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# LEGAL EDUCATION AND THE THREAT RESPONSE

*Jane Mitchell*

*Law students struggle with disproportionately high rates of depression, anxiety, addiction, and disconnection. This paper offers a novel explanation for these negative outcomes that thus far has been absent from conversations on the subject: Law schools fuel students' sense of threat. According to psychology's well-established cognitive appraisal model, students "appraise" stressful situations as either challenging or threatening. Educational environments appraised as threatening consistently lead to negative outcomes—lower student performance, decreased student engagement, and increased anxiety. Situations appraised as challenging lead to positive outcomes—improved academic performance, increased participation, and better overall health.*

*Law schools facilitate students' threat response rather than a challenge response in four main ways: through the "culture of competition and conformity" characteristic of traditional law schools; by an overemphasis on reputation and self-image; by the nature of a curriculum that trains students to spot threats in everyday situations; and through law school's traditional pedagogy. To address these issues, I propose a series of practical, empirically supported strategies for reducing threat response and promoting challenge responses instead. Five recommendations are offered: embracing a constructivist approach to teaching; encouraging mindfulness; providing greater curricular balance; training students in emotional intelligence; and building a culture of service, friendship, and connection.*

## I. INTRODUCTION

Law students exhibit disproportionately high rates of anxiety, depression, addiction, and disconnection. The 2016 Survey of Law Student Well-Being found that thirty-seven percent of law students experienced anxiety, and seventeen percent experienced depression<sup>1</sup>—roughly three and a half times the rate of the general

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<sup>1</sup> Bree Buchanan & James C. Coyle, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, NAT'L TASK FORCE ON LAWYER WELL-BEING 1, 7 (2017). The survey used the Patient Health Questionnaire-2 (PHQ-2) to screen for depression and the Kessler Psychological Distress Scale 6 instrument to screen for generalized

population.<sup>2</sup> These figures surged during the pandemic, with more than half of law students screening positive for anxiety in 2021.<sup>3</sup> Other pre-pandemic studies suggest a twenty percent to forty percent incidence of clinical depression among law students.<sup>4</sup> Some forty-three percent of students surveyed reported binge drinking at some point during the previous two weeks; one-quarter of law students were considered at risk for alcoholism.<sup>5</sup>

Evidence suggests that “students may experience depression . . . as a *result of the law school experience*” itself, as opposed to the possibility that law schools attract people more likely to experience mental illness.<sup>6</sup> One study of Arizona law students found that the depression rate for incoming law students was eight percent to nine percent, mirroring that of the general population, but increased to thirty-two percent after one year of coursework and forty percent after three years of law school.<sup>7</sup> Traditional law

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anxiety. Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016).

<sup>2</sup> The 2019 National Health Interview Survey found that 4.7% of adults over the age of 18 in the United States regularly experienced feelings of depression, and 11.2% regularly had feelings of worry, nervousness, or anxiety. Tainya C. Clarke et al., *Early Release of Selected Estimates Based on Data From the 2019 National Health Interview Survey*, NAT'L CTR. FOR HEALTH STAT. 1 (2020).

<sup>3</sup> David Jaffe et al., *“It is Okay to Not Be Okay”: The 2021 Survey of Law Student Well-Being*, 60 UNIV. LOUISVILLE L. REV. 441 (2021).

<sup>4</sup> Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 114 (2002) (citing Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 LAW AND HUM. BEHAV. 55, 61 (1999) and G. Andrew Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 LAW & SOC. INQUIRY 225 (1986), confirming an earlier study, Stephen Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 (1985)).

<sup>5</sup> Buchanan & Coyle, *supra* note 1, at 7.

<sup>6</sup> C.A. Roach, *A River Runs Through It: Tapping Into the Informational Stream to Move Students From Isolation to Autonomy*, 36 ARIZ. L. REV. 667, 680 (1994) (emphasis in original).

<sup>7</sup> Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of*

schools have been considered “a breeding ground for depression, anxiety, and other stress-related illnesses.”<sup>8</sup> Compared with those in other demanding graduate programs, law students fare the worst: ninety-six percent of law students report being stressed, compared with seventy percent of medical students and forty-three percent of other graduate students.<sup>9</sup> “Law students almost always reported higher levels of anxiety than comparison groups, including medical students. In some cases, they report mean scores on anxiety measures that are comparable to psychiatric populations.”<sup>10</sup>

Many of these unhealthy patterns continue with students as they become practicing attorneys. One in three practicing attorneys are considered problem drinkers.<sup>11</sup> Some twenty-eight percent of licensed practicing attorneys struggle with depression.<sup>12</sup> Lawyers demonstrate between five and fifteen times the normal incidence of clinical psychological distress.<sup>13</sup> Historically, the legal profession has one of the highest suicides rates of any occupation.<sup>14</sup> Other challenges to lawyer well-being include “social alienation, work addiction, sleep deprivation, job dissatisfaction, a diversity crisis, complaints of work-life conflict, incivility, [and] a narrowing of values so that profit predominates.”<sup>15</sup>

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*an Unhappy, Unhealthy and Unethical Profession*, 52 VAND. L. REV. 871, 875 (1999) (as cited in Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse among United States Lawyers*, 13 INT'L J.L. & PSYCH. 233, 240 (1990)).

<sup>8</sup> Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?*, 8 J. LEGAL WRITING INST. 229 (2002).

<sup>9</sup> Dave Nee Foundation, *Lawyers & Depression* (Mar. 7, 2020), <http://www.daveneefoundation.org/scholarship/lawyers-and-depression>.

<sup>10</sup> Dammeyer & Nunez, *supra* note 4, at 63.

<sup>11</sup> Buchanan & Coyle, *supra* note 1.

<sup>12</sup> Patrick Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, J. ADDICTION MED. 46 (2016).

<sup>13</sup> Connie Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J. L. & HEALTH 1 (1995); see also Rick Allan, *Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial?*, 31 CREIGHTON L. REV. 265 (1997); Kreiger, *supra* note 4.

<sup>14</sup> Schiltz, *supra* note 7.

<sup>15</sup> Buchanan & Coyle, *supra* note 1, at 7.

What drives these negative student outcomes? This paper offers a novel explanation that thus far has been absent from conversations on the subject: *Law schools overexpose students to conditions of threat*. Law students are exposed to conditions that facilitate their threat response on an ongoing basis—leading to physiological and psychological damage, including anxiety and depression.

As explained in Section II, a threat refers to the perceived possibility of harm. According to psychologists Lazarus and Folkman, an individual faced with a stressor will appraise it as either a challenge or a threat. Stressors perceived as challenging lead to positive outcomes for the body, mind, and performance. Stressors perceived as threatening trigger negative outcomes.

As Section III details, traditional law schools all too often steer students to appraise their learning environment as threatening. This occurs through four main channels. First, law schools are characterized by a pervasive “culture of competition and conformity”<sup>16</sup> that breeds a scarcity mentality and increases the likelihood students will appraise the learning environment as threatening. Second, law schools implicitly and explicitly teach students to protect against threats to their reputation and image. Students are then surrounded by circumstances that threaten that image—an experience that the human mind registers to be as threatening as a physical threat. Third, the curricular canon itself trains students to perceive threats in the world around them. In first-year courses like torts, property, contracts, and criminal law, students’ psyches become disposed to see the world as a more threatening one; they develop a heightened awareness of the many ways in which ordinary, everyday situations can quickly turn threatening. Fourth, traditional law school pedagogy further fuels students’ sense of threat through its approach to student-teacher engagement and assessment. This pedagogical approach risks turning students’ threat response into a chronic state, leading to depression and anxiety.<sup>17</sup>

Over the past several decades, scientists have shown the consequences of cumulative threats to be severe. Educational psychologists repeatedly find that academic environments appraised as threatening—as opposed to challenging—lead to

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<sup>16</sup> See *infra* Part III.A.

