

**IMPLEMENTING ABA STANDARD 303(b)(3):
POSITIVE LEGAL EDUCATION THROUGH A
COMMUNITY OF INQUIRY**

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ABSTRACT

According to William Adams, Executive Director of Legal Education and Bar Admissions at the American Bar Association (ABA), “Full implementation [of 303(b)(3)] [was] expected by 2023.” The revised Standard requires that law schools provide “substantial opportunities” for professional identity development (PID). Though the ABA’s Standards and Rules of Procedure for Approval of Law Schools and the related interpretations allow flexibility, the ABA left law schools without detailed guidance; without a unified professional identity concept, law schools across the country will implement a patchwork of programs, some stronger than others, that may curtail a global strengthening of the profession. Fortunately, scholars at the University of St. Thomas School of Law’s Holloran Center have conceptualized a socialization process that develops professional identity. Yet even that excellent work leaves the granular teaching methods to law schools’ and professors’ discretion. While prior efforts have addressed broader curriculum reform for PID, this Article builds on previous scholarship and offers an andragogy option for delivering PID at the classroom level. Adopting the Foundational Competencies Model (FCM) and Four Foundational Professional Development and Formation Goals (PD&F Goals), this Article revisits Professor Debra S. Austin’s call for a Positive Legal Education (PLE) movement. The Article suggests that, when combined with the Community of Inquiry (CoI) teaching framework and andragogy methods, positive legal education provides an ideal philosophy for meeting the PD&F Goals to achieve the FCM. The discussion includes suggestions for law schools to employ positive psychology in a CoI so that students can learn, grow, and flourish while in law school, on the bar exam, and in the profession. The appendices provide a timeline of major developments in legal education, a lesson plan template, and an example of the template in use. With a PLE/CoI andragogy model, the academy can improve law student well-being and help develop professional identities through achieving the PD&F Goals that establish FCM. Those professional strengths can trickle into law practice for a healthier profession with thriving attorneys who flourish.

INTRODUCTION

Positive Psychology: “[T]he scientific study of human flourishing. It focuses on individuals’ and communities’ positive aspects and strengths as a path to wellbeing.”¹

Positive Education: “Positive education is the combination of traditional education principles with the study of happiness and wellbeing.”²

Community of Inquiry³: “An educational community of inquiry is a group of individuals who collaboratively engage in purposeful critical discourse and reflection to construct personal meaning and confirm mutual understanding.”⁴

1. Jeremy Sutton, *Martin Seligman’s Positive Psychology Theory*, POSITIVEPSYCHOLOGY.COM (Oct. 4, 2016), <https://positivepsychology.com/positive-psychology-theory>; *see also* Martin E.P. Seligman & Mihaly Csikszentmihalyi, *Positive Psychology: An Introduction*, 55 AM. PSYCH. 5, 5, 12–13 (2000); MARTIN E.P. SELIGMAN, FLOURISH: A VISIONARY UNDERSTANDING OF HAPPINESS AND WELL-BEING 36–38 (2011).

2. Catherine Moore, *What Is Positive Education, and How Can We Apply It?*, POSITIVEPSYCHOLOGY.COM (Feb. 24, 2020), <https://positivepsychology.com/what-is-positive-education>.

3. The community of inquiry is broadly defined as any group of individuals involved in a process of empirical or conceptual inquiry into problematic situations. According to C.S. Peirce, “Unless we make ourselves hermits, we shall necessarily influence each other’s opinions; so that the problem becomes how to fix belief, not in the individual merely, but in the community.” Charles S. Peirce, *The Fixation of Belief*: 12 POPULAR SCI. MONTHLY 1, 7–8 (1877), <https://philpapers.org/archive/PEITFO.pdf>. This paper concerns the concept within a law school setting, as opposed to, for example, a political think tank.

4. *About the Framework: An Introduction to the Community of Inquiry*, THE CMTY. OF INQUIRY, <https://www.thecommunityofinquiry.org/coi> (last visited May 12, 2024).

For decades, the legal academy has bemoaned that legal education wants for innovation,⁵ and the American Bar Association (ABA), alarmed with waning professionalism, systemic racism, and poor lawyer mental health,⁶ has conducted numerous studies that have influenced revisions for the Standards and Rules of Procedure for Approval of Law Schools (ABA Standards), including the recent Standard 303 revision.⁷ Beginning with the 2023–2024 academic year, law schools must offer students “substantial opportunities” for professional identity development.⁸ However, the new Standard 303(b)(3) poses an ambiguous mandate without suggestions for implementation or data-tracking that might prove compliance.⁹

5. One need only look to the Journal of Legal Education archives, going back to volume one in 1948, to find numerous examples of articles that debate the then-state and future of legal education. *See, e.g.*, Millard F. Caldwell, *The Law School of the Future*, 1 J. LEGAL EDUC. 388, 393 (1949). Since 1952, the Council of the Section on Legal Education and Admissions to the Bar has been an organization separate from the ABA and is the law school accrediting agency recognized by the U.S. Department of Education. The first standards were adopted in 1921. The Standards have been revised many times. *See* AM. BAR ASS'N, SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2023–2024 (2023), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/2023-2024-aba-standards-rules-for-approval.pdf. Other major developments to the Standards include, the *Ramsey Commission* (1972–1973), the *Whal Commission Consent Decree* (1992–1996), 2000, 2006, 2008–2014, and minor revisions since 2014. The Council has undertaken several periodic reviews and annually seeks suggestions and proposed changes. *See* Susan Katcher, *Legal Training in the United States: A Brief History*, 24 WIS. INT'L L.J. 335 (2006); Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933); *see also* John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 160–62 (1993) (discussing the Langdellian Socratic case method and its shortcomings, focused more on economic viability to sustain a law school rather than student-centered, practical education).

6. *See* AM. BAR ASS'N, *supra* note 5, Standard 303 (Interpretations 303-5, 303-8), at 19–20; *see also* Memorandum from Standards Committee to the Council Regarding Proposed Changes to Standards 205 and 206, 303 and 508, and 507 (May 7, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/may21/21-may-standards-committee-memo-proposed-changes-with-appendix.pdf; Memorandum from Scott Bales Chair, ABA Council on Legal Educ. & Admissions to the Bar & William Adams, Managing Dir., Accreditation and Legal Educ. to Interested Persons Regarding ABA Standards and Rules of Procedure—Matters for Notice and Comment—Standards 303 and 508 and Rules 2 and 13 (Mar. 1, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/may21/21-may-standards-committee-memo-proposed-changes-with-appendix.pdf (proposing amendment to ABA accreditation Standard 508, which recognizes the need of law schools to provide for student well-being due to concerns over mental health).

7. Bales & Adams, *supra* note 6, at 2 (discussing proposed revision to Standard 303 that includes explicit reference to the formation of professional identity); *see also* AM. BAR ASS'N, *supra* note 5, Standard 303.

8. AM. BAR ASS'N, *supra* note 5, Standard 303(b) (Interpretations 303-5, 303-8), at 19–20; *see also* AM. BAR ASS'N, *supra* Standard 304(a)(3).

9. *See* Bales & Adams, *supra* note 6, at 2–4 (lacking objective criteria to meet Standard 303 even in the interpretations); AM. BAR ASS'N, *supra* note 5, at 18.

Meanwhile, after repeated studies over decades, the status quo remains relatively unchanged for legal professionals: Substance abuse rates and mental health disorders and their symptoms are significantly higher among law students and lawyers, compared with the general population.¹⁰ Studies over the decades have also made clear that law school itself causes poor mental health.¹¹ Despite awareness and various efforts, the data has never seen statistically significant improvement.¹² Apparently, lack of intentionality creates a professional identity mired in misery.

Most professors and schools maintain obsolete educational practices, such as grading curves, rankings, and the Langdellian Socratic case method—teaching techniques that mind, brain, and education science has proven to drive toxic competitiveness, personal silos rather than communities, and poor mental well-being among law students.¹³ Studies have also proven that the mental health problems that students develop during law school carry into the profession.¹⁴ As the National Task Force on Lawyer Well-Being explained in 2017:

To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal services, to increase access to justice, and to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now. Change will require a wide-eyed and candid assessment of our

10. See Jordana Alter Confino, *Where Are We on the Path to Law Student Well-Being?: Report on the ABA CoLap Law Student Assistance Committee Law School Wellness Survey*, 68 J. LEGAL EDUC. 650, 650 (2019); *Mental Health Information*, ABA (last visited May 12, 2024), https://www.americanbar.org/groups/law_students/resources/mental-health/information; *Law Deans Clearinghouse for Mental Health*, THE ASSOC. OF AM. L. SCHS. (last visited May 12, 2024), <https://www.aals.org/mental-health-clearinghouse>; Mike Robinson, 6 *Law Student Mental Health Statistics*, CLIO (Aug. 10, 2023), <https://www.clio.com/blog/law-student-mental-health-statistics>.

11. Janet Thompson Jackson, *Legal Education Needs a Wellness Reckoning*, BLOOMBERG L. (Apr. 7, 2021), <https://news.bloomberglaw.com/us-law-week/legal-education-needs-a-wellness-reckoning>.

12. See Amy Gallo, *A Refresher on Statistical Significance*, HARV. BUS. REV. (Feb. 16, 2016), <https://hbr.org/2016/02/a-refresher-on-statistical-significance>.

13. See Valerie Strauss, *School Environments Can Be Toxic. Why and How They Must Change*, WASH. POST (Jan. 9, 2022), <https://www.washingtonpost.com/education/2022/01/09/toxic-school-environments-must-change> (discussing that students from all ages are having increased mental health issues from pressure in school); Pilar Melendez, *'Toxic Culture': Prominent Law School Dean Quits After Students Stage Walkout*, DAILY BEAST (Oct. 7, 2021), <https://www.thedailybeast.com/university-of-montana-dean-paul-kirgis-amid-allegations-of-trying-to-stifle-title-ix-cases>; g-house_kitten69, *Why Is Everyone So Toxic*, REDDIT (Apr. 12, 2022), https://www.reddit.com/r/LawSchool/comments/u2g96q/why_is_everyone_so_toxic/?rdt=59764.

14. See David Jaffe et al., *"It Is Okay to Not Be Okay": The 2021 Survey of Law Student Well-Being*, 60 LOUISVILLE L. REV. 441, 441–96 (2022).

members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer.¹⁵

What if the legal academy sets aside professors' pontifications and antiquated teaching methods for a healthier learning framework that benefits students, professors, law school communities, and the profession?

This Article embraces Neil Hamilton and Louis Bilonis's Foundational Competencies Model (FCM) and Four Foundational Professional Development and Formation Goals (PD&F Goals) while echoing Debra S. Austin's call for a Positive Legal Education movement (PLE).¹⁶ This Article adds an andragogic teaching framework, the Community of Inquiry (CoI), applied with positive psychology.¹⁷ With an intentional, student-focused andragogy classroom structure, law professors may better impart the foundational competencies for professional identity development. The structure, with clear institutional and course objectives, can help law schools measure professional identity development outcomes that prove compliant with ABA Standard 303(b)(3).¹⁸

Following this introduction, Part I provides a stark reminder about the sad state of law student and attorney mental health, a status quo that law schools and the profession can't seem to overcome. Part II provides an overview of positive psychology/education, and Part III explains the CoI. This Article then brings the concepts together and argues that PLE applied in a CoI offers a solution for implementing ABA Standard 303(b)(3) so that students may realize the Hamilton/Bilonis PD&F Goals for FCM. More importantly, this proposal hopes to arouse a much-needed cultural shift in legal education. With the PLE/CoI teaching framework, the academy can shift focus from its shortcomings, problems to repair, and realize how best to

15. *Report from the National Task Force on Lawyer Well-Being*, ABA (Nov. 9, 2018), https://www.americanbar.org/groups/lawyer_assistance/task_force_report.

16. *See infra* notes 85 & 19 and accompanying text.

17. *See infra* notes 101 & 19 and accompanying text.

18. The ABA requires that law schools have objectives and learning outcomes. AM. BAR ASS'N, *supra* note 5, Standard 301(b), at 17; *see also* Debra S. Austin, *Positive Legal Education: Flourishing Law Students and Thriving Law Schools*, 77 MD. L. REV. 649, 652, 656, 685, 693 (2018). However, the Council has proposed revisions to Standard 302 that will impact institutional level objectives. *See* Memorandum from Bridget Mary McCormack, Chair, Council on Legal Educ. & Admissions to the Bar and William Adams, Managing Dir. Of Accreditation & Legal Educ. to Interested Parties and Entities Regarding Matters for Notice and Comment: Standards Revisions related to Academic Freedom and Freedom of Expression, Learning Outcomes and Assessment, and Library and Information Resources 4–6 (Aug. 30, 2023), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/2023/23-aug-notice-comment-acad-freedom-outcomes-assessment-library.pdf.

use institutional and teaching strengths that already exist. The model helps law schools build competent, self-reliant, resilient professionals with purpose, grit, and compassion—lawyers who can flourish as professionals. These traits are essential for mental well-being during and beyond law school.¹⁹

This Article does not conclude; instead, it invites a continuous conversation about legal education's strengths so the academy and the profession may move legal education forward in ways that grow strong, adaptable, positive professional identities—law students and lawyers who flourish.

I. STATUS QUO AND THE HOPES FOR STANDARD 303(b)(3)

The legal industry and law schools have a well-being and substance abuse crisis.²⁰ Perhaps it always has. Since at least the early 20th century, scholars have considered these issues, and the most recent Law Student Survey on Well-being revealed that even the most ardent efforts, such as the National Task Force on Lawyer Well-Being, have hardly made inroads for systemic change.²¹ The prior work has culminated in the 2023–2024 Standards and Rules of Procedure for Approval of Law Schools (ABA Standards), including revisions to Standards 303 and 508.²² Though intentions are good, the lack of clear guidance favoring flexibility for law schools has created an undocumented hodgepodge of professional identity development (PID) and mental well-being approaches (assuming schools have created PID programs).²³ Inconsistent programming and outcomes may

19. Austin, *supra* note 18, at 693.

20. See Confino, *supra* note 10, at 650; *Mental Health Information*, *supra* note 10; *Law Deans Clearinghouse for Mental Health*, *supra* note 10; Robinson, *supra* note 10.

21. See Confino, *supra* note 10, at 650; *Mental Health Information*, *supra* note 10; *Law Deans Clearinghouse for Mental Health*, *supra* note 10; Robinson, *supra* note 10; see also Jerome M. Organ et al., *Helping Law Students Get the Help They Need: An Analysis of Data Regarding Law Students' Reluctance to Seek Help and Policy Recommendations for a Variety of Stakeholders*, 66 AM. U. WASH. COLL. L. 8, 9, (2015).

22. AM. BAR ASS'N, *supra* note 5, Standard 303 (Interpretations 303-5, 303-8), at 19–20.

23. Compare, e.g., California Western School of Law, *STEPS Notice* (Fall 2023), https://www.cwsl.edu/files/registrar/stepps_notice.pdf (discussing CWSL's recent decision to suspend and reevaluate its long-standing professional identity development program), with *Inn of Court*, DETROIT MERCY L., <https://law.udmercy.edu/academics/experiential-education/inn-of-court.php> (last visited May 12, 2024) (explaining its 3L Inns of Court program), and Neil Hamilton, *Standard 303 and the Development of Student Professional Identity: A Framework for the Intentional Exploration of the Profession's Core Values*, 20 U. ST. THOMAS L.J. 1, 6–8 (forthcoming 2024), https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4598227_code39730.pdf?abstractid=4598227&mirid=1 (explaining the University of St. Thomas 303(b)(3) implementation framework).

dampen hope for statistically significant improvements in law student and lawyer well-being as a profession that operates nationally and globally.

A. The Ongoing Sad State of Legal Education

Though conversations about professional identity development and mental well-being in law date back to at least 1914,²⁴ the recent movement to add a mandate for PID and mental well-being concepts into the law school curriculum began earnestly after the 1992 *MacCrate Report*.²⁵

The *MacCrate Report* was perhaps inspired in part by a longitudinal study conducted from 1981 to 1984 at Arizona Law School.²⁶ That study was published in 1986.²⁷ Researchers followed 320 law students and found that, before law school, students experienced mental distress symptoms²⁸ at the same rate as the general population. However, after beginning law school, 17–40% suffered from depression (depending on demographic), and 20–40%

24. See JOSEF REDLICH, THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, BULLETIN NO. 8 (1914) (often referred to as the Redlich Report); ALFRED ZANTZINGER REED, CARNEGIE FOUND., TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, BULLETIN NO. 15 (1921) (the Reed Report I); see also John B. Sanborn, *Training for Public Profession of the Law*, 7 A.B.A. J. 615, 615 (1921) (noting that discussions regarding the state of legal education date back to the Civil War); James R. Maxeiner, *Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method*, 35 INT'L J. LEGAL INFO. 1, 1 (2007); Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 919, 923 (1933); Jerome Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20, 46–47 (1951); ASSOC. OF AM. L. SCHS., CURRICULUM STUDY PROJECT COMM., REPORT: TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW 33 (1971); Barry B. Boyer & Roger C. Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 256–57 (1974); AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS 11, 15, 19 (1979); Robert B. McKay, *What Schools Can and Should Do (And Sometimes Do)*, 30 N.Y.U. L. REV. 491, 511 (1985); see Eugene E. Clark, Am. Bar Ass'n, *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 4 LEGAL EDUC. REV. 1 (1992) (known as the “MacCrate Report”); see also John T. Costonis, *supra* note 5, at 190; see WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007), http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf; William M. Sullivan, *After Ten Years: The Carnegie Report and Contemporary Legal Education*, 14 U. ST. THOMAS L.J. 331, 332 (2018).

25. See *An Educational Continuum*, *supra* note 24.

26. G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress in Law Students and Lawyers*, 11 AM. BAR FOUND. RSCH. J. 225, 228 (1986).

27. *Id.* This empirical study notes the methodical shortcomings of prior studies about law student and lawyer mental health. See *id.* n.5 for a list of the various studies.

28. *Id.* (discussing that the symptoms measured included obsessive-compulsive behavior, interpersonal sensitivity, depression, anxiety, hostility, paranoid ideation, psychoticism).

reported “significant symptom elevations.”²⁹ The 1991 Association of American Law Schools (AALS) student survey made similar findings.³⁰

The *Carnegie Report*, in 2007, further hastened the effort to reinvent legal education.³¹ That analysis made five key observations:

OBSERVATION 1. Law School Provides Rapid Socialization into the Standards of Legal Thinking.

OBSERVATION 2. Law Schools Rely Heavily on One Way of Teaching to Accomplish the Socialization Process.

OBSERVATION 3. The Case-Dialogue Method of Teaching Has Valuable Strengths but Also Unintended Consequences.

OBSERVATION 4. Assessment of Student Learning Remains Underdeveloped.

OBSERVATION 5. Legal Education Approaches Improvement Incrementally, Not Comprehensively.³²

The Carnegie Foundation for the Advancement of Teaching recommended three legal education apprenticeships: (1) doctrine, (2) skills, and (3) professional identity—what it means to be a lawyer.³³ The American Bar Association (ABA) made some Standards revisions after the *Carnegie Report*, but subsequent student surveys (and lawyer surveys) revealed only slight improvement.³⁴

Seven years later, twenty-two years after the *MacCrate Report*, the 2014 Survey of Law Student Well-being covered fifteen law schools and revealed that 17% of law students had depression, and 37% had anxiety.³⁵ That same year, the Yale Mental Health Alliance found that an astounding

29. *Id.* at 246.

30. Robert A. Stein et al., *Report of the AALS Special Committee on Problems of Substance Abuse in the Law Schools*, 44 J. LEGAL EDUC. 35, 41 (1994).

31. See Sullivan, *supra* note 24, at 332–33; SULLIVAN ET AL., *supra* note 24, at 5.

32. SULLIVAN ET AL., *supra* note 24, at 5–7.

33. *Id.*

34. ABA, *Survey of Law Student Well-Being* (Mar. 20, 2020), https://www.americanbar.org/groups/lawyer_assistance/research/law_student_survey (includes an infographic with data; *but see also* Organ et al., *supra* note 21 (offering detailed analysis of the data)).

