



PROGRAM MATERIALS

Program #2963

April 8, 2019

Untangling Fear in Lawyering

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Untangling Fear in Lawyering

A Four-Step
Journey Toward
Powerful Advocacy



HEIDI K. BROWN

Fears Some Lawyers Experience

- Public Speaking
- Oral Arguments
- Failure
- Criticism/Judgment
- Mistake-Making
- “Losing” a Case
- Networking/Rainmaking
- Not Being “Cut Out” for the Law
- Others?



Messages We Hear About Fear

- Just Do It!
- **Fake** It Till You Make It!
- Get Over It!
- **Face** Your Fears!
- Do Something Every Day That **Scares** You!
- If Your Dreams Don't **Scare** You, They're Not Big Enough!
- If You're Not Afraid, It's Time to "**Leave** the Law"!



My Story



Messages I Heard for Twenty Years

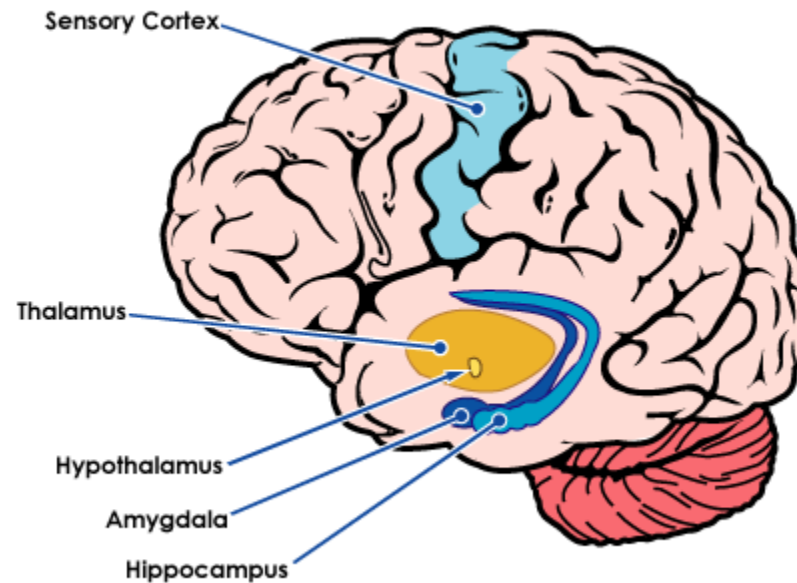
- “Stick your neck out!”
- “Get over yourself, and face your fears!”
- “Pair off! Team up! High-five your neighbor!”
- “Grow a thicker skin!”



The Science of Fear

Fear blocks learning and performance...

Parts of the Brain Involved in Fear Response

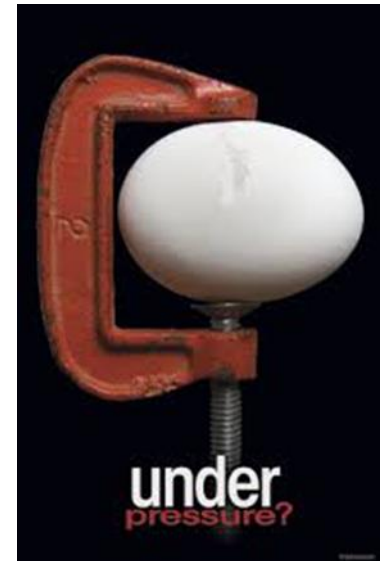


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So, messages like “just do it” don’t help.

Impact on Well-Being

- Entering law students:
 - Psychological profile similar to that of the general public
- Graduating law students:
 - 20-40% indicate a “psychological dysfunction”



Our Profession Has a FEAR Problem

“You live in constant fear that the client or rainmaking partner who’s giving you work might cut you off any moment. . . . The cult of perfectionism is indeed pervasive in law firms—the notion that you should feel deep shame about an inconsequential typo or experience terror for not properly reading the unstated wishes of some client or senior partner.”

