

DO WE REALLY WANT TO KNOW? RECOGNISING THE IMPORTANCE OF STUDENT PSYCHOLOGICAL WELLBEING IN AUSTRALIAN LAW SCHOOLS

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A subtle socialization goes on in law schools. We in legal education know so little about this process or how to influence it. But the process plays itself out for our observation. Every year we see students who change aspects of their character during law school.¹

'TURN OFF. TUNE OUT. MAKE MONEY.'
'Perhaps more than any other six words, [these] capture the ethos which prevails in law school.'²

I INTRODUCTION

Recent research in Australia has suggested that law students are four times more likely than students in other degrees to suffer from anxiety and depression. The Brain and Mind Research Institute's (BMRI) 2008 survey of lawyers and law students found that over 35% of the law students studied suffered from high to very high levels of psychological distress, and that almost 40% reported distress severe enough to warrant clinical or medical intervention.³ This contrasted with just over 17% of medical students

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¹ B A Glesner, 'Fear and Loathing in Law Schools' (1990-91) 23 *Connecticut Law Review* 627, 662.

² S Halpern, 'On the Politics and Pathology of Legal Education (Or, Whatever Happened to That Blindfolded Lady with the Scales)' (1982) *Journal of Legal Education* 383.

³ N Kelk et al, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Legal Practitioners* (Brain & Mind Research Institute: University of Sydney, 2009). See also: N Berkovic, 'Research Finds Depression Very High in Legal Profession', *The Australian* (Sydney), 19 September 2008, <<http://www.theaustralian.news.com.au/story/0,25197,24367557-17044,00.html>> at 29 July 2009; I Hickie, *The Mental Health of Australian Lawyers: A Challenge for the Law*

and 13% of the general population. Similarly, a significant portion of the lawyers surveyed were found to suffer from elevated levels of anxiety and depression, with 31% falling in the high to very high levels of psychological distress.

These findings correspond to the extensive research conducted over the last two decades in the United States. This research has consistently found lawyers to have the highest incidence of depression of all occupational groups,⁴ and to be up to 15 times more likely to suffer from emotional distress than the general population.⁵ Similar studies have also shown that significant numbers of law students become depressed or anxious in the first year of their study, and remain so throughout their degree. For example, one of the earliest psychiatric/psychological studies conducted in 1986 found that before entering law school, students had similar levels of psychological health to the general population.⁶ However, within a year of commencing their study, law students had higher levels of psychiatric distress than either medical students or a contrasting normative population.⁷

Similarly, in a recent longitudinal study at two United States law schools, it was shown that the students studied shifted from strong mental health and life satisfaction during orientation, to distinctly elevated distress and depression by the end of their first year.⁸ The data also revealed a dulling of student motivation and a shift from altruistic motivations on entering law school, to external values and motives during law school.⁹ This led one of the researchers to conclude that '[w]hen students graduate and enter the profession they are significantly different people from those who arrived to begin law school: they are more depressed, less service-oriented, and more inclined towards undesirable, superficial goals and values.'¹⁰

As a result, many researchers in the United States have argued that the learning environment *within* law school plays a significant role in increasing levels of distress

Schools and the Profession (2008) Brain and Mind Research Institute <<http://services.thomson.com.au/cpdnews/docs/OccHealthNews/jepsonfin08.pdf>> at 29 June 2009.

⁴ W Eaton et al, 'Occupations and the Prevalence of Major Depressive Disorder' (1990) 32 *Journal of Occupational Medicine* 1079, table 3. See also: S Daicoff, 'Lawyer Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism' (1997) 46 *American University Law Review* 1337.

⁵ See: G A H Benjamin et al, 'The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Amongst United States Lawyers' (1990) 13 *International Journal of Law and Psychiatry* 233; C J A Beck et al, 'Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers' (1995) 10 *Journal of Law and Health* 1. See also: R B Allan, 'Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial' (1997) 31 *Creighton Law Review* 265; Daicoff, above n 4.

⁶ G A Benjamin et al, 'The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers' (1986) 2 *American Bar Foundation Research Journal* 225. The researchers tested for somatisation, obsessive compulsiveness, interpersonal insensitivity, depression, and anxiety.