35. See Organ et al., *supra* note 21; Confino, *supra* note 10, at 653.

70% of Yale Law students “reported . . . mental health challenges.”³⁶ Two years later, a study of practicing attorneys found that of the 12,825 licensed and employed attorneys surveyed, 36.4% were problem drinkers,³⁷ 28% suffered depression,³⁸ and 19% were experiencing anxiety.³⁹ The *Hazelden Betty Ford* study noted that the rate of problem drinking among lawyers in 1990 was only 18%—the alcohol problem had almost doubled over 24 years.⁴⁰

The 2021 Updated Survey of Law Student Well-being (Updated SLSWB) is the most recent study, and the participating law schools more than doubled.⁴¹ The Updated SLSWB invited approximately 24,000 participants at 39 law schools; however, only 5,000 or 23% responded.⁴² Comparing the 2014 survey, alcohol consumption “within the past thirty days” (of answering the survey) declined from 53% to 44%, and binge-drinking within the prior two weeks declined from 43% to 33%.⁴³ However, according to Cut, Annoyed, Guilty, and Eye (CAGE) assessment responses, the percentage of law students who may be problem drinkers increased from 25% to 27%.⁴⁴ Thus, though in 2021, there were fewer law student drinkers, problem drinkers among them had increased, and the decrease in drinking shifted with gains in the use of street drugs and prescription drugs.⁴⁵

Meanwhile, more students in 2021 arrived at law school with a mental health diagnosis compared to 2014; 54% screened positive for anxiety or mental distress, with 43% reporting moderate to severe symptoms.⁴⁶ Suicidal

36. JESSIE AGATSTEIN ET AL., YALE L. SCH. MENTAL HEALTH ALL., FALLING THROUGH THE CRACKS: A REPORT ON MENTAL HEALTH AT YALE LAW SCHOOL 3, 14 (2014), https://law.yale.edu/sites/default/files/area/department/studentaffairs/document/falling_through_the_cracks.pdf.

37. Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 48, 51 (2016). Among women attorneys, 39.5% scored on the AUDIT-C compared to 19% of the general population of women, and for male attorneys, 33.7%, consistent with the general male population of 32%. *Id.* at 46, 48, 51.

38. *Id.* at 51.

39. *Id.*

40. Compared to 10% of the general population in 1990. Krill et al., *supra* note 37, at 46.

41. See Jaffe et al., *supra* note 14, at 442.

42. *Id.* at 451.

43. See Jaffe et al., *supra* note 14, at 455; see also *infra* note 56 and accompanying text.

44. See also Jaffe et al., *supra* note 14, at 456–57. The CAGE assessment has four questions, and a positive response to two or more indicates a propensity for alcoholism. See John A. Ewing, *The CAGE Questionnaire for Detection of Alcoholism*, 252 JAMA 252 (1984), reprinted in John A. Ewing, *The CAGE Questionnaire for Detection of Alcoholism*, 300 JAMA 2054, 2055 (2008) (stating that the CAGE questions published by JAMA have been “validated in numerous studies as a good, quick primary indicator of the need for further investigation”).

45. See Jaffe et al., *supra* note 14, at 459–60.

46. See *id.* at 463, 465.

ideation among law students also significantly increased since 2014.⁴⁷ The extent to which the pandemic and social distancing affected these statistics remains unclear. Nevertheless, over 40 years, substance abuse and mental health problems have remained relatively consistent.⁴⁸ For all the analysis and realizations, ABA Standards revisions and wellness efforts have done little to improve the literal sad state of legal education.

With public sentiment about the profession waning and a clear, relentless mental health and substance abuse crisis,⁴⁹ the ABA and other organizations convened the National Task Force for Lawyer Well-Being. The National Task Force for Lawyer Well-Being made several recommendations for law schools in its 2017 report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (the Task Force Report).⁵⁰ The Task Force Report called for a holistic approach and defined well-being as “a continuous process in which lawyers strive for thriving in each dimension of their lives: [emotional, occupational, intellectual, spiritual, physical, and social].”⁵¹ The report also notes that:

[W]ell-being is a team sport. The contexts in which we live and work, such as organizational and professional cultures can play a powerful role in helping or harming individual well-being. Each of us contributes to our workplace and institutional cultures, and each is affected by it. What this means is that we’re all in this together.⁵²

47. *See id.* at 467.

48. *See id.* at 454–60, 463.

49. *See* REPORT AND RECOMMENDATIONS: AMERICAN BAR ASSOCIATION TASK FORCE ON THE FUTURE OF LEGAL EDUCATION 9 (2014), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.pdf (noting criticisms of legal education); AM. BAR ASS’N, ABA SECTION OF LITIGATION, PUBLIC PERCEPTIONS OF LAWYERS: CONSUMER RESEARCH FINDINGS 8 (2002), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.pdf; Rebecca Love Kourlis, *Public Trust and Confidence in the Legal System: The Way Forward*, UNIV. OF DENVER: IAALS (Sept. 13, 2019), <https://iaals.du.edu/blog/public-trust-and-confidence-legal-system-way-forward>; *see also* NAT’L TASK FORCE ON LAW. WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 1, 23 (Aug. 14, 2017) [hereinafter PATH TO LAWYER WELL-BEING], <https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf>.

50. PATH TO LAWYER WELL-BEING, *supra* note 49, at 3.

51. *Id.* at 9 (emphasis added).

52. *Read the Report That Launched a Movement*, INST. FOR WELL-BEING IN L., <https://lawyerwellbeing.net/the-report> (last visited May 12, 2024).

In addition to the general recommendations for all stakeholders,⁵³ the Task Force Report made several recommendations for law schools:

27. Create Best Practices for Detecting and Assisting Students Experiencing Psychological Distress.
 - 27.1 Provide Training to Faculty Members Relating to Student Mental Health and Substance Use Disorders.
 - 27.2 Adopt a Uniform Attendance Policy to Detect Early Warning Signs of Students in Crisis.
 - 27.3 Provide Mental Health and Substance Use Disorder Resources.
28. Assess Law School Practices and Offer Faculty Education on Promoting Well-being in the Classroom.
29. Empower Students to Help Fellow Students in Need.
30. Include Well-Being Topics in Courses on Professional Responsibility.
31. Commit Resources for Onsite Professional Counselors.
32. Facilitate a Confidential Recovery Network.
33. Provide Education Opportunities on Well-being Related Topics.
 - 33.1 Provide Well-Being Programming During the 1L Year.
 - 33.2 Create a Well-Being Course and Lecture Series for Students.

53. See PATH TO LAWYER WELL-BEING, *supra* note 49, at 4 (noting as stakeholders judges, regulators, legal employers, bar associations, law schools, lawyers, professional liability insurance carriers, and lawyer assistance programs; The ABA House of Delegates adopted a resolution at the 2018 Mid-Year Meeting urging stakeholders to adopt the recommendations).

34. Discourage Alcohol-Centered Social Events.
35. Conduct Anonymous Surveys Relating to Student Well-Being.⁵⁴

Recommendations 27–32 are somewhat reactionary programming to assist students already in crisis, while only 33–35 are preventative.

In August 2019, Bree Buchanan and Johnnie Nguyen wrote to the Bar Council of the Section of Legal Education and Admissions to the Bar on behalf of the ABA Commission on Lawyer Assistance Programs, The National Task Force on Lawyer Well-Being, and the ABA Law Student Division.⁵⁵ Citing the *Law Student Survey* and the *Hazelden Study*,⁵⁶ the letter bluntly stated, “[l]aw students are experiencing significant challenges in the areas of substance use (including alcohol) and mental health.”⁵⁷ Buchanan and Nguyen’s organizational constituents urgently requested that the ABA:

1. [A]rticulat[e] professional well-being as a fundamental learning outcome in Section 302;
2. [Interpret] Section 303 [to require] that two hours in the Professional Responsibility course be dedicated to education on substance use and mental health;
3. [E]nsur[e] that law school student services as defined in Section 508 include the substance use and mental health counseling desperately needed on every campus in this era.⁵⁸

The ABA Council acted. In March 2021, Scott Bales, then Council Chair of the ABA Section on Legal Education and Admission to the Bar, and William Adams, Managing Director of Accreditation and Legal Education at the ABA, provided a Memorandum for Notice and Comment (March 2021

54. *Id.* at 5.

55. Letter from Bree Buchanan, Chair, ABA Comm’n on Law. Assistance Programs et al., to Mary Kearin, Admin. Assistant, ABA Council of the Section of Legal Educ. & Admissions to the Bar (Aug. 12, 2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/august-2019/19-aug-d5b-comments-on-substance-abuse-and-well-being.pdf [hereinafter Buchanan Letter].

56. Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 116 (2016); Krill et al., *supra* note 38.

57. Buchanan Letter, *supra* note 55.

58. *Id.*

Memo) for proposed changes to Standards 303 and 508.⁵⁹ As to Standard 303 and the proposed mandate to provide “substantial opportunities” for “professional identity development,” the March 2021 Memo explains that:

Interpretation 303-5 allows flexibility so that law schools can incorporate opportunities for student professional identity development into the curriculum, co-curricular activities, and professional development activities in meeting this part of the Standard while also defining “professional identity.”⁶⁰

And for Standard 508, the March 2021 Memo explained:

Recognizing concerns about mental health and substance abuse among law students, student well-being resources were added to the list of required student support services listed in Standard 508. “The Standard has also been updated to define both “student well-being resources” and “reasonable access” so that these clearly define what is required by the Standard.⁶¹

Ultimately, the ABA amended Standard 303(b), adding subsection 3,⁶² requiring that law schools “provide substantial opportunities”⁶³ to develop professional identity—an identity that should include mental well-being.⁶⁴ The Standard 303 revision also adds a subsection c that requires cross-cultural anti-bias training, at least at the beginning of law school and once more before graduation.⁶⁵ The ABA also amended Standard 508, adding a provision requiring schools to provide student well-being resources to avoid the stigma associated with seeking such resources.⁶⁶ The revisions of Standards 303(b)–(c) and 508 were born of articulated needs, including concerns about mental health issues, substance abuse, suicidality, and career

59. Bales, *supra* note 6, at 1.

60. *Id.*

61. *Id.*

62. AM. BAR ASS’N, *supra* note 5, Standard 303(b), at 18.

63. *Id.*

64. *Id.* Standard 303 (Interpretation 303-5), at 19.

65. *Id.* Standard 303 (Interpretation 303-6), at 19.

66. *Id.* Standard 508 (Interpretation 508-1), at 37–38; AM. BAR ASS’N HOUSE OF DELEGATES, RESOLUTION ADOPTING COUNCIL OF THE SECTION OF LEGAL EDUCATION AND ADMISSIONS FEBRUARY 2022 AMENDMENTS TO STANDARDS 205, 303, 507, AND 508 at 7–8, 10 (2022), <https://www.americanbar.org/content/dam/aba/administrative/news/2022/02/midyear-hod-resolutions/300.pdf>.

dissatisfaction.⁶⁷ The ABA fully implemented the revisions in the fall of 2023.⁶⁸ However, in preserving flexibility, law schools are left to invent multiple opportunities in an already crowded curriculum without any guidance to track outcomes.⁶⁹ Of course, Standard 303 does not explicitly require outcomes, merely “opportunities.”⁷⁰ However, if a school is to devote resources towards intentional efforts that build students’ professional identity development, administrators and regional accreditors will likely want proof that a program achieves its goals. Indeed, the U.S. Department of Education has expectations.⁷¹

During the comment period for the ABA Standards 303 and 508 revisions, more than 40 comments were offered about the Standard 303 revisions; the comments were overwhelmingly supportive.⁷² However, some professors expressed concerns about the practicality of defining professional identity and the challenges of measuring outcomes. Professor Kenneth Klein, California Western School of Law, noted:

67. See AM. BAR ASS’N, *supra* note 5, Standard 303 (Interpretations 303-5, 303-8), at 19–20; see also Bales, *supra* note 6, at 2 (listing concerns over mental health and substance abuse as motivators of the revisions).

68. See AM. BAR ASS’N, *supra* note 5, at vii (noting the standards were approved through August 2023); see also *List and Explanation of Standards*, ABA, https://www.americanbar.org/groups/legal_education/resources/standards (last visited May 12, 2024).

69. Neil W. Hamilton & Louis D. Bilonis, *Revised ABA Standards 303(b) and (c) and the Formation of a Lawyer’s Professional Identity, Part 1: Understanding the New Requirements*, NALP BULLETIN+: PDQ (NAT’L ASSOC. FOR L. PLACEMENT), May 2022, <https://www.nalp.org/revised-aba-standards-part-1> (citing email from Professor Kendall Kerew to Neil Hamilton summarizing a communication from William Adams to the deans).

70. AM. BAR ASS’N, *supra* note 5, Standard 303 (Interpretations 303-5, 303-8), at 18–20.

71. See *generally Accreditation: Postsecondary Education Institutions*, U.S. DEPT. OF EDUC., <https://www.ed.gov/accreditation> (last visited May 12, 2024); see also *U.S. Department of Education Takes Action Against Five Schools for Disbursing Federal Student Aid to Students Enrolled in Unaccredited Programs*, U.S. DEPT. OF EDUC. (Aug. 24, 2023), <https://www.ed.gov/news/press-releases/us-department-education-takes-action-against-five-schools-disbursing-federal-student-aid-students-enrolled-unaccredited-programs>.

72. *Notices of Proposed Standards Changes and Responses to Proposed Standards Changes*, ABA, https://www.americanbar.org/groups/legal_education/resources/notice_and_comment (last visited May 12, 2024); see E-mail from Christopher Newman, Visiting Professor of Prac., Externship Program, Univ. of Denver Sturm Coll. of L., to Fernando Mariduena, Paralegal, Am. Bar Ass’n, Comment on Standard 303 (Mar. 5, 2021, 11:41:27 AM) (supporting the revision and noting prior scholarship on the issue); Letter from Lauren Bartlett & Anjum Gupta, Co-Presidents, Clinical Legal Educ. Ass’n, to Council of the Sec. of Legal Educ. & Admissions to the Bar, Am. Bar Ass’n, (Mar. 2021), (explaining that professional identity development is a central objective of experiential legal education); E-mail from Cindy Archer, Professor of Lawyering Skills, Univ. of California Irvine Sch. of L., to Fernando Mariduena, Paralegal, Am. Bar Ass’n, (Apr. 14, 2021, 6:38:12 PM) (supporting the revision and suggesting that it does not go far enough and should also consider a lawyer’s role to society).

Any lawyer, judicial officer, or law professor would support repetitively exposing law students to what it means to be a professional. But identifying and assessing values and personality traits seems fraught. The identification of *which* are the correct values and personality traits would seem doomed to a disturbing frequency of doing much harm on metrics of implicit bias, systemic racism and sexism, and equity considerations. And it is far from apparent *how* one would assess the development of values and personality traits.⁷³

And that is where the legal academy finds itself, with well-intentioned standards and little guidance for implementing or measuring professional identity development outcomes.

Given the academy's notorious inertia⁷⁴ against change and its attachment to bad or absent andragogy, law schools, at least for the foreseeable future, will probably continue consorting with known problematic instruction that breeds toxic cultures, mental illness, and substance abuse.⁷⁵ Studies make clear that lawyers' mental health issues begin or are exacerbated in law school, and those problems come into law practice.⁷⁶ The andragogical shortcomings introduce young lawyers into the profession with diminished mental well-being and weak professional identities.⁷⁷ Law school culture hangs off classroom demands, and law professors' andragogical approaches must support community, rather than competition, if we are to see the needed cultural shift.

Perhaps the legal academy perpetuates a self-defeating prophecy through periodic study that shows no improvement—that's just how it is? Until law schools make a solid effort to exorcise bad teaching (i.e., grading curves, rankings, and poorly employed Langdellian Socratic case method),⁷⁸

73. E-mail from Kenneth S. Klein, Professor of L., California W. Sch. of L., to Fernando Mariduena, Paralegal, Am. Bar Ass'n (Mar. 31, 2021).

74. See Sullivan, *supra* note 24, at 332–33.

75. See Austin, *supra* note 18, at 653–55; Abigail A. Patthoff, *This Is Your Brain on Law School: The Impact of Fear-Based Narratives on Law Students*, 2015 UTAH L. REV. 391, 424 (2015); Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 113–15 (2002).

76. DOUGLAS LITOWITZ, *THE DESTRUCTION OF YOUNG LAWYERS: BEYOND ONE L 10*, 10 (2006); Krieger, *supra* note 75, at 114; Organ et al., *supra* note 56, at 127–29.

77. PATH TO LAWYER WELL-BEING, *supra* note 49, at 1.

78. See *The Case Study Teaching Method*, HARVARD L. SCH., <https://casestudies.law.harvard.edu/the-case-study-teaching-method> (last visited May 12, 2024); Robin West, *Opinion, 'Socratic' Teaching Is a Thing of the Past*, N.Y. TIMES (Dec. 15, 2011), <https://www.nytimes.com/roomfordebate/2011/12/15/rethinking-how-the-law-is-taught/socratic-teaching-is-a-thing-of-the-past>; Laura Kallman, *Commentary, To Hell with Langdell!*, 20 L. & SOC.

why bother conducting another study about law student or lawyer mental well-being? The profession and the academy should use those resources for change rather than reiteration. The academy should take a cue from positive psychology and focus on what it has done and continues to do well, building on its strengths. Those existing methods, often appearing organically rather than intentionally or purposefully, align well with Positive Legal Education (PLE) and the Community of Inquiry (CoI) and can accomplish the Professional Development and Formation Goals (PD&F Goals) so that students achieve the Foundational Competencies Model (FCM).

B. Defining Professional Identity: The Four Foundational Professional Development Goals to Create Lawyer Foundational Competencies

This Article need not reinvent the exceptional work of conceptualizing what it means to be a legal professional. Instead, this Article furthers those definitions with a teaching framework that supports professional identity development outcomes. Debra S. Austin,⁷⁹ R. Lisle Baker,⁸⁰ Louis Bilionis,⁸¹ Neil Hamilton,⁸² David Jaffe, Jerome Organ,⁸³ and many other diligent ABA and AALS committee members and scholars have written extensively about law student well-being and professional identity issues. The University of St. Thomas School of Law Holloran Center has conducted many studies and held symposia to collect resources about ethics,

INQUIRY 771, 771, 773 (1995); Edward Rubin, *What's Wrong with Langdell's Method and What to Do About It*, 60 VAND. L. REV. 609, 612–13 (2007); Adam Grant, Opinion, *Why We Should Stop Grading Students on a Curve*, N.Y. TIMES (Sept. 10, 2016), <https://www.nytimes.com/2016/09/11/opinion/sunday/why-we-should-stop-grading-students-on-a-curve.html>; Sam Mollin, *Grading on a Curve Promotes Toxic Competition*, JOHN HOPKINS NEWS-LETTER (Mar. 29, 2018), <https://www.jhunewsletter.com/article/2018/03/grading-on-a-curve-promotes-toxic-competition>.

79. See Debra Austin, DU STURM COLL. OF L., <https://www.law.du.edu/about/people/debra-austin> (last visited May 12, 2024); see Austin, *supra* note 18, at 652, 670–71, 684, 693, 695, 705, 710–11 (providing a deep-dive into positive psychology science and calling for a “positive legal education” movement).

80. See R. Lisle Baker, *Designing a Positive Psychology Course for Lawyers*, 51 SUFFOLK U. L. REV. 207 (2018) (offering suggestions for creating an experiential positive psychology course for law students and creating a foundation upon which other professors might build).

81. See Louis Bilionis, UC CINCINNATI COLL. OF L., <https://law.uc.edu/faculty/directory/louis-d-bilionis.html> (last visited May 12, 2024).

82. See Neil Hamilton, UNIV. OF ST. THOMAS SCH. OF L., <https://law.stthomas.edu/about/faculty-staff/directory/neil-hamilton> (last visited May 12, 2024).

