

**CULTIVATING GRIT IN LAW STUDENTS: GRIT, DELIBERATE
PRACTICE, AND THE FIRST-YEAR LAW SCHOOL
CURRICULUM**

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ABSTRACT

What characteristics reliably predict success? Why is it that some individuals accomplish more than others of equal intelligence? Why do some make the most of their abilities while others barely tap into their potential? In examining these questions, psychologist Angela Duckworth discovered that grit was the one characteristic all highly successful individuals had in common.

Grit, defined as “passion and perseverance for the long-term goal,”¹ has proven to reliably predict success in a variety of domains. In the educational setting, specifically, grit has emerged as a strong predictor for student success at both the secondary and undergraduate levels. Yet, despite the research showing a positive relationship between grit and academic achievement, grit remains virtually unexamined in the context of legal education.

This Article illustrates why grit is a concept worth examining in legal education. In particular, the Article argues that cultivating grit in law students is a pedagogical goal worth pursuing in legal education in order to improve student learning and promote student success. After exploring how grit can grow, the Article suggests that one effective way for nurturing grit in law students is to help students develop the capacity to engage in deliberate practice. Deliberate practice, described as “the most powerful and effective way to improve one’s abilities” in every area studied, has

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¹ Angela L. Duckworth et al., *Deliberate Practice Spells Success: Why Grittier Competitors Triumph at the National Spelling Bee*, 2 SOC. PSYCHOL. & PERSONALITY SCI. 174, 179 (2011) [hereinafter Duckworth et al., *Deliberate Practice Spells Success*].

been shown to also help grit grow.² By incorporating the principles of deliberate practice into the first-year law school curriculum, law schools can therefore help cultivate grit in students, in the hope that the grittier our students are, the more likely they will be to succeed in law school and beyond.

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² ANDERS ERICSSON & ROBERT POOL, PEAK: SECRETS FROM THE NEW SCIENCE ON EXPERTISE 25 (2016) [hereinafter ERICSSON & POOL, PEAK].

I. INTRODUCTION

Over the last few years, grit has become somewhat of a national obsession.³ Angela L. Duckworth, a psychologist at the University of Pennsylvania, shined a new spotlight on “grit” back in 2007.⁴ Duckworth defined grit as “perseverance and passion for long term goals.”⁵ Grit encompasses “working strenuously toward challenges, maintaining effort and interest over years despite failure, adversity, and plateaus in progress.”⁶ In other words, grit requires both a behavioral persistence in the face of adversity and a sustained, passionate pursuit of goals.⁷ Gritty individuals, Duckworth argues, approach achievement as a marathon, fully aware that endurance and stamina are the qualities that will ultimately lead them to the finish line.⁸ Gritty individuals stay on task even when disappointment or loss of interest may lead others to move on to something else.⁹ As a result, grit is essential to high achievement, irrespective of the domain.¹⁰ In the educational setting, more specifically, grit has been shown to be a reliable predictor for academic achievement at both the

³ See, e.g., David Denby, *The Limits of “Grit”*, THE NEW YORKER (June 21, 2016), <https://www.newyorker.com/culture/culture-desk/the-limits-of-grit> [<https://perma.cc/L6K9-CJM6>] (noting “Grit” has become a “pop-psych smash,” and explaining over eight million people viewed Angela Duckworth’s TED talk on grit before the publication of her book); Rachel M. Cohen, *Grit, Privilege, and American Education’s Obsession with Novelty*, AM. PROSPECT (Apr. 10, 2015), <http://prospect.org/article/can-grit-save-american-education> [<https://perma.cc/4TWF-EXWP>] (stating educators, policy makers, and the media have all embraced the concept of grit and its potential). See also Paul Tough, *What if the Secret to Success is Failure*, THE N.Y. TIMES MAG. (Sept. 14, 2011), <https://www.nytimes.com/2011/09/18/magazine/what-if-the-secret-to-success-is-failure.html> [<https://perma.cc/B7VG-EKY S>]; PAUL TOUGH, HOW CHILDREN SUCCEED: GRIT, CURIOSITY, AND THE HIDDEN POWER OF CHARACTER xv–xvi, 74–75 (2012); Judy Holland, *Grit: The True Ingredient to your Kids’ Success*, THE WASH. POST (Mar. 9, 2015), https://www.washingtonpost.com/news/parenting/wp/2015/03/09/grit-the-key-ingredient-to-your-kids-success/?noredirect=on&utm_term=.186c57efa4f8 [<https://perma.cc/8ZRV-LCPD>]; Daniel R. Portfield, *Cultivating ‘Grit’ on a College Campus*, FORBES (Apr. 11, 2017), <https://www.forbes.com/sites/dporterfield/2017/04/11/grit-and-persistence/#5e67f0751982> [<https://perma.cc/CDL8-NGP 8>].

⁴ See Angela L. Duckworth et al., *Grit: Perseverance and Passion for Long Term Goals*, 92 J. PERSONALITY & SOC. PSYCHOL. 1087, 1087 (2007) [hereinafter Duckworth et al., *Grit*].

⁵ *Id.*

⁶ *Id.* at 1087–88.

⁷ See *id.*

⁸ See *id.* at 1088. See also Duckworth et al., *Deliberate Practice Spells Success*, *supra* note 1, at 175.

⁹ See Duckworth et al., *Grit*, *supra* note 4, at 1088.

¹⁰ *Id.*

secondary and undergraduate levels.¹¹ Yet, grit remains virtually understudied in the context of legal education.

This Article illustrates why grit is a concept worth examining and a pedagogical goal worth pursuing in legal education. Part II of the Article provides an overview of the research on grit as it relates to achievement in general.¹² Part III explores whether and how grit can be cultivated.¹³ Acknowledging and addressing some of the critiques grit has drawn in recent years, Part IV then argues that grit remains an important predictor for achievement and, as such, is a characteristic law schools should strive to nurture in students in order to promote success both in law school and in law practice.¹⁴ The Article concludes by suggesting that one effective way to cultivate grit in law students is to incorporate deliberate practice principles into the first-year law school curriculum.¹⁵

II. GRIT: WHY DOES GRIT MATTER?

In the early 2000s, Duckworth and her colleagues set out to examine why “some individuals accomplish more than others of equal intelligence,” even when intelligence has served as the single, most reliable predictor for achievement in a variety of contexts.¹⁶ The answer, they discovered, was grit. Grit, which Duckworth and her colleagues described as “passion and perseverance for long term goals,” was the one personal characteristic

¹¹ See, e.g., Zorana Ivcevic & Mark Brackett, *Predicting School Success: Comparing Conscientiousness, Grit, and Emotion Regulation Ability*, J. RES. PERSONALITY 29, 31 (2014) (secondary level); Terrell L. Strayhorn, *What Role Does Grit Play in the Academic Success of Black Male Collegians at Predominantly White Institutions*, 18 J. AFR. AM. STUD. 1, 5 (2013) (undergraduate level).

¹² See *infra*, Section II (providing an overview of grit).

¹³ See *infra*, Section III (discussing whether and how grit can be taught).

¹⁴ See *infra*, Section IV (addressing some of the critiques on grit and explaining why being gritty in law school and law practice can lead to success).

¹⁵ See *infra*, Section V (offering specific examples for cultivating grit in the first-year law school curriculum).

¹⁶ See Duckworth et al., *Grit*, *supra* note 4, at 1087–88. In their groundbreaking work, Duckworth and her colleagues relied on a number of previous studies demonstrating the impact of IQ on achievement as it relates to college and graduate school GPA. *Id.* at 1088. In particular, Duckworth and her colleagues wanted to find why some individuals make the most of their abilities by pushing themselves to the limit while others only tap into a small part of their resources. *Id.* Acknowledging some characteristics, such as emotional intelligence, self-confidence, and creativity, may play a varying role depending on the field, Duckworth and her colleagues set to study whether high-achieving individuals shared certain characteristics that could explain the distinction between their successes and the less successful performance of their counterparts. *Id.* at 1087.

shared by the majority of highly successful individuals across the board, setting these individuals apart from all others in their respective fields.¹⁷

To test their hypothesis that grit is as essential to achievement as intelligence and has a stronger impact on achievement than other similar traits, such as self-control and conscientiousness,¹⁸ Duckworth and her colleagues developed the Grit Scale—a self-reported questionnaire designed as a stand-alone measure of grit.¹⁹ They then used the Grit Scale in a series of studies designed to determine the precise nature of the relationship between grit and achievement.²⁰ Three of these original studies are illustrated below.

First, in an attempt to determine the impact of grit on academic achievement, Duckworth and her colleagues examined the relationship between grit and cumulative GPA among undergraduate students at an elite university.²¹ The results of the study revealed that students who scored higher on the Grit Scale had higher GPAs than their less gritty peers.²² The results further revealed an even stronger relationship between grit and academic performance when students' SAT scores, used as a measure for mental abilities and intelligence, were held constant.²³ This last result

¹⁷ *Id.* at 1087, 1089.

¹⁸ *Id.* at 1089 (Conscientious individuals, according to Duckworth, are “thorough, careful, reliable, organized, industrious, and self-controlled,” with self-control defined as “the ability to resist temptation and control impulses.” Grit differs from conscientiousness because grit focuses on long-term endurance, as opposed to short-term intensity, and consistent goals and interests).

¹⁹ *Id.* at 1089. See also Angela Duckworth, *Grit Scale*, <https://angeladuckworth.com/grit-scale/> [<https://perma.cc/KR8S-Z3Z7>]. Duckworth designed the Grit Scale to measure individual differences at a certain point of time rather than to assess behavioral changes over time. Duckworth et al., *Grit*, *supra* note 4, at 1089. Because the Grit Scale is self-reporting, however, Duckworth cautions against its use in high-stake decision-makings, such as admissions or hiring decisions. *Id.* But see Scott Jaschik, *New Doubts on Using ‘Grit’ to Identify Student Talent*, INSIDE HIGHER EDUC. (Oct. 2, 2017), <https://www.insidehighered.com/admissions/article/2017/10/02/new-doubts-are-being-raised-about-using-grit-identify-student-talent> [<https://perma.cc/HMM2-ZN69>] (discussing the rising level of support for using grit in college admissions).

²⁰ See Duckworth et al., *Grit*, *supra* note 4, at 1093.

²¹ *Id.* (The participants in this study were 139 undergraduate students, majoring in Psychology, at the University of Pennsylvania. Of those participants, 69% were women and 31% were men).

²² *Id.*

²³ *Id.* at 1093 (The study did confirm the researchers' original expectation that SAT scores were related to undergraduate GPA as well).

supported the hypothesis that in addition to intelligence, grit, too, has a significant impact on academic achievement.²⁴

Expanding the scope of their research beyond pure academic achievement, Duckworth and her colleagues then examined whether grit could predict both GPA and retention at the West Point Military Academy.²⁵ Consistent with the results of their study on grit and cumulative GPA for undergraduate students, the results from the West Point study showed grit was a strong, though not the best, predictor for both first-year GPA and the overall Military Performance Score, which includes cadets' grades and performance ratings.²⁶ Grit, however, proved to be the single, most reliable predictor for the retention of West Point cadets.²⁷ In particular, the study results showed that cadets with higher grit scores were more likely to complete the rigorous summer training program, known as "Beast Barracks,"²⁸ than their less gritty counterparts.²⁹

²⁴ See *id.* The results also showed that students with lower SAT scores tended to be grittier than their peers with higher SAT scores. *Id.* However, given that the average SAT score of the participants in this study was 1,415 (a score achieved by less than 4% of SAT takers), Duckworth and her colleagues concluded that among students of relatively high intelligence, those with lower mental abilities make up for the difference by working harder and displaying higher levels of determination. *Id.* See also Joanna Moutafi et al., *Can Personality Factors Predict Intelligence?*, 38 J. PERSONALITY & INDIVIDUAL DIFFERENCES 1021, 1031 (2005) (finding conscientiousness, often described in the same family as grit, and intelligence to be inversely correlated).