<sup>17</sup> See *infra* Part III.D.

lower performance, decreased intrinsic motivation, diminished self-efficacy, and lower student engagement. Threatening learning environments increase anxiety, avoidance, and other negative responses.<sup>18</sup> Though some may argue that the competitive, threatening nature of legal education is simply part of the law school package—a necessary aspect of the pedagogy—there is little evidence to support this view.

While psychologists have explored the impact of threat states for decades, this article constitutes the first instance of its application to legal education. Viewing legal education through the paradigm of Lazarus and Folkman's theory of threat and challenge states offers an essential lens for understanding how the law school learning environment impacts student psyches, behavior, and learning. It also paves the way for understanding what students, administrators, and faculty can do to mitigate this threat response and thereby improve student well-being, learning, and engagement.

To address these issues, I offer five concrete recommendations in Section IV that will facilitate challenge responses instead of threat states. First, faculty can embrace a constructivist approach to teaching—matching their teaching methods with how students learn. Second, schools can engage more students and faculty in mindfulness training. Mindful individuals consistently appraise situations in less threatening ways. Third, law schools can create greater balance in the curriculum—giving more weight to the development of interpersonal skills. Fourth, faculty can emphasize the development of students' emotional intelligence. "Stress reappraisal" strategies and other techniques present particularly promising avenues for training students to view stressors as challenges, not threats. Finally, law schools can work to build cultures of service and friendship—by reconsidering grading policies, bolstering group work, modeling vulnerability, and creating in-class opportunities for students to get to know one another. By taking these steps, legal educators can promote challenge responses and prepare students to deal with the ongoing exposure to possible threat that accompanies learning to think like a lawyer.

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<sup>18</sup> See *infra* Part II.D.

## II. THE SCIENCE OF THREAT AND CHALLENGE

To set the stage for understanding how legal education facilitates threat responses, I begin by reviewing the science of threat and challenge states. I open this section by defining threat in Part A, contrasting it with related concepts like challenge and stress. Drawing on Lazarus and Folkman's theory of cognitive appraisal, I describe the scientific processes involved in making a threat appraisal. In Part B, I review the literature on the physiological and psychological consequences of immersing students in an environment of threat. Part C explains the vastly different, improved consequences students experience when they appraise a situation as challenging instead of threatening. The implications for legal educators are profound: As Part D details, learning situations appraised as threatening lead to lower self-efficacy, attainment, and student engagement, while those appraised as challenging do the reverse—increasing student performance, active participation, and achievement.

### *A. Definition of Threat*

A threat refers to “the perceived possibility of harm.”<sup>19</sup> According to the *International Handbook of Threat Assessment*,

The key feature of a threat . . . is that [the harm] is uncertain. We are unsure of exactly what will happen (its nature), how bad the consequences will be (severity), when it will happen (imminence), how often it will happen (frequency), how long it will last (duration), or the probability that it will happen (likelihood). This is in part because a threat arises and exists in specific circumstances . . . . A threat is inherently dynamic, changing over time, and contextual, changing in response to the environment.<sup>20</sup>

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<sup>19</sup> REID MELOY & JENS HOFFMAN, *INTERNATIONAL HANDBOOK OF THREAT ASSESSMENT* (2d ed. 2021). “Threat concerns harms or losses that have not yet taken place but are anticipated.” RICHARD LAZARUS & SUSAN FOLKMAN, *STRESS, APPRAISAL AND COPING* 32 (1984).

<sup>20</sup> MELOY & HOFFMAN, *supra* note 19, at 3.

Potential harm need only be perceived to constitute a threat. *Empirical threats* are those that an outside witness would agree are threatening. *Apriori threats* are those that an outside witness would not consider threatening. In either case, it is the individual body that perceives a threat, whether the threat is real or not. Moreover, a person need not be consciously aware of a threat to experience it; some perceptions of threat, particularly biological ones, are perceived even without the person's consciously identifying it as a threat.

According to Lazarus and Folkman's classic work, our *appraisals* of events determine whether we perceive situations to be threatening. An appraisal refers to a person's evaluation of a situation as it relates to his or her goals, values, and beliefs.<sup>21</sup> It describes the "process of categorizing an encounter . . . with respect to its significance for well-being."<sup>22</sup> Appraisals are cognitive judgments that occur continuously throughout waking life.<sup>23</sup> They may be conscious or unconscious.<sup>24</sup> Lazarus and Folkman's theory asserts that the way a person appraises a situation determines the physiological response that follows.<sup>25</sup> In other words, it is not the event itself that triggers the experience of feeling threatened but the way the mind *interprets* the event that leads to the body's reaction and subsequent emotions.

Lazarus and Folkman's model outlines two cognitive processes the mind undertakes when making an appraisal, referred to as primary appraisal and secondary appraisal.<sup>26</sup> The primary appraisal stage asks, "Am I in trouble? Am I OK? Will I be benefited by this, now or in the future?" This primary stage

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<sup>21</sup> LAZARUS & FOLKMAN, *supra* note 19.

<sup>22</sup> *Id.* at 31.

<sup>23</sup> David W. Putwain, Wendy Symes & Hannah M. Wilkinson, *Fear Appeals, Engagement, and Examination Performance: The Role of Challenge and Threat Appraisals*, 87 BRIT. J. EDUC. PSYCH. 16 (2017).

<sup>24</sup> Jeremy P. Jamieson et al., *Capitalizing on Appraisal Processes to Improve Affective Responses to Social Stress*, 10 EMOTION REV. 30 (2017).

<sup>25</sup> Core to Lazarus and Folkman's model is the belief that stress responses are malleable; Jeremy P. Jamieson, *Challenge and Threat Appraisals*, in HANDBOOK OF COMPETENCE AND MOTIVATION 175, 1766 (Andrew Elliot, Carol Dweck & David Yeager eds., 2d ed. 2017) ("that is, stress responses can be altered by changing how individuals perceive stressors").

<sup>26</sup> LAZARUS & FOLKMAN, *supra* note 19, at 35.



constitutes an assessment of what is at stake in the situation at hand.<sup>27</sup>

The secondary appraisal stage evaluates which options are available for addressing the situation. This stage asks, “Can I cope with the situation? What can I do? Can I handle this?” This secondary stage assesses one’s ability to cope with the situation given the resources available—resources that could be physical, social, material, or psychological.

The answers to these two sets of questions determine whether a person perceives a stressor as a stress, a threat, or a challenge.<sup>28</sup> *Stress* refers to harm or loss already experienced or currently being experienced—“damage already done.”<sup>29</sup> A *threat* refers to the perception that something harmful could happen—a harm that has not yet occurred but is anticipated.<sup>30</sup> A *challenge* refers to an appraisal focused on the potential for growth, mastery, or gain in an encounter. It includes both the opportunity to gain something and some risk of an undesired outcome.<sup>31</sup>

Put another way, a challenge is a stressor a person believes he or she can handle; a threat is a stressor a person believes he or she cannot handle. When challenged, a person centers mental focus on the positive rewards or growth gained when he or she succeeds. When a person is threatened, mental focus centers on the possible damage to well-being or self-esteem when he or she fails to succeed.<sup>32</sup> “Situations that are appraised as high in personal significance and low in controllability . . . are usually appraised as threats, and situations that are high in personal significance and

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<sup>27</sup> Sophie Berjot & Nicolas Gillet, *Stress and Coping with Discrimination and Stigmatization*, 2 FRONTIERS PSYCH. 1 (2011).

