Introduction

For many of us, being a lawyer can be scary at times. Being a law student likewise can be scary. As students, we might fear being cold-called in class and on the receiving end of a confusing and persistent Socratic inquiry. Perhaps we are afraid of not knowing the answers, appearing unintelligent before our peers or professors, messing up our one-shot final exams, falling short of law review grade cutoffs, faltering in oral arguments, not landing a summer job, or failing the bar exam—any one of these concerns making us worry that we are not cut out for the practice of law. Through hard work and pushing through or repressing the fear, we “successfully” run this gauntlet; we pass the bar and are sworn in as counselors-at-law. We transition from academia to law practice. Wearing our new suits, sitting on our ergonomic office chairs, staring at a box of crisp business cards, a familiar feeling percolates: fear.

As legal practitioners, many of us remain afraid . . . of accidentally overlooking a case in our research, misunderstanding a complex procedural rule, making the wrong strategic decision, missing a deadline despite multipronged calendaring efforts, being intimidated by aggressive opposing counsel in a deposition or negotiation, not knowing the answer to a judge’s question in oral argument, being embarrassed, blushing, sweating, showing weakness. While such fears in lawyering are very real and palpable, unfortunately we spend a lot of time pretending they don’t exist. Well-meaning mentors advise: “Fake it till you make it!” “Just do it!” “Never let them see you sweat!” Non-lawyers in our lives remark, “Well, hey, isn’t this the profession you chose? If it causes you so much anxiety, maybe you should go do something else.” Lawyers who are lucky enough to never have experienced the foregoing types of fear offer seemingly “quick fix” slogans:

• Face your fears.
• Conquer your fears.
• Get over yourself.
• Do something every day that scares you.
• If your dreams don’t scare you, they’re not big enough.
The mantras, the mottos, the empowerment jargon might work for some individuals who just need a little push to “snap into action,” but they don’t work for all, perhaps not even most. They definitely didn’t work for me. Ignoring fear is a completely ineffective tactic for becoming the best lawyers we can be. Putting it bluntly, author Brandon Webb, a former Navy SEAL, says quips like “get out of your comfort zone” are “basic bullshit.”10 Why? Webb explains:

_The problem with “get out of your comfort zone” is that it’s a tactic that doesn’t address the nature of the problem. It’s a nonsolution, like saying, “Oh, you’re afraid to jump? Well, just stop being afraid.” Not helpful._11

In many facets of our legal arena, acting fearless, tough, even intellectually cocky is often a badge of honor. Yet, for many of us, our internal emotional barometer constantly runs on high alert. We are smart, hardworking, and focused researchers, writers, and analysts, but our irrefutable fears can make us feel as if we don’t belong. We do belong. We have an important role to play in the legal showground.

As a profession, we need to stop pretending fear does not exist in lawyering. Instead, we must start understanding how fear works, distill it into tangible parts, get to know it deeply, and then flip the message: we are effective counselors and advocates _because_ we are human and real.

The myth that good lawyers are fearless and also mistake-free germinates in legal education. In law school, we rarely talk about the actuality of fear. We seldom discuss the reality of day-to-day lawyering mistakes. We might touch on catastrophic mistakes or ethical breaches, but those such examples can prompt students to reassure themselves, “Well, I would never do that!” Some teachers and mentors advise, “Just be prepared so you don’t make a mistake.” That’s unrealistic and inadequate guidance. The real practice of law is complicated, multilayered, and nuanced. Litigation involves myriad procedural rules which are not always clear or easy to figure out or calculate. In the early days of my career, deciphering Virginia mechanic’s lien procedures or the methods of serving a Federal Rule of Civil Procedure 45 subpoena—somehow always on the eve of a long-awaited, on-the-verge-of-being-postponed-again, vacation—felt like translating hieroglyphics. The “right” strategies and tactics in lawyering often depend on others’ behavior, to which we must react without much time for deliberation.

Even a seemingly mundane task like an electronic document review can be fraught. The most careful privilege reviewer might experience a few seconds of weariness and click the wrong document category, sending a potentially
privileged (even that determination is not always 100% clear) document into the cyber-pile designated for opposing counsel’s view. In depositions, negotiations, or courtroom appearances, lawyers often need to make split-second decisions amid multiple competing stimuli. The “correct” maneuver in the moment might not be readily obvious. Later, tactical errors emerge like holograms.