83. See Jerry Organ, UNIV. OF ST. THOMAS SCH. OF L., <https://law.stthomas.edu/about/faculty-staff/directory/jerry-organ> (last visited May 12, 2024); see also David M. Jaffe, FORDHAM L., <https://www.fordham.edu/school-of-law/faculty/directory/adjunct/david-m-jaffe> (last visited May 12, 2024).

professionalism, and well-being in law.⁸⁴ A definition for professional identity development will help readers understand how positive psychology through a CoI can develop a strong sense of professional identity and well-being in students, and thus, future lawyers.

However, professional identity is just that—identity. Identity is personal. The profession lacks the personal knowledge to dictate a cookie-cutter ideal of the supreme professional identity. Doing so would perpetuate many of the issues this Article hopes to remedy. Rather, the FCM offers a broad concept for an ethical and balanced professional with stable well-being. The effort to define a professional identity mandates an exploration of self, aided by law schools’ and professors’ guidance or coaching. Neither the profession nor the academy should dictate a particular personality that students should achieve, other than an ethical disposition with a sense of diligence and fiduciary duty to clients.

When followed, the prevailing model, Hamilton and Bilonis’s FCM, leads to outcomes that achieve the PD&F Goals.⁸⁵ However, the FCM/PD&F Goals need a precise teaching framework with which law professors may help students achieve those goals and competencies. The FCM/PD&F Goals are highly compatible with PLE through a CoI and andragogical principles.

Hamilton and Bilonis’s synthesis emerged from the ABA Standards and Model Rules of Professional Conduct.⁸⁶ ABA Standards and Rules of Procedure for Approval of Law Schools, Interpretation 303-5 offers a broad overview of professional identity. Interpretation 303-5 delineates two “focuses”: (1) “what it means to be a lawyer” and (2) “the special obligations lawyers have to their clients and society.”⁸⁷ Interpretation 303-5 vaguely describes the process of professional identity development, such as the exploration of “values, guiding principles, and well-being practices” with reflection and growth over time during each year of law school.⁸⁸ The process may include classes, “co-curricular,” and, in a circular way, “professional development activities.”⁸⁹ Interpretation 303-5 makes clear that the 303(b)(3)

84. See generally *Holloran Center for Ethical Leadership*, UNIV. OF ST. THOMAS SCH. OF L., <https://law.stthomas.edu/about/centers-institutes/holloran-center> (last visited May 12, 2024).

85. See NEIL W. HAMILTON & LOUIS D. BILIONIS, LAW STUDENT PROFESSIONAL DEVELOPMENT AND FORMATION: BRIDGING LAW SCHOOL, STUDENT, AND EMPLOYER GOALS 10–13 (2022) (“At the center of the Foundational Competencies Model—visually and conceptually—is each student’s internalization of a deep responsibility and service orientation to others, especially the client, that creates trust.”) (explaining the foundational competency model as related to forming the legal profession).

86. See *Id.* at 5–7.

87. AM. BAR ASS’N, *supra* note 5, Standard 303 (Interpretation 303-5), at 19.

88. *Id.*

89. *Id.*

and (c) obligations are flexible.⁹⁰ Thus, each law school may help students find their individual professional identities that support the law school's mission and local needs. Perhaps the move to require PID opportunities calls on prospective students to deeply consider the law schools they target for admission.

Much like the mission of positive psychologists to base strategies on science, the FCM/PD&F model is based on empirical data.⁹¹ Each PD&F Goal addresses the two focuses espoused in Interpretation 303-5 and informs “what it means for an individual to think, act, and feel like a lawyer”—professional identity.⁹² The PD&F Goals are:

1. Ownership of continuous professional development toward excellence at major competencies that clients, employers, and the legal system need;
2. [A] deep responsibility and service orientation to others, especially the client;
3. [A] client-centered problem-solving approach and good judgment that ground each student's responsibility and service to the client; and
4. [W]ell-being practices.⁹³

Goal one—continuous professional development—asks the professional to plan, manage, and control their learning processes and requires ongoing coaching to foster belonging.⁹⁴ Building these skills can improve student performance during law school and on the bar exam.⁹⁵ These ideas are also key concepts in sound andragogy design.⁹⁶

Consistent with the Preamble of the Model Rules of Professional Responsibility, the second goal requires professionals to understand the

90. *Id.*

91. For a list of relevant empirical studies, see HAMILTON & BILIONIS, *supra* note 85, at 7–9.

92. *Id.* at 2.

93. *Id.* at 1–2; Hamilton & Bilonis, *supra* note 69.

94. HAMILTON & BILIONIS, *supra* note 85, at 4.

95. *Id.* at 3–4.

96. See JOSEPH HOUE, ANDRAGOGY AND MOTIVATION: AN EXAMINATION OF THE PRINCIPLES OF ANDRAGOGY THROUGH TWO MOTIVATION THEORIES 90 (2006), <https://files.eric.ed.gov/fulltext/ED492652.pdf>.

“deep care” involved in fiduciary relationships so that clients have trust in the lawyer’s professional discretion and judgment in the profession.⁹⁷

Somewhat overlapping with the second goal, the third goal builds the foundation for client-centered problem-solving that emerges from continued professional development and the nature of the attorney-client relationship.⁹⁸ Hamilton and Billionis suggest a new model of attorney skills competencies—an expansion of the *Delta Model of Lawyer Competency*.⁹⁹ They developed the FCM based on empirical studies about what clients and legal employers need.¹⁰⁰

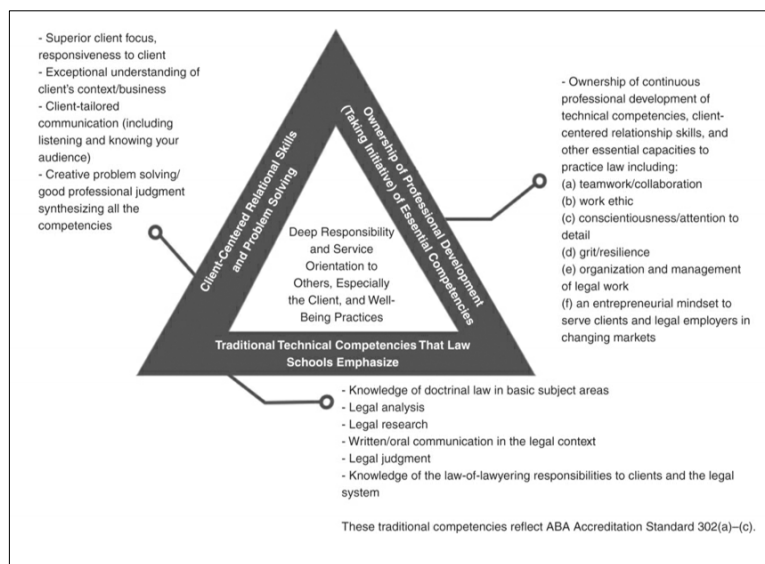


Figure 1. Foundational Competencies Model¹⁰¹

97. HAMILTON & BILIONIS, *supra* note 85, at 5 (discussing the how the lawyer’s relationship with the client is a foundational aspect of the profession, as can be seen by the way the Model Rules of Professional Conduct emphasize the attorney-client relationship).

98. *Id.* at 7 (claiming that due to demand from professional firms, centering students in a client-first approach will prepare them for their future careers).

99. *Id.* at 9–10; Alyson Carrel & Cat Moon, *Developing the Delta Model*, DESIGN YOUR DELTA, <https://www.designyourdelta.com/about> (last visited May 12, 2024).

100. HAMILTON & BILIONIS, *supra* note 85, at 10; *see also id.* app. A at 17–27 (discussing the findings of the major studies used in crafting the *Delta Model of Lawyer Competency*).

101. HAMILTON & BILIONIS, *supra* note 85, at 12. The Author is grateful to Neil Hamilton and Louis Billionis for allowing this graphic’s use here. This model is based on the Delta Model created by Cat Moon and Alyson Carrel. To learn more about the Delta Model, *see* Carrel & Moon, *supra* note 99.

The final goal calls for well-being education so that students and future lawyers take care of themselves, skills that are transferrable to clients, and that they realize the benefits of self-determination theory—a branch of positive psychology.¹⁰²

II. POSITIVE PSYCHOLOGY AND POSITIVE EDUCATION (POSED)

One may think that psychology simply concerns the mind's functions, but the art and science of psychology have many tendrils. Psychology is a broad field that intertwines natural and social sciences, studying conscious and unconscious human thought and behavior.¹⁰³ There are numerous psychology focus areas, sometimes called movements or perspectives.¹⁰⁴ Professor Dodge Fernald categorizes psychology into six perspectives: biological, psychodynamic, behavioral, humanistic, cognitive, and evolutionary.¹⁰⁵ However, other scholars omit evolutionary psychology as a perspective or approach, and some include cross-cultural.¹⁰⁶ With so many areas focusing on different questions and problems, along with the lack of a unified theory, scientific validation of psychology has developed at a slower pace than other sciences.¹⁰⁷ Abraham H. Maslow first coined the term “positive psychology” in 1954, contributing to a humanist foundation, but

102. See HAMILTON & BILIONIS, *supra* note 85, at 13 (explaining that the self-determination theory offers an empirical framework for examining student well-being and how improving student well-being helps students, instructors, and staff); see also *The Theory*, CSDT, <https://selfdeterminationtheory.org/the-theory> (last visited May 12, 2024). Self-determination theory considers the intrinsic and extrinsic motivations that influence cognitive and social development among individual differences.

103. See DODGE FERNALD, *PSYCHOLOGY: SIX PERSPECTIVES* 3 (2008).

104. Kendra Cherry, *Major Branches of Psychology: 18 Psychology Areas You Can Study*, VERYWELL MIND (Mar. 12, 2023), <https://www.verywellmind.com/major-branches-of-psychology-4139786> (identifying the major branches of psychology as: abnormal, behavioral, biopsychology, clinical, comparative, cognitive, counseling, cross-cultural, developmental, educational, experimental, forensic, health, industrial-organizational, personality, school, social, and sports).

105. FERNALD, *supra* note 103 at 17.

106. *7 Psychological Perspectives (Importance and Points of View)*, NC PSYCHOANALYSIS (Oct. 14, 2020), <https://ncpsychoanalysis.org/7-psychological-perspectives> (including both evolutionary and cross-cultural psychology as major perspectives in the field); Kendra Cherry, *What Is Cross-Cultural Psychology?*, COLUMBIA UNIV. SCH. OF PRO. STUD. (Apr. 6, 2022), <https://careerdesignlab.sps.columbia.edu/blog/2023/06/27/what-is-cross-cultural-psychology> (discussing the main components of cross cultural psychology and arguing for its inclusion as a major psychological approach).

107. See David S. Chester & Emily N. Lasko, *Construct Validation of Experimental Manipulations in Social Psychology: Current Practices and Recommendations for the Future*, 16 PERSPS. ON PSYCH. SCI. 377, 377–78 (2021); Jana Uher, *Psychology's Status as a Science: Peculiarities and Intrinsic Challenges. Moving Beyond Its Current Deadlock Towards Conceptual Integration*, 55 INTEGRATIVE PSYCH. & BEHAV. SCI. 212, 213 (2021); Alex B. Berezow, *Why Psychology Isn't Science*, L.A. TIMES (July 13, 2012), <https://www.latimes.com/opinion/la-xpm-2012-jul-13-la-ol-blowback-psycho-science-20120713-story.html>. *But see* Austin, *supra* note 18, at 658, 673.

the concept simmered until the late 1990s when Martin Seligman and Mihaly Csikszentmihalyi engineered a positive psychology framework, publishing their seminal paper in 2000.¹⁰⁸

The benefits of positive psychology aren't merely personal; people who flourish contribute their well-being to others, institutions, and communities, and collectives may also develop from positive psychology principles.¹⁰⁹ Positive psychology can help each law student learn the skills to develop Positive Emotion, Engagement, Relationships, Meaning, and Accomplishment (PERMA),¹¹⁰ the positive psychology framework, and those students may then move into practice as attorneys with strong professional identities and stable mental well-being. Applying positive psychology throughout a law school environment could create a much-needed cultural shift throughout the profession.

A. Positive Psychology

Positive psychology . . . takes you through the countryside of pleasure and gratification, up into the high country of strength and virtue, and finally to the peaks of lasting fulfillment: meaning and purpose.

—Martin E.P. Seligman, Ph.D.¹¹¹

Positive psychology emerged from psychologists' humanistic perspective of the mid-20th century.¹¹² As mentioned above,

108. Seligman & Csikszentmihalyi, *supra* note 1, at 5.

109. See Noel Williams et al., *The Impact of Positive Psychology on Higher Education*, 5 WM. & MARY EDUC. REV. 83, 90–92 (2018) (noting that positive psychology benefits higher education learning environments, administration and faculty environments, social environments, residential environments, and community environments). *But see* Corentin Montiel et al., *Fostering Positive Communities: A Scoping Review of Community-Level Positive Psychology Interventions*, FRONTIERS PSYCH. Sept. 20, 2021, at 1, 1 (noting the viability of positive psychology's impact on communities but noting that there is a gap in research literature regarding community variables that may inhibit full community benefits).

110. See PERMATM *Theory of Well-Being and PERMATM Workshops*, PENN. ARTS & SCIS.: POSITIVE PSYCH.CTR., <https://ppc.sas.upenn.edu/learn-more/perma-theory-well-being-and-perma-workshops> (last visited May 12, 2024).

111. MARTIN E.P. SELIGMAN, AUTHENTIC HAPPINESS: USING THE NEW POSITIVE PSYCHOLOGY TO REALIZE YOUR POTENTIAL FOR LASTING FULFILLMENT at xiv (2002).

112. *About Us*, SOC'Y FOR HUMANISTIC PSYCH. (Mar. 1, 2021), <http://www.apadivisions.org/division-32/about/index.aspx>; see also *A Brief History of Humanistic Psychology*, ASS'N FOR HUMANISTIC PSYCH. IN BRITAIN, <https://ahpb.org/index.php/humanistic-psychology/our-history> (last visited May 12, 2024) (noting the many labels used for the humanistic psychology school of thought including “third force of psychology,” “self-awareness movement,” “human potential movement,” and “personal growth”).

Abraham Maslow's *Motivation and Personality*¹¹³ coined "positive psychology" in 1954.¹¹⁴ A reaction to Freud's psychoanalytic theory¹¹⁵ and Skinner's behaviorism theory,¹¹⁶ humanistic psychology or the "third force"¹¹⁷ calls for a holistic consideration of the individual and prioritizes concepts that support positive growth, such as free will,¹¹⁸ self-efficacy,¹¹⁹ and self-actualization.¹²⁰ The humanistic holistic approach to psychology emphasizes the development of the whole person: Humans are the sum of many parts, not just past experiences and trauma, psychopathologies, or current behaviors.¹²¹

113. Kendra Cherry, *Biography of Abraham Maslow (1908-1970)*, VERYWELL MIND, <https://www.verywellmind.com/biography-of-abraham-maslow-1908-1970-2795524> (last updated Mar. 14, 2023); see A. H. MASLOW, MOTIVATION AND PERSONALITY 353–54, 377 (Gardener Murphy ed., Harper & Bros. 1954) (1943) [hereinafter MOTIVATION]; ABRAHAM H. MASLOW, RELIGIONS, VALUES, AND PEAK EXPERIENCES (1964) [hereinafter RELIGIONS, VALUES, AND PEAK EXPERIENCES].

114. MOTIVATION, *supra* note 113, at 353.

115. Saul Mcleod, *Sigmund Freud's Theories and Contribution to Psychology*, SIMPLYPSYCH. (Jan. 25, 2024), <https://www.simplypsychology.org/sigmund-freud.html> (including a bibliography of Freud's publications).

116. See generally, B. F. SKINNER, SCIENCE AND HUMAN BEHAVIOR ch. II–III (The Free Press First Free Press Paperback ed., 1965) (1953); *Biographical Information*, B.F. SKINNER FOUND., <https://www.bfskinner.org/archives/biographical-information> (last visited May 12, 2024) (discussing how to regulate human behavior at an individual level despite the complexity of individuals being beyond logic and law).

117. Roy Jose Decarvalho, *A History of the Third Force in Psychology*, 30 J. HUMANISTIC PSYCH. 22, 23, 27, 34 (1990). Humanistic psychology as a third force should not be confused with the "four forces" of psychotherapy: theoretical models, paradigms, dimensions, movements, and world views. See Colette Fleuridas & Drew Krafcik, *Beyond Four Forces: The Evolution of Psychotherapy*, SAGE OPEN, Jan.–Mar. 2019, at 1, 2, <https://doi.org/10.1177/2158244018824492>.

118. Whether humans truly have free will remains debated. From Freud (human subconsciousness influences decisions) and Skinner (environmental factors influence decisions) to neuroscientists, many notable scholars have shown that free will does not exist or that free will exists only if humans believe they have free will. See Adam Bear, *What Neuroscience Says About Free Will*, SCI. AM. (Apr. 28, 2016), <https://blogs.scientificamerican.com/mind-guest-blog/what-neuroscience-says-about-free-will/>; Seth J. Schwartz, *Do We Have Free Will?*, PSYCH. TODAY (Nov. 19, 2023), <https://www.psychologytoday.com/us/blog/proceed-your-own-risk/201311/do-we-have-free-will>.

119. See Albert Bandura, *Self-Efficacy: Toward a Unifying Theory of Behavioral Change*, 84 PSYCH. REV. 191, 197, 200–01 (1977).

120. JOHN G. BENJAFIELD, A HISTORY OF PSYCHOLOGY 357 (3d ed. 2010); see MOTIVATION, *supra* note 113, at 14; see generally ABRAHAM H. MASLOW, TOWARD A PSYCHOLOGY OF BEING 21, 23, 107, 109, 113, 145, 146, 148, 150–52, 154–55, 157–60 (Wilder Pub. 2011) (1962); RELIGIONS, VALUES, AND PEAK EXPERIENCES, *supra* note 113, at 27; see also ROMAN GELPERIN, THE MASTER MIND OF THE SELF-ACTUALIZING PERSON: THE LIFE AND LEGACY OF ABRAHAM MASLOW, AND MY SUDDEN AWAKENING INTO SELF-ACTUALIZATION 1–9, 158, 163, 228–29, 233, 236, 283, 301, 304, 307–10, 312–13, 343, 364 (2020).

121. See Huy P. Phan et al., *Introducing 'Holistic Psychology' for Life Qualities: A Theoretical Model for Consideration*, 7 HELIYON, Jan. 2021, at 2–4 (arguing for a new model of humanistic psychology that considers the spectrum of negative and positive experiences and characteristics as sources of vitality, motivating a person to improve and reach a state of flourishing).

Positive psychology arose from the work of the “Five Fathers”: William James,¹²² Abraham H. Maslow,¹²³ Martin Seligman, Mihaly Csikszentmihalyi,¹²⁴ and Christopher Peterson.¹²⁵ James¹²⁶ dared consider optimal human functioning against the trend during his lifetime that focused on defining psychopathology, sparking positive psychology in the late 19th century, and Maslow theorized that fulfilling innate human needs would culminate in self-actualization.¹²⁷ Finally, Seligman, Csikszentmihalyi, and Peterson synthesized a new, somewhat humanistic paradigm, adopting Maslow’s term positive psychology.¹²⁸

Given that they were emerging psychology scholars¹²⁹ during humanistic psychology’s golden age,¹³⁰ it’s no coincidence that Seligman, Csikszentmihalyi, and Peterson challenged the well-developed behavioral and psychoanalytical schools of psychology. Psychoanalysis explores past trauma to understand someone’s mental health challenges but with little hope for improvement, just realizations and coping to minimize symptoms;¹³¹ and though the early humanist psychologists helped people look inward, the end goal was still focused on overcoming something from the past or in treating pathologies.¹³² According to some scholars, neither psychoanalysis nor humanist psychology are based on credible science.¹³³ However, Seligman’s

122. William James, HARVARD UNIV.: DEP’T. OF PSYCH., <https://psychology.fas.harvard.edu/people/william-james> (last visited May 12, 2024); see also LINDA JAMES, *GENUINE REALITY: A LIFE OF WILLIAM JAMES* (1998).

