strongly supported the predictive validity of EI in terms of job performance, above and beyond the FFM and cognitive ability'.⁶⁹

Research on coaching psychology has found that individuals can improve their measureable score of emotional intelligence, which is potentially relevant to legal education. One Australian study found that emotional intelligence, as measured by the Schutte Emotional Intelligence Score (SEIS) model,⁷⁰ can be enhanced by developing particular skills associated with it, such as coaching skills.⁷¹ Other

⁶³ Alexander and Howieson, above n 28, ch 8.

⁶⁴ D L Joseph and D A Newman, 'Emotional Intelligence: An Integrative Meta-Analysis and Cascading Model' (2010) 95 *Journal of Applied Psychology* 54. The Big Five personality factors are Neuroticism, Extraversion, Openness, Agreeableness, and Conscientiousness; see Giddi Rubinstein, 'The Big Five Among Male and Female Students of Different Faculties' (2005) 38 *Personality and Individual Differences* 1495–1503.

⁶⁵ Frank Walter, Michael S Cole and Ronald H Humphrey, 'Emotional Intelligence: Sine Qua Non of Leadership or Folderol?' (2011) 25(1) *Academy of Management Perspectives* 45.

⁶⁶ Ibid 52.

⁶⁷ Ibid.

⁶⁸ Ernest H O'Boyle et al, 'The Relation between Emotional Intelligence and Job Performance: A Meta-Analysis' (2011) 32(5) *Journal of Organizational Behavior* 788.

⁶⁹ Ibid 806.

⁷⁰ N S Schutte et al, 'Development and Validation of a Measure of Emotional Intelligence' (1998) 25 *Personality and Individual Differences* 167.

⁷¹ Anthony M Grant, 'Enhancing Coaching Skills and Emotional Intelligence through Training' (2007) 39(5) *Industrial and Commercial Training* 257.

research has found significant correlations between measurable aspects of coaching skills, such as personal insight, and emotional intelligence,⁷² supporting the theory that emotional intelligence can be taught, learned and developed with practice.⁷³ Given the apparent key role of emotions in daily and professional life, and the apparent mental health risk of legal education and legal practice, there may be benefit in law schools investigating ways to help students develop their emotional competencies.

IV PUTTING THEORIES INTO PRACTICE

The research on teaching emotional intelligence has been constrained by the early controversy of whether the concept is best understood as 'state' or 'trait' and whether it is a useful addition to personality theory. Despite this, social and emotional learning programs have been accepted enthusiastically in primary and secondary schools in the United States and now Australia.⁷⁴ In addition, recent empirical evidence has confirmed that important aspects of what we measure in emotional intelligence are state-like and can be developed.⁷⁵ Some research shows that benefits in emotional intelligence can follow simple practices of mindfulness,

⁷² Grant found that 'insight' was central to the coaching process: A Grant, 'The Impact of Life Coaching on Goal Attainment, Metacognition and Mental Health' (2003) 31(3) *Social Behaviour and Personality* 253. Locke found insight to be crucial to goal attainment: E A Locke, 'Setting Goals for Life and Happiness' in C R Snyder and S J Lopez (eds), *Handbook of Positive Psychology* (Oxford University Press, 2002) 299; Joseph Ciarrochi, Frank P Dean and Stephen Anderson, 'Emotional Intelligence Moderates the Relationship between Stress and Mental Health' (2002) 32(2) *Personality and Individual Differences* 197.

⁷³ Pat Wolfe, 'The Role of Meaning and Emotion in Learning' (2006) 110 (Summer) *New Directions for Adult and Continuing Education* 35; Richard E Boyatzis, Daniel Goleman and Kenneth Rhee, 'Clustering Competence in Emotional Intelligence: Insights from the Emotional Competence Inventory (ECI)' in Reuven Bar-On and James D A Parker (eds), *Handbook of Emotional Intelligence: Theory, Development, Assessment, and Application at Home, School and in the Workplace* (Jossey-Bass, 2000); Schutte et al, above n 70.