⁷ *Ibid* 246; and S B Shanfield and G A H Benjamin, 'Psychiatric Distress in Law Students' (1985) 35 *Journal of Legal Education* 65.

⁸ K M Sheldon and L S Krieger, 'Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Well-Being' (2004) 22 *Behavioral Sciences and the Law* 261.

⁹ *Ibid* 280-3.

¹⁰ L S Krieger, 'The Inseparability of Professionalism and Personal Satisfaction' (2004) *New York Law School Clinical Research Institute* 6.

amongst students.¹¹ Issues such as student workloads, the impersonal nature of legal education, the isolation of law students and the emphasis on linear over creative thinking have been identified as potentially having a negative impact on law student wellbeing.¹² Other research has emphasised the competitive nature of law school, noting that students are pressed into direct competition with each other from early on in their studies and this continues throughout their degrees.¹³ It has also been argued that law schools are less interactive and supportive than other university environments. As Shanfield and Benjamin note:

Law schools have considerably fewer teachers per student than medical school, which makes for logistical problems in providing one-to-one interaction with students. Teaching is done primarily in large classes. Law school teachers have been noted to give little feedback and to treat students impersonally. They are seen as distant and less supportive than medical school teachers.¹⁴

Whilst there are differences between studying law in the United States and Australia,¹⁵ there are also similarities that make this research relevant to Australian law schools. For example, in both jurisdictions, compulsory courses are commonly taught through large formal lectures, and there is a strong focus on individual assessment rather than upon collective effort or team work. A competitive academic and social environment commonly exists within law school, with awards and honors being given to students on the basis of the academic marks they achieve. Traditional teaching methods also tend to dominate, with doctrinal and case analysis at the core of teaching and assessment practices. As a result, it is argued that an impersonal, competitive and contingent-worth environment can exist within law schools in both jurisdictions.

Although recently momentum has gathered in the United States to respond to the issue of law student wellbeing,¹⁶ questions remain as to why it has taken so long for a

¹¹ Shanfield and Benjamin, above n 7; Benjamin et al, 'The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers', above n 6; Halpern, above n 2, 382; Glesner, above n 1, 627; L S Krieger, 'What We're not Telling Law Students - and Lawyers - that They Really Need to Know: Some Thoughts-in-Action toward Revitalizing the Profession from its Roots' (1998-9) 13 *Journal of Law and Health* 1; M Dammeyer and N Nunez, 'Anxiety and Depression Among Law Students: Current Knowledge and Future Directions' (1999) 23 *Law and Human Behaviour* 55; L S Krieger, 'Psychological Insights: Why Our Students and Graduates Suffer, and What We Might do About it' (2002) *Journal of the Association of Legal Writing Directors* 258; Sheldon, and Krieger, 'Does Legal Education have Undermining Effects on Law Students?', above n 8; K M Sheldon and L S Krieger, 'Understanding the Negative effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) 33 *Personality and Social Psychology Bulletin* 883.

¹² See Benjamin et al, 'The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers', above n 6; Dammeyer and Nunez, above n 11.

¹³ Shanfield and Benjamin, above n 7, 70-1; Benjamin et al, 'The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers', above n 6, 247.

¹⁴ Shanfield and Benjamin, above n 7, 69-70 (footnotes omitted).

¹⁵ For example, in the United States law is studied as a postgraduate degree, more students study fulltime and the Socratic method is more strongly relied upon in class teaching.