123. MOTIVATION, *supra* note 113; see also EDWARD HOFFMAN, *THE RIGHT TO BE HUMAN: A BIOGRAPHY OF ABRAHAM MASLOW* (1988).

124. Seligman & Csikszentmihalyi, *supra* note 1, at 5.

125. Nansook Park & Martin Seligman, *Christopher M. Peterson (1950–2012)*, 68 AM. PSYCH. 403, 403 (2013).

126. Jo Nash, *The 5 Founding Fathers and a History of Positive Psychology*, POSITIVEPSYCHOLOGY.COM (Feb. 12, 2015), <https://positivepsychology.com/founding-fathers/#waves>.

127. HOFFMAN, *supra* note 123.

128. MOTIVATION, *supra* note 113; Seligman & Csikszentmihalyi, *supra* note 1, at 5, 7.

129. See generally MARTIN E.P. SELIGMAN CURRICULUM VITAE UPDATED: MARCH 25, 2024 (2024), <https://ppc.sas.upenn.edu/sites/default/files/seligmancv.pdf> (showing the timing of his education as contemporary to the development of humanistic psychology).

130. Kendra Cherry, *What Is Humanistic Psychology?*, VERYWELLMIND, <https://www.verywellmind.com/what-is-humanistic-psychology-2795242> (last updated Nov. 14, 2022) [hereinafter *What Is Humanistic Psychology*].

131. See Jo Nash, *Psychoanalysis: A History of Freud’s Psychoanalytic Theory*, POSITIVEPSYCHOLOGY.COM (Mar. 5, 2024), <https://positivepsychology.com/psychoanalysis> (discussing the history of psychoanalysis); *What Is Humanistic Psychology?*, *supra* note 130 (discussing the history of behaviorism).

132. See generally *Different Approaches to Psychotherapy*, AM. PSYCH. ASS’N., <https://www.apa.org/topics/psychotherapy/approaches> (last visited May 12, 2024).

133. See Adolf Grünbaum, *Is Psychoanalysis a Pseudo-Science? Karl Popper Versus Sigmund Freud*, 31 ZEITSCHRIFT FÜR PHILOSOPHISCHE FORSCHUNG 333, 334–35 (1977); Jerome C. Wakefield, *Is Behaviorism Becoming a Pseudoscience? Replies to Drs. Wyatt, Midkiff and*

furtherance of humanistic psychology with a better-defined positive psychology model gives credence to humanistic psychology because Seligman created well-designed scientific studies to prove his theories and the PERMA framework, including follow-up validation studies.¹³⁴

Most psychologists distinguish humanistic and positive psychology.¹³⁵ The differences seem subtle, but the interventions or methods are significant.¹³⁶ For example, humanistic psychology might suggest that a person should change their environment to affect positive outcomes and self-actualization—a focus on somewhat uncontrollable exterior stimuli. However, positive psychology indicates that focusing on character strengths rather than external exposures or psychopathologies provides a greater opportunity for humans to reach optimal functioning and flourishing.¹³⁷ Nevertheless, there are significant overlaps between humanistic and positive psychology,¹³⁸ most notably, the rejection of behaviorist theories and psychoanalysis, which focus on the root causes of psychopathology, such as

Wong, 16 BEHAV. SOC. ISSUES 171, 187 (2007); Matthew P. Normand, *Science, Skepticism, and Applied Behavioral Analysis*, 1 BEHAV. ANALYSIS PRAC. 42, 42 (2008) (discussing the lack of evidence supporting behaviorist interventions for people who have autism and concluding that this area of clinical behaviorism is pseudoscience).

134. For a list of Seligman's research, see *Positive Psychology Research*, UNIV. OF PENN. POSITIVE PSYCH CTR., <https://ppc.sas.upenn.edu/research/positive-psychology-research> (last visited May 12, 2024).

135. See Stephen Joseph, *How Humanistic Is Positive Psychology? Lessons in Positive Psychology from Carl Rogers' Person-Centered Approach—It's the Social Environment that Must Change*, FRONTIERS PSYCH., Sept. 2021, at 2–3 (discussing how positive psychology separated itself from humanistic psychology, only to develop from and reincorporate the ideas of humanistic psychology); Alan S. Waterman, *The Humanistic Psychology-Positive Psychology Divide: Contrasts in Philosophical Foundations*, 68 AM. PSYCH. 124, 124–26 (2013) (discussing the emergence of positive psychology compared to humanistic psychology and continuing to analyze the philosophical differences between the two disciplines); Alan S. Waterman, *Further Reflections on the Humanistic-Positive Psychology Divide*, 69 AM. PSYCH. 92, 93 (2014) (responding to academic criticism of *The Humanistic Psychology-Positive Psychology Divide: Contrasts in Philosophical Foundations*, and concluding that the philosophical differences between the two psychological approaches will not be reconciled in the near future).

136. See Madhuleena Roy Chowdhury, *19 Positive Psychology Interventions + How to Apply Them*, POSITIVEPSYCHOLOGY.COM (Feb. 20, 2019), <https://positivepsychology.com/positive-psychology-interventions> (discussing positive psychology intervention models); DAVID J CAIN ET AL., HUMANISTIC PSYCHOTHERAPIES: HANDBOOK OF RESEARCH AND PRACTICE 4 (2d ed. 2016) (listing humanistic psychotherapies).

137. See Nansook Park, *Classifying and Measuring Strengths of Character*, in THE OXFORD HANDBOOK OF POSITIVE PSYCHOLOGY 33–34, 37 (C.R. Snyder et al., eds., 3d ed. 2021) (discussing the development of character traits as a measurable conceit and the development of the hypothesis of signature traits as the key to flourishing).

138. CAIN ET AL., *supra* note 136.

traumatic childhood events and the negative behaviors that result from past trauma.¹³⁹

Positive psychology does not entirely abandon the value of psychoanalysis, behaviorism, or humanistic psychology; as Seligman explained, positive psychology is a supplement to “psychology-as-usual” and urged that:

Removing the disabling conditions of life is laudable, but it is not the same endeavor as building the *enabling* conditions of life.

. . . [B]uilding the skills of having better relationships, more meaning in life, more engagement, and more positive emotion is almost entirely different from building the skills of fighting depression, anxiety, and anger. So, positive psychology aims to develop interventions that build the enabling conditions of life, not just interventions that decrease misery.¹⁴⁰

Positive psychology aims to help individuals, institutions, and communities flourish.¹⁴¹ Flourishing has been described as “[Moving] beyond the confines of simple happiness or wellbeing; it encompasses a wide range of positive psychological constructs and offers a more holistic

139. See Tiffany Sauber Millacci, Ph.D., *Humanistic Psychology's Approach to Wellbeing: 3 Theories*, POSITIVEPSYCHOLOGY.COM (July 9, 2022), <https://positivepsychology.com/humanistic-psychology/>; see generally *History of American Psychoanalytic Theory*, AM. PSYCH. ASS'N., <https://apsa.org/about-psychoanalysis/psychoanalytic-theory-approaches> (last visited May 12, 2024) (first citing SIGMUND FREUD, *THE EGO AND THE ID* (1921); then citing SIGMUND FREUD, *THE PROBLEM OF ANXIETY* (1936); then citing SIGMUND FREUD, *EGO AND THE MECHANISMS OF DEFENSE* (1936); and then citing HEINZ HARTMANN & DAVID RAPAPORT, *PSYCHOANALYSIS AND THE PROBLEM OF ADAPTATION* (1939)); see also ALLEN M. SIEGEL, HEINZ KOHUT AND THE PSYCHOLOGY OF THE SELF (Routledge eds., 1st ed. 1996); HEINZ KOHUT, *THE ANALYSIS OF THE SELF: A SYSTEMATIC APPROACH TO THE PSYCHOANALYTIC TREATMENT OF NARCISSISTIC PERSONALITY DISORDERS 192–96* (Univ. of Chicago Press ed., 2009) (1971) (describing the psychoanalytic assessment and goals for someone with narcissistic personality disorder); MARGARET S. MAHLER ET AL., *THE PSYCHOLOGICAL BIRTH OF THE HUMAN INFANT 5* (Routledge 2018) (1975) (describing the effect of early trauma on infants in a psychoanalytic model); Margaret S. Mahler, *Thoughts About Development and Individuation: The Psychoanalytic Study of the Child*, 18 *ASPECTS OF NORMAL & PSYCH. DEV.* 307, 307–09 (1963).

140. Martin Seligman, *Flourish: Positive Psychology and Positive Interventions*, The Tanner Lectures on Human Values 231, 233 (Oct. 7, 2010), in 31 *THE TANNER LECTURES ON HUMAN VALUES* 231, 233, 237 (Grethe B. Peterson ed., 2012).

141. See MARTIN E.P. SELIGMAN, *FLOURISH: A VISIONARY NEW UNDERSTANDING OF HAPPINESS AND WELL-BEING* 11–12 (2011) (reviewing the origins of well-being theory in the context of the theory of positive psychology and finding that the goals had grown to encompass “flourishing by increasing positive emotion, engagement, meaning, positive relationships, and accomplishment”).

perspective on what it means to feel well and happy.”¹⁴² According to Seligman, flourishing is the result of paying careful attention to building and maintaining the five aspects of the PERMA model.¹⁴³ “[Flourishing] is the combination of positive emotions, engagement, relationships, meaning, and accomplishment . . . that forms the foundation for individuals to live their most fulfilling life.”¹⁴⁴ Positive psychology posits that individuals can reach a point of well-being or flourishing when they cultivate the PERMA framework through their character strengths.¹⁴⁵

People who reach a state of flourishing find fulfillment in their lives, accomplishing meaningful and worthwhile tasks and connecting with others at a deeper level—in essence, living the “good life.”¹⁴⁶ Though positive psychology builds PERMA through character strengths, character strengths are not static.¹⁴⁷ The positive psychology process can help people develop lesser strengths and balance strengths that overpower and that hinder one from flourishing.¹⁴⁸ Positive psychology encourages the development of balanced individuals with stable mental well-being—people with room to grow more and flourish.

142. Courtney E. Ackerman, MA, *What Is Flourishing in Positive Psychology?*, POSITIVEPSYCHOLOGY.COM (May 9, 2018), <https://positivepsychology.com/flourishing/#definition-flourishing> (citing Martin E.P. Seligman and others).

143. *Id.*

144. Gabriella Lancia, Ph.D., *Positive Psychology in Education: Your Ultimate Guide*, POSITIVEPSYCHOLOGY.COM (Mar. 12, 2024), <https://positivepsychology.com/positive-psychology-schools-education/>; *Id.*

145. See *PERMA™ Theory of Well-Being and PERMA™ Workshops*, *supra* note 110; SELIGMAN, *supra* note 141, at 16 (discussing the PERMA framework); *Our Flourishing Measure*, HARVARD UNIV.: THE HUMAN FLOURISHING PROGRAM, <https://hfh.fas.harvard.edu/measuring-flourishing> (last visited May 12, 2024); “Character strengths” refers to the widely accepted VIA Character Survey that sets forth 24 character traits. See also *The 24 Character Strengths*, VIA INST. ON CHARACTER, <https://www.viacharacter.org/character-strengths> (last visited May 12, 2024).

146. See generally SELIGMAN, *supra* note 141, at 16–21, 26, 28–29 (detailing the elements of well-being and how they describe a life well-lived).

147. See *id.* at 41–43, 81 (showing practical applications for how well-being can be changed through understanding character strengths).

148. See *id.* at 40–51 (explaining how well-being can be changed through understanding character strengths; among the 24 character strengths, some will be stronger than others).

Seligman summarized each element:

Positive Psychology Framework: PERMA	
Positive Emotions	“Involves not only feeling good but also an acknowledgement that the past may not have been ideal, promoting a positive outlook surrounding future prospects.” ¹⁴⁹
Engagement	“A passion or activity that an individual can become engaged or absorbed in that gives them personal fulfillment.” ¹⁵⁰
Relationships	“Intimate connections with other people (e.g., family, friends) who provide the individual with emotional support.” ¹⁵¹
Meaning	“An individual’s reason for continuing to persevere, often related to their work, passions, or personal connections, despite battling hardships.” ¹⁵²
Accomplishment	“A sense of accomplishment is a result of working toward and reaching goals, mastering an endeavor, and having self-motivation to finish what you set out to do. This contributes to well-being because individuals can look at their lives with a sense of pride.” ¹⁵³

Table 1.

People can discover their “character strengths” through several psychology surveys or assessments,¹⁵⁴ but as the only free, scientifically

149. Gabriella Lancia, Ph.D., *Positive Psychology in Education: Your Ultimate Guide*, POSITIVEPSYCHOLOGY.COM (Mar. 12, 2024) (citing SELIGMAN, *supra* note 141, at 11), <https://positivepsychology.com/positive-psychology-schools-education> (discussing the original development of the concept of positive emotions in authentic happiness theory).

150. *Id.* (citing SELIGMAN, *supra* note 141, at 11, 16) (discussing the evolving meaning of engagement in the context of positive psychology).

151. *See id.* (citing SELIGMAN, *supra* note 141, at 20–24) (“There is no denying the profound influences that positive relationships or their absence have on well-being.” (quoting SELIGMAN, *supra*, at 21)).

152. *See id.* (citing SELIGMAN, *supra* note 141, at 17–18) (concluding that meaning is pursued for its own sake and contributes independently to well-being in a distinct manner from other pillars of well-being).

153. Melissa Madeson, *Seligman’s PERMA+ Model Explained: A Theory of Wellbeing*, POSITIVEPSYCHOLOGY.COM (Mar. 11, 2017), <https://positivepsychology.com/perma-model> (citing SELIGMAN, *supra* note 141, at 16–21, 24, 29) (discussing the validity of the PERMA framework); Seligman & Csikszentmihalyi, *supra* note 1, at 9.

154. Other character surveys and assessments include: *The Most Accurate DISC Test Online*, ONLINE DISC TESTS, https://onlinediscstests.com/?mselkid=fe2693f72beb10764a82f7094ffd23c7&utm_source=bing&utm_medium=cpc&utm_campaign=DiSC%20Test&utm_term=disc%20personality&utm_content=Ad%20group%201 (last visited May 12, 2024) (describing the Personal DISC Test); *CliftonStrengths*, GALLUP STORE, <https://store.gallup.com/c/en-us/1/cliftonstrengths> (last visited May

validated strengths assessment survey, the VIA Character Strengths Survey from the VIA Institute on Character¹⁵⁵ is widely regarded. The character strengths taxonomy has six families with three to four specific strengths each:

12, 2024). The CliftonStrengths assessment has become popular among educators, including its \$24.99 course for students. *Id.*

155. *About the VIA Institute on Character*, VIA INST. ON CHARACTER (last visited May 12, 2024), <https://www.viacharacter.org/about> (displaying the VIA Institute's mission to develop the science of character strengths). The institute provides free character assessment surveys to advance character science and promote psychological research. *Id.*; see also Catherine Moore, *VIA Character Strengths & Survey: 31 Ways to Spot Strengths*, POSITIVEPSYCHOLOGY.COM (Dec. 14, 2023), <https://positivepsychology.com/via-survey> (noting that the VIA survey is widely used). Common alternatives include the DiSC Profile, created by a for-profit limited liability company, Personality Profile Solutions, LLC, and the Clifton Strengths, which is owned by Gallup, also a for-profit company. See generally *CliftonStrengths*, GALLUP, <https://www.gallup.com/cliftonstrengths/en/252137/home.aspx> (last visited May 12, 2024); *What Is DiSC*, DISC PROFILE, <https://www.discprofile.com/what-is-disc> (last visited May 12, 2024).

VIA Institute on Character: Character Strengths Taxonomy ¹⁵⁶					
Wisdom	Perspective	Love of Learning	Judgment	Creativity	Curiosity
Courage	Bravery	Honesty	Perseverance	Zest	
Humanity	Social Intelligence	Love	Kindness		
Justice	Teamwork	Leadership	Fairness		
Temperance	Humility	Prudence	Self-Regulation	Forgiveness	
Transcendence	Appreciation of beauty and excellence	Gratitude	Hope	Humor	Spirituality

Table 2.

Positive psychology and the path to flourishing are not without critics. Some misperceive positive psychology as toxic positivity,¹⁵⁷ but as James Maddux, a professor at George Mason University, explained:

[W]hile positive psychology is concerned with enhancing happiness and well-being, it is not simply about looking at the “bright side” of everything or always “seeing the glass as half full.” It is also not about ignoring pathology, pain, suffering, and evil. It is, however, about actively searching for the many aspects of life that we can appreciate, value, enjoy, and savor and about helping people who might not be pathological, pained, suffering, or evil make their lives better.¹⁵⁸

156. *The 24 Character Strengths*, *supra* note 145 (the author created this table based on a graphic from the VIA Institute on Character source).

157. See Naima Small, *Popping the Bubble of Positive Psychology*, 34TH STREET (Mar. 3, 2023), <https://www.34st.com/article/2023/03/positive-psychology-mental-health-grit-resilience-agency-happiness> (explaining misconceptions about positive psychology and conflation with toxic positivity).

158. James Maddux, *Foreword* to THE OXFORD HANDBOOK OF POSITIVE PSYCHOLOGY, at xxii (C.R. Snyder et al. eds., 3d ed. 2021).

Critics deride past and ongoing commercialization of self-care and self-help books and programs, gimmicks that often have only tangential ties to the science of positive psychology.¹⁵⁹ Unlike many self-help items and concepts that are often inaccessible to people who are marginalized,¹⁶⁰ positive psychology interventions can be used by anyone for free, as the field generously offers materials online.¹⁶¹ Many self-help programs lack any proof of success; meanwhile, the science of well-being has been proven through scientific study.¹⁶² The self-help industry certainly offers some people what they need,¹⁶³ but positive psychology is a field of scientific study, not an item for sale. Entrepreneurs sell self-help tokens; psychologists

159. See, e.g., Joseph Smith, *Is Positive Psychology All It's Cracked Up to Be?*, VOX, <https://www.vox.com/the-highlight/2019/11/13/20955328/positive-psychology-martin-seligman-happiness-religion-secularism> (last updated Nov. 20, 2019) (claiming that many decry positive psychology's rampant consumerism, as therapists and self-help coaches use the psychology to promote "wild claims for their lucrative products"); see also Nora Sissenich, *Consumerism Is Not Self-Care*, SCI. SURVEY (Apr. 23, 2021), <https://thesciencesurvey.com/editorial/2021/04/23/consumerism-is-not-self-care> (criticizing the commercialization of self-care through "the idea that without [buying certain] new product[s], we will never be happy or satisfied").

160. See John Bunyi et al., *Accessibility and Digital Mental Health: Considerations for More Accessible and Equitable Mental Health Apps*, FRONTIERS DIGIT. HEALTH, Sept. 29, 2021, at 1, 5 <https://doi.org/10.3389/fdgth.2021.742196> (arguing that increased development in mental health apps will make mental health care more accessible to people from marginalized communities, especially people with cognitive and sensory disabilities); Shayla Love, *The Dark Truths Behind Our Obsession with Self Care*, VICE (Dec. 11, 2018), <https://www.vice.com/en/article/zmdwm4/the-young-and-the-uncared-for-v25n4> (reporting on the inequities of the self-care industry for people in poverty).

161. See, e.g., Jeremy Sutton, *56 Free Positive Psychology PDF Handouts*, POSITIVEPSYCHOLOGY.COM (Oct. 3, 2016), <https://positivepsychology.com/positive-psychology-pdf>.