<sup>28</sup> Cognitive appraisals also occur when evaluating nonstressful situations. Nonstressful situations are appraised as either irrelevant or benign-positive. Situations appraised as irrelevant are those that do not impact well-being or health outcomes; they do not require a response. Benign-positive situations signal positive outcomes, without the need for significant involvement. See LAZARUS & FOLKMAN, *supra* note 19.

<sup>29</sup> Susan Folkman, *Stress: Appraisal and Coping*, in ENCYCLOPEDIA OF BEHAVIORAL MEDICINE (M. Gellman & J. Turner eds., 2013).

<sup>30</sup> Lazarus & Folkman, *supra* note 19, at 32.

<sup>31</sup> Berjot & Gillet, *supra* note 27.

<sup>32</sup> Sarah Warren, *Good vs. Bad Stress: The Critical Difference Between Challenge and Threat*, SOMATIC MOVEMENT CTR. (Dec. 4, 2019), <https://somaticmovementcenter.com/challenge-threat-stress-response/>.

high in controllability are more likely to be appraised as challenges.”<sup>33</sup>

Because people appraise situations differently, the same stressor can evoke threat states in some individuals and challenge states in others. A threat for one may be a challenge for another. A person’s prior experience—his or her upbringing, age, relationships, education, skills, occupational expertise, beliefs, traumas, membership in a traditionally disadvantaged group, social status, and so on—all have the potential to influence the appraisal process.<sup>34</sup> In the years since Lazarus and Folkman’s model was first developed,<sup>35</sup> researchers have come to view

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<sup>33</sup> Folkman, *supra* note 29.

<sup>34</sup> See, e.g., Rodney Clark et al., *Racism as a Stressor for African Americans: A Biopsychosocial Model*, 54 AM. PSYCH. 805 (1999); Kimberly Matheson et al., *Traumatic Experiences, Perceived Discrimination, and Psychological Distress Among Members of Various Socially Marginalized Groups*, 10 FRONTIERS PSYCH. 1 (2019); Jamieson, *supra* note 25; Sierk A. Horn, *Non-English Nativeness as Stigma in Academic Settings*, 16 ACAD. MGMT. LEARNING & EDUC. 579 (2017); Freida Hopkins Outlaw, *Stress and Coping: The Influence of Racism on the Cognitive Appraisal Processing of African Americans*, 14 ISSUES MENTAL HEALTH NURSING, 399 (1993); Karen van der Zee, Veronica Jan Benet-Martinez & Pieter van Oudenhoven, *Personality and Acculturation*, in CAMBRIDGE HANDBOOK OF ACCULTURATION PSYCH. 50 (David L. Sam & John W. Berry eds., 2d ed., 2016); Wendy Berry Mendes et al., *Challenge and Threat Responses During Downward and Upward Social Comparisons*, 31 EUR. J. SOC. PSYCH. 477 (2001); Gila Cohen Zilka et al., *Sense of Challenge, Threat, Self-Efficacy, and Motivation of Students Learning in Virtual and Blended Courses*, 33 AM. J. DISTANCE EDUC. 2 (2019).

<sup>35</sup> Since Lazarus and Folkman’s *Stress, Appraisal and Coping* (1984), scientists came to ground challenge and threat states in physiological systems. This subsequently led to the development of the biopsychosocial (BPS) model of challenge and threat. The BPS model integrates both the primary and secondary appraisal stages, “such that an individual appraises situational demands and available coping resources in concert.” Jamieson, *supra* note 25, at 177. Appraisals of demands and resources then lead to either challenge or threat responses.

Lazarus and Folkman’s model also influenced multiple educational psychology theories, including Eccles’ expectancy-value theory and Pekrun’s control-value theory. Expectancy-value theory proposes that student choice, persistence, and performance can be predicted based on (1) the *expectancy* that the desired outcome can be achieved and (2) the subjective *value* of the activity. See Jacquelynne Eccles et al.,

challenge and threat responses as anchors on a continuum of possible responses and not as dichotomous states.<sup>36</sup> People experience not only full-blown threat or challenge states but a range of responses that lie anywhere along the continuum from challenge to threat. “Thus by definition, promoting challenge would also reduce threat. As the ratio of perceived resources to [situational] demands increases, individuals move along the continuum from threat to challenge.”<sup>37</sup>

### ***B. The Body’s Response to Threats***

Threat perceptions trigger several physical consequences. When a person appraises a situation as threatening, the body’s fight-or-flight response (the sympathetic nervous system) is activated. Adrenaline is released, increasing the body’s heart rate. A condition called vascular resistance occurs, limiting how much blood flows to the brain and the appendages of the body. Despite the increase in heart rate, blood vessels constrict and oxygen flow to the brain lessens.<sup>38</sup>

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*Expectancies, Values, and Academic Behaviors, in* ACHIEVEMENT AND ACHIEVEMENT MOTIVATION 75 (J. Spence ed., 1983); Allan Wigfield & Jacquelynne Eccles, *Expectancy-Value Theory of Achievement Motivation*, 25 CONTEMP. EDUC. PSYCH. 68 (2000); Allan Wigfield et al., *Achievement Motivation: What We Know and Where We Are Going*, 3 ANN. REV. DEV. PSYCH. 87 (2021); David Putwain, Richard Remedios & Wendy Symes, *The Appraisal of Fear Appeals as Threatening or Challenging: Frequency of Use, Academic Self-Efficacy and Subjective Value*, 36 EDUC. PSYCH. 1670, 1673 (2016). Control-value theory stipulates that appraisals of control and value figure centrally in the arousal of achievement emotions. Anxiety may result, for example, when the perceived controllability of success or failure is low but the perceived value is high. See Reinhard Pekrun, *The Control-Value Theory of Achievement Emotions: Assumptions, Corollaries, and Implications for Educational Research and Practice*, 18 EDUC. PSYCH. REV. 315 (2006).

<sup>36</sup> See Jamieson, *supra* note 25.

<sup>37</sup> Jeremy P. Jamieson et al., *Optimizing Stress Responses with Reappraisal and Mindset Interventions: An Integrated Model*, 31 ANXIETY, STRESS, & COPING 245, 247 (2018). See also Jeremy P. Jamieson et al., *Reappraising Stress Arousal Improves Performance and Reduces Evaluation Anxiety in Classroom Exam Situations*, 7 SOC. PSYCH. AND PERS. SCI. 579 (2016).

<sup>38</sup> Jamieson, *supra* note 25, at 177–78.

Because of this physiological process, situations appraised as threatening can make the brain feel as though it has been commandeered. Threat states impair decision-making.<sup>39</sup> Psychologists describe the rational thinking areas of the brain as being “hijacked” or “flooded” during these moments, swept away by strong emotions that accompany the threat appraisal, such as anxiety, anger, or fear.<sup>40</sup> In this condition, “a person can neither hear what is said without distortion, nor respond with clarity; thinking becomes muddled and the most ready responses are primitive ones—anything that will end the encounter quickly.”<sup>41</sup>

These responses occur regardless of whether the perceived threat is physical or psychological. From an evolutionary perspective, the threat response system was activated most often in response to physical threats, alerting humans to real dangers posed by predators or mobilizing a parent to protect a child. Nowadays, however, “most of the threats we face are challenges to our self-image or self-concept.”<sup>42</sup> In our more advanced, complex, modern civilization, even simple office politics or deadlines can activate a threat response in much the same way that physical threats might.

