THE ACCIDENTAL OPTIMIST

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ABSTRACT

Today, psychologists and researchers have the benefit of statistical models, neuroscience, longitudinal studies, and perhaps most importantly, the new science of positive psychology—all of which are reshaping the way researchers and practitioners think about and address depression.

Lawyers and law students, a notoriously depressive population with unusually high rates of suicide and related ills, have provided fertile soil for some of the most recent depression research. Dr. Martin Seligman, one of the people credited with the invention of positive psychology, studied depressive thinking in law students at the University of Virginia. Two resulting articles established the foundations of the now widely held view that, for some lawyers, depression is perhaps a useful ill and may even be crucial to the success of those who work in judgment-driven fields like law. This Article will explore the findings and interpretations of the University of Virginia study and its impact on the current popular conception of lawyer and law-student psychology.

This Article will argue that the best explanation for the study's results lies in defensive pessimism, an idea that is consistently overlooked largely because of its counter-intuitive nature. The Article challenges the notion that depressed thinking is necessary for success in the legal field and will explore the idea that defensive pessimists are uniquely situated to succeed—and thrive—in the legal academy.

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INTRODUCTION

It is no great secret that law school gets things wrong. From method to ideology, like all human institutions, law schools are plagued by error. Ten years ago, just before the positive psychology movement blossomed into a full-fledged discipline, two scholars who had known each other through psychological research circles ran into one other on a Hawaiian beach. When Mihaly Csikszentmihalyi noticed Martin Seligman standing near the beach bungalow Seligman had rented with his wife and young children, the two men exchanged greetings, commented on the unexpected run in, and planned to meet again. Both were interested in the science of what makes people thrive while others suffer, and they spent the rest of their vacation developing ideas that would become the foundation of the positive psychology movement.¹ That movement would eventually upend the legal academy’s view of itself and contribute to the debate about law student psychology, achievement, and mental health that rages to this day.

The public, even the non-legally educated layperson, is all-too familiar with the crises of the legal academy. Incendiary articles have

¹ This narrative is a summary of the longer version of the same story told by Mihaly Csikszentmihalyi and Jeanne Nakamura. Kennon Sheldon et al., Positive Psychology: Where Did It Come From, Where Is It Going?, DESIGNING POSITIVE PSYCHOLOGY (2011).
been published on everything from law student debt to the depressed nature of the profession itself, and the traditional methods of teaching and grading have been in the public eye for some time.  

Commentators have noted that all too often, high achieving law students struggle to translate their academic success into professional lives that satisfy. In this era of increasing law student debt and decreasing Big Law prospects, one must wonder what does a law student want, if not a satisfying career and an opportunity to become his or her best academic and professional self? Yet law schools are not able to affect this outcome for all—and maybe not even most—of their students. One reason for this failure is that law schools are unique producers of depression and psychological ills, and those psychological phenomena interfere with law students’ and lawyers’ abilities to have fulfilling, professional careers.

Many people are talking—and writing—about law student depression and the ill effects that accompany it. Yet, no one has successfully defined the entirety of the problem’s roots.

The good news of late—of the past fifteen years or so—is that we have new tools with which to understand the kinds of psychological experiences that law students have as they enter and move through law school. Today, psychologists and researchers have the benefit of statistical models and longitudinal studies, and of the new science of positive psychology, all of which are shaping and reshaping the way people think about and address depression, achievement, and the

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3 For a description of the psychological problems among law students, see Suzanne C. Segerstrom, Perceptions of Stress Control in the First Semester of Law School, 32 WILLAMETTE L. REV. 593, 594 (1996); Stephen B. Shanfield & G. Andrew H. Benjamin, Psychiatric Distress in Law Students, 35 J. LEGAL EDUC. 65 (1985); Matthew M. Dammeyer & Narina Nunez, Anxiety and Depression Among Law Students: Current Knowledge and Future Directions, 23 LAW & HUM. BEHAV. 55, 55 (1999) (indicating that law students suffer depression and other psychological symptoms at very high rates and that law students have a different (and much worse) psychological profile than the general population. The elevated rates of depression and other symptoms begin in the first year and continue, at least as far as the conclusion of the third year); see also G. Andrew H. Benjamin et al., The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers, 1986 AM. B. FOUND. RES. J. 225, 225 (“The anecdotal literature suggests that the process of legal education impairs the maintenance of emotional well-being in law students.”); Gerald F. Hess, Heads and Hearts: The Teaching and Learning Environment in Law School, 52 J. LEGAL EDUC. 75, 75 (2002) (“Legal education literature documents a number of disturbing effects of law school on students.”).
challenges of experiences like those faced by students within the legal academy.

Because lawyers and law students are a notoriously depressive population with unusually high rates of suicide and related ills, both lawyers and law students have been studied in recent depression research. Notably, Dr. Martin Seligman, a father of positive psychology, studied depressive thinking in law students at the University of Virginia. The resulting article, “Why Lawyers are Unhappy,” established, albeit inadvertently, the foundations of a widely held view that, for some lawyers, depression is perhaps a useful ill—and may even be crucial to the success of those who work in judgment-driven fields like law.

This Article will explore the findings of the University of Virginia study and its impact on the current popular conception of lawyer and law-student psychology. This Article will argue that the best explanation for the UVA study’s results lies in defensive pessimism, an idea that is consistently overlooked because of its technical and therefore counter-intuitive nature. By making this argument the Article challenges the notion that depressed thinking is necessary for success in the legal field. To assert this position, the Article will explore the relationship between defensive pessimism and current theories of intrinsic motivation—

It is a long established fact that law schools are unique producers of depression⁴ and that many incoming law students, otherwise psychologically healthy people with no unique predisposition to depression, begin to exhibit signs of psychological distress at alarming rates shortly after entering the legal academy.⁵ Legal educators agree that

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⁴ Though some recent researchers have sought to minimize or recharacterize the scope of the depression problem among law students, the broad consensus among psychological researchers, as well as the evidence gathered by law professors around the country, suggests that to do so would be to ignore the suffering of thousands of law students and lawyers. See the unpublished research described at Debra C. Weiss, Aiming for BigLaw? You May Want a Different Target, Happiness Researcher Says, ABA J. (June 30, 2010), http://www.abajournal.com/news/article/law_students_will_be_part_of_positive_psychology_study.

law students’ psychological health should not mirror that of inpatient psychiatric populations,\(^6\) and that such a state of mental health in the legal academy is cause for serious inquiry. The decline in psychological well-being experienced by new law students is both disconcerting and destructive, because depression can lead to suicide, drug abuse, and other quality-of-life problems, in addition to cloudy thinking, lower grades, and reduced professional opportunity.

For some years, the academy and the profession have sought to discover the roots of the law school depression epidemic and to assess which, if any, interventions might be most appropriate. Depression, the conventional wisdom has long held, contributes to the high rates of alcoholism, suicide, and unhappiness common among lawyers and law students.

Martin Seligman, who along with Mihaly Csikszentmihalyi, is widely credited with the inventing the new field of positive psychology, or the science of human thriving, took up the question of why lawyers are unhappy in a landmark study published in 1997.\(^7\) Seligman and his team of researchers republished a partial summary of their findings in a provocative 2001 essay. They applied what was then a new science of optimism and depression to law students at the University of Virginia. Seligman and his team wanted to understand how law students were thinking about the things that were happening to them. The researchers believed that if they could better understand not just what but how law students were thinking about the good and bad events in their own lives the researchers could use that information to develop a more comprehensive understanding of law student depression.

The 2001 paper, *Why Lawyers Are Unhappy*, had a counter-productive effect. Perhaps because 2001 was a more hospitable cultural moment than the late 1990s had been, when Seligman published his paper, the media and public listened. Both the paper and the popular news coverage that followed laid the groundwork for the legal academy, the legal profession, and the world at large to label lawyers as beyond help. The notion that nothing can, or should, be done to intervene in law students’ depressed thinking arises out of a mistaken interpretation of the study’s data—a misinterpretation that set back efforts to address the nature and scope of the problems of lawyer and law student depression. Seligman’s paper established the foundations of the view that depression is perhaps useful, and maybe even necessary, to the success of those who work in judgment-driven fields. The paper and the articles that interpreted it advanced the idea that depressed thinking may allow law

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\(^6\) But they do. *See supra* note 5.

students and lawyers to judge situations carefully and accurately, and that being optimistic might interfere with lawyers’ abilities to think critically. The idea that depressed thinking makes law students and lawyers better at their jobs spawned a series of articles in major American newspapers.\(^8\) With titles like, *Except in One Career, Our Brains Seem Built for Optimism*, these well-intentioned articles picked up the findings of the UVA study and suggested that, although depression is a terrible disease, society is better off with lawyers who are somewhat depressed because depression and effective legal thinking go hand in hand.\(^9\) Such articles’ interpretations were not entirely incorrect, but they were somewhat misleading.

Though there is some evidence suggesting that extraordinarily optimistic people are worse judges of accuracy in some cases than their more pessimistic counterparts,\(^10\) the notion that depression among lawyers is inevitable or even desirable is not only incorrect, it also encourages the legal academy to do nothing to mitigate the psychological trouble that many law students experience.