162. Compare, e.g., Suzanne Moore, *The Self-Care Industry Is Peddling Exhausting, Dangerous Drivel*, GUARDIAN (May 7, 2018), <https://www.theguardian.com/commentisfree/2018/may/07/the-self-care-industry-is-peddling-exhausting-dangerous-drivel> (discussing how self-help programs are sought out as a broken panacea for a failing social system), with Charlotte Liberman, *How Self-Care Became So Much Work*, HARV. BUS. REV. (Aug. 10, 2018), <https://hbr.org/2018/08/how-self-care-became-so-much-work> (revealing the connections between self-care and increasing stress, and that "[d]espite the fact that mindfulness meditation is now popular enough to be a billion dollar business, the science behind it remains a work in progress"), and Nancy Colier, *How the \$11 Billion Self-Care Industry Is Failing Women*, YOURTANGO (Oct. 23, 2022), <https://www.yourtango.com/health-wellness/how-11-billion-self-care-industry-failing-women> ("The real problem with our self-care system, however, is the basic premise upon which it's built, namely, that self-care is something we buy or do—as opposed to something we *are*—as in self-caring."), and Ed Diener et al., *Advances in Subjective Well-Being Research*, 2 NATURE HUM. BEHAV. 253, 253 (2018) (reviewing well-being research methods across a large body of studies and the future potential of the field of research). The field of study is so robust, it now has its own journal: *The Journal of Positive Psychology*, TAYLOR & FRANCIS ONLINE, <https://www.tandfonline.com/journals/rpos20> (last visited May 12, 2024).

163. See Page Nicewaner & Ashton Matlock, *Nicewaner & Matlock: Pros and Cons of "Self-Care Culture"*, STANDARD (Apr. 5, 2021), https://www.the-standard.org/leisure/nicewaner-matlock-pros-and-cons-of-self-care-culture/article_8e4276c2-90d2-11eb-a6cf-3f8882b20a42.html ("In an attempt to feel better, the guise of self-care culture has provided quick fixes for people to deal with mental health issues when no other solution is offered.").

who have adopted the positive approach offer techniques to improve well-being so that individuals develop meaning and purpose.

Finally, to reach a point of flourishing—positive psychology’s goal—takes tremendous effort. James Maddux explained: “If positive psychology is to be concerned with helping people find meaning and purpose in life, then we must not forget that finding meaning and purpose is sometimes a struggle and is often *the result of struggle*, and not the result of taking the path of least resistance.”¹⁶⁴ No one in the positive psychology field who has studied or written about positive psychology has ever said that the philosophy is a silver bullet cure-all for poor mental health. In fact, Seligman acknowledged that no one should ignore psychopathologies, marginalized demographics, physical or developmental delays, or character weaknesses.¹⁶⁵ It is simply another mental healthcare tool.¹⁶⁶ Positive psychology does not suggest that mental health may be improved simply by “seeing the glass as half full” or “looking at the bright side.”¹⁶⁷ No human can simply will away life problems.

Whether movement, religion, philosophy, or commodity, Seligman and his colleagues developed positive psychology through scientific study.¹⁶⁸ The studies have shown that institutions, such as schools, can deploy positive psychology (i.e., “positive education” or PE)¹⁶⁹ methods that improve students’ individual well-being, their outcomes, and communities.¹⁷⁰ PosEd principles could improve law student well-being and individual outcomes,

164. Maddux, *supra* note 158.

165. Seligman, *supra* note 141 at 238–41.

166. See Seligman & Csikszentmihalyi, *supra* note 1, at 10.

167. See Maddux, *supra* note 158, at xxii; Nico Rose, 7 *Common Misconceptions About Positive Psychology*, MAPPALICIOUS (Dec. 6, 2013), <https://mappalicious.com/2013/12/06/7-common-misconceptions-about-positive-psychology>.

168. See generally *Positive Psychology Research*, *supra* note 135 (listing Seligman’s research and publications on positive psychology).

169. See generally *What Is Positive Education?*, THE CTR. FOR POSITIVE EDUC., <https://thecenterforpositiveeducation.com> (last visited May 12, 2024).

170. See MARTIN SELIGMAN & ALEJANDRO ADLER, GLOBAL HAPPINESS POLICY REPORT, 2018, CH. 4—POSITIVE EDUCATION, at 52–73 (2018); see also Angela L. Duckworth et al., *Self-Control in School-Age Children*, 49 *EDUC. PSYCH.* 199, 199–200, 202 (2014) (studying self-control and educational outcomes in a positive psychology context); Lauren Eskreis-Winkler et al., *The Grit Effect: Predicting Retention in the Military, the Workplace, School and Marriage*, *FRONTIERS PSYCH.*, Feb. 2014, at 2 (studying whether a single personality trait, grit, is a reliable determiner of staying in educational programs); Brian Galla et al., *The Academic Diligence Task (ADT): Assessing Individual Differences in Effort on Tedious but Important Schoolwork*, 39 *CONTEMP. EDUC. PSYCH.* 314, 315, 318 (2014) (developing a test to measure academic diligence based on direct behavior, which then could create an objective baseline for positive psychological studies); Benjamin D. Plummer et al., *A Behind-the-Scenes Guide to School-Based Research*, 8 *MIND, BRAIN, EDUC.* 15, 17 (2014) (finding that creating positive relationships with clinical subjects is key to creating successful school-based research); Seligman, *supra* note 142, at 240–41.

supporting professional identity developments that trickle into law practice.¹⁷¹

B. Positive Education

Though humanistic psychology has been used in schools for centuries,¹⁷² positive psychology education offers a framework that can build child or adult meaningful educational experiences and, when coupled with a CoI, modern learning.¹⁷³ One could argue that humanistic psychology developed from humanist education. In fact, long before Carl Rogers, Abraham Maslow, and James F.T. Bugental envisioned humanistic learning theory for modern education, John Dewey¹⁷⁴ and Jerome Bruner¹⁷⁵ theorized that with scaffolding and discovery learning, schools could teach life skills in a meaningful way that influences positive social outcomes, including self-esteem and self-help.¹⁷⁶ Maslow furthered John Dewey and Bruner's work with character learning.¹⁷⁷

171. Austin, *supra* note 17, at 656, 658, 672–73, 675, 694.

172. See Nimrod Aloni, *Humanistic Education*, in ENCYC. OF EDUC. PHIL. & THEORY 1085, 1085 (Michael Peters ed., 2015) (discussing the origins of humanistic education in ancient Greece and Rome); YAN Wen-juan, *The Study on Humanistic Educational Thought During Renaissance in Europe*, 8 J. LITERATURE & ART STUD. 1552, 1552–53 (2018).

173. Cf. Stephen Joseph et al., *Positive Education: A New Look at Freedom to Learn*, 46 OXFORD REV. EDUC. 549, 549–50 (2020) (explaining that positive education can increase student resilience, positive emotions, engagement, meaning, and help students become more fully-functioning); Joshua J. Daspit, et al., *The Role of Positive Psychological States in Online Learning: Integrating Psychological Capital into the Community of Inquiry Framework*, 39 J. MGMT. EDUC. 626, 632–34, 641–42 (2015) (claiming positive psychology in online communities of inquiry can motivate students).

174. *John Dewey*, STAN. ENCYCLOPEDIA PHIL. (Nov. 1, 2018), <https://plato.stanford.edu/entries/dewey>.

175. *Jerome Bruner*, HARVARD UNIV.: DEPT. OF PSYCH., <https://psychology.fas.harvard.edu/people/jerome-bruner> (last visited May 12, 2024).

176. See Tiffany Sauber Millacci, Ph.D., *Humanistic Psychology's Approach to Wellbeing: 3 Theories*, POSITIVEPSYCHOLOGY.COM (July 9, 2022), <https://positivepsychology.com/humanistic-psychology/#humanistic-psychology>; see also Juan Balbi, *Epistemological and Theoretical Foundations of Constructivist Cognitive Therapies: Post-Rationalist Developments*, 1 DIALOGUES PHIL., MENTAL & NEURO SCIS. 15, 18–19, 24–25 (2008) (explaining Bruner's rational constructivist theories and continuous change to a person's self-identity). Kelly's original ideas surrounding the psychology of constructs at an individual level should become the foundation of understanding how humans relate to one another in larger group settings like schools. See generally 1 GEORGE A. KELLY, *THE PSYCHOLOGY OF PERSONAL CONSTRUCTS, THEORY AND PERSONALITY* 74–127 (Routledge 1991) (1955) (discussing how a person defines themselves through internal means, and the way this reflects in their statements and personality).

177. Millacci, *supra* note 176.

Today, PosEd carries forward the prior humanistic educational concepts and adds the positive psychology framework.¹⁷⁸ PosEd goes beyond humanistic skill-building for success and helps teachers and students prioritize strengths to facilitate educational growth, rather than dwelling on past performance.¹⁷⁹ Though much of the positive education scholarship has focused on K-12 settings, a “well-being university” movement is well underway.¹⁸⁰ There’s no reason to suggest that PosEd would create negative outcomes in law schools. Coupled with a CoI teaching framework, PosEd could help law students, law professors, and the legal industry experience a much-needed cultural shift and improved professional identity.

In the Global Happiness Policy Report 2018, Seligman and Dr. Alejandro Adler analyzed the application of PosEd in several countries and school settings.¹⁸¹ Seligman and Adler only considered schools that measure outcomes and that also use a replicable set of validated interventions to achieve those outcomes.¹⁸² Their introduction explains:

To the extent that teachers transmit optimism, trust, and a hopeful sense of the future, this will positively influence their students’ perception of the world. . . . [H]ope, trust, and happiness cause better well-being, and so the guiding hypothesis of Positive Education . . . is that positive schools and positive teachers are the fulcrum for producing more well-being in a culture.¹⁸³

The report looks at Bhutan, the earliest nation-wide PosEd adopter.¹⁸⁴ Bhutan measures its success, not by Gross National Product but by Gross National Happiness (GNH).¹⁸⁵ Its Education Ministry is charged to educate for GNH.¹⁸⁶ Compared to control schools, the schools in Bhutan that implemented a GNH Curriculum with positive psychology saw increased academic performance and significantly increased student well-being.¹⁸⁷ The

178. I. Lisa McCann, Ph.D. & Laurie A. Perlman, Ph.D., *Constructivist Self-Development Theory: A Theoretical Framework for Assessing and Treating Traumatized College Students*, 40 J. AM. COLL. HEALTH 189, 189 (1992).

179. See SELIGMAN & ADLER, *supra* note 170.

180. See Ryan M. Travia, Ed.D et al., *Framing Well-Being in a College Campus Setting*, 70 J. AM. COLL. HEALTH 758, 769–70 (2022).

181. See SELIGMAN & ADLER, *supra* note 170.

182. See *id.* at 54–55.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

positive interventions that Bhutan educators used align well with CoI teaching methods.¹⁸⁸ The pilot program was so successful that Bhutan has implemented the PosEd curriculum nationwide.¹⁸⁹ As of the 2018 Global Happiness Policy Report, countries studying or adopting PosEd curriculums included China, India, the United Arab Emirates, Israel, Australia, Mexico, Peru, and the United Kingdom.¹⁹⁰

The 2018 analysis notes five best practices for developing and implementing a PosEd curriculum:

1. Rigorous ongoing evaluation;
2. Analyses of effect sizes and intervention duration;
3. Cultural adaptation of evidence-based interventions;
4. Treatment fidelity measurements; and
5. The promotion of teacher empowerment and creativity to refine local interventions.¹⁹¹

In the 2019 Global Happiness Policy Report (GHPR), Seligman and Alejandro offered a “how to” guide, even including a checklist.¹⁹² They further defined the work of developing PosEd in three aspects:

1. The goal of PosEd is to produce both well-being as well as to forward the traditional outcomes of schooling.
2. PosEd measures the well-being outcomes before and after measures of “happiness,” which are decomposed into elements less vague than the highly ambiguous term, “happiness.” In addition, PosEd measures the relief of ill-being or unhappiness, typically depression and anxiety. Third, PosEd measures academic success.

188. *See id.*

189. *Id.*

190. MARTIN SELIGMAN & ALEJANDRO ADLER, GLOBAL HAPPINESS POLICY REPORT 2019, CH. 4—POSITIVE EDUCATION, at 68–70 (2019) [hereinafter GHPR 2019].

191. *See* SELIGMAN & ADLER, *supra* note 170, at 54–55.

192. GHPR 2019, *supra* note 190, at 54.

3. PosEd uses reasonably well-validated interventions that increase well-being and decrease ill-being¹⁹³

The 2019 GHPR reports on PosEd applications at Geelong Grammar School (Australia), University of Adelaide (Australia), and TecMilenio University (Mexico).¹⁹⁴ It also reiterates Bhutan’s success and includes a list of all nations with PosEd programs, having grown to 26 countries by 2019.¹⁹⁵ Successful PosEd interventions that have been measured and verified are: identifying character strengths, coaching programs (including health), community engagement, school restructuring to value students of diversity, “whole school” approaches and training, goal setting, gratitude exercises, and use of technology, such as blogs.¹⁹⁶ Each of these techniques align with a CoI approach and could easily be adopted by law school professors.

193. *Id.* at 55.

194. *Id.* at 56–61.

195. *Id.* at 64, 69–70.

196. Cecilia Cesa Schiavon et al., *Positive Education: Innovation in Educational Interventions Based on Positive Psychology*, 36 SCH. & DEV. PSYCH., 2020, at 4, 6.

III. COMMUNITY OF INQUIRY (COI): AN IDEAL TEACHING METHOD

During the 19th and 20th centuries, the art of education evolved into educational pedagogy, an applied science.¹⁹⁷ Though we've yet to realize current shifts in education, hindsight being a necessity to understanding our past,¹⁹⁸ the 21st century seems to be merging science and art into a new pedagogy.¹⁹⁹

Researchers found that the demands of a knowledge-based society, student expectations, technological innovation, and rapidly changing workplaces are driving changes in educational practices.²⁰⁰ Scholars have identified seven key elements that make up the “new pedagogy”:

1. Blended Learning;
2. Collaborative Approaches To The Construction Of Knowledge/Building Communities Of Inquiry And Practice;
3. Use Of Multimedia And Open Educational Resources;
4. Increased Student Control, Choice, And Independence;
5. Anywhere, Anytime, Any Size Learning;
6. New Forms Of Assessment;
7. Self-Directed And Non-Formal, Online Learning.²⁰¹

197. See *A History of Pedagogy*, LE PÔLE (Apr. 3, 2017), <https://lepole.education/en/post/pedagogical-culture/history-of-pedagogy>.

198. *Historical Significance*, THE HIST. THINKING PROJECT, <https://historicalthinking.ca/historical-significance> (last visited May 12, 2024) (explaining a basic premise in the study of history—that determining the significance of an event as having historical value requires a reference to the past that considers the current state of affairs; what may seem insignificant in the present could have great significance in the future).

199. See, e.g., RUDOLF STEINER & PAUL M. ALLEN, *EDUCATION AS AN ART* 24, 33 (3d ed. 1979) (describing how Rudolf Steiner created the Waldorf education method, based on his philosophy anthroposophy); JEFF HALSTEAD, *NAVIGATING THE NEW PEDAGOGY: SIX PRINCIPLES THAT TRANSFORM TEACHING* 71, 143 (2011) (“Certainly there is a science to teaching, but there is also an art to this craft that creates a magic that borders on alchemy.”); CONTACT N. NORD, *A NEW PEDAGOGY IS EMERGING . . . AND ONLINE LEARNING IS A KEY CONTRIBUTING FACTOR* 2–4 (2020), <https://teachonline.ca/tools-trends/how-teach-online-student-success/new-pedagogy-emerging-and-online-learning-key-contributing-factor> (scroll to bottom of webpage).

200. CONTACT N. NORD, *supra* note 199, at 2–4.

201. *Id.* at 5–9.

This evolution will lead to more accessible and flexible learning environments, shared power between student and teacher, and increased use of technology.²⁰² For law schools, andragogy methods, Positive Education (PosEd), and CoI can meet the new challenges while offering multiple opportunities for professional identity development that create law students and lawyers who flourish. The days of “chalk and talk” are dead.²⁰³

A. Taxonomies, Intelligences, and Framework

To fully integrate a PosEd/CoI teaching approach, professors should be aware of the broader trends in educational psychology. Many people think that learning theory ends with Gardner’s Theory of Multiple Intelligences or Bloom’s Taxonomy.²⁰⁴ Educators and students glom onto the idea that pupils are certain “types” of learners, an implication of information processing abilities.²⁰⁵ However, Bloom’s work categorized learning outcomes, not brain processing, and even Gardner cautioned against the use of any one learning style as an absolute control for teaching any particular student.²⁰⁶

The seven intelligences function within the theories about how humans learn, and those theories are complimented by systems to manage educational objectives and the actual pedagogical means of teaching—theory, taxonomy, and methods.²⁰⁷ There are at least 32 learning theories of which only three are widely accepted—that is, how humans acquire information: behaviorism,

202. *Id.* at 9.

203. Timothy W. Floyd et al., *Beyond Chalk and Talk: The Law Classroom of the Future*, 38 OHIO N. U. L. REV. 257, 257–58 (2011).

204. See HOWARD GARDNER, FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES 1 (Basic Books 2011) (1983); see also Patricia Armstrong, *Bloom’s Taxonomy*, VANDERBILT UNIV.: CTR. FOR TEACHING, <https://cft.vanderbilt.edu/guides-sub-pages/blooms-taxonomy> (last visited May 12, 2024) (explaining the leading theory posits that humans have general intelligence, made up of the many labels that Gardner offers); John Geake, *Neuromythologies in Education*, 50 EDUC. RSCH. 123, 123–24 (2008).

205. See Deborah L. Borman & Catherine Haras, *Something Borrowed: Interdisciplinary Strategies for Legal Education*, 68 J. LEGAL EDUC. 357, 361–64 (2019).

206. Valerie Strauss, *Howard Gardner: ‘Multiple Intelligences’ Are Not ‘Learning Styles,’* WASH. POST (Oct. 16, 2013), <https://www.washingtonpost.com/news/answer-sheet/wp/2013/10/16/howard-gardner-multiple-intelligences-are-not-learning-styles>.

207. See Toni Noble, *Integrating the Revised Bloom’s Taxonomy with Multiple Intelligences: A Planning Tool for Curriculum Differentiation*, 106 TCHRS. COLL. REC. 193, 194–95, 201–02 (2004) (finding that teachers who planned curricula by integrating Bloom’s Revised Taxonomy with the Multiple Intelligences theory helped broaden individualized instruction and benefited students).

cognitivism, and constructivism.²⁰⁸ The new pedagogy/andragogy, no matter the underlying theory or taxonomy, focuses on the student experience.²⁰⁹

Behaviorism helps students perform objectively observable behaviors.²¹⁰ Unobservable mental activities are discounted.²¹¹ Teachers model desired outcomes and reinforce behaviors that help students move towards achieving objectives.²¹² Teachers program instruction in small steps or sequences, building many tasks into one larger objective.²¹³ Behaviorist education—performance-based—certainly could have an impact on law student professional identity development as to work product output or clinical classes, but the behaviorist theories fall short in creating a robust, socially aware professional with independent judgment.²¹⁴

On the opposite spectrum, cognitivism involves acquisition or reorganization of cognitive structures through which humans process and store information.²¹⁵ Students must be self-aware and perform metacognitive tasks to fully embrace change (i.e., learning).²¹⁶ While modeling appropriate outcomes, teachers “chunk” information and engage students in active and motivational learning.²¹⁷ Law professors probably find the constructivism theory most comfortable and compatible with professional school, especially with the Langdellian Socratic case method. Under the constructivist theory, students adjust existing mental models to accommodate new experiences.²¹⁸ Professors guide students to understand the world we live in and to apply new understandings to current and future problems.

208. See *A Visual Summary: 32 Learning Theories Every Teacher Should Know*, TEACHTHOUGHT (July 26, 2023), <https://www.teachthought.com/learning/a-visual-summary-the-most-important-learning-theories> (citing Richard Milwood’s visual aid example of learning theories); DALE H. SCHUNK, *LEARNING THEORIES: AN EDUCATIONAL PERSPECTIVE* 79 (8th ed. 2020).

209. See STEINER & ALLEN, *supra* note 199, at 33 (discussing the importance of student education); HALSTEAD, *supra* note 199, at 72–74, 76, 80, 106 (grounding teaching in student experience, and the unique limits of student experience, noting that instruction is best delivered “through well-constructed and well-delivered learning experiences that students will become adept at the skills and content necessary for productive, well-rounded lives”); CONTACT N. NORD, *supra* note 199, at 2, 9.