¹⁶ For a discussion of these issues see: M H Schwartz, 'Humanizing Legal Education: An Introduction to a Symposium Whose Time Came' (2007-8) 47 *Washburn Law Journal* 235; L S Krieger, 'Human Nature As a New Guiding Philosophy for Legal Education and the Profession' (2007-8) 47 *Washburn Law Journal* 247. For example, in 2006 the American Association of Law Schools held a one day workshop on humanising legal education, and established a section within the association to address such issues. In 2007, the Carnegie Foundation's reports, *Educating Lawyers: Preparation for the Profession of Law* and *Best Practices for Legal Education* included concerns on a range of issues

significant response to be developed. For example, in 2002 Krieger suggested that, although there was a lot of alarming information about the collective distress and unhappiness of students in United States law schools:

we appear to be practicing a sort of organizational denial because, given this information, it is remarkable that we are not openly addressing these problems among ourselves at faculty meetings and in committees, and with our students in the context of courses and extracurricular programs.¹⁷

With research on student wellbeing now becoming available in Australia, this article takes up the point of how Australian law schools will respond to these findings. It suggests that even before we start to consider the question of what we should do about the problem of student wellbeing, we must recognise that there are common psychological processes which can undermine our response to these issues. In particular, research in cognitive dissonance and rationalisation suggests that even as we become aware of negative information on law student distress, we can unconsciously ignore it or rationalise it away on the basis that it is not relevant to us. Furthermore, these same cognitive processes can affect our students, such that they can fail to appreciate the significant implications of this research for them.

The following discussion therefore aims to alert Australian academics to important cognitive barriers that can obstruct our own and our students' understanding of research on psychological wellbeing in law school. It also aims to facilitate a more open debate within the legal academy, and between academics and students, on the role and impact of legal education. As most academics in Australian law schools would testify, the signs of student strain are all around us and seem to be increasing. Indeed, although written over 15 years ago, Glesner's description of the visible effects of law student distress is still accurate in many Australian law schools today. As he noted:

Law students get sick more frequently than others ... They have problems in their relationships with friends and family. They worry more than they work. They are continually agitated or lethargic. They gain or lose weight. They take up or increase their chemical crutches, such as caffeine, nicotine, alcohol or cocaine. They often become angry and bitter - especially at their teachers, sometimes at their colleagues or at the profession - they withdraw, drop out, skip classes, or simply avoid getting to know their classmates. When called upon in specific stressful situations to use reserves of courage and confidence, they may be debilitated; and they often do not have these reserves to call upon.¹⁸

to do with student wellbeing. The same year a conference was held at Washburn University Law School on Humanising Legal Education, with papers subsequently being published in the *Washburn Law Journal*. In addition, there is a Humanising Legal Education list serve with over 250 subscribers that allows for interchange on legal education and the impact those choices may have on the attitudes, values, needs, health and wellbeing of law students. See: Florida State University College of Law, <http://www.law.fsu.edu/academic_programs/humanizing_lawschool/listserve.html> at 30 June 2009.

¹⁷ L 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, 112.

¹⁸ Glesner, above n 1, 631.

II COGNITIVE DISSONANCE AND RATIONALISATION

Cognitive dissonance is a well recognised psychological phenomenon in the context of how individuals deal with new experiences and information that challenge their existing behaviours and beliefs.¹⁹ It suggests that people try to make sense of the world by looking for consistency between their thoughts, experiences, values and behavior.²⁰ In particular, if there is inconsistency between two or more of a person's cognitions (elements of knowledge), an unpleasant internal state (cognitive dissonance) is likely to result. This discomfort generally prompts a person to engage in unconscious strategies to restore their mental wellbeing. These strategies can include re-interpreting the situation that caused the dissonance, avoiding or denying the negative information or adding to/increasing existing positive cognitions. As these processes are generally engaged in unconsciously, people are not usually able to reason about why they responded to a particular situation in the way they did. As Luban notes, our minds like to think 'if I said it, I must believe it ... if I did it, I must think its right.'²¹

The powerful ways in which cognitive dissonance can influence thinking are demonstrated in Festinger's original research on the topic. In 1954, he studied a cult group that believed the world was going to end through a great flood.²² The group's leader had received messages from 'superior alien beings' telling her that only 'true believers' would be saved by aliens. On the predicted doomsday, members of the sect awaited the arrival of the aliens. As the time came and went, tension mounted. Finally, the sect leader announced that she had received another message. It said that due to the faith of the members, the aliens had chosen to save the world. As Festinger observed, joy then broke out amongst the cult members and many became more faithful to their leader than ever.²³