Vivia Chen, *The American Lawyer*
(in response to the death of a Sidley partner)

The Reality of Fear in Law School

- The National Task Force on Lawyer Well-Being reported factors that “hinder seeking help for mental health conditions”:
 - “**fear** of jeopardizing academic standing or admission to the practice of law, social stigma, and privacy concerns”
 - “**fear** of adverse reactions by others whose opinions are important”
 - “**fear** of career repercussions”

New Well-Being Initiatives

- National Task Force on Lawyer Well-Being: created in 2016
 - 9 associations, 17 judges, lawyers, law professors
- August 2017: Task Force Report → Practical Recommendations for Positive Change
 - “To be a good lawyer, one has to be a healthy lawyer.”
- Working Group to Advance Well-Being in the Legal Profession:
 - “To examine and make recommendations regarding the current state of attorney mental health issues”
- Well-Being Toolkit for the Legal Profession
- Well-Being Toolkit Nutshell—80 Tips for Lawyer Thriving
- Campaign and Pledge
 - Pledge to support the campaign and adopt a 7-point framework

Solutions?

Instead of downplaying, minimizing, ignoring,
or shrugging off fear, OR lauding it as the
world's greatest motivator...

LET'S HELP LAWYERS **UNTANGLE** IT



What are Other Professions Doing?

- Medicine
- Journalism
- Engineering
- Business/Entrepreneurship

**Learning
From
Others**

Medicine, Fear, and Mistake-Making

- 1999 Institute of Medicine report: shocking number of deaths from medical errors
- 2006: recognizing OUT LOUD medicine's "hidden curriculum"
 - "culture of intimidation"
 - "culture of fear"
 - "misuse of the Socratic method"
 - "myth of infallibility" of the "good doctor"
- Not just in America!
 - A 2015 survey of medical students at the University of Sydney and the University of Melbourne reported that "teaching by humiliation," including a misuse of the Socratic method, has been "part of the culture in medicine."

Medicine, Fear, and Mistake-Making

- Solutions?
- Medical schools have begun developing formal coursework on:
 - identifying, preventing, and remedying medical errors
 - communicating about fear and mistake-making
 - how to have difficult conversations about fear and mistakes (with superiors and patients)
 - metacognition
- Simulations
- Virtual reality technology



Journalism, Fear, and Mistake-Making

- Professor Lisa Taylor (Ryerson University):
 - “The proliferation of new technologies, the intellectual demands of explaining complex subject matter, the **fear** of getting the story wrong or missing a deadline” can contribute to the development of “a very damaged human being.”
 - Journalists (and lawyers!) often ignore “well-being”
- Courses integrating mindfulness
- *Thriving for Action* program: exploring mistake-making and resilience
- Columbia: Dart Center for Journalism & **Trauma**

Engineering, Fear, and Mistake-Making

- Recognition that ignoring the inevitability of mistakes in the profession can breed **fear** and “imposter syndrome” in new engineers
- University of Washington: a new course “with ample opportunities for students to make **mistakes**—a fodder for reflection—and learn from them”
- Professor Henry Petroski of Duke University: “The course employs **failure** as a unifying concept for understanding the history and practice of engineering and design.”
- Professor David Beach of Stanford University: a course specifically designed to teach engineering students how to learn from **mistakes**

Business/Entrepreneurship, Fear, and Mistake-Making

- Janet Sernack (Australia-based CEO):
 - Cultivating a “fail fast” culture can “help organizations unfreeze, survive, flow and flourish with the current levels of FEAR, ambiguity, uncertainty, volatility and instability in 21st century organizations”
- Professor Bob Sicina (American University): a course called “Learn from Failure”:
 - Reducing “fear of failure” through reflection
 - Students write about failure and mistakes

“Untangling Fear in Lawyering” Process

Four Steps to Fortitude:

1. Comparative Fearlessness
2. Mental Reboot
3. Channeling Our Inner Athlete
4. Cultivating a Culture of Fortitude



Comparative Fearlessness

- Recognizing other areas in our non-lawyer personas where we feel “swagger”
- Are there areas in our lives where, by society’s standards, we “**should**” feel fear but we **don’t**?
- Are there areas in our lawyering lives where, by the profession’s standards, we “**shouldn’t**” feel fear but we **do**?
- What is the **difference**?