This Article will argue that the media and public improperly interpreted the results of the University of Virginia study. It will offer an analysis of and an explanation for that failure of interpretation, as well as an alternate framework for understanding the study’s results. To understand the findings, effect, and importance of the University of Virginia study, a preliminary understanding of the technical framework that defines depressed thinking, optimism, and mindset is essential. Thus, this Article will first explore the contours of the mental health crisis in American law schools. Then it will establish the technical definitions for optimism and pessimism. The Article will go on to examine the confusion in terms created by the University of Virginia study. Next, the Article will explore the too-quickly abandoned notion of defensive pessimism, which, this Article will argue, is the best and most likely explanation for the University of Virginia study’s surprising results. Because it is likely that the findings of the University of Virginia study are related to intrinsic motivation, a kind of motivation associated with anxiety management and the absence of depression, the Article will conclude by defining the relationships between and among defensive pessimism, optimism, anxiety, and intrinsic motivation as they are manifested by those in the legal academy.

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8 The Wall Street Journal ran one of the most direct, and perhaps most notable of these articles. Robert Lee Hotz, *Except in One Career, Our Brains Seem Built for Optimism*, WALL ST. J., Nov. 9, 2007, at B1.

9 See id.

I. THE FOUNDATIONS

A. DEPRESSION MATTERS

Lawrence Krieger and Kennon Sheldon,11 two of the leading researchers in the area of law student well-being, help readers understand law student depression from the perspectives of both students and legal educators. In the article, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, they write from the perspective of law teachers, saying:

Simply stated, it appears that many [law students] are rapidly and broadly dehumanized by the nature of our training in legal analysis. We see them arrive bright and enthusiastic, and then observe many become “‘the walking wounded’: demoralized, dispirited, and profoundly disengaged,” a situation which even the most dedicated, caring teachers may be unable to prevent or ameliorate.12

Legal academics often suggest that law student distress and the uptick in psychological problems among students after they enter the legal academy can be understood simply as the unfortunate byproduct of the competitive law school environment.13 Krieger and Sheldon’s research, however, tells the opposite story. Even top law students, at top institutions, who attended law school during a time when jobs were plentiful and a position in the class at an elite law school meant (or at least seemed to mean) an entrée into society’s most elite circles, experienced post-matriculation depression and related ills. Moreover, those students experienced such problems at the same rate as less successful law students at less elite schools. Krieger and Sheldon’s empirical study, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, reveals that depression in American law schools is widespread—not even the most elite law students are immune. In articulating the scope of the problem, Krieger points to the example of one Harvard student who said:

Harvard Law School continues to represent, for many people both inside and outside the legal community, the pinnacle of legal education, the breeding ground for the nation’s leaders. Given this status, one would expect to find HLS full of confident, enthusiastic, optimistic students who are thoroughly comfortable with themselves and fully prepared upon graduation to take on the world. In fact, one finds quite the opposite. . . . 

By third year, a disturbingly high number of students come to convey a strong sense of impotence and little inclination or enthusiasm for meeting the world’s challenges head on. . . . One must look to the institution itself for an explanation.14

B. Mental Health and the Legal Academy

i. An Overview

It is widely understood that lawyers and law students rank among the most depressed professionals and professional students in the United States. One lawyer who wrote about depression called it “the lawyers’ epidemic.”15

A quick Google search of the words “lawyer” and “suicide” yields a list of startling results. There was D.C. lawyer Mark Levy who made headlines when, in 2009, he put a .38 caliber bullet through his head one late night at the office. The Legal Times described Levy as “a well-known lawyer who headed the Supreme Court and Appellate Practice section of Kilpatrick Stockton.”16 Levy’s firm was in financial trouble, but he had the kind of elite education and outstanding professional accolades that would almost certainly have enabled him to transition easily to another firm. There was no evidence to suggest he had done anything wrong, no reason to believe that he was guilty of malpractice or fraud. Even so, he was unable to cope with the situation before him and so became desperate enough to take his own life.

14 Krieger, Dark Side, supra note 5, at 113 (quoting Note, Making Docile Lawyers: An Essay on the Pacification of Law Students, 111 Harv. L. Rev. 2027, 2027 (1998)).
There was Texas lawyer Hermes Villarreal who, in 2005, carried out his dramatic suicide with a razor blade at a hospital in McAllen, Texas.\(^{17}\) No detailed explanation of Villarreal’s suicide was published, so little is known. More recently and more publicly, California Deputy District Attorney Christine Trevino shot herself in traffic in Oceanside, California in November 2011.\(^{18}\) Journalists suggested that the dark nature of her work—prosecuting criminals—was perhaps too much for her to bear, but it is more likely that long-standing depression, unchecked over time, pushed her finally to take her own life.

Statistics reveal alarming trends. A National Institute of Health and Safety study of lawyer suicide determined that lawyers in the United States are at least twice as likely to die from suicide as persons in other professions, and one Canadian study found the rate of suicide among lawyers to be as much as six times that of the general population.\(^ {19}\) Suicide is a real issue, but it is not a stand-alone problem. Suicide is easy to discuss in a research context because it provides data that is relatively clear and quantifiable. Completed suicides are recorded and many of those who attempt suicide self-report in psychiatric treatment settings.\(^ {20}\) But this data does not tell the whole story. Suicide and suicidality are the symptoms of an even more endemic and complex problem: widespread depression that plagues the legal community.

\textit{ii. The Roots of Depression}

Scholars focused on the study of law student well-being have demonstrated that law school has a negative impact on law students’ sense of balance and autonomy support. These scholars point out that this negative impact continues over the three years it takes to complete the course of legal education.\(^ {21}\) Their studies have also demonstrated that

\(^ {17}\) Martha Nell, 'Totally Driven' Lawyer's Suicide a Wake-up Call for Others, ABA J. (May 5, 2008), http://www.abajournal.com/news/article/totally_driven_lawyers_suicide_a_wake_up_call_for_others.


\(^ {21}\) Krieger, Dark Side, supra note 5 (discussing the negative effects of law school on law students, during law school and beyond, into their professional lives). Lawyers “rank fifth in the incidence of suicide and show from five to fifteen times the normal incidence of clinical psychological distress as well as very high levels of substance abuse.” Id. at 115.
law students’ values shift over the course of their three years of study and that this shift is accompanied by a sharp decline in students’ subjective well-being index scores. Some have suggested possible explanations for the phenomenon of law student distress: a lack of autonomy support, the employment of an academic language that challenges students’ most closely held values of justice and equality, and environmental factors that push students to value extrinsic motivators, such as grades, money, and status, in lieu of intrinsic values, such as justice, fairness, equality, and balance. Whatever the cause, these studies have demonstrated that law student depression is a real and significant problem—one that may require deep inquiry in order to understand and address.

For many, depression begins in law school. Kennon Sheldon and Lawrence Krieger established that law schools are producers of psychological distress, and that, for many, the problems of depression and related psychological ills manifest in the early months of the 1L year and persist indefinitely into practice. In Sheldon and Krieger’s empirical study, Does Legal Education Have Undermining Effects?, students entering the legal academy showed psychological profiles that were better than those of the general population. Compared with a control group and observed over time, law students’ psychological health declined rapidly during the course of the first year. The change was not a minimal one; after less than one year in the academy, law students’

22 Krieger, Human Nature, supra note 12, at 261–62 (“[Law students’] personalities are narrowed rather than broadened by law training and . . . [their] most basic needs are frustrated in law school.”).
23 Id. at 263.
24 Id. (“[S]tudents that experienced greater autonomy support had greater basic need satisfaction, performed better—as measured by (normalized) grade achievement and passage of their bar examination, had more internal motivation when seeking a lawyer position, and were happier.”).
25 Anthropologist and law professor Elizabeth Mertz suggests that the nature of legal thinking and the Socratic classroom, an environment in which students are taught to refute arguments and to disregard their own moral values, empathies, and feelings of compassion, effectively destabilizes their moral grounding and changes their values, resulting in the development of “combat dialog” and the subordination of student’s individual goals and values. ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER” 5–6, 9–10 (2007).
26 See, e.g., Dammeyer & Nunez, supra note 3, at 55–56; see also Benjamin et al., supra note 3, at 225; Hess, supra note 3, at 75.
27 Sheldon & Krieger, Undermining Effects, supra note 5, at 263 (“Although performance pressures, extrinsic rewards and enticements, and desires to impress others may produce positive performance to some extent, these factors tend to work against persistence, enjoyment, creativity, and integration in the long run.”).
28 See id. at 261.
indicators for subjective well being plummeted. Among other things, Krieger and Sheldon’s work supports what previous studies have found, that negative changes persist[] throughout law school and into the students’ early careers, making it clear that the negative findings in law students do not represent a brief “adjustment” problem at the beginning of law school. The incidence of clinically elevated anxiety, hostility, depression, and other symptoms among [studied law] students ranged from eight to fifteen times that of the general population.

Krieger’s work tells us that law schools are negatively affecting significant numbers of students, that the change in well-being experienced by those students occurs soon after students enter the law school environment, and that those changes have measurable, negative psychological outcomes. Importantly, these problems were associated with students’ shift from intrinsically held values to extrinsically held values, especially their focus on the perceptions and judgments of others. Krieger and Sheldon suggest that this shift to a preference for extrinsic values, a change that causes students to place high premiums on what others think about their appearance and perceived status, is close to the core of the law school depression problem. At the conclusion of their study Krieger and Sheldon admonish:

Past scholarly commentaries and previous studies paint a bleak picture of the effects of legal education on the well-being of law students. Our data from two very diverse law schools confirms these negative reports . . . .

