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# GRIT, GROWTH MINDSET, AND THE PATH TO SUCCESSFUL LAWYERING

Megan Bess\*

## INTRODUCTION

“Legal education must be connected to the profession.”<sup>1</sup> Indeed, in a 2007 report, the Clinical Legal Education Association (“CLEA”) observed that “if law teachers begin giving more thought to how students learn as well as what lawyers do and how they do it, new avenues of legal scholarship will be opened.”<sup>2</sup> This article embarks on one of these new avenues, exploring the application of non-cognitive skills, borrowed from the social sciences, to legal education.

More than thirty years of studying the effectiveness of legal education have made the need for change clear. An American Bar Association (“ABA”) Task Force on the Future of Legal Education, tasked with examining current problems with legal education and presenting recommendations for improvement, concluded that law schools needed to shift further toward competencies and professionalism needed to best serve clients.<sup>3</sup> The ABA has since updated its Standards and Rules of Procedure for Approval of Law Schools to encompass more concrete learning outcomes, including professional skills needed for the practice of law, although without much specification as to what this must encompass.<sup>4</sup> Now, as empirical research increasingly reveals, employers need law graduates to possess a broader range of skills, including not only legal knowledge and the ability to “think like a lawyer,” but also a blend of general professional skills and characteristics. Many of these professional skills are competencies that are transferrable to nearly any profession. The concepts of “grit,” defined as passion and perseverance for pursuing long term goals, and “growth mindset,” the belief that intelligence is

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<sup>1</sup> Sandee Magliozzi, *Bridging the Gap-From Law School to Law Firm*, in THE ART AND SCIENCE OF STRATEGIC TALENT MANAGEMENT IN LAW FIRMS 55, 71 (Terri Mottershead ed., 2010).

<sup>2</sup> ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 4 (2007) [hereinafter BEST PRACTICES].

<sup>3</sup> A.B.A. TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, REPORT AND RECOMMENDATIONS 1-3 (2014),

[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf). [hereinafter A.B.A. TASK FORCE REPORT]

<sup>4</sup> See *infra* section I.E.

malleable, are among the vital skills identified by legal employers. Furthermore, social science research reveals that grit and growth mindset can be cultivated to increase additional skill sets and performance. Grit and growth mindset are particularly important to cultivating success in the generations of students in law schools today.

This article explores the importance of grit and growth mindset from these two premises—as standalone skills necessary for success in the law and as skills that help young lawyers acquire other necessary skills—and makes the case that they are essential components of professionalism that should be included in every law school curriculum. To reach this conclusion, Part I reviews the historical focus of legal education. Next, Part II summarizes recent research on the key characteristics, traits, and competencies vital to the success of new attorneys. Part III introduces grit and growth mindset. Part IV summarizes the limited application of grit and growth mindset to the legal and law school contexts and advocates for including them more thoughtfully, particularly in light of growing law student distress and struggles. Finally, Part V concludes by offering suggestions to incorporate grit and growth mindset at institutional and course levels.

## I. HISTORICAL FOCUS OF LEGAL EDUCATION

The traditional approach to legal education focuses on the case method and legal doctrine. Staples of this traditional approach include reading appellate cases to uncover and synthesize substantive doctrinal law while faculty call on students in Socratic fashion (commonly known as the Langdellian method).<sup>5</sup> Many legal academics have urged for changes to better incorporate broad professional skills and values into legal education.<sup>6</sup>

Against the backdrop of the Langdellian method, the importance of character, skills, and competencies have crept into legal academia. Several studies introduce the need for further professional development in law schools. The ABA,

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<sup>5</sup> Jerome N. Frank, *Why Not a Clinical Lawyer School?*, 81 U. PA. L. REV. 907, 909-910 (1932-33); Jerome Frank, *A Plea For Lawyer Schools*, 56 YALE L.J. 1303, 1304 (1947); Katherine R. Kruse, *Legal Education and Professional Skills: Myths and Misconceptions About Theory and Practice*, 45 MCGEORGE L. REV. 7, 10 (2013). For a history of the case method, see Steve Sheppard, *Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall*, 82 IOWA L. REV. 547, 596-619 (1997) (describing Christopher Columbus Langdell's development of the case method and the spread of this method through American law schools).

<sup>6</sup> See e.g., DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* 185-87 (2000) (describing the mismatch between legal education and legal needs and explaining that legal education has not developed the most effective methods for addressing concerns); Susan Swaim Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795, 833 (2012) (observing the focus of schools on substantive and procedural doctrinal skills such as legal research, reading and briefing cases, analyzing legal issues, legal writing, advocacy, trial skills, and applying law to hypothetical fact patterns); Frank, *Why Not a Clinical Lawyer School?*, *supra* note 5, at 910-11 (the first article theorizing clinical legal education); Frank, *A Plea for Lawyer-Schools*, *supra* note 5, at 1314-20 (describing the Langdell system as an "albatross" and advocating for teachers with practice experience, a study of cases that provides more context, exposing students to legal operations, and legal clinics).

CLEA, and the Carnegie Foundation each issued reports following a comprehensive study of American legal education featuring recommendations for further advancing the field. These findings are summarized in this section.

#### A. The MacCrate Report

The first modern in-depth study of legal education was the “*MacCrate Report*,” which was born out of a series of ABA conferences in the 1980s addressing legal education and the profession.<sup>7</sup> The ABA established a “Task Force on Law Schools and the Profession: Narrowing the Gap” to determine whether law schools had adequately sought to discover the skills, attitudes, and character traits required of lawyers.<sup>8</sup> The Task Force conducted three years of study and in 1992 ultimately published a report, *Legal Education and Professional Development – An Educational Continuum*, most commonly referred to as the *MacCrate Report*.<sup>9</sup>

The *MacCrate Report* recognized that professionalism must include teaching professional values and the obligations and accountability of dealing with the lives of clients.<sup>10</sup> These professional values include (1) competent representation; (2) striving to promote justice and fairness; (3) striving to improve the profession; and (4) professional self-development, including the ideals to which a lawyer should commit as a member of a learned profession.<sup>11</sup> Competent legal representation is not enough—attorneys must also engage in continuous assessment and self-improvement.<sup>12</sup> Part of this professional self-development includes assessing one’s own performance.<sup>13</sup> In order to accomplish this, lawyering skills and professional values should be core to law school curricula.<sup>14</sup>

#### B. The Carnegie Report

In 2007, the Carnegie Foundation issued a study and comprehensive report that assessed the state of legal education and proposed a framework for legal education to satisfy the needs of legal theory and practice.<sup>15</sup> The authors concluded

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<sup>7</sup> BEST PRACTICES, *supra* note 2, at vi.

<sup>8</sup> *Id.* Section Chair Justice Rosalie Wahl posed this question at the 1987 National Conference on Professional Skills and Legal Education. *Id.*

<sup>9</sup> A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION & PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM REPORT OF THE TASK FORCE ON LAW SCHOOLS AND PROFESSION: NARROWING THE GAP 330 (1992) [hereinafter the *MacCrate Report*].

<sup>10</sup> *Id.* at 135-36.

<sup>11</sup> *Id.* at 136.

<sup>12</sup> *Id.* at 211, 218.

<sup>13</sup> *Id.* at 218.

<sup>14</sup> *See generally id.*

<sup>15</sup> WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 12 (2007) [hereinafter referred to as the *Carnegie Report*]. This was one of five studies of professional education.

legal education to be comprised of three apprenticeships of decreasing success: first, thinking like a lawyer; second, acting as a lawyer; and third, developing the professional identity of a lawyer.<sup>16</sup> The authors' hope was that the *Carnegie Report* would create interest in better teaching and changes in legal education to more fully achieve all three apprenticeships.<sup>17</sup> The study concluded that professional identity is not just a matter of ethics, but also a matter of character.<sup>18</sup> The authors observed that students generally welcome the opportunity to strengthen their ability to self-reflect and increase self-awareness as part of their legal education.<sup>19</sup>

An important takeaway from the *Carnegie Report* was that law schools pay too little attention to direct training in professional practice, with insufficient opportunity to use legal thinking in the actual practice of law and developing the ethical and social dimensions of practice.<sup>20</sup> The *Carnegie Report* ultimately proposed an integrated model of legal education to include: (1) teaching legal doctrine and analysis, which provides the knowledge and understanding needed to grow as a lawyer; (2) introducing real-world facets of practice, including acting responsibly on behalf of clients; and (3) inculcating the identity, values, and dispositions of the legal profession.<sup>21</sup>

### C. Best Practices for Legal Education

The same year the *Carnegie Report* was published, a CLEA committee published a report: *Statement of Best Practices for Legal Education*.<sup>22</sup> This publication, commonly known as "*Best Practices*," offered an alternative vision for legal education, including a combination of substantive law, skills, and market knowledge.<sup>23</sup> Like the *Carnegie Report*, *Best Practices* recommended that law schools broaden the lessons they teach; integrate knowledge, skills, and values; and give greater attention to professionalism.<sup>24</sup> *Best Practices* concluded that law schools do not produce graduates who are adequately competent and ready to practice in a professional manner.<sup>25</sup> The authors called for legal education to adopt practices that treat professional skills as an important competency.<sup>26</sup> *Best Practices* also advocated for law professors to teach about professional values, defining professionalism broadly to mean appropriate behavior, including honesty,

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<sup>16</sup> R. Lisle Baker, *Designing a Positive Psychology Course for Lawyers*, 51 SUFFOLK U. L. REV. 207, 209 (2018) (describing the Carnegie Report's analysis).

<sup>17</sup> Carnegie Report, *supra* note 15, at 19.

<sup>18</sup> *Id.* at 129.

<sup>19</sup> *Id.* at 156.

<sup>20</sup> *Id.* at 188.

<sup>21</sup> *Id.* at 194.

<sup>22</sup> BEST PRACTICES, *supra* note 2, at vi.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at vii.

<sup>25</sup> *Id.* at 18.

<sup>26</sup> *Id.* at 56.

integrity, fairness, competence, and respect for others.<sup>27</sup> Notably, *Best Practices* suggested that law professors ask practicing lawyers what new lawyers need to know and help develop these skills in students.<sup>28</sup>

#### D. Building on Best Practices

In 2015, a CLEA committee published *Building on Best Practices: Transforming Legal Education in a Changing World*, which synthesized all of the developments in legal education since the publication of *Best Practices*.<sup>29</sup> The Report, commonly known as “*Building on Best Practices*,” called on law schools to link mission and outcomes, and develop a “broader spectrum of skills needed by lawyers in the twenty-first century . . . .”<sup>30</sup> *Building on Best Practices* observed that, despite changes to legal education in recent decades, including the expansion of experiential education and practice-related skills, most law schools continued to “devote the lion’s share of resources to doctrinally-focused teaching.”<sup>31</sup> The authors implored law schools to include a broader range of skills to better balance teaching doctrine and professional skills.<sup>32</sup>

Expanding on the themes from the *Carnegie Report* and *Best Practices*, the authors of *Building on Best Practices* advocated for teaching law students eight core values to help them establish professional identity: (1) integrity; (2) honesty; (3) diligence; (4) fairness; (5) courage; (6) wisdom; (7) compassion; and (8) balance.<sup>33</sup> In order to develop these values, students must learn skills that support value formation, such as self-awareness, empathy, and self-motivation.<sup>34</sup> Suggestions for achieving student development of skills and values include contemplative practices, reflecting on decisions, and storytelling.<sup>35</sup> The publication further advocated for teaching skills outside the competencies traditionally covered in law school, such as problem-solving, communication, developing relationships, and stress management.<sup>36</sup>

#### E. ABA Standards

In recent years, the ABA has implemented standards governing what students actually learn in law school. The accrediting organization instructed law

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<sup>27</sup> *Id.* at 59-60.

<sup>28</sup> *Id.* at 43.

<sup>29</sup> BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD xxxvii (Deborah Maranville et al. eds., 2015) [hereinafter BUILDING ON BEST PRACTICES].

<sup>30</sup> *Id.* at xl. The authors observed complementary claims in previous reports for increased preparation for the professional practice of law. *Id.* at xxxvii.

<sup>31</sup> *Id.* at 45 (citing A.B.A. TASK FORCE REPORT, *supra* note 3, at 26).

<sup>32</sup> *Id.* at 45-46.

<sup>33</sup> *Id.* at 257.

<sup>34</sup> *Id.* at 260.

<sup>35</sup> *Id.* at 261-69.

<sup>36</sup> *Id.* at 315-16.

schools to shift their emphasis from what they are teaching to what students are learning.<sup>37</sup> The ABA standards for legal education now require law schools to develop learning outcomes that include minimum competencies in:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.<sup>38</sup>

“Other professional skills” are determined by law schools, but the ABA suggested they might include “interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.”<sup>39</sup> The ABA required the establishment and implementation of learning outcomes by the end of the 2017-18 academic year and adoption of assessment methods to determine levels of student competency by the end of 2018-19.<sup>40</sup>

The shift in ABA standards recognizes the need to focus on what law students are able to do after completing law school. Focusing on whether competencies are achieved ensures that students have a defined set of skills and knowledge upon graduation. This change in philosophy reflects a departure from the historical approach of simply “learning to think like a lawyer.”

#### F. Legal Scholars

Long before the ABA issued its new standards, legal scholars were drawing attention to the need to incorporate into legal curricula the knowledge, skills, and values of successful lawyers.<sup>41</sup> For example, in 2001, Michael Hunter

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<sup>37</sup> A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, MANAGING DIRECTOR’S GUIDANCE MEMO, 3 (June 2015), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2015\\_learning\\_outcomes\\_guidance.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf) [hereinafter A.B.A. 2015 GUIDANCE MEMO].

<sup>38</sup> A.B.A. STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, 301(b), 302 (2019-20), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2019-2020/2019-2020-aba-standards-and-rules-of-procedure.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-and-rules-of-procedure.pdf) [hereinafter A.B.A. STANDARDS]; A.B.A. 2015 GUIDANCE MEMO, *supra* note 37, at 2, 6.

<sup>39</sup> A.B.A. STANDARDS, *supra* note 38, at Interpretation 302-1.

<sup>40</sup> A.B.A. 2015 GUIDANCE MEMO, *supra* note 37, at 6.

<sup>41</sup> See William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 463 (observing that when writing the article in 2012, “a growing proportion of law professors want to have a focused dialogue on possible solutions” to how to change legal education to meet the needs of a changing legal market).