²⁵ Duckworth et al., *Grit*, *supra* note 4, at 1094. See also ANGELA DUCKWORTH, GRIT: THE POWER OF PASSION AND PERSEVERANCE 3–10 (2016) [hereinafter GRIT] (detailing the research of grit and West Point cadets' academic and overall performance, both during the initial summer training program and throughout their time at the military academy).

²⁶ Duckworth et al., *Grit*, *supra* note 4, at 1095–96 (Self-control was a better predictor for GPA than grit). Although self-control and grit are often used interchangeably, they are not one and the same, according to Duckworth. See Angela Duckworth & James J. Gross, *Self-Control and Grit: Related but Separable Determinants of Success*, CURRENT DIRECTIONS IN PSYCHOL. SCI. 1, 3–4 (2014). Self-control is "the capacity to regulate attention, emotion, and behavior" when presented with conflicting goals—one that has an immediate value and another that has a more enduring value. *Id.* at 2. See also Angela Lee Duckworth & Martin E. P. Seligman, *Self-Discipline Gives Girls the Edge: Gender in Self-Discipline, Grades, and Achievement Test Scores*, 98 J. EDUC. PSYCHOL. 198, 199 (2006) (defining self-control as "the ability to suppress prepotent responses in the service of a higher goal."). Grit, on the other hand, is passion and perseverance for long-term goals. See Duckworth & Gross, *supra* note 26, at 3. As a result, self-control is more closely related to everyday success while grit is more closely related to long-term success. *Id.* at 5.

²⁷ Duckworth et al., *Grit*, *supra* note 4, at 1095.

²⁸ GRIT, *supra* note 25, at 4. Beast Barracks is a seven-week intensive training that is often described as "the most physical and emotionally demanding part of [a cadet's] four years at West Point." *Id.* For seven straight weeks (there are no weekends and no breaks), cadets begin training at 5:00 a.m. and end each day at 10:00 p.m. *Id.* at 4–5. Of the roughly
(continued)

In fact, grit predicted who would complete Beast Barracks better than any other factor, including SAT score, class rank, leadership potential, and physical aptitude.³⁰ Interestingly, the study found no relationship between grit and a cadet's Whole Candidate Score,³¹ the most important factor for admission to West Point.³² In other words, what separated the cadets who made it through Beast Barracks from those who dropped out was not intelligence, leadership experience, or athletic ability—it was grit.³³

Duckworth and her colleagues further examined the relationship between grit and achievement by studying whether grit could predict success at the Scripps National Spelling Bee.³⁴ For purposes of this study, the authors defined success as the total number of rounds each competitor completed—the higher the rounds, the more successful the competitor.³⁵ Grit again emerged as a reliable predictor for performance and success, showing grittier competitors advanced to more rounds in the competition than their less gritty peers.³⁶ Moreover, when factors such as age were held constant, the only other positive predictor for success based on the study, grit reliably predicted the final round, suggesting grit drives achievement rather than the other way around.³⁷

1,200 cadets who are admitted to West Point each year, about one in five drops out before graduation and about one in twenty drops out during Beast Barracks. *Id.* at 3–4.

²⁹ See Duckworth et al., *Grit*, *supra* note 4, at 1095. The study showed that cadets who were a standard deviation higher in grit were 60% more likely to survive through Beast Barracks than their less gritty peers. *Id.* at 1095–96. At the same time, cadets who were a standard deviation higher in self-control were 50% more likely to complete the intensive summer training program. *Id.* at 1095.

³⁰ See *id.*

³¹ *Id.* The Whole Candidate Score is a combination of each cadet's SAT score, high school rank adjusted for class size, demonstrated leadership ability, and physical aptitude. *Id.* The Whole Candidate Score is West Point's best estimation of each applicant's talent and ability to acquire the skills necessary for a successful military leader. GRIT, *supra* note 25, at 6.

³² Duckworth et al., *Grit*, *supra* note 4, at 1095. See also GRIT, *supra* note 25, at 3 (explaining that admission to West Point requires top SAT or ACT scores, outstanding high school grades, a nomination from a Congress member or the Vice President of the United States, and an excellent performance on a physical aptitude exam).

³³ Duckworth et al., *Grit*, *supra* note 4, at 1096. See also Duckworth et al., *Deliberate Practice Spells Success*, *supra* note 1, at 175.

³⁴ Duckworth et al., *Grit*, *supra* note 4, at 1096.

³⁵ See *id.*

³⁶ *Id.* at 1097.

³⁷ *Id.* (The study showed that while both grit and age were significant predictors for the advancement to higher rounds in the competition, competitors with higher grit scores (a standard deviation higher than the mean for other competitors of the same age) were 41% more likely to advance to higher rounds).

Collectively, these studies showed that grit was not only essential to high achievement, but that grit could also explain variances in achievement beyond those explained by intelligence.³⁸ Duckworth and her colleagues thus concluded that “achievement is the product of talent and effort.”³⁹ Talent affects the rate at which skill improves with effort,⁴⁰ but “effort makes skill productive.”⁴¹ Effort thus counts twice.⁴² Put differently, while talent certainly matters in predicting achievement, grit matters more.⁴³

III. GRIT: CAN GRIT BE CULTIVATED?

Given grit’s role in predicting achievement, Duckworth next turned to examine whether grit can be cultivated. The short answer, she found, is that it can.⁴⁴ Grit can grow, and both nature and nurture play a role in that growth process.⁴⁵ Like other psychological traits, grit is genetically influenced; it is partly hereditary.⁴⁶ And like other psychological traits, grit is also influenced by experience; it is partly nurtured.⁴⁷ Grit is, therefore, not fixed.⁴⁸ It can and does change over time,⁴⁹ and it can be cultivated.⁵⁰ This section first addresses how grit can be cultivated from the outside in and then explains the process for growing grit from the inside out.

A. *Cultivating Grit from the Outside In*

Duckworth suggests three distinct methods for cultivating grit from the outside in: (1) “parenting” for grit; (2) encouraging participation in, commitment to, and follow through for “hard” things, such as

³⁸ *Id.* at 1098.

³⁹ *Id.*

⁴⁰ GRIT, *supra* note 25, at 41.

⁴¹ *Id.* at 42.

⁴² *Id.*

⁴³ *See id.* at 14, 42.

⁴⁴ *See id.* at 90.

⁴⁵ *Id.* at 80–82.

⁴⁶ *Id.* To support her conclusion that grit is partly hereditary, Duckworth describes the results of a study conducted by researchers in London that included administering the Grit Scale to over two thousand pairs of teenage twins. *Id.* at 81–82. The results of the study estimated the persistence aspect of grit to be 37% hereditary, and the passion aspect to be about 20% hereditary. *Id.* at 82. As with other psychological traits, however, no single gene for grit exists. Rather, grit is polygenic, meaning it is influenced by a number of genes. *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 89.

⁴⁹ *Id.* at 78.

⁵⁰ *See id.* at 89–92.

extracurricular activities; and (3) creating a culture of grit.⁵¹ Under the first method, “parenting” for grit, Duckworth includes anyone on the outside interested in encouraging grit in others.⁵² The term “parenting”⁵³ is thus not limited to parents because whether it is a parent, a teacher, a coach, or a mentor, a person devoted to cultivating grit in others acts, according to Duckworth, is cultivating grit in a “parent-like” manner.⁵⁴ The most effective type of “parenting,” when it comes to cultivating grit from the outside in, is “psychologically wise parenting.”⁵⁵ Psychologically wise parents are both demanding and supportive.⁵⁶ They set high standards for their children, but they also show them support and affection, fully appreciating that “children need love, limits, and latitude to reach their full potential.”⁵⁷

The concept of “psychologically wise parenting” is equally applicable to teaching. Just as psychologically wise parents can help grow their children’s grittiness, psychologically wise teachers can help their students get grittier.⁵⁸ Like psychologically wise parents, psychologically wise teachers are both demanding and supportive.⁵⁹ They have high expectations for their students, but they also provide the needed encouragement, support, and confidence for students to meet these expectations.⁶⁰ The message psychologically wise teachers send to their students is this: “I have very high expectations *and* I know that you can reach them.”⁶¹ And research shows that when teachers are both demanding⁶² and supportive,⁶³ they are more effective in not only

⁵¹ See generally *id.* at 199–268.

⁵² *Id.*

⁵³ See *id.* at 199.

⁵⁴ *Id.*

⁵⁵ *Id.* at 211–12.

⁵⁶ *Id.* at 212.

⁵⁷ *Id.* at 211–12.

⁵⁸ See *id.* at 218.

⁵⁹ *Id.*

⁶⁰ See *id.*

⁶¹ See *id.* at 218–19 (emphasis added). See also David Yeager et al., *Breaking the Cycle of Mistrust: Wise Interventions to Provide Critical Feedback Across the Racial Divide*, 143 J. EXPERIMENTAL PSYCHOL. 2, 808–20 (2014) (showing academic improvements when teacher feedback on student essays communicated both the high standards the teacher had for the student, and a personal assurance in the student’s abilities to meet those standards).

⁶² See GRIT, *supra* note 25, at 218 (Demanding teachers are teachers who are described by their students as follows: “My teacher accepts nothing less than our best efforts” or “Students in this class behave the way my teacher wants them to.”).

⁶³ See *id.* (Supportive teachers are teachers for whom students say: “My teacher seems to know if something is bothering me” or “My teacher wants us to share our thoughts.”).

increasing the academic skills of their students, but also in enhancing student engagement and well-being.⁶⁴

Parents and teachers, however, are not the only ones who can help nurture grit. Coaches, mentors, or anyone else, who encourage others to set high goals and then provide the guidance and support needed to reach these goals, can help cultivate grit from the outside in as well.⁶⁵ Take extracurricular activities, for example. Duckworth argues that sustained participation in structured extracurricular activities can help enhance grit.⁶⁶ Because extracurricular activities combine both the passion (interest) and perseverance (effort) aspects of grit,⁶⁷ encouraging participation in, commitment to, and follow through for such activities is another way for cultivating grit from the outside in.⁶⁸ But extracurricular activities are just one example of growing grit by doing “hard” things.⁶⁹ Any activity that requires consistent and concentrated effort toward learning or improving a skill can be a “hard” thing.⁷⁰ A “hard” thing requires perseverance—it requires sticking with the activity and following through on the commitment.⁷¹ That is not to say quitting is not an option; it most certainly is.⁷² Quitting, however, should only be an option either after the original commitment has been fulfilled, or after some logical stopping point has arrived.⁷³ After all, if grit is about sticking with a goal for the long-term, doing “hard” things and sticking with them, even as they get harder, is what can help grit grow.⁷⁴

⁶⁴ *Id.* See also Ronald F. Ferguson & Charlotte Danielson, *How Framework for Teaching and Tripod 7Cs Evidence Distinguish Key Components of Effective Teaching*, in DESIGNING TEACHER EVALUATION SYSTEMS: NEW GUIDANCE FROM THE MEASURES OF EFFECTIVE TEACHING PROJECT 98–133 (Thomas J. Kane et al. eds., 2015).

⁶⁵ See GRIT, *supra* note 25, at 219–20.

⁶⁶ See *id.* at 223–26.

⁶⁷ See *id.* at 225.

⁶⁸ *Id.* at 232–33.

⁶⁹ *Id.* at 241–42. Duckworth provides the example of the Hard Thing Rule she has implemented for her family. *Id.* at 241. The rule has three parts. *Id.* First, everyone in the family must do at least one hard thing. *Id.* The hard thing can be anything that requires daily deliberate practice—psychological research, piano, ballet, or real estate development all qualify. *Id.* Second, everyone can quit her hard thing, but quitting should come only after some logical stopping point has arrived. *Id.* Third, everyone gets to choose her hard thing. *Id.*

⁷⁰ *Id.* at 241.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See *id.* at 225–26.