⁷⁴ Maurice Jesse Elias, Mary Utne O'Brien and Roger P Weissberg, *Transformative Leadership for Social-Emotional Learning: The Social-Emotional Skills Necessary for Success in School and in Life Can Be Taught and Reinforced in School* (2006) National Association of School Psychologists <<http://www.nasponline.org/resources/principals/Social%20Emotional%20Learning%20NASSP.pdf>>; Department of Education, Training and the Arts (Qld), *Guide to Social and Emotional Learning in Queensland State Schools* <http://education.qld.gov.au/studentservices/protection/sel/pdfs/sel_booklet.pdf>; Joseph E Zins and Maurice J Elias, *Social and Emotional Learning* (2006) Collaborative for Academic, Social, and Emotional Learning <http://casel.org/wp-content/uploads/2011/04/elias_zins.pdf>.

⁷⁵ D Richard Roberts et al, 'Teaching and Learning Guide for Emotional Intelligence: Towards a Consensus of Models and Measures' (2010) 4(10) *Social and Personality Compass* 968; Reuven Bar-On, Maurice Jesse Elias and J G Maree (eds), *Educating People to Be Emotionally Intelligent* (Praeger, 2007).

such as savouring.⁷⁶ Other research suggests that one-off training sessions have minimal benefit, although benefits accrue if the training is followed by team-based learning.⁷⁷ It therefore seems that, whatever strategies drawing on positive psychology are considered by a law school, they should be program-wide, and coordinated as part of an optimistic, supportive and emotionally-intelligent culture that pervades the school, including the attitudes and language of key staff.

Academics likely have significant modelling influence on students, especially first-year professional discipline students. This underscores the importance of the Dean's address during students' induction to law school.⁷⁸ Ideally, the head of school would refer to the priority of student wellbeing in the context of the risks evidenced by the research. Delay in telling students of the possible negative effects that studying and practising law might have to their individual wellbeing risks minimising its significance, perpetuating the stigma of depression and allowing students at risk to think that it does not apply to them. The Dean may then address the strategies the school provides to encourage a high level of self-awareness and protective practices to assist affective development as well as cognitive learning. Included in the induction materials could be a brief on relevant psychological literature to assist those who were not exposed to the discourse of psychology before law school. The law school's resources should ensure that every student has a good chance of coping with the known stressors, enjoying their experience as a student as well as performing at their academic best.

Also during induction, students could be introduced to strengths theory and invited to complete one of the free, self-report instruments on psychological strengths.⁷⁹ Students who complete the VIA survey will receive a short report on their five 'signature strengths' which they can retain for use during their first year of study. In subsequent classes, law teachers familiar with strengths theory could help students engage with their signature strengths and practise them in new ways as they develop good learning habits and become familiar

⁷⁶ Savouring is the intentional prolonging and if possible enhancing of a positive experience. See Fred B Bryant and Joseph Veroff, *Savoring: A New Model of Positive Experience* (Lawrence Erlbaum Associates, 2007); Jordi Quoidbach et al, 'Positive Emotion Regulation and Well-Being: Comparing the Impact of Eight Savoring and Dampening Strategies' (2010) 49(5) *Personality and Individual Differences* 368.

⁷⁷ Nicholas Clarke, 'Developing Emotional Intelligence Abilities through Team-Based Learning' (2010) 21(2) *Human Resource Development Quarterly* 119.

⁷⁸ Carrie J Menkel-Meadow, 'Can a Law Teacher Avoid Teaching Legal Ethics?' (1991) 44 *Journal of Legal Education* 3.

⁷⁹ For example, the VIA Character Strengths: VIA Institute on Character, above n 36, which is free, accessible and takes about 30 minutes. Other instruments are available at sites cited above nn 45 and 46.

with the law and legal process.⁸⁰ Students with improved self-awareness will be better able to consciously practise their natural strengths and talents as their future identity develops and they begin to envisage themselves as professional lawyers.