29 See id.
30 Krieger, Dark Side, supra note 5, at 114 (citing Dammeyer & Nunez, supra note 3 and Benjamin et al, supra note 3).
31 See id.; see also Dammeyer & Nunez, supra note 3, at 55; Martin E.P. Seligman et al., Why Lawyers Are Unhappy, 23 CARDOZO L. REV. 33, 37 (2001).
32 Sheldon & Krieger, Undermining Effects, supra note 5, at 273 (“In the language of [self-determination theory], this suggests a classic ‘undermining’ effect, in which initial positive motivations are eroded or usurped . . . . [S]tudents of all demographic types came to feel that pursuit of their law-school goals was less interesting or enjoyable, and was more controlled by others’ desires and dictates.”).
33 See id. at 264.
34 In their work, Krieger and Sheldon argue that one of the major forces driving law student depression, SWI, and other problematic indicators is a lack of autonomy support created by an environment that seeks to control participants. This Article does not seek to explore, endorse, discount, or otherwise investigate that assertion. Instead, this Article seeks to deepen the discourse by introducing additional psychological constructs into the law school pedagogy conversation.
If these experiences are common in American law schools, as anecdotal reports and other studies indicate, it would suggest that various problems reported in the legal profession, such as depression, excessive commercialism and image-consciousness, and lack of ethical and moral behavior, may have significant roots in the law-school experience.  

For affected law students, the decline in well-being and sense of self is marked by a change in attitudes toward the world and toward the self. In Krie ger and Sheldon’s study, the approval and admiration of others, along with external validation in the form of money, grades, and job prospects became increasingly important as students’ sense of well-being and personal accomplishment decreased. In other words, the students’ measures of extrinsic and intrinsic motivation changed. Many students lost their sense of intrinsic motivation and became more extrinsically motivated during the course of law school. Such a shift, from intrinsic values to extrinsic values, is one of the hallmarks of depressed thinking. Though support and other help was available to the students studied, few took advantage of it, and their depressed well-being levels remained low, even into practice.

Regardless of class rank or school caliber, law students seem to be experiencing a crisis of self-loathing, helplessness, and pessimism—hallmarks of the depressed mind. The degree to which the depression

35 Sheldon & Krieger, Undermining Effects, supra note 5, at 283. Though the causes of the law student depression epidemic are not entirely clear, some excellent hypotheses have been developed, proposed, and empirically studied by Krieger, Mertz, and others. This Article does not seek to duplicate that research and will not focus on those works’ conclusions about the causes of law student depression, nor will it focus on solutions to the depression problem that might require restructuring the curriculum or other aspects of the law school environment. Instead, this Article proposes a classroom and written response feedback method that, when integrated into the existing model of legal education, may alleviate depression by breaking students’ cycles of pessimistic attribution, particularly with respect to attitudes toward learning and performance.

36 Id.
37 Id. at 281.
38 Id.
39 Id. at 264.
40 Id. at 263.
41 Id.; see also Benjamin et al., supra note 3, at 225. Benjamin’s earlier Arizona study produced similar results, but used a different instrument, finding “no correlation between symptom levels and a number of factors that one might [expect] to influence student distress. For example . . . age, undergraduate grade point average, law school grade point average, hours devoted to undergraduate studies, or hours devoted to law school studies.” Benjamin et al., supra note 3,
and pessimism influence law school performance is not well understood, largely because most law schools still grade using a forced curve. What we do know is that depressed people are likely to experience helplessness, so that where depressed law students are not maximizing and realizing their academic potential, their depressed thinking is almost certainly interfering with their ability to do so.

C. HAPPINESS ON THE UPSWING

At the same time that law schools are working to acknowledge and address the nuanced problems of law student and lawyer distress, the American public’s interest in happiness has exploded. In the past five years, books on happiness, achievement, well-being, and success have graced the New York Times Bestseller list, making their way into stores, homes, and the national consciousness. Some believe that too much choice is contributing to American unhappiness, while others point to interconnectedness, self-determination, and health as sources of well-being. Though the underlying cause of the happiness craze remains unclear, the demand for happiness literature does suggest that Americans are paying closer attention to the value of emotion in everything from economic theory to relationship success.

In the current scheme, happiness is a broad, unwieldy concept. The notion of happiness has been used to capture ideas ranging from the Aristotelian ideal of a life well lived to the immediate hedonic gratification associated with consumer behavior. Rather than evaluating law student happiness as a way into understanding law student

at 225. Krieger and Benjamin’s work, taken together, suggests that law students’ well-being is jeopardized by the law school experience and that the disruptive factor, though perhaps difficult to ascertain, is nonetheless unrelated to age, GPA, or hours spent studying.

42 Happiness is perhaps something of an ill-conceived term for the sort of well being these books and articles seem to want to define. For a brief discussion of the different approaches to conceptualizing happiness, including eudaimonic or Aristotelian notion of the well lived life and hedonic, or pleasure seeking notions of the life that maximizes pleasure, see the work of Mike Steger, What Makes Life Meaningful, TEDxCSU (March 2013), http://www.youtube.com/watch?v=RLFVoEF2RI0&list=PLsRNoUx8w3rPAUaj7ID8DN-v8_CtQPrhR&index=3.


depression, researchers have examined well-being in the form of life satisfaction and attribution style for negative events in order to understand why law students are depressed and what, if anything, can be done about it. Attribution style refers to the way people use particular language to explain the causes of good and bad events in their lives—particularly whether they explain events by looking at internal factors, such as natural ability, or external factors, such as the decisions of others. Studying a person’s attribution style toward positive events may not be useful in the law school context, though. This is because happiness is still a soft, rather ill defined concept. Because of the varied terminology used to define happiness, happiness research alone does not provide the tools the legal academy needs in order to understand law student psychology. Attribution style for bad events, on the other hand, provides the most useful technical framework for understanding whether a person thinks about setbacks or crises through the lens of optimism or pessimism. It also predicts with accuracy whether a person is likely to become depressed. As a result, optimism and pessimism, which have been used to understand law student behavior and experience, are better measures and predictors of law student depression than those measures offered by happiness research more generally.

II. RECONCILING THE QUESTION

A. OPTIMISM, PESSIMISM, AND DEPRESSION

i. Attribution Style

Optimism and pessimism are well-examined systems of thought. Evolutionary psychologists have evaluated what, if any, evolutionary advantage the general human predisposition toward optimism confers. In most human affairs, people who exhibit a predisposition toward thinking about the world through the lens of optimism are more successful in their endeavors, enjoying higher wages, better health, larger retirement portfolios, and more successful relationships. Those

46 Daniel Kahneman has advanced the idea that a clearer definition of happiness would help advance the research in the field. See, e.g., Kahneman, supra note 43.
47 See, e.g., Sam Wren-Lewis, Towards a Complete Account of Psychological Happiness, 2 PRAXIS 58 (2010).
49 Hotz, supra note 8, at B1 (“[I]n the palette of human temperament, a rose-colored view of the future is the dominant hue, regardless of culture or nationality. Psychologists puzzle over this basic bias for the bright side.”).
who function within the boundaries of what psychologists have deemed a healthy optimism, live longer, have more friends, and experience greater overall life satisfaction.\textsuperscript{51} In nearly every arena, optimism seems to be an adaptive trait that predicts long-term success.\textsuperscript{52} Pessimism, on the other hand, is linked with learned helplessness, depression, poor financial health, and, in some studies, even early death.\textsuperscript{53}

Attribution style theory is a system that provides an understanding of whether and to what degree a person is engaged in optimistic or pessimistic thinking. The theory, in brief, holds that people using an optimistic attribution style generally internalize positive events. These people believe that good events arise out of positive attributes that are fixed, pervasive, and rooted in the self. At the same time, negative events are externalized, viewed as temporary, changeable, and particular to a specific time and set of events. For example, a person with an optimistic attribution style might experience a job loss during a recession but would attribute the loss to the particular time, place, and set of circumstances, rather than the result of some inherent, unfixable flaw in herself.\textsuperscript{54} Attribution style theory is a system that has grown out of positive psychology research\textsuperscript{55} and one that is particularly applicable to the law school context.\textsuperscript{56} The field of positive psychology seeks to redefine the

\textsuperscript{51} See generally \textit{Seligman}, supra note 48.
\textsuperscript{52} \textit{Id.} at 96, 134, 178.
\textsuperscript{53} \textit{Id.} at 14, 55–57.
\textsuperscript{54} See \textit{id.}
\textsuperscript{55} See generally Martin E.P. Seligman & Mihaly Csikszentmihalyi, \textit{Positive Psychology: An Introduction}, 55 AM. PSYCHOLOGIST 5 (2000). Positive psychology is a new field in psychology. Where traditional psychology focuses on abnormal human behavior—or psychological illness—positive psychology works to understand human thriving—or psychological health—and then translates healthy behaviors into diagnoses and tools that can be used to help those in the general population, both those suffering psychological ills and those simply seeking to improve their already healthy psychologies. \textit{Id.}
\textsuperscript{56} See \textit{Seligman}, supra note 48; see also Todd David Peterson & Elizabeth Waters Peterson, \textit{Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology}, 9 YALE J. HEALTH POL’Y L. & ETHICS 357, 361 (2009) (“[T]he relatively new field of positive psychology may provide some useful solutions to the problem where the traditional approaches of clinical psychology and the proposals for curricular reform fail.”); Martin E.P. Seligman et al., \textit{Why Lawyers Are Unhappy}, 23 CARDOZO L. REV. 33, 35 (2001) (“Our belief is that the new field of ‘positive psychology’ (which seeks to cultivate human strengths, rather than focus on human weaknesses), offers coping strategies to reduce unhappiness, and can be adapted successfully to the legal setting . . . .”) (internal citations omitted).
way the scientific community thinks about human cognition and behavior.\textsuperscript{57} “The principal tenet of positive psychology is that to understand the human condition, we should study not only mental illness and distress, but also the conditions that lead to optimal functioning.”\textsuperscript{58} That concept of optimal functioning, or “thriving” has become a new goal for psychological health.\textsuperscript{59} Unlike the old science of the mind,\textsuperscript{60} positive psychology asks probing questions to discover what makes humans thrive and seeks information about the methods by which healthy people avoid depression and related ills.\textsuperscript{61} In the law school environment, where depression is an increasing problem, an understanding of the psychology of thriving could play an especially important role.\textsuperscript{62}

\textsuperscript{57} See Seligman & Csikszentmihalyi, supra note 55, at 10.

