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## The Next Generation Professional: An opportunity to Reframe Legal Education to Center Student Wellness

Benjamin Afton Cavanaugh

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## THE NEXT GENERATION PROFESSIONAL: AN OPPORTUNITY TO REFRAME LEGAL EDUCATION TO CENTER STUDENT WELLNESS

*Benjamin Afton Cavanaugh\**

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### I. INTRODUCTION

“A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”<sup>1</sup>

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\* Assistant Dean of Law Success and Service Professor of Law, St. Mary’s University School of Law. I want to thank the countless law students over the years that have come to me to share their mental health struggles and to ask for help. It takes courage to seek out help when you are struggling and it gives me increasing hope for the future of the legal profession that the next generations of law students will carry more openness around struggle and their strong desire for change into the legal profession. Without your shared experiences and trust in me, I would not be in a position to advocate for change. I would also like to thank the Law Success team at St. Mary’s University School of Law for their willingness to adapt curriculum and deeply analyze our processes with students in mind. Finally, I would like to thank my wife, Mariah Cavanaugh, who works as a high school history teacher and who is as invested in creating a safe space and helping high school students comfortably express their mental health needs as I am. I have learned a great deal about the challenges of our system of education through her experiences as we have both undertaken the mission of centering student wellness in how we approach education.

1. AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 301(a) (2022). The quoted language identifies the primary objective of the program of legal education in the United States. *Id.* The Council of the American Bar Association Section of Legal Education and Admis-

Legal education has a serious design problem.<sup>2</sup> The current rigorous design of legal education breeds depression, imposter syndrome, anxiety, and problems with substance abuse.<sup>3</sup> The outcome of these issues is that too many graduates are not ready “for effective, ethical, and responsible participation as members of the legal profession”<sup>4</sup> because their mental well-being is at an all-time low following graduation and preparation for the bar exam.<sup>5</sup> Law schools across the nation need to undertake a self-evaluation of how to marry the rigor needed to prepare their

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sions to the Bar (“Council”) is tasked by the United States Department of Education with accrediting juris doctorate (“JD”) programs for the attainment of a professional degree in law. *See id.* at v (describing the authority of the ABA in setting law school accreditation standards). As part of the accreditation process the Council creates, maintains, and enforces standards against all law schools seeking to maintain their accredited status. *Id.* Since most states require graduation from an accredited law school to sit for the bar exam, maintaining accredited status is important to the success of law schools in recruiting students and ensuring them the privilege of sitting for the bar exam and seeking licensure. *See id.* The Standards and Rules of Procedure set out the requirements law schools must follow to maintain their accredited status and provide interpretations as to the meaning of some of the rules. *Id.* This process of accreditation has persisted for generations as the measure to ensure a law school is meeting the basic requirements considered necessary for a good legal education. *Id.*

2. *See* Emma Jones & Caroline Strevens, Editorial, *Legal Education for Wellbeing: Design, Delivery and Evaluation*, 56 L. TCHR. 1, 1 (2022) (commenting that it has become “almost trite” to raise the specter of student well-being in law school and beyond). To find success in having a positive impact on the mental health of students, a “whole” university approach needs to be implemented into the design and delivery of the curriculum and in the overall student experience. *See id.* There are countless studies about mental health of law students, including those that make it clear it is the “culture, norms, and approaches common in legal studies” that are breeding this harm to the well-being of law students. *See id.*; *see also* Kennon S. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCH. BULL. 883 (2007); Caroline Strevens & Clare Wilson, *Law Student Wellbeing in the UK: A Call for Curriculum Intervention*, 11 J. COMMONWEALTH L. & LEGAL EDUC. 44 (2016).

3. *See* Molly Townes O’Brien et al., *No Time to Lose: Negative Impact on Law Student Wellbeing May Begin in Year One*, 2 INT’L J. FIRST YEAR IN HIGHER EDUC. 49, 53 (2011) (showing the prevalence of depression, anxiety, and stress reported in just the first year of law school); *see also* Courtney March, *Recognizing the Reality of Imposter Syndrome*, CANADIAN L. (July 31, 2017), <https://www.canadianlawyermag.com/news/opinion/recognizing-the-reality-of-imposter-syndrome/270562> [<https://perma.cc/S2W9-4BHB>] (explaining that lawyers and law students are particularly susceptible to imposter syndrome because they are high achievers and this expectation of success creates feelings of inadequacy and a sense that they are faking it with their peer group); Laura Rothstein, *Law Students and Lawyers with Mental Health and Substance Abuse Problems: Protecting the Public and the Individual*, 69 U. PITT. L. REV. 531, 532 (2008) (indicating that addiction rates for law students and lawyers are nearly double that of the general population).

4. AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 301(a) (2022).

5. *See* Graham Ferris, *Law-Students Wellbeing and Vulnerability*, 56 L. TCHR. 5, 7 (2022) (“The sources on student wellbeing demonstrate that contemporary low wellbeing levels among law students is part of a larger phenomenon of low wellbeing among students in higher education. Neither problem is one that individual students can be expected to solve through acquisition of resilience skills.”).

students for law practice with the necessity of ensuring graduates leave the academic world with a strong sense of themselves as legal professionals and in a healthy state of mental wellness.<sup>6</sup> This self-evaluation starts with being honest about how far programs geared at wellness can really go in resolving the impact the design of law school has on students.<sup>7</sup>

The prevalence of mental health issues in law school continues despite the rise in programming and attempts by law schools to help law students incorporate thoughtful mental well-being planning into their day-to-day lives.<sup>8</sup> Law schools take many different approaches to helping students maintain their well-being mentally; from wellness workshops, to mindfulness, yoga, classroom discussions, student events, and countless other resources, from before orientation through graduation students will be exposed to many different approaches to taking care of

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6. See Jones & Strevens, *supra* note 2, at 1:

The starting point for this special issue is that it is vital for law schools to adjust to this “whole university” approach in the way they design, deliver, and evaluate their teaching, foster learning, interact with their students and facilitate their students’ experience. Whilst mental health, wellbeing and other pastoral services have a crucial role to play in higher education, they are not sufficient on their own. Neither are generic central policies and processes for recognition of wellbeing as a curricular matter. An effective “whole university” approach also requires each individual school and department to consider how to acknowledge the value of wellbeing and integrate it into the curriculum in an evidence-based and sustainable manner appropriate to their discipline.

For law schools in particular, there is a rich body of international evidence demonstrating that the culture, norms and approaches common in legal studies can be potentially harmful to student wellbeing. As a result, there is a strong ethical imperative upon them to address their role in this as part of implementing such a “whole university” approach. Given the bidirectional relationship between wellbeing and teaching and learning, there are also sound pragmatic reasons for such an approach. Student retention, progression, and attainment are all potentially affected by law schools’ approach to wellbeing.

*Id.* at 1-2.

7. See *id.* at 1 (asserting that although services to help improve mental health and well-being are critical, these services are not enough to resolve the well-being problem alone). Moreover, suggesting to faculty to recognize the importance of well-being in their classrooms is also an insufficient method for resolving such a pervasive problem with preserving good mental health. *Id.*

8. See Jessica R. Blaemire, *ANALYSIS: Well-Being in Law School—Law Students Aren’t OK*, BLOOMBERG L. (Feb. 3, 2023), <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-well-being-in-law-school-law-students-arent-ok> [<https://perma.cc/G68F-Q8XJ>] (“The survey also asked law students whether they experienced various mental and physical health problems ‘because of law school related issues.’ The response from most students was a resounding ‘yes.’ A majority of law school respondents reported experiencing anxiety (77%), disrupted sleep (71%), and depression (51%). Only 11% of law students reported experiencing none of the given issues.”); Zara Abrams, *Campus Crisis*, MONITOR ON PSYCH., Oct. 2022, at 60, 60-67 (discussing the various programs and mental health resources that colleges had before the pandemic and how as demand has grown the strain on these resources has increased). While the second article is geared towards higher education more generally, it is describing a problem across all institutions. *Id.* While they are not trained counselors, faculty are often the first to raise an alarm about their concern for a student and are also the ones that point students to the various available resources. *Id.*

their mental health.<sup>9</sup> Many of the programs and efforts of law schools in this arena are aimed at having students take on the work of ensuring they maintain their mental well-being; it is rare that a law school considers how their own approach to legal education might be contributing to the very issues they are trying to help students navigate.

These same mental health issues are commonplace in legal practice,<sup>10</sup> and as law school is meant to prepare students for participation in the legal profession, in this regard law schools certainly are on track. In most instances, anyone stepping back and examining a system that drove higher rates of mental health issues would demand reform of that sys-

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9. See Stephanie Villinski, *A Healthy Legal Profession Starts with Law Student Well-Being*, 2CIVILITY (Oct. 24, 2019), <https://www.2civility.org/a-healthy-legal-profession-starts-with-law-student-well-being> [https://perma.cc/683A-FYN5] (“Some law schools include health-focused programming in their new student orientation, offer classes on physical well-being and maintain strong engagement with the Lawyer’s Assistance Program. However, [Jordana Alter Confino] suggests that most law schools can still improve in terms of resources devoted to onsite counseling, the development of well-being curricula and engaging students, faculty and staff in well-being efforts.”). See generally MASS. SUP. JUD. CT. STANDING COMM. ON LAW. WELL-BEING, A GUIDE TO LAW STUDENT WELLNESS AND WELL-BEING (2021), <https://static1.squarespace.com/static/5e6d105ff4b7d15cf766c1e1/t/611e9050bb94f0099df0dec1629392976814/A+Guide+to+Law+Student+Wellness+and+Well-Being+2021.pdf> [https://perma.cc/ES2A-LXFF] (discussing tips, resources, and strategies law students can employ as they embark on their legal careers starting in law school). The Guide provides a roadmap for students to follow as they navigate tending to their wellness and well-being in law school. *Id.* at 2. This Guide is a great example of the programs and approach that the legal community has taken to the wellness issue as a whole. It provides countless resources and guidance, but puts the onus entirely on the user to maintain their mental well-being. Certainly, everyone must play a part in tending to their own well-being, but that role does not foreclose the ability to evaluate the larger system as well. Indeed, in a footnote, the Standing Committee that pulled together the guide mentions the ongoing work around encouraging schools to evaluate and adjust the “structural elements of legal education” to ensure better student well-being. *Id.* at 6, n.6. The first article references well-being curricula, but only in the sense that schools should ensure they are teaching students about well-being through programming. See Villinski, *supra* note 9. Together, these resources make valuable and thoughtful points about well-being, and demonstrate the status quo approach. *But see* Jonathan Todres, *A Healthier Legal Profession Starts with Law Schools*, BLOOMBERG L. (Mar. 15, 2022), <https://news.bloomberglaw.com/us-law-week/a-healthier-legal-profession-starts-with-law-schools> [https://perma.cc/8W8Z-SNEG] (noting that efforts to address wellness tend to be “reactive and piecemeal” and asserting that “gym memberships and mindfulness classes can only do so much”). There is a growing trend of pushing back on the idea that these resources alone are going to be able to resolve wellness issues without a greater culture shift. *Id.* Todres asserts that to “enable law students to maintain a healthy work-life balance, law schools cannot simply encourage students to take care of themselves.” *Id.* Law students are “drowning” in work and in tasks that must be balanced if they are going to remain in good standing. *Id.* To drive real change in well-being, a culture shift of valuing well-being needs to start from the top down. *Id.*

10. See Daniel T. Lukasik, *Prioritizing Mental Health and Well-Being in the Workplace Is Evolving and Driving Change in the Legal Profession*, FUTURE PRO. INITIATIVE (June 1, 2022), <https://www.law.upenn.edu/live/news/14831-prioritizing-mental-health-and-well-being-in-the> [https://perma.cc/K6UM-XMBF] (noting that “anxiety, burnout, depression, and problems with alcohol are rampant throughout the legal profession.”).

tem.<sup>11</sup> Yet, legal education is steeped in the idea of tradition.<sup>12</sup> The methods of preparation have produced good lawyers for a time beyond most current law school professors and administrators. It is a system we are used to, a system we came through.

Part II of this Article discusses the design of legal education as a disease that law schools have largely focused on treating the symptoms of rather than doing the hard work of identifying the disease and seeking to cure it. Though the problems with legal education have long been discussed, this Article calls into questions the practice of treating the symptoms rather than addressing the problems head on. Part III examines two change agents—the American Bar Association’s (“ABA”) revisions to Standard 303 and the NextGen Bar Exam—as the drivers to finally identify the diseased aspects of the legal curriculum design and make changes with these looming shifts in mind.