Schwartz, a law school dean recognized as influential in legal education, described legal instruction as “locked in an instructional methodology of dubious merit.”<sup>42</sup> Legal education scholar Rogelio Lasso observed “almost universal agreement that law schools do not adequately prepare students for the practice of law.”<sup>43</sup> William Henderson, a scholar recognized multiple times as one of the most influential people in legal education, has also been a vocal advocate for a legal curriculum that works backward to achieve the competencies needed in the legal market.<sup>44</sup> Christine Cerniglia, a professor and scholar dedicated to legal education reform, opined that a traditional law school curriculum “is not designed to analyze modern issues” in the legal profession.<sup>45</sup>

Other legal scholars have focused on what is missing in legal education. Susan Daicoff, an expert on the law as a healing profession, has observed that legal education often overlooks the skills needed to be an effective lawyer.<sup>46</sup> Instead, legal education arms students with “left-brain-oriented lawyering skills,” leaving graduates unprepared when encountering circumstances that call for judgment, maturity, and collaboration.<sup>47</sup> Daicoff advocated for incorporating these relational skills, traditionally referred to as “soft skills,” into law school curricula.<sup>48</sup>

Professor Deborah Rhode advocated extensively for leadership training in legal education,<sup>49</sup> as well as an updated model of legal education that encompasses a broader array of skills needed for legal practice.<sup>50</sup> She observed that leadership qualities are neglected in legal education and often are not characteristics of those who pursue legal careers.<sup>51</sup> She urged law schools to consider the skills and qualities of leaders, including values (such as integrity), personal skills (like self-

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<sup>42</sup> Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 349-50 (2001).

<sup>43</sup> Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 SANTA CLARA L. REV. 1, 15 (2002).

<sup>44</sup> Henderson, *supra* note 41, at 496.

<sup>45</sup> Christine Cerniglia Brown, *Professional Identity Formation: Working Backwards to Move the Profession Forward*, 61 LOY. L. REV. 313, 313 (2015).

<sup>46</sup> BUILDING ON BEST PRACTICES, *supra* note 29, at 316; Daicoff, *supra* note 6, at 803.

<sup>47</sup> Daicoff, *supra* note 6, at 834.

<sup>48</sup> BUILDING ON BEST PRACTICES, *supra* note 29, at 316.

<sup>49</sup> See generally BUILDING ON BEST PRACTICES, *supra* note 29, at Chapter 6.A. (describing methods to teach professional identity formation); DEBORAH L. RHODE, *LAWYERS AS LEADERS* (2013).

<sup>50</sup> RHODE, *supra* note 6, at 196-203.

<sup>51</sup> *Id.*



awareness), interpersonal skills (including empathy), vision, and technical competence (like judgment).<sup>52</sup>

## II. RECENT RESEARCH FOCUS ON SKILLS REQUIRED OF NEW ATTORNEYS

Legal employers emphasize the importance of non-legal skills in the first years of a lawyer's career. Employers and their clients value not only technical legal skills, but also a lawyer's "moral core" and "ability to build successful relationships . . . ."<sup>53</sup> However, not all law students are aware of the importance of basic professional competencies, characteristics, and skills. As observed by Neil Hamilton, an expert on professional identity formation and leadership in the legal profession, "bright, perfectly capable new lawyers get off to a rocky start simply because they do not appreciate the professional environment within most legal offices and the expectations of those they are working for."<sup>54</sup>

The research and accompanying critiques of legal education summarized below reveal an emerging pattern—general professional competencies are far more critical to a young attorney's success than legal knowledge or skills. The messages from employers and legal experts are clear: law students lacking traits critical to success in nearly any professional setting are less likely to succeed.

In changing its standards, the ABA urged schools to measure student mastery of skills that bridge the gap between thinking like a lawyer and the skills required to be a lawyer.<sup>55</sup> It is critical that law schools identify the knowledge, skills, and competencies required for successful lawyering and develop them in students.<sup>56</sup> As this section will demonstrate, the answers to these questions are found, at least in part, through feedback from practicing attorneys. It is critical that legal educators and legal employers have a dialogue on the requisite knowledge and skills that lead to success in the legal field.<sup>57</sup>

### A. Lawyering Effectiveness Factors

In 2003, Marjorie Schultz and Sheldon Zedeck from the University of California at Berkeley investigated effectiveness in terms of skills performed daily in the legal profession.<sup>58</sup> The pair conducted focus groups to identify qualities and

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<sup>52</sup> BUILDING ON BEST PRACTICES, *supra* note 29, at 298.

<sup>53</sup> Neil W. Hamilton, et. al, *Empirical Evidence That Legal Education Can Foster Student Professionalism/Professional Formation to Become an Effective Lawyer*, 10 U. ST. THOMAS L.J. 11, 13 (2012).

<sup>54</sup> NEIL W. HAMILTON, ROADMAP: THE LAW STUDENT'S GUIDE TO MEANINGFUL EMPLOYMENT 134 (2d ed. 2018) [hereinafter ROADMAP].

<sup>55</sup> A.B.A. 2015 GUIDANCE MEMO, *supra* note 37, at 3.

<sup>56</sup> Henderson, *supra* note 41, at 465.

<sup>57</sup> *Id.* at 495.

<sup>58</sup> Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis*

behaviors that would make them want to choose an attorney from the perspective of a potential client.<sup>59</sup> Their research focused on five stakeholder groups, including alumni, clients, faculty, students, and judges, and identified 26 factors related to

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*for Law School Admission Decisions*, 36 *LAW. & SOC. INQUIRY* 620 (Summer 2011). This was one of the first studies that sought to determine how clients define values and skills important in attorneys. *ROADMAP*, *supra* note 54, at 20.

<sup>59</sup> Schultz & Zedeck, *supra* note 58, at 629.

attorney effectiveness.<sup>60</sup> Although the pair did not rank the factors, they are as follows:

- Analysis and reasoning
- Creativity/innovation
- Problem-solving
- Practical Judgment
- Researching the Law
- Fact-Finding
- Questioning and Interviewing
- Influencing and Advocating
- Writing
- Speaking
- Listening
- Strategic Planning
- Organizing and Managing One's Own Work
- Organizing and Managing Others
- Negotiation Skills
- Able to See the World Through the Eyes of Others
- Networking and Business Development
- Providing Advice & Counsel & Building Relationships with Clients
- Developing Relationships within the Legal Profession
- Evaluation, Development, and Mentoring
- Passion & Engagement
- Diligence
- Integrity/Honesty
- Stress Management
- Community Involvement and Service
- Self-Development<sup>61</sup>

Many effectiveness factors are not legal-specific. Other than legal research, the factors are relevant to the practice of law, but in a more general sense, such as the ability to understand others and approach work with passion and engagement.<sup>62</sup>

### B. Foundations for Practice

As part of an initiative titled "Educating Tomorrow's Lawyers," the Institute for the Advancement of the American Legal System (IAALS)<sup>63</sup> launched

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<sup>60</sup> *Id.* After initial focus groups identified 26 effectiveness factors, Shultz and Zedeck surveyed 2,000 alumni. *Id.* at 629-30.

<sup>61</sup> *Id.*

<sup>62</sup> Baker, *supra* note, 16, at 213-14. As critical as these skills are, Susan Daicoff found that at least half of these may not be covered by most legal educators. She observed that perhaps seven of these skills are traditionally taught in law school (analysis and reasoning, researching the law, fact finding, questioning and interviewing, writing, speaking, influencing and advocating) and three to six more might be covered in elective clinical courses (listening, problem solving, practical judgment, negotiation skills, seeing the world through another's eyes, and counseling clients). Daicoff, *supra*

a multi-year project aimed at identifying foundations needed by entry-level lawyers, creating methods of legal education to support the foundations identified, and aligning hiring practices to incentivize improvements in legal education.<sup>64</sup>

IAALS conducted a study of over 24,000 lawyers to identify the foundations needed by entry-level lawyers to be successful.<sup>65</sup> The results, known as “*Foundations for Practice*,” revealed that lawyers valued characteristics and professional competencies far more than legal skills.<sup>66</sup> The report also concluded that legal employers lack confidence regarding the preparation of law school graduates.<sup>67</sup> IAALS identified 147 foundations for new lawyers, which included legal skills, professional competencies, and characteristics.<sup>68</sup> More than one-half of the respondents identified 76% of the characteristics and 46% of the professional competencies as necessary right out of law school.<sup>69</sup> In contrast, respondents found only 40% of legal skills necessary right out of law school.<sup>70</sup>

The top ten foundations necessary for the short term were all professional competencies and characteristics, including (1) keeping information confidential; (2) arriving on time; (3) honoring commitments; (4) integrity/trustworthiness; (5) treating others with respect; (6) listening attentively; (7) responding promptly; (8) diligence; (9) strong work ethic; and (10) attention to detail.<sup>71</sup> The rest of the top 20 follows much the same pattern, including only one traditional legal skill—legal research (ranked fourteenth).<sup>72</sup>

The takeaways from *Foundations for Practice* are clear—rather than having “nuts and bolts” skills upon graduation, new lawyers need foundations that will allow them to grow over time.<sup>73</sup> More than just intelligence and technical legal skills are necessary to fill the gap between what new lawyers have and what they need.<sup>74</sup> If schools can educate students with these foundations in mind, law school

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note 6, at 823-25.

<sup>63</sup> IAALS is an independent research center dedicated to facilitating continuous improvement in the American legal system. <https://iaals.du.edu/about>

<sup>64</sup> ALLI GERKMAN & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 1 (2016), [https://iaals.du.edu/sites/default/files/documents/publications/foundations\\_for\\_practice\\_whole\\_lawyer\\_character\\_quotient.pdf](https://iaals.du.edu/sites/default/files/documents/publications/foundations_for_practice_whole_lawyer_character_quotient.pdf) [hereinafter FOUNDATIONS FOR PRACTICE].

<sup>65</sup> *Id.* at 1.

<sup>66</sup> *Id.* at 3.

<sup>67</sup> *Id.* at 4.

<sup>68</sup> *Id.* at 5.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 26.

<sup>72</sup> Zack DeMeola, Presentation at A Teaching Roundtable: Building Foundations for Practice in Law School (Webinar, September 12, 2018) (PowerPoint presentation on file with author). The additional characteristics and competencies were: (11) conscientiousness; (12) common sense; (13) intelligence; (15) taking responsibility; (16) emotional regulation/self-control; (17) speaking professionally; (18) having a strong moral compass; (19) writing professionally; and (20) exhibiting tact and diplomacy.

<sup>73</sup> FOUNDATIONS FOR PRACTICE, *supra* note 64, at 36.

<sup>74</sup> *Id.* at 4, 36.

graduates will develop characteristics that embody the “whole lawyer” and clients will ultimately be better served by the legal profession.<sup>75</sup>

### C. Neil Hamilton’s Research

In his book, *Roadmap*, Professor Neil Hamilton presented similar findings regarding what is essential for young lawyers.<sup>76</sup> Employers do not view legal knowledge as most important—they value professional skills that are transferable, particularly as the profession has grown more volatile with greater attorney mobility between positions.<sup>77</sup> Hamilton cited four studies of Minnesota employers evaluating what mattered when hiring new attorneys.<sup>78</sup> The skills valued the highest included: (1) integrity/honesty/trustworthiness; (2) good judgment/common sense/problem solving; (3) analytical skills; (4) initiative/ambition/drive/strong work ethic; (5) effective oral/written communication skills; (6) dedication to client service; (7) commitment to firm/departments/goals/values; and (8) initiating and maintaining strong relationships.<sup>79</sup> Legal competency was important but fell in the second tier.<sup>80</sup>

Interpreting the competencies valued by employers, Hamilton emphasized initiative and drive as what “gives a person the determination, grit, and resilience to follow through . . . .”<sup>81</sup> He indicated the importance of “professional development” as a commitment to growing competencies.<sup>82</sup> Hamilton advised students to build a resume demonstrating their initiative, drive, work ethic, and

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<sup>75</sup> *Id.* at 38.

<sup>76</sup> ROADMAP, *supra* note 54. This book was written with a law student audience in mind and was designed to: 1) have students identify their strengths; 2) identify work and service characteristics that energize them; 3) assess their degree over which they take ownership of their professional development; 4) identify their strongest competencies and skills; 5) figure out how to align their skills with legal positions; and 6) use law school to develop the remaining competencies.

<sup>77</sup> *Id.* at 16-17.

<sup>78</sup> *Id.* at 31.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* (along with project management, including timeliness, ability to work independently, professional development, and creative thinking).

<sup>81</sup> *Id.* at 64.

<sup>82</sup> *Id.*

professional development and understand that developing these skills is a long but necessary process.<sup>83</sup>

#### D. Moving Toward Competencies

Competencies, the behaviors demonstrated by someone who does a job well, have emerged as an important facet of legal education.<sup>84</sup> Law firms have increasingly moved to competency models, in which they define the characteristics of successful lawyers and use those characteristics as models to hire, develop, and evaluate lawyers.<sup>85</sup> Competencies are powerful because they impact culture and behavior in law firms, which in turn can change law schools.<sup>86</sup> As law firm competencies evolve, so do (and should) those articulated by law schools.<sup>87</sup>

Legal scholars have advocated for a blend of broader legal skills built into competencies in legal education.<sup>88</sup> Henderson has advocated for competencies based on clarity between legal educators and employers about the knowledge, skills, and values that correlate to success in the legal industry.<sup>89</sup> Hamilton's research also demonstrated the growing use of competency models to evaluate attorney effectiveness.<sup>90</sup>

The types of competencies needed for lawyers and law students are evolving. Scott Westfahl and David Wilkins recently advocated for new approaches to legal education and professional development of young lawyers.<sup>91</sup> Under the historical Cravath model, firms were able to provide on-the-job training that law schools did not provide, with clients willing to pay for it.<sup>92</sup> This model is no longer viable for a host of reasons, including the simple reality that clients will not foot the bill for training.<sup>93</sup> Westfahl and Wilkins asserted that lawyers need to

<sup>83</sup> *Id.* at 65-75. Hamilton encourages students to look at each of these areas and reflect on how they have been part of a student's experience thus far. He suggests students look as far back as high school for patterns that show their experience with and commitment to these values.

<sup>84</sup> Terri Mottershead & Sandee Magliozzi, *Can Competencies Drive Change in the Legal Profession?*, 11 UNIV. ST. THOMAS L.J. 51, 52-53 (2013).

<sup>85</sup> Neil Hamilton, *Law Firm Competency Models & Student Professional Success: Building on a Foundation of Professional Formation/Professionalism*, 11 U. ST. THOMAS L.J. 6, 6 (2013). Competencies provide observable criteria, offering attorneys objectivity and consistency in measuring performance. Susan Manch, *Competencies and Competency Models—An Overview*, in THE ART AND SCIENCE OF STRATEGIC TALENT MANAGEMENT IN LAW FIRMS, 77, 79 (Terri Mottershead ed., 2010).