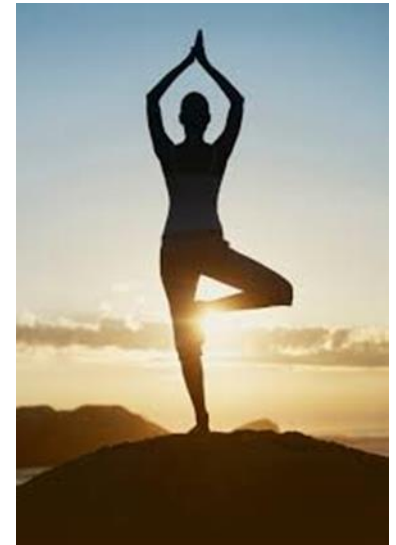
Mental Reboot

- Consider the REAL root of the fear
- Past fear of judgment?
- Past fear of failure?
- Listen to and transcribe the PAST messages we are applying in the PRESENT
- Recognize their irrelevance in this new context
- Draft new relevant messages for our current lawyer persona



Channeling Our Inner Athlete

- Enhance self-awareness → BODY SCAN
- Fortify our machine
- Align posture (like pillars)
- Balanced stance (like an athlete)
- Focus on breathing
- Use our appendages
- Forge eye contact
- Project our voices
- BE THE BLUSH!



Cultivating a Legal Culture of Fortitude

- Debunking stereotypes/messages about fear, failure, and mistake-making in lawyering
- Understanding the science of fear
- Cultivating a culture of “psychological safety”
 - Professor Amy Edmondson: *The Fearless Organization*
- Empowering junior lawyers to open up about fears, and ask questions to avoid/prevent mistakes
- Teaching junior lawyers how to have conversations about mistake discovery and remediation (establishing protocols)

Cultivating a Legal Culture of Fortitude

- Recognizing and addressing client fears
- Recognizing trauma-related fears
 - Resources for Trauma-Informed Lawyering
 - Sarah Katz and Deeya Haldar, “The Pedagogy of Trauma-Informed Lawyering,” 22 Clinical Law Review 22 359 (Spring 2016).
 - Sara E. Gold, “Trauma: What Lurks Beneath the Surface,” 24 Clinical Law Review 201 (Spring 2018).

Other “Fear” Resources

- See Bibliography and Proposed “Untangling Fear” Discussion Topics
- <http://www.abajournal.com/magazine/article/face-fear-dont-fake-it>
- [http://www.abajournal.com/magazine/article/fear of lawyering/](http://www.abajournal.com/magazine/article/fear_of_lawyering/)
- *Untangling Fear in Lawyering* book:
<https://www.americanbar.org/products/inv/book/358687385/>

Let's Listen ... and Empower

*If I really listened to my fear, I could've clearly
assigned value to what moved my spirit:*

Writing.

Painting.

Pulling something from nothing.

Meera Lee Patel

Let's Untangle Fear Together...

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Conversations about Fear, Failure, and Mistake-Making in Lawyering

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Schoemaker, Paul J. H. *Brilliant Mistakes: Finding Success on the Far Side of Failure*. Wharton Digital Press, 2011.

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Appendix E

Suggested Topics for “Untangling Fear” Discussion Groups, Workshops, or Courses

Session #1: Societal Messages/Stereotypes about Fear

- What societal messages or stereotypes do we often hear and absorb about fear?
 - Advertisements? Marketing?
 - Instagram memes?
 - T-shirt slogans?
- Do we hear any messages about *fear* from family members, coaches, other authority figures, classmates, colleagues, friends?
- What stereotypes are perpetuated about fear in lawyering?
- How do we internalize these messages or stereotypes?
- How do these messages or stereotypes affect our lawyer personas?
- Is it hard to be authentic or vulnerable about fear in lawyering?
- Homework Options:
 - Heidi K. Brown, “Turning the Fear of Lawyering into the Power of Advocacy,”
http://www.abajournal.com/magazine/article/fear_of_lawyering
(January 2018)
 - Preface and Introduction to *Untangling Fear in Lawyering* book
 - Chapter 6: *The Ineffectiveness of “Pro-Fear” Messages*
 - Notice and write down any fear messages/stereotypes encountered over the next week (in the news, on social media, on subway advertisements, in TV commercials, etc.).

Session #2: Fear Scenarios in Lawyering; Character-in-Context

- What lawyering activities spark fear in some of us? Why exactly? What precisely are we afraid of? Fear of failure? Judgment? Making mistakes?
- Do “good” lawyers ever make mistakes?
- Is it hard for us to admit that we are afraid in law school or law practice?
- Is it hard for us to admit that we made a mistake? If so, why? Do we feel fear? Guilt? Shame?
- Is it ever hard to communicate or talk about someone else’s mistake? If so, why?
- What does it mean to have “character” as a lawyer?
- Is character in the context of lawyering learnable, or able to be further developed? Or is it something we either have or don’t have?