Part IV presents an approach to evaluating and changing the first-year law school curriculum that centers student wellness. It lays out a path for law schools to adopt changes to the system of legal education that would shift the focus from treating symptoms of a bad design to resolving the bad design itself. Every law school has different considerations for their student population, a different mission, and different driving goals that should factor into such decisions. The purpose of this Article is not to suggest the method described is the only way forward, but to demonstrate how student wellness can be a core consideration in curriculum design. Thus, Part IV posits that the focus on molding law students for practice should rely on building well-being into the curriculum design rather than putting the onus totally on students to incorporate well-being into their professional identity formation.

## II. TREATING THE SYMPTOMS OF A DISEASED SYSTEM OF EDUCATION

“Lead by example, not by showing samples.” — Seyi Ayoola<sup>13</sup>

Every year tens of thousands of hopeful first-year law students embark on their law school journey after they have run the LSAT and ad-

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11. See Jones & Strevens, *supra* note 2, at 1 (asserting that there is a “strong ethical imperative” for law schools to expand their approach to improving law student well-being).

12. See L. Danielle Tully, *What Law Schools Should Leave Behind*, 4 UTAH L. REV. 837, 842-43 (2022) (arguing that legal education has retained much of the traditional approach to teaching law students despite the clear data the approach is bad for law students today).

13. *Seyi Ayoola Quotes*, GOODREADS, <https://www.goodreads.com/quotes/6861600-lead-by-example-not-by-showing-samples> [<https://perma.cc/43S4-ERXM>] (last visited Aug. 12, 2023).

missions gauntlet.<sup>14</sup> Students seeking to get this advanced degree have already received a bachelor's degree and successfully navigated the undergraduate college experience.<sup>15</sup> They are not new to college, but they are new to law school. The decision to pursue a law degree is a transformative one.<sup>16</sup> Law school graduates enjoy a higher earning potential than other professions with a median annual salary of \$127,990.<sup>17</sup> In contrast, the median annual salary for students holding a bachelor's degree is \$59,600.<sup>18</sup> The reality is that the earning potential for someone with a juris doctorate outpaces their potential with just a master's degree.<sup>19</sup> In addition, the skills developed in law school transform how a person engages with the world around them.<sup>20</sup> These skills make law students attractive to employers beyond just traditional law firms.<sup>21</sup> These changes are exciting, but they also come at a great cost.

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14. See *Law School Enrollment*, LAW SCH. TRANSPARENCY, <https://www.lawschooltransparency.com/trends/enrollment/all> [<https://perma.cc/BE76-WH52>] (last visited Aug. 12, 2023) (demonstrating that although enrollment declined after a peak in 2010, roughly 38,000-41,000 first-year students have enrolled each year since 2018).

15. See *FAQ*, ASS'N OF AM. L. SCHS., <https://www.aals.org/prospective-law-students/faqs> [<https://perma.cc/XQW6-BJLZ>] (last visited Aug. 12, 2023) (explaining that law schools generally require a bachelor's degree and an LSAT score, among other things, to be considered for admission).

16. See Shawn Healy, *Argument: Law School Changed Me*, MASS. LAP BLOG (Nov. 4, 2015), <https://www.lclma.org/2015/11/04/law-school-changed-me-part-1> [<https://perma.cc/46C4-F6KP>] ("Law students and lawyers often tell me that law school changed them. This realization usually occurs after numerous friends and family members tell them that they have changed."); see also Brandon Galarita, *Is Law School Worth It? How to Decide if Law School Is Right for You*, FORBES (Dec. 1, 2022, 12:42 AM), <https://www.forbes.com/advisor/education/is-law-school-right-for-you> [<https://perma.cc/8J6N-CM9P>] (positing that law school is a time of great growth and learning because it challenges you to think in a way that is different than before).

17. Galarita, *supra* note 16 (stating that the U.S. Bureau of Labor and Statistics reports that lawyers have above-average earning potential with the median annual salary coming in at nearly \$128,000.). The "highest 10% earn[] over \$208,000 and the lowest 10% earn[] less than \$61,400." *Id.*

18. Brianna McGurran, *Average Salaries of College Graduates 2023*, FORBES (July 28, 2022, 7:31 AM), <https://www.forbes.com/advisor/student-loans/average-salary-college-graduates> [<https://perma.cc/6W3M-V2US>]. The salary varies widely by major, with majors in the STEM fields bringing in more than their humanities counterparts. *Id.*

19. Even with a master's degree or higher, the median annual salary is around \$69,700. *Id.* This is an increase over the other types of degrees captured, but it does not come anywhere near the median salary for lawyers. Thus, although lawyers may take on more debt, their greater earning potential may make the investment worth it in the long run for those attaining the median salary range.

20. See Healy, *supra* note 16 ("One of the most prevalent experiences about law school is the way that it changes the way you think about everything. Whether you are thinking about an argument to make or about the intention behind a law, law school teaches you that there are no right and wrong answers. It is all about the argument you can make."); see also Galarita, *supra* note 16 (advising potential law students to consider how they will change and grow from the skills learned in law school).

21. See *What We Know About JD Advantage Jobs - An Update for the Class of 2020*, NALP BULL. (Jan. 2022), <https://www.nalp.org/0122research> [<https://perma.cc/BB82-NNDP>] (indicating

First, law students face the cost of legal education itself. In data compiled by the ABA from law schools around the country, law schools cost on average around \$40,791 a year “for full-time, in-state students.”<sup>22</sup> After three years of law school, students will have paid on average over \$122,000 to obtain their law degree before other fees and expenses are even factored in.<sup>23</sup> This number also does not include the fact that law students are generally not permitted to work in their first year of law school and generally only part time thereafter.<sup>24</sup> The increased earning potential over a lifetime may justify this cost for some students, but not for others depending on their goals.<sup>25</sup> Being a lawyer may be a long-held goal that makes the value of the degree worth it as well. But there is another cost, one that gets far less attention when it comes to researching the pursuit of a legal career—the cost to a person’s mental well-being.<sup>26</sup>

Law school takes a significant mental health toll on students, and the recent COVID-19 pandemic has only amplified the mental health

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that “full-time, long-term jobs in business” are the most frequent recruiters of JD students for non-legal work). Although this sector tends to employ more JD graduates than other sectors, the pay for JD Advantage jobs is lower than what graduates who achieve their law license and work in the legal field tend to earn. *Id.*

22. Galarita, *supra* note 16.

23. *Id.*

24. See *Pros and Cons of Working During Law School*, JD ADVISING, <https://jedadvising.com/pros-and-cons-of-working-during-law-school> [<https://perma.cc/2N85-53BD>] (last visited Aug. 12, 2023) (“The American Bar Association previously prohibited full-time first-year law students from working more than 20 hours per week. While this rule has since been abolished, many law schools have adopted similar policies that are still in place.”).

25. See Greg Depersio, *Is Law School Worth It Anymore?*, INVESTOPEDIA (Nov. 7, 2022), <https://www.investopedia.com/articles/personal-finance/082416/going-law-school-worth-it-anymore.asp> [<https://perma.cc/U2MM-9ATD>] (evaluating the return on investment most lawyers experience from their law degree vs. the cost of that degree). Law school graduates end up with around \$145,000 on average in student debt between their undergraduate degree and the loans they take on while not working in law school. *Id.* Although most attorneys reach successful high-paying jobs eventually, some never do and the early years of paying debt payments on lower salaries should give everyone a moment of pause as they consider law school. See *id.* (noting that with the rise of lower paying entry level jobs students should evaluate their goals carefully before coming to law school).

26. See David Jaffe et al., *‘It Is Okay to Not Be Okay’: The 2021 Survey of Law Student Well-Being*, 60 U. LOUISVILLE L. REV. 441, 442 (2021) (discussing the higher rates of depression and anxiety in law students among other mental health issues); see also Karen Sloan, *‘Our Law Students Need Help.’ Study Finds Higher Rates of Mental Health Problems*, REUTERS (July 13, 2022, 2:55 PM), <https://www.reuters.com/legal/legalindustry/our-law-students-need-help-study-finds-higher-rates-mental-health-problems-2022-07-13> [<https://perma.cc/42MF-4ED5>] (“Nearly 69% of respondents from 39 law schools surveyed in 2021 reported that they needed help for emotional or mental health problems in the past year. That’s up from 42% from the 2014 version of the same survey . . .”).



toll.<sup>27</sup> The mental well-being of law students often declines from the start of their first year through graduation.<sup>28</sup> Studies have shown that prior-to-law-school depression rates “among law students are 8-9%” and increase with each successive semester to “27% after one semester, 34% after two semesters, and 40% after three years.”<sup>29</sup> Another study found that in 2021, 69% of surveyed respondents across thirty-nine different law schools reported they had struggled with mental health issues in the last year over the prior number of 42% from the 2014 survey.<sup>30</sup> Even compared to other professional schools, law students are worse off.<sup>31</sup> A recent study found that “96% of law students suffer from significant stress, compared to only 70% of medical students and 43% of graduate students in all fields.”<sup>32</sup>

There is no question that there is a long history of mental health issues for people who have chosen the legal profession as their career pathway.<sup>33</sup> The mental health issues prevalent in law school include de-

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27. See Jaffe et al., *supra* note 26, at 463 (describing the results of the survey as making it clear law students need help as nearly seventy percent of respondents indicated needing help for mental health or emotional problems compared to only forty-two percent reporting the same in the 2014 survey); see also Sloan, *supra* note 26 (“The authors found that a greater focus on law student well-being in recent years hasn’t translated to lower rates of such problems. Instead, they wrote that law student wellness decreased by many measures between 2014 and 2021.”).

28. See Mike Robinson, *6 Law Student Mental Health Statistics*, CLIO (Nov. 9, 2022), <https://www.clio.com/blog/law-student-mental-health-statistics> [<https://perma.cc/H3QQ-5ZA8>] (explaining that depression rates increase across the time of law school enrollment).

29. See *id.* (outlining the results of a recent study by the Dave Nee Foundation):

This tendency toward depression appears to follow many graduates into their practice years. Attorneys are the most frequently depressed occupational group in the US, and attorneys are 3.6 times more likely to suffer from depression than non-attorneys. To solve this problem, the legal industry needs to start with the initial training grounds of legal education.

*Id.* The Dave Nee Foundation was formed in 2006 after Dave Nee’s suicide following a struggle with depression. *Dave Nee Foundation*, MIGHTYCAUSE, <https://www.mightycause.com/organization/Dave-Nee-Foundation> [<https://perma.cc/CRD5-WM3U>] (last visited Aug. 12, 2023). The mission of this foundation is “to eliminate the stigma of mental illness by fostering candid discussions about mental health in higher education and the workplace.” *Id.*

30. See Jaffe et al., *supra* note 26, at 443; Sloan, *supra* note 26.

31. See Robinson, *supra* note 28.

32. Rachel Casper, *The Full Weight of Law School: Stress on Law Students Is Different*, MASS. LAP BLOG (Jan. 18, 2019), <https://www.lclma.org/2019/01/18/the-full-weight-of-law-school-stress-on-law-students-is-different> [<https://perma.cc/BW48-RTS3>]; see Robinson, *supra* note 28 (explaining that depression rates increase across the time of law school enrollment).

33. See Andrea M. Flynn et al., *Law School Stress: Moving from Narratives to Measurement*, 56 WASHBURN L.J. 259, 259-61 (2017) (examining the history of research showing the prevalence of mental health issues in law school); see also Krystia Reed et al., *Problem Signs in Law School: Fostering Attorney Well-being Early in Professional Training*, 47 INT’L J.L. & PSYCHIATRY 148, 148 (2016) (“Findings indicate that law students suffer from high levels of stress, anxiety, depression, and alcohol use, and that these problem behaviors fluctuate throughout the course of law school.”); Robert Kellner et al., *Distress in Medical and Law Students*, 27 COMPREHENSIVE

pression, anxiety, suicidal ideation, and drug and alcohol abuse, among others.<sup>34</sup> The rates of anxiety and depression continue to increase despite the rising focus on wellness in law schools across the nation.<sup>35</sup> The COVID-19 pandemic had a significant impact on law student health.<sup>36</sup> In 2021, the annual Law Student Survey of Student Engagement (LSSSE) received over 13,000 responses from sixty-one institutions around the country.<sup>37</sup> In that survey, “[85%] of law students reported that they suffered through depression . . .” and “[87%] managed anxiety that interfered with their daily functioning . . .”<sup>38</sup> The survey also found that

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PSYCHIATRY 220, 221 (1986) (concluding that law students report more mental health distress than their medical school counterparts); Lawrence S. Krieger, *What We're Not Telling Law Students—and Lawyers—That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots*, 13 J.L. & HEALTH 1, 3-6 (1998) (positing that the culture of law school is what drives the unhealthy practices of law students and eventually of lawyers); Lekan Oguntoyinbo, *Battling Mental Illness in the Legal Profession*, DIVERSITY & BAR, Apr. 2015, at 18-21 (analyzing the impact of legal practice in causing high rates of depression and mental illness in lawyers); Jaffe et al., *supra* note 26, at 484 (discussing the rise in mental health issues reported by law students since a similar 2014 survey); Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65, 66-68 (1985) (studying the mental distress reported by law students across the years they are in law school); Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 L. HUM. BEHAV. 55, 58 (1999) (charting a path for further research into the causes attributing to poor well-being in law students); Colin James, *Lawyers' Wellbeing and Professional Legal Education*, EUR. J. LEGAL EDUC. 1, 3-4 (2008) (noting that the development of interpersonal skills may help law students combat or at least better recognize issues in their mental health); Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 557, 558 n.6 (2015) (stating that attorneys have the highest depression rate of any profession in the U.S.).