210. SCHUNK, *supra* note 208, at 79.

211. *Id.*

212. *Id.* at 110–11.

213. *Id.*

214. See Roger Schnaitter, *Some Criticisms of Behaviorism*, 22 PHIL. LEGACY OF BEHAV. 209, 245 (1999) (criticizing behaviorism for excessive focus on externally observable phenomena).

215. SCHUNK, *supra* note 208, at 125.

216. *Id.*

217. See *id.* at 144 (discussing how teachers can break down tasks to improve learner information processing).

218. Charlene Tan & Connie S. L Ng, *Constructivism in Education*, OXFORD RSCH. ENCYCLOPEDIA 1, 2 (2021).

No matter which learning theory a professor leans towards, actual teaching (the pedagogy/andragogy) is best developed when professors consider the learning taxonomies. Where the teaching theories guide approaches, the taxonomies organize the broad theories into learning outcomes or objectives.²¹⁹ Like the learning theories, there are many taxonomy models, but the following have been widely discussed:

1. Bloom's Taxonomy/Anderson Revision 2001;
2. TeachThought Learning Taxonomy;
3. Six Facets of Understanding;
4. Marzano/Kendall Taxonomy;
5. Webb's Depth of Knowledge Framework;
6. Fink's Taxonomy of Significant Learning; and
7. The SOLO Taxonomy.²²⁰

Most professors are probably familiar with Bloom's Taxonomy. Under the Bloom schema, students reach mastery when they are able to remember, understand, apply, analyze, evaluate, and create.²²¹ Generally, the alternative taxonomies encapsulate these same concepts—milestones in achieving mastery and self-reliance—but with different language and visual depictions. For example, the *Six Facets of Understanding* helps students explain, interpret, and apply while also developing perspective, empathy, and self-knowledge.²²² Marzano and Kendall offer a four-level concept, each with specific pedagogical techniques: retrieval, comprehension, analysis, and knowledge utilization.²²³ Like the learning theories, the learning objectives

219. See Andrew R. Thompson & Logan P.O. Lake, *Relationship Between Learning Approach, Bloom's Taxonomy, and Student Performance in an Undergraduate Human Anatomy Course*, 28 *ADVANCES HEALTH SCIS. EDUC. THEORY PRAC.* 1115, 1116–17 (2023) (explaining the intersection of learning approaches and learning taxonomies).

220. Terrell Heick, *6 Alternatives to Bloom's Taxonomy for Teachers*, TEACHTHOUGHT (Nov. 16, 2021), <https://www.teachthought.com/critical-thinking/alternatives-blooms>.

221. *Id.*

222. *Id.*

223. ROBERT J. MARZANO & JOHN S. KENDALL, *THE NEW TAXONOMY OF EDUCATIONAL OBJECTIVES* 66 (2d ed. 2007).

taxonomies overlap, and law professors may benefit from considering each of them or a combination.

Theories and taxonomies aside, in the broadest classifications, learning is either active or passive. Is one better than the other? Studies lack consistency because of design variances. However, a 2009 study showed that although passive learners and active learners in a business school curriculum showed similar content mastery, active learners scored higher.²²⁴ Perhaps, that could be a clue to bar passage success.

Passive learning does not engage interaction between professor and student; rather, the teacher transfers knowledge to the class, usually by lecture.²²⁵ Examples of passive learning include reading, watching, or listening. However, education scholarship has yet to unify a definition for active learning. No matter how well-versed in human intelligence, learning theory, taxonomies for learning objectives, or specific pedagogical philosophy, active learning engages the educator as an artist.²²⁶ Active learning requires that the professor think outside the lectern box.²²⁷ Learners are held responsible for their own learning, like professionals.²²⁸

The flipped classroom provides an example of active learning.²²⁹ Comparing entirely online classes with blended classes, a 2021 study found that students engaged more with video than in blended classes,²³⁰ but according to another study, the costs may outweigh the benefits²³¹:

224. See Norbert Michel et al., *Active Versus Passive Teaching Styles: An Empirical Study of Student Learning Outcomes*, 20 HUMAN RESOURCES DEVELOPMENT QUARTERLY 397, 410, 414 (2009).

225. See *id.* at 397, 400; Kyoungwon Seo et al., *Active Learning with Online Video: The Impact of Learning Context on Engagement*, 165 COMPUTERS & EDUCATION 1, 2 (2021); Mario Tani et al., *Drivers of Student Engagement in Higher Education: A Behavioral Reasoning Theory Perspective*, 81 HIGHER EDUCATION 499, 514 (2021).

226. See PHIL KIRKMAN, CAMBRIDGE INTERNATIONAL EXAMINATIONS, ACTIVE LEARNING LESSONS FROM THE ARTS (2014), <https://www.cambridgeinternational.org/images/177926-phil-kirkman.pdf> (explaining the need for creative thinking to support students, using arts education as example).

227. *Active Learning*, UC BERKELEY: CENTER FOR TEACHING & LEARNING, <https://teaching.berkeley.edu/teaching-guides/running-your-course/active-learning> (last visited May 12, 2024).

228. *Id.*

229. See Cynthia J. Brame, *Flipping the Classroom*, VANDERBILT UNIVERSITY: CENTER FOR TEACHING, <http://bit.ly/2QAqJ5Y> (last visited May 12, 2024) (providing an overview of “flipping the classroom”); see also Amy Roehl et al., *The Flipped Classroom: An Opportunity to Engage Millennial Students Through Active Learning Strategies*, 44 JOURNAL OF FAMILY & CONSUMER SERVICES 45–48 (2013) (arguing that Millennial students benefit from a “flipped classroom” teaching model).

230. See Brame, *supra* note 229 (for an overview of “flipping the classroom”); see also Roehl, *supra* note 229, at 47 (arguing that Millennial students benefit from a “flipped classroom” teaching model).

231. B. Jane Mandernach, *Effect of Instructor-Personalized Multimedia in the Online Classroom*, 10 INTERNATIONAL REVIEW OF RESEARCH IN OPEN & DISTANCE LEARNING 1, 1 (2009). However, technology costs decrease

There is considerable evidence that well-designed multimedia resources can enhance learning outcomes, yet there is little information on the role of multimedia in influencing essential motivational variables, such as student engagement. . . . A comparison of student engagement between courses that feature increasing numbers of instructor-personalized multimedia components reveals conflicting evidence. While qualitative student feedback indicates enhanced engagement as a function of instructor-generated multimedia supplements, quantitative data reports no significant differences in engagement or learning between the various levels of multimedia inclusion. Findings highlight the complexity surrounding the appropriate use of multimedia within an online course. University policy-makers and instructors are cautioned to examine carefully the cost-benefit ratio of multimedia inclusion for online learning environments.²³²

B. Mind, Brain, and Education Science

The development of mind, brain, and education science (MBE) is having significant impacts on teaching methods.²³³ MBE is a multidisciplinary field that combines neuroscience, psychology, and education to study how teaching methods can help people learn more efficiently.²³⁴ As suggested by Professor Nancy Millar, law professors should draw from MBE science to inform our teaching:

[MBE science] offers to law professors and others the tools to recognize and address students' learning difficulties through techniques based on empirical evidence. By integrating research from neuroscience, psychology, and education, MBE science is able to "create more powerful teaching tools" superior to any tool coming from just one discipline.²³⁵

over time, and tech vendors often offer discounts for educators, while online learning management systems have become the norm.

232. *Id.*

233. Nancy E. Millar, *The Science of Successful Teaching: Incorporating Mind, Brain, and Education Research into the Legal Writing Course*, 67 ST. LOUIS U. L. J. 373, 373–74 (2019).

234. *Id.* at 390.

235. *Id.*

According to MBE scientists there are five well-established principles about the human brain:

1. [H]uman brains are as unique as faces;
2. [A]ll brains are not equal because context and ability influence learning;
3. [E]xperience changes the brain;
4. [T]he brain is highly plastic; and
5. [T]he brain connects new information to old information.²³⁶

These characteristics should influence an andragogic approach for adult learners. Students bring individual levels of intelligence, experiences, skills, and biases, suggesting that learning experiences should be personalized through differentiated instruction.²³⁷ Universal design for learning (UDL) helps teachers differentiate instruction to offer highly accessible materials for a wide audience of different experiences and abilities.²³⁸ Law students are adults with life experiences and undergraduate degrees, and professors should meet them where they are.

C. “Andragogy”? Did He Mean “Pedagogy”?

One might pause to ask, “pedagogy/andragogy—isn’t it the same thing?” Ubiquitous use of “pedagogy” for all things related to instructional methods has created an overlap of general learning science that applies to all humans, regardless of age.²³⁹ However, in developing a Positive Education (PosEd) curriculum in a CoI, law professors should remember that they teach adults, not children. But when developing classroom methods, law professors

236. *Id.* at 391–97 (emphasis added) (citing Maureen F. Fitzgerald, *What’s Wrong with Legal Research and Writing? Problems and Solutions*, 88 L. LIBR. J. 247, 250 (1996)).

237. Carol Ann Tomlinson et al., *Differentiating Instruction in Response to Student Readiness, Interest, and Learning Profile in Academically Diverse Classrooms: A Review of Literature*, 27 J. EDUC. GIFTED 119, 121 (2003); Heather Garretson et al., *The Value of Variety in Teaching: A Professor’s Guide*, 64 J. LEGAL EDUC. 65, 69 (2014).

238. See *The UDL Guidelines*, CAST, <https://udlguidelines.cast.org> (last visited May 12, 2024).

239. *It’s Andragogy, Not Pedagogy*, INSIDE HIGHER EDUC. (June 16, 2014), <https://www.insidehighered.com/views/2014/06/17/essay-questions-use-term-pedagogy-describe-ideas-regard-college-teaching> (explaining the overuse and misuse of “pedagogy” when referring to adult learning).

should look to both “andragogy” and “pedagogy” materials, to the extent that “pedagogy” research may address learning generally, rather than as it applies only to children. This discussion views andragogy as a primary theory with several subsets that could inform teaching of adults, all of which overlap well with PosEd and the CoI.

Though pedagogy and andragogy share a basic construct that includes a teacher, a subject, and a learner, each term corrals different teaching methods—one for children (*peda-*) and another for adults (*andra-*).²⁴⁰ For andragogy, the basic construct includes self-directed learning.²⁴¹ Numerous studies have shown that adult learners need approaches different from children,²⁴² and law schools educate adults, not children.²⁴³ In fact, the separation has been so distinct that in September 1989, the journal, *Adult Learning*, was launched.²⁴⁴ Yet, legal educators frequently reference pedagogy research to inform law school instruction.²⁴⁵ Surprisingly, in early brainstorming and workshopping for this Article, many colleagues had never heard the term andragogy. To the extent that pedagogy studies analyze teaching methods or learning science generally, perhaps the semantics don’t matter. However, since Malcolm Knowles reintroduced andragogy theory,

240. Malcolm Knowles, *Andragogy, Not Pedagogy*, 16 ADULT LEADERSHIP 350, 351 (1968); see *Andragogy*, OXFORD ENG. DICTIONARY, https://www.oed.com/dictionary/andragogy_n?tab=factsheet#12070503 (last updated July 1, 2023). But see *Pedagogy*, OXFORD ENG. DICTIONARY, <https://www.oed.com/viewdictionaryentry/Entry/139520> (last updated July 1, 2023) (defining pedagogy more generally as educational instruction); Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VANDERBILT L. REV. 321, 327 (1982). See *Andragogy vs. Pedagogy: Key Differences in Learning*, WGU (May 24, 2022), <https://www.wgu.edu/blog/andragogy-pedagogy-key-differences-learning2205.html>; see also Bloch, *supra* at 327.

241. See Sharan B. Merriam, *Andragogy and Self-Directed Learning: Pillars of Adult Learning Theory*, 89 NEW DIRECTIONS FOR ADULT & CONT. EDUC. 3, 4–5 (2001).

242. *15 Top Strategies for Teaching Adult Learners [+ FAQs]*, UNIV. OF SAN DIEGO: PRO. & CONTINUING EDUC., <https://pce.sandiego.edu/15-top-strategies-for-teaching-adult-learners-faqs> (last visited May 12, 2024); KASIA M. DERBISZEWSKI & T. NICOLE TUCKER-SMITH, SUPERCHARGE YOUR PROFESSIONAL LEARNING: 40 CONCRETE STRATEGIES THAT IMPROVE ADULT LEARNING (2020). There is enough scientific research for andragogy that the topic has a devoted journal, *Adult Learning*, SAGE JS., <https://journals.sagepub.com/description/ALX> (last visited May 12, 2024).

243. See David Merson, *How Old Is Too Old for Law School?*, JURIS EDUC. (Jan. 18, 2023), <https://www.juriseducation.com/blog/how-old-is-too-old-for-law-school> (stating that the “average age of law students is 25 or younger,” however, there are statistics for ages 30 and above); see also Rebecca Flanagan, *Anthrogogy: Towards Inclusive Law School Learning*, 19.1 CONN. PUB. INT. L. J. 93, 98–99 (2019) (suggesting the need for a new learning theory for “emergent adulthood” that reflects current law school demographics; whereas andragogy has traditionally been viewed as a theory for other types of adult learners).

244. See *Adult Learning*, *supra* note 242.

245. A Lexis+ search for the word “pedagogy” in law review articles revealed 8,921 results. A Lexis+ search for the word “andragogy” revealed only 148 search results. The search history is on file with the author.

learning scientists have separated the field from child learning research.²⁴⁶ Improving legal education calls for a review of scientific research specific to adult learning, not child development research.²⁴⁷

Some scholars argue that current law students are somewhere between adolescence and adulthood, and therefore, neither pedagogy nor andragogy are appropriate.²⁴⁸ Whatever the academy calls its teaching processes, the reality holds that today's law students are unique among other professional school students and different from past generations, and law schools should adopt teaching methods that protect student well-being and provide opportunities for professional identity development so that those students can flourish when they practice law. More of the same will produce more of the same.

1. "Andragogy" History/Overview

In 1833, German educator Alexander Knapp first coined "andragogy."²⁴⁹ Analyzing Plato's work on education, Knapp realized that Plato included adults as learners, and Knapp included a separate book section on adult learning.²⁵⁰ However, Knapp did not create an adult learning theory—rather he concluded that adults also need education and suggested important developmental qualities, generally and for trades.²⁵¹ However, scholars debated the topic, and the term fell out of use.²⁵² Andragogy reappeared in 1921 when Eugen Rosenstock-Huussy recognized that adult education demands a unique philosophy, specialized teachers, and unique methods.²⁵³ In 1926, Eduard Lindeman carried the concept further in his

246. Knowles, *supra* note 240, at 351.

247. See Merson, *supra* note 243; Flanagan, *supra* note 243, at 98–99 (suggesting the need for a new learning theory for "emergent adulthood" that reflects current law school demographics, whereas andragogy has traditionally been viewed as a theory for other types of adult learners).

248. Flanagan, *supra* note 243, at 98–99 (suggesting the need for a new learning theory for "emergent adulthood" that reflects current law school demographics, whereas andragogy has traditionally been viewed as a theory for other types of adult learners).

249. SHEILA ALDRED ET AL., TOWARDS A DEVELOPMENTAL THEORY OF ANDRAGOGY, at v (1983); Sevin Loieng, *Alexander Kapp—The First Known User of the Andragogy Concept*, 36 INT'L J. LIFE LONG EDUC. 629, 630 (2017) (citing Kapp's book *Platon's Erziehungslehre, als Pädagogik für die Einzelnen und als Staatspädagogik: Oder Dessen Praktische Philosophie, aus den Quellen Dargestellt*).

250. Loieng, *supra* note 249, at 630, 632.

251. *Id.*

252. See ALDRED, *supra* note 249 (discussing opposition to the use of the term by German philosopher Johan Herbart and the response in academia).

253. See *id.* (describing the contents of a paper delivered to the Academy of Labor in Frankfurt, Germany); Sevin Loieng, *Eugen Rosenstock-Hussey—An Andragogical Pioneer*, 35 STUD. CONTINUING EDUC. 241, 241 (2013).

book, *The Meaning of Adult Education*.²⁵⁴ However, work in developing andragogy fell silent again, with the exception of some European educators in the 1950's, including Franz Poggeler.²⁵⁵ An interesting note is that andragogy seems to capture interest among academic circles following times of war (returning soldiers in need of new skills) and economic shifts, such as urbanization and industrialization.²⁵⁶ However, it wasn't until Malcolm Knowles published his version of andragogy in 1970 that the term became well-established.²⁵⁷ He went on to publish more than 200 articles and books on adult education.²⁵⁸

Since its widespread recognition, Knowles's concept of adult education has not been without critics. For example, some have argued that there are some social settings that cannot suffer the self-direction suggested by Knowles's andragogy, such as church and civics.²⁵⁹ Scholars have also questioned andragogy as a valid field for scientific study, apart from learning generally.²⁶⁰ Thus, andragogy scholars have been siloed from pedagogy scholars, and the separation of andragogy and pedagogy limits the centuries of pedagogical development, some of which has been about human learning generally, while other important findings have been specific to child education.²⁶¹

254. EDUARD C. LINDEMAN, *THE MEANING OF ADULT EDUCATION* 6 (1926).

255. *See generally* FRANZ POGGELER, *INTRODUCTION INTO ANDRAGOGY: BASIC ISSUES IN ADULT EDUCATION* (1957) (an apparent gap in literature specific to andragogy between the World Wars).

256. In the 1820's and 1830's, Germany was in turmoil, leading to the Hambach Festival where protesters advocated for the unification of German states—post enlightenment, beginning of industrialization, and Romanticism; 1920's—post-World War I; 1950's—post World War II; 1970's America—time of significant social change and return of Vietnam veterans. John A. Heskke, *A History of Andragogy and Its Documents as They Pertain to Adult Basic and Literacy Education*, 25 PAACE J. LIFELONG LEARNING I (2016).

257. Knowles, *supra* note 240, at 250; *see generally* MALCOLM S. KNOWLES, *THE MODERN PRACTICE OF ADULT EDUCATION: FROM PEDAGOGY TO ANDRAGOGY* 1, 59 (1970) [hereinafter *THE MODERN*]; *see also* JOST REISCHMANN, *ANDRAGOGY. HISTORY, MEANING, CONTEXT, FUNCTION* 4 (2004), <http://www.andragogy.net/Andragogy-Internet.pdf>.

258. *Malcolm Knowles: Hall of Fame Class of 1996*, THE UNIV. OF OKLA.: HALL OF FAME, <https://halloffame.outrach.ou.edu/Inductions/Inductee-Details/malcolm-knowles> (last visited May 12, 2024).

259. Knowles, *supra* note 240, at 350–52; *THE MODERN*, *supra* note 257, at 45; *see also* REISCHMANN, *supra* note 257, at 3–4 (discussing Knowles's notion that maturity entails self-directed action is not often accepted in adult education, since values such as family, religion, and civic education frequently favor “we” over “self”).

260. Knowles, *supra* note 240, at 386; *THE MODERN*, *supra* note 257, at 59; *see also* REISCHMANN, *supra* note 257, at 5 (explaining andragogy encompasses all types of learning, including “formal and informal,” purposeful, “institution-supplied,” and self-directed learning).

261. REISCHMANN, *supra* note 257.

2. Andragogy Discussions in Legal Education

As for legal education, andragogy does not appear in scholarship until 1982 when Frank S. Bloch saw its value in clinical education.²⁶² That article wasn't cited until 1987.²⁶³ Over the last 41 years, andragogy has only appeared in 150 law review articles and 2 appellate court opinions.²⁶⁴ Until 1996, that scholarship was limited to a passing glance or being specifically about clinical legal education.²⁶⁵ In 2000, David D. Garner received renewed praise for the Langdellian case method; however, he did not thoroughly explore the alternatives that he recognized were available—noting lecture, textbook, problems, and clinical methods.²⁶⁶ And andragogy has not been without critics in legal education, some scholars noting that graduate students are atypical adults and that someone's precise age is irrelevant to their self-sufficiency and other adult characteristics.²⁶⁷ Most recently in 2018, Rebecca Flanagan suggested that today's law students are somewhere between adolescence and adulthood and that the hierarchy and formality of the legal profession requires a more formal teaching theory.²⁶⁸ Nevertheless, even the youngest first-year students are actual adults with agency. Even though law students may be at different places within a spectrum of adulthood, this does not mean child or adolescent learning theory is appropriate in law schools. A PosEd/CoI meets these concerns and can work for pedagogy, andragogy, and all in between.