In transactional drafting, mistakes can happen as well. Opposing counsel may sneakily, or even accidentally, recirculate an earlier version of a negotiated draft of an 80-page agreement. Unless the recipient rechecks every Tracked-Change edit, for perhaps the fifth, sixth, seventh time, the wrong phrase can end up in the final executed contract.

It’s natural to be afraid of making a mistake, or to dread having to own up to an error in lawyering. Yet we tend to gloss over the reality of frontiers like these in law school. We do not give students many, or enough, opportunities to confront such in-the-field missteps and talk about how to handle or remedy them in an ethical manner. We rarely delve into the emotional, mental, and physical manifestations of the fear of making or admitting a mistake. As Professor Abigail A. Patthoff notes, legal education instead can foster fear-based narratives, illustrating attorney failings through catastrophic “cautionary tales” usually “involv[ing] a lawyer or law student behaving unprofessionally and then suffering consequences.” But what about the individual who is not cheating, cutting a corner, or flouting the rules? How about the diligent one who is endeavoring to decode the rule, adhere to the deadline, make the right judgment call, but still chooses the “wrong” door?

Law practice also can exacerbate fear. When we reinforce messages to job applicants like, “No associate here has ever failed the bar” or “We hire only people that don’t make mistakes and there are plenty of them out there” or “That superstar partner has never lost a case,” we pave a pathway of fear. Instead of reinforcing the myth of the infallibility of the “successful lawyer,” let’s train law students and lawyers to untangle the knots of fear and circumstances that could lead to mistakes. We can begin by acknowledging and emphasizing in law school and practice that fear exists and mistakes happen in the practice of law. Next, we can provide education and professional development training on how to process fear and reduce, anticipate, recognize, admit, and resolve mistakes. We can cultivate environments in which law students and lawyers can ask for guidance before making a material or costly error, and develop the resilience to confide in a mentor or supervisor upon discovery of a mistake. We cannot just assume that character will win the day if an attorney errs. There is too much at stake: fear of losing one’s job, debt, shame, exclusion, judgment, loss of standing.
Fear in lawyering is real. It is not a character flaw for a law student to fear a professor who verbalizes frustration upon encountering classroom hesitation or for a lawyer to fear a screaming boss who punches a hole in an office wall because the new office couch arrived in the wrong fabric color. It is a flaw in our system when we allow toxicity to ferment in our legal arena. Let’s start talking about the reality of fear in lawyering, and arm our future lawyers with the substantive and technical knowledge and the fortitude, courage, and character they need to advance justice.

As a quiet law student fresh out of college, intimidated by the Socratic method of classroom teaching and other performance-oriented events like oral arguments and negotiation simulations, I harbored a lot of fear. My earliest memory of being afraid in law school at The University of Virginia was the day I was cold-called in Civil Procedure class. My face flushed a deep cherry-red as I fumbled through a response to a question about diversity jurisdiction. I knew the jurisdictional rule intimately, having devoured the assigned reading. Yellow highlighter ink stained my hands. My flash cards, flowcharts, and outlines contained every possible answer to the professor’s queries. In that moment in the “hot seat,” the gears in my brain immobilized. My classmates chuckled as my professor pointed out that, no, indeed Portland and Seattle are located in different states, not the same state, and therefore diversity jurisdiction did exist in the hypothetical fact scenario. That was the beginning of my rampant blushing in law school. Every time a professor called on me, or an upper-level student tried to engage with me, my face and neck flamed.

Fear swirled around me—like the dust cloud following the Peanuts comic strip character Pig-Pen—as my 1L classmates and I began to receive our first-semester grades. My roommate reveled in the daily intellectual banter of law school. She used words like “ostensibly” and “empirically” even in casual debriefings of Law & Order episodes. Being cold-called was her jam. She was popular, always smiling and laughing, and had an ever-present entourage of pals trailing her down the halls and encircling her in ebullient library study group debates. The school released our very first grade—Criminal Law—before all our other grades; professors taught that course in small sections instead of the large lecture format of 80+ students. My Criminal Law grade was by far the worst mark I had ever received in my life: C+. To this day, I don’t know why 1Ls discuss grades among their peers (and I constantly counsel my students to keep their grades to themselves), but I quickly learned that my roommate had received an A+. I went home, hurled myself into bed, and
wept for days. It wasn’t that I just felt stupid and incompetent. (To be honest, I didn’t like the course, I found the instruction incomprehensible, and I had zero interest in practicing criminal law.) I was afraid. I feared a report card littered with poor grades in the rest of my classes. I feared being regarded as unworthy of law school. I feared not getting a paying summer job owing to a low GPA. I feared failing out. I feared not being able to pay back my student loans. I also feared the painful familiar feeling of shame.