The last method for growing grit from the outside in is through creating a collective culture of grit.⁷⁵ Duckworth defines culture as “the shared norms and values of a group of people”⁷⁶ and argues that to become grittier, one must join a culture that espouses grittiness.⁷⁷ Because culture has the power to shape one’s identity, individual grittiness is largely influenced by the collective grittiness of the group to which one belongs.⁷⁸ Joining a collectively gritty group of people can thus increase a person’s individual grittiness.⁷⁹ It is about conformity—the desire to belong and fit in.⁸⁰ It is what sociologist Dan Chambliss defines as the “easy” way to become grittier.⁸¹ The hard way to get grit is to do it on your own—from the inside out.⁸²

B. Cultivating Grit from the Inside Out

Duckworth asserts that when it comes to cultivating grit from the inside out, grit grows in stages and follows a particular order.⁸³ Grit starts with interest—an interest in what one does and a passion for doing it.⁸⁴ Finding and fostering one’s interest takes time.⁸⁵ Interest must first be discovered, a process that requires extensive exploration and experimentation on the path to self-realization.⁸⁶ Interest must then be developed,⁸⁷ which can be long and sometimes trying.⁸⁸ It requires hard work and patience, as well as encouragement and support from others who share a similar interest.⁸⁹ Finally, interest must be deepened.⁹⁰ It must be

⁷⁵ *Id.* at 245. *See also generally id.* at 199–268.

⁷⁶ *Id.* at 244.

⁷⁷ *Id.* at 245.

⁷⁸ *Id.* at 247–48.

⁷⁹ *Id.* at 247.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *See id.* at 91.

⁸⁴ *Id.* (As Duckworth points out, while gritty individuals thoroughly enjoy what they do, the level of enjoyment inevitably varies. Not all aspects of the work need to be enjoyed in the same manner. Some aspects will be less enjoyable than others and some aspects may be not enjoyable at all. On balance, however, gritty individuals find what they do as a whole captivating and meaningful).

⁸⁵ *See id.* at 103–05.

⁸⁶ *Id.* at 91, 104, 114–15.

⁸⁷ *Id.* at 103.

⁸⁸ *Id.* at 104.

⁸⁹ *Id.* at 104, 106, 116.

⁹⁰ *Id.* at 103.

refined and reimagined until it becomes more than just an interest—until it becomes a passion.⁹¹

Practice follows interest.⁹² Practice, however, is not just about the amount of time one spends on a task, it is also about the quality of time spent on the task.⁹³ The unrelenting willingness to engage in an effortful and focused practice in order to improve one's skills and achieve mastery, day in and day out, is a characteristic shared by the grittiest of individuals.⁹⁴ And the capacity to engage in and sustain this type of practice, known as “deliberate practice,” over an extended period of time is what separates gritty individuals from their less gritty counterparts.⁹⁵

After practice comes purpose.⁹⁶ Interest, Duckworth argues, can certainly lead to passion,⁹⁷ but personal interest alone is usually insufficient to sustain that passion over time.⁹⁸ Thus, although fostering a passion often begins with the discovery of a self-oriented interest, to sustain the passion, one needs more than interest—she needs purpose.⁹⁹ Duckworth defines purpose as “the intention to contribute to the well-being of others”¹⁰⁰ and asserts purpose is just as crucial as interest to the long-term sustainment of passion.¹⁰¹

At last, there is hope. Hope permeates all.¹⁰² While Duckworth lists hope as the last stage in growing grit from the inside out, she emphasizes hope plays a critical role throughout the growth process.¹⁰³ The type of hope grit depends on is the hope that one's own efforts can improve her future.¹⁰⁴ It is hope that keeps the gritty individuals going when times get tough.¹⁰⁵ And it is hope that motivates gritty individuals to keep trying despite setbacks, failures, and plateaus in progress.¹⁰⁶

⁹¹ See *id.* at 116.

⁹² *Id.* at 91.

⁹³ See *id.* at 117–18.

⁹⁴ See *id.* at 119–20.

⁹⁵ See *id.* at 120–22.

⁹⁶ *Id.* at 91.

⁹⁷ *Id.* at 143.

⁹⁸ *Id.* at 91.

⁹⁹ See *id.* at 143–44.

¹⁰⁰ *Id.* at 146.

¹⁰¹ *Id.* at 149.

¹⁰² *Id.* at 103, 169.

¹⁰³ See *id.* at 91–92.

¹⁰⁴ *Id.* at 169 (Duckworth makes the distinction between the hope that rests on outside factors to make things better and hope that accounts for one's own responsibility in making things better. The latter is the hope that grit depends on).

¹⁰⁵ *Id.* at 91–92.

¹⁰⁶ *Id.*

In sum, whether it is from the outside in or from the inside out, grit can and does grow—it can be cultivated. Grit can be cultivated from the outside in through the guidance and support of others—parents, coaches, teachers, and mentors all play a role in that process.¹⁰⁷ Grit can be built by practicing and following through on hard things,¹⁰⁸ or by joining a culture that espouses grittiness.¹⁰⁹ Growing grit from the inside out, on the other hand, means learning how to: discover, develop, and deepen an interest; acquire the capacity to engage in deliberate practice; seek and find an other-centered purpose; and remember to hope through it all.¹¹⁰ Having outside guidance and support during this internal growth process can certainly be beneficial, though it does not seem to be required. Rather, to get grittier, one must do the hard work on her own. After all, that is what grit is all about.

Knowing that grit can be cultivated and understanding how grit grows, the next question to be addressed is: should law schools strive to cultivate grit in law students? The next section below addresses that very question, answering it in the affirmative. Grit, the section concludes, is a characteristic worth cultivating in law students.

IV. GRIT: SHOULD GRIT BE CULTIVATED IN LAW STUDENTS?

Duckworth's groundbreaking research on grit and its impact on high achievement sparked national attention both in educational circles and in the public media.¹¹¹ Subsequent studies seemed to confirm her findings that grit had a positive correlation to student performance and success at both the secondary¹¹² and undergraduate levels.¹¹³ As a result, many

¹⁰⁷ See *id.* at 216–17, 269.

¹⁰⁸ See *id.* at 236.

¹⁰⁹ See *id.* 247.

¹¹⁰ *Id.* at 269.

¹¹¹ See, e.g., Tovia Smith, *Does Teaching Kids to Get 'Gritty' Help Them Get Ahead?*, NPR (Mar. 17, 2014), <https://www.npr.org/sections/ed/2014/03/17/290089998/does-teaching-kids-to-get-gritty-help-them-get-ahead> [<https://perma.cc/XB2E-ZSFH>] (“It’s become the new buzz phrase in education: ‘Got Grit?’”); Sarah D. Sparks, *‘Nation’s Report Card’ to Gather Data on Grit, Mindset*, EDUC. WEEK (June 2, 2015), <https://www.edweek.org/ew/articles/2015/06/03/nations-report-card-to-gather-data-on.html> [<https://perma.cc/EX2L-AAAD>] (explaining the National Assessment of Educational Progress will begin collecting data on students’ grit levels starting in 2017); Paul Tough, *How Kids Learn Resilience*, THE ATLANTIC MAG. (June 2016), <https://www.theatlantic.com/magazine/archive/2016/06/how-kids-really-succeed/480744/> [<https://perma.cc/QFX9KADA>] (describing the growing popularity of the idea that noncognitive traits, such as grit and resilience, have an impact on children’s school performance and success).

¹¹² See, e.g., Ivcevic, *supra* note 11, at 31; Lauren Eskreis-Winkler et al., *The Grit Effect: Predicting Retention in the Military, the Workplace, School and Marriage*, 5 (continued)

educators quickly embraced the idea of grit in the hope that grit's relationship to academic performance could lead to improving academic outcomes.¹¹⁴ Others, however, were not only cautious to accept Duckworth's findings, but seemed critical of what they described as a "single-minded" approach to achievement in the educational setting.¹¹⁵

This section first discusses the critiques of grit as it relates to academic achievement and then explains why, in spite of these critiques, cultivating grit in law students remains a worthwhile pedagogical goal in legal education.

A. Grit and Academic Achievement: Critiques and Responses

When it comes to grit and its impact on academic achievement, it is not without its critics. Some have argued, for example, that an overemphasis on grit shifts the burden from the institution to the individual student.¹¹⁶ Viewing grit as the key to student success, these critics assert, ignore, and even promote, the structural inequalities in K-12 public

FRONTIERS IN PSYCHOL. 1, 6 (2014) (finding grit to be positively correlated to graduation rates for Chicago Public School students).

¹¹³ See, e.g., Strayhorn, *supra* note 11, at 5–6 (finding grit was a positive predictor for academic achievement, as measured by students' GPA, for black students in a predominantly white institution, and that grit predicted grades more accurately than high school GPA or scores from standardized college entrance exams). See also Christopher A. Wolters & Maryam Hussain, *Investigating Grit and its Relations with College Students' Self-Regulated Learning and Academic Achievement*, 10 METACOGNITION & LEARNING 293, 293 (2015) (concluding the perseverance aspect of grit was strongly related to all indicators of self-regulated learning and suggesting self-regulated learning may serve as a "mediating pathway" for grit and its relationship to improved academic achievement); Lora Reed & Jim Jeremiah, *Student Grit as an Important Ingredient for Academic and Personal Success*, 44 DEV. IN BUS. SIMULATION & EXPERIENTIAL LEARNING 252, 253, 255 (2017) (noting a positive relationship between grit and student learning and retention).

¹¹⁴ See Reed, *supra* note 113, at 254 (describing grit as an important factor in increasing academic outcomes).

¹¹⁵ See Denby, *supra* note 3 (arguing "Duckworth's single-mindedness could pose something of a danger to the literal-minded" because an overemphasis on persistence at a young age may deprive children from exploring other worthwhile activities).

¹¹⁶ See, e.g., Christine Yeh, *Forget Grit, Focus on Inequality*, EDUC. WEEK (Apr. 14, 2017), <https://www.edweek.org/ew/articles/2017/04/14/forget-grit-focus-on-inequality.html> [<https://perma.cc/G7PM-MPMQ>] ("Schools that focus on grit shouldn't ignore structural inequalities because they assume that regardless of your race, class, or social context you can still triumph."); David Gooblar, *Yes, We Should Teach Character*, THE CHRON. OF HIGHER EDUC. (Dec. 20, 2017), <https://www.chronicle.com/article/Yes-We-Should-Teach-Character/242093> [<https://perma.cc/G7LZ-8U4U>] (noting an emphasis on grit as a predictor to academic achievement "indulges in student blaming" for what is ultimately the schools' shortcomings).

education.¹¹⁷ Accordingly, they have advocated for educational reforms aimed at fixing the systems that erect and perpetuate barriers to student achievement rather than reforms aimed at “fixing” the individual student.¹¹⁸ Others have questioned whether Duckworth’s research overstates the effect of grit,¹¹⁹ expressing skepticism over the relationship

¹¹⁷ See Katrina Schwartz, *Does the Grit Narrative Blame Students for Schools’ Shortcomings*, KQED NEWS: MINDSHIFT (May 5, 2015), <https://www.kqed.org/mindshift/39337%20does-the-grit-narrative-blame-students-for-schools-shortcomings> [<https://perma.cc/8KYV-9WDA>] (questioning whether the “grit narrative” ignores the structural barriers in public schools for students from low-income families and students with learning disabilities). See also Valerie Strauss, *The Problem with Teaching ‘Grit’ to Poor Kids? They Already Have It. Here is What They Really Need.*, THE WASH. POST (May 10, 2016), https://www.washingtonpost.com/news/answer-sheet/wp/2016/05/10/the-problem-with-teaching-grit-to-poor-kids-they-already-have-it-heres-what-they-really-need/?utm_term=.53144dbc6ee3 [<https://perma.cc/6KPR-KFDS>] (stating an overemphasis on grit distracts from focusing on the systematic inequalities that impact student success and can cause real harm by “romanticizing poverty as a character-building experience.”); Alfie Kohn, *Grit: A Skeptical Look at the Latest Educational Fad*, INDEP. SCH. (2014), <https://www.alfiekohn.org/article/grit/?print=pdf> [<https://perma.cc/3ZE9-YRGX>] (asserting Duckworth’s work attributes underachievement to students’ “failure to exercise self-discipline” rather than to structural factors rooted in social, economic, and even educational barriers some students face).