Festinger was keen to understand how sect members could continue to believe in the ideas of the cult when the prophecy had not come true. He observed that when the flood did not occur, less committed members were more inclined to recognise that they had been fooled and leave. In contrast, committed members, some of whom had given up their homes and jobs to work for the cult, were more likely to accept the leader's claim that their faith had saved the world. They were willing to re-interpret the failure of the prophecy in the context of this claim and to see it providing evidence that they had been right all along. When other members of the sect adopted the same approach, the group's overall conviction was strengthened. Festinger, therefore, concluded that it was easier for committed sect members to re-evaluate their experience of the failed prophecy to bring it in line with their beliefs, than to question their previous behaviour. In particular, he considered that the dissonance that would have been created for the committed members, had they accepted that the prophecy was never true, would have

¹⁹ L Festinger and J M Carlsmith, 'Cognitive Consequences of Forced Compliance' (1959) 58 *Journal of Abnormal and Social Psychology* 203; L Festinger, *A Theory of Cognitive Dissonance* (Stanford University Press, 1957); E Aronson, R D Akert and T D Wilson, *Social Psychology* (Pearson Prentice Hall, 6th ed, 2006); E Aronson, 'The Theory of Cognitive Dissonance: A Current Perspective' in L Berkowitz (ed), *Advances in Experimental Social Psychology* (Elsevier, 1969) 1, 1.

²⁰ Festinger, above n 19.

²¹ D Luban, 'Integrity: Its Causes and Cures' (2003-4) 72 *Fordham Law Review* 279, 283.

²² Festinger, above n 19; H W Riecken and S Schachter, *When Prophecy Fails* (Harper & Row, 1956).

²³ Festinger, above n 19, 64.

been so great that they were more inclined to accept a highly doubtful explanation of the events than to live with the idea that they had been ‘coned’.²⁴

This research, and the hundreds of studies that have followed it, have confirmed that individuals strive hard to establish consistency between their thoughts, conduct and beliefs/values.²⁵ In particular, Aronson, who refined Festinger’s work, has shown that dissonance is most problematic when people see their actions or experiences as conflicting with their self-concept as a competent, in-control and morally good person.²⁶ If events occur that cause individuals to challenge this image of themselves, high levels of dissonance can result. People are more likely to reject or re-interpret the cognition that caused them to challenge their belief in themselves, than to re-appraise their behavior or revise their self-image.

In this context, rationalisation processes are important. They are the most common processes that we use to develop reasons for our behavior and create consistency in our actions, thinking and self-interest. Common rationalisations include ‘I was told to do it’; ‘It is just the way things were done’; ‘Everyone else was doing it’; ‘I couldn’t have changed it anyway’; and ‘It wasn’t so bad’. When we act in a way which conflicts with our values or sense of self, we can unconsciously draw upon such rationalisations to negotiate or reduce our sense of responsibility for our actions.²⁷ For example, in Festinger’s original research, committed cult members adopted the rationalisation provided by their leader for why the prophecy had not occurred. This allowed them to preserve their self-esteem as competent and in control people whilst at the same time reducing their sense of responsibility for any negative consequences that might have flowed from their actions (such as giving away their savings and jobs, and leaving their families). With the help of their leader’s rationalisation, they could feel disconnected to the negative aspects of their behavior and still maintain that what they had done was right.

III THE POTENTIAL EFFECT OF COGNITIVE DISSONANCE AND RATIONALISATION ON STUDENTS’ UNDERSTANDINGS OF LAW SCHOOL

Cognitive dissonance theory and rationalisation may be relevant in the context of how students respond to law school, especially when it conflicts with their previous experiences, beliefs or values. Firstly, research suggests that if students are called upon to learn something that contradicts what they already know or believe to be right, they are likely to either resist the new learning or to reject their prior learning.²⁸ It is generally not possible for a person to maintain belief in two contradictory aspects of knowledge or to hold within their minds two inconsistent cognitions without dissonance being created.²⁹ As a result, when integrating new learning with their previous beliefs,

²⁴ Ibid 87.