Of course, a few weeks later when the school released the rest of our grades, I performed fine overall. But to this day, I vividly recall the insomnia, the anvil weighing down my chest, the sensation of terror every morning, wondering if I was good enough, smart enough, worthy of law school and the legal profession.

A few months later, in the spring of my 1L year, I wrote my first brief for my legal writing course. I immediately loved the task of researching statutes and cases, carefully selecting the right precedent, and crafting a persuasive written argument. I methodically typed my brief, and spent days and nights editing it, choosing words and phrases that would best convey the logic and pathos of my hypothetical client’s advocacy position. Now, reflecting back on that initial brief-writing experience, I understand that those moments were my first law school experience of being in “flow.” Flow is the “theory of optimal experience” developed by Hungarian psychologist Mihaly Csikszentmihalyi (pronounced “chick-sent-mee-high-ee”). Csikszentmihalyi defines “flow” as “the state in which people are so involved in an activity that nothing else seems to matter.” He says that “[t]he best moments usually occur when a person’s body or mind is stretched to its limits in a voluntary effort to accomplish something difficult and worthwhile.” Researching and writing in law school was a full-contact sport for me, a mental and physical gladiatorial feat of strength in which pushing myself beyond my limits felt extraordinary. It was the opposite of how I felt in class.

A newbie to legal research, I felt a jolt when I stumbled upon a quirky case that I could use to argue a difficult point by analogy. I experienced a rush when the mere act of moving two sentences around suddenly added punch to a paragraph. In the quietude of my bedroom, alone with my weighty textbooks and my beagle puppy (a gift from my long-term boyfriend who was not in law school and lovingly thought potty-training an adorable yet stubborn hound would be a healthy distraction from law school stress) chewing on the corner of my Contracts outline, I found my calling in the law.

Unfortunately, after our briefs were hypothetically “filed,” next up on our law school assignment docket loomed oral arguments. The oral argument assignment poked the bear of my fear again. I would have loved for my appellate brief to serve as a quietly triumphant capstone to my 1L year. Nonetheless,
law school tradition prevailed. Every 1L student was required to participate in a mock oral argument. At many schools, this rite of passage also serves as the tryout for the school’s moot court team, an extracurricular activity in which students write briefs and perform oral arguments in competitions around the country. Akin to my total lack of interest in practicing criminal law, I had zero desire to join the moot court team. Everyone else seemed ecstatic about the opportunity. Is something wrong with me? Am I not cut out to be a lawyer if I don’t want to do this argument or be on the moot court team? A new fear tornado brewed.

I couldn’t walk down the school hallways without overhearing students bandying about the legal issues in our briefs and role-playing questions posed by imaginary judges. If I simply could have delivered an uninterrupted ten-minute presentation on the contentions laid out in my brief, that scenario would have been somewhat nerve-wracking from a public speaking standpoint but manageable. Instead, in an oral argument, the advocate begins speaking, conveys approximately 90 to 120 seconds of material, and then a panel of judges interrupts the discourse, peppering the advocate with questions to test the theories and logic of the arguments. This is not exactly an ideal venue for many of us (i.e., introverts) who naturally prefer time to ponder, vet, and test our ideas and responses internally before sharing them aloud. Many of my classmates delighted in this type of intellectual challenge, the spontaneous verbal volley, the battle of brains. I just wanted to deposit my brief in a dropbox and be done with the whole thing.