34. See generally *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, NAT'L TASK FORCE ON LAW. WELL-BEING (Aug. 14, 2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf> [<https://perma.cc/EU3M-UCU3>] (presenting the results from the survey of law student well-being):

The results from both surveys signal an elevated risk in the legal community for mental health and substance use disorders tightly intertwined with an alcohol-based social culture. The analysis of the problem cannot end there, however. The studies reflect that the majority of lawyers and law students do not have a mental health or substance use disorder. But that does not mean that they're thriving. Many lawyers experience a “profound ambivalence” about their work, and different sectors of the profession vary in their levels of satisfaction and well-being.

*Id.* at 7.

35. Sloan, *supra* note 26.

36. Jaffe et al., *supra* note 26, at 450.

37. See MEERA E. DEO ET AL., LSSSE 2021 ANNUAL REPORT: THE COVID CRISIS IN LEGAL EDUCATION 6 (2021), <https://lssse.indiana.edu/wp-content/uploads/2015/12/COVID-Crisis-in-Legal-Education-Final-10.28.21.pdf> [<https://perma.cc/2Z9W-SKVY>] (discussing the heavy toll COVID has taken on law students); see also Meera E. Deo, *Investigating Pandemic Effects on Legal Academia*, 89 FORDHAM L. REV. 2467, 2478 (2021) (describing how COVID has intensified the pressures on faculty and students and blurred the lines between work and home).

38. DEO ET AL., *supra* note 37, at 12.

91% of law students reported an “increase in mental or emotional exhaustion” as a result of the pandemic.<sup>39</sup> The pandemic pushed what was already a mental health crisis in law schools and the legal profession into the stratosphere.

To combat the pre-pandemic mental health crisis, we have seen a rise of wellness programming. Educating students on the potential issues and giving them tools to recognize and work on the mental health issues that arise has been the leading solution.<sup>40</sup> As more and more research has come out raising the alarm about the mental state of law students, law schools have reacted by incorporating only more information about how to manage depression, imposter syndrome, anxiety, and problems with substance abuse.<sup>41</sup> These include imposter syndrome discussions and co-curricular programs aimed at helping students from diverse backgrounds and experiences navigate the challenge of law school.<sup>42</sup> In essence, the current approach is to offer samples for how wellness can be incorporated into the day-to-day life of a law student. These efforts make no attempt to set the example of centering wellness.

Furthermore, schools have added support on campus and beyond to help law students manage their wellness. For instance, some schools have added therapists, contracted with mental health providers, and created help lines or connected students with existing state help lines.<sup>43</sup> More law schools discuss the law school experience with spouses, children, and families of law students and how they can support the wellness of their law students.<sup>44</sup> Academic support professionals work with students to make study schedules that include moments for wellness and self-care woven through at various intervals so the student knows to incorporate time for their own needs throughout the semester.<sup>45</sup> Schools also invite speakers and run sessions educating students on the impact of

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39. *Id.* at 11.

40. See Paula Schaefer, *Today's Law Student Wellness Programs*, BEST PRACTS. FOR LEGAL EDUC. (June 19, 2019), <https://bestpracticeslegaled.com/2019/06/19/todays-law-student-wellness-program> [<https://perma.cc/U79V-PMHB>].

41. *Id.*

42. See DEO ET AL., *supra* note 37, at 8; Deo, *supra* note 37, at 2478. The report concludes with a note that adjustments need to be made. See DEO ET AL., *supra* note 37, at 16. To continue the status quo of preaching self-care, “while assigning impossible levels of work” will only continue to result in a decline. *Id.*

43. See Mariia Synytska, *How Law Schools Address Mental Health: Programs and Resources*, LAWRIINA, <https://lawrina.org/blog/mental-health-programs-in-law-schools> [<https://perma.cc/GZ4Q-LZBG>] (last visited Aug. 12, 2023).

44. See, e.g., *Parental Guidance: How to Support Your Child in Law School*, NEW ENG. L. SCH., <https://www.nesl.edu/blog/detail/parental-guidance-how-to-help-your-child-to-and-through-law-school> [<https://perma.cc/9YSH-3KX7>] (last visited Aug. 12, 2023).

45. Synytska, *supra* note 43.

these issues and the dangers of not seeking help.<sup>46</sup> Schools incorporate wellness discussions into orientation, bar preparation classes, and professional identity discussions.<sup>47</sup> There are few areas of law school life outside the classroom that do not incorporate wellness discussions these days. The reality is that all of these efforts have enjoyed relatively little success in lowering the rates of depression, anxiety, and substance abuse among law students—in fact, as we have seen, the numbers are only going up.<sup>48</sup>

The purpose of this Article is not to suggest that the inclusion of wellness education and training in law school is invalid. Any good treatment plan will involve treating the symptoms, and no plan can resolve 100% of the challenges faced in the legal profession. It is a high stress, conflict-oriented field where lawyers will experience very high and very low days.<sup>49</sup> Law students need to be aware of the reality of law practice and be prepared to enter it with a realistic view of the challenges they will face.<sup>50</sup> But any plan that can be applied to navigating those challenges necessarily relies on the current mental well-being of a law school graduate. How can we expect someone already in current mental distress to make life-changing decisions on behalf of a client or major decisions that will define the initial path of their career?<sup>51</sup>

Legal educators have to start by giving up the justification that law school should be this stressful because legal practice is only more stressful. One wrong does not justify another. As agents of legal education, faculty and law school administrators often seek to justify the design of the legal education system because it prepares students for the practice of law. At a base level this suggests that, because these mental health issues are prevalent in the practice of law, it follows that their presence in law school shows legal education is doing a good job in mirroring law practice. As such, we cannot treat the diseased nature of legal education because it serves a purpose; instead we can focus our energy on manag-

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46. *Id.*

47. *Id.*

48. Sloan, *supra* note 26; Jaffe et al., *supra* note 26, at 484.

49. See Blaemire, *supra* note 8 (“The legal profession is demanding, but preparing for the practice of law is just as hard. An intense workload, expectations for perfection, grading on a curve, and cold-calling all help prepare law students for our client-driven and often-adversarial profession—but it may also be laying a foundation of anxiety and stress. And, as the data show, the negative effects may be worse for those who identify as female, nonbinary, or Black.”).

50. *See id.*

51. See Robinson, *supra* note 28 (“It’s important to remember that law student mental health statistics are more than just numbers on a page. These statistics represent law students suffering and sacrificing their mental health for the sake of an education. This is why law students and legal professionals need to prioritize their mental health, combat the mental illness stigma, and give society what it truly needs—a legal industry full of well-balanced attorneys with healthy mindsets.”).

ing the symptoms of the disease. To be clear, few faculty members or administrators think about the impact of law school on students in this manner. We all want to believe we are doing the best for our students as we coach them on mental health and wellness, run programs geared at tackling imposter syndrome, and help first-generation professionals navigate the toll of law school on their daily lives.

Few of us want to step back and consider that maybe we are the ones delivering the cancer into our students' systems and then working to provide the chemotherapy and radiation needed to get them to a point of wellness. Yet, by incorporating a discussion on making time for wellness while simultaneously giving students extensive and heavy reading assignments, cold calling to ensure they mastered every aspect of that extensive assignment, and offering relatively little formative assessment and only high-stakes exams to reflect their progress, we give them no time or motivation to make space for their well-being during law school.<sup>52</sup> We also provide them little validation that their efforts are producing acceptable or good results. Instead, law students sit in uncertainty and question their sense of self and by extension their ability to become the professional they are striving towards. These bad habits carry over into practice with them after graduation.

It is time for a reckoning on the limitations of wellness programs law schools have implemented in response to the mental health crisis in law students. The blunt reality is that if we envision the design of legal education as the disease causing the decline in the mental health of law students, the current approach to treatment has been focused on treating the symptoms rather than treating the underlying disease itself.<sup>53</sup> Law students have continued to experience greater rates of depression, imposter syndrome, anxiety, and problems with substance abuse than the general population despite the increased focus on wellness programs throughout legal education.<sup>54</sup> This approach alone is not working. It is time to do more. It is time for law school administrators and faculty to lead by example in incorporating wellness into the curriculum rather than offer samples on how law students might make it happen them-

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52. See DEO ET AL., *supra* note 37, at 16 (arguing that legal educators have a history of preaching one thing while creating a system that results in another).

53. See Janet Thompson Jackson, *Legal Education Needs a Wellness Reckoning*, BLOOMBERG L. (Apr. 7, 2021, 3:01 AM), <https://news.bloomberglaw.com/us-law-week/legal-education-needs-a-wellness-reckoning> [<https://perma.cc/9VHE-GW92>] ("More than a general call to action, legal education needs a new step-by-step blueprint of how to reimagine legal education with a focus on wellness. Actions must begin with leaders in legal education challenging ourselves to become modelers of wellness as well as teachers of law.").

54. Sloan, *supra* note 26; Jaffe et al., *supra* note 26, at 484.

selves.<sup>55</sup> Fortuitously, with two major agents of change looming on the horizon for legal educators anyway, a moment exists to make changes while centering student wellness in the curriculum.

### III. CHANGE AGENTS FOR LEGAL EDUCATION

American legal education has been on a journey of evolution since the COVID-19 pandemic started in March 2020.<sup>56</sup> The pandemic kicked off some of the most radical changes to legal education since its foundation.<sup>57</sup> Law students were shifted en masse to online education in an educational system that largely decried online learning as ineffective.<sup>58</sup> Since then, some schools have moved to offer a JD entirely online rather than solely continue their residential programs.<sup>59</sup> Offering an online JD requires adapting the curriculum significantly to work with the virtual mode of delivery.<sup>60</sup> It requires thinking about community building in different ways,<sup>61</sup> preparing students for bar exams across the country, and countless other changes that were barely on the radar just a few years back.<sup>62</sup> A change that might otherwise have been decades in the making happened virtually overnight.<sup>63</sup>

Amid the pandemic shift, the ABA announced the addition of stronger requirements on incorporating professional identity formation for accredited law schools<sup>64</sup> around the same time the National Confer-

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55. See Jackson, *supra* note 53 (“But, wellness support for students cannot end with orientation. Self-care practices must be reinforced throughout law school and integrated into the curriculum.”).

56. See Timothy Casey, *Reflections on Legal Education in the Aftermath of the Pandemic*, 28 CLINICAL L. REV. 85, 89 (2021) (describing the shifting state of legal education during and after the COVID-19 pandemic).

57. See Linda Jellum, *Did the Pandemic Change Legal Education for Better or Worse?*, DOJ J. FED. L. & PRAC. 67, 74 (2021).

58. See Casey, *supra* note 56, at 91-92 (noting that the pandemic lowered barriers to online education).

59. See *id.* at 97 (“The pandemic dispelled the myth that legal education could not be delivered on-line. We did it. That said, some aspects of the legal education curriculum are better suited to on-line delivery and some aspects are best delivered in person.”).

60. See *id.* (expressing that an examination of learning outcomes and legal pedagogy is necessary for successful online education).

61. See generally Andrele Brutus St. Val, *Survey Says—How to Engage Law Students in the Online Learning Environment*, 70 J. LEGAL EDUC. 297 (2021) (discussing survey results on the best methods to engage online learners).

62. See James McGrath & Andrew P. Morriss, *Online Legal Education & Access to Legal Education & the Legal System*, 70 SYRACUSE L. REV. 49, 62-64 (2020).

63. See Casey, *supra* note 56, at 89 (describing the shifting state of legal education during and after the COVID pandemic).