262. Bloch, *supra* note 240, at 321. Like other time periods when andragogy returned to the zeitgeist, 1982 was an economically challenging time in the United States, during which legal education was in the midst of shifting from didactic and Socratic method to experiential learning. *See also* Leah Wortham et al., *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. UNIV. L. REV. 337, 356 (1987).

263. Wortham, *supra* note 262, at 356.

264. Based on this author's search of Westlaw and Lexis within secondary sources, filtered to law reviews and journals for the search term "andragogy." The search history is on file with the author.

265. *See* Roy T. Stuckey, *Education for the Practice of Law: The Times They Are A-Changin'*, 75 NEB. L. REV. 648, 652–53 (1996) (this author notes that most of what Stuckey argues for change is exactly what we continue developing in 2023); *see also* Kimberly K. Kovach, *Virtual Reality Testing: The Use of Video for Evaluation in Legal Education*, 46 J. LEGAL EDUC. 233, 233 (1996) (highlighting the significance of the MacCrate Report); Thomas Disare, *A Lawyer's Education*, 7 MD. J. CONTEMP. L. ISSUES 359, 376–77 (1996).

266. David D. Gardner, *The Continuing Vitality of the Case Method in the Twenty-First Century*, 2000 BYU EDUC. L. J. 307, 341–42 (2000).

267. *See* Emily Zimmerman, *An Interdisciplinary Framework for Understanding and Cultivating Law Student Enthusiasm*, 58 DE PAUL L. REV. 851, 867–68, 867 n.103 (2009).

268. Rebecca Flanagan, *Better by Design: Implementing Meaningful Change for the Next Generation of Lawyers*, 17 ME. L. REV. 103, 115–18 (2018).

Meanwhile, Jennifer Rosen Valverde has suggested that the benefits of andragogy theory in clinics can also be realized in the doctrinal classroom.²⁶⁹ Metacognition and differentiated learning, andragogical techniques, continue to be hot topics.²⁷⁰ But as anyone knows, the world has changed significantly since 2019, post-pandemic. One can argue that the “emerging adults,” described in Flanagan’s pre-pandemic piece, had a “baptism by fire” with a pandemic introduction to adulthood, self-reliance, isolation, and loneliness. With the change to entirely online learning, other legal scholars found the value of andragogical principles across the law school curriculum.²⁷¹ In fact, law schools have been expanding virtual offerings since the pandemic.²⁷²

269. Jennifer Rosen Valverde, *Preparing Tomorrow’s Lawyers to Tackle Twenty-First Century Health and Social Issues*, 95 DENVER L. REV. 539, 564–566 (2018); see also Danielle R. Cover, *Of Courtrooms and Classrooms*, 27 B.U. PUB. INT. L. J. 291, 292 (2018) (suggesting trial practitioners could use andragogy theory to persuade jurors); Kimberly O’Leary, *Weaving Threads of Clinical Legal Education Scholarship into the First-Year Curriculum: How the Clinical Law Movement Is Strengthening the Fabric of Legal Education*, 26 CLINICAL L. REV. 357, 362–63 (2019) (acknowledging other instructive methods in other professions); Jaime Alison Lee, *From Socrates to Selfies: Legal Education and the Metacognitive Revolution*, 12 DREXEL L. REV. 227, 229–30 (2020) (same).

270. See Jennifer A. Gundlach & Jessica R. Santangelo, *Understanding the Metacognitive “Space” and Its Implications for Law Students’ Learning*, 50 HOFSTRA L. REV. 769, 770 (2022) (discussing metacognition); Karen J. Sneddon, *Square Pegs and Round Holes: Differentiated Instruction and the Law Classroom*, 48 MITCHELL HAMLIN L. REV. 1095, 1097 (2022) (discussing differentiated learning).

271. See Charletta A. Fortson, *Now Is Not the Time for Another Law School Lecture: An Andragogical Approach to Virtual Learning for Law School Education*, 65 ST. LOUIS U. L. J. 505, 506 (2021) (explaining the impact of the pandemic on legal education); Yvonne M. Dutton & Margaret Ryznar, *Law School Pedagogy Post-Pandemic: Harnessing the Benefits of Online Teaching*, 70 J. LEGAL EDUC. 252, 252–53 (2021) (same).

272. *Law Schools Plan Virtual Expansion Post-Pandemic*, ABA, <https://www.americanbar.org/news/abanews/aba-news-archives/2022/02/law-schools-plan-virtual-expansion> (last visited May 12, 2024).

3. Knowles Andragogy Principles:

Malcom Knowles developed the andragogy principles:

	Purpose	Autonomy	Experience	Accessible	Hope ²⁷³
<i>Knowles's Principles</i>	“Adults understand <i>why</i> something is important to know or do.”	“Freedom to learn in their own way.”	“Learning is experiential.”	“Scaffolding to encourage learning when the student is ready.”	“Allowing measured success and failure to help students find confidence to explore and grow.”
<i>Optimal Adult Learning</i>	Learning is relevant.	Learning is self-directed.	Learning is experiential and uses background knowledge. Problem-centered learning.	Relevant for current roles.	Students are motivated to learn.

Table 3.²⁷⁴

By purposefully employing these andragogy principles into instruction, adult educators and learners will experience greater success in the classroom.²⁷⁵ When employed thoughtfully and with intention, Knowles theorized that adult learners would achieve the following outcomes:

Adults should acquire a mature understanding of themselves. . . . They should accept . . . and respect themselves [and always strive] to become better.

273. The author created this header row to further iterate Knowles’s principles in pragmatic, modern terms. These concepts overlay well with Positive Legal Education (PLE) and CoI hallmarks. See Talisha Holmes, *5 Principles for Teaching Adult Learners*, GEN. ASSEMBLY, <https://generalassemb.ly/blog/principles-teaching-adults> (last visited May 12, 2024).

274. Deb Peterson, *What Is Andragogy and Who Needs to Know?*, THOUGHTCO., <https://www.thoughtco.com/what-is-andragogy-31318> (last updated Mar. 8, 2017).

275. Deb Peterson, *5 Principles for Teaching Adults*, THOUGHTCO., <https://www.thoughtco.com/principles-for-the-teacher-of-adults-31638> (last updated Oct. 7, 2019).

Adults should develop an attitude of acceptance, love, and respect toward others. [They should] learn . . . to challenge ideas without threatening people. . . .

Adults should develop a dynamic attitude toward life. They should accept [that they are] always changing [and] look[] at every experience as an opportunity to learn

Adults should learn to react to the causes, not the symptoms, of behavior. Solutions to problems lie in their causes, not their symptoms. . . .

Adults should acquire the skills necessary to achieve the potentials of their personalities. Every person [is capable of contributing to society and has an obligation to develop his own individual talents]. . . .

Adults should understand the essential values in the capital of human experience. . . . They should [understand] the great ideas [and traditions of history and realize that these are what bind people together]. . . .

Adults should understand their society and should be skillful in directing social change. In a democracy the people participate in making decisions that affect the entire social order. It is imperative, therefore, that every factory worker, every salesman, every politician, every housewife, know enough about government, economics, international affairs, and other aspects of social order to be able to take part in them intelligently.²⁷⁶

Those outcomes align well with professional identity development. Clearly, teachers of adults have a far different job than the K–12 educators. The legal academy should look to mind, brain, and learning science about adults, not children.

276. See MALCOLM KNOWLES, *INFORMAL ADULT EDUCATION: A GUIDE FOR ADMINISTRATORS, LEADERS, AND TEACHERS* 9–10 (4th ed. 1955).

D. The Community of Inquiry's Four Presences

The CoI offers an excellent teaching framework to employ andragogy principles. The CoI arose from social-constructivist theories posited by 19th and early 20th century philosophers, such as John Dewey and Charles Sanders Peirce.²⁷⁷ However, its current iteration was designed in 2000, coincidentally the same year that Seligman and Csikszentmihalyi published their paper about positive psychology.²⁷⁸ Despite aging roots, the CoI framework has seen greater adoption and development due to the growth of law school clinics and online learning during the COVID-19 pandemic.²⁷⁹

In the CoI process, students learn through the development of three elements or presences: social, cognitive, and teaching.²⁸⁰ The model is meant to be adaptable, and in fact, many scholars have added to the CoI triumvirate.²⁸¹ Some researchers include a fourth presence—learning

277. Sami Paavola & Kai Hakkarainen, *Community of Inquiry and Inquiry-Based Learning*, ENCYC. OF EDUC. PHIL. & THEORY, 1, 7 (2018).

278. See Seligman & Csikszentmihalyi, *supra* note 1, at 5; *CoI Framework*, COI, <https://coi.athabascau.ca/coi-model> (last visited May 12, 2024).

279. See, e.g., Joseph A. Rosenberg, *Confronting Clichés in Online Instruction: Using a Hybrid Model to Teach Lawyering Skills*, 12 SMU SCI. TECH. L. REV. 19, 51, 51 n.70 (2017); Filippa Marullo Anzalone, *It All Begins With You: Improving Law School Learning Through Professional Self-Awareness and Critical Reflection*, 24 HAMLINE L. REV. 325, 332 (2001); see also *supra* notes 272 & 273 and accompanying text.

280. *CoI Framework*, *supra* note 278; D. Randy Garrison, *Designing a Community of Inquiry*, THE CMTY. OF INQUIRY (Jan. 2, 2018), <http://www.thecommunityofinquiry.org/editorial9> [hereinafter *Inquiry*]; D. Randy Garrison, *Understanding CoI Presences*, THE CMTY. OF INQUIRY (Oct. 30, 2019), <http://www.thecommunityofinquiry.org/editorial23> [hereinafter *Presences*]; D. Randy Garrison, *Social and Cognitive Presence Relationships*, THE CMTY. OF INQUIRY (June 17, 2019), <http://www.thecommunityofinquiry.org/editorial22> [hereinafter *Relationships*].

281. D. Randy Garrison et al., *The First Decade of the Community of Inquiry Framework: A Retrospective*, 13 INTERNET & HIGHER EDUC. 5, 6 (2010).

presence.²⁸² The CoI is especially applicable to online learning²⁸³ and found greater recognition during the COVID-19 pandemic.²⁸⁴

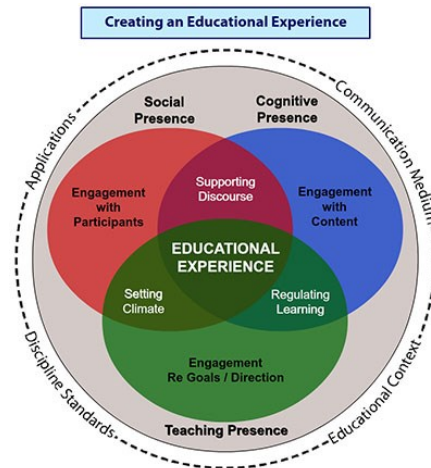


Figure 2²⁸⁵

282. See, e.g., Elvira Popescu & Gabriel Badea, *Exploring a Community of Inquiry Supported by a Social Media-Based Learning Environment*, 23 J. EDUC. TECH. & SOC'Y 61, 61–62 (2020) (discussing the history of adding learning presence to the CoI framework, and explaining why the category is particularly useful when studying online education settings).

283. See D. Randy Garrison et al., *Critical Inquiry in a Text-Based Environment: Computer Conferencing in Higher Education*, 2 INTERNET & HIGHER EDUC. 87, 87–88 (1999) (discussing the applicability of a community of inquiry to online learning); see also Noelle Wall Sweaney, *From Theory to Practice: Evidence-Based Strategies for Designing and Developing Online Courses*, 70 SYRACUSE L. REV. 167, 172 (2020) (discussing the use of the CoI in online learning); D. Randy Garrison, *CoI Framework in Face-to-Face Environments*, THE CMTY. OF INQUIRY (Aug. 1, 2023), <https://www.thecommunityofinquiry.org/editorial42>; Jati Ariati et al., *Constructivist Learning Environments: Validating the Community of Inquiry Survey for Face-to-Face Contexts*, ACTIVE LEARNING IN HIGHER EDUC., July 2023, at 3.

284. Daniela Castellanos-Reyes, *20 Years of the Community of Inquiry Framework*, 64 TECHTRENDS 557, 558–59 (2020).

285. *So How Do You Design Effective Learning Experiences for the Online Environment? Next, a Theoretical Framework Is Presented to Answer This Question*, UNIV. OF WISCONSIN-MADISON, https://courses.dcs.wisc.edu/design-teaching/PlanDesign_Fall2016/1-Getting-Started-Module/3-transitioning-online-unit/8_community-inquiry.html (last visited May 12, 2024) [hereinafter *Effective Learning Experiences*]; D. Randy Garrison et al., *Critical Thinking, Cognitive Presence, and Computer Conferencing in Distance Education*, 15 AM. J. DISTANCE EDUC. 7, 9 (2001).

1. Cognitive Presence

Cognitive presence is the extent to which learners can construct and confirm meaning through sustained reflection and discourse.²⁸⁶ Students should actively engage with the content and explore their own ideas, thoughts, and beliefs. These meaningful connections connect with the content and facilitate learning.²⁸⁷ Teachers should set high expectations for student inquiry and help students identify learning goals. Throughout the process, professors should examine, challenge, and probe students' responses to encourage deeper analysis—an overlap with teaching presence. Learning activities and formative assessments must be relevant, challenging, collaborative, and require analytical thinking. Students should have reflective discussions, share their thoughts and emerging questions with classmates, and experience collaborative projects. Formative assessments should require students to apply what they've learned in real-world situations.

2. Social Presence

Social presence offers students “the ability . . . to identify with the community (e.g., course of study), communicate purposefully in a trusting environment, and develop inter-personal relationships by way of projecting their individual personalities.”²⁸⁸ Social presence methods help develop a sense of safety and comfort so that students will be receptive to the teaching presence and cognitive presence methods.²⁸⁹ Professors can strengthen social presence, even in a flipped or online classroom, for example with discussion forums. The forums could have a separate thread for introductions (which is especially useful in large classes), logistics, and major assignments. With appropriate humor and vulnerability, students view teachers as authentic, relatable, and approachable.

286. Christopher W. Parrish et al., *Fostering Cognitive Presence, Social Presence and Teaching Presence with Integrated Online—Team-Based Learning*, 65 *TECHTRENDS* 473, 476 (2021); Garrison et al., *supra* note 285, at 8, 10, 11; Karel Kreijns et al., *Social Presence: Conceptualization and Measurement*, 34 *EDUC. PSYCH. REV.* 139, 146 (2021).

287. Parrish et al., *supra* note 286; Garrison et al., *supra* note 285, at 10, 11; Kreijns et al., *supra* note 286, at 140.

288. *Col Framework*, *supra* note 278; Kreijns et al., *supra* note 286, at 145.

289. *Effective Learning Experiences*, *supra* note 285.

3. Teaching Presence

Teaching presence concerns the design, facilitation, and direction of cognitive and social processes for the purpose of realizing personally meaningful and educationally worthwhile learning outcomes.²⁹⁰ Teaching presence concerns andragogy. It manifests in everything the teacher does to shape, guide, and support learning experiences. Professors must have an authentic, purposeful, and consistent presence and set clear, challenging expectations for students. Announcements and discussion forums allow for teaching presence in addition to regular class time. With frequent engagement, teachers can stay abreast of students' realizations and progress while allowing encouraging feedback, guidance, and direction. Materials and information should come from diverse sources and be presented according to principles of universal design for both learning and differentiated learning so the class is accessible to the widest student pool.

When most educators think of differentiated instruction, they probably recall Fleming and Mills's VARK Modalities: visual, auditory, reading/writing, and kinesthetic.²⁹¹ While these are valid learning modalities, unfortunately, many teachers and students make too much of the VARK theory and view the "learning styles" as absolute, one way or another, for learners.²⁹² In fact, Fleming and Mills clearly stated in their seminal paper that it was a survey of "*preferences*."²⁹³ Professors and law students should not perpetuate the myth that students learn by only one modality; learning encompasses all modalities, regardless of the learner's preferences. Nevertheless, the VARK modalities can be helpful guides for developing lesson plans that strive towards differentiated instruction and universal design for learning.

Teachers who employ differentiated instruction involve all students in a range of methods so that they may acquire knowledge, the skills to process that knowledge, and the ability to employ processes to make sense of ideas and problems—professional identity development (PID). Depending on many factors, including social and economic demographics, the materials a

290. *Designing a Community of Inquiry*, *supra* note 280; *Presences*, *supra* note 280; *Relationships*, *supra* note 280.

291. Neil Fleming & Colleen Mills, *Not Another Inventory, Rather a Catalyst for Reflection*, 11 TO IMPROVE ACAD. 137, 138 (1992).

292. See, e.g., *What's Your Learning Style?*, EDUCATIONPLANNER.ORG, <http://www.educationplanner.org/students/self-assessments/learning-styles.shtml> (last visited May 12, 2024) (classifying learners as one of three kinds); Nancy Chick, *Learning Styles*, VANDERBILT UNIV.: CTR. FOR TEACHING, <https://cft.vanderbilt.edu/guides-sub-pages/learning-styles-preferences> (last visited May 12, 2024) (explaining the prevalence of identifying with a learning style).

293. Fleming & Mills, *supra* note 291 (emphasis added).

teacher uses in differentiated instruction must vary. While a pure differentiated environment might go so far as to set unique expectations for each student, based on their individual needs, such individualized curricula are not possible in the current law school model. However, it is still possible to differentiate learning through content, process, product, and environment by adopting UDL principles.²⁹⁴

4. Learning Presence

Learning presence was not an original branch of the CoI. This new prong emerged around 2010.²⁹⁵ It focuses on learner self-efficacy as well as self- and co-regulation, focusing on the active roles of students in terms of metacognitive, motivational, and behavioral traits.²⁹⁶ Learning presence mediates the relationships among teaching presence, social presence, and cognitive presence. However, given the andragogy principles and goals and the professional identity definition, learning presence should be a part of a law school's PosEd/CoI methods.

294. *The UDL Guidelines*, *supra* note 238.

295. See Peter Shea et al., *Learning Presence: Additional Research on a New Conceptual Element Within the Community of Inquiry (CoI) Framework*, 15 *INTERNET & HIGHER EDUC.* 89, 90 (2012).

296. Catherine A. Honig & Diane Salmon, *Learner Presence Matters: A Learner-Centered Exploration into the Community of Inquiry Framework*, 25 *ONLINE LEARNING J.* 95, 113 (2021).

IV. BRINGING IT ALL TOGETHER: POSITIVE EDUCATION (POSED) IN A
COMMUNITY OF INQUIRY (COI) FOR PROFESSIONAL IDENTITY
DEVELOPMENT THAT BUILDS FOUNDATIONAL MODEL COMPETENCIES

The responsibility rests upon the profession to see that its membership is composed of good timber. The law school of the future will not only be an institution designed to impart some learning of the law but, also, it will be an institution created for the purpose of grounding students in the foundation stones of government, in logic, psychology, and ethics. It will develop the ability to analyze and see through, and to despise sham and hypocrisy.

—Millard F. Caldwell²⁹⁷

Former Florida Governor and Florida Supreme Court Justice, Millard F. Caldwell, wrote those words in 1949.²⁹⁸ Decades later, the academy still cries for revolution and a design that creates lawyers with strong professional identities and well-being who can flourish in the profession. Caldwell's vision parallels Hamilton and Bilonis's Foundational Competencies Model/Professional Development and Formation (FCM/PD&F) Goals and can be fulfilled through PosEd in a CoI.