\textsuperscript{58} Peterson & Peterson, supra note 56, at 361–62.

\textsuperscript{59} Seligman & Csikszentmihalyi, supra note 55. Thriving is understood as maximizing individual potential in terms of performance and achievement markers, which can be quantified using specific markers. Thriving and the related concepts of cognitive optimism and pessimism have no relationship to the feel-good ideas associated with the self-esteem movement. \textit{Id.; see also} Peterson & Peterson, supra note 56, at 362 (“Although positive psychology researchers were not the first persons to think about what makes for a full and happy life, ‘the value of the overarching term positive psychology lies in its uniting of what had been scattered and disparate lines of theory and research about what makes life most worth living.’ Positive psychology aims to move from a disease model, where the focus is solely on fixing what is wrong with people, to a health model, where the focus is on building positive traits and skills that foster optimal functioning.”) (internal citations omitted); David Cray, \textit{Study Finds Students Narcissistic: Says Trend Among College Youths Can Harm Society}, BOSTON GLOBE (Feb. 27, 2007), http://www.boston.com/news/nation/articles/2007/02/27/study_finds_students_narcissistic/ (discussing how the self-esteem movement has produced narcissistic students).

\textsuperscript{60} See SELIGMAN, supra note 48, at 8–9. B.F. Skinner’s theory of Behaviorism as a theory that understood human action as the belief “that people were ‘pushed’ by their internal drives or ‘pulled’ by external events . . . that behavior was repeated only when reinforced externally.” \textit{Id.} Seligman goes on to explain the shift that precipitated the advent of his theory of positive psychology, writing that “[s]tarting around 1965, the favored explanations began to change radically. . . . So the dominant theories in psychology shifted focus in the late 1960s from the power of the environment to individual expectation, preference, choice, decision, control, and helplessness.” \textit{Id.}

\textsuperscript{61} \textit{Id.} at 19–20. Seligman first began to examine depression when he accidentally discovered learned helplessness, an outcome of experiments in conditioning dogs.

\textsuperscript{62} See Krieger, \textit{Dark Side}, supra note 5, at 115 (“Our graduates rank fifth in the incidence of suicide and show from five to fifteen times the normal incidence of clinical psychological distress as well as very high levels of substance abuse.”) (internal citations omitted).
Attribution style tells us that language operates in the brain in powerful ways, and that how we use the language of thought to explain events to ourselves may dictate the way that we respond. Optimistic or pessimistic attribution style is identified by key language the optimist or pessimist uses in describing a situation.

Positive psychology suggests that people who are resilient in the face of daily challenges think about setbacks through the lens of an optimistic attribution style, while those who give up easily, those who are prone to learned helplessness and depression, are more likely to think about bad academic events through the lens of a pessimistic attribution style. Those who believe performance can be improved and that perceived failures are not the result of permanent problems are more likely to rebound after a setback, to outperform their peers and their own expectations over the course of time and, perhaps most importantly, to be insulated from stress and performance-related depression.

ii. Pessimism

In order to understand what makes some people more resilient than others, Martin Seligman examined optimism and pessimism as cognitive processes. Seligman and his team identified attribution style, the way a person uses particular language to explain the causes of good and bad events, as the key component in determining whether a person is optimistic or pessimistic, according the Seligman’s definition of those terms. Seligman and his team based their inquiry on the early work of UCLA psychologist Bernard Weiner, who in the 1960’s theorized that the way people think about achievement influences what they are actually able to achieve. Weiner looked at ways people thought about themselves and the underlying causes of their achievements. He believed that, rather than responding to external reinforcement, people’s internal beliefs about their achievement were the most predictive of their

63 See SELIGMAN, supra note 48, at 14–16.
64 Though the terms “optimism” and “pessimism” have colloquial meanings that are well understood by most laypeople, this Article does not rely on those common definitions. Instead, this Article draws on the science of attribution style theory and the definitions of optimism and pessimism propounded by researchers in that field.
65 SELIGMAN, supra note 48, at 44.
67 See SELIGMAN, supra note 48, at 40–43.
68 See BERNAHID WEINER, http://lieber.bol.ucla.edu/Weiner/Weiner.html (last visited Sept. 16, 2013). Weiner is widely credited with the initial development of attribution theory. Seligman’s work built on the core concept of Weiner’s theory, refining it to the categories identified in this Article.
success.\textsuperscript{69} Weiner introduced the idea of attribution in relation to achievement, arguing that the way a person thinks about what happens to her dictates whether she has a pessimistic or optimistic response to obstacles.\textsuperscript{70}

Though Weiner’s theory was less nuanced than Seligman’s, the essence of Weiner’s idea lives on in Seligman’s work; we now know people who are most successful see obstacles not as permanent roadblocks, but as temporary states that can be overcome with hard work.\textsuperscript{71}

Seligman, however, sought a more complex approach to answering the question of what makes some people flourish where others fail. In exploring what makes certain individuals especially resilient, Seligman hit on the idea of a multi-part explanatory style that could be used to analyze habitual thinking. This explanatory style could be traced in written or spoken patterns and\textsuperscript{72} those patterns could then be extrapolated to yield information about what an individual’s cognitive processes were over the course of an hour, a week, or even a lifetime.\textsuperscript{73} This new explanatory style framework explicitly identified two kinds of thinkers: those who predominately use an optimistic explanatory style and tend to be more resilient in the face of obstacles and those who use a pessimistic explanatory style, who tend toward helplessness, depression, and lower psychological resilience.\textsuperscript{74}

In 2001, Charles S. Carver\textsuperscript{75} and Michael F. Scheier\textsuperscript{76} neatly summed up the colloquial definitions of “optimism” and “pessimism.”\textsuperscript{77} According to the two researchers, most people think, “[o]ptimists are people who expect good experiences in the future [and] [p]essimists are people who expect bad experiences.”\textsuperscript{78} That definitional mode, they said,

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\textsuperscript{69} See SELIGMAN, supra note 48, at 14, 16, 40–41.
\textsuperscript{70} Id.
\textsuperscript{71} Id.
\textsuperscript{72} Id.
\textsuperscript{73} Id. at 80.
\textsuperscript{74} Id. at 43–51.
\textsuperscript{76} See Michael F. Scheier, Curriculum Vitae (Mar. 4, 2010), \textit{available at} http://www.psy.cmu.edu/people/scheier_vita.pdf.
\textsuperscript{77} Shelley Taylor, Optimism/Pessimism, MACARTHUR RESEARCH NETWORK ON SES AND HEALTH, http://www.macses.ucsf.edu/research/psychosocial/optimism.php (last revised July 1998).
\textsuperscript{78} Charles S. Carver & Michael F. Scheier, Optimism, Pessimism, and Self-Regulation, \textit{in} OPTIMISM & PESSIMISM: IMPLICATIONS FOR THEORY, RESEARCH, AND PRACTICE 31, 41 (Edward C. Chang ed., 2001). Carver and Scheier suggest that optimism and pessimism are strongly linked to motivation, that “the
“has a long history in folk wisdom, as well as in early attempts to categorize people according to their qualities of personality.”

Seligman’s research took that folk wisdom into the scientific realm and reoriented it, demonstrating that pessimists exhibit specific characteristics in the way that they anticipate future occurrences and in the way they understand both positive and negative and past and present events. He found that pessimists are almost universally people who give up easily, and, as a result of their thought and speech habits, are more likely than those with an optimistic explanatory style to experience depression.

In Seligman’s model, pessimistic minds work along a defined spectrum and attribute events along three dimensions: permanence, pervasiveness, and personalness. Pessimistic people see negative occurrences as the result of some permanent failing. Examples of these kinds of thoughts are, “diets never work” or “professors always hate me.” This kind of thought promotes the concept that the issue in question cannot be modified, remedied, or changed in any way.

The pessimist sees negative events as attributable to some pervasive problem—one that colors not only the single, negative situation the pessimist seeks to understand, but also everything related to that situation. Examples of this sort of thinking include the phrases “all expectancies with which people return to action are reflected in subsequent behavior.” Carver and Scheier “begin[] with the assumption that behavior is organized around the pursuit of goals,” and go on to tie pessimism to decreased motivation and optimism to increased motivation. They write, “If doubts are strong enough, the result is an impetus to disengage from effort, and potentially from the goal itself.”