Once activated, the body’s threat-defense system needs time to recover. If the threat is overcome, a recovery process begins: Heart rate and blood pressure start to normalize. The body readjusts its hormone levels until they reach a pre-threat state.

If the threat is not resolved, however, or if the stressful situation continues, the body can remain in survival mode long after the onset of the initial threat.<sup>43</sup> Where there is sustained threat exposure, the body does not have time to recover. Particularly when a person perceives everyday situations as threatening, the body’s threat response can be activated repeatedly—leading to a condition called *chronic threat response*.

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<sup>39</sup> *Id.*

<sup>40</sup> DANIEL GOLEMAN ET AL., PRIMAL LEADERSHIP: UNLEASHING THE POWER OF EMOTIONAL INTELLIGENCE 28 (2013).

<sup>41</sup> *Id.* at 22.

<sup>42</sup> KRISTIN NEFF & CHRISTOPHER GERMER, THE MINDFUL SELF-COMPASSION WORKBOOK 31 (2018).

<sup>43</sup> JULIAN FORD & JON WORTMANN, HIJACKED BY YOUR BRAIN: HOW TO FREE YOURSELF WHEN STRESS TAKES OVER 8 (2013).

Chronic threat response in turn leads to serious physical problems. It can cause anxiety, depression, digestive problems, ulcers, and weight gain.<sup>44</sup> Without time to recover between threatening experiences, blood vessels remain constricted and heart rates stay elevated, increasing the likelihood of a stroke, a heart attack, or cardiovascular disease.<sup>45</sup> The immune system likewise suffers: The body produces fewer antibodies in this state, making vaccines less effective, the immune system more susceptible to viruses<sup>46</sup> and cancer,<sup>47</sup> and inflammation more likely.<sup>48</sup> Chronically threatened individuals experience accelerated levels of cognitive decline and faster “brain aging.”<sup>49</sup>

### ***C. The Body’s Response to Challenges***

If an individual perceives a situation as a challenge instead of a threat, the body’s response differs significantly. Challenge appraisals activate the fight-or-flight system, preparing the body for the challenge. Heart rate increases. Unlike in the threat response, however, vascular resistance does not occur. Blood vessels dilate freely, sending more oxygen to the brain and muscles.<sup>50</sup>

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<sup>44</sup> Neff & Germer, *supra* note 42; see also ROBERT SAPOLSKY, *WHY ZEBRAS DON’T GET ULCERS* (3d ed. 2004).

<sup>45</sup> Christian E. Waugh et al., *Cardiovascular and Affective Recovery From Anticipatory Threat*, 84 *BIOLOGICAL PSYCH.* 169 (2010).

<sup>46</sup> Jean-Philippe Gouin et al., *Immune Dysregulation and Chronic Stress Among Older Adults: A Review*, 15 *NEUROIMMUNOMODULATION* 251 (2009). Even wounds heal more slowly when under chronic threat response. Ronald Glaser & Janice Kiecolt-Glaser, *Stress-Induced Immune Dysfunction: Implications for Health*, 5 *NATURE REV. IMMUNOLOGY* 243 (2005).

<sup>47</sup> Alison N. Saul et al., *Chronic Stress and Susceptibility to Skin Cancer*, 97 *J. NAT’L CANCER INST.* 1760 (2005).

<sup>48</sup> Jennifer Morey et al., *Current Directions in Stress and Human Immune Function*, 5 *CURRENT OP. PSYCH.* 13 (2015).

<sup>49</sup> Angela Jefferson et al., *Cardiac Index is Associated With Brain Aging: The Framingham Heart Study*, 122 *CIRCULATION* 690 (2010). People in this situation also age faster; see Aoife O’Donovan et al., *Stress Appraisals and Cellular Aging: A Key Role For Anticipatory Threat in the Relationship Between Psychological Stress and Telomere Length*, 26 *BRAIN, BEHAV., & IMMUNITY* 573 (2012).

<sup>50</sup> Jamieson, *supra* note 25, at 177–78.

In this challenge state, coordination, concentration, and accuracy improve. A person feels positive, pleasurable emotions (such as excitement, eagerness, and exhilaration). Mental and physical performance get a boost.<sup>51</sup>

This challenge response also positively affects the body's immune system. Protection against antigens increases; immune responses to surgery, vaccines, and tumors improve.<sup>52</sup> Cell growth throughout the body increases.<sup>53</sup> The effects of the challenge response are so positive that one study concluded that adolescents who faced moderately challenging experiences fared better than those who faced no challenges.<sup>54</sup>

While threat responses can become chronic, challenge responses are typically short-term. The body's hormone levels reduce to normal soon after the stressful event concludes. It is possible for a person to become addicted to the positive endorphins of a challenge state ("adrenaline junkies" or exercise addicts come to mind<sup>55</sup>), but generally these instances constitute a healthy habit distinct from actual addiction.<sup>56</sup> The body is not designed to remain in a state of ongoing challenge; hormone levels return to normal within a matter of minutes or hours of the challenge.

#### ***D. The Impact of Appraisal on Learning Outcomes***

Threat and challenge states also significantly impact academic learning. Educational psychologists identify a strong connection between students' academic performance and their appraisal of

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<sup>51</sup> Firdaus Dhabhar, *The Short-Term Stress Response: Mother Nature's Mechanism for Enhancing Protection and Performance Under Conditions of Threat, Challenge, and Opportunity*, 49 FRONTIERS NEUROENDOCRINOLOGY 175 (2018).

<sup>52</sup> *Id.*

<sup>53</sup> Alia J. Crum et al., *The Role of Stress Mindset in Shaping Cognitive, Emotional, and Physiological Responses to Challenging and Threatening Stress*, 30 ANXIETY, STRESS & COPING 379 (2017).

<sup>54</sup> B. Shapero et al., *Moderate Childhood Stress Buffers Against Depressive Response to Proximal Stressors: A Multi-Wave Prospective Study of Early Adolescents*, 43 J. ABNORMAL CHILD PSYCH. 1403 (2015).

<sup>55</sup> See Marilyn Freimuth et al., *Clarifying Exercise Addiction: Differential Diagnosis, Co-occurring Disorders, and Phases of Addiction*, 8 INT'L J. ENV'T. RSCH. PUB. HEALTH 4069 (2011).

<sup>56</sup> Warren, *supra* note 32.

academic situations as being either a threat or a challenge. Research with elementary, secondary, and undergraduate students finds that threat appraisals are related to lower exam performance: When students perceive their classrooms to be threatening, their test scores decrease.<sup>57</sup> This occurs in part because threat perception lowers intrinsic motivation.<sup>58</sup> When students experience less intrinsic motivation, their performance suffers.<sup>59</sup> It also occurs because threat perception leads to greater test anxiety—and increased test anxiety likewise lowers test performance.<sup>60</sup>

In addition to decreasing academic attainment on tests, threat appraisals weaken students' engagement in the learning process. Students who perceive a learning environment to be more threatening than challenging are more likely to suffer from low self-efficacy and lack confidence in their abilities to complete a task or achieve a goal.<sup>61</sup> Threat appraisals also increase avoidance, defensiveness, and negative emotions—all of which stymie the learning process.<sup>62</sup> Concerningly, students who feel threatened

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<sup>57</sup> David Putwain & Richard Remedios, *The Scare Tactic: Do Fear Appeals Predict Motivation and Exam Scores?*, 29 SCH. PSYCH. Q. 503 (2014); David Putwain & Richard Remedios, *Fear Appeals Used Prior to a High-stakes Examination: What Makes Them Threatening?*, 36 LEARNING AND INDIVIDUAL DIFFERENCES 145 (2014); David Putwain & C. Roberts, *The Development and Validation of the Teachers' Use of Fear Appeals Questionnaire*, 79 BRIT. J. EDUC. PSYCH. 643 (2009); David Putwain & Wendy Symes, *Classroom Fear Appeals and Examination Performance: Facilitating or Debilitating Outcomes?*, 21 LEARNING AND INDIVIDUAL DIFFERENCES 227 (2011). See also Putwain, Symes & Wilkinson, *supra* note 23.