- Homework Options:
 - For law students: Chapter 1: *Fear in Law Students*
 - For lawyers: Chapter 2: *Fear in Lawyers*
 - Chapter 4: *The Role of Fear in Mistake-Making*
 - Free “character strengths test” offered by the VIA Institute on Character, <http://www.viacharacter.org/www/Character-Strengths-Survey>
 - Patricia Snyder, “Super Women Lawyers: A Study of Character Strengths,” *Arizona Summit Law Review* 8 (Spring 2015): 261-315.

Session #3: The Science of Fear

- What happens to our bodies when we are afraid? What physical manifestations of fear do we individually experience (these likely will differ for each of us)? Shaking, sweating, blushing, heart racing, shortness of breath?
- What happens to the brain’s ability to process information, or our ability to quickly respond to questions or form coherent sentences, when we are afraid?
- Does fear block our learning and performance? If so, how?
- Does fear sometimes mask itself in other emotions? Which emotions?
- Homework Options:
 - Chapter 5: *The Science of Fear*
 - Chapter 7: *How Fear Blocks Learning and Performance*
 - Chapter 8: *How Fear Hides behind Other Unproductive Emotions*

Session #4: Do Our Clients Experience Fear?

- How can fear (and other emotions) in our clients affect the attorney-client relationship?
- What is a lawyer’s duty or responsibility with respect to identifying and addressing clients’ emotions?
- Is a lawyer qualified to identify or address clients’ emotions?
- Can we improve our skills at recognizing, and then untangling, clients’ fears (and other emotions)?
 - Homework Options: Chapter 3: *Fear in Clients*
 - Appendix D: *Practical Strategies for Helping Clients Untangle Fears*

Session #5: Can We Learn from How Other Professions Address Fear and Mistake-Making?

- Is the legal profession “unique,” or can we learn from other professions about how to address fear and mistake-making?
- Homework Options:
 - Chapter 9: *A Glimpse into Fear and Mistake-Making in Medical Education and Training*
 - Chapter 10: *A Glimpse into Fear and Mistake-Making in Journalism Education and Training*
 - Chapter 11: *A Glimpse into Fear and Mistake-Making in Engineering Education*

and Training

- Chapter 12: *A Glimpse into Fear and Mistake-Making in Entrepreneurship and Business Education and Training*

Session #6: Attitudes about Failure and Mistake-Making in the Legal Profession

- How is failure or mistake-making perceived in the legal profession?
- Do we feel open to talking about fear, failure, and mistake-making in the classroom or law office? Why or why not?
- Is there anything we can learn from being open about fear, failure, or mistake-making, especially in law school before transitioning to practice?
- Is there a benefit to discussing and debriefing fears, failures, and mistakes in law practice?
- Homework Options:
 - Barry Boyce, "Why Our Brain Thrives on Mistakes," <https://www.mindful.org/brain-thrives-mistakes/> (May 3, 2017)
 - Doug Lemov, "Culture of Error," <http://teachlikeachampion.com/cultureoferror/>
 - Kaci Bishop, "Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience," *Arkansas Law Review* 70, No. 4 (January 2018): 959-1006.
 - Excerpts from:
 - Henry Petroski, *Success through Failure*. Princeton, NJ: Princeton University Press, 2006.
 - Paul J. H. Schoemaker, *Brilliant Mistakes: Finding Success on the Far Side of Failure*. Wharton Digital Press, 2011.
 - Robert Sicina, *Learn from Failure: The Key to Successful Decision Making*. AuthorHouse, 2017.

Session #7: Comparative Fearlessness

- Are there scenarios or situations in our lives in which society, our families, or our friends might think or suggest we *should* feel fear, but we *don't*?
- Are there scenarios or situations in our lawyering lives in which we think we *shouldn't* feel fear, but we *do*?
- What are the differences between these scenarios?
- Can we bring some of the *swagger* we feel in the first scenarios into the second ones?
- Homework Option:
 - Chapter 14: *Step 1: Untangling Fear* (and end-of-chapter exercise)

Session #8: Mental Reboot

- When we anticipate a fear-inducing performance scenario, what negative mental messages about ourselves, or what fear-based mantras or slogans do we automatically hear?