<sup>86</sup> Mottershead & Magliozzi, *supra* note 84, at 51.

<sup>87</sup> *Id.* at 58-59.

<sup>88</sup> This article is not intended to provide an exhaustive overview of such criticisms of legal education. This section provides an overview of criticisms and examples of these scholarly critiques.

<sup>89</sup> Henderson, *supra* note 41, at 495-96.

<sup>90</sup> Hamilton, *supra* note 85, at 9. This research is also summarized in ROADMAP, *supra* note 54.

<sup>91</sup> Scott A. Westfahl & David B. Wilkins, *The Leadership Imperative: A Collaborative Approach to Professional Development in the Global Age of More for Less*, 69 STAN. L. REV. 1667 (2017).

<sup>92</sup> *Id.* at 1676. Under this model young lawyers were hired right out of law school to work for a probationary period until potential partnership. *Id.* at 1674-75.

<sup>93</sup> *Id.* at 1681-84.

develop three sets of competencies to build successful careers: (1) technical legal skills and expertise; (2) professional skills adaptable to any context; and (3) opportunity-creating professional networks.<sup>94</sup> They underscored the importance of building leadership and other professional skills that can be applied in any sector or setting, including working in teams, leading others, emotional intelligence, and understanding one's own strengths and work style.<sup>95</sup> They advocated for schools and firms to train students and young attorneys to meet these new needs of the legal market—a different type of professional development.<sup>96</sup>

One core competency is a commitment to self-development in exercising all competencies.<sup>97</sup> Neil Hamilton, Verna Monson, and Jerome Organ of the University of St. Thomas School of Law advocated the need for law students to take personal responsibility for developing the competencies required for the successful practice of law.<sup>98</sup> Robin Wellford Slocum of Chapman University Law School urged law schools to focus on emotional competencies rather than requiring students to “fend for themselves” in developing these critical skills.<sup>99</sup> Susan Daicoff warned that professors and students typically downplay these skills or marginalize them as not teachable or assessable.<sup>100</sup>

Updated ABA standards address minimum competencies for understanding law, conducting legal analysis, and properly exercising professional responsibilities.<sup>101</sup> While the ABA requires competencies in “other professional skills as needed” to competently represent clients, that category is quite broad and undefined.<sup>102</sup> Legal scholars and educators increasingly call for law schools to think more broadly about what these other professional skills mean. Law schools have moved toward a competency model—the next phase of this model should be re-examining the competencies being taught.

### E. Emerging Trends and Patterns

The research and scholarship summarized above identifies that certain character traits possessed by successful lawyers and law students can be better

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<sup>94</sup> *Id.* at 1689.

<sup>95</sup> *Id.* at 1707-09.

<sup>96</sup> *Id.* at 1717-18.

<sup>97</sup> Neil W. Hamilton, Verna Monson & Jerome M. Organ, *Encouraging Each Student's Personal Responsibility for Core Competencies Including Professionalism*, 21 *THE PROF. LAW.* 3, 1 (2012).

<sup>98</sup> *Id.* Not only is the competency approach based on examining characteristics of highly successful lawyers, competency roadmaps themselves provide an opportunity for students to understand the skills needed to be an effective lawyer and also how to demonstrate this to employers. *See also id.* at 9.

<sup>99</sup> Robin Wellford Slocum, *An Inconvenient Truth: The Need to Educate Emotionally Competent Lawyers*, 45 *CREIGHTON L. REV.* 827, 831-32 (2012). Included in her definition of emotional competency: (1) self-awareness; (2) self-management; (3) social awareness; and (4) relationship management. *Id.* at 831-838.

<sup>100</sup> Daicoff, *supra* note 6, at 867.

<sup>101</sup> See A.B.A. TASK FORCE REPORT, *supra* note 3, at 26-27.

<sup>102</sup> A.B.A. STANDARDS, *supra* note 38, at Standards 301-302.

predictors of success in the legal field than traditional measures, such as class rank or law review membership.<sup>103</sup> Employers demand a sophisticated set of skills, many of which are transferable across industries and careers—including characteristics (such as integrity, diligence, work ethic, and attention to detail) and professional competencies (listening, responding, confidentiality, and timeliness).<sup>104</sup> The research makes clear an “imbalance between legal education’s current focus and what competencies are determined by those in the occupation as necessary to be professionally prepared to practice law.”<sup>105</sup>

Starting with the *MacCrate Report*, more than 30 years of study and critique have led to a consensus that law schools must arm law school graduates with the skills they need to successfully practice law. As such, it is incumbent on legal educators to continue to broaden their views of legal education to encompass fostering the development of these skills and characteristics. “Law schools should explore providing greater emphasis on character development in their curriculum given the importance placed on character as an indicator of success, the emphasis on professional identity formation, and the ABA’s outcome-based learning standards.”<sup>106</sup> As we learn more about what makes an effective, satisfied lawyer, legal educators must continue to evolve. The next section of this article proposes constructs borrowed from the social sciences as tools to help legal education achieve this goal.

#### F. Introduction to Grit and Growth Mindset

The notion that one’s mindset can be a predictor of success is not new. Psychology professor Carol Dweck investigated the mindset of helplessness and how students respond to failure, research that has grown into robust findings of how one’s beliefs about intelligence impact success.<sup>107</sup> A “fixed” mindset reflects a belief that one’s talents and qualities are set and cannot be altered.<sup>108</sup> A “growth” mindset stems from a belief that qualities and intelligence can be cultivated.<sup>109</sup> When people believe intelligence is malleable, they pursue goals that increase their competence and abilities.<sup>110</sup> In contrast, those who believe that intelligence is fixed

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<sup>103</sup> Heather D. Baum, *Inward Bound: An Exploration of Character Development in Law School*, 39 U. ARK. LITTLE ROCK L. REV. 25, 25 (2016).

<sup>104</sup> See FOUNDATIONS FOR PRACTICE, *supra* note 64. FOUNDATIONS FOR PRACTICE categorized traits into characteristics, competencies, and legal skills. This section of analysis uses these characterizations generally as established in FOUNDATIONS FOR PRACTICE.

<sup>105</sup> Daicoff, *supra* note 6, at 824.

<sup>106</sup> Baum, *supra* note 103, at 25

<sup>107</sup> See generally CAROL S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS (2d ed. 2016); Carol Dweck, The Power of Believing that You Can Improve, TEDxNorrköping (November 2014) [https://www.ted.com/talks/carol\\_dweck\\_the\\_power\\_of\\_believing\\_that\\_you\\_can\\_improve?language=en](https://www.ted.com/talks/carol_dweck_the_power_of_believing_that_you_can_improve?language=en) (which has been viewed over 9.5 million times as of September 6, 2019).

<sup>108</sup> DWECK, *supra* note 107, at 6-7.

<sup>109</sup> *Id.*

<sup>110</sup> Carol S. Dweck & Ellen L. Leggett, *A Social-Cognitive Approach to Motivation and Personality*, 95 PSYCHOL. REV. 256, 262 (1988).



pursue goals that simply guarantee positive feedback.<sup>111</sup> Dweck's research revealed that basic ideas about risk and reward grow from mindset.<sup>112</sup> People with a fixed mindset thrive when things are within their grasp, but quickly lose interest if they perceive something is too challenging.<sup>113</sup> Those with a fixed mindset only feel smart when they don't make a mistake.<sup>114</sup> People with a growth mindset still experience pain from failure but refuse to let it define them.<sup>115</sup>

In a study measuring depression in college students, Dweck found that those with fixed mindsets had higher levels of depression and that their response to depression was to take less action to solve problems they confronted.<sup>116</sup> In contrast, even when faced with depression, students with a growth mindset took more actions to improve their situations.<sup>117</sup> When students participated in a mindset workshop, those who were taught that their minds can grow and change displayed improvement in their academic performance through higher grades.<sup>118</sup> Dweck's research demonstrated that mindset is in fact so powerful that when taught about mindset, students changed the way they reacted to their moods and setbacks.<sup>119</sup>

While people may naturally tend toward one mindset, mindsets can also be changed.<sup>120</sup> People occupy different mindsets at different times and under different circumstances.<sup>121</sup> Dweck also found that simply making people aware of the fact that there are two mindsets can help those with a fixed mindset.<sup>122</sup> In a study of junior high students, those who attended a mindset workshop and were taught that they could learn and grow more intelligent improved their grades and demonstrated changes in motivation that were noticeable to their teachers.<sup>123</sup> The enthusiasm and curiosity that accompany a growth mindset help to explain why so many people with this mindset rise to the top of their professional fields.<sup>124</sup> Intelligence is not the only trait that can grow—character can also be learned.<sup>125</sup>

A discussion of mindset often introduces the notion of "grit." Grit, a quality shared by leaders in every field, is defined as passion and perseverance for long-term goals and maintaining this effort while overcoming challenges, failures,

<sup>111</sup> *Id.* at 262-63.

<sup>112</sup> DWECK, *supra* note 107, at 10.

<sup>113</sup> *Id.* at 22-23.

<sup>114</sup> *Id.* at 24.

<sup>115</sup> *Id.* at 33.

<sup>116</sup> *Id.* at 38.

<sup>117</sup> *Id.*

<sup>118</sup> Dweck & Leggett, *supra* note 110, at 229-31.

<sup>119</sup> DWECK, *supra* note 107, at 39.

<sup>120</sup> *Id.* at 11-16. Dweck reasons that mindsets are like beliefs, which can be changed.

<sup>121</sup> Kaci Bishop, *Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience*, 70 ARK. L. REV. 959, 959 (2018) (generally citing DWECK, *supra* note 107, at 213-24).

<sup>122</sup> DWECK, *supra* note 107, at 36.

<sup>123</sup> *Id.* at 229-31.

<sup>124</sup> *Id.* at 48.

<sup>125</sup> *Id.* at 93.

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and setbacks.<sup>126</sup> Angela Duckworth's work on grit has become widely known and studied in many contexts.<sup>127</sup> Duckworth, a psychology professor and researcher, defines grit as having a proclivity to pursue long term goals with sustained effort, a trait that predicts achievement in academic and professional domains.<sup>128</sup> Gritty individuals "work strenuously toward challenges, maintaining effort and interest over years despite failure," and approach achievement with stamina.<sup>129</sup> Duckworth and her colleagues developed a grit scale and administered it to several groups.<sup>130</sup> In a study of freshman cadets entering West Point, grit was the best predictor of completing the rigorous summer training program.<sup>131</sup> A study of finalists in the Scripps National Spelling Bee yielded similar results, where grittier competitors were more likely to advance to higher rounds in the competition.<sup>132</sup> Duckworth also found a correlation between grit and higher grade point averages among undergraduate students at the University of Pennsylvania.<sup>133</sup>

Duckworth not only uncovered a link between higher grit levels and different types of achievement or success, she also investigated how grit is developed. She found that grit is not fixed and that it can grow in individuals over time.<sup>134</sup> Importantly, those who are "gritty" share common traits, including an interest in what they are doing, the capacity to practice, purpose, and hope.<sup>135</sup>

Duckworth found that experts in their fields engage in deliberate practice with a constant desire to do better with an eye toward growth.<sup>136</sup> Those with grit are more interested in what they did wrong and how to fix it, as opposed to dwelling on what they do well.<sup>137</sup> "Gritty" people approach problems with optimism and see setbacks as a chance to learn.<sup>138</sup> Duckworth also found similar relationships between grit and growth mindset in younger children and adults.<sup>139</sup>

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<sup>126</sup> Angela L. Duckworth et al., *Grit: Perseverance and Passion for Long-Term Goals*, 92 J. PERSONALITY & SOC. PSYCHOL. 1087, 1087-88 (2007).

<sup>127</sup> See generally ANGELA DUCKWORTH, GRIT: THE POWER OF PASSION AND PERSEVERANCE 89 (2016); Angela Duckworth, Grit: The Power of Passion and Perseverance, TED Talks Education (April 2013) [https://www.ted.com/talks/angela\\_lee\\_duckworth\\_grit\\_the\\_power\\_of\\_passion\\_and\\_perseverance#t-681](https://www.ted.com/talks/angela_lee_duckworth_grit_the_power_of_passion_and_perseverance#t-681) (which has been viewed over 17,800,000 times as of September 6, 2019).

<sup>128</sup> Katherine R. Von Culin, Eli Tsukayama & Angela L. Duckworth, *Unpacking Grit: Motivational Correlates of Perseverance & Passion for Long-Term Goals*, 9 J. POSITIVE PSYCHOL. 306, 306 (2014).

<sup>129</sup> Duckworth et al., *supra* note 126, at 1087-88.

<sup>130</sup> *Id.* at 1089.

<sup>131</sup> *Id.* at 1094-96.

<sup>132</sup> *Id.* at 1096.

<sup>133</sup> *Id.* at 1093.

<sup>134</sup> DUCKWORTH, *supra* note 127, at 89.

<sup>135</sup> *Id.* at 91.

<sup>136</sup> *Id.* 118-21.

<sup>137</sup> *Id.* at 122.

<sup>138</sup> *Id.* at 175.

<sup>139</sup> *Id.* at 181.

Importantly, grit and growth mindset are related—having a growth mindset contributes to grit.<sup>140</sup> Duckworth and Dweck linked grit and growth mindset when studying high school seniors.<sup>141</sup> They found that students with a growth mindset are grittier than other students.<sup>142</sup> Grit and growth mindset in education help students achieve long-term goals and overcome obstacles and challenges.<sup>143</sup>

Paul Tough, a journalist writing extensively about parenting and education, explored the role of grit and growth mindset as character traits that help children in his book, *How Children Succeed: Grit, Curiosity, and the Hidden Power of Character*.<sup>144</sup> Tough opined that character is what matters—which includes conscientiousness, grit, resilience, perseverance, and optimism.<sup>145</sup> He believes that adults can mold and develop character traits in children and that these traits will give them the tools they need to learn from setbacks and failures.<sup>146</sup>

The work of Emma Seppala, a researcher at both Stanford and Yale, further supports the values of grit and growth mindset. In her studies on happiness, Seppala concluded that a person's view of self determines how one responds to failure and the ability to develop resilience.<sup>147</sup> Understanding how every person is capable of building new strengths (i.e., a growth mindset) is what determines the ability to learn new skills.<sup>148</sup> Seppala contended that a person's brain can and does grow throughout their life,<sup>149</sup> and that people can learn from mistakes and failures, rendering negative experiences into constructive ones.<sup>150</sup> This process leads to higher levels of effectiveness, performance, and productivity.<sup>151</sup>

These works demonstrate that human beings are capable of developing and learning new characteristics and traits. Doing so depends on one's beliefs about their own intelligence and ability to change and grow. As law students seek to develop the characteristics and skills necessary to successfully practice law, grit and growth mindset can become powerful tools.