<sup>58</sup> Putwain & Remedios, *The Scare Tactic*, *supra* note 57.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*; see also Putwain & Remedios, *Fear Appeals*, *supra* note 57.

<sup>61</sup> See *infra* note 57; Albert Bandura, *Self-Efficacy: Toward a Unifying Theory of Behavioral Change*, 84 PSYCH. REV. 191 (1977).

<sup>62</sup> See Eleftheria Gonida et al., *Students' Achievement Goal Orientations and Their Behavioural and Emotional Engagement: Co-examining the Role of Perceived School Goal Structures and Parent Goals During Adolescence*, 19 LEARNING AND INDIVIDUAL DIFFERENCES 53 (2009); Holly A. McGregor & Andrew J. Elliot, *Achievement Goals As Predictors of Achievement-Relevant Processes Prior to Task Engagement*, 94 J. EDUC. PSYCH. 381 (2002); Amy L. Reschly et al., *Engagement as Flourishing: The Contribution of Positive Emotions and Coping to Adolescents'*

show decreased engagement in their learning<sup>63</sup>—meaning they exhibit lower degrees of attention, curiosity, interest, optimism, and passion toward their education.<sup>64</sup> Furthermore, the extent to which students perceive their learning environment and messages communicated by teachers as threatening determines the strength of these outcomes.<sup>65</sup> The greater the sense of threat, the lower the academic attainment.

Challenges, meanwhile, have the opposite effect on learning. When students appraise learning situations as challenging instead of threatening, their levels of anxiety and other negative emotions lessen.<sup>66</sup> Their confidence and sense of self-efficacy increase.<sup>67</sup> Test scores improve.<sup>68</sup> If students believe they can succeed in a difficult academic encounter, they demonstrate higher levels of active participation, on-task behavior, and engagement.<sup>69</sup> Challenge responses deepen learning.

### III. LAW SCHOOLS HEIGHTEN STUDENTS' THREAT PERCEPTION

With this science in mind, I now turn to the law school learning environment. Traditional law schools feed students' overall sense of threat. This occurs in four ways. First, the "culture of competition and conformity" in law schools increases the

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*Engagement at School and with Learning*, 45 PSYCH. SCH. 419 (2008).

<sup>63</sup> David Putwain, Richard Remedios & Wendy Symes, *Fear Appeals Used Prior to High-stakes Examinations: Why Are They Appraised as Threatening and Do They Impact on Subjective Task Value?*, 40 LEARNING AND INSTRUCTION 21 (2015). See also Putwain, Remedios & Symes, *supra* note 35.

<sup>64</sup> *Student Engagement*, GLOSSARY EDUC. REFORM (last updated Feb. 18, 2016), <https://www.edglossary.org/student-engagement/>.

<sup>65</sup> Putwain & Remedios, *Fear Appeals*, *supra* note 57.

<sup>66</sup> Raymond Preiss et al., *Test Anxiety, Academic Self-Efficacy, and Study Skills: A Meta-Analytic Review*, in CLASSROOM COMMUNICATION AND INSTRUCTIONAL PROCESSES: ADVANCES THROUGH META-ANALYSIS 99 (Barbara Gayle, Raymond Preiss, Nancy Burrell & Mike Allen eds., 2006).

<sup>67</sup> Putwain, Remedios & Symes, *supra* note 63; Putwain, Remedios & Symes, *supra* note 35.

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

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



likelihood that students will appraise their learning environment as threatening. As I detail in Part A, competition and conformity breed a scarcity mentality and shrink the pool of available resources for students to cope with demands. Second, law schools teach students to care about their reputation and self-image, as Part B explores—an emphasis that invites students to appraise classroom interactions as more of a threat than a challenge. Third, the curricular canon teaches students to perceive threats where they previously had seen none. Part C explores how foundational first-year classes like torts, property, contracts, and criminal law train students to see the world as a more threatening one. Fourth, traditional law school pedagogy further steers students toward a threat response through its approach to student-teacher engagement and assessment. Faced with ongoing exposure to environments that facilitate threat appraisals, students are more likely to develop anxiety and depression, a weakened immune system, and poor academic outcomes.

### ***A. The Culture of Competition and Conformity***

In their article *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, Susan Sturm and Lani Guinier chronicle the existence of a “culture of competition and conformity” across traditional law schools.<sup>70</sup> This culture refers to the norms, traditions, unspoken beliefs, and incentive structures that shape the behavior of all members of the law school community.<sup>71</sup>

While school culture naturally varies from law school to law school, most traditional law schools exhibit a competitive culture.<sup>72</sup> Established metrics of success funnel students from one competition to another throughout their tenure in law school.<sup>73</sup>

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<sup>70</sup> Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515 (2007).

<sup>71</sup> *Id.* at 519.

<sup>72</sup> *Id.*; see also Peggy C. Davis & Elizabeth E. Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249, 264 (1997); Olympia Duhart, *It's Not For a Grade: The Rewards and Risks of Low-Risk Assessment in the High-Stakes Law School Classroom*, 7 ELON L. REV. 491, 491 (2015).

<sup>73</sup> Sturm & Guinier, *supra* note 70, at 520.

With most classes graded on a curve, students compete for top grades. They then compete to get on law review or other distinguished journals; to secure clerkships, summer internships, and prestigious jobs; and to participate in selective coursework, clinical opportunities, or moot court.<sup>74</sup>

This traditional law school culture is simultaneously conformist.<sup>75</sup> Pressured to conform to the school's standards of excellence, students often suspend their personal judgment, substituting an external reward system for inner morals.<sup>76</sup> Many become desensitized to their own internal compass and detach from their sense of purpose, conforming instead to the prevailing context.<sup>77</sup> Students worry about taking certain opportunities that are out of sync with what the rest of the class may be doing.<sup>78</sup> Career counselors push students toward conformist paths that translate into short-term wins for a law school's ranking and more law firm hires.<sup>79</sup> Too many students lose their sense of engagement with law school—the reasons they came to law school in the first place and the opportunity to engage with real problems or make intellectual discoveries.<sup>80</sup> Disconnected intellectually and

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<sup>74</sup> Krieger, *supra* note 4, at 117; Sturm & Guinier, *supra* note 70, at 520. See also Schiltz, *supra* note 7; Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 253 (1978) (noting the power of the hidden curriculum in influencing student attitudes toward grades, status, and success).

<sup>75</sup> Robert B. McKay, *What Law Schools Can and Should Do (and Sometimes Do)*, 30 N.Y. L. SCH. L. REV. 491, 494 (1985); Sturm & Guinier, *supra* note 70, at 520. See WILLIAM P. LAPIANA, *LOGIC & EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION* (1994) (discussing where this culture and approach to legal education originates).

<sup>76</sup> Sturm & Guinier, *supra* note 70, at 539; see also Barbara G. Fines, *Competition and the Curve*, 65 UMKC L. REV. 879 (1997).

<sup>77</sup> See Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705 (1997); Sturm & Guinier, *supra* note 70, at 540; ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION*, 114–15 (1995).