64. See Michelle Weyenberg, *ABA Passes Revisions to Accreditation Standards*, NAT’L JURIST (Apr. 5, 2022, 10:00 AM), <https://nationaljurist.com/national-jurist/news/aba-passes-revisions-to-accreditation-standards> [<https://perma.cc/VP9N-8QZR>] (reporting that the ABA ap-

ence of Bar Examiners (“NCBE”) concluded its multi-year review of the bar exam and announced the decision to redesign the bar exam with an eye towards a launch of the new exam in 2026.<sup>65</sup> While the ABA’s professional identity formation rules are likely to have a more limited impact than the NCBE’s redesign of the bar exam, both point towards a wider trend of revising legal education with a stronger eye towards preparing students for practice than the current system of legal education.<sup>66</sup> Change is once again on the horizon<sup>67</sup> and law schools will need to adapt to meet ABA standards and to help their students achieve success on the bar exam.

These two change agents—the focus on professional identity formation and the NextGen Bar Exam’s focus on skills—align fortuitously to impact the next few years of incoming law students. This alignment creates an opportunity to make significant, positive, and lasting changes to the legal education curriculum. With law students’ mental health issues creeping up post-pandemic and the lack of success in more targeted wellness programs, law schools should use this moment of reevaluation to lead by example in centering student wellness into curriculum redesigns.<sup>68</sup>

#### A. *The ABA’s Professional Identity Formation Revision*

Aside from the rise in online legal education,<sup>69</sup> the first potential change agent for legal education is the recent expansion of curriculum requirements around professional identity formation for accredited law schools passed by the ABA<sup>70</sup> and included in the 2022-2023 Standards and Rules of Procedure for Approval of Law Schools.<sup>71</sup> The revisions

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proved a change to its standards around professional identity formation at its February 2022 mid-year meeting).

65. See *How Is the New Uniform Bar Exam Going to Be Different?*, JD ADVISING, <https://jedadvising.com/how-is-the-new-uniform-bar-exam-going-to-be-different> [<https://perma.cc/D2AD-FEBG>] (last visited Aug. 12, 2023) (noting significant forthcoming changes to the bar exam by the NCBE).

66. Compare *id.* (discussing the upcoming national transformation of the bar exam), with Weyenberg, *supra* note 64 (explaining the newly implemented ABA standard focusing on the development of professional identity).

67. See Stephanie De Sola, *3 Ways Legal Education and the Bar Exam Are Changing*, NAT’L JURIST MAG. (May 12, 2021, 2:27 PM), <https://nationaljurist.com/national-jurist-magazine/3-ways-legal-education-and-bar-exam-are-changing> [<https://perma.cc/UZ7D-6H8N>] (discussing how the legal profession and legal education are changing post-pandemic).

68. See Jones & Strevens, *supra* note 2, at 1.

69. See Casey, *supra* note 56, at 97.

70. See Weyenberg, *supra* note 64.

71. See generally AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2022), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_t](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_t)

are already in place, with law schools expected to move into compliance by the Fall 2023 semester.<sup>72</sup>

In February 2022, the American Bar Association revised Standards 303(b) and (c) on the Program of Legal Education.<sup>73</sup> These standards focus on the law school curriculum and implement certain requirements that did not exist before.<sup>74</sup> These standards focus on creating more opportunity for professional identity formation as well as ensuring law students are receiving training on serving clients of diverse backgrounds and perspectives without bias.<sup>75</sup> Both changes are significant, but the revision as to professional identity formation could be used to compel a reimagining of the law school curriculum.

The new version of Standard 303 reads as follows:

Standard 303. CURRICULUM

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

- (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members;
- (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty-supervised; and

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[he\\_bar/standards/2022-2023/2022-2023-standards-and-rules-of-procedure.pdf](https://www.americanbar.org/content/dam/aba/administrative/news/2022/02/midyear-hod-resolutions/300.pdf) [https://perma.cc/M7CL-BU2Y] (incorporating the revised standards for legal education); *Report to the House of Delegates, Resolution 300*, AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR (2022), <https://www.americanbar.org/content/dam/aba/administrative/news/2022/02/midyear-hod-resolutions/300.pdf> [https://perma.cc/M7CL-BU2Y] (overviewing the revisions to Standards 205, 303, 507, and 508). The ABA has four goals that guide its operations: “1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law.” *Id.* at 4. The revisions to Standard 303 on professional identity formation seek to accomplish building into legal education an introduction on how to combat “bias, cross-cultural competency, and racism to students” that can serve the third goal of eliminating bias and enhancing diversity as those students make their way into the legal profession. *Id.*

72. William E. Adams, Jr. & Leo P. Martinez, *Focus on Diversity: The ABA Strengthens Diversity, Equity, and Inclusion Educational Requirements for Law Schools*, BAR EXAM’R, <https://thebarexaminer.ncbex.org/article/summer-2022/focus-on-diversity-2> [https://perma.cc/GQY2-MAT2] (last visited Aug. 12, 2023).

73. Weyenberg, *supra* note 64.

74. See 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 BULL., <https://www.nalp.org/revised-aba-standards-part-1> [https://perma.cc/BU8N-XUDU] (last visited Aug. 12, 2023).

75. *See id.*



(3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement, as defined in Standard 304.

(b) A law school shall provide substantial opportunities to students for:

- (1) law clinics or field placement(s);
- (2) student participation in pro bono legal services, including law-related public service activities; and
- (3) the development of a professional identity.

(c) A law school shall provide education to law students on bias, cross-cultural competency, and racism:

- (1) at the start of the program of legal education; and
- (2) at least once again before graduation.

For students engaged in law clinics or field placements, the second educational occasion will take place before, concurrently with, or as part of their enrollment in clinical or field placement courses.<sup>76</sup>

Law schools are tasked with providing students “substantial opportunities” for “the development of a professional identity” moving forward.<sup>77</sup> To understand what this means in the context of legal education, the ABA has provided Interpretation 303-5:

Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice. Because developing a professional identity requires reflection and growth over time, students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.<sup>78</sup>

Of particular note is the guidance that “students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.”<sup>79</sup> Although law schools have a lot of flexibility in how

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76. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 303 (2022).

77. *Id.* at § 303(b).

78. *Id.* at § 303-5.

79. *Id.*

they interpret and approach meeting this standard, the charge can and should be read as an opportunity to consider how the law school curriculum supports the formation of professional identity.<sup>80</sup> The development of a law student's professional identity should occur in all aspects of the law school experience—courses, extracurricular activities, and other specifically designed professionalism activities.<sup>81</sup> To apply this change as envisioned, law school faculty and administrations should look at their program of legal education from the ground up and consider how each building block fits into the development of the professional.

Moreover, this interpretation charges schools with recognizing that “professional identity should involve an intentional exploration of the values, guiding principles, and *well-being practices* considered foundational to successful legal practice.”<sup>82</sup> This language creates an opportunity to explore how the design of legal education contributes to the decline of mental well-being across the legal profession.<sup>83</sup> Success in serving the public requires the ability to maintain your mental well-being to bring to bear the full resource of your mental faculties in resolving legal issues.<sup>84</sup> As such, it makes sense that professional identity education would involve incorporating well-being into that learning process. Indeed, mental well-being is *critical* to the ability to engage in professional identity formation and to operate in the professional sphere.<sup>85</sup> Thus, to embark on an effective professional identity formation curriculum, law schools need to first ensure their students maintain good mental health.

Interestingly, this inclusion makes the incorporation of mental well-being not just recommended, but part of the requirements of providing a legal education.<sup>86</sup> The Program of Legal Education standards

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80. See Hamilton & Bilionis, *supra* note 74.

81. See *id.*

82. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 303-5 (2022) (emphasis added).

83. See Jones & Strevens, *supra* note 2, at 1.

84. See Robinson, *supra* note 28 (asserting that mental wellness is critical to success in law school and beyond); see also Jackson, *supra* note 53 (suggesting legal education should be reformed to ensure students are able to bring good mental health to the experience).

85. See *New Study on Lawyer Well-Being Reveals Serious Concerns for Legal Profession*, ABA: YOURABA (Dec. 2017), <https://www.americanbar.org/news/abanews/publications/youraba/2017/december-2017/secretcy-and-fear-of-stigma-among-the-barriers-to-lawyer-well-bei> [<https://perma.cc/P9X9-8MVY>] (determining that action is needed to ensure the ethical integrity of the legal profession, as somewhere between 40-70% of attorney complaints involve substance abuse and depression).

86. See AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 303(b) (2022) (requiring law schools to provide substantial opportunities for the development of professional identity); see also *id.* at § 303-5 (2022) (defining a professional identity formation as involving “an intention-

are just the floor for accredited schools. The standards should not represent the ceiling of what a law school might accomplish as they aid their students in the formation of their professional identities. Whether a law school targets the floor set by the standards, targets the ceiling, or aims somewhere in between, the design of each school's program of legal education should be evaluated with mental well-being as a core consideration.

### B. NCBE's NextGen Bar Exam

The second potential change agent for legal education is the NextGen Bar Exam, which represents a major shift from the current version of the Uniform Bar Exam (“UBE”).<sup>87</sup> The biggest shift in the exam is that it puts legal skills at the forefront, as opposed to heavy testing of memorized legal knowledge.<sup>88</sup> The need for memorized knowledge remains, but has been scaled back.<sup>89</sup> With skills at the forefront of the licensing exam, the demand for skills courses and experiences in legal education will grow.<sup>90</sup> This timing works in tandem with the revisions to incorporate professional identity formation into the curriculum because one's professional identity is formed and molded through experience rather than purely academic learning.<sup>91</sup>

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al exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice”).

87. See *How Is the New Uniform Bar Exam Going to Be Different?*, *supra* note 65 (noting that in January 2021, the NCBE announced major changes to the bar exam); see also *NextGen Bar Exam of the Future*, NCBE, <https://nextgenbarexam.ncbex.org> [<https://perma.cc/5WPV-E3F5>] (last visited Aug. 12, 2023) (overviewing the NextGen Bar Exam).

88. Staci Zaretsky, *New Bar Exam Will Test Future Law Grads on Skills Actually Related to Being a Lawyer*, ABOVE L. (Jan. 10, 2022, 12:41 PM), <https://abovethelaw.com/2022/01/new-bar-exam-will-test-future-law-grads-on-skills-actually-related-to-being-a-lawyer> [<https://perma.cc/M3MQ-3J5P>].

89. Sarah Wood, *NextGen Bar Exam: What to Know*, U.S. NEWS (Feb. 15, 2023, 12:39 PM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/applying/articles/nextgen-bar-exam-what-to-know> [<https://perma.cc/VP37-J3H6>].

90. See *id.* (“Jon J. Lee, an associate professor of law at the University of Oklahoma College of Law and another volunteer for the development of NextGen content, says the changes will free up time for law schools to focus on skills courses because ‘currently there is a lot of doctrine that students must know for the bar exam.’”).

91. See Martin J. Katz, *Teaching Professional Identity in Law School*, 42 COLO. LAW. 45, 45 (2013) (explaining that experiential learning is perfectly suited to the need to create situations where students will need to grapple with questions of lawyering and how they want to interact and engage in such scenarios):

Professional identity is more than simply ethics or professionalism—or even both together. Although professional identity includes these two issues, it is a broader concept. Professional identity is the way a lawyer understands his or her role relative to all of the stakeholders in the legal system, including clients, courts, opposing parties and counsel, the firm, and even the legal system itself (or society as a whole). In an ideal world, law-

The current UBE is made up of three sections: the multistate essay exam (“MEE”), the multistate bar exam (“MBE”), and the multistate performance test (“MPT”).<sup>92</sup> The MPT is the most realistic aspect of the UBE because it requires bar takers to engage in a common first-year lawyer task, i.e., evaluate a packet of law and case materials and write a memo, brief, letter, or other document for a client, their boss, or perhaps a judge.<sup>93</sup> The MPT is completed under intense time pressure.<sup>94</sup> The MBE is a multiple-choice exam that tests some “skills” but largely tests a bar taker’s knowledge of the legal subject covered by the exam and their ability to apply multiple choice test-taking skills.<sup>95</sup> The essay exam tests a bar taker’s ability to spot legal issues, their knowledge of the law, and ability to write a reasoned and organized analysis.<sup>96</sup> This is certainly a first-year lawyer skills stripped into an essay response that is not akin to a task generally undertaken by a first-year attorney (writing an essay).<sup>97</sup>

The UBE also tests thirteen different major areas of law, and even more than that when you break major areas into common sub-areas, such as business associations into corporations, agency, and partnership.<sup>98</sup> Fewer subjects are tested on the MBE, with the memorization of most subjects required for the essay exam.<sup>99</sup> The volume of material requiring memorization creates significant stress for students as they prepare for the bar exam.<sup>100</sup> Many students have juggled learning and mastering five

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yers come to understand their duties to each of these stakeholders and how to navigate tensions between those duties. Ethical rules and precepts of professionalism may help navigate those tensions. Professional identity goes beyond those rules and precepts to encompass the ideals each of us holds regarding our professional roles, and how we apply those ideals to the complex situations we encounter in our professional lives.