Duckworth does make a distinction, however, between self-discipline and grit. See *supra* note 26 and accompanying text. Self-discipline, a term Duckworth uses interchangeably with self-control, refers to “the ability to suppress prepotent responses in the service of a higher goal.” *Id.* Grit, on the other hand, encompasses passion and perseverance for long-term goals. *Id.* (explaining the difference between self-control and grit).

¹¹⁸ See Kohn, *supra* note 117 (explaining an increased focus on building persistence in students takes away from the larger issue of structural inequalities in our educational institutions, and stating “[t]he more we focus on people’s persistence . . . , the less likely we’ll be to question larger policies and institutions.”). See also Gooblar, *supra* note 116 (stating that while grit is not the only metric of student success that tends to ignore structural barriers in our educational system, grit is problematic because it so easily fits into “traditional American narratives of self-reliance and meritocracy—narratives used for centuries to justify a ‘natural’ racist, sexist, and classist hierarchy.”); Denby, *supra* note 3 (arguing that the growing focus on grit as the solution for underperforming students seems to ignore a “daunting truth: We don’t know how to educate poor children in this country.”).

Rather than placing the responsibility for educational attainment on each individual student to achieve through grit, these critics have argued schools must take a closer look at their own institutional grittiness—their perseverance and passion toward serving the needs of all students by creating and promoting equitable conditions for student success. See, e.g., Yeh, *supra* note 116 (asserting “[e]ducators need to . . . identify meaningful changes that tackle the discrepancies in student resources.”).

¹¹⁹ See Marcus Credé et al., *Much Ado about Grit: A Meta-Analytic Synthesis of the Grit Literature*, 113 J. PERSONALITY & SOC. PSYCHOL. 492, 492 (2017). The study analyzed a number of independent samples and concluded, among other things, that Duckworth’s research results overstate the impact of grit on achievement because grit is only moderately

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between grit and academic achievement to the exclusion of other factors that may influence students' educational experiences.¹²⁰ The emphasis on perseverance over passion in Duckworth's grit scale has also drawn some criticism as of late. "Persistence," some critics have claimed, is not always an asset; changing the course may often be the better option.¹²¹

While these critiques raise important questions about the relationship between grit and academic achievement, there, nonetheless, remains much to recommend about Duckworth's research on grit. To begin, even Duckworth's harshest critics agree that grit has some impact on academic achievement and that grittier students have some advantage over their less gritty peers when it comes to academic performance.¹²² Moreover, much

related to academic performance. *See id.* at 502. Specifically, the study showed what Credé described only a "modest" correlation of 0.18 between grit and academic performance. *Id.* at 499, 502. In response, Duckworth defended the statistics in her research as factually accurate and explained the findings on the independent impact of grit to academic achievement were consistent with the findings of Credé's meta-analysis. *See* Anya Kamanetz, *McArthur 'Genius' Angela Duckworth Responds to a New Critique of Grit*, NPR (May 25, 2016), <https://www.npr.org/sections/ed/2016/05/25/479172868/angela-duckworth-responds-to-a-new-critique-of-grit> [<https://perma.cc/BCA9-ULA4>]. These findings showed a correlation of 0.20 between grit and student success, perhaps suggesting the critique is more about the way Duckworth has presented her results rather than the results themselves. *See* Duckworth et al., *Grit*, *supra* note 4, at 1099.

¹²⁰ *See, e.g.*, Denby, *supra* note 3 (criticizing Duckworth for overemphasizing grit and failing to account for other factors that may impact achievement, including family background, opportunity, culture, or economic environment, as well as for excluding from her list of character traits important to success traits, such as honesty, courage, integrity, kindness, or responsibility for others).

¹²¹ *See* Denby, *supra* note 3; Saltman, *supra* note 118. In particular, critics of the persistence component of grit have pointed out that "not everything is worth doing, let alone doing for an extended period of time." Kohn, *supra* note 117. For example, when an activity presents a problem that resists a solution, these critics assert changing the course is often the sounder approach. *Id.* If an individual continues to persist in those situations simply for the sake of persistence—for the sake of sticking with it—persistence will not only become nonproductive, but it could also lead to negative outcomes, like killing creativity, originality, and even thoughtfulness. *See, e.g.*, Sarah Sparks, "Grit" May Not Spur Creative Success Scholars Say, EDUC. WEEK (Aug. 19, 2014), <https://www.edweek.org/ew/articles/2014/08/20/01grit.h34.html> [<https://perma.cc/X9PU-MCHU>]. Duckworth's recommendations, however, do not advocate for persistence in all circumstances. *See* Duckworth et al., *Grit*, *supra* note 4, at 1092 (stating that "[m]oving on from dead-end pursuits is essential to the discovery of more promising paths."). *See also* GRIT, *supra* note 25, at 241 (explaining it is fine to quit but suggesting the decision to quit should include thoughtful and reflective deliberation).

¹²² *See, e.g.*, *supra* note 119 and accompanying text (finding a modest relationship between grit and academic achievement, despite the authors' criticism of Duckworth's work); Rachel Cohen, *Teaching Character: Grit, Privilege, and American Education's Obsession with Novelty*, THE AM. PROSPECT (Apr. 10, 2015), <http://prospect.org/article/can->

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of the concerns about grit have been raised in the context of primary and secondary education,¹²³ and while it is possible some of these concerns apply beyond K-12 public education, they seem less warranted in the context of professional schools, such as law schools.

The concern that grit's focus on persistence may preclude students from exploring different interests during their early educational experiences illustrates why some critiques may be less applicable to legal education. By the time students enter law school, for example, they have arguably had numerous opportunities to explore different disciplines and activities, quit the ones they had no interest in pursuing further, and determine where their interests lie. As a result, by the time students begin their legal education journey, they have typically discovered at least some interest in the law and have committed to pursuing a law degree and a law career. Having the persistence to follow through on that long-term commitment can certainly be advantageous for law students, especially when considering how challenging and demanding both the law school experience and the practice of law can be. And while the relationship between grit and achievement is virtually unexamined in the law school setting,¹²⁴ grit's impact on achievement in law practice, as described in the study below, supports the assertion that grit, despite its critiques, remains a characteristic worth cultivating in law students.

grit-save-american-education [<https://perma.cc/PBM4-NKHY>] (quoting Eldar Shafir, a critic of Duckworth's work, for acknowledging that "whoever you are, having grit will be better than not having grit.").

¹²³ See, e.g., Kohn, *supra* note 117.

¹²⁴ To date, the only study on grit in the context of legal education comes from Emily Zimmerman and Leah Borgan at Drexel University School of Law. See generally Emily Zimmerman & Leah Borgan, *Grit and Legal Education*, 36 PACE L. REV. 114 (2015). Zimmerman and Borgan studied the relationship between grit and law school GPA by surveying recent law school graduates. *Id.* at 134. Although the results did not show a statistically significant relationship between grit and law school GPA, Zimmerman and Borgan did not interpret the results as definitively showing grit had no impact on performance for law students. *Id.* at 142.

First, as the authors themselves acknowledged, the study included a very small sample—only one graduating class from only one law school in the nation. *Id.* at 134. Second, the study participants were law school graduates, meaning their performance in law school had already led to a successful outcome—completing their law school education. *Id.* at 144. Third, the average grit score for participants was relatively high, perhaps suggesting that "for students, individual differences in grit beyond a certain baseline grit level may not relate to differences in GPA." *Id.* at 142–43. Finally, as Zimmerman and Borgan explained, even if the results did not show a statistically significant relationship between grit and academic achievement, as measured by law school GPA, grit may, nevertheless, have a positive impact to other aspects of students' law school experience, such as overall satisfaction and well-being. *Id.* at 154.

B. Grit, Performance, and Achievement in Law Practice

In 2013, a few years after Duckworth published her groundbreaking work on grit, the American Bar Association Commission on Women in the Profession (Commission) launched the Grit Project.¹²⁵ The goal of the project was to enhance the effectiveness and promote the retention of women in the legal profession by educating women, among other things, on the science behind grit.¹²⁶ The project relied on Duckworth's earlier work on grit and achievement,¹²⁷ as well as the work of Milana Hogan, who studied whether and how grit impacts the performance and advancement of women in BigLaw.¹²⁸

The results of Hogan's initial research revealed that grit had a positive relationship to a number of measures of success in BigLaw.¹²⁹ In particular, Hogan found that grit was a strong predictor for a woman lawyer's annual billable hours, as well as for her perception of the quality of work she received within the firm.¹³⁰ Grit remained a strong predictor for these two measures of success in BigLaw even when other factors were held constant.¹³¹ More importantly, Hogan's findings showed that grit was the cause for, not simply the consequence of, success for women lawyers in BigLaw.¹³² Hogan's research, along with the attrition of women lawyers and the gender imbalance in leadership positions at law firms, motivated

¹²⁵ See MILANA L. HOGAN, GRIT, THE SECRET TO ADVANCEMENT: STORIES OF SUCCESSFUL WOMEN LAWYERS ix (2017). See also *The Grit Project*, AM. BAR ASSOC., https://www.americanbar.org/groups/diversity/women/initiatives_awards/grit-project/ [<https://perma.cc/VM64-GAUB>].

¹²⁶ See Martha Middleton, *ABA's Grit Project Aims to Help Women Advance in the Profession*, ABA J. (Nov. 2014), http://www.abajournal.com/magazine/%20article/true_grit_a_new_aba_project_helps_women_learn_personal_characteristics_that [<https://perma.cc/FUH8-E4YU>]; *Grit Project*, *supra* note 125. The project was launched under the leadership of then-Commission Chair, Roberta "Bobbi" Leidenberg. See HOGAN, *supra* note 125, at xi. Her vision for the project was "to create a comprehensive training program that would teach women lawyers to master [grit and growth mindset], empowering them to navigate everyday challenges and barriers." *Id.* at xi–xii. Although the project focused on both grit and growth mindset, this Article focuses on the grit aspect only.

¹²⁷ HOGAN, *supra* note 125, at xii.

¹²⁸ *Id.* (For purposes of her research, Hogan defined BigLaw as the law firms on the annual "Am Law 200" list, published by *The American Lawyer*). See also 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) [hereinafter Hogan's Dissertation].

¹²⁹ Hogan's Dissertation, *supra* note 128, at 117–18.

¹³⁰ *Id.* at 118.

¹³¹ *Id.*

¹³² *Id.* at 121–23.

the Commission to further study the impact of grit by initiating the Grit Project.¹³³

Specifically, because Hogan studied only a small subset of women lawyers (women practicing in BigLaw), the Commission sought to expand the scope of her research by studying the relationship between grit and success in the legal profession for women in solo practice, small and mid-size firms, corporations, government, and non-profit organizations.¹³⁴ The results of the subsequent research initiated by the Commission confirmed Hogan's initial findings. They showed that grit played a critical role in the success of women lawyers across practice settings.¹³⁵ Notably, the results also demonstrated that grit was not only a characteristic shared by successful women lawyers, but that grit also had a strong, statistically significant relationship to the success of women lawyers.¹³⁶

For example, the results showed a statistically significant relationship between grit and the overall satisfaction of women lawyers in solo practice.¹³⁷ Women in solo practice also believed that grit was an important contributor to career success.¹³⁸ Similarly, for women practicing in law firms of all sizes, grit was highly correlated to career success¹³⁹ and

¹³³ *Id.* at xiii.