My actual oral argument was a certifiable disaster. I knew the statutes, the cases, my client’s assertions, and my argument’s soft spots inside and out. I prepared for days. I bought a suit from T. J. Maxx. Armed with a binder containing my outline and “case law reminder prompts” in the event my mind went blank about the facts or holding of particular precedent, I entered the classroom. My vision blurred. My eyes could delineate the shapes of two 3L students and one alumnus, all wearing judges’ robes and sitting at the makeshift daïs. My ears could hear my opposing counsel clicking his pen while he waited for me to take my place at the podium. My heart banged wildly against my rib cage. The familiar prickles of a blush tingled my neck and cheeks. I forced myself to speak. The judges’ questions came at me like rogue waves. To one, I had to answer, “I’m sorry. I don’t know.” Afterward, one swagger-filled 3L advised me to “work on that hair-pulling tic.” Apparently, I had been unconsciously yanking at my long hair in an effort to hide my hives.

Today, 26 years later, when I share that story during presentations at law firms and bar associations about my Introverted Lawyer book (in which the mission is to help quiet lawyers amplify their voices authentically instead of “faking it till we make it”), a member of the audience sometimes will ask, “Well if
law school was so scary for you, why didn’t you just quit and go do something else?” That reaction always gives me pause, and frankly makes me a little sad (and annoyed). Do we really want law school to only be about, or available to, superconfident speakers? Or can we instead acknowledge that some law school traditions or rites of passage understandably produce more anxiety for some students than others? And that’s okay. And does not mean the anxiety-prone students do not deserve to be there, or are unworthy of our profession. Our scared students might be deeply insightful thinkers, writers, and problem solvers who have a lot to say and just need some guidance and support—and empathy, for that matter—to find their genuine lawyer voices. I look back on my unpleasant and, quite honestly damaging, oral argument experience and ponder what might have helped me back then. I realize now that I needed a teacher, an upper-level student, or some sort of open-minded mentor to (a) acknowledge the anxiety that I, and likely other of my classmates, felt and (b) provide tangible guidance on how to mentally and physically—not just substantively or procedurally—prepare for that type of performance-oriented event. That didn’t exist (for me at least) when I was in law school. Or I didn’t know where to find it.

My exams went better that 1L spring, and in response to a 100-résumé mass mailing to law firms, I landed a plum summer job with a boutique construction litigation firm located just outside Washington, DC. At the ripe age of 22, still somewhat naïve about the many facets of the legal profession, I had not yet delved into the distinction between litigation and transactional work, or which area of practice might best suit my personality. I had law school loans. I needed a paying job. And the firm prided itself on being the highest-paying firm in Virginia, even though it was only 20 years old at the time. I stepped into the hard-hitting world of construction law.

I loved that law firm’s environment from the moment I walked through the front doors. The firm invested in a robust summer associate program. We summer associates—from various East Coast law schools—had offices, assistants, and access to an overnight word processing team. We received cool softball jerseys, accompanied partners on fancy client lunch outings, and trained and trained and trained.

When I told my law school friends that the firm specialized in construction law, their responses usually entailed a wrinkled nose and a quip of “That sounds boring.” Not even close. The legal work was riveting (no pun intended). We researched complicated contractual issues, learned how to read blueprints and engineering designs, and wrote innumerable memoranda, deposition outlines, and briefs. The lawyers were attractive, physically fit (if we weren’t going to client lunches, we did group three-mile runs), snappily dressed, and
mostly extroverted and loud. The atmosphere was “work hard, play hard.” Our softball jerseys bragged, “Losing is not an option.” The hallways buzzed with lawyers brainstorming solutions to conflicts. There was lots of jovial swearing. The F-bomb was an ever-present verb, noun, and adjective.

That summer, and the subsequent one after my 2L year, the firm nurtured and encouraged my legal research and writing. I felt happy in the law firm’s library stacks, reading headnotes in the burgundy case books and figuring out the structure of the Federal Acquisition Regulations. I experienced pure joy when completing lengthy writing assignments and receiving comments written in the founding partner’s trademark blue felt-tip ink that said “Your writing stuns me! Great job!” I survived a few mandatory speaking performances: client lunches and requests by another founding partner to explain challenging aspects of client opinion letters that I had drafted. He chain-smoked cigarettes and nodded along. I blushed and got blotchy in those moments. No one seemed to mind.