²⁵ See a discussion of these works in E Aronson, ‘The Return of the Repressed: Dissonance Theory Makes a Comeback’ (1992) 3(4) *Psychological Inquiry* 303.

²⁶ E Aronson, ‘Dissonance Theory: Progress and Problems’ in R Abelson et al (eds), *Theories of Cognitive Consistency: A Sourcebook* (Rand McNally, 1968) 5; Aronson, ‘The Return of the Repressed’, above n 25.

²⁷ C R Snyder and R L Higgins, ‘Excuses: Their Effective Role in the Negotiation of Reality’ (1988) 104(1) *Psychological Bulletin* 23.

²⁸ J S Atherton, *Cognitive Dissonance [on-line] UK* (2002) Learning and Teaching <<http://www.learningandteaching.info/>> at 1 July 2009.

²⁹ Aronson, ‘The Return of the Repressed’, above n 25.

students often abandon or re-appraise aspects of their previous knowledge. The extent to which this occurs generally depends upon how much inconsistency there is, how committed the student is to their previous knowledge and how important their new learning is to their sense of self.

Cognitive dissonance theory also suggests that if a course of study is perceived as hard, uncomfortable or difficult to achieve, students are more likely to value that study, and are less likely to critically analyse the process or the content involved.³⁰ It seems that if students acknowledge that what they have worked hard to learn is not important or useful, there is an increased risk that they will feel foolish in having taken their study so seriously. This can then undermine their self-esteem and belief in themselves as competent, intelligent and successful people. For example, in one of the earliest experiments to test these ideas, Aronson and Mills had individuals undergo mild or severe initiation to become a member of a group.³¹ The group then turned out to be dull and boring. Those individuals who had experienced the more severe initiation were found to be the most reluctant to admit the true (boring) nature of the group, and evaluated it more favorably than those who had experienced the mild initiation. This led to the conclusion that people may justify putting a significant effort into a task by elevating the outcome that they achieve as being worth the effort.³² This seems to particularly be the case where to do otherwise would make a person appear foolish or stupid to themselves or others.

These two findings are potentially important in the context of law school. They suggest that if the content and methods of legal education are in conflict with aspects of students' previous learning or values, students may abandon their earlier beliefs rather than challenge their new learning. In particular, research suggests that the intense pressure and competitive success norms that pervade law school can result in students abandoning or re-appraising their altruistic values or public service goals in favor of those that they see endorsed within law school.³³ Granfield supports this argument and asserts that the dominant ideology of many United States law schools is 'corporatist'.³⁴ Drawing on field work he conducted in a large, prestigious law school in the United States (termed 'Ivy'), Granfield argues that the corporatist ideology not only channels students' interests and goals toward the private/corporate sector of legal work, but also replicates the frenzied atmosphere and high work pressures of many large corporate enterprises. He found that although many students entered law school with the desire to act in the public interest, in the law school environment these values were quickly compromised.

The corporatist ideology presents itself in many different ways at Ivy ... Many students entering Ivy view legal education as a vehicle for socially meaningful and important work.

³⁰ Ibid; J Alessandri, JC Darcheville and TR Zentall, 'Cognitive Dissonance in Children: Justification of Effort or Contrast?' (2008) 15 *Psychonomic Bulletin & Review* 673.

³¹ E Aronson and J Mills, 'The Effect of Severity of Initiation on Liking for a Group' (1959) *Journal of Abnormal and Social Psychology* 59.

³² Ibid 62.

³³ Sheldon and Krieger, 'Does Legal Education have Undermining Effects on Law Students?', above n 8; Sheldon and Krieger, 'Understanding the Negative effects of Legal Education on Law Students', above n 11. See also: T Walsh, 'Putting Justice Back into Legal Education' (2007) 17 *Legal Education Review* 119.

³⁴ R Granfield, 'Legal Education as Corporate Ideology: Student Adjustment to the Law School Experience' (1986) 1(3) *Sociological Forum* 514.