¹³⁴ *Id.*

¹³⁵ *Id.* at 26. Acknowledging that success can have different meanings and that it will be difficult, if not impossible, to come up with a single definition of success to be applied across practice settings, the authors resolved to drafting various measures of success for each of the practice groups in the study. *Id.* at 12. For example, while receiving positive feedback on formal performance evaluation was a measure of success for women lawyers in large law firms, overall satisfaction with the work performed was a more accurate measure of success for solo-practitioners. *Id.* At the end, the final measures of success used in the study included a variety of options for each participant to choose from. *Id.* at 13.

¹³⁶ *Id.* Grit has also been described as one of the traits shared by successful trial lawyers. See Mark Bennett, *Eight Traits of Great Trial Lawyers: A Federal Judge's View on How to Shed the Moniker "I am a Litigator"*, 33 REV. LITIG. 1, 16–20 (2014). Reflecting on his twenty years of experience on the bench, Judge Bennett opined that while “[n]ot all gritty trial lawyers are great trial lawyers[,] . . . all great trial lawyers have grit.” *Id.* at 16. The reason, he explained, reflects the work required of them. *Id.* at 19. To be successful, trial lawyers have to be “willing to travel the long road and exert enormous effort.” *Id.* Along this road, most trial lawyers would face setbacks and failures. *Id.* Rather than being deterred by them, great trial lawyers view setbacks as learning opportunities and keep moving forward. *Id.* Their grit is what helps them persevere toward the long-term goal of becoming great trial lawyers. *Id.* at 19–20.

¹³⁷ See HOGAN, *supra* note 125, at 38–42.

¹³⁸ *Id.* at 37–38 (Solo practitioners also believed that, in addition to grit, growth mindset was as an important contributor to their professional success).

¹³⁹ *Id.* at 85–87. For purposes of this finding, the study defined success by looking primarily at billable hours because “more than any other measures of success . . . , number of hours worked is the most obvious and direct way for grit to manifest itself in the law firm

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was strongly related to how well women lawyers fared on formal performance evaluations.¹⁴⁰ Grit was also closely related to the quality of work women in law firms received,¹⁴¹ the level of ambition they displayed,¹⁴² and their ability to achieve professional success in the law firm environment.¹⁴³ For in-house, government, and nonprofit lawyers, grit again emerged as an important predictor for career advancement and a reliable indicator of on-the-job performance.¹⁴⁴

The results of the Commission's study could not, however, definitively confirm that grit alone caused the success of women lawyers.¹⁴⁵ This finding is not surprising. As Duckworth herself points out, while grit is a strong predictor for success in a variety of settings, "grit is far from the only—or even the most important—aspect of a person's character" that contributes to success.¹⁴⁶ And that brings us back to some of the critiques Duckworth's work on grit has generated. To the extent these critiques suggest Duckworth presents grit as *the* answer to achievement, the critiques misinterpret her recommendation. In fact, Duckworth explicitly cautions against viewing grit as the one-all solution to achievement.¹⁴⁷ Character, Duckworth notes, is plural.¹⁴⁸ Thus, in addition to grit, highly successful individuals have higher levels of self-control, gratitude, social intelligence, curiosity, and zest.¹⁴⁹ Grit, however, remains the strongest predictor for academic achievement, according to Duckworth.¹⁵⁰

To be sure, more research is necessary to confirm the precise relationship between grit and performance in law school.¹⁵¹ But given the

environment." *Id.* at 85–86. *But see supra* note 135 and accompanying discussion (explaining the various measures of success used in the study).

¹⁴⁰ *Id.* at 91–93. The results showed that grittier women received better ratings on evaluations than their less gritty female colleagues. *Id.* at 92.

¹⁴¹ *Id.* at 87–89.

¹⁴² *Id.* at 89–91.

¹⁴³ *Id.* at 95–97.

¹⁴⁴ *See id.* at 194–96; 199–203; 228–33. Similar to law firm lawyers, the grit level of in-house lawyers was strongly related to the messages they received on performance evaluations, and the grit level of government and nonprofit lawyers was closely related to their ambition. *Id.* at 196–99; 234–35. For in-house lawyers, grit also influenced when they became involved in the decision-making process. *Id.* at 199–203.

¹⁴⁵ *Id.* at 26.

¹⁴⁶ GRIT, *supra* note 25, at 272.

¹⁴⁷ *See id.* at 273–74.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 274.

¹⁵¹ *See Zimmerman & Borgan, supra* note 124, at 123–24 (describing their research findings on grit as the first published research on the impact of grit to academic
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existing research on grit and achievement in a variety of other settings, including the Commission's findings on the positive impact of grit to the professional success of women lawyers across practice areas, cultivating grit in law students seems to be a pedagogical goal worth pursuing in legal education. After all, even Duckworth's critics agree that grit has some positive relationship to academic performance.¹⁵² Moreover, the existing research shows that grittier students tend to be, in general, more satisfied with their overall educational experience,¹⁵³ more likely to complete their educational journey,¹⁵⁴ and better positioned to succeed once they enter the workforce.¹⁵⁵ Grit thus remains a characteristic, admittedly one of many,¹⁵⁶ that law schools should strive to cultivate in students. The next

performance in the law school setting). My research did not reveal any subsequent studies on grit and academic achievement in law school.

¹⁵² See, e.g., Credé, *supra* note 119, at 502 (finding a modest relationship between grit and academic achievement, despite the authors' criticism of Duckworth's research and findings).

¹⁵³ See Reed, *supra* note 113, at 253 (discussing grit's relevance to teacher effectiveness and student learning); Mia M. Vainio & Davia Daukantaitė, *Grit and Different Aspects of Well-Being: Direct and Indirect Relationships via Sense of Coherence and Authenticity*, 17 J. HAPPINESS STUD. 2119, 2129–32, 2139 (2016) (finding grit was strongly related to all aspects of well-being in a study of undergraduate students); Kamlesh Singh & Shalini Duggal Jha, *Positive and Negative Affect, and Grit as Predictors of Happiness and Life Satisfaction*, 34 J. INDIAN ACAD. APPLIED PSYCHOL. 42–44 (2008) (finding a positive correlation between grit, happiness, and life satisfaction).

¹⁵⁴ See, e.g., Duckworth et al., *Grit*, *supra* note 4, at 1096 (explaining grit emerged as the strongest predictor for cadets' retention at West Point Military Academy). See also Reed, *supra* note 113, at 255 (discussing grit and its impact on student retention); Credé, *supra* note 119, at 502–03 (suggesting grit may be particularly relevant in higher education because of grit's ability to predict retention).

¹⁵⁵ See HOGAN, *supra* note 125, at 24–28 (summarizing the key findings on grit and its positive impact on performance and success for women lawyers); Reed, *supra* note 113, at 252 (discussing grit's value in the workforce development). See also Bisma Mazhar Khan & Ali Mahmood Khan, *Grit, Happiness, and Life Satisfaction among Professionals: A Correlational Study*, 2 J. PSYCHOL. COGNITION 129–30 (finding a moderate positive relationship between grit and happiness among lawyers).

¹⁵⁶ At the University of North Dakota School of Law, for example, first-year law students take a course entitled Professional Foundations in the Spring of their first year. The course explores some of the characteristics effective and ethical lawyers share, including: (1) adaptability and dealing with unpredictability; (2) the ability to confront mistakes; (3) courage; (4) diligence and reliability; (5) empathy and compassion; (6) generosity and public-mindedness; (7) honesty and trustworthiness; (8) humility, respectfulness, and courtesy; (9) integrity under pressure; (10) loyalty; (11) patience, perseverance, and resilience; (12) professional objectivity and sympathetic detachment. *Course Descriptions*, UNIV. OF N.D. SCH. OF L., <https://law.und.edu/academics/courses.html> [<https://perma.cc/AM4J-5KTJ>].

section explores how incorporating the principles of deliberate practice into the first-year law school curriculum can accomplish that goal.

V. GRIT: HOW TO CULTIVATE GRIT IN LAW STUDENTS?

The good news about grit, as discussed in Part III above, is that grit can and does change over time—it can be cultivated.¹⁵⁷ With guidance, encouragement, and support from the outside in, law students can grow their grit from the inside out. Law schools can help students learn how to discover, develop, and deepen their interest in the law, for example.¹⁵⁸ They can help students find an other-centered purpose for becoming lawyers.¹⁵⁹ They can give students hope to face and overcome the inevitable challenges and setbacks on the journey toward becoming lawyers,¹⁶⁰ and they can help students develop the capacity to practice.

When it comes to cultivating grit through practice, however, it is not just any practice that helps grit grow.¹⁶¹ The type of practice required is deliberate practice—a concentrated and effortful practice aimed at learning or improving a particular skill or aspect of performance.¹⁶² Anders Ericsson, a cognitive psychologist at Florida State University, first coined the term deliberate practice to explain the effort required to achieve expertise in a given field.¹⁶³ Ericsson defines deliberate practice as “a highly structured activity, the explicit goal of which is to improve performance”;¹⁶⁴ and describes it as the “gold standard”—“the ideal to which anyone learning a skill should aspire.”¹⁶⁵ It is the type of practice that “has proven to be the most powerful and effective way to improve

¹⁵⁷ See *supra*, Section III (explaining how grit grows).

¹⁵⁸ See GRIT, *supra* note 25, at 92.

¹⁵⁹ See *id.* at 91. Arguably, even if students enter law school having discovered an interest in the law, law schools can help students not only sustain, but also develop and deepen that interest. Moreover, to the extent some first-year law students may struggle to maintain their initial interest in pursuing a law degree and a law career—*e.g.*, the second-semester slump and all-too-common feeling of disillusionment with the law, and so on—law schools can certainly help address those struggles and, in turn, help students become grittier.

¹⁶⁰ See *id.* 91–92.

¹⁶¹ See *id.* at 118–20.

¹⁶² See *id.* at 120–23.

¹⁶³ See generally K. Anders Ericsson et al., *The Role of Deliberate Practice in the Acquisition of Expert Performance*, 100 PSYCHOL. REV. 3, 363–406 (1993) [hereinafter Ericsson et al., *The Role of Deliberate Practice*].

¹⁶⁴ *Id.* at 368.

¹⁶⁵ ANDERS ERICSSON & ROBERT POOL, PEAK: SECRETS FROM THE NEW SCIENCE ON EXPERTISE 85 (2016) [hereinafter ERICSSON & POOL, PEAK].

one's abilities in every area that has been studied"¹⁶⁶—from sports to performing arts and from business to medicine.¹⁶⁷ It is the type of practice that can help grit grow.¹⁶⁸

A. Deliberate Practice: Definition, Requirements, and Applications

To better understand what deliberate practice is, it may be helpful to first explain what deliberate practice is not. According to Ericsson, the "usual" approach to learning a new skill follows a similar pattern irrespective of the skill, from learning how to drive to learning how to write a topic sentence, for example.¹⁶⁹ The process begins with a general goal—what the endgame should be.¹⁷⁰ Then, some type of instruction follows; this instruction may come from a teacher, a coach, or a manual.¹⁷¹ Next comes practice—practicing the skill until an acceptable level of performance is reached; until performance becomes automatic.¹⁷² In other words, the ultimate goal in this usual approach to learning a new skill is to reach a point at which it is relatively easy, and thus enjoyable, to perform the skill at a satisfactory level.¹⁷³

The problem with this approach to learning, however, is that once a satisfactory level is reached, improvement stops.¹⁷⁴ As Ericsson explains, "once a person reaches that level of 'acceptable' performance and automaticity, the additional years of 'practice' don't lead to improvement."¹⁷⁵ Quite the opposite may happen, in fact. Research shows that, for many skills, more practice does not necessarily translate into higher levels of performance and that more practice can actually lead to a decline in performance over time.¹⁷⁶ Improvement thus requires more than

¹⁶⁶ *Id.* at 25.