<sup>78</sup> Sturm & Guinier, *supra* note 70, at 540.

<sup>79</sup> Sturm & Guinier, *supra* note 70, at 535; see also Jeffrey E. Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L. J. 229 (2006).

<sup>80</sup> Davis & Steinglass, *supra* note 72, at 272 (“all of this may make it very difficult for students to focus on learning rather than performing”).

emotionally, students find their learning processes become impoverished.<sup>81</sup> Students become risk averse and, in many cases, fail to develop the “legal imagination” hallmark of astute legal minds.<sup>82</sup>

What happens to students’ psyches when they operate in this culture? From a psychological perspective, the culture of competition and conformity influences students’ primary and secondary appraisal processes, pushing students more toward a threat response than a challenge response.

When assessing their situational demands during the primary appraisal stage (“Am I OK? Will I be benefited by this?”), students are more likely to respond negatively if immersed in a competitive culture. Competition breeds a scarcity mentality; unlike a collaborative space where all have the potential to ascend together, competitive environments create a zero-sum game with distinct winners and losers. Only a select number of students can earn the marks of a winner—high grades, law review participation, prestigious work opportunities. As one student described his first year of law school, “It’s like I lived in the jungle, and I was trying to survive every day just by competing for scarce resources . . . . It was a lot easier to see others as threats.”<sup>83</sup> Competition intensifies perceptions of situational demands.

Conformity reinforces this competitive element: When students are encouraged to conform to the same narrow, one-size-fits-all definition of success, they feel a greater pull to compete. Many students come to appraise regular classroom interactions (such as participating in class) as potentially threatening (“No, I will not be benefited by this”) because the competitive, conformist environment signals the interaction could affect their status as either a success or a failure. Learning environments marked by greater acceptance, more collaboration, and less competition would lead to a different set of cognitive judgments during this primary appraisal stage.

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<sup>81</sup> See Keith H. Hirokawa, *Critical Enculturation: Using Problems to Teach Law*, 2 DREXEL L. REV. 1, 3 (2009); Sturm & Guinier, *supra* note 70, at 546; Davis & Steinglass, *supra* note 72, at 270.

<sup>82</sup> Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 602 (2007).

<sup>83</sup> Video recording: Transformational Leadership in Law, held at B.Y.U. Law School (Aug. 29, 2022) (on file with author).

This culture likewise affects students' secondary appraisal process. When evaluating whether they can cope ("Can I handle this?"), students are again more likely to respond negatively if immersed in a competitive environment. Invariably, competition shrinks the pool of peer-to-peer resources available to students. When students see one another as competition, they are less likely to create rich, supportive peer communities and strong social networks designed to help one another.

A similar dynamic occurs with faculty and students. The faculty incentive structure discourages the formation of strong faculty-student relationships.<sup>84</sup> Faculty are rewarded for publishing a significant amount to a small subset of specialists; particularly at elite law schools, faculty lack institutional incentives to mentor students and build close relationships with students.<sup>85</sup> This too contributes to a smaller pool of resources from which students can draw upon when facing stressors. Absent stronger relationships with peers or faculty, students are more likely to conclude that they cannot cope with or handle a certain situation—leading to threat appraisal.<sup>86</sup>

### ***B. Reputation and Self-Image***

Law schools further create conditions that fuel students' sense of threat by teaching students to care excessively about their image—and then by surrounding them with ongoing threats to that image.

In many law schools, students are explicitly and implicitly taught to care about their reputation and image, from day one. In an article addressed to first-year law students, the American Bar Association encourages, "[O]ur advice to 1Ls is to be aware that even in the earliest stages of your legal education, you are laying

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<sup>84</sup> Sturm & Guinier, *supra* note 70, at 538.

<sup>85</sup> *Id.*; see also Marin R. Scordato, *The Dualist Model of Legal Teaching and Scholarship*, 40 AM. U. L. REV. 367 (1990); James Eagar, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389 (1996).

<sup>86</sup> The perception of strong social supports assists the appraisal process by increasing an individual's ability to cope and redefining the situational threat. See Carla Meijen et al., *A Theory of Challenge and Threat States in Athletes: A Revised Conceptualization*, 11 FRONTIERS PSYCH. 1, 7 (2020).

the foundations for two of the most important aspects of business development: reputation and relationships . . . . An attorney's reputation is his or her most valuable asset."<sup>87</sup> Relationships are viewed as the means to future business development, money, and career ascendancy—not as an end in itself. Students are taught to care about their image—how they perform in class, how they are perceived, how they look in front of professors or the law firm partner—and are encouraged to guard their carefully crafted reputation.<sup>88</sup> A colleague of mine was told during his new student orientation as an incoming 1L, “Guard your reputation at all costs.”<sup>89</sup> Large law firms give similar advice during new associate training: Associates craft their reputations from the get-go and should protect their image—a good reputation leads to more clients, more work, and more money.

In this kind of environment, situations that risk diminishing a student's reputation are likely to be appraised as threats. Classroom interactions with faculty become potential threats to one's image rather than safe opportunities to make and learn from mistakes. Authority figures become objects to impress rather than human beings to learn from or learn with. Unable to eliminate the reality of their natural human weakness, many law students and young lawyers develop a paralyzing perfectionism because of this overfocus on reputation. Furthermore, these threats to image in the law school classroom are ongoing, triggering the threat response repeatedly—potentially inducing a state of chronic threat response.

An overemphasis on reputation can also frustrate the development of genuine relationships. Carol Gilligan and Lyn Mikel Brown describe how an overfocus on being perceived as a “good” member of a community can lead people to be dishonest about their true selves and to silence their inner voices—frustrating genuine relationship with others for the sake of a phony reputational “relationship,” making real connection

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<sup>87</sup> Ian Fischer & Eugene Endress, *Reputation and Relationships: Advice for First-year Law Students*, A.B.A. (Mar. 29, 2017),

[https://www.americanbar.org/groups/litigation/pages/reputation\\_and\\_relationships/#:~:text=Nevertheless%2C%20our%20advice%20to%201Ls,business%20development%3A%20reputation%20and%20relationships.](https://www.americanbar.org/groups/litigation/pages/reputation_and_relationships/#:~:text=Nevertheless%2C%20our%20advice%20to%201Ls,business%20development%3A%20reputation%20and%20relationships.)

<sup>88</sup> Schiltz, *supra* note 7.

<sup>89</sup> Interview with V. P. (May 7, 2020).

impossible.<sup>90</sup> Law students find themselves caught between a natural desire to be authentic and their full human selves—allowing space for vulnerability, safety, compassion, emotion, and everyday human weaknesses—and pressure to maintain an image of strength and reliability for the sake of their future career. This leads to disconnection from self and others, distrust of peers,<sup>91</sup> and what Parker Palmer calls “divided living.”<sup>92</sup>

In addition to focusing attention on students’ reputation and image, law schools also threaten students’ self-image. While “reputation” refers to the opinions held generally about a person and “image” refers to the general impression a person presents to the public, “self-image” refers to a person’s views about him or herself. A person’s self-image is distinct from his or her public image or reputation, though it may be influenced by it. Psychologists define *self-image threats* as experiences that call into question a person’s favorable views about him or herself.<sup>93</sup> Though largely internal, self-image threats trigger the same psychological and physiological threat responses that more

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<sup>90</sup> CAROL GILLIGAN & LYN MIKEL BROWN, MEETING AT THE CROSSROADS: WOMEN’S PSYCHOLOGY AND GIRLS’ DEVELOPMENT (Random House Publishing Group 1993).