### III. GRIT AND GROWTH MINDSET IN THE LEGAL WORLD

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<sup>140</sup> *Id.*; see also Deborah Perkins-Gough, *The Significance of Grit: A Conversation with Angela Lee Duckworth*, 71 *EDUC. LEADERSHIP* 14, 14-20 (2013).

<sup>141</sup> DUCKWORTH, *supra* note 127, at 181.

<sup>142</sup> *Id.*; Perkins-Gough, *supra* note 140, at 14-20.

<sup>143</sup> Aaron Hochanadel & Dora Finmore, *Fixed and Growth Mindset in Education and How Grit Helps Students Persist in the Face of Adversity*, 11 *J. OF INT'L EDUC. RES.* 47, 49 (2015).

<sup>144</sup> PAUL TOUGH, *HOW CHILDREN SUCCEED: GRIT, CURIOSITY, AND THE HIDDEN POWER OF CHARACTER* xxiv, 74, 97-98 (2012).

<sup>145</sup> *Id.* at 195.

<sup>146</sup> *Id.* at 195-96.

<sup>147</sup> EMMA SEPPALA, *THE HAPPINESS TRACK* 122-23 (2016).

<sup>148</sup> *Id.* at 129.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at 133.

<sup>151</sup> *Id.* at 154.

The legal world has begun to take notice of the benefits of grit and growth mindset. For example, the ABA Commission on Women in the Profession launched “The Grit Project” in 2013 to educate female lawyers about the science behind grit and growth mindset.<sup>152</sup> The introduction to the project stated that grit and growth mindset are “two important traits that many successful women lawyers have in common.”<sup>153</sup>

Programs for lawyers and law students on the topics of grit and growth mindset are more prevalent<sup>154</sup> and The Grit Project’s website includes resources for use in planning such programs.<sup>155</sup> The National Association of Women Lawyers has also offered members advice for building grit and growth mindset as tools for success.<sup>156</sup> Additionally, bar association journals run articles touting the benefits of developing both grit and growth mindset.<sup>157</sup> And, in a 2012 book on the benefits of psychology for lawyers, Jennifer Robbenblot and Jean Sternlight highlighted grit and growth mindset as tools for productivity, success, and happiness in lawyers.<sup>158</sup> These concepts are increasingly becoming part of the vocabulary of the legal profession.

#### A. Research on Grit and Growth Mindset in Attorneys

There has been relatively little research on grit and growth mindset in lawyers. In one of the best known studies in this area, Milana Hogan, Chief Legal Talent Officer at Sullivan & Cromwell LLP, researched the relationship between

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<sup>152</sup> Alli Gerkman & Milana L. Hogan, *Grit & Growth Mindset Fuels Lawyers’ Success Throughout Their Careers*, N.Y. ST. B. ASS’N J. (2019) (on file with author); Martha Middleton, *True Grit: A New ABA Project Helps Women Learn Personal Characteristics That Will Help Them Advance in the Legal Profession*, 62 ABA J., 62-63 (2014). See also A.B.A., THE GRIT PROJECT, [https://www.americanbar.org/groups/diversity/women/initiatives\\_awards/grit-project/](https://www.americanbar.org/groups/diversity/women/initiatives_awards/grit-project/) (last visited Sept. 3, 2019).

<sup>153</sup> THE GRIT PROJECT, *supra* note 152.

<sup>154</sup> For example, the 2017 ABA Midyear Meeting included a session titled “Grit, the Secret to Advancement: Stories of Successful Women Lawyer” ([https://www.americanbar.org/content/dam/aba/marketing/women/grit\\_midyear2017.pdf](https://www.americanbar.org/content/dam/aba/marketing/women/grit_midyear2017.pdf)), and, in 2019, the UIC John Marshall Law School (formerly The John Marshall Law School) hosted a program presented by the Commission on Women in the Profession titled “The Grit and Growth Mindset: Traits of Successful Lawyers” (email invitation on file with author).

<sup>155</sup> THE GRIT PROJECT, *supra* note 152.

<sup>156</sup> See Milana Hogan & Katherine Larkin-Wong, *Grit & Mindset: Implications for Women Lawyers*, 98 WOMEN LAW. J. 11 (2013).

<sup>157</sup> Gerkman & Hogan, *supra* note 152; Caroline Adams Miller, *Do You Have the Right Kind of Grit to Succeed?*, A.B.A. LAW PRACTICE TODAY, June 14, 2016 (stating that people with grit do not give up when work is difficult and they elevate the quality of teams they are on, inspiring resilience and passion in others).

<sup>158</sup> JENNIFER R. ROBBENBLOT & JEAN R. STERNLIGHT, *PSYCHOLOGY FOR LAWYERS* 424-428 (2012). They observed that: (1) gritty lawyers set and stick to long term goals; (2) good attorneys take an approach to growth that embraces feedback; and (3) that by reacting to their own mistakes and weaknesses with kindness and compassion for oneself, lawyers can reach their goals.

grit and success for female lawyers at large law firms.<sup>159</sup> Identifying the problematic lack of women in leadership positions in BigLaw,<sup>160</sup> Hogan studied whether grit and growth mindset were not only traits of successful women, but predictors of success.<sup>161</sup> Her results showed a strong, significant relationship between grit and success for women in BigLaw.<sup>162</sup> Her research revealed a correlation between grit and several measures of success, including hours billed,<sup>163</sup> attorneys' perception of the quality of the work they receive,<sup>164</sup> and the messages received at the attorney's most recent performance review.<sup>165</sup>

Importantly for legal education, Hogan determined that grit is a precursor to success in BigLaw rather than a result of it.<sup>166</sup> She observed that grit scores among the 477 respondents were higher than average<sup>167</sup> and all interview subjects reported that they arrived at their BigLaw jobs with grit.<sup>168</sup> She also detected that many successful female lawyers display growth mindsets.<sup>169</sup> Hogan concluded that though further research is needed regarding the links between grit and growth mindset and success, grit is somewhat predictive of workplace success.<sup>170</sup> Employers can and should recruit for grit and provide feedback to further develop the characteristic in employees.<sup>171</sup>

### B. Current Application in Legal Education

Although grit and growth mindset are fairly widespread concepts, there has been little exploration of their potential use in legal education. Instead, legal scholars have increasingly explored the application of other fields, particularly the social sciences, to legal education. For example, Susan Daicoff has advocated expanding the view of legal education to incorporate best practices from other fields.<sup>172</sup> Implementing practices from other fields requires agreeing upon skills

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<sup>159</sup> Milana Lauren Hogan, *Non-Cognitive Traits That Impact Female Success in BigLaw* (2013) (unpublished Ph.D. dissertation, University of Pennsylvania) (on file with the University of Pennsylvania).

<sup>160</sup> *Id.* at 1-2 (defining BigLaw as a group of large law firms with 101 or more attorneys that pay market rate for entry level associates, demand long hours, and represent large corporations).

<sup>161</sup> *Id.* at 3-4.

<sup>162</sup> Hogan & Larkin-Wong, *supra* note 156, at 6

<sup>163</sup> Hogan, *supra* note 159, at 73.

<sup>164</sup> *Id.* at 77-78.

<sup>165</sup> *Id.* at 69-70. Measured factors of success included average billable hours, messages received at the most recent review; the lawyer's opinion of the quality of her work, financial compensation (for partners), and whether the lawyer was on the partner track (for non-partners).

<sup>166</sup> *Id.* at 121

<sup>167</sup> *Id.* at 121-22. The average grit score among her participants was 3.94, and none scored lower than 3 (citing Duckworth for an average grit score among women of 3.43).

<sup>168</sup> *Id.* at 122.

<sup>169</sup> *Id.* at 123.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 131.

<sup>172</sup> Daicoff, *supra* note 6, at 873-74.

needed for success in legal practice, making the acquisition of these skills part of legal education, and drawing on knowledge from other disciplines in doing so.<sup>173</sup> Jean Sternlight and Jennifer Robbenblot, authors of *Psychology for Lawyers*, observed that “[l]egal academia has slowly started to take account of the fact that new lawyers need to be skilled in dealing with people in addition to being skilled legal analysts.”<sup>174</sup> They assert that legal education does not fully recognize the value that psychology can bring to the practice of law and contend that lawyers who understand social psychology are more effective in lawyering tasks, more successful, and happier.<sup>175</sup> Among the concepts presented by Sternlight and Robbenblot is the importance of grit and perseverance.<sup>176</sup>

### 1. Studying Grit in Legal Education

Emily Zimmerman and Leah Brogan of Drexel University conducted one of the only known studies of grit in law school to date.<sup>177</sup> Citing the lack of empirical research on grit in legal education, but acknowledging the growing interest in studying grit in education generally, Zimmerman and Brogan designed a research project to investigate grit as it relates to performance in law school.<sup>178</sup> The pair used a modified version of Duckworth’s grit scale and additionally measured law school and undergraduate GPA and LSAT scores.<sup>179</sup> They administered their survey to recent graduates from an east coast law school in a large city in August 2013.<sup>180</sup> While their research did not conclusively link grit to any of these measures of performance,<sup>181</sup> there is a possibility that beyond a certain amount of grit, perhaps the grit required to get into law school, individual differences may not impact academic performance.<sup>182</sup>

As they observed:

[t]he fact remains that for many law students, law school is their most challenging academic experience. For most law students, law school is not only the culmination of their formal educations but also the beginning of their professional legal careers. We must devote attention

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<sup>173</sup> *Id.*

<sup>174</sup> Jean R. Sternlight & Jennifer K. Robbenblot, *Psychology and Effective Lawyering: Insights for Legal Educators*, 64 J. LEGAL EDUC. 365, 366 (2015).

<sup>175</sup> *Id.* at 367-68.

<sup>176</sup> *Id.* at 373.

<sup>177</sup> Emily Zimmerman & Leah Brogan, *Grit & Legal Education*, 36 PACE L. REV. 114 (2015).

<sup>178</sup> *Id.* at 123-24.

<sup>179</sup> *Id.* at 135-37.

<sup>180</sup> *Id.* at 135.

<sup>181</sup> *Id.* at 139.

<sup>182</sup> *Id.* at 144.

to the experience that students have in law school and how we can promote students' success both in and after law school.<sup>183</sup>

Zimmerman and Brogan suggested that grit's focus on passion and perseverance is fitting in the context of legal education, where students are required to work diligently through years of schooling.<sup>184</sup> Even if grit is not related to academic performance, it might be related to other aspects of success or well-being in law school or law practice.<sup>185</sup> They recommended that further research explore the relationship between grit and well-being in law school, as grittier students may be able to better weather the demands of legal education and practice.<sup>186</sup> Lastly, acknowledging that grit is only one of many factors that contribute to a law student's experience, they pointed to the sustained effort required by both law school and legal practice and suggested that grit may be a useful tool for students and lawyers alike.<sup>187</sup>

## 2. Examining Character, Including Grit, in Law Students

In a study of character development in law school, Heather Baum measured the importance of character traits, including grit, for law students and new attorneys.<sup>188</sup> She studied how both practicing lawyers and members of the legal writing community viewed seventeen character traits (including grit and persistence),<sup>189</sup> and their importance in practicing law.<sup>190</sup> Identifying the skills most important for new attorneys to either have or learn, legal writing instructors ranked grit/persistence second (after responsibility).<sup>191</sup> Practitioners identified grit and persistence as one of the top six important skills for law students.<sup>192</sup> And when asked to rate the most important skills for law students, 46% of legal writing instructors identified grit/persistence as the most important (making it the top-ranked trait).<sup>193</sup> Furthermore, legal writing instructors identified that the top-

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<sup>183</sup> *Id.* at 117.

<sup>184</sup> *Id.* at 128-29.

<sup>185</sup> *Id.* at 148.

<sup>186</sup> *Id.* at 149.

<sup>187</sup> *Id.* at 157.

<sup>188</sup> Baum, *supra* note 103, at 25.

<sup>189</sup> *Id.* at 33. Traits surveyed included: Grit/Persistence; Determination; Resilience; Adaptability; Responsibility; Integrity; Honesty, Ethics; Patience; Confidence; Optimism; Gratitude; Empathy; Intellectual Curiosity; Ability to Get Along/Work Well With Others; Enthusiasm; and Self-Control.

<sup>190</sup> *Id.* at 44.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

performing students in their courses demonstrated grit (51% rated this first, making it the top-ranked trait).<sup>194</sup>

Given the weight placed on grit and persistence by both practicing attorneys and legal writing faculty, Baum recommended emphasizing grit in the legal classroom.<sup>195</sup> She suggested that strategies for changing mindset could be applied to changing and developing character traits, including grit.<sup>196</sup> While it is not clear whether happiness is the cause of or the effect of one's professional success, she cited Duckworth's grit research for the notion that at least one character trait—grit—is known to make people happier.<sup>197</sup>

### 3. Mindset and Cognitive Science in Legal Writing

Legal scholars have observed the impact of mindset on law students and the difficulties students face when they present with fixed mindsets. Elizabeth Adamo Usman observed that fixed mindsets and the accompanying helplessness have a “staggering outcome” on a student's learning.<sup>198</sup> Addressing different student reactions to feedback on legal writing assignments as observed by numerous legal writing professors, Carrie Sperling and Susan Shapcott explored how mindsets guide reactions.<sup>199</sup> They observed that student beliefs about intelligence guided their reaction to feedback in law school,<sup>200</sup> and that mindset predicted behavior.<sup>201</sup> When students are successful, they have high motivation and high confidence, but when faced with difficulty, those with a fixed mindset display helpless behavior.<sup>202</sup> But when students are able to view challenges as opportunities, they are not weighed down or defined by poor performance and can find ways to improve.<sup>203</sup> Mindset matters in law school because how students explain their performance makes the difference between receiving an accurate assessment and knowing how to improve, and turning instead to external explanations for poor performance, thus never striving to improve.<sup>204</sup>

Usman further explored the use of cognitive science in the legal writing classroom, including the application of grit and growth mindset.<sup>205</sup> She cited the work of Duckworth, Dweck, and Tough to emphasize the importance of teaching

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<sup>194</sup> *Id.* at 45.