- Can we rewrite our mental soundtrack for our new lawyering personas?
- Homework Option:
 - Chapter 15: *Step 2: Mentally Rebooting* (and end-of-chapter exercise)

Session #9: Channeling Our Inner Scholar-Athlete

- When we anticipate a fear-inducing performance scenario, what automatic physical responses do our bodies launch? Do we hunch down, cross our limbs, or fold inward, accidentally closing off our flow of oxygen, blood, and energy?
- Can we identify any unhelpful automatic physical fear reactions, and train ourselves to approach a performance event like an athlete – in an open and balanced stance?
- Can we develop a “pre-shot” routine or a physical performance checklist that will power us through a lawyering activity with a calm mind and body, like an athlete stepping into a competition arena?
- Homework Options:
 - Chapter 13: *A Glimpse into Fear and Mistake-Making in Sports Training*
 - Chapter 16: *Step 3: Channeling Our Inner Athlete* (and end-of-chapter exercise)
 - Amy Cuddy, TED talk, “Your Body Language May Shape Who You Are,” https://www.ted.com/talks/amy_cuddy_your_body_language_shapes_who_you_are (TED Global, 2012)

Session #10: Cultivating a Culture of Fortitude

- Can we reject the not-so-helpful cliché messages to “just do it,” “fake it till you make it,” “just do what scares you,” or “embrace fear as a great motivator”?
- Can we build character-in-context in the legal arena by consciously seeking opportunities to learn more about lawyering scenarios that ignite fear?
- Can we develop a realistic protocol for approaching mentors to ask questions – and get substantive, procedural, logistical, and tactical guidance – about specific lawyering scenarios that ignite fear or worries about making a mistake?
- Can we seek out general opportunities to learn more about substantive, procedural, logistical, and tactical challenges that may arise in particular lawyering scenarios or in our specific area of practice?
- Can we develop protocols for handling difficult situations, asking for help, and knowing (and having the strength to undertake) the proper protocol if something does go wrong?
- Can we seek opportunities to better understand client fears and help clients (and others) untangle those fears?
- Homework Option:
 - Chapter 17: *Step 4: Cultivating a Culture of Fortitude* (and end-of-chapter exercise)

Session #11: Reducing Fear of the Unknown

- This session could involve a panel of lawyers and insurance providers discussing lawyering mistakes of different types (in a nonintimidating tone that fosters a growth mindset); panelists could explain how ethics hotlines and malpractice insurance protocols work.
- The session could focus on establishing communication channels in law office settings for asking questions about tricky lawyering issues, and identifying what to do upon discovery of a potential or actual mistake.
- Participants could engage in role-playing tough situations that entail asking for help or bringing a perceived mistake to the attention of a supervisor or mentor.
- Homework Options:
 - Mark Bassingthwaighe, "Fear of the Public Eye Can Be Disastrous," 2005-FEB *West Virginia Lawyer* (January/February 2005): 17-18.
 - Mark Bassingthwaighe, "Malpractice and Fear of the Public Eye," ALPS blog, www.blog.alpsnet.com (November 9, 2012).
 - Dolores Dorsainvil, Douglas R. Richmond, and John C. Bonnie, "My Bad: Creating a Culture of Owning Up to Lawyer Missteps and Resisting the Temptation to Bury Professional Error," Annual Conference of the Litigation Section of the American Bar Association, New Orleans (April 16, 2015).
 - Catherine Gage O'Grady, "A Behavioral Approach to Lawyer Mistake and Apology," *New England Law Review* 51 (2017): 7-51.

Session #12: Recognizing Trauma-Related Fear in Ourselves and Others

- This session could involve a panel of trauma experts discussing how to recognize signs of trauma-related fear in ourselves and clients.
- Homework Options:
 - Sara E. Gold, "Trauma: What Lurks beneath the Surface," *Clinical Law Review* 24 (Spring 2018): 201-245.
 - Sarah Katz and Deeya Haldar, "The Pedagogy of Trauma-Informed Lawyering," *Clinical Law Review* 22 (Spring 2016): 359-393.

Session #13: Continuing to Untangle Fear Together

- Can we craft slogans about fear related to lawyering that are better and more helpful than "just do it!" or "face your fears!" or "fake it till you make it!"?
- How can we cultivate a culture of *fortitude* in our own classrooms, school environments, or law offices?
 - Can we reduce or eliminate the *stigma* associated with talking about fear, mistakes, or failure?
 - Can we incorporate principles of vulnerability, authenticity and "intellectual humility" into discussions about fear, mistakes, or failure in the legal context?
- How can we support others in their own quests to untangle fear?