*Id.*

92. *Uniform Bar Exam*, NCBE, <https://www.ncbex.org/exams/ube> [https://perma.cc/CP64-CMRL] (last visited Aug. 12, 2023).

93. *Preparing for the MPT*, NCBE, <https://www.ncbex.org/exams/mpt/preparing> [https://perma.cc/6CP3-WCKZ] (last visited Aug. 12, 2023).

94. *Id.*

95. *Id.*

96. *Id.*

97. Stephanie Francis Ward, *A Better Bar Exam? Law Profs Weigh in on Whether Test Accurately Measures Skills Required for Law Practice*, ABA J. (Jan. 8, 2020, 10:09 AM), <https://www.abajournal.com/web/article/building-a-better-bar-exam> [https://perma.cc/ZGS7-QFTY] (questioning the ability of the bar exam to measure a law student’s competency for practice).

98. *Which Subjects Are Tested on the Uniform Bar Exam?*, JD ADVISING, <https://jdadvising.com/which-subjects-tested-uniform-bar-exam> [https://perma.cc/AQC5-D2AY] (last visited Aug. 12, 2023).

99. *Id.*

100. *See Memorization v Understanding*, L. SCH. ACAD. SUPPORT BLOG (Feb. 3, 2021), [https://lawprofessors.typepad.com/academic\\_support/2021/02/memorization-v-understanding.html](https://lawprofessors.typepad.com/academic_support/2021/02/memorization-v-understanding.html) [https://perma.cc/Z4NT-M27G] (discussing the impossibility of memorizing all the material on the

to six areas of law at a time, but doubling that for the bar exam is a significant mental feat.<sup>101</sup> The NCBE's task force evaluating the bar exam recognized this and recommended scaling back the number of tested subjects.<sup>102</sup>

The NextGen Bar Exam that arose from the recommendations of the task force is a very different exam than the current bar exam.<sup>103</sup> The doctrine covered includes subjects that are tested now, but scales the number covered back to eight subjects.<sup>104</sup> The NCBE also has explained that some questions will include the relevant legal materials, much like the current MPT, to ensure an examinee can place more focus on the legal skills.<sup>105</sup> Memorization and questions testing knowledge of basic legal principles will certainly remain part of the bar exam in the future.<sup>106</sup> As a tradeoff for removing subject matter, the NCBE has incorporated testing of seven foundational skills: Legal Research, Legal Writing, Issue Spotting and Analysis, Investigation and Evaluation, Client Counseling and Advising, Negotiation and Dispute Resolution, and Client Relationship and Management.<sup>107</sup>

The addition of these foundational skills is significant. The current standards for the Program of Legal Education only require six credit hours of experiential learning for law students.<sup>108</sup> Nearly every law

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bar exam and the stress that creates); *see also* Wood, *supra* note 90 (noting that memorization is a major point of bar prep stress).

101. *See Memorization v Understanding*, *supra* note 100 (offering methods to work on learning the law tested on the bar exam). The average full-time law student takes five to six classes per semester and is working on mastering these areas across the typical fourteen weeks of a law school semester before the exam in the fifteenth week. For the bar exam, recent graduates are working to review all thirteen major topics in usually a nine-to-ten week period.

102. *See* Valerie Hickman et al., *Final Report of the Testing Task Force*, NAT'L CONF. OF BAR EXAM'RS 22 (Apr. 2021), <https://nextgenbarexam.nebex.org/wp-content/uploads/TTF-Final-Report-April-2021.pdf> [<https://perma.cc/3NGL-MN5W>] ("The objective is to reduce the amount of legal knowledge candidates must learn for the exam, while emphasizing skills such as interpreting and applying law. The new exam will not be 'open book' in the sense of candidates being permitted to bring in or otherwise access materials not made available in the exam materials provided to all candidates. However, the new exam's emphasis on the application of provided legal resources will yield the practical effect of an open-book exam while maintaining the standardization central to applicant fairness.").

103. *See* Wood, *supra* note 89.

104. *See* Hickman et al., *supra* note 102, at 21 (indicating that the following subjects will be included on the NextGen Bar Exam: Civil Procedure, Contract Law, Evidence, Torts, Business Associations, Constitutional Law, Criminal Law and Constitutional Criminal Procedure, and Real Property).

105. *See id.* at 22 (noting that many legal resources will be provided to students to place the emphasis on interpreting and applying law).

106. *See* Wood, *supra* note 89.

107. *See* Hickman et al., *supra* note 102, at 21.

108. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 303(a)(3) (2022).

school has a legal research and writing course of some kind, and law schools vary widely on the content and scope of those courses.<sup>109</sup> Often these courses are focused in the 1L year and have traditionally been considered less valuable by tenure-track and tenured law faculty and students than the common 1L doctrinal courses, including Contract Law, Torts, Property, federal Civil Procedure, Criminal Law, and Constitutional Law.<sup>110</sup> The 1L doctrinal courses all incorporate issue spotting and analysis, and at many schools they may incorporate legal writing through exam taking or perhaps other formative and summative assessments.<sup>111</sup>

Though such courses exist, it is rare for 1L doctrinal courses to incorporate the other tested foundational skills.<sup>112</sup> Whereas, a legal research and writing course is likely to introduce a number of the core foundational skills, including legal research, legal writing (not exam writing), issue spotting and analysis, and investigation and evaluation.<sup>113</sup> A number of legal writing programs also incorporate some exposure to client counseling and advising and client relationship and manage-

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109. See Ilana Kowarski, *Choose a Law School That Emphasizes Legal Writing*, U.S. NEWS (Nov. 2, 2017, 9:00 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2017-11-02/assess-the-quality-of-a-law-schools-legal-writing-program> [<https://perma.cc/T7F2-BGKC>].

110. See Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105, 139-40 (2010):

In sum, there is an unmistakable pattern in the twenty-first century legal academy, with a prevalence that grows as a school's place in the rankings increases: (1) law schools hire impractical scholars with little, if any, record of practicing law and charge them with the mission to write theoretical law review articles and publish them in as highly ranked law reviews as possible; (2) student editors feel pressured to select theoretical articles, preferably written by professors at highly ranked schools, rather than practical articles so as to increase the law review's and, concomitantly, the school's reputation among other law schools; and (3) law faculties grant promotion, including the "brass ring" of tenure, to professors who have published several such articles in highly ranked law reviews, and pay little attention to whether such professors have proven themselves as effective teachers or whether they have produced any scholarship (or otherwise engaged in any activity) that has meaningfully benefited the legal profession.

*Id.* at 139.

111. Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report into a Doctrinal Course*, 34 NEV. L.J. 32, 32-33 (2002).

112. See Deborah J. Merritt, *The Appellate Classroom*, L. SCH. CAFÉ (June 12, 2015), <https://www.lawschoolcafe.org/tag/socratic-method> [<https://perma.cc/FJ6V-EPXN>] (explaining that the typical doctrinal classroom mirrors appellate practice which is practiced by very few law graduates).

113. Cheryl Bratt, *Livening Up 1L Year: Moving Beyond Simulations to Engage 1L Students in Live-Client Work*, 33 SECOND DRAFT (July 30, 2020), <https://www.lwionline.org/article/livening-1l-year-moving-beyond-simulations-engage-1l-students-live-client-work> [<https://perma.cc/9WCL-93PH>].

ment.<sup>114</sup> Relatively few first-year curricula across the nation would cover all of these foundational skills between all the courses offered.<sup>115</sup> And, even if they do, at best the 1L curriculum serves as an introduction to these skills which will not be sufficient to help a student demonstrate minimum competency on the NextGen Bar Exam.

Experiential courses are a core part of the law school experience, but most focus on a few areas of these foundational skills that make sense in the context of the course. A negotiation course will necessarily incorporate negotiation and dispute resolution, and will certainly include client counseling and advising in the context of dispute resolution, but the coverage may not be as broad as the NCBE envisions testing in these areas. Further, since only six hours of experiential learning are required without specific courses or objectives tied to those courses,<sup>116</sup> it is very likely a law student will make their way through the current program of legal education having never been more than tangentially introduced to some of the skills tested on the NextGen Bar Exam. Furthermore, as most law school curricula focus on doctrinal courses, and students perceive that and gravitate towards such courses as where the real learning happens, the current priority culture of legal education works against the changing exam and professional identity formation standards.<sup>117</sup>

None of this is to suggest that these courses do not offer significant value to law students, they certainly do. Doctrinal courses engage students in learning core areas of law and in case reading, issue spotting, and analysis.<sup>118</sup> Often doctrinal professors are hindered from incorporating more work in skills than their course currently includes because their class sizes are larger than that of their legal writing and experiential professor counterparts.<sup>119</sup> However, these courses are also largely the ones modeled on the traditional style of legal education that has resulted in the decline in mental well-being. The courses alone are not the sole drivers of the decline in mental well-being, but the tie to tradition in the face of changing learners and the major shifts in legal education that have oc-

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114. *Id.*

115. *Id.*

116. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 303(a)(3) (2022).

117. Newton, *supra* note 110, at 139-40.

118. See David A. Hyman et al., *Does the 1L Curriculum Make a Difference?* 5-6 (Geo. U. L. Ctr., Working Paper, 2022), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3483&context=facpub> [<https://perma.cc/PWE2-4NPL>] (overviewing the traditional 1L curriculum and the benefits).

119. See *id.* at 7 (stating section sizes can have over 100 people). Schools will vary in section size depending on the size of their 1L class. However, it is not uncommon for section sizes to range from 80-100 students. Legal writing courses are usually broken into smaller sections, though this is not true at all schools.

curred or will occur is certainly going to impact success on the NextGen Bar Exam.<sup>120</sup> The new exam is not orientated to the current mode of testing for these courses. It is more aligned with the testing style or project work done in experiential or skills leaning courses.

To ensure student success on this future bar exam, law schools will need to incorporate courses that take students from introduction to minimum competency in the foundational skills before graduation and sitting for the bar exam. Success will be hard to find in the current structure of legal education. The separation and stratification of courses into doctrine and skills is a detriment to bar success and professional identity formation.<sup>121</sup> Skills and doctrine do not exist in vacuums.<sup>122</sup> Instead, and in reality, every law school class draws on both and could incorporate each with more intentionality for the betterment of their programs and for the value of the education provided to law students. With the NextGen Bar Exam set to launch in 2026, given the three-year academic cycle for law school graduates, the part-time classes of 2022 and the full-time entering classes of Fall 2023 will likely be the first law school graduates to take the new bar exam, so the time is now to make changes ahead of the NextGen Bar Exam.<sup>123</sup>

#### IV. PROPOSALS FOR CHANGING THE LAW SCHOOL CURRICULUM

Compelled by these two change agents and the law school mental health crisis being driven to a fever pitch by the pandemic, the next few academic years are a critical moment for reflection and change.<sup>124</sup> The old traditions need make way for a sustainable model of legal education for the future.<sup>125</sup> The design of legal education should be reworked to better prepare students for serving as new professionals in the practice of law, to minimize the significant toll law school takes on a person's mental health, and to ensure graduates are ready to pass the new bar exam and move into serving their clients successfully. To make this shift, law schools should move towards centering student wellness as a core objective while also placing greater focus on developing minimum competency on core legal skills through expanded experiential learning. A redesign of legal education has the potential to produce graduates better

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120. Newton, *supra* note 110, at 139-40.

121. Noble-Allgire, *supra* note 111, at 32-35.

122. *Id.* at 36.

123. See Wood, *supra* note 89 (explaining that curricular adjustments are needed with the incoming Fall 2023 class as these will likely be the first graduates to sit for the NextGen Bar Exam).

124. See Todres, *supra* note 9 (arguing that law school requires a culture shift that puts well-being first).

125. See Tully, *supra* note 12, at 842-43.



suites to meet the demands of law practice while also ensuring graduates can fully engage mentally in practice.<sup>126</sup>

The ABA's professional identity formation requirements and the NextGen Bar Exam are the needed spark to change the future of legal education that has been mired in maintaining the traditional approach.<sup>127</sup> Helping students develop a professional identity requires engaging them in practicing the skills necessary for "effective, ethical, and responsible participation as members of the legal profession."<sup>128</sup> As the NextGen Bar Exam tests these same skills, a reorientation of law school curriculum towards building legal skills and taking a more direct approach to preparation for practice is critical to student and bar success.<sup>129</sup> Moreover, this creates a perfect moment<sup>130</sup> to stop treating the symptoms of the diseased nature of our current legal education system and focus our efforts on where the problem really originates.