¹⁶⁷ See K. Anders Ericsson, *Deliberate Practice and the Acquisition and Maintenance of Expert Performance in Medicine and Related Domains*, 79 *ACAD. MED.* 70–71 (2004) [hereinafter Ericsson, *Expert Performance in Medicine*]. See also K. Anders Ericsson & Neil Charness, *Expert Performance: Its Structure and Acquisition*, 49 *AM. PSYCHOL.* 8, 741 (1994) [hereinafter Ericsson & Charness, *Expert Performance*] (explaining deliberate practice has been found to play an important role in a variety of fields).

¹⁶⁸ See GRIT, *supra* note 25, at 91.

¹⁶⁹ See ERICSSON & POOL, PEAK, *supra* note 163, at 12.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 12–13.

¹⁷⁵ *Id.* at 13.

¹⁷⁶ *Id.* For example, "[r]esearch on many specialties shows that doctors who have been in practice for twenty or thirty years do worse on certain objective measures of performance than those who are just two or three years out of medical school." *Id.* at 18. According to

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just practice (the amount of time spent on a task); it requires deliberate practice.¹⁷⁷

Deliberate practice, unlike the usual approach to practice described above, is a specialized, highly-structured form of practice that is purposefully aimed at learning a skill or improving an aspect of performance.¹⁷⁸ Four distinct features separate deliberate practice from other forms of practice. First, deliberate practice requires a clearly defined goal that identifies the specific skill or the targeted aspect of performance to be learned or improved upon.¹⁷⁹ Moreover, to amount to deliberate practice, the identified skill or aspect of performance must stretch beyond what one already knows or can do.¹⁸⁰ In other words, deliberate practice demands that challenge exceeds skill and “focuses on tasks beyond [one’s] current level of competence and comfort.”¹⁸¹

Second, deliberate practice is deliberate; it requires complete concentration and full effort toward learning or improving upon the identified skill or aspect of performance.¹⁸² For many, the required concentration and effort make deliberate practice more effortful and less enjoyable than other forms of practice.¹⁸³ But it is precisely that type of concentration and effort that provides for optimal opportunities to acquire

Ericsson, one of the reasons for the lack of improvement among physicians with many years of experience is the fact that a physician’s daily activities do not present sufficient opportunities for challenge; they do not push physicians out of their comfort zone. *Id.*

¹⁷⁷ *See id.* at 25.

¹⁷⁸ *See* Ericsson et al., *The Role of Deliberate Practice*, *supra* note 163, at 363.

¹⁷⁹ *See* K. ANDERS ERICSSON, *The Influence of Experience and Deliberate Practice on the Development of Superior Expert Performance*, CAMBRIDGE HANDBOOK OF EXPERTISE AND EXPERT PERFORMANCE 691–92 (Cambridge University Press) (2006).

¹⁸⁰ *See* K. Anders Ericsson et al., *The Making of an Expert*, HARV. BUS. REV. 119 (July–Aug. 2007) [hereinafter Ericsson et al., *The Making of an Expert*].

¹⁸¹ *Id.* at 116.

¹⁸² *See* ERICSSON & POOL, PEAK, *supra* note 165, at 99.

¹⁸³ Ericsson & Charness, *Expert Performance*, *supra* note 167, at 738 (Ericsson and Charness distinguish deliberate practice from two other types of practice activities. The first one, characterized as “flow” by psychologist Mihaly Csikszentmihaly, refers to what Ericsson and Charness describe as “effortless engagement” that is inherently enjoyable. While deliberate practice is effortful and taxing, flow is effortless and easy. The second type of practice activity is “work” and refers to “public performances . . . motivated by external social and monetary rewards.” Work, unlike deliberate practice, offers only minimal opportunities for learning and improvement because the goal in work activities is to produce a product reliably and efficiently in hopes of receiving immediate social or monetary rewards). *See also* Duckworth et al., *Deliberate Practice Spells Success*, *supra* note 8, at 175 (explaining competitors at the National Spelling Bee perceived solitary study (the preparation activity that fits deliberate practice) as more effortful and less enjoyable than the other preparation activities (leisure reading and being quizzed by others)).

the identified skill or improve upon the predefined aspect of performance.¹⁸⁴

Third, deliberate practice requires feedback—informative and, preferably, immediate feedback.¹⁸⁵ To improve learning and performance, the feedback must be constructive, even if that makes it painful at times.¹⁸⁶ Whether the feedback comes from another or is self-directed, to be effective, the feedback must further identify specific aspects for improvement not only at the current stage, but also at the next level of skill acquisition.¹⁸⁷ Feedback thus facilitates the learning process and guides the selection, sequence, and type of future practice activities.¹⁸⁸

Lastly, deliberate practice requires repetition,¹⁸⁹ but repetition alone is not enough.¹⁹⁰ Mindless repetition of a task does not automatically lead to improvement.¹⁹¹ Rather, the repetition must be focused, responsive, and reflective.¹⁹² It must focus on the repetitive performance of the same or similar task.¹⁹³ It must respond to the provided feedback and allow ample opportunities for self-reflection.¹⁹⁴ Only when these criteria are met can repetition lead to the gradual refinement in and improvement of the initially identified skill or aspect of performance.¹⁹⁵

These four features—a well-defined goal aimed at improving a specific aspect of performance, disciplined concentration, informative feedback, and corrected repetition—distinguish deliberate practice from other forms of practice and make deliberate practice “the most powerful and effective way to improve one’s abilities” in a wide range of domains.¹⁹⁶ And while much of Ericsson’s research focuses on the role of deliberate practice in the context of sports or the performing arts, the examples provided below show that applying the principles of deliberate practice in domains such as writing, business, or medicine is equally as effective.¹⁹⁷

¹⁸⁴ See Ericsson & Charness, *Expert Performance*, *supra* note 167, at 739.

¹⁸⁵ See Ericsson et al., *The Role of Deliberate Practice*, *supra* note 163, at 367.

¹⁸⁶ See Ericsson et al., *The Making of an Expert*, *supra* note 180, at 121.

¹⁸⁷ *Id.*

¹⁸⁸ See *id.*

¹⁸⁹ See Ericsson et al., *The Role of Deliberate Practice*, *supra* note 163, at 367.

¹⁹⁰ See *id.*

¹⁹¹ *Id.*

¹⁹² See *id.*

¹⁹³ See Ericsson & Charness, *Expert Performance*, *supra* note 167, at 739.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See ERICSSON & POOL, PEAK, *supra* note 165, at 25, 85, 98–100.

¹⁹⁷ See e.g., Ericsson, *Expert Performance in Medicine*, *supra* note 167, at 1473–83 (discussing deliberate practice in medicine and related fields); Ericsson et al., *The Making* (continued)

Deliberate practice, for example, is how Benjamin Franklin improved his writing.¹⁹⁸ Determined to learn how to write more logically and clearly, Franklin would collect the best essays from his favorite magazine, the *Spectator*.¹⁹⁹ He would read and reread each essay, striving to understand it, not to memorize it.²⁰⁰ Franklin would then rewrite the essay and compare his reproduction with the original, noting any differences between the two, both in content and structure.²⁰¹ After reflecting on the differences, he would repeat the cycle all over again.²⁰² By engaging in this highly structured learning activity, an activity that includes all four features of deliberate practice, Franklin was able to improve his writing and to learn how to organize and present his thoughts with logic and clarity.²⁰³

Similarly, deliberate practice has been used to develop and improve expertise in business settings.²⁰⁴ The case-method approach employed by many business schools illustrates the positive effect of deliberate practice on student learning.²⁰⁵ Under this case-method approach, students are presented with a real-life scenario that requires a solution.²⁰⁶ Once students have developed a solution on their own, they compare that solution to the actual outcome of the presented scenario.²⁰⁷ The opportunity to receive immediate and informative feedback on their proposed recommendation, because the outcome of the scenario is in fact known, allows students to then engage in repetition that is both reflective (based on the feedback) and focused (aimed at refinement).²⁰⁸ This type of carefully designed training activity that business students engage in to

of an Expert, *supra* note 180, at 118–19 (discussing deliberate practice in business, writing, and medicine).

¹⁹⁸ Ericsson & Charness, *Expert Performance*, *supra* note 167, at 739.

¹⁹⁹ *Id.* See also Janice Campbell, *Copywork: How Benjamin Franklin Taught Himself to Write Well*, EXCELLENCE IN LITERATURE (Aug. 24, 2012), <https://excellence-in-literature.com/copywork-how-benjamin-franklin-taught-himself-to-write-well/> [<https://perma.cc/9EV6-8M2F>].

²⁰⁰ Ericsson & Charness, *Expert Performance*, *supra* note 167, at 739.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ See Ericsson, *The Making of an Expert*, *supra* note 180, at 117–18.

²⁰⁵ *Id.* at 118.

²⁰⁶ *Id.* See also *The Case Method as Used by Top MBA Programs*, TOP MBA (May 15, 2017), <https://www.topmba.com/mba-programs/case-method-used-top-business-schools> [<https://perma.cc/62WN-G6EG>] (describing the case method-approach used by business schools).

²⁰⁷ Ericsson, *The Making of an Expert*, *supra* note 180, at 118.

²⁰⁸ See *id.* at 118–19.

learn the requisite business skills, Ericsson notes, is what deliberate practice is all about.²⁰⁹

Even in a domain such as medicine, deliberate practice can effectively lead not only to the acquisition, but also to the maintenance of the skills required for expert performance.²¹⁰ For instance, studies show that structured training activities that fit the definition of deliberate practice correspond to improved performance in medical diagnosis²¹¹ and can positively impact the accuracy of surgical procedures.²¹² Research further reveals deliberate practice positively affects the learning and performance of clinical skills for medical students,²¹³ showing the integration of deliberate practice into the medical school curriculum can better facilitate student learning and improve student performance.²¹⁴

²⁰⁹ *Id.* at 118.

²¹⁰ Ericsson, *Expert Performance in Medicine*, *supra* note 167, at 70.

²¹¹ *Id.* at 77.

²¹² *Id.* at 78 (The use of simulators in the medical training of surgical residents is one example of what it means to engage in deliberate practice. Simulators provide an opportunity to perform a given surgical procedure—*i.e.* the training has a clearly defined goal that exceeds the trainee’s current level of competence—and to monitor their performance. Practice in a simulator further provides the informative and immediate feedback deliberate practice requires because the procedure can be stopped at any time, thus allowing the trainee to get feedback and then instantly correct any mistakes).

²¹³ See Robbert J Duvivier et al., *The Role of Deliberate Practice in the Acquisition of Clinical Skills*, *BMC MED. EDUC.* 4–7 (2011). The study examined the role of deliberate practice in the development of clinical skills for medical students in the Netherlands during the first three years of the students’ medical education. *Id.* at 2. The results showed certain study habits related to deliberate practice, such as planning, concentration, and repetition, had a positive impact on the students’ development and performance of clinical skills. *Id.* at 4–5.

²¹⁴ See *id.* at 7. This finding supports Ericsson’s emphasis on the crucial role teachers play in deliberate practice. Working with an effective teacher, Ericsson asserts, is the best approach to deliberate practice. See ERICSSON & POOL, *PEAK*, *supra* note 165, at 108. Effective teachers understand how to create successful training activities and how to tailor those activities to meet the needs of individual students. *Id.* They develop a solid foundation first and then gradually build on that foundation to help students acquire the skills necessary for success in their field, providing valuable and constructive feedback along the way. *Id.* Most importantly, however, effective teachers recognize that the focus should be on helping students develop skills through “doing” rather than through simply equipping students with the knowledge of how to do something. *Id.* at 131. Thus, while Ericsson acknowledges students must have a certain knowledge base, he criticizes professional schools, including law schools, for the way they have traditionally trained their students. *Id.* at 131–37. Ericsson’s criticism stems from what he describes as an overemphasis on knowledge over skills in these professional schools, *id.*, and seems to be consistent with the critiques legal education has faced over the last decade. See *e.g.*, WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATIONS FOR THE PROFESSION OF LAW 87–95* (HB Printing 2007) (urging law schools to bridge the gap from “thinking
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Incorporating deliberate practice principles into the curricula of professional schools, such as business and medical schools, has proven to positively impact the learning and performance of field-related skills. These results, together with the research on how deliberate practice can help grit grow, make deliberate practice a theory worth exploring in the context of legal education. The next section presents some options for incorporating deliberate practice into the first-year law school curriculum, in particular.