This image of legal practice, however, is routinely attacked and de-valued at Ivy. A corporate-business ideal is supported by faculty ... by traditions, and by the placement office ... Corporate law, including the prestigious practice in large metropolitan law firms, is considered by many faculty to be the appropriate role for Ivy graduates.³⁵

These findings are also supported by Sheldon and Krieger. In their extensive research on changes in law student motivation, values and wellbeing throughout law school, they found that from early on in their studies, many law students re-orient themselves away from the positive values they brought with them to law school and towards more superficial extrinsic values.³⁶ In particular, in a recent study of nearly 500 law students in two law schools in the United States, they found a significant decline in the endorsement of intrinsic values (such as community service), and a significant move towards extrinsic values (such as appearance and image), throughout the first year of studying law.³⁷ They noted that a high number of first year students soon changed their motivation for studying law, with fewer reporting that they pursued their study for reasons of interest and enjoyment, and more reporting that they did it to please and impress others.³⁸ Finally, the researchers noted that those students who did achieve high grades in the first semester of their study, often shifted towards high-stress, money-oriented legal work and away from more service-oriented careers.³⁹ This shift was reflected in the words of one law student, who wrote:

The change from public interest to corporate interest is related to ... the implicit message that smart people do corporate work. Smart people don't, as one professor says deal with the petty problems of everyday people. There's a clear message that poverty law is not interesting and that anyone can do legal aid work but only the elite can do large firm corporate work.⁴⁰

In other research, it is argued that the dispassionate nature of legal reasoning contributes to students' willingness to reject their broader social values in law school.⁴¹ As the case-based method of teaching encourages students to focus on analytical reasoning, abstraction, de-personalising the parties and moral neutrality, it generally requires them to set aside the values and beliefs they brought with them to law school.⁴² Students are taught to base their arguments on 'pragmatic strategies designed to guarantee victory'⁴³ and to ignore the broader social and moral principles involved. This focus, although important to the development of analytical legal skills, can result in devaluation of a student's more subjective and non-rational qualities such as feeling, values and

³⁵ Ibid 517.

³⁶ Sheldon and Krieger, 'Understanding the Negative effects of Legal Education on Law Students', above n 11; Sheldon, and Krieger, 'Does Legal Education have Undermining Effects on Law Students?', above n 8.

³⁷ Sheldon and Krieger, 'Understanding the Negative effects of Legal Education on Law Students', above n 11, 893.

³⁸ Sheldon, and Krieger, 'Does Legal Education have Undermining Effects on Law Students?', above n 8, 281.

³⁹ Ibid.

⁴⁰ Quoted in Granfield, above n 34, 518.

⁴¹ Krieger, 'Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking The Silence', above n 17; Glesner, above n 1; Krieger, 'What We're Not Telling Law Students - and Lawyers - That They Really Need to Know', above n 11.

⁴² See also: The Carnegie Foundation for the Advancement of Teaching, *Educating Lawyers: Preparation for the Profession of Law* (2001).

⁴³ Granfield, above n 34, 515.

intuition.⁴⁴ As Glesner notes ‘[i]f we are reluctant to explore the differences in student values and attitudes, we are teaching them that analysis and reason are the only important aspects of lawyering. This attitude causes the most stress to those whose attitudes are being excluded.’⁴⁵

Rationalisation is also important to how students respond to the challenges of law school. If students experience disharmony or confusion about the content or processes of legal education, and their own values and experiences, they can ‘neutralise’ this dissonance by arguing that such feelings are common or by separating off their approach to their study from the rest of their lives.⁴⁶ In this context, common rationalisations can include, ‘Everyone else is doing it’; ‘This is what I need to do to succeed/survive’; or ‘This is how things are done in law school’.