Id. at 41–42 (internal citations omitted).

Id. at 31.

SELGiman, supra note 48, at 5.

Id.

Id. at 44. Seligman and fellow researchers used the labels, “internal, stable, and global.” See, e.g., Jane E. Gillham et al., Optimism, Pessimism and Explanatory Style, in OPTIMISM & PESSIMISM: IMPLICATIONS FOR THEORY, RESEARCH, AND PRACTICE 53–55 (Edward C. Chang ed., 2001). Those labels were later morphed into the alliterative tags, “permanent, pervasive, and personal.” See SELgImAN, supra note 48, at 44. I will use this second phrasing throughout the remainder of the Article.

SElgImAN, supra note 48, at 44–45.

See Gillham et al., supra note 82, at 54–55; see also SELGImAN, supra note 48, at 44.

See Gillham et al., supra note 82, at 54–55; see also SELGImAN, supra note 48, at 44.

See Gillham et al., supra note 82, at 54–55; see also SELGImAN, supra note 48, at 46.
women are impossible to talk to” or “all law professors are unfair.”
This kind of attribution allows negativity to permeate from a single occurrence into every related occurrence, encouraging the pessimist to view not only the situation at hand, but also related situations, as hopeless; as result, the pessimist is inclined to give up. From there, the pessimist extrapolates individual bad events to the broader world, expecting those bad events to reproduce indefinitely.

The pessimist also attributes negative events in a way that is highly personal. That is, the pessimist believes that bad things have happened to her because she is, in some way, fundamentally and irrevocably flawed. Examples of this kind of thinking include the statements, “I’m stupid” and “I’m ugly.” When good things happen to the pessimist, she sees them as the result of some unusual, perhaps random, confluence of events. When the pessimist receives a high mark on an exam, she thinks, “The test was too easy,” or, “This is a class of weak students.” In sum, pessimistic attribution style is that habit of thought in which a person, presented with a bad event, regards that event as (1) permanent, arising out of some incurable failing; (2) pervasive, rooted in the surrounding environment such that everyone in that environment can see the permanent failing; and (3) personal, having an origin in an aspect of himself such that the failure can only be attributable to the very make-up of the individual.

### iii. Optimism

An optimist, by definition, thinks about experiences in a way that is directly opposite of the way the pessimist characterizes events. When seeking to understand negative events, the optimist has a positive

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87 See SELIGMAN, supra note 48, at 46–47.
88 Id.
89 Id. at 131–34 (explaining that, in a study of women who were girls during the Great Depression, those who continued to live in poverty emerged as pessimists, while those whose families were able to recover financially emerged as optimists at an increased rate of statistical significance).
90 Id. at 208.
91 Id. at 76.
92 Id.
93 This Article will focus primarily on attribution style for negative events or challenging events, the kinds of things that are happening to students in law school.
94 See SELIGMAN, supra note 48, at 50.
95 See id. The pessimist’s attribution style for understanding positive events parallels the optimist’s attribution style for negative events. The pessimist sees good things that happen to him as temporary, isolated, and specific, while the optimist thinks about negative events in this way. Thus, optimism and pessimism reveal themselves as mirror images. Id.
96 See id. at 45; see also id. at 44–50.
It is in thinking about the good things that happen to her that the optimist identifies with permanent, pervasive, and personal qualities. For example, when the optimist receives a high mark on an exam, she thinks of her success as the result of some set of innate quality in herself, not as an isolated incident. Thoughts like, “I am a strong test taker” or “I have always been a great student,” run through the optimist’s mind in explaining to herself her academic success. In the case of negative events, the optimist has a forward-looking explanatory style. When she encounters a setback or a negative event, the optimist views the event in terms that are temporary, specific, and hopeful. If an optimist sees a poor mark on a paper, she thinks of the mark as a temporary, one-time occurrence. She also perceives the bad event as having grown out of something specific, as being attributable to some particular failing or problem. For example, the optimist might see that she did not leave enough time to complete her assignment, that she was less experienced than her classmates, or that she had a personal emergency a few days before the paper was due. The optimist also sees bad events in hopeful terms. She believes that, if she does something or some set of things differently in the future, she can produce a better outcome.

The views of optimists and pessimists could not be more divergent. Where the pessimist sees a low mark as an indication that she is stupid, believing that every assignment is stacked against her and every professor convinced of her inadequacy (a very broad view of the problem), the optimist cabins the issues and thinks about them in narrow terms appropriate to the particular situation. Where the pessimist sees the mark as indicative of a permanent failing, the optimist views the same experience through a hopeful lens. And because the optimist sincerely believes he can “walk on water,” he will bend his world as much as he can to reflect the truth of that internal reality.

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97 See id. at 44–50.
98 See id.
99 See id. at 45.
100 Id.
101 See id. at 45–48.
102 Id. at 44.
103 Id. at 44, 47–48.
104 Id. at 52.
105 See id. at 44, 47, 49.
106 Id. at 44.
107 Id. at 95.
108 Id.
iv. Pessimism and Depression, a Progression

The product of prolonged pessimistic attribution is learned helplessness, a condition that leads those experiencing it to look, feel, and behave like depressed persons. Learned helplessness is precisely what it sounds like—a state of believing that nothing one does can alter one’s situation. People who develop this belief often experience negative events over which they have no control and extrapolate their negative experiences to the rest of their lives, concluding that they are powerless to affect change—even where that change is strongly desired. Though depression and learned helplessness are not the same, the two are nearly identical in their behavioral manifestation; both people with learned helplessness and depressed people exhibit extreme passivity.

Research demonstrates that learned helplessness can be taught. In a series of experiments, researchers successfully taught animal subjects that the subjects could not reduce negative stimuli with behavior modification, even when that behavior modification was simple to execute and easy to understand. Later, when placed in a situation in which behavior modification would reduce or eliminate negative stimulation, the subjects refused to act in a way that would protect them from harm, even though there were no external obstacles to such action. In short, the subjects learned to be victims. As this research demonstrates, learned helplessness is the result of prolonged pessimistic attribution style thinking. This is important because learned helplessness has been identified as a key process in the development of depression.

B. The University of Virginia Study

Generally speaking, medical and economic evidence supports the notion that the optimists will be better prepared to cope with the


110 Depression is a medical diagnosis, whereas learned helplessness is a behavior manifested in response to a stimulus or set of stimuli. Depressed persons exhibit the passivity (and sometimes incapacitation) associated with learned helplessness, but a person can learn helplessness with respect to a particular thing—for example, achievement in school—and still not meet the DSM criteria for clinical depression. See id. at 182–226.

111 See Seligman, supra note 48, at 44–50.

112 Id. at 19–32.

113 Id. at 26.

114 Id. at 24, 26–28.

115 For a description of the way helplessness and passivity are manifested as aspects of unipolar depression, see id. at 13.

116 Some researchers have characterized optimism as a trait imbued with survival value, and some argue that optimism may have been a highly prized
academic and psychological challenges that law school presents. Seligman’s work suggests that because optimists generally thrive, even in the face of extreme challenges, they are more likely to survive the setbacks experienced by many students as part of law school. Before 2001, it seemed the literature on optimism and pessimism was clear, well vetted, and widely accepted. To thrive in a given endeavor, the research said, one would do best to function within the boundaries of healthy optimism—aware of potential pitfalls where ignorance might result in a highly problematic outcome, but not so in tune with the negative aspects of a given activity that one’s motivation, engagement, and confidence would be undermined. However, the 2001 University of Virginia study generated some surprising and potentially problematic data—data that called into question the value of pessimism for particular kinds of activities and thought processes.

Seeking to understand the relationships between pessimism, depression, and related ills in the legal community, positive psychology pioneer Martin Seligman worked with Paul Verkuil and Terry Kang to conduct one of the most authoritative and disturbing studies of American law students. Conducted at the University of Virginia School of Law, the study applied Seligman’s formulations for optimistic and pessimistic attribution style to the student body. In Seligman’s formulation, a pessimistic attribution style is a risk factor for, if not synonymous with, learned helplessness and depression. The researchers believed that assessing whether students experienced law school through the lens of optimism or pessimism should provide some insight into why law students and lawyers are often depressed and what ought to be done about it.

The results of the study were by all accounts surprising. The highest-achieving law students were disproportionately those who exhibited a strong preference for extreme pessimism, those who attributed bad

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115 See SELIGMAN, supra note 48, at 5; Puri & Robinson, supra note 116, at 73–74.
116 See SELIGMAN, supra note 48, at 184, 209.
events in the way that was most permanent, pervasive, and personal. One would expect, given the research on pessimistic attribution style, that students who attributed bad events pessimistically would be the least successful in any given group. Yet, at least for the students who participated in the UVA study, the opposite proved true. Those surprising results led Seligman to suggest that extreme pessimism was correlated with law school success—at least for law students performing in the highest bracket.119

The notion was a revelation of sorts. It seemed that, instead of worrying about law student and lawyer depression, the academy and the broader public should instead change their thinking about lawyers and depression. If pessimism, which leads to learned helplessness and then depression, is a positive trait for those working in the law, one that leads to better lawyers and, by extension, to better legal outcomes for those involved in the legal system, then perhaps pessimistic or depressive lawyers ought to be left to their own depressive devices. Optimism, which research suggested was necessary for a happy, healthy, productive life, was not to be available to those operating in the legal world.