Given the apparent vulnerability of many law students, legal academics should be competent in ‘Mental Health First Aid’⁸¹ and complete at least a foundational course in neuroscience, educational or positive psychology. Legal academics have significant influence on the development of values and attitudes in their students, and experienced teachers know that in the classroom they are always modelling a sub-curriculum of behaviours, values and attitudes. Psychologically-informed legal educators will not only be better teachers but their ability to engage with students at a deep level, without counselling them in a clinical context, will help reduce stigma about mental health issues and encourage students to adopt informed and positive attitudes to their own challenges and opportunities.

V CONCLUSION

This article has drawn on an extensive literature to identify several strategies to help protect law students from anxiety-related depression, improve their experience of law school, and to assist them to perform at their academic best. The literature supports the idea that improving law students’ levels of psychological literacy will not only help to reduce the effects of prejudicial stigma, allowing at-risk students to disclose and seek help, but will encourage students’ propensity to practice mindfulness, which will benefit both cognitive performance and self-awareness. The literature also shows that developing self-awareness can be boosted by applied strengths theory to help individuals to better understand their own unique mix of capacities and qualities, which they can apply effectively to their legal education and subsequent legal practice. Finally, the research shows that students’ self-awareness will also be assisted by learning the importance of emotional intelligence, and how it informs their practice — especially their interactions and responses to others in their role as a lawyer.

In the author’s view, it is crucial that law schools and legal educators take responsibility and engage with students on mental health issues to minimise their risk. Otherwise, students who

⁸⁰ R Biswas-Diener, T B Kashdan and Guralp Minhas, ‘A Dynamic Approach to Psychological Strength Development and Intervention’ (2011) 6(2) *The Journal of Positive Psychology* 106; Gary K Clabaugh, ‘Strengths-Based Education: Probing Its Limits’ (2005) 83(3) *Education Horizons* 166.

⁸¹ Betty A Kitchener and Anthony F Jorm, ‘Mental Health First Aid Training: Review of Evaluation Studies’ (2006) 40(1) *Australian and New Zealand Journal of Psychiatry* 6; Mental Health First Aid, *What is Mental Health First Aid?* (2011) <<http://www.mhfa.com.au/cms/>>.

experience anxiety may isolate, repress their feelings, and think that they may not be suited to the legal profession.⁸² The loss of potential lawyers for that reason is unfortunate for them, perpetuates negative stereotypes about lawyers' personalities, and is disastrous for the profession and society.⁸³ Students may feel supported if they are encouraged to improve their psychological literacy and enhance their self-awareness with knowledge of strengths theory and emotional intelligence. Psychologically-informed students would be more open to developing mindfulness and using it in their study methods, which in turn may improve their academic performance and communication skills, and develop positive habits of lifelong learning, fitness and self-care. Students who reflect on the attitudes, values and reactions of their psychologically aware teachers may be more able to cope with their own stressors and more willing to seek appropriate help when they feel the pressure or confusion leading to anxiety. Seeking professional help can be the turning point in a career and, in some cases, it may be a life-saver.

⁸² Krieger, 'Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence', above n 4. Recent Australian examples include senior partners in large firms who described their experiences of getting close to suicide due to work-related depression in the short video *Resilience@Law* <http://www.u2u.com.au/aar/player.php?name=AAR_2010-03-23_Resilience_V1&img=Resilience@law>. In some cases, law students and lawyers have committed suicide, as did Tristan Jepson, a Sydney-based law student suffering from depression, who took his own life on 28 October 2004. In his honour, his family and friends established the Tristan Jepson Memorial Foundation <<http://www.tjmf.org.au/>>. Incidents elsewhere include the suicide of Mark I Levy, a prominent Washington attorney, in 2009: Karen Sloan, 'Depression Stalks the Legal Profession', *National Law Journal* (online), 4 May 2009 <<http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202430438300&slreturn=1>>.

⁸³ Arguably the most repeated lawyer jokes in popular culture reproduce the stereotype of lawyers as aggressive, thick-skinned, unscrupulous, dishonest, insensitive and greedy: Marc Galanter, *Lowering the Bar: Lawyer Jokes and Legal Culture* (University of Wisconsin Press, 2006).