B. Cultivating Grit in Law Students: Incorporating Deliberate Practice into the First-Year Law School Curriculum

Success, in law school and in law practice, is a multifaceted concept. Many factors contribute to success but if grit is one of those factors, then we ought to teach students about it. We ought to tell students why grit matters and how grit impacts achievement. We ought to assure them that grit can and does change over time, and help them understand how they can grow their grittiness by developing the capacity to engage in deliberate practice. And we ought to do it at the outset of their educational journey—during the first year of law school, starting with Orientation.

1. Start Early: Orientation as an Opportunity to Teach Students about Grit and Deliberate Practice

Research shows that students' beliefs about their abilities to learn and improve significantly impact their academic achievement.²¹⁵

like a lawyer" to "lawyering" in an attempt to better prepare law students for the practice of law and the role they will play in the legal profession); ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 7 (2007) (criticizing what the authors described as a lack of commitment in legal education to prepare students how to actually practice law).

²¹⁵ See CAROL S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS 5–7 (2006). Students' beliefs about their abilities to learn and improve is what Dweck refers to as mindset. *Id.* at 6. She identifies two types of mindset: a fixed mindset and a growth mindset. *Id.* at 6–7. Students with a fixed mindset see intelligence and ability as static. *Id.* at 6. Thus, when presented with a challenge that exceeds their abilities, students with a fixed mindset see little value in putting forth any effort in tackling that challenge. *Id.* at 58–59. Students with a growth mindset, on the other hand, believe that intelligence is "malleable"—that it can be changed through experiences and application; that it can be cultivated through effort. *Id.* at 98–99. The belief that they can change their intelligence motivates these students to work harder and put forth their best effort in all that they do. *Id.* Not surprisingly, studies conducted by Duckworth and Dweck showed that students with a growth mindset are much grittier than their peers with a fixed mindset. See GRIT, *supra* note 25, at 181. And while exploring the role of growth mindset in law school is beyond the scope of this Article, it seems that just as with grit, growth mindset is a concept worth discussing with law students at the outset of their legal education.

Understanding the role deliberate practice plays in the learning process can therefore positively impact student performance in law school. Knowing that deliberate practice has proven to be the most “effective way to improve one’s abilities in every area that has been studied,”²¹⁶ for example, can help curtail students’ preexisting beliefs about their own abilities as static. If students recognize, at the outset of their three-year journey, that their abilities to learn are not fixed,²¹⁷ but can change through deliberate practice, students will be better equipped to tackle the demands of law school and overcome the challenges, setbacks, and failures they are likely to encounter at some point during that journey.

Moreover, to ensure that all students are in a position to profit from the advantages that can come from an in-depth understanding of how to learn, students should be given specific strategies on how to incorporate the principles of deliberate practice into their study habits.²¹⁸ These strategies may include how to plan and organize study activities in a structured and intentional manner, for example.²¹⁹ Because sustained concentration is critical to deliberate practice,²²⁰ providing specific strategies on how to avoid distractions and maintain focused attention while studying can be equally as helpful. Additionally, given the central role of feedback to deliberate practice,²²¹ students could benefit from learning specific strategies about how to view, process, and respond to feedback in law school.²²²

²¹⁶ ERICSSON & POOL, PEAK, *supra* note 165, at 29.

²¹⁷ See DWECK, *supra* note 215, at 98–99.

²¹⁸ See Duivivier, *supra* note 213, at 6.

²¹⁹ See Ericsson et al., *The Role of Deliberate Practice*, *supra* note 163, at 368 (defining deliberate practice as a “highly structured activity” aimed at improving a specific aspect of performance). See also Duivivier, *supra* note 213, at 2–5 (discussing the statistically significant relationship between students’ abilities to plan their study activities, in accordance with the principles of deliberate practice, and students’ performance on tests assessing their clinical skills).

²²⁰ See Ericsson et al., *The Role of Deliberate Practice*, *supra* note 163, at 390–91 (explaining deliberate practice requires full and focused concentration). See also E. Scott Freuhwald, *How to Help Students from Disadvantaged Background Succeed in Law School*, 1 TEX. A&M L. REV. 83, 125 (2013) (discussing how focused practice leads to deep learning).

²²¹ See Ericsson et al., *The Role of Deliberate Practice*, *supra* note 163, at 367 (stating informative feedback is a key aspect of deliberate practice).

²²² See e.g., Elizabeth M. Bloom, *A Law School Game Changer: (Trans)Formative Feedback*, 41 OHIO N.U. L. REV. 227, 236 (2015) (stating law students lack specific strategies on how to effectively use feedback); Margaret Price et al., *Feedback: All that Effort but What is the Effect?*, 35 ASSESSMENT & EVALUATION IN HIGHER EDUC. 277, 277–79 (2010) (noting students tend to lack the “literacy” to understand the purpose and role of feedback in the learning process).

Teaching students about deliberate practice at the outset of their law school experience accomplishes three main objectives. First, it establishes a baseline of exposure and understanding concerning how to learn and succeed in law school.²²³ That baseline would hopefully provide a firm foundation for most students to springboard into the specifics of the first-year courses to come—more prepared to take on the private learning challenges they will face and better able to understand their learning potential. Second, teaching students about deliberate practice during Orientation can help increase students' buy-in.²²⁴ Deliberate practice requires students' full cooperation and active participation.²²⁵ Thus, the more students know about deliberate practice—the more they understand how deliberate practice can sharpen their learning potential—the more likely they will be to cooperate and participate in it.²²⁶ Lastly, because grit grows through practice,²²⁷ helping students develop the capacity to engage in deliberate practice can help cultivate grit in law students, in hopes that the grittier our students are, the more likely they will be to succeed both in law school and beyond.

Educating students about why grit matters and how grit can grow through deliberate practice during Orientation is an important step toward cultivating grit in law students. But if we are truly committed to helping students be grittier for the long run, we need to be doing more. In particular, we need to be deliberate about incorporating deliberate practice principles into the rest of the first-year curriculum. One way to accomplish that goal is by establishing well-defined and specific learning objectives that focus on what students should be able to do, rather than on what students simply should know, by the end of their first-year of law school.²²⁸

2. *Establish Specific, Skills-Centered Learning Objectives*

The first requirement of deliberate practice is the formulation of a clearly defined goal—a goal that identifies a specific skill or aspect of performance to be learned or improved upon.²²⁹ The goal must be specific, not vague or general;²³⁰ it must focus on skills, not knowledge or

²²³ See DWECK, *supra* note 215, at 57.

²²⁴ See Duivivier, *supra* note 213, at 6.

²²⁵ See *id.*

²²⁶ See *id.*

²²⁷ See GRIT, *supra* note 25, at 91 (explaining that the capacity to engage in deliberate practice is the second stage of growing grit from the inside out).

²²⁸ See ERICSSON & POOL, PEAK, *supra* note 165, at 251.

²²⁹ See *id.* at 99.

²³⁰ See *id.* at 99.

understanding alone.²³¹ In other words, deliberate practice requires well-defined, specific goals for what students should be able to do rather than what students should know.²³² To be effective, however, these initial goals must then be broken down into smaller, step-by-step-specific learning objectives that clearly define how the overall goals are to be accomplished.²³³ Thus, establishing learning objectives in accordance with deliberate practice principles requires identifying what students should learn how to do first (an overall skills-based objective) and then working backwards to determine a concrete, step-by-step process that will help students get there.²³⁴ And because deliberate practice further demands that challenge exceeds skills,²³⁵ each step in the learning process must take students out of their comfort zone, though not so far out as to prevent them from attempting to master it.²³⁶

Of course, the need for setting overall course goals and creating learning objectives for how these goals are to be reached is not a new

²³¹ See *id.* at 250–51.

²³² See *id.* Recent changes to the American Bar Association Standards on Legal Education show a shift toward more skills-based learning outcomes. See ABA SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *Standards for Approval of Law Schools 2018-2019*, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-rules-approval-law-schools-final.pdf [<https://perma.cc/9JUU-UEZ5>] [hereinafter ABA STANDARDS]. Standard 302, for example, requires law schools to establish learning outcomes that include competency 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

Id. at Standard 302 (The Standard thus provides for some skills-centered learning goals, including legal reasoning, problem-solving, and the exercise of professional responsibilities). The interpretation to Standard 302 further explains that law schools may set learning outcomes related to other professional skills, such as “interviewing, counseling, negotiation, . . . trial practice, document drafting, . . . [or] organization and management of legal work.” *Id.* at Interpretation 302-1.

²³³ ERICSSON & POOL, PEAK, *supra* note 165, at 99.

²³⁴ See *id.*

²³⁵ *Id.* at 99.

²³⁶ *Id.* at 253.

concept in legal education.²³⁷ Neither is the understanding that to be effective, goals and objectives must be clear, concrete, and focused on behavior that can be observed and measured.²³⁸ What deliberate practice adds to this understanding is the need for intentionality and transparency—intentionality in designing a step-by-step process to help students accomplish each learning goal, and transparency in explaining both the process and the purpose behind it to students.

Here is an example from the legal writing classroom. A legal writing course will typically have some variation of the following overall learning goal: By the end of this course, students should be able to communicate effectively in writing. The goal is certainly skill-based—learn how to do something. The problem, as far as deliberate practice is concerned, is that the goal is neither well-defined nor specific enough to enable students to learn how to communicate effectively in writing. Rather, what deliberate practice tells us is that establishing such an overall goal is a good start. To ensure students can accomplish that goal, however, we must be intentional about first designing and then communicating to students the step-by-step process that will get them there.

Designing a step-by-step process to help students learn how to communicate effectively in writing would likely begin with identifying the characteristics of effective written communication first; to name a few: large and small-scale organization; format and tone appropriate for the intended audience; use of correct grammar, syntax, diction, and punctuation; clarity and concision; and proper citations. Each characteristic represents one step in the overall learning process that can and should be broken down even further. For instance, to properly use citations, students must learn when to cite and how to apply the correct citation rules based on the type of authority they are using. Before students can apply the correct citation rules in writing, they must learn the process for determining the applicable citation rules. To do so, students must learn to navigate the citation manual, and so on and so forth, until a concrete, step-by-step process for learning the skills necessary to use proper citation in written communication is created. The key, according to the principles of deliberate practice, is to take a general goal—learn to communicate

²³⁷ See e.g., MICHAEL HUNTER SCHWARTZ ET AL., TEACHING LAW BY DESIGN 38–42, 68–70 (2009) (discussing the need for setting course goals and establishing class objectives in law school).

²³⁸ See, e.g., *id.* at 39, 68 (stating course goals and class objectives are more effective when they are concrete, not abstract, and explaining that understanding a concept or appreciating a value are not behaviors that can be observed or measured).

effectively in writing—and turn it into a manageable and specific “how-to guide” for students, so that they can approach each step of the process with a realistic expectation of mastering it.²³⁹ That is the intentionality deliberate practice demands in designing well-defined and specific learning goals.

Being intentional in designing clear and concrete learning objectives is important, but so is being transparent about it. Articulating well-defined learning objectives at the beginning of each class session, for example, can help focus student learning.²⁴⁰ Explicitly communicating the learning objectives for each class, helping students place them into the larger course context, and then identifying—with specificity—the steps students ought to take to accomplish these objectives can help ensure students take on the learning process with the necessary focus, motivation, and determination. Moreover, if we are transparent with students as to why each step in the learning process has been designed to push them out of their comfort zone—a core characteristic of deliberate practice—students will be better equipped to face each new learning challenge. Being transparent about the learning process can also help secure student buy-in and cooperation;²⁴¹ adding plenty of opportunities for feedback and repetition that students will soon be fully engaged in deliberate practice.