Articles such as the Wall Street Journal’s Except in One Career, Our Brains Seem Built for Optimism, the New York Times’ Lean Toward the Sunny Side, but Don’t Overdo It, and a score of other periodicals, blogs, and books relayed Seligman’s findings to the public. These sources conveyed the message that, for those in the legal profession, pessimism and depression may be personally problematic but perhaps required.120 From websites and articles across the country, the consensus was clear: Depressed people make better lawyers. But this notion—that society benefits from depressed lawyers—is problematic. To say that depression and psychological illness is desirable or even inevitable harms those coping with these often stigmatized issues. Instead of promoting or even accepting a pessimistic point of view, society and legal institutions should encourage cognitive pessimists to see the world in a more optimistic way.

The UVA study has been unduly characterized as an endorsement of pessimism. This is due in part to the unusual findings of the study and to

119 Correlation is never the same as and so should not be mistaken for causation.
the explanations of those findings. The study briefly touched on, but did not explore in detail, the possibility that a unique phenomenon may be occurring in those law students for whom high pessimism and strong success were correlated. A special kind of pessimism, defensive pessimism, seldom discussed and not always well-understood, may provide the best explanation for the study’s findings. If defensive pessimism is indeed a way of understanding the unique correlation between pessimism and achievement, defensive pessimism may also provide guidance as to how those in the legal academy can help law students to feel less depressed.

III. THE ACCIDENTAL OPTIMIST

A. INTRINSIC MOTIVATION AND THE GROWTH MINDSET

A common theory explaining the phenomenon of law student distress is that law students, graded on a curve in a competitive environment, experience more failure than others and so think less highly of themselves. Because students in a variety of educational settings have been studied, there is a broad literature on what makes students successful and happy, even in competitive academic settings. Mindset theory suggests that a person’s belief about whether he can learn and thereby improve his academic outcomes affects his ability to do so. The theory evolved as a result of Carol Dweck’s decades-long research and provides some broad insight into the way that different people experience challenge and perceived failure—especially the experience of being poorly ranked or receiving a lower-than-expected grade in school. Dweck’s experiments have examined the ways in which approaches to thinking about intelligence affect motivation and performance. These experiments focus particularly on an individual’s attitude about his own intelligence and his ability to improve that intelligence, and therefore his mastery and performance in challenging activities.

Mindset theory asks how beliefs shaped by our schools, families, and teachers, influence our actual and perceived abilities to succeed. The theory also asks how those altered abilities in turn shape our actions, thoughts, and subsequent success. Dweck’s research demonstrates that students who believe that intelligence is fixed—that each person is born with an innate level of intelligence, and that this level of intellectual power cannot be changed—tend not only to stagnate intellectually, but also develop habits that inhibit their growth. These students fear failure

123 Id.
and become invested in appearing smart rather than in achievement. On the other hand, students who believe that intelligence is fluid and that performance can be improved with a combination of hard work and appropriate feedback show an openness to challenges. Because these students are willing to fail and to learn from their failures, over extended periods they will outperform their entity-minded counterparts and are more likely to perceive academic environments as productive and enriching.  

One of the essential theses of the growth mindset is that when an environment promotes a certain belief about the malleability of intelligence, students internalize that idea, and their beliefs are reflected in their performance—or lack of performance—on academic tasks. Writing about mindset and institutional culture in the *Harvard Journal of Law and Gender*, Susan Sturm comments: “[Dweck] shows that learning-focused environments, which emphasize the capacity to learn from error, foster greater levels of engagement and academic success than performance-ranking environments, which emphasize proving intrinsic intelligence.”

Krieger and Sheldon suggest that one of the features of law students’ psychological decline is a reframing of student values. As students experience law school, their value orientation shifts from an intrinsically motivated orientation to an extrinsically motivated orientation—a shift from a learning focus to a proof-of-intelligence focus. As a result, law students come to believe that grades and the perception that one “is smart” are more useful than a willingness to explore or a determination to master difficult concepts. In other words, students become outcome-oriented valuing intelligence more than learning. Anecdotal evidence

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124 *Id.; see also* Claudia M. Mueller & Carol S. Dweck, *Praise for Intelligence Can Undermine Children’s Motivation and Performance*, 75 J. PERSONALITY & SOC. PSYCHOL. 33, 48 (1998) (“[C]hildren who received ability feedback appeared to learn to measure their intelligence from their performance in a way that children who received effort feedback did not.”).

125 Jennifer A. Mangels et al., *Why Do Beliefs About Intelligence Influence Learning Success? A Social Cognitive Neuroscience Model*, 1 SOC. COGNITIVE & AFFECTIVE NEUROSCI. 75, 75 (2006) (“Most students aim to succeed on academic tests. Yet, there is increasing evidence that the likelihood of their success is influenced not only by actual ability, but also by the beliefs and goals that they bring to the achievement situation . . . .”).

126 Susan Sturm, *Multi-Disciplinary Response to Susan Sturm’s The Architecture of Inclusion*, 30 HARV. J.L. & GENDER 409, 415 (2007) (“[W]hen status is zero-sum and depends largely upon out-performing others, institutions tend to be more exclusionary and to discourage engagement, full participation, and advancement. When, in contrast, the institution has a responsibility to develop each person’s status as a learner with the capacity to succeed, it is more likely to encourage full participation and engagement.”).

suggests that many law students perceive the Socratic dialogue and the final exam as a contest of minds in which the “smart” people will be rewarded, with both grades and social desirability.\(^{128}\)

Dweck’s research suggests that this kind of focus on extrinsic motivators is indicative of an environment that relies on ability labeling. Ability labeling is very much what it sounds like—a process by which some people are labeled as smart and others are labeled as less so, in a hierarchy of fixed intellectual traits. Ability labeling promotes the entity mindset and can encourage a shift from growth to entity mindset in those who are so labeled.\(^{129}\) Both the labeling and the labels are damaging to the learning process.\(^{130}\)

Early in her career, Dweck noticed that some people gave up easily or refused a challenge altogether when given a difficult task, while others relished the opportunity to learn from a difficult exercise, even though they realized that they might fail.\(^{131}\) Her research pursued those polarized responses to difficult tasks and evaluated the motivation and behaviors of individuals who engaged with challenges differently.\(^{132}\) Those who responded to challenges by giving up, she found, were the same people who believed that intelligence was a fixed trait and that performance could not be improved, even with instruction and training.\(^{133}\) Some subjects did not work to get better because, quite simply, they did not believe that they could.\(^{134}\) Dweck now calls these people entity theorists, or those who believe that intelligence is a fixed entity. She has found that, when pressed to complete a challenging task that might lead to failure, entity theorists not only give up, they also respond to challenges by rejecting opportunities for growth:

Entity theorists tend to be more concerned with besting others in order to prove their intelligence (‘performance goals’), leaving them highly vulnerable to negative feedback. As a result, these individuals are

\(^{128}\) This is anecdotal. I have been writing about mindset and law students since 2009 and have observed that the shift to extrinsic motivation that begins early on in law schools seems to occur simultaneously with a shift to the entity view of intelligence. Students who make comments like, “I’m not smart enough,” or “Until I came to law school, I believed I was smart” are expressing both an entity view and an extrinsic orientation. Those who teach in American law schools will note that comments of this ilk are unfortunately far from uncommon.

\(^{129}\) DWECK, supra note 122, at 74–79.

\(^{130}\) See id. at 16, 18, 141.

\(^{131}\) Id. at 180.

\(^{132}\) Id. at 72, 82.

\(^{133}\) Id. at 111–13.

\(^{134}\) Id. at 24-25, 33, 109.
more likely to shun learning opportunities where they anticipate a high risk of errors, or to disengage from these situations when errors occur. Indeed, when areas of weakness are exposed, they will often forego remedial opportunities that could be critical for future success . . . .

When performance is linked to intelligence through praise, it reinforces the entity theory of intelligence. Such praise, known as ability praise, promotes labeling and instructs those who are successful that their achievement resulted from high ability or a powerful fixed intelligence. A public ranking system may have the same effect. Describing an environment designed to promote the entity-mindset, Dweck writes:

Unlike Alfred Binet [Mrs. Wilson] believed that people’s IQ scores told the whole story of who they were. We were seated around the room in IQ order, and only the highest IQ students could be trusted to carry the flag, clap the erasers, or take a note to the principal . . . . [S]he was creating a mindset in which everyone in the class had one consuming goal—look smart, don’t look dumb.

When students say things such as, “When I go to class, I am afraid to participate,” “If I say the wrong thing, people will think I’m stupid,” or “Everybody treats me like they’re smarter than I am,” they are expressing themselves through statements that resonate with ability-labeling. Statements like these suggest that students feel as though the environment itself is creating and perpetuating such labeling. A preoccupation with symbols of success, others’ perceptions, and material indications of achievement over an intrinsic sense of learning and

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135 Mangels et al., supra note 125, at 75.
136 Mueller & Dweck, supra note 124, at 33, 48.
137 Id. at 33, 34, 44.
138 Id. at 33.
139 See Dweck, supra note 122, at 5 (“Wasn’t the IQ test meant to summarize children’s unchangeable intelligence? In fact, no. Binet, a Frenchman working in Paris in the early twentieth century designed this test to identify children who were not profiting from the Paris public schools, so that new educational programs could be designed to get them back on track. Without denying individual differences in children’s intellects, he believed that education and practice could bring about fundamental changes in intelligence.”).
140 Id. at 6.
mastery are the key features of the entity theory of intelligence, and it is likely that law schools, albeit inadvertently, are encouraging such an orientation.