Furthermore, students can be encouraged in this approach by the pressures to conform within law school.⁴⁷ Research in psychology suggests that people tend to accept the definitions of reality provided to them by a legitimate authority, and to strive to achieve conformity within their group.⁴⁸ As a result, whilst students often do not agree with the teaching and assessment practices used in law school, the hierarchical and competitive nature of this environment can encourage students to be compliant about their legal education experience. Students can also feel pressured to conform with their peers because of concern about their reputations, job prospects and academic success. As one law student noted, ‘I felt under a steady, insistent pressure to conform and that’s the only way you’re going to have a decent time of it here.’⁴⁹ Another student said:

I found people who wouldn’t look at me in the hallways ... making snide remarks about my classroom comments ... I felt that people discredited me after a very short while and I found this particularly unsettling. I realized I had to be more judicious about my comments or else lose my credibility entirely.⁵⁰

Finally, the idea that students might unconsciously value their law study more if it is difficult to achieve, can result in a silencing of their dissent on the issues of stress, high workload and personal struggle within law school. When the impersonal and individualised nature of studying law is also taken into account, it seems possible that students’ willingness to acknowledge the struggle of law school can be compromised by their unconscious need to maintain their self-esteem and belief in what they are doing. Yet, resulting decreases in confidence, wellbeing and career/life satisfaction can result from this denial. As Krieger notes, much of the attention of law students is focused on deferred external rewards such as high grades, impressing others and gaining image or status.

⁴⁴ H Brayne, *Logic, Emotion, Evolution and Law* (2001) Social Science Research Network <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=270410> at 3 July 2009.

⁴⁵ Glesner, above n 1, 663.

⁴⁶ Granfield, above n 34, 520.

⁴⁷ A Perlman, ‘Unethical Obedience by Subordinate Attorneys: Lessons from Social Psychology’ (2007) 36 *Hofstra Law Review* 451.

⁴⁸ S Milgram, *Obedience to Authority* (Harper and Row, 1974) 145; I Janis and L Mann, *Decision Making: A Psychological Analysis of Conflict, Choice and Commitment* (Free Press, 1977).

⁴⁹ Quoted in Granfield, above n 34, 521.

⁵⁰ *Ibid.*

[T]he heavy workload which law students ... typically undertake translates into diminished opportunities for one's self, one's important relationships, or for other inherently enjoyable or meaningful pursuits. All of this is truly unfortunate, since *none* of the external markers of achievement - class, standing, financial success, image or status - has been shown to correlate with a good life.⁵¹

All of this can be important to understanding how Australian law students might respond to negative evidence about student distress. It suggests that many students might struggle with the dissonance created by studying law and develop unconscious rationalisation patterns to cope. As a result, it may not be possible for these students to apply new information on student distress to their own experience. They may feel that it creates a risk that they will be seen by other students to be different or weak, or that it will challenge their identity and self-esteem. They can also rationalise that these experiences are a necessary part of the law school experience and that, as most students don't complain, the issues are not as serious as the research suggests.

IV THE POTENTIAL EFFECT OF COGNITIVE DISSONANCE AND RATIONALISATION ON ACADEMICS' RESPONSES TO ISSUES OF LAW STUDENT WELLBEING

For law school staff, cognitive dissonance and rationalisation can also affect our reactions to the research on student wellbeing. In particular, cognitive dissonance may arise when we become aware of the negative impact law school can have on our students. It may be hard to acknowledge that what we do can create a high risk of student distress. There can also be discomfort in knowing that we are involved in perpetuating a system that has been shown to have a detrimental impact on many of our students' goals and public service aspirations. As Krieger writes:

[W]e may fear that we undermine our own enterprise, or create unwanted anxiety, if we acknowledge openly with our students the significant problems apparently occurring in law schools ... We may feel put upon as well. After all, we are basically reproducing the system of legal education which we experienced and for which we had great aptitude as students ... [H]uman nature suggests that some of us will simply avoid the substantial effort that helpful changes might require – particularly if they come at a cost to our own comfort and convenience.⁵²

Furthermore, powerful rationalisations can work to undermine our individual willingness to respond to the issues of student wellbeing. We may reason that we are ill-equipped to deal with these problems or that it is not our job to address them in the law school environment. We can develop arguments that 'I am not trained for this'; 'Things really aren't that bad'; or 'It's always been this way'. Some academics may try to argue that these problems have always existed as students with a propensity for negative thinking, extrinsic values or emotional problems are disproportionately drawn to law school. However, as Krieger notes, rather than being legitimate these responses just facilitate our avoidance of the problems. 'Regardless of individual motives for [the] inertia, the collective result is clear: few faculties address these problems to any greater extent than if these problems did not exist at all.'⁵³

⁵¹ Krieger, 'Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking The Silence', above n 17, 116 (emphasis added).