- How can we become changemakers for the legal profession regarding lawyer well-being when it comes to fear?



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Untangling Fear in Lawyering is a practical resource for law students, lawyers, legal educators, and law practice mentors to eliminate unnecessary drivers of fear in our profession that impact learning, performance, and individual well-being.

Responding to the National Task Force on Lawyer Well-Being's call to action for the profession to reduce the level of toxicity in our profession, this book helps law students and lawyers deconstruct and understand fear so that they can become authentically powerful advocates.

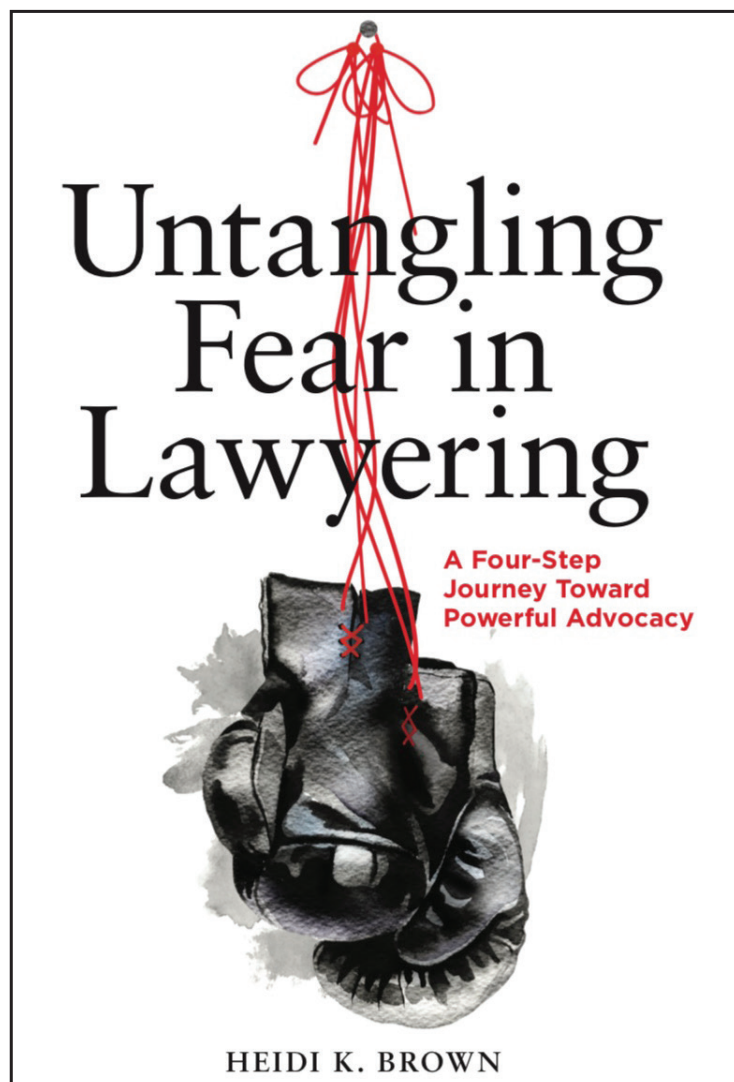
The book discusses the reality, causes, manifestations, and consequences of fear in legal education and practice, from the standpoint of law students, junior attorneys, and clients. It analyzes fear from a cognitive, physical, and emotional perspective.

The book draws guidance from how other industries address fear (and mistake-making) in education and training. The book concludes with a four-step process for law students and lawyers to reframe fear into fortitude.



Heidi K. Brown is a graduate of The University of Virginia School of Law, a law professor at Brooklyn Law School, and a former litigator in the construction industry. Having struggled with anxiety and fear as a law student, attorney, and new law professor, she finally untangled her fears, embracing authenticity as a powerful asset in teaching and practicing law. She is also the author of *The Introverted Lawyer: A Seven-Step Journey Toward Authentically Empowered Advocacy* (ABA 2017).

Her website is www.theintrovertedlawyer.com, and she loves to hear from readers on Instagram @introvertedlawyer and Twitter @introvertlawyer.



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