<sup>195</sup> *See id.* at 49 (citing DUCKWORTH, *supra* note 127).

<sup>196</sup> *Id.* at 51.

<sup>197</sup> *Id.* at 35-36.

<sup>198</sup> Elizabeth Adamo Usman, *Making Legal Education Stick: Using Cognitive Science to Foster Long-Term Learning in the Legal Writing Classroom*, 29 GEO. J. LEGAL ETHICS 355, 373 (2016).

<sup>199</sup> Carrie Sperling & Susan Shapcott, *Fixing Students' Fixed Mindsets: Paving the Way for Meaningful Assessment*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 39, 40-41 (2012).

<sup>200</sup> *Id.* at 41.

<sup>201</sup> *Id.* at 49.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at 51.

<sup>204</sup> *Id.* at 56.

<sup>205</sup> Usman, *supra* note 198, at 373.



students to fail and to learn from their mistakes.<sup>206</sup> She acknowledged the growing interest in the application of grit to legal education, suggesting that this theory, along with others, should be explored in the legal writing classroom.<sup>207</sup>

### C. The Case for Infusing Legal Education with Grit and Growth Mindset

Grit and growth mindset are powerful tools for performance, which a growing number of legal educators now recognize. As the research of Dweck and Duckworth demonstrated, students with grit and growth mindset are more successful.<sup>208</sup> These concepts can be the key to reframing student struggles.<sup>209</sup> The foundations identified in the *Foundations for Practice* study also underscore the importance of grit and growth mindset. Specifically, thirteen foundations name or support grit and growth mindset, including, among others, adapting to changing circumstances, resilience, setting goals, initiative, and overcoming challenges.<sup>210</sup> At least 75 percent of respondents to *Foundations for Practice* identified all thirteen foundations related to grit and growth mindset as necessary for lawyers and an even higher percentage (90) found eight of the thirteen to be necessary.<sup>211</sup>

The unique aspects of legal education and law practice make grit and growth mindset especially important for law students to practice and internalize. “[A] student’s resilience or grit can determine whether the student will persist or give up.”<sup>212</sup> Unfortunately, the current law school model encourages students to adhere to a fixed belief of their intelligence.<sup>213</sup> Class ranks, emphasis on first-year grades, the pressure to obtain high-paying jobs, and negative feedback from professors play a part in shaping student mindsets and fear of failure.<sup>214</sup> In law school, students accustomed to being high achievers may struggle like never before to learn the material and then may receive some of their lowest grades (thanks to grading curves).<sup>215</sup> For most students, law school presents the first time they are unable to answer when called on and their first experiences receiving negative feedback on writing assignments.<sup>216</sup> A single exam at the end of the semester with

<sup>206</sup> *Id.* at 379-80.

<sup>207</sup> *Id.* at 395-97.

<sup>208</sup> See *supra* Section III.

<sup>209</sup> DWECK, *supra* note 107 at 38-39 (in a study of college students, those with growth mindset took more action to confront obstacles than those with a fixed mindset—they became more motivated to solve problems); DUCKWORTH, *supra* note 126, at 1093-94 (gritty undergraduates outperform peers and grit was a predictor of ability of freshman candidates at West Point to finish summer program).

<sup>210</sup> Gerkman & Hogan, *supra* note 152, at 1, 5. To examine the application of grit and growth mindset to foundations, grit was defined as “perseverance and passion for long term goals” and growth mindset was defined as “basic abilities can be developed through dedication and hard work.”

<sup>211</sup> *Id.*

<sup>212</sup> Rodney Fong, *Foreword to THE LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, 2018 ANNUAL SURVEY RESULTS: RELATIONSHIPS MATTER* (2019).

<sup>213</sup> Corie Rosen, *The Method and the Message*, 12 NEV. L.J. 160, 162 (2011).

<sup>214</sup> Bishop, *supra* note 121, at 959; Rosen, *supra* note 213, at 178.

<sup>215</sup> Bishop, *supra* note 121, at 978-79.

<sup>216</sup> *Id.* at 979.

no opportunity to receive feedback, still prevalent in law schools, sends the message that learning is not as valuable as performance.<sup>217</sup> Furthermore, students often measure their intelligence in comparison to their classmates.<sup>218</sup> Performance during the first year of law school can serve as a gatekeeping mechanism for law review, prized positions with law firms, and other law school honors.<sup>219</sup> Each of these factors can lead to a fixed mindset.<sup>220</sup> Students who perform below expectations, particularly in the first year, may give up entirely.<sup>221</sup>

Law schools may fail to send the message that learning is worthwhile and that even the students below the top of their class can have satisfying careers.<sup>222</sup> When an environment sends this type of message, which students internalize, students then reflect those beliefs in their performance (or lack thereof).<sup>223</sup> Law students may come to believe that grades and the perception of intelligence are more important than the actual struggle to master difficult concepts—becoming more outcome-oriented.<sup>224</sup>

Legal educators have a responsibility to assist students with navigating “non-cognitive” factors that may impact their success.<sup>225</sup> Grit and growth mindset are integral to many of the non-legal skills needed for successful lawyering and for developing all of the skills essential for young lawyers. Developing character traits, including grit and growth mindset, can have a profound effect on a student’s ability to learn.<sup>226</sup> Students with a fixed mindset cannot learn from failure and vice versa—those with growth mindsets can learn and improve.<sup>227</sup> These strategies help combat the staggering effect a fixed mindset has on one’s ability to learn.<sup>228</sup>

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<sup>217</sup> *Id.* at 982.

<sup>218</sup> Sperling & Shapcott, *supra* note 199, at 70.

<sup>219</sup> Lucile A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 *BUFF. L. REV.* 1155, 1186 (2008)

<sup>220</sup> *Id.*

<sup>221</sup> Rosen, *supra* note 213, at 179.

<sup>222</sup> *Id.* at 169.

<sup>223</sup> *Id.* at 167.

<sup>224</sup> *Id.* at 166.

<sup>225</sup> Fong, *supra* note 212.

<sup>226</sup> Usman, *supra* note 198, at 377 (citing the work of Paul Tough, *supra* note 171, for the thesis that developing character traits, including grit, help children face obstacles and use failure as a learning opportunity).

<sup>227</sup> *Id.* at 372-73.

<sup>228</sup> *Id.* at 373.

Understanding how beliefs shape one's ability to learn—mindset—can improve a student's relationship with failure and encourage them to learn from it.<sup>229</sup>

### 1. Law Student Distress

Law schools produce psychological distress in students,<sup>230</sup> and psychological state relates to academic performance.<sup>231</sup> Kennon Sheldon and Lawrence Krieger's research into the well-being of law students found that during their first year of law school, students experienced an increased emphasis on extrinsic values (appearance and image values) and a decrease in intrinsic motivation (focusing on their own goals).<sup>232</sup> The overall well-being of students decreased during law school, including a decline in happiness.<sup>233</sup> This is true even for students who excel academically.<sup>234</sup> In a more recent study, Jerome Organ, David Jaffe, and Katherine Bender found troubling levels of depression and anxiety, as well as high levels of substance abuse, among law students.<sup>235</sup>

The transition to law school, including dealing with anxieties about their future careers and managing debt, creates stressors for which law students are not prepared.<sup>236</sup> A focus in law school on high grades and prestigious employment as signs of success undermines that which gave students purpose before law school.<sup>237</sup> Students then often lose touch with the support networks and system they accessed prior to law school.<sup>238</sup> As stress increases and well-being decreases, students have fewer support systems as they struggle with the academic demands of law school.

An increase in distress is likely due to both the students' decreasing sense of control and the feedback they receive.<sup>239</sup> However, law schools and law professors are in a position to encourage students to replace negative thoughts with tools to weather difficulties and develop more accurate interpretations of their learning progress.<sup>240</sup> Grit and growth mindset—focusing on motivation and

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<sup>229</sup> Bishop, *supra* note 121, at 976.

<sup>230</sup> Rosen, *supra* note 213, at 163.

<sup>231</sup> Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 526-27 (1998).

<sup>232</sup> Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 272-81 (2004).

<sup>233</sup> *Id.* at 275-76.

<sup>234</sup> Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 123-24 (2002).

<sup>235</sup> Jerome M. Organ, David B. Jaffe, & Katherine M. Bender, Ph.D., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Abuse and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 145 (2016). The trio implemented a Survey of Law Student Well-Being of students at fifteen ABA-accredited law schools. *Id.* at 122-24.

<sup>236</sup> *Id.* at 146.

<sup>237</sup> Iijima, *supra* note 231, at 527.

<sup>238</sup> *Id.* at 528-29.

<sup>239</sup> Rosen, *supra* note 213, at 183.

<sup>240</sup> Iijima, *supra* note 231, at 534.

resilience—are important in light of the decreased well-being of law students. Even simply discouraging the belief that intelligence and achievement cannot be improved will create a more flexible and optimistic approach to student learning.<sup>241</sup>

## 2. Generational Issues

Traits inherent to the generations of students now in law school also further support the case for infusing legal education with grit and growth mindset. The literature on pedagogical and learning issues recognizes that legal educators now face a different type of law student.<sup>242</sup> There are many benefits to the passion and confidence that law students today bring to their legal studies.<sup>243</sup> This Article focuses on the traits of the Millennial and Generation Z (Gen Z) students that may require legal educators to adjust their approaches to teaching.

Millennial<sup>244</sup> and Gen Z<sup>245</sup> students now make up most of the populations of law school classrooms. Their primary education tasked Millennials and Gen Z students with fewer critical thinking, writing, and problem-solving assignments.<sup>246</sup> Many students now enter law school without basic problem-solving skills and the assumed educational attributes required for success in law school.<sup>247</sup> Both generations have documented problems with writing. Employers have found the writing skills of Millennials to be deficient, lacking clarity and organization.<sup>248</sup> Millennials and Gen Z grew up accustomed to using technology, specifically social media, to communicate, which contributes to poor writing skills.<sup>249</sup> This makes vigorous legal writing expectations a challenge. Evidence indicates that today's law students come to law school without the writing, reading, and critical thinking skills that professors have expected in the past.<sup>250</sup>

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<sup>241</sup> Rosen, *supra* note 213, at 183.

<sup>242</sup> Susan Stuart & Ruth Vance, *Bringing a Knife to a Gunfight: The Academically Underprepared Law Student & Legal Education Reform*, 48 VAL. U. L. REV. 41, 46 (2013).

<sup>243</sup> Catherine Martin Christopher, *Normalizing Struggle*, 73. ARK. L. REV. 27, 39-40 (2020).

<sup>244</sup> Millennials were born between 1982-1994. Laura P. Graham, *Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation*, 41 U. ARK. LITTLE ROCK L. REV. 29, 37-38 (2019).

<sup>245</sup> Generation Z students were born between 1995-2010. *Id.* at 11.

<sup>246</sup> Millennials are heavily influenced by technology and educators have observed their problems with writing, specifically organization, clarity, spelling, punctuation, and grammar. Stuart & Vance, *supra* note 242, at 64. Generation Z was raised under No Child Left Behind and a STEM focus, making much of the focus of their education on taking exams. Mary Ann Becker, *Understanding the Tethered Generation: Net Gens Come to Law School*, 10 DUQ. L. REV. 9, 18, 21 (2015) (documented issues with writing); Graham, *supra* note 244, at 57-58, 64-65.

<sup>247</sup> Stuart & Vance, *supra* note 242, at 43.

<sup>248</sup> *Id.* at 65.

<sup>249</sup> *Id.* at 65.

<sup>250</sup> Christopher, *supra* note 243, at 37.

These generations of students have high expectations for their own performance and expect success to come from effort.<sup>251</sup> Millennial and Gen Z students struggle to adapt to challenges and have difficulty acknowledging that failure is possible.<sup>252</sup> This lack of exposure to failure and challenges creates difficulties in accepting honest feedback on one's performance.<sup>253</sup> Students from these generations have also experienced grade inflation, making them believe they are performing at a higher level of competence than they actually are, and making them ill-prepared to receive and properly respond to negative feedback.<sup>254</sup>

Millennials and Gen Z are characterized as experiencing increased stress and anxiety, often accompanied by a concern with top grades and performance, which is likely to be exacerbated by law school.<sup>255</sup> Mental health problems have become more prevalent in today's youth, which some posit is because of a focus on extrinsic motivations and status (rather than relationships and community).<sup>256</sup> Given what we know about distress and decreased well-being in law school, today's students need tools to help them survive and thrive during their legal education.<sup>257</sup>

Law schools must accept the challenges posed by these new generations in legal classrooms and adjust pedagogy to meet their needs and help them succeed.<sup>258</sup> Undergraduate, secondary, and elementary schools now teach their students to have a growth mindset and exercise grit and resilience.<sup>259</sup> Today's law students are arriving with an understanding of these concepts but little practice applying them to new settings, especially an environment as challenging as law school. It is worthwhile to teach them how they apply to the study and practice of law—allowing them to become deliberate learners and develop motivation, resilience, and grit in law school.<sup>260</sup> Explaining to students the value of intentional

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<sup>251</sup> Stuart & Vance, *supra* note 242, at 67-68 (self-esteem movement in schools in 1980s led to increased self-esteem, translating to expecting to perform well based on effort); Graham, *supra* note 244, at 58-60 (Generation Z students have overconfidence in their thinking skills and difficulty accepting feedback).

<sup>252</sup> Renee Nicole Allen & Alicia R. Jackson, *Contemporary Teaching Strategies: Effectively Engaging Millennials Across the Curriculum*, 95 U. DET. MERCY L. REV. 1, 4 (2017) (for Millennials, this happens in part because they experienced an education in which self-esteem was emphasized and failure was not recognized); Graham, *supra* note 244, at 60.

<sup>253</sup> Graham, *supra* note 244, at 59.

<sup>254</sup> Karen McDonald Henning & Julia Belian, *If You Give a Mouse a Cookie: Increasing Assessments and Individualized Feedback in Law School Classes*, 95 U. DET. MERCY L. REV. 35, 43 (2017).

<sup>255</sup> Graham, *supra* note 244, at 42-43; Stuart & Vance, *supra* note 242, at 63. Frequent use of social media and comparing oneself to others contribute to this stress. Graham, *supra* note 244, at 32-43.

<sup>256</sup> Stuart & Vance, *supra* note 242, at 69-70.

<sup>257</sup> Graham, *supra* note 244, at 44; *see supra* section C (discussing how law school demands cause distress in students).