⁵² Ibid 116.

⁵³ Ibid.

Finally, from a group perspective, there can also be resistance to new perspectives or change in the focus of legal education. Over the last decade, Australian law schools have been challenged to incorporate more skills and ethics into the curriculum, to modernise methods of legal education and to provide more marketable and commercially successful undergraduate and postgraduate courses. These demands have encouraged many law schools to adopt ideological positions on what they consider to be the most important aspects of curriculum reform. And research on the psychology of decision making suggests that once these decisions are made, there can be a strong inclination to resist further change. A confirmation bias can ‘kick in’ that encourages groups to reject or interpret new information in ways that support their pre-existing positions.⁵⁴ There can also be a systemic and powerful bias towards maintaining the status quo. This can lead to claims that unless change is essential, our programs and processes should largely remain the same. Krieger argues that this approach has influenced a large number of law schools in the United States, with the result that they continued to ‘maintain the status quo, at times by ignoring the problems outright, and at other times by deflecting concern in ways that avoid any constructive approach to them.’⁵⁵

V CONCLUSION

It is therefore important that Australian law schools work now to avoid the unintentional denial and rationalisation that can occur around issues of student wellbeing. In particular, we need to start by taking seriously the research that has started in Australia, and which continues to be carried out in the United States. Together this research provides a strong framework for discussion on the many relevant issues that can be involved in law student psychological distress, along with suggestions for reform.

It is also important that we engage in discussion with our students *now*. By talking with students, we communicate that who they are and what they are experiencing in law school matters to us. Granfield argues that we should always be aware of the experience of the significant number of students who do not fit into the dominant ideology of law school.⁵⁶ For many of these students, maintaining their belief in who they are or what they value is a constant struggle. In particular, he suggests that those students with strong social, political and emotional responses to studying law are often silenced on the basis that they are ‘not thinking like a lawyer’.⁵⁷ As one first year student wrote, ‘I felt very alienated because I felt like I was resisting all the time. There was a general kind of attitude that what I had to say was unimportant or irrelevant to the legal discussion ... I was considered out of place in this context’.⁵⁸

The role of universities and law schools in responding to these issues together is crucial. Institutional and peer group recognition is important to counter academic and student tendencies to dismiss or rationalise evidence on law student distress. Responses can include explicitly encouraging initiatives to increase awareness of mental health issues

⁵⁴ R S Nickerson, ‘Confirmation Bias: A Ubiquitous Phenomenon in Many Guises’ (1998) 2 *Review of General Psychology* 175.

⁵⁵ Krieger, ‘Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking The Silence’, above n 17, 115.

⁵⁶ Granfield, above n 34, 521.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

by both staff and students, and establishing links between law schools and providers of professional counseling services within universities. Law students can also benefit from being taught specific mechanisms to cope with stress, anxiety, competition and depression. As many of these strategies involve students learning important life skills, these techniques can be applied to all aspects of their lives, including to legal practice.

Finally, it is important that law schools consider how to create environments where both academic staff and students are encouraged to reflect on the impact of legal education on their own thinking and emotional wellbeing. In particular, links can be made between values, wellbeing and life satisfaction. A spectrum of respected sources tell us that high levels of emotional health, maturity and life satisfaction come from understanding and expressing our values, commitments and character.⁵⁹ Habits of self-awareness can result in actions that naturally express aspects of ourselves and provide us with a strong sense of integrity and happiness. These habits can also make us more aware of the ways in which those around us may be struggling. In this context, empathy and compassion can work as particularly powerful antidotes to the abstract legalism and isolation of law school. These behaviors are also important elements of a human oriented system of legal education.

⁵⁹ At the broadest level see the two ancient writings: L Tsu, *Tao Te Ching* (School & Library Binding, 6th Century BC) (translation); and Vyasa, *Bhagavad-Gita* (2nd Century BC) (translation).