To start, law faculty and administrators must consider what a wellness-driven curriculum<sup>131</sup> should look like at their school within the context of the ABA standards. Law school hallmarks such as extensive nightly reading, lack of assessment to measure performance, the curved grading system, cold calling, the competition, and the loss of identity all negatively impact law student wellness.<sup>132</sup> While these things certainly carry over into the legal profession, law students don't feel that the stress they felt in law school prepared them for the types of stressors they would encounter in practice.<sup>133</sup> The question for law faculty and administrators becomes what pedagogical purpose these hallmarks serve, and if they do serve a purpose, how might they be adapted to help aid wellness in law school.

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126. *See id.* at 846-47.

127. *See De Sola, supra* note 67 (discussing how the legal profession and legal education are changing post-pandemic).

128. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 301(a) (2022).

129. *See Hickman et al., supra* note 102, at 20-22.

130. There is little question that legal education is at an inflection point following the pandemic. *See Casey, supra* note 56, at 85-86, 89-90 (describing the shifting state of legal education during and after the COVID pandemic); *see also De Sola, supra* note 67.

131. *See Tully, supra* note 12, at 842-43; Jackson, *supra* note 53.

132. *See Tully, supra* note 12, at 847 ("Before law schools can reimagine and rebuild legal education, those who govern them must first remove the enduring obstacles that produce and reproduce unnecessary inequality . . .").

133. *See* Matthew Jenkin, *Legally Drained: Why Are Stress Levels Rising Among Law Students?*, GUARDIAN (Nov. 19, 2019, 6:02 AM), <https://www.theguardian.com/law/2019/nov/19/legally-drained-why-are-stress-levels-rising-among-law-students> [<https://perma.cc/J4ZQ-T58S>] ("Junior lawyers also admitted they felt that university didn't prepare them enough for the level of stress in the profession, and the study heard stories of trainees not sleeping or crying in the office toilets.").

The place to look initially to make changes is the first-year curriculum.<sup>134</sup> Law schools can and should center wellness throughout the entire law school experience, but the first-year curriculum is the entry ramp into law school and the moment when entering students start to develop habits and systems around their approach to law school.<sup>135</sup> A careful redesign of the first year will set a solid foundation for professional identity formation,<sup>136</sup> provide a great primer on vital bar exam covered subjects and skills, and set up students for success in their second and third years with a deeper understanding of what it means to think like a lawyer that is mentally equipped to solve legal problems. Thus, we will consider adjustments to the first-year curriculum that center wellness as a primary goal.

### A. *The First-Year Experience*

The first year of law school sets the tone for everything that comes after. It will always be an academic year of transformation for most students, one that redefines how they recognize legal issues, craft legal communication, identify relevant law, and analyze legal problems.<sup>137</sup> The first year must remain the catalyst of the paradigm shift to be able to analyze any problem to a reasoned outcome regardless of the “side” one finds themselves on with the recognition that there is no right answer, but only the answer you rightly argue. This transformative process can be adapted to make the experience significantly less stressful and im-

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134. See Tully, *supra* note 12, at 847 (noting that the first-year curriculum should be the first place to reimagine legal education).

135. See Janet Thompson Jackson, *Work, Wellness, and Meaning: Reimagining Legal Education and the First 10 Years of Law Practice*, NALP BULL. (Jan. 2022), [https://www.nalp.org/lawyer\\_wellness\\_article](https://www.nalp.org/lawyer_wellness_article) [<https://perma.cc/EW3J-R9PT>] (“When I arrived at law school, I experienced culture shock. I felt as though I had been dropped into a foreign land. I had to learn a new way of reading, deciphering, and analyzing information. I experienced a completely different classroom interaction with my professors and classmates than what I had experienced in college. I learned how to dissect fact patterns, build an argument, and adopted a new method of speaking. I learned to think like a lawyer.”). The first year of law school is a time of great change and adjustment. Revamping the first year “does not require abandoning the traditional approach of teaching law students to think logically and analytically.” *Id.* Law schools can take various routes to changing the curriculum, but they “must integrate concepts of empathy, compassion, interpersonal connections, and constructive introspection along with issue spotting and analytical reasoning.” *Id.* There is nothing about “thinking like a lawyer” that necessitates the need for poor mental well-being. *Id.*

136. See *id.* (explaining that the medical profession understands that professional identity formation starts in medical school, and law schools need to recognize the same is true for law students).

137. See *id.*

pacful on a student's mental health while simultaneously creating a positive environment for growth.<sup>138</sup>

To center student well-being, several key changes will need to be made to law school mainstays. Solely using the casebook method of learning, the extensive reading assignments, high-stakes assessments, and the grading curve must be adapted or eliminated in the first year.<sup>139</sup> Instead, the first year should be seen as a primer for the second and third years. Legal educators should aim in the first year to prepare students to think like lawyers and work on the development of their professional identity.

### 1. Pacing and the Casebook Method

First, the pace of the first-year class needs to slow down dramatically. One reason wellness programs are having little success is that there is no time for students to incorporate wellness into their daily lives.<sup>140</sup> Between their first-year courses students may have 50-100 or more pages of dense case material to read each day in preparation for the days ahead.<sup>141</sup> They have research and writing they need to complete, and outlining and studying they need to engage in beyond just the reading.<sup>142</sup> When students first enter law school, many need significant time to engage with the case readings much less to fit in the other tasks they need to undertake for academic success.<sup>143</sup> First-year faculty can help ease the students into experience by starting with relatively short readings and progressively build as the semester goes on with the overall goal to scale back significantly across the semester. First-year professors can also co-

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138. See *id.*; Tully, *supra* note 12, at 847.

139. See Tully, *supra* note 12, at 847; Merritt, *supra* note 112; Mitchell M. Handelsman, *Is the Socratic Method Unethical?*, PSYCH. TODAY (July 27, 2018), <https://www.psychologytoday.com/us/blog/the-ethical-professor/201807/is-the-socratic-method-unethical> [<https://perma.cc/JH5W-7PRU>] (stating that “the Socratic Method runs the risk of being (or being perceived as) disrespectful, ineffective, and evidence of professor incompetence, malice, or laziness.”).

140. See DEO ET AL., *supra* note 37, at 5, 16 (asserting that impossible levels of work keep law students from being able to engage in self-care).

141. See *The Ultimate Guide to Undergrad vs. Law School: All the Differences You Need to Know*, NEW ENG. L. BOS., <https://www.nesl.edu/blog/detail/the-ultimate-guide-to-undergrad-vs.-law-school-all-the-differences-you-need-to-know> [<https://perma.cc/AZ84-F3VG>] (last visited Aug. 12, 2023); Galarita, *supra* note 16.

142. See *The Ultimate Guide to Undergrad vs. Law School: All the Differences You Need to Know*, *supra* note 141.

143. See *id.*

ordinate amongst themselves and each section the assignments between classes to ensure students' time is more balanced.<sup>144</sup>

It is important to account for the fact that ABA Standard 310 defines the amount of time students spend in class for a credit hour and the amount of homework that is required for each credit hour.<sup>145</sup> This requirement must be met, even as professors evaluate their course assignments. The average full-time first-year student takes approximately fifteen credit hours a semester.<sup>146</sup> Under Standard 310, this course load should manifest as 12.5 hours of in-class time, and thirty hours of homework time a week.<sup>147</sup> For a full-time law student, that is a roughly 42.5-hour work week often before you add in the additional work of understanding the material, creating an outline, and adding in needed supplements and practice with material to progress towards mastery.<sup>148</sup> Standard 310 builds rigor into the law school experience by requiring a certain amount of homework relative to in-class time.<sup>149</sup> Law schools can meet this requirement, while scaling back the reading and creating an approach that accounts for student wellness. In part, because the additional work of understanding the material, creating an outline, and adding in needed supplements and practice with material to progress towards mastery are typically not accounted for by professors in those

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144. Todres, *supra* note 9 (“In responses to the 2021 Law School Survey of Student Engagement, nearly half of law students reported averaging five or fewer hours of sleep per night, including weekends. In addition, 43.6% of respondents reported five or fewer hours of relaxing or socializing per week, and an additional 32.1% reported only six to [ten] hours of relaxing or socializing per week. The numbers were even worse among students of color.”).

145. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 310-1 (2022).

146. *Part-Time Programs vs. Full-Time Programs*, BARBRI: POWERSCORE, <https://www.powerscore.com/lSAT/help/ptvsft> [<https://perma.cc/2AVF-FYPC>] (last visited Aug. 12, 2023).

147. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 310(b) (2022). The standard states that

A “credit hour” is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out of class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time . . . .

*Id.* Interpretation 310-1 further clarifies that

fifty minutes of classroom or direct faculty instruction and two hours of out-of-class student work per week over the fifteen-week (or its equivalent) period required by the Standard, at least 42.5 hours of total in-class instruction and out-of-class student work is required per credit [15 x 50 minutes + 15 x 2 hours].

*Id.*

148. Todres, *supra* note 9.

149. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 310(b) (2022).

thirty hours of homework, professors can still meet the ABA standards by building in time for students to accomplish that work.

The reality is that many law students spend far more time preparing for classes and exams than is envisioned by ABA Standard 310.<sup>150</sup> For the 2017-2018 school year LSSSE survey, full-time 1L students “read for 21.7 hours per week” and spend roughly 11.4 hours on non-reading activities.<sup>151</sup> In this same survey, the more a student felt they were struggling academically, the more time they were likely to have spent on reading and non-reading activities, sometimes exceeding over twenty-five hours a week just on reading alone.<sup>152</sup> In the first few weeks of law school, new law students require far more time to read and prepare for classes than they will as the semester progresses.<sup>153</sup> The entire first year, students will find themselves to be slower at studying than in their second and third years as they adapt to thinking like a lawyer. Around exam time students retain their normal reading levels but have to ramp up their outside study in preparation for the exam.<sup>154</sup> Law students can easily find themselves hitting fifty to sixty hours a week in preparation for exams.<sup>155</sup>

Despite the fact that first-semester and first-year students need more time, the first year is often the most demanding in terms of the subject matter covered. Thus, the need to scale back is evident if students are going to have adequate time to build skills, thoughtfully work to develop their professional identity, and accomplish all of these things in a manner that centers wellness. Making such an adjustment in the scale of what is covered poses a real challenge to the casebook method of learning that law school courses have relied on for decades.<sup>156</sup> Reading cases is an important part of the law school classroom and critical learning process.<sup>157</sup> Reading cases will never disappear from the curriculum, but

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150. See Jakki Petzold, *How Much Time Do Law Students Spend Preparing for Class?*, LSSSE (Jan. 16, 2019), <https://lssse.indiana.edu/blog/how-much-time-do-law-students-spend-preparing-for-class> [<https://perma.cc/47SY-T53A>].

151. See *id.*

152. See Jakki Petzold, *Time Spent Preparing for Class and Grades*, LSSSE (Jan. 30, 2019), <https://lssse.indiana.edu/blog/time-spent-preparing-for-class-and-grades> [<https://perma.cc/ZR58-LU84>].

153. See *The Ultimate Guide to Undergrad vs. Law School: All the Differences You Need to Know*, *supra* note 141.

154. See Tully, *supra* note 12, at 859 (indicating that “students cram during reading period and then promptly forget the subject matter, many recalling the entire exam process as traumatic. These high-stakes, winner-takes-all exams create and recreate destabilizing and destructive discomfort and foster fixed mindsets.”).

155. See *id.*

156. See Merritt, *supra* note 112.

157. See Deborah J. Merritt, *Analyzing Cases and Statutes*, L. SCH. CAFÉ (Feb. 16, 2013), <https://www.lawschoolcafe.org/tag/socratic-method> [<https://perma.cc/JB6R-HQ2E>] [hereinafter

the casebook method also should not be the sole means of learning material.<sup>158</sup> In part, this method does not align completely with how lawyers learn or practice the law.<sup>159</sup> One aspect of a lawyer's professional identity is charting their own pathway for self-regulated learning in their field.<sup>160</sup> The casebook method also provides law students a warped view of what that process would typically look like in today's world. Further, to slow down the overall pace of the class necessitates determining new ways to cover core material beyond having students read cases to absorb the legal knowledge. Instead, first-year courses should aim to drill a process of gaining legal knowledge into students that involves learning through a variety of legal resources, including through the review of cases.<sup>161</sup>

Slowing down the pace of the first-year course will necessarily mean that professors are not able to cover the same volume of material they once could. The tradeoff here is that the learning with which students can engage on the areas covered will be deeper and richer because rigor does not have to come only through a fast pace.<sup>162</sup> Rigor can instead come from deep engagement on a few core areas.<sup>163</sup> Of course, one concern for first-year courses is that students will not have been exposed to enough for the future bar exam. However, the retention rate of subjects covered three years early makes this rationale of little value.<sup>164</sup> If

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*Analyzing Cases and Statutes*] (“Whatever else we teach in law school, most professors and lawyers agree that we need to teach students how to analyze cases and statutes. Lawyers must be able to read those key products of our legal system; analyze their meaning; synthesize their rules; apply the rules to new situations; and recognize ambiguities or open questions.”).