I finished my 3L year, married my long-term boyfriend, studied for and passed the bar exam, and began my new job as an associate at the construction law firm right after Labor Day. Sporting a new suit inspired by the Ally McBeal show—cornflower blue and an impossibly short skirt—I waltzed into the firm expecting life to be as blissful as it was during my summer associate days. To paraphrase Alex Conklin’s directive to CIA operative Jason Bourne in The Bourne Supremacy movie, “Training [was] over.” The firm’s cases were high stakes and fast paced. While my role on many case teams involved a lot of legal research and writing at first, my workload soon included depositions, trial work, and negotiations. Mini-cyclones of fear began to churn again. No longer could I hide in the stacks and shine solely through my writing. I was expected to fight.

One of my first interactive engagements with opposing counsel was an assignment by one of the partners to negotiate a “case management schedule” that our respective parties would jointly submit to the trial judge. We needed to determine, and agree upon, how many months the parties would need to handle pleadings, discovery, experts, pretrial submissions, and trial, and set realistic interim deadlines along the way. The only negotiation advice the partner gave me was: “If opposing counsel wants the trial scheduled in two years, you say we want trial in six months. If those guys want trial in six months, you demand a two-year timeline.” Gulp. This seemed like terrible advice—to fight for the sake of fighting—instead of taking a realistic look at the breadth of document review the parties would have to undertake, the number of witnesses scattered around the country to depose, what types of and how many experts were needed, whether we anticipated filing evidentiary motions or cross-motions for summary judgment, how many days or weeks or even months
of trial would be reasonably necessary. The partner was accustomed to untai-
tlored aggression. I was expected to mirror the custom. I felt fraudulent. I had
no poker face. My blush was my “tell,” and the turtlenecks and scarves I wore
to try to hide my blotchy neck merely exacerbated the feeling of suffocation.
Migraines and insomnia entrenched.

For the most part, in the early years of my litigation career, I enjoyed my
day-to-day life when I was physically present in the office, researching and
writing, and generating memoranda and briefs. The atmosphere was collegial
and intellectually collaborative. Our softball team trounced our opponents.
Our holiday parties rocked. But out in the real legal world, my internal anxiety
tornado wrought havoc. I threw up in hotel rooms and restrooms around the
country before every deposition and negotiation. My relationships suffered a
toll. My fear felt like a weakness. When I did confide my trepidation toward
performance-oriented events, well-meaning but not-so-empathetic folks in my
life would convey advice like, “Hey, this is the career you chose! Just get in
there and do it! Face your fears! Fake it till you make it! Quit worrying! Grow
a thicker skin!” Internalizing that advice, I kept doing it, faking it, pushing
through, bungee-jumping into the fray and pretending I wasn’t afraid. Inside,
I was terrified. Afraid of screwing up, misunderstanding a negotiation ploy,
overtrusting opposing counsel’s word, missing the timing of a deposition
objection, not volleying back quickly enough in response to a judge’s question.

As I climbed the associate ranks, I eventually became part of a litigation
team assigned to a huge case involving a tough client and managed by a vola-
tile partner. The partner was a brilliant, charismatic, hardworking rainmaker
with a wild temper. He had many enablers, and I became one. His assistant,
paralegals, my fellow associates, and I jumped when he said “Jump!” even off
metaphorical cliffs. We dodged flying pens, binder clips, and once, his set of
BMW keys hurtling toward a glass door.

The partner and the client sent me to defend a sequence of expert deposi-
tions in our highly contentious case with millions of dollars on the line. The
usual role of a defending attorney at a deposition is to object to improper
questions posed by the questioning attorney. At times, the defending attorney
also can use the vehicle of the objection to gently signal to the deponent (our
side’s witness or expert) to slow down, listen to the question, and not get too
carried away. Ethically, a defending attorney is not allowed to coach the wit-
ness or intentionally disrupt the flow of questioning other than to preserve the
record with proper objections to the form of the queries. Midway through one
deposition, the expert I was defending received news that his father had been
moved into hospice care and likely would not live through the following week-
end. The expert was understandably distraught, yet wanted to continue and
finish the deposition instead of rescheduling. He planned to travel to be at his father’s side as soon as the deposition concluded. The expert began to stray a bit during his answers and veer into territory that other experts were covering. I worried that he might contradict opinions rendered by our other experts. I attempted to object to the form of the questions a little more often, my stomach beginning to twist like a pretzel. I was doing the right thing procedurally, but I wasn’t sure of the wisest tactical move. Do I stop the deposition? On what grounds? We took a break and I called my boss. Amid a flurry of swear words, he screamed, “Just handle it!” I didn’t know what handling it meant. I couldn’t testify for the deponent. I couldn’t predict or control the words coming out of his mouth. He was a professional expert witness. He knew the deposition drill. He was well aware of the millions of dollars at stake. And I had reminded him of all of that during the break. But he also was human, and his dad was dying.