<sup>258</sup> Kimberly R. Kass, *Millennials, Deliberate Learning, Motivation and Resilience*, THE LEARNING CURVE, 2 (Mar. 01, 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3113603](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3113603).

<sup>259</sup> Bishop, *supra* note 121, at 963.

<sup>260</sup> Kass, *supra* note 258, at 2-5.

and purposeful practice—grit—and how to confront deficits in the areas in which they face challenges can increase their ability to face those challenges.<sup>261</sup>

### 3. Grit and Growth Mindset as a Pathway to Other Skills

Underlying the research on outcomes and the skills, characteristics, and competencies required for a successful practice is a “sense that to be successful, law students need to take responsibility for these varied aspects of their future legal careers while in law school . . . .”<sup>262</sup> In order to do so, students must understand their belief in their ability to learn and grow is critical to successfully acquiring the skills needed to practice law. Understanding the difference between fixed and growth mindsets helps students see the value in learning from their mistakes.<sup>263</sup> Historically, legal education assumed the formation of professional identity in law students.<sup>264</sup> Recent discoveries have debunked this view and students are often left to “fill in the blanks” when unsure of what is expected of them.<sup>265</sup> Given the importance of professional characteristics to success in one’s lawyering career, it is more important than ever to provide students with the tools needed to establish a successful professional identity before they begin their careers.

Given the rigors of law school, legal educators must find ways to promote student success during and after law school.<sup>266</sup> Mindset can provide a powerful tool for learning. Students who display a fixed mindset are unable to engage in self-regulated learning,<sup>267</sup> the key to which is reflection.<sup>268</sup> And it is through reflection—when students critically observe their performance and reflect on why it occurred—that one truly learns.<sup>269</sup> Research shows that students who display a growth mindset will welcome opportunities to improve that develop goals that are based on internal, rather than external, standards.<sup>270</sup> The premise of growth mindset can also apply to character.<sup>271</sup> Changing beliefs about intelligence, via growth mindset, could be used to develop character in law students—reaching both underperforming and overly confident students to make them understand the malleability of intelligence.<sup>272</sup>

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<sup>261</sup> *Id.* at 2-5.

<sup>262</sup> Baker, *supra* note 16, at 217.

<sup>263</sup> *Id.* at 226.

<sup>264</sup> Leary Davis, *Competence as Situationally Appropriate Conduct: An Overarching Concept for Lawyering, Leadership, and Professionalism*, 52 SANTA CLARA L. REV. 725, 732 (2012).

<sup>265</sup> Daicoff, *supra* note 6, at 830-31, 834.

<sup>266</sup> Zimmerman & Brogan, *supra* note 177, at 117.

<sup>267</sup> Usman, *supra* note 198, at 372-73.

<sup>268</sup> *Id.* at 371.

<sup>269</sup> Davis, *supra* note 264, at 754-55.

<sup>270</sup> Usman, *supra* note 198, at 373.

<sup>271</sup> Baum, *supra* note 103, at 49.

<sup>272</sup> *Id.*

Some are skeptical that grit and growth mindset can be taught.<sup>273</sup> However, although not applied in legal education, the work of Dweck and Duckworth in other educational contexts shows great promise for application in any educational context. Their research demonstrated that grit and growth mindset can be cultivated in educational circumstances.<sup>274</sup> As Deborah Rhode observed, relational skills are regularly taught in other graduate programs, and there is no reason to believe that they cannot also be incorporated into legal education.<sup>275</sup> Similarly, Susan Daicoff has advocated for adapting and customizing curricula from other fields for teaching many different lawyer effectiveness skills.<sup>276</sup> Even for the skills that are arguably non-teachable, students can be placed into hypothetical situations so that they have opportunities to develop these traits.<sup>277</sup>

#### IV. STRATEGIES FOR INTEGRATING GRIT AND GROWTH MINDSET IN LAW SCHOOL

There are several ways for legal educators to better prepare students for the demands of legal study and practice. Grit and growth mindset are both parts of the skill set necessary for success, and also strategies to help students cultivate the other necessary characteristics and skills. Students are likely to find overwhelming mastery of so many skills.<sup>278</sup> Law school pedagogy can prepare students to manage these demands by arming them with skills that will help them persevere and manage the challenges of doing such difficult work under pressure.<sup>279</sup>

United States law schools just underwent a rigorous process to identify and adopt learning outcomes and curricular competencies in accordance with ABA standards.<sup>280</sup> Many of the competencies include traditional skills such as legal reasoning and analysis. ABA standards also require “other professional skills” necessary to legal practice—a broad category that could serve as an umbrella for numerous skills.<sup>281</sup> This section proposes also including in outcomes and competencies: (1) essential characteristics and broad professional skills, as identified by employers and the research summarized in this article; and (2) grit and growth mindset, both as subsets of essential skills and as conduits for mastering them. Further detailed below are strategies for fostering a culture of grit and growth mindset, encouraging faculty to develop and promote these skills, and

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<sup>273</sup> See, e.g., University of Edinburgh, *No Benefit in Growth Mindset Theory, Study Says*, MEDICAL XPRESS, Sept. 20, 2019, <https://medicalxpress.com/news/2019-09-benefit-growth-mindset-theory.html>.

<sup>274</sup> DWECK, *supra* note 107, at 229-231. For example, adolescent students who participated in a mindset workshop saw improvement not just in their attitudes, but also in their math grades.

<sup>275</sup> BUILDING ON BEST PRACTICES, *supra* note 29, at 322.

<sup>276</sup> Daicoff, *supra* note 6, at 831.

<sup>277</sup> *Id.* at 831 (suggesting that honesty, drive, and passion may be perceived as difficult to teach).

<sup>278</sup> Graham, *supra* note 244, at 38-39.

<sup>279</sup> Zimmerman & Brogan, *supra* note 177, at 146-47.

<sup>280</sup> See *supra* section I.E.

<sup>281</sup> A.B.A. STANDARDS, *supra* note 38, at Standard 302(d).

suggestions for individual courses. Students must equip themselves with the values and expectations of the changing legal marketplace while mastering traditional lawyering skills.<sup>282</sup> The inclusion of these additional focuses, through the strategies outlined below, will ultimately better prepare students for the myriad of requirements of legal practice.

### A. Learning Outcomes and Curriculum

Law schools must ensure that their learning objectives reflect the characteristics, competencies, and professional skills identified by employers. Schools should provide greater emphasis on character development in their curriculum, given its identification as an indicator of success.<sup>283</sup> Research consistently shows a high value placed on general professional skills and characteristics.<sup>284</sup> This does not mean that legal skills and knowledge are not important, but law schools cannot ignore this data.<sup>285</sup> Now that law schools have implemented learning outcomes, as with any process, schools should “assess the success of the change” and continue setting goals, gathering data, reassessing, and changing processes.<sup>286</sup> The ABA Standards reflect this responsibility by requiring that law schools “conduct ongoing evaluation” of their programs of legal education, including learning outcomes, and make appropriate changes to the curriculum.<sup>287</sup> The ABA’s emphasis on professional skills, as outlined in Standard 302, must be considered in light of the latest research.<sup>288</sup> By starting with core traits important to future professionals, law schools can then work backward to construct a curriculum based on these fundamental values and principles.<sup>289</sup> Learning outcomes should include general professional skills and characteristics that are vital to student success. What better skills to include than the ones employers have demonstrated to be critical for new attorneys?<sup>290</sup> *Foundations for Practice* advocated that law schools focus on the desired outcome—producing graduates prepared to enter the profession—and build learning objectives to achieve this goal.<sup>291</sup>

Law school learning outcomes should state outright some of the key traits for success in the legal profession, including diligence, integrity, trustworthiness,

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<sup>282</sup> Brown, *supra* note 45, at 320.

<sup>283</sup> Baum, *supra* note 103, at 25.

<sup>284</sup> See *supra* sections II.A.–D.

<sup>285</sup> A.B.A. STANDARDS, *supra* note 38, at Standard 302.

<sup>286</sup> Gerald F. Hess, Michael Hunter Schwartz, & Nancy Levit, *Fifty Ways to Promote Teaching and Learning*, 67 J. LEGAL EDUC. 696, 714 (2018).

<sup>287</sup> A.B.A. STANDARDS, *supra* note 38, at Standard 315

<sup>288</sup> A.B.A. STANDARDS, *supra* note 38, at Standard 302.

<sup>289</sup> Brown, *supra* note 45, at 316.

<sup>290</sup> See BUILDING ON BEST PRACTICES, *supra* note 29, at 319 (observing that empirical findings are relatively consistent and should be helpful to law schools in revising curricula); see generally FOUNDATIONS FOR PRACTICE, *supra* note 64; ROADMAP, *supra* note 54.

<sup>291</sup> FOUNDATIONS FOR PRACTICE, *supra* note 64, at 36.



problem-solving, good judgment, passion, and engagement. While it is ultimately the decision of each law school's faculty to determine whether evidence of the importance of these traits is persuasive enough to incorporate more explicitly into learning outcomes, the consistency of the findings across studies helps make the case for inclusion.<sup>292</sup>

Law schools must next incorporate these skills into their curricula. Legal education must clearly communicate to students the importance of general professional skills and characteristics. This can be done in a variety of ways and does not have to be limited to courses devoted to practical experience and "soft skills." While many of these skills, including decision-making, problem-solving, and judgment, have been implicit in law school curricula, they must now be made explicit.<sup>293</sup> Incorporating these skills is not without concern, but a balance can exist between practice-oriented skills and legal doctrine.<sup>294</sup> Further, courses focused on practice do not have to replace doctrine—they can actually provide context to the teaching of doctrine.<sup>295</sup> Course materials, class discussions, assignments, and exercises should be linked explicitly to competencies related to the practice of law; these are more meaningful to students if they understand the relevance to their professional lives.<sup>296</sup>

In implementing these professional skills, schools should be careful to avoid marginalizing them by simply adding them into new courses on top of the traditional pedagogy.<sup>297</sup> Many of these are already integrated, to some extent, into internships or other experiential courses.<sup>298</sup> Unless fully integrated meaningfully into the academic content of law school, students will not understand their importance.<sup>299</sup>

Once students are aware, through learning outcomes, of what will be expected of them during and after law school, they will have a roadmap for their studies and professional development. Law schools must show students how to utilize the tools needed to understand and master the skills and competencies they need to acquire for success in the legal field. It is also critical that law schools place

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<sup>292</sup> See *supra* sections II.A.-D.

<sup>293</sup> Carrie Menkel-Meadow, *Crisis in Legal Education or the Other Things Law Students Should be Learning and Doing*, 45 MCGEORGE L. REV. 133, 154-55 (2013).

<sup>294</sup> BUILDING ON BEST PRACTICES, *supra* note 29, at 47.

<sup>295</sup> *Id.*

<sup>296</sup> Slocum, *supra* note 99, at 851.

<sup>297</sup> Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 542 (2007).

<sup>298</sup> *Id.* at 532.

<sup>299</sup> See generally *id.*

the responsibility on each student to develop all required competencies and skills.<sup>300</sup>

## B. Culture and General Messaging

The culture of a law school is a lens through which students view theories of law, concepts of professionalism, and the value of legal education.<sup>301</sup> Curricular reform as described above, while important, is not enough to change incentive structures and the ways culture impacts student engagement and motivation.<sup>302</sup> “Learning lawyering skills, and becoming competent or proficient in them, is a struggle.”<sup>303</sup> Starting with orientation and moving forward, law schools can and should continuously convey the importance of persistence and effort.<sup>304</sup> Legal educators should acknowledge and normalize the difficulties that students face.<sup>305</sup> Students should see that struggling with material and new skills are a normal part of both law school and legal practice.<sup>306</sup> Grit is influenced by culture,<sup>307</sup> and schools can foster the development of grit and growth mindset by creating a culture that expects struggle but also compassionately equips students to grow through the struggle.

ABA-required learning outcomes, clarified through a law school curriculum that clearly demonstrates not just legal knowledge but also a broad blend of skills and professional competencies, allow students to plan and take responsibility for achieving those outcomes. Grit and growth mindset (as well as tools to achieve them) should both be part of these outcomes. Schools should communicate the need for students to understand the skills required for legal practice and to develop a plan to achieve them.<sup>308</sup> Much like competencies in law firm models, introducing competencies for success at law school orientation provides a path for success.<sup>309</sup> Introducing competencies and explaining the importance of mastering each allows for students to track their development.<sup>310</sup>

### 1. Addressing Grades and Ranking

Law school emphasizes educational mastery and ultimate success—a process of “getting it” which means two things—both understanding and

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<sup>300</sup> Hamilton, Monson & Organ, *supra* note 97, at 10.

<sup>301</sup> Sturm & Guinier, *supra* note 297, at 547.

<sup>302</sup> *Id.* at 547-48.

<sup>303</sup> Christopher, *supra* note 243, at 28.

<sup>304</sup> Sperling & Shapcott, *supra* note 199, at 74.

<sup>305</sup> Christopher, *supra* note 243, at 28.

<sup>306</sup> *Id.* at 13-14.

<sup>307</sup> DUCKWORTH, *supra* note 127, at 245.

<sup>308</sup> FOUNDATIONS FOR PRACTICE, *supra* note 64, at 37.

<sup>309</sup> Manch, *supra* note 85, at 121.

<sup>310</sup> *Id.* (explaining how attorneys can use clearly defined competencies to track their progress).

internalizing the ways lawyers solve problems, but also obtaining good grades, good reviews on performance, and the good opinions of others.<sup>311</sup> The extrinsic motivators of law school (grades and ranking) reinforce ability labeling—the process by which people are labeled as smart or not.<sup>312</sup> Ranking makes those on top feel they have won and those not at the top feel as if they have lost.<sup>313</sup> This is negative even for high-performing students, as they may become unwilling to set difficult goals for fear of failure, missing out on opportunities to learn and grow.<sup>314</sup> These students fear deviating from the standard curriculum or trying new things out of fear of disrupting their competitive position.<sup>315</sup>

While grades and rankings are necessary components of legal education, the negative effects they have on students can be minimized. Law schools can encourage students to view ranking as indicative of mastery that they can still obtain.<sup>316</sup> This can help prevent sending the message that high-achieving students are smarter, when in fact they may have just achieved a more advanced level of mastery of the material.<sup>317</sup> Schools can also communicate to students the opportunities in their second and third years to refine skills and improve understanding (to combat the fixed mindset that may accompany first-year performance).<sup>318</sup> When a culture avoids ability labeling, students are better able to access growth mindset and see the opportunity to increase their mastery of skills.<sup>319</sup>

## 2. Normalizing Failure and Struggle

Law students' substantive learning is shaped by how they define what it means to succeed in law school.<sup>320</sup> "Because teaching professionalism is already at the heart of legal education, law school is the natural place to instill in students the value of learning from failure."<sup>321</sup> Struggling to learn material can develop resilience in law students.<sup>322</sup> The fear that students face in law school is exacerbated by the focus on outcomes.<sup>323</sup> Kaci Bishop proposed a pedagogy of failure in law school<sup>324</sup> and Catherine Christopher advocates for a culture that normalizes struggle.<sup>325</sup> Law schools can start by letting students know that they are

<sup>311</sup> Sturm & Guinier, *supra* note 297, at 521, 523.