<sup>91</sup> See NIOBE WAY ET AL., THE CRISIS OF CONNECTION: ROOTS, CONSEQUENCES, AND SOLUTIONS (2018).

<sup>92</sup> In the words of Parker Palmer, “I pay a steep price when I live a divided life—feeling fraudulent, anxious about being found out, and depressed by the fact that I am denying my own selfhood. The people around me pay a price as well, for now they walk on ground made unstable by my dividedness. How can I affirm another’s identity when I deny my own? How can I trust another’s integrity when I defy my own? A fault line runs down the middle of my life, and whenever it cracks open—divorcing my words and actions from the truth I hold within—things around me get shaky and start to fall apart . . . . The divided life is a wounded life, and the soul keeps calling us to heal the wound. Ignore that call, and we find ourselves trying to numb our pain with an anesthetic of choice, be it substance abuse, overwork, consumerism, or mindless media noise.” PARKER PALMER, A HIDDEN WHOLENESS: THE JOURNEY TOWARD AN UNDIVIDED LIFE, 5, 20 (2004).

<sup>93</sup> See W. Keith Campbell & Constantine Sedikides, *Self-Threat Magnifies the Self-Serving Bias: A Meta-Analytic Integration*, 3 REV. GEN. PSYCH. 23 (1999); Michelle R. vanDellen et al., *Compensating, Resisting, and Breaking: A Meta-Analytic Examination of Reactions to Self-Esteem Threat*, 15 PERS. AND SOC. PSYCH. REV. 51 (2011).

external threats (like a threatening instructor or competitive culture) might trigger. Self-image threat is a common occurrence. Many types of everyday events can trigger a threat to self-image, including receiving feedback about one's academic competence or intelligence.<sup>94</sup>

People typically respond to self-image threats in unhealthy ways. Because individuals are motivated to sustain a positive image of themselves, they subsequently take steps to minimize self-image threats when they experience them.<sup>95</sup> Common reactions to self-image threats include engaging in risky behaviors,<sup>96</sup> cognitively distorting the situation to make it less threatening,<sup>97</sup> reacting defensively,<sup>98</sup> becoming avoidant, making external attributions for failure,<sup>99</sup> and adopting self-defeating beliefs.<sup>100</sup> People experiencing self-image threat tend to generalize their negative thoughts and feelings about themselves to other aspects of life,<sup>101</sup> lessening their feelings of self-worth and increasing feelings of personal inadequacy.<sup>102</sup>

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<sup>94</sup> Lisa Aspinwall & Shelley Taylor, *Effects of Social Comparison Direction, Threat, and Self-Esteem on Affect, Self-Evaluation, and Expected Success*, 64 J. PERS. AND SOC. PSYCH. 708 (1993).

<sup>95</sup> Campbell & Sedikides, *supra* note 93; *see also* J. Crocker & L. Park, *The Costly Pursuit of Self-Esteem*, 130 PSYCH. BULL. 392 (2004).

<sup>96</sup> Roy Baumeister et al., *When Ego Threats Lead to Self-Regulation Failure: Negative Consequences of High Self-Esteem*, 64 J. PERS. AND SOC. PSYCH. 141 (1993); *see also* Jean Twenge et al., *Social Exclusion Decreases Prosocial Behavior*, 92 J. PERS. AND SOC. PSYCH. 56 (2007).

<sup>97</sup> D. Sherman & G. Cohen, *The Psychology of Self-Defense: Self-Affirmation Theory*, ADVANCES IN EXPERIMENTAL SOC. PSYCH. 183 (2006).

<sup>98</sup> *Id.*

<sup>99</sup> Campbell & Sedikides, *supra* note 93.

<sup>100</sup> Some self-defeating behaviors include self-handicapping, thoughts of self-harm, and choosing to self-punish. M. J. Callan et al., *Making Sense of Misfortune: Deservingness, Self-Esteem, and Patterns of Self-Defeat*, 107 J. PERS. AND SOC. PSYCH. 142 (2014).

<sup>101</sup> This phenomenon is known as overgeneralization. *See* J. Brown & K. Dutton, *The Thrill of Victory, the Complexity of Defeat: Self-Esteem and People's Emotional Reactions to Success and Failure*, 68 J. PERS. AND SOC. PSYCH. 712 (1995); M. H. Kernis et al., *Self-esteem and Reactions to Failure: The Mediating Role of Overgeneralization*, 57 J. PERS. AND SOC. PSYCH. 707 (1989).

<sup>102</sup> Charles S. Carver et al., *Depression and Cognitive Style: Comparisons Between Measures*, 49 J. PERS. AND SOC. PSYCH. 722 (1985).

Law schools frequently threaten students' self-images. Grades prompt students to reconsider their views of their own intelligence. The way expertise is modeled in most law school classrooms also spurs students to doubt their abilities and to undervalue certain life experiences. As Sturm and Guinier explain, law schools assume that professors are the experts. The professor models what it means to think like a lawyer. Students' experiences and insights tend to be devalued, even if they might teach professors a great deal.<sup>103</sup> Students are treated more like objects than empowered agents; they are put in a passive, reactive position, "focused on at least not making mistakes and at best giving the professor what she is looking for."<sup>104</sup> In this environment, law students often experience threats to their self-image. This may be especially true for students who do not fit the traditional mold, including women and students of color.<sup>105</sup>

One other response to self-image threats should be of particular concern to law schools: Self-image threats breed prejudice.<sup>106</sup> As mentioned, threats to self-image provoke the need for individuals to restore their threatened image. One mechanism people use to restore their threatened image is to apply negative stereotypes toward members of stereotyped groups.<sup>107</sup> Laboratory

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<sup>103</sup> Sturm & Guinier, *supra* note 70, at 532.

<sup>104</sup> According to Sturm and Guinier, law schools' assumptions about expertise are embedded in the structure of all relationships between students, faculty, and practitioners. Sturm & Guinier, *supra* note 70, at 532. Students focus on what the professor "wants to hear"; they typically disengage when their peers speak and turn to the instructor for confirmation of classmates' insights. *Id.* In addition to reducing student learning, this modeling of expertise dissuades curiosity, collaboration, and innovative perspectives. *Id.* It assumes that the most critical learning during law school occurs in the classroom, through instruction given by the professor. *Id.*

<sup>105</sup> See Kathryne M. Young, *Understanding the Social and Cognitive Process in Law School that Creates Unhealthy Lawyers*, 89 *FORDHAM L. REV.* 2575 (2021) (highlighting qualitative interview evidence of how cold calls and peer judgments in law school disproportionately harm female and nonwhite students).

<sup>106</sup> Steven Spencer et al., *Automatic Activation of Stereotypes: The Role of Self-Image Threat*, 24 *PERS. AND SOC. PSYCH. BULL.* 1139 (1998).

<sup>107</sup> "When people experience self-image threat, they will have the goal to restore their self-image, and if they encounter a member of a group for which there is a readily available stereotype, they will be likely to



studies indicate that people whose self-image is threatened are more likely to view stereotyped individuals negatively than those who do not experience threats to self-image.<sup>108</sup> Researchers conclude that having a threatened self-image leads to the development of more prejudicial attitudes.<sup>109</sup> By placing students in an environment that threatens their self-image, law schools risk fomenting prejudice.

### ***C. The First-Year Curriculum***

Law schools further foster a potentially threatening learning environment through the subject matter of many of their doctrinal courses. The first-year curriculum illustrates this point. In one sense, the foundational classes of torts, property, contracts, and criminal law teach students to perceive threats.