158. See Merritt, *supra* note 112.

159. See *Analyzing Cases and Statutes*, *supra* note 157 (“The right answers in a doctrinal class usually require knowledge of the doctrine—not knowledge of how to deduce that doctrine from a case or statute. Students who are struggling for answers, therefore, usually turn to doctrinal study guides; they rarely seek additional help in analyzing and synthesizing legal materials.”).

160. See Jackson, *supra* note 135 (“Let’s begin with law schools. The humanizing legal education movement, among others, has called for substantive changes in legal education for over a decade and is credited with improving the learning environments in many law schools. Those changes include a demonstrated respect for students, a focus on collaborative learning, increased assessments and feedback, attention to self-directed learning, diverse teaching methodologies, and more.”).

161. See *Analyzing Cases and Statutes*, *supra* note 157.

162. See Peter Noonan, *Building Rigor into Every Classroom*, WHITE RIVER SCH. DIST., [https://www.whiteriver.wednet.edu/apps/pages/index.jsp?uREC\\_ID=1473444&type=d&pREC\\_ID=1626071](https://www.whiteriver.wednet.edu/apps/pages/index.jsp?uREC_ID=1473444&type=d&pREC_ID=1626071) [<https://perma.cc/L8AZ-Q93C>] (last visited Aug. 12, 2023) (“While rigorous instruction may require that students put forth more effort, it is not based on the volume of work students complete. Rigor is about the quality of the work students are asked to do, not the quantity. More assignments or more reading does not guarantee more rigor. In fact, rigorous classrooms often have fewer assignments and homework.”).

163. See *id.*

164. See Olivia McGarry, *5 Ways to Challenge the Forgetting Curve*, LEARNUPON BLOG, <https://www.learnupon.com/blog/ebbinghaus-forgetting-curve> [<https://perma.cc/VXN6-J6JB>] (last

students finish the first year with a better command of the areas of law they did cover, a process for self-directed learning, and in a better mental state, the lack of touching on every possible area of bar exam coverage will not represent a significant detriment.<sup>165</sup>

Skills-oriented courses, such as lawyering courses or first-year legal research and writing, also tend to exceed the ABA homework mandates.<sup>166</sup> These mandates are just the floor, so it is not a standards violation to exceed them, but the excess work can result in stressed, depressed, and burnt-out law students.<sup>167</sup> Under the current law school structure, first-year lawyering skills courses are asked to accomplish far too much, and that drives the need for extensive coverage. Often these courses introduce research, communication, legal writing, and professionalism skills, and incorporate some academic success skill building as well.<sup>168</sup>

Lawyering classes absorb a lot of the development of law students beyond the work that is traditionally done in a doctrinal classroom.<sup>169</sup> They have become a veritable “homeroom” in many law schools. This issue, in combination with the challenge even good writers face in transitioning their writing to the legal style, results in a robust course that demands a lot of time in competition with the other courses. Much like the doctrinal courses, adjustments to coverage need to be made here to help with the stress of the first-year experience. To accomplish these adjustments some things need to be stripped out of first-year lawyering classes. Because the skills curriculum will need to expand anyway for the NextGen Bar Exam, schools can thoughtfully design a skills curriculum that reduces the burden on first-year courses and introduces core skills throughout the law school experience.

## 2. High-Stakes Assessments and the Grading Curve

Aside from the impossible pacing, the next major drivers of chronic stress that lead to mental health issues are the high-stakes testing model and curved grading of law school.<sup>170</sup> With a few exceptions, law schools largely rely on final exams worth a significant portion of a law student’s grade and curved grading that sets a mandatory median grade for

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visited Aug. 12, 2023) (explaining that people forget roughly fifty percent of information within an hour of learning it); *see also Memorization v Understanding*, *supra* note 100.

165. *See* Jackson, *supra* note 135.

166. *See* Tully, *supra* note 12, at 859.

167. *See* Blaemire, *supra* note 8.

168. *See* Tully, *supra* note 12, at 845.

169. Newton, *supra* note 110, at 146.

170. Tully, *supra* note 12, at 857-58.

first-year classes.<sup>171</sup> These law school traditions are not without value, as the practice of law is certainly high-stakes and quite stressful. Also, the curve ends up having a positive effect on many first-year students' grades because, despite their actual score working out to below the seventy-point threshold traditional grades dictate as passing, students may still end up with a B grade rather than an F.<sup>172</sup> However, taken together, the combination of the high-stakes exam and curved grading puts students into a competitive environment that drives unhealthy habits around balance.<sup>173</sup> Thus, to make serious change on the negative impact of legal education on mental health, these two law school mainstays require elimination.

One change that the ABA had already pushed through the standards for legal education years ago is the inclusion of more formative assessment throughout law school courses.<sup>174</sup> Outside of first-year legal research and writing, students rely on midterm and final exam testing, as most courses still offer relatively little formative assessment to monitor one's success in mastering the material in between exams.<sup>175</sup> Some professors go above and beyond in creating opportunities for practice while others offer little assistance in this regard. Whatever the approach, first-semester law students build up to their first round of final exams with the knowledge that if they do not do well compared to their classmates, they could face exclusion from law school.<sup>176</sup> The stress of preparing for an exam that determines the value of their roughly \$20,000 investment<sup>177</sup> to that point in the cost of their education for that semester

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171. See *id.* at 858 (“Because of mandatory curves, discussed in the next section, students who performed very differently are still likely to receive the same or similar final score, a B. After receiving their grades, which already play an outsized role in the law student psyche, most students cannot determine from the feedback they received (if any) where they need to improve.”).

172. Andrea A. Curcio, *A Simple Low-Cost Institutional Learning-Outcomes Assessment Process*, 67 J. LEGAL EDUC. 489, 490 (2018) (expressing that curve grades can leave students with an impression of mastery that they did not attain).

173. See Tully, *supra* note 12, at 859; see also Jackson, *supra* note 135.

174. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 314 (2022) (“A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.”). Formative assessments are meant to provide students feedback throughout the semester to ensure students know where their strengths and weaknesses are as they progress towards the final exam.

175. See Steven C. Bahls, *Adoption of Student Learning Outcomes: Lessons for Systemic Change in Legal Education*, 67 J. LEGAL EDUC. 376, 400-02 (2018); see also Tully, *supra* note 12, at 861.

176. *Academic Probation and Disqualification in Law School*, JD ADVISING, <https://jedadvising.com/academic-probation-and-disqualification-in-law-school> [<https://perma.cc/N2LX-JU8P>] (last visited Aug. 12, 2023).

177. Kat Tretina & Alicia Hahn, *Is Law School Worth It? 5 Factors to Consider*, FORBES (Feb. 9, 2022, 8:18 AM), <https://www.forbes.com/advisor/student-loans/is-law-school-worth-it>



is incredibly high before you factor in the impact of the stereotype threat,<sup>178</sup> imposter syndrome,<sup>179</sup> and other psychological phenomena that play a role in performance on high-stakes exams.<sup>180</sup>

Law schools could take several approaches to adapting or eliminating the high-stakes testing or grading curve component of the experience. Indeed, some law schools have already started to make such adjustments.<sup>181</sup> Courses could diversify the points earned across a series of formative assignments, building up to the final exam. The final exam could retain a higher point value than other assignments, while making it possible for students to still succeed in the course even if they do not achieve a good score on the final exam.<sup>182</sup> This approach would also account for the challenges that exist with a high-stakes exam as a true representation of student learning.<sup>183</sup> Some students do not test as successfully as others, though they may otherwise be very knowledgeable of the material.<sup>184</sup> A greater point spread across assignments will do more to assess student learning of the material and to allow professors to adjust student weaknesses before the end of the semester.<sup>185</sup>

Eliminating the curve is a tougher consideration than the pedagogically vetted adjustment to incorporating more formative assessments and

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[<https://perma.cc/QM2L-CZUU>] (“Law school is an intense experience, with coursework far more rigorous than you endured in college. Law school is so challenging that the dropout rate for first-year students can be quite high; at some schools, the dropout rate can be as high as [thirty-eight percent]. If you find law school too difficult and drop out, you still have to repay any student loans you took out, but you don’t have the benefits or career prospects that a J.D. holder has.”).

178. Catherine Martin Christopher, *Eye of the Beholder: How Perception Management Can Counter Stereotype Threat Among Struggling Law Students*, 53 DUQ. L. REV. 163, 166 (2015) (describing stereotype threat as the phenomena where someone underperforms because of their concerted effort not to conform with a stereotypical view of their likely performance based on their classification by gender, race, etc.); see also Jackson, *supra* note 135 (discussing the impact of stereotype threat on performance).

179. See Jackson, *supra* note 135 (discussing imposter syndrome as a driver of stress in law students that impacts their performance).

180. See Jennifer A. Heissel et al., *Testing, Stress, and Performance: How Students Respond Physiologically to High-Stakes Testing*, INST. POL’Y RSCH. NW. U. 2 (Nov. 2018), [http://people.tamu.edu/~jmeer/HADFM\\_TestingStress.pdf](http://people.tamu.edu/~jmeer/HADFM_TestingStress.pdf) [<https://perma.cc/KAZ5-XUUL>] (discussing the increased prevalence of cortisol levels before high-stakes testing compared to weeks without such testing). The stress response was elevated in subjects from lower socioeconomic backgrounds. *Id.* at 3.

181. See Tatiana Becker, *Don’t Let the Curve Make You Unkind*, B.C. L.: IMPACT (Jan. 28, 2020), <https://bclawimpact.org/2020/01/28/dont-let-the-curve-make-you-unkind> [<https://perma.cc/ZND9-WC8A>] (indicating that some schools have moved away from the standard law school grading system).

182. See Tully, *supra* note 12, at 859.

183. See *id.*

184. See Jackson, *supra* note 135.

185. See Tully, *supra* note 12, at 859.

eliminating or minimizing the impact of high-stakes exams.<sup>186</sup> As noted, the curve often does help law students avoid what might otherwise be a failing grade if the singular goal was to achieve seventy points or more out of 100 on law school assignments.<sup>187</sup> It also protects students against the impact that exams that are too easy versus exams that are too hard might have on their overall GPA. However, the curve fails at indicating to students how much they have really mastered of the subject matter as it just scores them relative to the performance of their peers.<sup>188</sup> This comparative grading measure has a significant impact on the mental health of students as the grades become a direct reflection of their ability compared to their peers.<sup>189</sup> With more formative assessments in the mix, it may be possible to eliminate the need for law schools to grade on a curve as students build their mastery of the material across assignments.<sup>190</sup> This more accurate measure of success in knowledge and application mastery would result in a clearer picture of where students need improvement in their academic journey beyond the broad sense that they did not perform as well as their peers in some manner.<sup>191</sup>

### 3. Proposal for Centering Wellness and Professional Identity Formation in the Curriculum

There are any number of ways a law school might accomplish slowing down the pace of the first year and incorporating more formative assessment and professional identity formation all while centering student wellness.<sup>192</sup> One approach would be to limit the number of hours and variety of subjects taught in the first semester, as well as the volume of the assignments. The first semester of law school is a notoriously difficult time of transition for law students.<sup>193</sup> They are adapting to the structure of law school while trying to learn and master complex legal doctrine through the reading of cases.<sup>194</sup> They are adapting their writing and communication skills to the legal field's more technical writing style and more formal pattern of communication.<sup>195</sup> This transition is a hard

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186. *See id.* at 864.

187. *See* Bahls, *supra* note 175, at 400-02; Tully, *supra* note 12, at 864.

188. *See* Tully, *supra* note 12, at 864.

189. *See* Bahls, *supra* note 175, at 400-02; *see also* Tully, *supra* note 12, at 864; Jackson, *supra* note 135.

190. *See* Tully, *supra* note 12, at 864.

191. *See id.*

192. *See* Jackson, *supra* note 135.

193. *See* Healy, *supra* note 16.