Even well-intentioned ability praise, like that given when the one praising is trying to encourage performance, can be damaging. That kind of praise may seem intuitive, but it is detrimental to learning. “You are smart” or the commonly communicated message “You did well because you are smart” actually undermine the ability to learn from the experience itself, ultimately discouraging further effort. Dweck finds that ability-marked students are typically unwilling to set difficult learning goals or engage in tasks that, because of an extraordinary challenge level, present a threat of failure. Of course, these challenging situations also present the greatest opportunity for learning and growth.

141 See generally id. (arguing that people with entity mindsets tend to believe that they must live up to their “smart” label, and that doing so means never being able to take on a challenge that might reveal their deficiencies).
142 The most likely places in which law schools are inadvertently communicating this message are the ranking system and law firm hiring processes which emphasize immediate, short term outcomes—first year grades—over longer-term mastery learning goals. While these emphases may be essential to the smooth functioning of on-campus hiring processes and may therefore be indispensable, some tempering message may be required to prevent them from contributing to the problem.
143 Prior to conducting my first research inquiry into Mindset Theory, see Corie Rosen, Creating the Optimistic Classroom: What Law Schools Can Learn from Attribution Style Effects, 42 MCGEORGE L. REV. 319 (2011), I often told my students that they were “smart enough” to succeed at any task the law learning environment required of them, or that they had succeeded because they were smart. Other ideas that I used to think of as reinforcing but which this research actually shows are harmful are the idea that the student wouldn’t have been admitted to law school if she was not smart enough to do the work, and the related idea that everyone at law school is smart.
144 Mueller & Dweck, supra note 124, at 48 (“Children praised for intelligence after success chose problems that allowed them to continue to exhibit good performance (representing a performance goal), whereas children praised for hard work chose problems that promised increased learning.”).
145 Id. at 48 (“[C]hildren who were explicitly told that they were smart after success were the ones who most indicted their ability on the basis of poor performance. This indictment of ability also led children praised for intelligence to display more negative responses in terms of lower levels of task persistence, task enjoyment, and performance than their counterparts, who received commendations for effort.”).
146 Though not always.
147 Lisa S. Blackwell et al., Implicit Theories of Intelligence Predict Achievement Across an Adolescent Transition: A Longitudinal Study and an Intervention, 78 CHILD DEV. 246 (2007); Mangels et al., supra note 125, at 75,
Ability labeling sends the message that labeled people—“smart” students—must live up to their markers or suffer a fall from grace.\textsuperscript{148} One possible reason why some students succeed in law school is that students who are more entrenched in the growth mindset are less affected by the law school environment and so more intrinsically motivated. By preserving their intrinsic motivation they are more likely to succeed and to feel good about their academic progress. Where law schools are encouraging such an outlook, changing the way law schools teach their students to think about academic performance might go a long way toward reducing the incidence of depression and related ills that law students experience.

Ron Ritchhart and David N. Perkins write:

Broadly speaking, learners with an entity mindset believe that “you either get it or you don’t,” and if you don’t, you probably are not smart enough. As a result, they tend to quit in the face of intellectual challenges. In contrast, learners with an incremental mindset believe their abilities can be extended through step-by-step effort, so they persist.\textsuperscript{149}

Put differently, those with the entity mindset believe that a task is either easy or impossible and that failure is a product of a permanent deficiency in one’s intelligence.\textsuperscript{150} This belief is itself pessimistic; the idea reflects permanence, in the form of the implied thought, “I’ll never be smart enough to learn how to do this properly.” It reflects pervasiveness to the extent that it implies the idea, “All of my teachers and peers believe that I am too stupid to master this.” And, most clearly, it reflects personalness in that the idea expresses the thought, “I’m a stupid person.”

According to attribution style theory, a person who attributes negative academic events in a mode that is permanent, pervasive, and personal, is expressing a pessimistic view—and may be, by extension, expressing a belief in the entity view of intelligence because her pessimistic attribution leads her to believe that her poor intelligence is a fixed trait. In the context of perceived negative academic events, it

\textsuperscript{77, 81, 84} (writing that an incremental theory of intelligence was associated with positive efforts, beliefs, learning goals, and positive strategies, while an entity theory was associated with negative attribution and task avoidance).

\textsuperscript{148} See \textit{Dweck, supra} note 122, at 109; Mueller & Dweck, \textit{supra} note 124, at 48.


\textsuperscript{150} See generally\textit{Dweck, supra} note 122; Mangels et al., \textit{supra} note 125.
seems that pessimistic attribution is also an expression of the entity mindset. The entity theorist and the pessimist think the same thoughts: “I’m really not that smart. Everyone knows that I’m not that smart.” And I’m always going to be this way.”

One explanation for why law students are depressed is that law school, in its very structure and motives, is organized around sorting students into poor, better, and best, primarily for the purposes of filtering students into large law firms that use grades as a primary hiring criterion. As law students shift from an intrinsic motivation to learn to an extrinsic motivation to appear successful, they may embrace pessimistic attributions for negative or perceived negative events if they believe that they are powerless to change their academic and professional outcomes.

The shift to extrinsic motivation among first year law students is well established, and it is likely that, for many students, the shift to extrinsic motivation coincides with a shift to pessimistic attribution style and a belief in the entity mindset. But for those unusual students, those top performers identified in the University of Virginia study who experienced both academic success and who used a pessimistic attribution style, some other set of beliefs must be in place. Those students seemed to use a pessimistic attribution style without falling prey to the entity mindset or to learned helplessness and depression. Any reader of the study must wonder, as the researchers themselves wondered, how it is that pessimistic students could also be high performing. In other words, how is it that those who were experiencing the world through the lens of pessimism were able to both avoid the entity mindset and sidestep the pitfalls of depression traditionally associated with a pessimistic attribution style?

**B. DEFENSIVE PESSIMISM**

According to leading defensive pessimism researcher, Dr. Julie Norem, defensive pessimism is “a strategy used by anxious people to help them manage their anxiety so they can work productively. . . . [T]hough it sounds as if it might be depressing, defensive pessimism actually helps anxious people focus away from their emotions so that they can plan and act effectively.” Defensive pessimism is “an anticipatory strategy that involves setting defensively low expectations

151 Or, “If I take on a real challenge, everyone will see that I’m not that smart.”

prior to entering a situation, so as to defend against loss of self-esteem in the event of failure.\textsuperscript{153}

In situations in which success is highly prized, or simply possible, there is, typically, some possibility of failure.\textsuperscript{154} This is particularly true of law school, in which most grades are predicated upon performance during a single final examination. In such situations, defensive pessimists use a special coping strategy to minimize the anxiety associated with possible failure and embarrassment.\textsuperscript{155} Because anxiety can interfere with cognition, memory, and processing, for those who experience academic anxiety, defensive pessimism may provide the psychological salve they need in order to engage in and succeed at what would otherwise be a harrowing task.\textsuperscript{156}

This brand of special pessimism carries a misleading name and, because defensive pessimists think, in some ways, like actual pessimists—who Norem argues we ought to call, simply, “depressives”—defensive pessimism and depressive pessimism are

\begin{itemize}
\item Julie K. Norem \& Nancy Cantor, \textit{Anticipatory and Post Hoc Cushioning Strategies: Optimism and Defensive Pessimism in “Risky” Situations}, 10 \textit{COGNITIVE THERAPY \& RES.} 347, 347 (1986).
\item \textit{Id.} at 348.
\item An alternative approach might be the “self-handicapping” approach in which “individuals faced with a threat to self-esteem, like a risky achievement situation, withdraw effort in order to avoid the implications about competence that may result from failure. . . .” \textit{Id.} at 349. By withdrawing effort (or “sabotaging” themselves), self-handicapping persons avoid negative ability attributions. \textit{Id.}
\item Anxiety. . . . impairs our cognitive performance because it makes it hard to concentrate on a task—or indeed, on anything except ourselves and our subjective state. Anxiety can make us forget what we’ve learned, lose the thread of a conversation, or miss key pieces of information that we need to understand a situation. . . . [A]nxiety can manifest itself in physical symptoms (increased heart rate, increased blood pressure, sweating, and shaking), which are often apparent to ourselves and to everyone watching us. Chronic anxiety over long periods of time can impair immune system functioning and otherwise damage out health and shrink our capacity for normal lives. . . . Yet anxiety, like other negative emotions, does serve a purpose. The increased physiological arousal involved in anxiety and fear may facilitate adaptive ‘‘flight or fight’ responses in dangerous situations. Some level of arousal is adaptive because it helps us pay attention to cues in the environment—and according to one of the few psychological constructs to have the status of a ‘law’ (the Yerkes-Dodson Law), there is an optimal level of arousal for most tasks.
\end{itemize}
easily confused. In a way, defensive pessimism is not really pessimism at all, but a system for coping with elevated levels of anxiety.

In the University of Virginia study, the notion that the top students exhibited a kind of pessimism that did not interfere with their success by resulting in depression, may have contributed to the idea that to be an effective law student and lawyer, one must be engaged in pessimistic attribution and so be at risk for or actually be depressed. But the pessimism these students exhibited more closely resembled defensive pessimism, which is not ordinary pessimism at all. Rather it is “a tool to work through all the possibilities ... [in order to be] prepared for everything, even failure.” People who are highly invested in achieving a successful outcome but who also fear that they will fail are helped by defensive pessimism because the strategy shields their self-esteem and calms them in the face of challenge. Defensive pessimists are not like other pessimists in that their “pessimism” does not put them at risk for depression. Defensive pessimists hope that the future will be positive but experience fear and anxiety around the possibility that it will not be as positive as they might hope.