<sup>312</sup> Rosen, *supra* note 213, at 167.

<sup>313</sup> *Id.* at 176-77.

<sup>314</sup> *Id.* at 169.

<sup>315</sup> Sturm & Guinier, *supra* note 297, at 542.

<sup>316</sup> Rosen, *supra* note 213, at 183.

<sup>317</sup> *Id.* at 183.

<sup>318</sup> *Id.*

<sup>319</sup> Bishop, *supra* note 121, at 995.

<sup>320</sup> Sturm & Guinier, *supra* note 297, at 523.

<sup>321</sup> Bishop, *supra* note 121, at 965.

<sup>322</sup> Christopher, *supra* note 243, at 44.

<sup>323</sup> Bishop, *supra* note 121, at 959 (grades, class rank, and obtaining high paying jobs).

<sup>324</sup> *Id.* at 986.

<sup>325</sup> Christopher, *supra* note 243, at 44.

asking a lot of them and that mistakes are expected and an important part of the learning process.<sup>326</sup> Legal educators can and should acknowledge that students struggle and that this is normal.<sup>327</sup> Some of the best learning happens when the learner is struggling—a concept law schools can capitalize on by teaching students the benefits of struggling.<sup>328</sup> Even the Socratic and case methods of teaching can be less intimidating if students understand that the goal of these is to produce struggle.<sup>329</sup> Further, schools and faculty can help students understand how struggle helps them to learn—even if an answer is correct a student can still be challenged to view an issue through other points of view.<sup>330</sup>

Hearing about the struggles of others helps to normalize the law school experience. Schools may also consider inviting successful graduates to speak to the class about how they overcame obstacles and failures in law school.<sup>331</sup> In addition, upper-level students familiar with grit and growth mindset could be paired with first-year students, specifically to mentor them in grit and growth mindset, sharing their own struggles in law school and the strategies they used to overcome challenges.<sup>332</sup> Hearing from not just faculty, but also students and alumni, about overcoming struggle helps to normalize the challenges of law school and legal practice.

### 3. Building Grit and Growth Mindset Incrementally

A law school's faculty, administration, and staff set the tone and attitude of an institution.<sup>333</sup> Infusing an institution's culture with grit and growth mindset happens gradually through a variety of strategies. Developing grit and growth mindset can start with a simple message about mindset, challenges, setbacks—having faculty and administrators tell students that “intelligence is malleable.”<sup>334</sup> Helping students understand that learning and mastery of legal knowledge and professional skills is a process helps to set expectations for sustained effort over time.

Courses that require persistent effort and offer multiple opportunities for feedback will best help students develop a growth mindset—for example, legal writing,<sup>335</sup> externships,<sup>336</sup> or clinics.<sup>337</sup> This sustained effort not only provides

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<sup>326</sup> Bishop, *supra* note 121, at 987.

<sup>327</sup> Christopher, *supra* note 243, at 28.

<sup>328</sup> *Id.* at 16.

<sup>329</sup> Bishop, *supra* note 121, at 988.

<sup>330</sup> *Id.* at 989.

<sup>331</sup> Sperling & Shapcott, *supra* note 199, at 75.

<sup>332</sup> Baum, *supra* note 103, at 62.

<sup>333</sup> Christopher, *supra* note 243, at 65.

<sup>334</sup> Baum, *supra* note 103, at 61.

<sup>335</sup> See Sperling & Shapcott, *supra* note 199.

<sup>336</sup> See *id.* at 76-77.

<sup>337</sup> Zimmerman & Brogan, *supra* note 177, at 146.

multiple opportunities for feedback but also encourages grit.<sup>338</sup> Requiring sustained effort could help students better prepare for the rigors of law practice and could encourage them to develop strategies, with the support and assistance of the law school, to prepare for the sustained effort required by legal practice.<sup>339</sup> This is especially important in light of the inherent peril of law school: grades are largely determined by a single exam, which can create a sense of panic in students with a fixed mindset.<sup>340</sup> Any law school course can include assignments and learning objectives to help students become incrementally-minded.<sup>341</sup>

Schools can guide students through a process of planning for their own development of knowledge and skills during their time in law school.<sup>342</sup> The process of developing a plan and seeing law school as a process promotes the notion that sustained effort is required to master legal knowledge and professional skills. This plan should identify the knowledge, skills, and capabilities that students need to become leaders and successful lawyers.<sup>343</sup> This allows students to be proactive in seeking out opportunities to develop their goals and build skills.<sup>344</sup> Students should regularly track progress toward their goals<sup>345</sup> while acknowledging that their plans can and should change over the course of law school as they gain skills and experience.<sup>346</sup> A well-designed plan or roadmap should result in accomplishing the ultimate goal: being qualified for legal employment.<sup>347</sup>

Law schools should stress the importance of this type of planning and continuously encourage students to engage in it. As part of their plan, students must assess and understand their strengths.<sup>348</sup> This is an important step toward building grit.<sup>349</sup> Students can set goals to improve areas of weakness and further develop their strengths.<sup>350</sup> As part of this assessment, law schools can ask students to evaluate their own levels of grit and growth mindset. “Gritty people have well-formed goals and develop creative strategies to accomplish them.”<sup>351</sup> This type of

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<sup>338</sup> *Id.* at 146.

<sup>339</sup> *Id.*

<sup>340</sup> DWECK, *supra* note 107, at 29.

<sup>341</sup> Sperling & Shapcott, *supra* note 199, at 75.

<sup>342</sup> ROADMAP, *supra* note 54, at 37-60 (describing the process by which students develop a roadmap to develop competencies needed to practice law); *see also* BUILDING ON BEST PRACTICES, *supra* note 29, at 300.

<sup>343</sup> BUILDING ON BEST PRACTICES, *supra* note 29, at 300.

<sup>344</sup> *Id.*

<sup>345</sup> Neil Hamilton refers to this plan as a roadmap. ROADMAP, *supra* note 54, at 37-60.

<sup>346</sup> *Id.* at 37-38.

<sup>347</sup> *Id.* at 38.

<sup>348</sup> ROADMAP, *supra* note 54, at 49-51, 55-60 (explaining how students can use their competencies to plan for the future); Baker, *supra* note 16, at 226.

<sup>349</sup> Miller, *supra* note 157.

<sup>350</sup> Slocum, *supra* note 99, at 850.

<sup>351</sup> *Id.*

planning and monitoring progress will contribute to the grit and growth mindset needed for success.

### C. Strategies for Faculty

Every law student interacts with faculty members.<sup>352</sup> In traditional models of legal education, students may not view faculty as having an interest in their development as learners outside of the classroom,<sup>353</sup> which can be problematic. When law students develop their professional identities outside of their academic work and without faculty involvement, they rarely make sense of what they are learning in relation to their values.<sup>354</sup> Further, law professors often fail to focus in the classroom on the interpersonal aspects of their fields, which sends the message to students that these forms of knowledge are not as important.<sup>355</sup> Faculty are, therefore, in a unique position to show an interest in and make an impact on the professional identities and professional skill development of their students.

#### 1. Demonstrate an Interest in Student Learning and Development

Faculty must demonstrate to students their commitment to their learning and professional development because law school faculty are positioned to teach students what and how to think.<sup>356</sup> First, professors can meet students where they are, recognizing that today's law students may not have the skills that previous law students had, without judgment.<sup>357</sup> Rather than viewing altered approaches to teaching as "dumbing down" the material, faculty can embrace the needs of law students and set the tone for learning.<sup>358</sup>

A simple way for faculty to demonstrate an interest in their students is to engage students on a personal level in the classroom on a regular basis.<sup>359</sup> If faculty check in with students throughout the semester, they may find out more about what students are facing outside their particular classroom.<sup>360</sup> Engaging students in this way shows an interest in their well-being—even recognizing the many demands students face shows compassion.<sup>361</sup> Law professors have an obligation to adopt strategies and teaching methods to help today's generation of law students

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<sup>352</sup> Organ, Jaffe, & Bender, *supra* note 235, at 151.

<sup>353</sup> Sturm & Guinier, *supra* note 297, at 532.

<sup>354</sup> *Id.* at 534-35.

<sup>355</sup> *Id.* at 531.

<sup>356</sup> Rosen, *supra* note 213, at 340.

<sup>357</sup> Christopher, *supra* note 243, at 65.

<sup>358</sup> *Id.* at 31.

<sup>359</sup> David B. Jaffe, The Key to Law Student Well-Being? We Have to Love Our Law Students, February 2018, <https://www.wcl.american.edu/impact/lawwire/the-key-to-law-student-well-being-we-have-to-love-our-law-students/article/>.

<sup>360</sup> *Id.*

<sup>361</sup> *Id.*

succeed.<sup>362</sup> Letting students know that they care about them is a vital part of this process.<sup>363</sup>

## 2. Arming Faculty with Mindset and Grit Awareness

Law schools are also in a position to develop mindsets for success.<sup>364</sup> By nurturing an incremental mindset, which lays the groundwork for students to react adaptively to feedback, legal educators can better position students for good performance in law school and legal practice.<sup>365</sup> It is critical that law professors first consider their own mindsets.<sup>366</sup> A legal educator's duty includes the responsibility to model behavior desired in the legal profession.<sup>367</sup> Professors with fixed mindsets are more likely to give feedback framed in ways that suggest to students that their intelligence is fixed.<sup>368</sup> This ability-oriented feedback leads to helpless behavior.<sup>369</sup> In contrast, feedback focused on effort can promote an incremental mindset and encourage students to master learning goals.<sup>370</sup> Before employing strategies to improve student mindsets, professors should first examine their own mindsets and beliefs and adopt an incremental/growth mindset.<sup>371</sup> Grittier teachers are also more effective.<sup>372</sup> Through examining their own levels of grit and mindsets, professors pay dividends for their students.<sup>373</sup> Faculty can model growth mindset, sharing their own professional struggles and setbacks and how they overcame them.<sup>374</sup>

## 3. Demonstrate the Failure Pedagogy

Even when using cold-calling or the Socratic method of instruction, professors can help students separate struggle from failure in classroom discussion.<sup>375</sup> It is vital that law faculty teach students that the kind of learning that requires effort, including struggle and failure, is quality learning.<sup>376</sup> Faculty

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<sup>362</sup> Courtney G. Lee, *Changing Gears to Meet the "New Normal" in Legal Education*, 53 DUQ. L. REV. 39 (2015).

<sup>363</sup> Jaffe, *supra* note 359.

<sup>364</sup> Sperling & Shapcott, *supra* note 199, at 68.

<sup>365</sup> *Id.*

<sup>366</sup> *Id.* at 72.

<sup>367</sup> Brown, *supra* note 45, at 314.

<sup>368</sup> *Id.*

<sup>369</sup> *Id.*

<sup>370</sup> *Id.* at 317.

<sup>371</sup> *Id.* at 317-18.

<sup>372</sup> Angela Lee Duckworth et al., *Positive Predictors of Teacher Effectiveness*, 4 J. POSITIVE PSYCHOL. 540, 544 (2009).

<sup>373</sup> *See id.*

<sup>374</sup> Christopher, *supra* note 243, at 65.

<sup>375</sup> *Id.* at 31-32.

<sup>376</sup> *Id.* at 40.

embrace and model struggle and failure when they are candid about their own struggles and setbacks.<sup>377</sup>

Faculty can also encourage growth mindset by framing incorrect answers and shortcomings optimistically.<sup>378</sup> When students answer incorrectly, providing optimistic feedback helps students tackle difficult problems without undermining their learning.<sup>379</sup> Offering feedback that is specific, temporary, and hopeful allows students to be hopeful rather than helpless.<sup>380</sup> For example, a professor could tell a student that they have not reached the right answer yet, or that they could use the particular facts to develop a better answer, allows students to see the potential for learning and progress.<sup>381</sup> When faculty help students think optimistically about their performance and frame failure in a hopeful way, students can realize their potential.<sup>382</sup>

#### D. Strategies for Individual Classes

This section addresses strategies to help students develop grit and growth mindset in any law school course. Although some courses may more obviously lend themselves to this type of inquiry and discussion,<sup>383</sup> the strategies discussed below could be implemented in nearly any type of course. By defining the skills being acquired, structuring feedback to induce grit and growth mindset, using multiple assessments, and requiring self-reflection and evaluation, each law school course can promote these tools to improve student learning and growth.

##### 1. Core Values and Skills Within Learning Objectives

There is a connection between teaching both grit and growth mindset.<sup>384</sup> Professors can teach students about incremental mindset and how to face challenges and frame feedback.<sup>385</sup> Each law school course should make clear, as part of its learning objectives, the characteristics, and skills targeted in the course. Explaining the values and skills that students will develop in the course and linking them to career success helps to create student buy-in.<sup>386</sup> For example, a syllabus could explain that grit and growth mindset are among the values that will be

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<sup>377</sup> *Id.* at 31.

<sup>378</sup> Rosen, *supra* note 213, at 184-85.

<sup>379</sup> *Id.* at 185.

<sup>380</sup> *Id.*

<sup>381</sup> *Id.* at 184-85.

<sup>382</sup> *Id.* at 185.

<sup>383</sup> See Zimmerman & Brogan, *supra* note 177, at 146.

<sup>384</sup> Baum, *supra* note 103, at 61.

<sup>385</sup> *Id.* at 61-62.

<sup>386</sup> Tracy Turner, *Core Values in the Classroom: Preparing Students for the Emotional Challenges of Lawyering*, 25 PERSP: TEACHING LEGAL RES. & WRITING 107, 110 (2017).



emphasized in the course.<sup>387</sup> Explaining why these skills are being included and describing the research showing how they are linked to educational and/or professional success legitimizes their value.<sup>388</sup> Providing students with explicit statements of characteristics and skills they should acquire in a course allows them to see their progress and appreciate their efforts.<sup>389</sup> A checklist also helps students be aware of the skills they have developed and understand the work required to master them.<sup>390</sup>

## 2. Incorporate Grit and Growth Mindset Throughout the Course

The very first class session of a semester can devote time to explaining how grit and growth mindset will be promoted in the course.<sup>391</sup> Faculty can incorporate grit and growth mindset as skills for students to gain and/or as methods to master the knowledge and skills to be gained in the course. To help students prepare for what is expected in the course, faculty can start with discussing mindset, explaining that challenges and setbacks are inherent to legal study and practice, and teaching students that intelligence is malleable.<sup>392</sup> Courses can utilize a combination of faculty and peer feedback, self-assessment, and reflection to achieve increased grit, growth mindset, and mastery of other important characteristics and skills.