While some law school professors might organically employ andragogy methods, an approximation of the CoI, and even positive psychology/education, intentionality matters.²⁹⁹ A great educator must have a plan to develop meaningful learning.³⁰⁰ Compounding the conundrum, the legal academy notoriously lags behind other professional schools in self-study and innovation.³⁰¹ As described by Professor Rebecca Flanagan, University of Massachusetts School of Law:

297. Millard F. Caldwell, *The Law School of the Future*, 1 J. LEGAL EDUC. 388, 392–93 (1949).

298. *Id.*

299. Phillip L. Waalkes et al., *The Intentional Andragogy Model: A Teaching Framework for Counselor Educators*, 5 TEACHING & SUPERVISION COUNSELING 65, 66–67 (2023); Lisa Maxfield, *Intentional Teaching Inspires Intentional Learning (Infographic)*, MCREL INT'L (Oct. 4, 2017), <https://www.mcrel.org/intentional-teaching-inspires-intentional-learning>; Patty Alleva & Jennifer A. Gundlach, *Learning Intentionally and the Metacognitive Task*, 65 J. LEGAL EDUC. 710, 710–13, n. 5 (2006); Patricia A. Gouthro, *Taking Time to Learn: The Importance of Theory for Adult Education*, 69 ADULT EDUC. Q. 60, 61 (2018).

300. Gouthro, *supra* note 299, at 70.

301. Flanagan, *supra* note 243, at 135; Christine N. Coughlin et al., *See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. L. REV. 361, 370–71, 411 (2010); Morrison Torrey, *You Call That Education?*, 19 WIS. WOMEN'S L. J. 93, 93–94 (2004) (“There is so much wrong with legal education today that it is hard to know where

The one thing law schools, as a whole, have not done is apply advances in learning and cognitive sciences to the teaching methodology. While graduate and professional education in general has been slow to adopt best practices in teaching methods, law schools are unique in their reticence to reconsider teaching methods to better serve their students.³⁰²

Debra S. Austin called for a Positive Legal Education (PLE) movement in 2018.³⁰³ Yet, like Professor Bloch's call for andragogy in clinical legal education in 1982, the PLE movement hasn't inspired the academy's masses. Are these concepts already applied in law schools? Yes and no. According to Jordan Alter Confino's analysis, many schools offer at least some positive psychology applications.³⁰⁴ However, PosEd has not been widely integrated into doctrinal classes, much less across a school's curriculum, while andragogy methods have hardly received attention beyond clinical and experiential classes.³⁰⁵ The andragogy of the doctrinal law school class is still dominated by Langdell's Socratic case method—a technique proven to cause toxic competition and poor mental well-being for law students.³⁰⁶

A. Curriculum Level Development

Through institutional analysis, community development, and intentionality, law professors can build a cultural shift in legal education. Like an individual exploring growth through positive psychology, law schools should reflect on what they do well and use those strengths to empower programs, professors, students, and the bar. Law schools should reflect upon the definition of professional identity offered by Hamilton and Bilionis. Perhaps a radical thought, the academy should consult education experts to help assess, plan, and implement the systemic changes that, in turn, might lead to the much-needed cultural shift that allows students to develop strong professional identities for flourishing in school and practice.

to begin.”); Eli Wald & Russell G. Pearce, *Making Good Lawyers*, 9 U. ST. THOMAS L. J. 403, 404–05 (2011).

302. Flanagan, *supra* note 243, at 135; *see also* Stuckey, *supra* note 265, at 653, 672–73. In 2023, the academy still struggles to implement Stuckey's suggestions. *Id.*

303. Austin, *supra* note 18, at 672–73.

304. Confino, *supra* note 10, at 665.

305. *See* Lexis, Westlaw, and SSRN search results (on file with Author).

306. Austin, *supra* note 18, at 672–73.

But how? Seligman and Adler offer a checklist for developing a PosEd curriculum, which this author has corralled into three phases:³⁰⁷

Phase 1 Planning	Phase 2 Development	Phase 3 Review & Improve
“Contextual and cultural immersion and understanding”	“Curricular development and adaptation”	“Post-intervention [review and] measurements”
“Multi-stakeholder engagement”	Educator training	“Evidence-based policy design and institutional embeddedness”
“Needs and goals assessment”	Implementation	“Large-scale policy implementation”
“Quantitative baseline measurement[s]”	“Ongoing training and embedding”	“Ongoing evidence-based evaluation, adaptation, and evolution”

Table 4.

Hamilton and Bilonis offer a similar approach to broader curriculum reform³⁰⁸ while also providing ten principles specific to building a professional identity development (PID) curriculum:

1. Milestones within a competency based model;
2. Sequencing;
3. Engage students where they are in professional development;
4. Continuous reflection and self-assessment;
5. Mentoring and coaching;

307. SELIGMAN & ADLER, *supra* note 170, at 54–55.

308. HAMILTON & BILONIS, *supra* note 85, at 119–38, 141.

6. Recognize pivotal points of development to offer support;
7. Connect professional development to the student personally;
8. Reimagine the concept of assessment as to the PD&F goals;
9. Student portfolios;
10. Program assessment on PD&F goals will be easier if schools follow the first nine principles.³⁰⁹

Assuming stakeholder buy-in, the exact tasks a law school must undertake for PosEd and CoI curriculum development will vary. For example, differences in law school missions, location, student demographics, status as public or private, and other variables will impact needs and bureaucracy. An independent law school might have more flexibility for expedient design and implementation, but a public law school may have stronger fiscal structures to support robust reform.

B. Granular Course-Level Implementation

If leaders and constituencies embrace a PosEd/CoI model across a curriculum, delivery relies on creative and intentional educators. Following the PosEd/CoI concepts and the FCM/PD&F PID, law professors should intentionally plan class sessions so that over time a law student comes to understand “what it means to be a lawyer and the special obligations that lawyers have to their clients.” Appendix B provides a class session lesson plan matrix that can ensure intentionality, and, if used regularly and across well-mapped curriculum outcomes, can provide substantial and frequent opportunities for PID. Further, curriculum and outcome mapping coupled with a learning management system (i.e., Canvas or Blackboard) can help professors and students track professional development over time.

The PosEd/CoI lesson plan matrix can be used for legal writing, doctrinal, or clinical classes. The PosEd/CoI class plan matrix considers four points for each class session: desired outcomes and PD&F Goals that the class session targets, information delivery, student engagement, and formative assessment.

309. *Id.* at 65–67.

Law professors should think intentionally, rather than simply delivering material in a way that aligns a class session's timing on a linear path for subject matter coverage as noted in a syllabus. What is the bigger picture for a topic on a given day? Why does the broad view and its minutiae matter to the overall class and the overall curriculum? How can professors deliver the material in a way that achieves the class and programmatic objectives while imparting professional confidence through PosEd?

Outcome considerations should include how that coverage relates to bar exam objectives, programmatic outcomes, course outcomes (in consultation with all professors who teach a particular course), and PD&F Goals. Curriculum mapping that includes the PD&F Goals can help ensure that all objectives are being met by everyone who teaches a subject. Every class session need not strive to affect every realm of outcomes, but with good planning, the localized outcomes and more global PD&F Goals can be met across the term of a course.

With the andragogy principles in mind, professors should think about the means to deliver the material with PosEd that builds a CoI. The Matrix includes a cross section to reference how each CoI presence aligns with the PD&F Goals and with PosEd considerations. It also includes reminders about andragogical approaches, such as incorporating flipped classroom activities (done outside of class, possibly through a learning management system), a collaborative learning activity, and student reflection.

For the seasoned professor, who could probably lecture on a topic without notes, this level of planning may seem fraught. However, such granular and intentional class session, course, and programmatic planning is exactly what the academy needs if it is to develop lawyers with stable mental well-being and strong, personally unique professional identities. More of the same teaching methods will only cause more of the same—students who cannot develop strong professional identities because they are distracted by poor mental health that came about during law school and led to substance abuse problems. Intentional, granular andragogy that employs PosEd through a CoI offers a new approach in the law school classroom that could ignite the cultural shift that the legal profession has needed for decades.

CONCLUSION

With the revisions to ABA Standard 303, the academy, yet again, has a call to amend bad teaching methods that fail to inculcate new professionals with a strong sense of professional identity and the fortitude to withstand the adversarial nature of the profession. It's a familiar song. For more than a century, the profession and the academy has studied the issues of law school teaching methods, student and lawyer mental health, and student and lawyer substance abuse. Yet, the problems persist, with relatively consistent data. Educational experts, psychologists, and a lot of law professors have known what the academy must do—careers have been made from publishing on these issues. Law schools add a program here or there, per ABA Standard 508, but still send approximately a quarter of students into the profession with poor mental well-being—a sixth of whom never had mental health issues before law school.

Until law professors set aside ego to, once and for all, recognize that pontification and toxic competition are harmful, and until law schools realize that the prevailing grading schemes profoundly impact students' long-term self-perceptions and professional identity development, the industry need not study the issues again. Resources should be aimed at solutions, rather than reiterating the stagnant problems. The legal industry has been tainted by questionable (or even absent) pedagogy/andragogy for too long, and if professors are to offer substantial and frequent opportunities for professional identity development, they must innovate. Today calls for classroom-level solutions—a new pedagogy/andragogy. Each professor has a responsibility to self-reflect about their teaching methods, catch up on developments in mind, brain, and education science, and adjust as science dictates. No more of the same.

Law schools are long-overdue for collaboration with teaching and psychology experts. The academy could use some therapy and remediation. This, perhaps, lengthy discussion that overviews positive psychology, positive education, andragogy, and the CoI brings together what mind and brain scientists and experienced educators have known for decades: Law school teaching methods create law students with mental health problems who go on to be attorneys with mental health problems. The problem begins with law schools, specifically law professor teaching methods.

This author is not the first to describe a CoI. This Article is not the first to call for PosEd in legal education. However, the author hopes that this document offers a means to achieve the PD&F Goals that build attorneys with the “foundational competencies.” The academy must reckon with its andragogic inertia that creates negative law school cultures and students with

poor mental well-being; the academy needs Positive Legal Education. Offering PLE through an andragogy-based CoI can help law professors build students who can reach the Hamilton/Bilionis PD&F Goals. With intentionality, law professors can develop students who thrive in classrooms, are resilient and passionate, pass the bar exam, and who become attorneys who flourish.

APPENDIX A

TIMELINE OF MAJOR DEVELOPMENTS IN LEGAL EDUCATION^{310*}**1878**

American Bar Association formed.

ABA Timeline, ABA, https://www.americanbar.org/about_the_aba/timeline (last visited May 12, 2024).

1893

ABA Section on Legal Education and Admissions to the Bar formed as the first ABA section.

Id.

1900

Association of America Law Schools formed—an affiliate organization of the ABA.

Id.

1908

ABA created first ethical standards, *The Canons of Professional Ethics*, later called the *Model Rules of Professional Conduct*

Id.

1914

JOSEF REDLICH, THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, BULL. NO. 9 (1914) (often referred to as the Redlich Report).

1915

ABA Journal was created.

ABA Timeline, supra.

* This is Appendix A to Article, Joshua Aaron Jones, *Implementing ABA Standard 303(b)(3): Positive Legal Education Through a Community of Inquiry*, 48 VT. L. REV. 564 (2024).

1921

ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW: CARNEGIE FOUND. BULL. NO. 15 (1921) (the Reed I report).

ABA created standards for professional education of prospective lawyers and their admission to the bar.

ABA Timeline, supra.

1928

ALFRED ZANTZINGER REED, PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA: CARNEGIE FOUND. BULL. NO. 21 (1928) (the Reed II).

1933

Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933).

1936

ABA House of Delegates and Board of Governors created, replacing the Executive Committee.

ABA Timeline, supra.

1947

ABA and American Law Institute created a national system for continuing legal education.

Id.

1951

Jerome Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20 (1951).

1952

The Council of the American Bar Association Section of Legal Education and Admissions to the Bar recognized by the U.S. Department of Education as the accrediting agency for law schools.

ABA Timeline, supra.

American Bar Foundation founded to study law, legal practices, and impacts of law on society.

Id.

1963

ABA Fund for Justice and Education founded.
Id.

1971

ASSOC. OF AM. L. SCHS., CURRICULUM STUDY PROJECT COMM., REPORT:
TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW (1971).

1972

First major revision of ABA Standards and Rules of Procedure for
Approval of Law Schools since 1921, adopted in 1973.
Note, *ABA Approval of Law Schools: Standards, Procedures, and the
Future of Legal Education*, 72 MICH. L. REV. 1134, 1136 (1974).

1973

EVERETT C. HUGHES ET AL., EDUCATION FOR THE PROFESSIONS OF
MEDICINE, LAW, THEOLOGY AND SOCIAL WELFARE (1973).

1974

Barry B. Boyer & Roger C. Cramton, *American Legal Education: An
Agenda for Research and Reform*, 59 CORNELL L. REV. 221 (1974).

1978

ABA Center for Professional Responsibility created.
ABA Timeline, supra.

1979

AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR,
REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER
COMPETENCY: THE ROLE OF LAW SCHOOLS (1979).

1985

Robert B. McKay, *What Schools Can and Should Do (And Sometimes Do)*,
30 N.Y.U. L. REV. 491 (1985).

1986

G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing
Psychological Distress Among Law Students and Lawyers*, 11 AM. BAR
FOUND. RSCH. J. 225 (1986) (longitudinal study of Arizona law student
mental health conducted between 1981–1984).

1989

The Honorable Henry Ramsey, The Ramsey Commission, second major revision of the ABA Standards
AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR THE APPROVAL OF LAW SCHOOLS 2023-2024, at vi (2023).

1990

Hazelden Betty Ford Foundation Study (this study is ongoing and was last updated in March 2017)

Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016).

1992

Eugene E. Clark, Am. Bar Ass'n, *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 4 LEGAL EDUC. REV. 1 (1992) (the MacCrate Report).

1993

AALS Special Committee, *Report of the AALS Special Committee on Problems of Substance Abuse in the Law*, 44 J. LEGAL EDUC. 35 (1994).
The American Association of Law Schools' Special Committee on Substance Abuse in the Law published their final report in 1993. In 1994, a final version was printed in the Journal of Legal Education, granting a broader range of access.

John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157 (1993).

1995

The Honorable Rosalie E. Whal, The Whal Commission
ABA STANDARDS, *supra*, at vi.

1996

Final Judgment, United States v. Am. Bar Assoc., No. 95-1211 (CRR) (D.D.C. June 25, 1996).

Third major revision of the ABA Standards
ABA STANDARDS, *supra*, at vi.

1996–2000

Comprehensive review of the ABA Standards
Id.

2003–2006

Comprehensive review of the ABA Standards
Id.

2004–2006

Comprehensive review of the ABA Rules of Procedure
Id.

2004

Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCIS. & L. 261, 261–63 (2004) (an empirical study showing declines in law student mental health during the first year of law school).

2007

WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

James R. Maxeiner, *Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method*, 35 INT'L J. LEGAL INFO. 1 (2007).

2008–2014

Comprehensive review of the ABA Standards and Rules of Procedure
ABA STANDARDS, *supra*, at vi.

2014

Law Student Survey on Well-being

Yale Law Student Survey

Survey on Law Student Well-Being, ABA (Mar. 30, 2020), https://www.americanbar.org/groups/lawyer_assistance/research/law_student_survey; JESSIE AGATSTEIN ET AL., YALE L. SCH. MENTAL HEALTH ALL., FALLING THROUGH THE CRACKS: A REPORT ON MENTAL HEALTH AT YALE LAW SCHOOL (2014).

2016

National Task on Lawyer Well-being formed by National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers, and the ABA Commission on Lawyers Assistance Programs.

National Task Force on Lawyer Well Being, ABA,

https://www.americanbar.org/groups/professional_responsibility/task_force_lawyer_wellbeing (last visited May 12, 2024).

2017

NAT'L TASK FORCE ON LAWYER WELL-BEING, *THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE* (2017).

2018

William M. Sullivan, *After Ten Years: The Carnegie Report and Contemporary Legal Education*, 14 U. ST. THOMAS L.J. 331 (2018).

2020

Institute for Well-being in Law formed from National Task Force on Lawyer Well-being.

About Us: How It All Began, INST. FOR WELL-BEING IN L.,

<https://lawyerwellbeing.net/how-it-all-began> (last visited May 12, 2024).

2021

Updated Law Student Survey on Well-being and Subsequent Scholarship
Jerome M. Organ et al., *The 2021 Survey of Law Student Well-Being: More Progress Needed in Fostering Help-Seeking Among Law Students*, BAR EXAMINER, Summer 2022, at 8.

2023

ABA Standard 303(b)(3) requires “substantial opportunities” for “professional identity” development and 303(c) regarding multi-cultural awareness and 508 regarding student mental health care.

ABA STANDARDS, *supra*.

APPENDIX B

POSED/COI LESSON PLAN MATRIX*

Class Session				
Topic				
Institutional Outcomes				
Course Outcomes				
Student Prep	Reading		Flipped Activities	
Student Reflection Activity				
Collaborative Learning Activity				
FCM/PD&F Goals	Social Presence	Cognitive Presence	Teaching Presence	PosEd Considerations
Ownership of continuous professional development toward excellence at major competencies that clients, employers, and the legal system need				
A deep responsibility and service orientation to others, especially the client				
A client-centered problem-solving approach and good judgment that ground each student's responsibility and				

* This is Appendix B to Article, Joshua Aaron Jones, *Implementing ABA Standard 303(b)(3): Positive Legal Education Through a Community of Inquiry*, 48 VT. L. REV. 564 (2024).

service to the client				
Well-being practices				

In using the PosEd/CoI Lesson Plan Matrix, professors should not expect to cover every component in every class session. Planning a semester will ensure a well-rounded course that targets each FCM/PD&F Goal through activities in each of the CoI presences and PosEd considerations. Andragogical theory should underlie each application.

APPENDIX C

POSED/COI LESSON PLAN MATRIX
EXAMPLE*

Class Session	1, September 1, 2023			
Topic	Case Reporters, Persuasive/Mandatory Authority, Finding Cases			
Institutional Outcomes	Competency in legal research and technology			
Course Outcomes	<ul style="list-style-type: none"> Find controlling, relevant cases in a particular jurisdiction Distinguish between persuasive/mandatory case authority Competency in Westlaw, Lexis, and Bloomberg Law 			
Student Prep	Reading	Shapo, Chpt. 2	Flipped Activities	Westlaw Modules 1–5
Student Reflection Activity	Which legal research platform do you prefer? Provide five reasons.			
Collaborative Learning Activity	Groups of 4; each team chooses a mascot (prechosen by professor based on available cases); assign a jurisdiction to each team; find cases about the mascot/animal; filter to mandatory authority			
FCM/PD&F Goals	Social Presence	Cognitive Presence	Teaching Presence	PosEd Considerations
Ownership of continuous professional development toward excellence at major competencies that clients, employers, and the legal system need	Collaborative Activity – Contribute understanding to team	Westlaw Modules Professional judgment through reflection activity	In Canvas assignment, describe the Westlaw modules and tie to institutional and course outcomes; demonstrate Westlaw search	Experiences Accomplishment Self-reflection Reminder of character strengths
A deep responsibility and service orientation to others, especially the client	Collaborative activity – Teamwork and commitment	Trial and error finding fact-relevant cases	Discuss relevant Rules of Prof. Conduct	Meaning Relationships

* This is Appendix C to Article, Joshua Aaron Jones, *Implementing ABA Standard 303(b)(3): Positive Legal Education Through a Community of Inquiry*, 48 VT. L. REV. 564 (2024).

A client-centered problem-solving approach and good judgment that ground each student's responsibility and service to the client	Collaborative activity – Teamwork and commitment	Associate facts and jurisdiction to inform case selection	Discuss candor to the court and revealing even negative controlling authority	Relationships
Well-being practices	Introduce boxed-breathing	Boxed-breathing exercise	Personal use of boxed breathing	Self-care Positive Emotions