Defensive pessimists are neither optimists nor pessimists, but a special third category of thinker. For the purposes of this Article, it might be useful to think of defensive pessimists as accidental optimists. They think in a way that looks depressed, but they are able to translate their feelings of inadequacy and belief that bad events happen for personal, pervasive, and permanent reasons, into the kind of optimistic planning and accounting that prevents them from experiencing depression. This

157 Id. at 97.
158 See, e.g., SELIGMAN, supra note 48.
159 Satterfield et al., supra note 7, at 104 (“Defensive pessimism involves setting unrealistically low expectations in a risky situation as a means of harnessing anxiety and enhancing motivation. Although unclear how these expectations would be related to attributions, the ASQ’s use of hypothetical (and potential future) events could tap into a defensive pessimism bias. The ASQ does not allow us to distinguish between actual pessimists and defensive ones, but the positive event scores provide an intriguing hint. The negative relationship found between explanatory style scores for positive events (CP) and GPA, suggests that students who discount or have lower expectations for their successes (lower internal, stable, and global attributions) show enhanced performance much like the defensive pessimists of Norem and Cantor. It is possible that the pessimists in our selected sample are more similar to defensive pessimists than to the depressive pessimists found in the helplessness literature.”).
161 Norem & Cantor, supra note 153, at 349.
162 NOREM, supra note 156, at 108.
163 Id. at 110–11.
way of thinking enables them to do what optimists do so well—engage challenging tasks and environments and perform up to their potential.

Though people who think in this way are certainly not optimists, they do share an important trait with optimists, which is that their thinking style allows them to work toward success, unlike the thought habits of those who are depressed or trapped by learned helplessness. The key distinction is that, instead of expecting positive outcomes all the time, defensive pessimists expect negative outcomes and prepare themselves by considering what they will do if those negative outcomes transpire. This targeted planning enables defensive pessimists to manage the anxiety associated with difficult situations. For many, anxiety in an academic setting can be debilitating, and defensive pessimists’ strategies may be particularly helpful in high-stakes academic settings, like those of the law school environment. Students who use defensive pessimism mitigate their anxiety by expecting and imagining their most feared outcomes and by mentally rehearsing responses to those situations of failure.

C. IMPLICATIONS

Defensive pessimism does not explain the depression problems associated with law school, the reasons lawyers are more suicidal than the rest of the population, the reason that law students’ subjective well-being declines upon entering the legal academy, or the reasons that law

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164 Yet another way anxiety can interfere is that it can lead to a kind of tunnel vision which psychologists call “‘premature cognitive narrowing,’ which happens when we zoom in on a problem so narrowly that we constrain our repertoire of alternative solutions. . . . Premature cognitive narrowing can interfere with creativity, pacing, and understanding the possibilities in a given situation.” Id. at 39–40.

165 “Defensive pessimism is more than just pessimism. Setting low expectations—thinking that things may turn out badly—kicks off a reflective process of mentally playing through possible outcomes. This mental rehearsal . . . is the second component of the strategy.” Id. at 43. In the context of law students preparing for exams, students may consider the worst possible outcome, i.e. that they will forget what they have learned, fail to spot key issues, or even worse, forget to show up for the exam. The student, in thinking through what might happen, would then consider the possible effect of such bad events—i.e. that they would receive a low grade in the class which might cause them embarrassment, the loss of respect of their loved ones or peers, or perhaps bad prospects for employment. The student would then consider what she might think, feel, or do should those (unlikely) negative outcomes becomes reality. According to Norem’s research, defensive pessimists are a class for whom, rather than increasing anxiety (as one might expect) rehearsing all of the negative possible outcomes in this way actually has a calming effect, inspiring a kind of “I can survive that” attitude that makes it possible for them to focus on the task at hand.
students experience a shift to extrinsic motivation. What defensive pessimism gives us is instead an explanation for why the academic performance of a small percentage of studied students at the University of Virginia were not affected by the litany of negative things that are typically associated with law school and law practice. The great irony is that the study itself posits defensive pessimism as a possible explanation. The study’s authors acknowledge that the relationships between law school achievement, explanatory style, and mental health are nuanced and complex. Yet the media and the greater public seem to have missed the idea.

Defensive pessimism provides an anticipatory strategy for facing challenging situations. “One cannot assume that defensive pessimists simply have an overall tendency to see ‘the darker side’ of things because of bad past experience.” If optimism is typically associated with achievement and success and pessimism is its binary opposite, then one might expect defensive pessimism to fall somewhere on the negative side of the attributional spectrum. Instead, the opposite is true.

Arguing for the benefits of negative thinking is contrary only to the assumption that optimism is an unadulterated virtue. It is not contrary to the aims of positive psychology, which include understanding how people can realize their full potential. Indeed, negative thinking is positive psychology when it helps, as defensive pessimism does, people achieve their goals.

Defensive pessimism gives us some insight into who is able to succeed in spite of what is most likely an anxiety-inducing law school environment. Defensive pessimism is about controlling what would otherwise become debilitating anxiety related to the expectation of failure.

It is long established that anxiety interferes with a student’s ability to master learning tasks. Perhaps defensive pessimists are the students who are best equipped to cope with the law school environment precisely because the law school environment creates anxiety. Perhaps it is true that law school, more than most challenging and competitive academic environments, is a unique producer of anxiety. If that were true, then it would be reasonable to suggest that defensive pessimists would have outlooks that are more adaptive, as they have a default

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166 Satterfield et al., supra note 7, at 104.
167 Id.
168 Norem & Cantor, supra note 153, at 359–60.
169 Id.; NOREM, supra note 156, at 13.
170 See, e.g., Rachael Ann Rosenfeld, Anxiety and Learning, 5 Teaching Soc. 151 (Jan. 1978).
strategy for coping with anxiety, whereas optimists who do not experience exaggerated anxiety prior to entering law school might have fewer, and perhaps no, strategies for addressing the anxiety the law school environment creates.

Another possible and related explanation is that, because law school provides limited opportunities for practice and feedback in the first year, it may be true that defensive pessimists are among the few law students who have actually thought through the exam-taking process and examined what might go wrong. Perhaps defensive pessimism not only allows law students to cope with the anxieties induced by law school, but also pushes defensive pessimists to rehearse, both mentally and practically, for the stressful exercise of taking law school exams.

A final explanation is that when defensive pessimists rehearse, expect, and plan for the possibility of failure, they are not experiencing the shift to extrinsic motivation as much as their less defensively pessimistic counterparts because their habits of thought keep them focused on intrinsic, or growth, justifications for learning.

Perhaps all of these explanations are true. Perhaps defensive pessimists really are in a sense not pessimists at all. But because the psychological literature labels them as such, it is perhaps most helpful to think of these individuals as accidental optimists or as uniquely successful pessimists—able to exhibit the success typically associated with optimism precisely because they are better able to cope with anxiety and so better able maintain a positive outlook, even in areas where they need to work harder to progress toward mastery.

In a sense, then, defensive pessimists are not pessimists, but special, unique kinds of thinkers. These people have some attributes of pessimists, the ability to see the worst-case scenario and to believe that their fixed traits might give rise to such a scenario. However, the defensive pessimist differs from a true pessimist in that she is able to imagine a possible bad outcome and still move forward because her pessimism is engaged before the bad event actually takes place and so serves a kind of planning function. She thinks somewhat pessimistically, but choses to move forward with activities even though she recognizes those activities might have particularly negative outcomes. She accepts the possibility that things might turn out badly and is protected against learned helplessness and depression because her unique brand of pessimism gives her an ability to cope with anxiety and distress. It is perhaps not an overreach to suggest that defensive pessimists are perhaps the most optimistic kinds of thinkers because they understand the possible negative outcomes but engage in the risk-taking—and achievement producing—behavior anyway. Defensive pessimism
confers the ability to face difficult tasks, and it just may be the secret ingredient that distinguishes top law students from the rest of their peers.

CONCLUSION

Optimism and pessimism are not the only thought habits that can influence the success of law students and their sense of self-esteem and well-being. The idea that the legal academy and the legal profession must accept a definition of their members as depressed, or that the profession should embrace the correlation between depression and brilliance is unsupportable. That notion suggests that no inquiry into the thought habits of suffering lawyers and law students is necessary, when the contrary is true. To better understand the roots of the law student and lawyer depression epidemic, the legal academy and legal profession must look to the experiences students have early on in law school. Understanding that law students’ thinking may be more nuanced than the black-and-white contrast offered by definitions of optimism and pessimism is only the first step in achieving a deep understanding of the roots of law student and lawyer depression.

Defensive pessimism with its special, protective features, may allow some law students to thrive in what other students find a challenging and even toxic environment. The academy and the profession must not allow the semantic confusion of “pessimism” and “defensive pessimism” to perpetuate the insidious belief that nothing can be done to protect students against the depression that many experience upon entering law school. Additional inquiry into what it is that defensive pessimism provides those unique law students who employ it may help the academy and the profession uncover the roots of the depression problem and put an end to the “lawyer’s epidemic.”