We got through the deposition mostly unscathed, other than a few responses that could be framed by a good opposing brief-writer as contradicting another expert’s opinion about an issue in the case. My boss went ballistic. As did the client. For days, I walked around the firm in a fog, not eating, wincing every time I heard a thud of a door closing or a book falling off a shelf in the library. And then they just got over it.

Six years into my litigation career, shortly before my thirtieth birthday, the most formative relationship of my life detonated. A 12-year bond fragmented into a million little pieces. Though much of the impetus for the split was my decision, my heart cracked apart. My body recovering from a miscarriage, my brain fried, my soul crushed, I needed time alone to figure out what in the world I was doing to the most important relationship I had ever had, and why I was doing it. Struggling to function under a blanket of shame, I moved to New York City to start over, leaving behind the person I loved the most in the world, my friends, my home, and my job. Only a year or two away from a partnership vote at the firm, I resigned.

Teetering on running out of money as Manhattan kicked me around with a steel-toed boot—the hazing many newcomers undergo in adjusting to New York life—I launched another 100 résumé blitz. I landed a job at a BigLaw firm in Tower Two of the World Trade Center. Every day, I took a long subway ride on the 4/5 train from my gloomy temporary uptown digs to Lower Manhattan, averting my eyes from the divorce lawyer advertisements that coaxed, “When diamonds aren’t forever.” My slim office windows offered a view of the Statue of Liberty, sailboats circling. Depressed and lonely, I tried to focus on editing drafts of banking contracts, sometimes putting my fingers in my ears to block out the bellowing from my next-door neighbor, another hot-tempered partner. I longed to switch places with the sailboat captains.
That year, I alternated between numbness at work and fear at home, terror that I had made a colossal mistake leaving my relationship. Manhattan kept bopping me around like a hacky sack, testing my mettle. At first, I couldn’t figure out why anyone would want to live here. Everything smelled; everyone yelled. Nine months into my New York life, as spring approached, I found a fifth-floor walkup apartment in the West Village to sublet. Moving in, carrying a Hefty bag of clothes under one arm and my overweight beagle under the other, I trudged up the four flights of stairs, quads burning. The place reeked of syrupy candle wax. I opened the windows. Wind billowed sheer white curtains. I heard nothing but birds chirping. I saw trees and flowers. I smelled coffee and baked goods involving cinnamon. Ok, I might be able to handle this. I listened to Dido music nonstop, bought a few canvases and tubes of oil paint, and began to paint and write.

That summer, I wrote myself into a decision that I needed some time off from the law—at least temporarily—to figure out what I wanted to do with my life. The prior day, I had noticed myself flinching every time the partner next door wailed about misplaced faxes. I had stayed late the prior evening to transmit a document to a German client and the partner was storming around the office demanding the fax confirmation sheet. He dropped a few F-bombs about a rogue staple that pricked his hand. Ultimately, he directed his ire at me.

“You’re always rushing through the halls! You haven’t made any effort to assimilate! You never stay late to drink tequila with us! What’s wrong with you? You need to make this job your number one priority!”

“It’s not my number one priority,” I murmured.

“Whaaahhh?!!” Steam seemed to blow from his ears, like a cartoon.

I am.

I filled out the paperwork to take an official leave of absence to get my head on straight. I needed to figure out how to heal the chasm in my soul, to adjust to New York, to write, to get healthy. I had buried oil drums full of fear, grief, and pain that needed excavation and remediation. Instead of constantly wishing I were on one of those sailboats circling Lady Liberty rather than at my desk, I needed to find joy and wonder in my life and work again.

After forging a few new Manhattan friendships late that summer, I booked a last-minute flight to join a couple of girls on a spontaneous trip to Greece at the beginning of September. One morning on the island of Santorini, I sat alone on a hotel balcony as the sun rose, bundled in a blanket, a fierce wind pummeling my face. Staring at the dark Aegean Sea, I felt a shift. I could breathe again and my chest didn’t hurt. Things were going to be different now. The depression had started to lift. I was going to be okay again. My