3. *Increase Opportunities for Feedback and Repetition in the First-Year Law School Curriculum*

In addition to setting clearly-defined goals aimed at learning or improving a specific skill, deliberate practice also requires feedback.²⁴² The feedback must be prompt, meaningful, and frequent.²⁴³ To be effective, the feedback must also be accompanied by ample opportunities for corrected repetition.²⁴⁴ In other words, deliberate practice follows the cycle: try, get feedback, correct, and then try again.²⁴⁵ This cycle, however, is not what most students are likely to experience in their first year of law school.²⁴⁶ Typically, the only feedback law students receive in

²³⁹ See ERICSSON & POOL, PEAK, *supra* note 165, at 99.

²⁴⁰ See SCHWARTZ ET AL., *supra* note 237, at 71–72.

²⁴¹ See Duivivier, *supra* note 213, at 6.

²⁴² See ERICSSON & POOL, PEAK, *supra* note 165, at 99.

²⁴³ See Ericsson, *Expert Performance in Medicine*, *supra* note 167, at 1472, 1474. See also Ericsson et al., *The Making of an Expert*, *supra* note 180, at 121.

²⁴⁴ See Ericsson & Charness, *Expert Performance*, *supra* note 167, at 739.

²⁴⁵ See ERICSSON & POOL, PEAK, *supra* note 165, at 253.

²⁴⁶ See, e.g., Herbert N. Ramy, *Moving Students from Hearing and Forgetting to Doing and Understanding: A Manual for Assessment in Law School*, 41 CAP. U. L. REV. 837, 839–

(continued)

the majority of their first-year courses comes in the form of a letter grade, following a single, end-of-the-semester examination.²⁴⁷ The letter grade is rarely accompanied by individualized comments on the student's performance and is seldomly preceded by any specific feedback on the student's understanding of the course material over the course of the semester.²⁴⁸

One of the proffered justifications for this traditional assessment approach is that it is time-consuming, effortful, and often difficult to provide timely, meaningful, and frequent feedback in large first-year law classes.²⁴⁹ But it does not have to be. Using clicker multiple-choice questions, for example, has proven to be an effective tool for assessing students' understanding of the material and for providing prompt feedback in large law school classes.²⁵⁰ The same is true for the use of peer and self-assessment assignments or grading rubrics.²⁵¹

40 (2013) (noting that most first-year law school courses use the end-of-the-semester exam as the single assessment tool and criticizing the use of such an assessment for its failure to provide prompt feedback and opportunities for practice).

²⁴⁷ See Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 J. LEGAL EDUC. 139, 140–41 (2017) (stating that the only feedback most law students receive in their first-year courses comes in the form of a letter grade, but acknowledging that recent criticism of this traditional approach to legal education has led to the implementation of mandatory mid-term exams in some law schools and the integration of various formative assessment mechanisms by some individual law school professors). *But see* ABA STANDARDS, *supra* note 232, at Standard 314 & Interpretation 314-1 (requiring a law school to use “both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students” and describing formative assessment methods as “measurements at different points during a particular course . . . that provide meaningful feedback to improve student learning.”).

²⁴⁸ See Schwarcz & Farganis, *supra* note 247, at 140.

²⁴⁹ *Id.* at 141.

²⁵⁰ See Ramy, *supra* note 246, at 854–56 (listing the use of multiple-choice questions as a tool for providing students in large classes with prompt feedback). *See also* Roger C. Park, *Reflections on Teaching Evidence with an Audience Response System*, 75 BROOK. L. REV. 1315, 1315–26 (2010) (explaining the use of clicker questions in a large law school class and noting students in the class found the use of clicker questions beneficial to their learning); Donna M. Steslow, *Click Here to Participate: Participation and Student Performance in a Large Business Law Course Before and After Implementation of a Remote Personal Response System*, 11 ATLANTIC L.J. 144, 150–54 (2009); Louis Deslauriers et al., *Improved Learning in Large-Enrollment Physics Class*, 332 SCI. 631, 862–64 (2011) (discussing how using clicker questions in large-enrollment physics courses comports with deliberate practice's requirement for frequent, informative, and preferably immediate feedback).

²⁵¹ See Ramy, *supra* note 246, at 857–65 (describing grading rubrics, self-scored assessments, and peer-scored assessments as alternatives to offering prompt feedback to students in large law school courses).

Another pedagogical approach that could increase opportunities for feedback and repetition in large first-year law school courses is the business school case-method approach—an approach grounded in the principles of deliberate practice. Unlike the case-method pedagogy of law schools, which requires students to discern and analyze legal principles through appellate cases,²⁵² the case-method approach employed by business schools is a problem-based approach to learning.²⁵³ The business school case method provides students with real-life scenarios, in the form of case files, and asks them to find solutions to the problems presented by those scenarios.²⁵⁴ A case file consists of facts, data, and documents from an actual case.²⁵⁵ Placing themselves in the role of the decision-maker, a manager, or a business executive, students work in learning teams before class to identify and analyze the issues presented by the file and to draft a set of recommendations.²⁵⁶ In class, under the able guidance of the professor, students then discuss their proposed solutions and compare them with the alternative solutions offered by their colleagues.²⁵⁷ Based on the entity's objectives and the preceding discussion, students ultimately suggest a proposed course of action.²⁵⁸ And because the case file is based on an actual case, students have the opportunity to receive both immediate

²⁵² See Michael M. Harner & Robert J. Rhee, *Teaching LLCs Through a Problem-Based Approach*, 71 WASH. & LEE L. REV. 489, 494 (2014).

²⁵³ See Beverly Petersen Jennison, *Beyond Langdell: Innovating in Legal Education*, 62 CATH. U. L. REV. 643, 651–52 (2013) (describing the business school case-method pedagogy). In a way, the case files used in business schools closely resemble the case files used on the Multistate Performance Test (MPT), which is part of the bar examination in a majority of jurisdictions. See NAT'L CONF. BAR EXAMINERS, *Jurisdiction Administering the MPT*, <http://www.ncbex.org/exams/mpt/> [<https://perma.cc/U8KS-YNYQ>]. Like the case files in business schools, the MPT files include facts, documents, and data. *Id.* The files include source documents, such as interview notes, trial transcripts, medical and police records, or client correspondence, that contain all the facts, as well as legal authorities, such as cases, statutes, or regulations. *Id.* The MPT thus assesses an examinee's ability to use fundamental lawyering skills, including the ability to problem solve, rather than the examinee's knowledge of substantive law. *Id.* A major difference between the MPT and the business school case files, however, is that while the MPT attempts to assess the use of lawyering skills through realistic scenarios, *id.*, the business schools case files present actual, real-life scenarios. See *The HBS Case Method*, HARV. BUS. SCH., available at <https://www.hbs.edu/mba/academic-experience/Pages/the-hbs-case-method.aspx> [<https://perma.cc/A39G-JN67>] [hereinafter *The HBS Case Method*].

²⁵⁴ Jennison, *supra* note 253, at 652.

²⁵⁵ See Todd D. Rakoff & Marta Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 603–04 (2007).

²⁵⁶ See *The HBS Case Method*, *supra* note 253.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

and informative feedback on their problem-solving skills, followed by the opportunity to engage in corrected repetition aimed at improving those skills.²⁵⁹

Here is how law schools may attempt to adapt the case-method pedagogy of business schools to the first-year law school curriculum. Rather than using appellate decisions to teach students how to think like lawyers, law professors can create case files based on those decisions to help students practice what they will be expected to do as lawyers. A case file should include source documents that contain all the facts. While the source documents could certainly be created from the facts discussed in the judicial opinion alone, a more effective approach would be to use actual materials from the record—excerpts from the parties' briefs, excerpts from the hearing or trial transcripts, and any other relevant documents.²⁶⁰ In addition to the facts, each case file should also include an overview of the blackletter law. As my former colleague Eric E. Johnson so profoundly observed, “[s]tudents are far better served by being given the blackletter law upfront, spooned to them—with sugar even,”²⁶¹ so that instead of spending all their time trying to discern the applicable legal principles, students can focus their efforts on applying these principles to real-life scenarios. To the extent students will need additional cases, statutes, or other legal authorities to analyze the issues presented by the file, then these authorities (edited as necessary), should also be provided.

Using the business school case methodology, students should then work in assigned learning teams,²⁶² before class, to identify and analyze the issues presented in the case file and predict how a court is likely to resolve these issues. Then, during class, the professor could first guide the students in a discussion of their predictions and the reasons behind them. This in-class discussion, and any accompanying small-group work, will

²⁵⁹ See Ericsson et al., *The Role of Deliberate Practice*, *supra* note 163, at 368 (explaining deliberate practice allows for “repeated experiences in which the individual can attend to the critical aspects of the situation and incrementally improve her or his performance in response to knowledge of results, feedback, or both.”).

²⁶⁰ See Harner, *supra* note 252, at 498 (asserting “[a]ppellate decisions provide a sterilized set of facts . . . [and] [t]he rich set of circumstances giving rise to a complex litigation or transaction is missing after a lower trial proceeding is filtered through the relevance inquiry and the appellate standard of review.”).

²⁶¹ Eric E. Johnson, *A Populist Manifesto for Learning the Law*, 60 J. LEGAL EDUC. 41, 57 (2010) (describing the traditional case-method pedagogy, under which students do not typically get to the blackletter law until the end of the semester, as “utterly backwards,” and advocating for beginning each course with an overview of the blackletter law instead).

²⁶² See Jennison, *supra* note 253, at 652–53 (discussing the advantages of using a team-based approach in the business school case file methodology).

offer one opportunity for assessment and feedback. Students will have another opportunity to receive feedback once the professor provides the class with the actual judicial opinion on which the case file was based. Because a court has already resolved the issues presented in the file, the feedback students will receive through the opinion will be both prompt and meaningful. By carefully studying the court's resolution of the issues, students will be able to determine—instantly and with specificity—how their analysis fares in comparison and what corrections they may need to make moving forward.

Adopting the business school model will admittedly require a significant investment of time and effort up front. But the potential long-term benefits of using case files in the first-year law school curriculum seem to outweigh these initial short-term costs. For one, using case files in large first-year law school courses will increase the opportunities for providing timely, meaningful, and frequent feedback to students. Paired with increased opportunities for repetition in response to that feedback, the business school case-method approach fully incorporates the principles of deliberate practice and can thus improve student learning and performance in the first year of law school. And because grit grows through practice, helping students develop the capacity to engage in deliberate practice is helping students get grittier.

VI. CONCLUSION

Grit, defined as “passion and perseverance for long term goals,” has been shown to be essential to achievement in a wide range of domains.²⁶³ In the educational realm, specifically, grit has emerged as a reliable predictor for student performance,²⁶⁴ overall satisfaction,²⁶⁵ and retention.²⁶⁶ As a result, cultivating grit in law students seems to be a pedagogical goal worth pursuing in legal education in order to improve student learning and promote student success. One effective way for law schools to accomplish that pedagogical goal is through deliberate practice. Deliberate practice helps grit grow. Incorporating deliberate practice principles into the first-year law school curriculum can therefore help

²⁶³ See Duckworth et al., *Grit*, *supra* note 4, at 1087–88.

²⁶⁴ See, e.g., Ivcevic, *supra* note 11, at 30–31 (discussing grit as a predictor for academic achievement at the secondary level); Strayhorn, *supra* note 11, at 5 (describing grit as a strong predictor for student success at the undergraduate level).

²⁶⁵ See, e.g., Reed, *supra* note 113, at 253.

²⁶⁶ See Duckworth et al., *Grit*, *supra* note 4, at 1096.

cultivate students' grit, in hopes that the grittier our students are, the more likely they will be to succeed in law school and beyond.