As students progress toward mastering a list of skills provided at the outset of a course,<sup>393</sup> they can measure and take into account their own levels of grit and growth mindset along the way. Students can assess their own mindsets and levels of grit using simple online assessments: the grit scale, developed by Angela Duckworth,<sup>394</sup> and a mindset test, developed by Carol Dweck.<sup>395</sup> Faculty could ask students to complete these simple online exercises and then reflect on their own grit levels and growth mindset at the start of a course. This sets the stage to continuously refer back to these concepts throughout the course and ask students

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<sup>387</sup> *Id.* Turner's syllabus explains that these values are connected to professional success. She explains the concept of growth mindset and states that she hopes to convince her students that accepting challenges is critical to their development as a lawyer. Similarly, she explains the value of grit and encourages to dig deep and prove that they can persevere when they are tempted to give up.  
<sup>388</sup> *Id.*

<sup>389</sup> Sperling & Shapcott, *supra* note 199, at 75-76.

<sup>390</sup> *Id.* at 76.

<sup>391</sup> *Id.* at 74-75.

<sup>392</sup> Baum, *supra* note 103, at 61.

<sup>393</sup> *Id.* at 61-62.

<sup>394</sup> Angela Duckworth, Grit Scale, <https://angeladuckworth.com/grit-scale/> (last visited Aug. 22, 2019). This simple online assessment gives an individual grit score.

<sup>395</sup> Positivity Guides.net, Test Your Mindset Quiz, <https://www.positivityguides.net/test-your-mindset-quiz/> (last visited January 11, 2021); Wabisabi Learning, The Growth Mindset Quiz: How Does Your Mindset Measure Up?, <https://wabisabilearning.com/blogs/mindfulness-wellbeing/growth-mindset-quiz> (last visited January 11, 2021). These assessments provide feedback regarding whether a person more often displays a fixed or growth mindset.

to evaluate their performance in any course in light of their grit and growth mindset, and to reframe challenges in light of both.

### 3. Set Expectations for and Provide Specific Feedback

It is important that law students understand from the start of each course that faculty members will be giving critical feedback to help them learn from their mistakes.<sup>396</sup> In each course, faculty members should detail the amount and type of feedback that students should expect to receive. Not only is feedback critical, but the focus of the feedback students receive can greatly impact how they perceive and incorporate it.<sup>397</sup> Praising effort and strategy communicates to a student that they can control these variables, as opposed to intelligence, which they may not feel they can control.<sup>398</sup> Feedback that focuses on strategy helps students develop grit and growth mindset.<sup>399</sup> Utilizing a variety of feedback techniques can prevent student resistance to feedback.<sup>400</sup> Student frustration may accompany feedback as lower-than-expected scores on assessments challenge their views of their own competence.<sup>401</sup>

Feedback aimed to help students become self-regulated learners and evaluate their work helps them to better think critically and solve problems.<sup>402</sup> Feedback is especially helpful for students when it frames problems as temporary (focusing only on the assignment and error at hand), specific (clearly identifying the weakness), and hopeful (showing there is a path to success).<sup>403</sup> Constructive feedback also avoids labeling students by their abilities.<sup>404</sup> For instance, faculty should avoid the temptation to tell students that they are smart or good writers or that something will come easily to them.<sup>405</sup> Praising effort and progress instead allows students to see how they have grown.<sup>406</sup> Simple word choices also matter. Using “yet” can be very powerful to let the student know what they have done well and where there is room for growth.<sup>407</sup> For example, feedback could tell the student that they correctly identified a case or statute but have yet to completely synthesize them or to understand the entire holding.<sup>408</sup> The use of “and” instead of “or” is also helpful—a student can be both smart and struggling.<sup>409</sup> The word “but” should be

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<sup>396</sup> Sperling & Shapcott, *supra* note 199, at 74.

<sup>397</sup> A.B.A. STANDARDS, *supra* note 38, at Standard 314; *see also* Baum, *supra* note 103, at 61.

<sup>398</sup> Sperling & Shapcott, *supra* note 199, at 77-78.

<sup>399</sup> *Id.* at 76.

<sup>400</sup> Christopher, *supra* note 243, at 57-58.

<sup>401</sup> Henning & Belian, *supra* note 254, at 38.

<sup>402</sup> Lee, *supra* note 362, at 70.

<sup>403</sup> *Id.* at 70-71.

<sup>404</sup> Bishop, *supra* note 121, at 995.

<sup>405</sup> *Id.* *See also* Rosen, *supra* note 213, at 338 (observing that it is vital to avoid ability-praise).

<sup>406</sup> Bishop, *supra* note 121, at 996.

<sup>407</sup> *Id.* at 997.

<sup>408</sup> *Id.*

<sup>409</sup> *Id.*

avoided—as it tends to diminish any feedback that comes before it.<sup>410</sup> And using the word “opportunity”—as in identifying opportunities for improvement—allows students to not just focus on what went wrong but also know what they need to do better next time.<sup>411</sup> When students receive feedback in ways that allow them to see problems as temporary and solvable, they are less likely to suffer from distress.<sup>412</sup>

#### 4. Provide Multiple Formative Assessments

Law school faculty can and should provide multiple formative assessments to enhance student learning.<sup>413</sup> Low stakes assessments improve learning,<sup>414</sup> while a single law school exam creates a situation where struggle can easily become failure.<sup>415</sup> Further, a single exam does not give students any guidance on how they can improve—meaning they may have gone through an entire semester without gauging whether they were on the right track.<sup>416</sup> Students rarely review their final exams, meaning they do not obtain feedback on where they fell short.<sup>417</sup>

Any law school course can further develop grit and growth mindset by using incremental approaches to assignments and formative assessments. Assessment also provides students with valuable feedback about their own learning and how they are progressing in a course.<sup>418</sup> Students are motivated by this process and may become more engaged in the classroom.<sup>419</sup> Giving students a chance to monitor their progress toward the learning goals of any course will provide an opportunity for the development of grit and growth mindset.<sup>420</sup>

Using multiple assessments allows faculty to determine how students are progressing with the material—signaling when they can move on to new concepts and highlighting where more attention is needed.<sup>421</sup> Formative assessments also help faculty collect information about student needs and progress.<sup>422</sup> If students are struggling, faculty can help them to approach the course and material with a growth mindset by encouraging them to appreciate their progress as they master new knowledge and skills. Further, testing students throughout the semester allows

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<sup>410</sup> *Id.* at 998.

<sup>411</sup> *Id.* at 999.

<sup>412</sup> Lee, *supra* note 362, at 70-71.

<sup>413</sup> Christopher, *supra* note 243, at 57.

<sup>414</sup> *Id.* at 55.

<sup>415</sup> *Id.* at 32.

<sup>416</sup> Sturm & Guinier, *supra* note 297, at 538.

<sup>417</sup> Henning & Belian, *supra* note 254, at 47.

<sup>418</sup> *Id.* at 25.

<sup>419</sup> *Id.* at 11-12.

<sup>420</sup> Baum, *supra* note 103, at 62.

<sup>421</sup> *Id.* at 24.

<sup>422</sup> *Id.* at 11-13.

them to better retain material—even students who answer a question incorrectly will better recall that information.<sup>423</sup>

#### v. Incorporate Reflection and Self-Evaluation

Reflection also helps students develop good judgment.<sup>424</sup> Students should seek feedback and have a dialogue about their work, and then reflect upon it.<sup>425</sup> Research shows that making students reflect on their learning creates better learning outcomes.<sup>426</sup> Furthermore, reflecting upon instances of bad judgment can improve judgment.<sup>427</sup> Journaling, analyzing past decisions, and contemplative practices each provide opportunities for reflection.<sup>428</sup> Students can also be asked to reflect on their strategies for their assignments and work, and this discussion of strategy allows the student to feel control over the process rather than judgment of the final product.<sup>429</sup> Through this reflection, a student learns that critical feedback is how strategies for success are acquired.<sup>430</sup>

Reflection can be accomplished through relation to peers. For example, students could interview each other about challenges and setbacks they have experienced and their views on the expansive nature of intelligence.<sup>431</sup> Having students pair up and tell their partner about overcoming a challenge, and then having their partner retell that story to show how that person overcame adversity and succeeded, helps students gain insight into their own persistence.<sup>432</sup>

Self-evaluation is critical to students' understanding of the learning process and their role in it. Asking students to reflect upon a challenge encourages both grit and growth mindset,<sup>433</sup> particularly when asked to reflect on an experience or task and determine what came easily and what did not.<sup>434</sup> Students should learn to detect patterns in their wrong answers.<sup>435</sup> There is a danger that some students are unable to extract useful lessons from a self-assessment exercise, for example, a sample answer.<sup>436</sup> Students may also benefit from giving and receiving peer feedback.<sup>437</sup> For example, a course could require students to critique each other,

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<sup>423</sup> Christopher, *supra* note 243, at 56-57.

<sup>424</sup> ROADMAP, *supra* note 54, at 116.

<sup>425</sup> *Id.* at 117.

<sup>426</sup> Allen & Jackson, *supra* note 252, at 16-17.

<sup>427</sup> ROADMAP, *supra* note 54, at 119.

<sup>428</sup> BUILDING ON BEST PRACTICES, *supra* note 29, at 261-70.

<sup>429</sup> Sperling & Shapcott, *supra* note 199, at 77.

<sup>430</sup> *Id.*

<sup>431</sup> Baum, *supra* note 103, at 61.

<sup>432</sup> BUILDING ON BEST PRACTICES, *supra* note 29, at 265.

<sup>433</sup> Baum, *supra* note 103, at 61.

<sup>434</sup> Sperling & Shapcott, *supra* note 199, at 76-77.

<sup>435</sup> Christopher, *supra* note 243, at 61.

<sup>436</sup> *Id.* at 27.

<sup>437</sup> *Id.* at 28.

but then through faculty-led discussion, ask students to reflect on how they received feedback.<sup>438</sup>

Self-reflection can also require students to tackle difficulties in any particular course. For example, Sperling and Shapcott developed instructions for students enrolled in an externship program:

In your externship, you will be asked to research areas of law you may not know anything about. You may be asked to write about legal issues in a format you haven't used before. You may also be asked to brief a lawyer or a judge orally about your thoughts on a case—again, something you probably have not practiced. By acceptance into the extern program, we know you have the ability to succeed in this new legal environment. We also know that some assignments will be especially challenging for you because you will have to apply some of the skills you learned in the past to new and different circumstances, sometimes with little or no guidance.

This evaluation form should help you through the process of mastering the kinds of skills you will need to become a successful lawyer. The purpose of this evaluation is to reflect on what tasks came easily to you and what tasks you found more difficult to master. Begin by filling out this evaluation form after completing any written assignment you have been given. When you have worked through a difficult task and completed an assignment that you were either uncertain about or you think you could have done a better job, make an appointment with your externship supervisor to discuss your work. Before meeting with your supervisor, you should make a list of the strategies you used to complete the task and be prepared to share them with your supervisor. This form is to help your supervisor see where to provide feedback that will help you develop as a lawyer. Ask for critical feedback when you meet with your supervisor. The time spent with your supervisor and this evaluation form will be one of the most valuable experiences of your externship—when your supervisor is sharing the highly adaptive strategies he or she mastered through years of experience.<sup>439</sup>

This language could be adapted to other law school courses and settings.<sup>440</sup> Having students reflect on what came easily to them and what presented a challenge could be an exercise in any course. Reflection allows students to see their progress and success and see the path to learning material they have yet to master. This practice promotes both grit and growth mindset.

## CONCLUSION

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<sup>438</sup> Brown, *supra* note 45, at 317.

<sup>439</sup> Sperling & Shapcott, *supra* note 199, at 76-77 (citing Sperling's unpublished Extern Evaluation Form).

<sup>440</sup> *Id.* at 76.

The authors of *Best Practices* wisely observed that “any description of ‘best practices’ will soon be eclipsed as we refine our understanding of the desirable goals of legal education and how to achieve them.”<sup>441</sup> Similarly, the authors of *Building on Best Practices* expressed their “hope that soon yet another effort to map ongoing changes will be necessary as the terrain of legal education continues to shift.”<sup>442</sup> This era of revelations from employers about what makes attorneys successful is an opportunity to further examine legal education. Employers will increasingly expect students to enter practice possessing characteristics and professional competencies for success. Law schools must be transparent about the need for this sophisticated blend of skills and competencies and arm law students with the tools needed to understand and develop the skills and characteristics they will need to practice law. Grit and growth mindset are part of this skill set, and are particularly important tools for today’s law students to navigate the pressures of law school and combat distress. Grittier law students may very well be better able to weather the demands of legal practice, and development of a growth mindset is key to the long-term perseverance required to achieve grit.<sup>443</sup>

Law schools can promote grit and growth mindset at an institutional and course level. A culture that promotes failure and struggle as learning tools and encourages students to frame struggles through grit and growth mindset will enable students to see and appreciate their progress. Schools should be clear about how the curriculum and other resources will help students develop legal knowledge and professional skills.<sup>444</sup> Faculty should demonstrate their commitment to student success and give students more opportunities to take responsibility for their own learning as they progress.<sup>445</sup> Specific and helpful feedback and the opportunity for dialogue and self-reflection are key tools to achieve this.<sup>446</sup> Ultimately, the “curriculum and culture should emphasize each student taking ownership” of acquiring the legal knowledge and skills they need for success,<sup>447</sup> including grit and growth mindset. These skills are critical to the pathway to successful lawyering.

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<sup>441</sup> BEST PRACTICES, *supra* note 2, at 4.

<sup>442</sup> BUILDING ON BEST PRACTICES, *supra* note 29, at xli-xlii.

<sup>443</sup> Zimmerman & Brogan, *supra* note 177, at 149.

<sup>444</sup> *Id.*

<sup>445</sup> See Hamilton, Monson & Organ, *supra* note 97, at 11.

<sup>446</sup> *Id.* at 12.

<sup>447</sup> *Id.* at 14.