194. *See id.*

195. *See The Ultimate Guide to Undergrad vs. Law School: All the Differences You Need to Know*, *supra* note 141; *see also Analyzing Cases and Statutes*, *supra* note 159.

one that often leaves students feeling unsure of themselves, overwhelmed, anxious, and unable to engage with the learning process.<sup>196</sup> Adapting to thinking like a lawyer will always come with some necessary and positive struggle, but the start of that adaptation can be managed thoughtfully.<sup>197</sup>

Rather than focus on multiple areas of subject matter, students can spend time focusing on two core subjects, perhaps Civil Procedure and Torts, combined with a series of skills labs and courses that also work within the same subjects. In addition, first-semester 1Ls should take a three-credit lawyer skills course akin to the current legal research and writing courses but scaled back given the inclusion of practice labs. For the two subjects, practice labs of one to two credit hours, focused on working with the subject matter through practice-oriented application would create opportunities to incorporate professional identity formation.<sup>198</sup> This diversifies the skills exposure across all the courses and builds in room for developing critical thinking skills by taking a deep dive into a few core subjects initially. Law school faculty in revising the curriculum should define the objectives for each course and lab with an eye towards dividing up introductions to foundational legal skills across the courses and as appropriate for the first semester 1L experience. The course schedule could look something like this:

1L Year

*Fall* – 15 hours

Federal Civil Procedure 4 credit hours + 2 credit hour practice lab

Torts 4 credit hours + 2 credit hour practice lab

Lawyering Skills (LRW) 3 credit hours

Further, the introduction of some of the law related to the subject matter should happen in the lab rather than the more substantive course. Adding knowledge through the lab process reinforces that self-learning is a core legal skill and not all learning will come through substantive class interactions.<sup>199</sup> Conversely, concepts introduced in the substantive

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196. Jackson, *supra* note 135.

197. *Id.*

198. See Teshal Pern, *A 1L's Guide to Experiential Learning*, B.C. L.: IMPACT (Feb. 17, 2022), <https://bclawimpact.org/2020/01/28/dont-let-the-curve-make-you-unkind> [https://perma.cc/28DS-WDCG] (describing experiential competitions for first years and their benefit):

By allowing 1Ls to participate in these competitions during their first semester, the school makes sure students don't forget what the primary goal of law school is: You want to study hard and learn the foundations of the law, but you also want to acquire the skills you'll need to be ready to practice upon graduation.

*Id.*

199. *See id.*

component of the course should be incorporated into lab work with the idea that students were already exposed to the subject matter and are now using it for practical application. Spending five to six credit hours learning and practicing Civil Procedure and Torts will aid student retention of those subjects and allow them to focus on two subjects during the challenging first semester transition.<sup>200</sup> This structure can also get them involved in forming their professional identity from day one through the skills labs without being overwhelmed. In crafting the structure of these courses and labs, law schools should be thoughtful and conscientious as to wellness, to ensure that overworking law students is not built into the curriculum design as is the case now.

The next adjustment would be to increase the course load in the spring, but only with the addition of one more subject area. A common spring curriculum might include Contract Law, Property, Criminal Law, and a lawyering skills course. Practice labs attached to the courses would create opportunities to reinforce foundational skills introduced in the first semester and expand on professional identity formation through skills exposure. Here again, 1L faculty should work together to determine which foundational skills will be incorporated into each course, ensuring that they divide the skills among the planned curriculum and that the coverage reinforces and expands on the fall curriculum. The second semester experience might look something like this:

1L Year

*Spring* – 15 hours

Real Property 3 credit hours + 1 credit hour practice lab

Criminal Law 3 credit hours + 1 credit hour practice lab

Contract Law 3 credit hours + 1 credit hour practice lab

Lawyering Skills (LRW) 3 credit hours

This proposal steps up the rigor of the spring experience with the addition of another subject but maintains a focus on building knowledge and retention through a combination of skills and substance. Across both semesters the labs could integrate with the pace of the lawyering skills class as well to ensure the skills concepts fit together thoughtfully and with objectives in student learning top of mind.<sup>201</sup> This coordinated ap-

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200. Law schools can decide on any arrangement of courses, including revamping the course offerings entirely. The key is to not overwhelm incoming law students with subject matter as they work to build skills to be successful. As discussed, these courses are also not meant to just be the current iteration of law school classes with just less in a semester, as that certainly will not do much to help with the mental wellness of students. Instead, the courses should be adjusted for this generation of learners and with maintaining student wellness centered as a core objective in progressing students through the law school experience.

201. See Pern, *supra* note 198.

proach to educating law students is very different than the current divide that exists amongst faculty and courses that contribute to the workload of law students.<sup>202</sup>

The question will certainly arise as to which faculty members should oversee the execution of the labs. Should this fall to the doctrinal faculty teaching the anchor course, to skills faculty such as those teaching lawyering skills, to a combination of the two working together, or perhaps to someone else entirely?<sup>203</sup> The distinction in faculty is not one that is helpful in thinking about educating law students, but it is one that persists despite its harmfulness in the education context.<sup>204</sup> As such, faculty will continue to be described in these categories here. The answer to the question of who will teach these courses likely depends on the size and human capital of the law school choosing to use this curriculum model. It may be for some schools that a combination of doctrinal and skills faculty will result in the most effective pairing to accomplish the lab objectives. Class sizes will certainly have an impact on this consideration as well as the availability of skills faculty to take on teaching labs in coordination with the doctrinal subject. For some skills, practitioners in the areas in question may serve as adjuncts to help introduce the skills with a more direct-to-practice oriented lens. Further, students are generally eager to learn from practitioners and such exposure helps with their own professional growth. Whatever pathway makes sense for each school, all 1L faculty should coordinate across the curriculum to ensure that a balanced approach is taken to the allocation of materials with strict adherence to the two hours of out-of-class work to one hour of in-class rule of the ABA's accreditation standards.<sup>205</sup>

While the proposed curriculum is not a major departure from the core subject matter coverage of the first year, the manner of accomplishing teaching this curriculum is the greatest proposed change. Indeed, a core departure is not necessary given that these topics have repeatedly been affirmed as those critical to a legal education, success on the bar

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202. See Bahls, *supra* note 175, at 400-02; see also Tully, *supra* note 12, at 861; Newton, *supra* note 110, at 139-40.

203. See Tully, *supra* note 12, at 847 (“Among full-time faculty, most schools currently maintain at least five tiers: casebook, clinical, legal writing, academic success, and law librarians.”).

204. See *id.* at 848 (arguing that faculty caste systems are one of the things law schools should leave in the past). “Rather than functioning as mere labels, these status distinctions are containers. They limit faculty’s ability to collaborate, innovate, and integrate best practices for legal education across the curriculum by reifying silos conceptualized around the arbitrary and inaccurate distinction between doctrine and skills.” *Id.*

205. AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2022-2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 310(b) (2022).

exam, and success in practice.<sup>206</sup> These courses introduce a foundation that is built upon through the remainder of a student's time in law school. Instead, the aim is to slow down the pace of the first semester as students adapt to law school and to thinking like a lawyer, and adjust how we go about teaching students to think like lawyers.<sup>207</sup>

The aim is to center wellness and stop centering exhaustion and burnout in curriculum design.<sup>208</sup> Classes should start with very short reading assignments as entering students build their skills for reading and understanding legal materials. Professors should incorporate alternative reading of supplemental materials to aid in understanding and other types of assignments to engage students in critical thinking and problem solving.<sup>209</sup> As the initial weeks pass, the number of pages in reading assignments can grow as students adapt.<sup>210</sup> However, professors should take care to target the length of time spent on assignments to the performance of the middle-of-the-class students rather than targeting the students closer to the top as law school often does.

Moreover, the inclusion of labs in the core subjects creates a practice ground for skills and professional identity formation while bolstering subject matter knowledge through hands-on experience.<sup>211</sup> Helping students develop a process and approach to learning the law that includes balance right from the outset as a core consideration will be the key to change. The inclusion of labs allows first-year students to meet the hours needed for a three-year degree while not overburdening them with too many subjects from the outset as they adapt to the study of law. Lawyering skills courses will further support this work and bring in the necessary introductions to research, legal writing basics, citations, and other skills necessary to sustain the more limited time given to practice labs. First-year faculty should agree on a method of formative and summative assessment for each course that reflects a shared commitment to measuring student knowledge on substance, skills, and professional identity formation.<sup>212</sup>

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206. See Hickman et al., *supra* note 102, at 16 (explaining that stakeholders that met with the task force felt that to “receive a general license to practice law, suggesting that the licensure exam should not attempt to assess knowledge and skills unique to discrete practice areas, but should instead assess knowledge and skills that are of foundational importance to numerous practice areas.”).

207. See Jackson, *supra* note 135.

208. See *id.*; see also Blaemire, *supra* note 8.

209. See Merritt, *supra* note 112.

210. See DEO ET AL., *supra* note 140, at 16 (arguing that we leave no time for wellness due to the volume of assignments).

211. See Jackson, *supra* note 135.

212. See Bahls, *supra* note 175, at 400-02; see also Tully, *supra* note 12, at 861; Newton, *supra* note 110, at 139-40.

While the structure of the assigned curriculum could take many forms, a thoughtful balancing of the schedule for the courses, limiting the subject matter, and more expansive inclusion of skills all while centering better mental well-being as a goal in that design will result in greater strides towards treating the disease of legal education design rather than the symptoms. More opportunities for professional identity formation also reflect a thoughtful balancing of law student interest<sup>213</sup> and legal education requirements.

## V. CONCLUSION

The next few academic years are primed to see major changes in legal education. Greater integration of skill development will be a critical addition to professional identity formation and preparation for the NextGen Bar Exam, never mind how valuable such development is for minimum competency in law practice. The long-existing rift between doctrine and skills will need to go on the chopping block in favor of cooperation for the success of law students. Law schools looking to avoid making these changes will find themselves struggling with bar success and to stay relevant against other law schools that position themselves to step into a new era in legal education.

Legal educators could certainly move forward embracing changes that react to the rising requirements for professional identity formation and the subject areas of the new bar exam (both skill and doctrine) without looking to resolve existing problems. But to do so would be to ignore the alarm bells surrounding the mental health of law students even as younger generations signal their decreasing willingness to sacrifice wellness for careers.<sup>214</sup> To do so would also ignore the rising tide of mental health issues in students following the pandemic. Law schools looking to position themselves as marketable in the future need to take steps now to change the outdated and diseased design of the legal education system. Centering student wellness will not only make better,

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213. See Pern, *supra* note 198.

214. See Alan Kohll, *The Evolving Definition of Work-Life Balance*, FORBES (Mar. 27, 2018, 11:32 AM), <https://www.forbes.com/sites/alankohll/2018/03/27/the-evolving-definition-of-work-life-balance/?sh=1f1fc0939ed3> [<https://perma.cc/NZP5-RRNK>] (“Attitudes on work-life balance will continue to evolve with cultural, generational and economic changes. Flexible leaders can update or reinvent their workplace culture to try something new if employees report poor work-life balance. While maximizing employee productivity will always remain a constant goal, ensuring employees have the time they desire away from the office and enjoy their time spent in the office is the best way to retain talented employees and make them lifers, regardless of perceived generational differences.”).

healthier lawyers and law students, it will also help institutions stand out from their peers that are stuck in the past.

Law practice certainly includes high-stakes situations and stress, and the bar exam is absolutely a high-stakes exam. Yet, helping students place wellness at the center of all they do in their legal careers in law school and beyond is certain to have a positive impact on the legal profession and bar pass rates. Stressed, burnt-out law students coping with depression and other mental health issues are not bringing their best selves to the endeavor of studying for the bar exam or serving clients. There is no need to train students to deal with the stress of practice by exposing them to chronic stress in law school. Rather, law schools can focus their efforts on preparing students to deal with the stress of practice through programming, externships, and clinic experiences, and creating thoughtful conversations around such experiences. The transformative nature of law school will always create stress for students, and there are many opportunities to work with law students on how best to manage that stress. No redesign will avoid the imposition of all stress, but it can certainly change the current status quo of making wellness an impossible afterthought in the drive to academic success.

We should look to the two looming changes—the NextGen Bar Exam and the ABA’s change to the Program of Legal Education Standards—as creating an opportunity to make major changes to the design of legal education. These changes can remove some of the common chronic stressors and center student wellness at the core as faculties consider how best to adapt their curriculum in preparation to accomplish the ABA standards and help students pass the NextGen Bar Exam. Legal education is going to change over the next few years regardless of the desire for change. With that change comes a fortuitous opportunity to examine the diseased nature of the current mode of legal education and its impact on law students’ mental wellness and create a healthier alternative. It is past time to stop treating the symptoms and focus our efforts on the disease itself.