In torts, for example, first-year students are taught to identify potential torts and liability claims in the world around them. Students experience a significant cognitive shift after reading dozens of cases involving ordinary, everyday situations between regular people that have gone wrong: A neighbor slips on a homeowner's protruding sidewalk, leading to injury and litigation; an elderly passenger boarding an airplane falls through the gap in the jet bridge; a water spill at a grocery store leads to a slip and a lawsuit that puts a small business owner out of business. Students unwittingly develop an ongoing awareness of just how easily issues of liability arise in regular, everyday moments. They begin noticing potential torts in run-of-the-mill situations that previously had not been associated with liability: rusting backyard playground equipment, an icy walkway, an old car that portends attractive nuisance. The world becomes rife with the possibility of lawsuits, stemming from ordinary, commonplace interactions. Students frequently report that taking torts changes the way they see the world forever.<sup>110</sup>

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stereotype that person even if this stereotyping occurs outside of their conscious awareness." *Id.* at 1140.

<sup>108</sup> Steven Fein & Steven Spencer, *Prejudice as Self-image Maintenance: Affirming the Self Through Negative Evaluations of Others*, 73 J. PERS. AND SOC. PSYCH. 31 (1997).

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

<sup>110</sup> In the words of one law student:

Part of the cognitive shift students experience as they learn to “think like a lawyer” involves coming to see the world as more threatening. There are psychological costs to developing a perspective that is trained to spot legal claims in every corner: Students develop an awareness of all that might go wrong. Their perceived possibility of harm increases. Unfortunately, this perceptual attunement to possible legal claims encourages a self-oriented, preservation-focused, individualist attitude that allocates blame and seeks to sidestep liability; it does not cultivate a community-minded, connected, neighborly concern for others.

Property and contracts courses have similar effects on first-years. Students spend their time absorbing stories and appellate decisions centered on what went wrong between once-collegial neighbors, business partners, or family members. They come to expect relationships between parties to sour over time, agreements to be violated, or once-friendly colleagues to someday sue each other. Relationship deterioration and broken contracts become the norm. Resolving neighborly disputes through litigation feels implicitly encouraged given the curricular emphasis on property disputes that result in litigation. Mediation, compromise, arbitration, settlement, forgiveness, or other more cooperative solutions are largely absent from class discussions and texts.

Where litigation and relational decline are the norm, the world unintentionally becomes a more threatening one. It becomes easier for students to view personal and professional activities with an eye toward how they too might fall apart. Students are unconsciously primed to view the world as being more prone to deteriorate than it in fact is.

Criminal law also risks leading students to see the world as more threatening. Students reading criminal law cases discover a fair amount of interpersonal violence, particularly rape and

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More than any class you take, torts will ruin the way you see everyday life. Banana peel on the floor? Yep, that’s a tort. Friend playfully hits you? You yell, ‘Battery! That’s a tort.’ Every hazard in the road will be a tort. You will find at least one thing each day that could be used in a lawsuit against a tortfeasor.

Rayven Ouellete-Garcia, *Your Brain on Law School*, KU LAW BLOG, <https://bloglaw.ku.edu/student-life/your-brain-on-law-school>.

homicide. Criminal law textbooks overwhelmingly prioritize homicide as “the paradigm crime,”<sup>111</sup> despite its infrequent occurrence—a mere 0.16% of all criminal offenses in the United States are categorized as either murder or manslaughter.<sup>112</sup> As Alice Ristroph explains,

By the numbers, criminal law is used much more often to manage petty disorder and low-level disruption than to respond to physical violence of any type . . . . [W]e should ask what ideological work is done by the choice to prioritize homicide and rape and exclude other offenses [in criminal law classes and textbooks] . . . . The course’s focus on homicide, with the occasional foray into sexual assault, also means that drug and gun crimes do not receive sustained attention. That omission helps a pro-carceral ideology.<sup>113</sup>

Ristroph further shows that criminal law courses overemphasize punishment theories when teaching students how to deal with defendants who have violated the law.<sup>114</sup> Retribution dominates as the primary accepted lens; restoration and rehabilitation receive only a few scant paragraphs over the course of the semester.

Social science research affirms that individuals who view or read violent media are significantly more likely to perceive the world as a dangerous and threatening place.<sup>115</sup> Meta-analyses examining the effect of exposure to violent media find that “violent media can increase aggressive thoughts, angry feelings, physiological arousal, and aggressive behavior.”<sup>116</sup> And perception of hostility affects action: “[P]eople who view the world in a hostile manner are more likely to behave aggressively themselves.”<sup>117</sup>

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<sup>111</sup> Alice Ristroph, *The Curriculum of the Carceral State*, 120 COLUM. L. REV. 1631, 1634 (2020).

<sup>112</sup> U.S. DEP’T OF JUST., OFF. OF JUV. JUST. & DELINQ. PREVENTION, STATISTICAL BRIEFING BOOK (2020), [https://www.ojjdp.gov/ojstatbb/crime/ucr.asp?table\\_in=2](https://www.ojjdp.gov/ojstatbb/crime/ucr.asp?table_in=2).

<sup>113</sup> Ristroph, *supra* note 111, at 1667–69.

<sup>114</sup> *Id.* at 1660.

<sup>115</sup> See Brad J. Bushman, *Violent Media and Hostile Appraisals: A Meta-analytic Review*, 42 AGGRESSIVE BEHAV. 605 (2016).

<sup>116</sup> *Id.* at 605.

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

Joshua Dressler, the author of one of the most prominent criminal law textbooks, defended his inclusion of especially graphic depictions of child abuse in his casebook, calling them “pedagogically useful.” He explains, “The problem, of course, is that any class covering criminal law is replete with awful crimes, so there is no sensible way to protect readers from this reality, nor should we.”<sup>118</sup>

But Ristroph disagrees: “This reasoning, however, is circular. Classes in criminal law are ‘replete with awful crimes’ if teachers and casebook authors choose to focus on awful crimes—if they choose homicides of children rather than drug possession, sexual assault rather than disorderly conduct, contract killings rather than shoplifting.”<sup>119</sup> By overemphasizing graphic, interpersonal violence, criminal law implicitly signals to students that the world is more threatening, violent, and dangerous than it is.<sup>120</sup> The approach risks increasing students’ perception of possible harm.

This pattern of perceiving potential threats continues in upper-level doctrinal courses—and in the practice of law itself. In a sense, the way that the first-year curriculum trains students to identify possible threats reflects the nature of a lawyer’s job—which is to handle potential threats to a client’s selfhood. Attorneys are routinely asked to intervene in crisis moments (where’s a client’s liberty, property, or money is threatened) or to anticipate and prevent future crises. Lawyers are hired to anticipate potential legal claims, to prepare against future scenarios that might threaten a client, to protect a client’s interests. A lawyer’s job involves identifying and handling possible threats. Lawyers protect against possible threats, defend those who are threatened

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<sup>118</sup> Ristroph, *supra* note 111, at 1666.

<sup>119</sup> *Id.*

<sup>120</sup> Reading criminal law cases can also retraumatize students who have personally experienced these crimes firsthand. Student conversation (Apr. 18, 2022); Alison M. Mikkor, *Problematic Problems*, 26 LEGAL WRITING: J. LEGAL WRITING INST. 35 (2022); Hoang Pham, *The Critical Case Brief: A Practical Approach to Integrating Critical Perspectives in the 1L Curriculum*, in INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM 51 (2021); (Nicole P. Dyszlewski et al., eds., 2021); See also Janice Carello, *Retraumatization During MSW Training: A Trauma-Informed Narrative Approach* (May 16, 2018) (unpublished Ph.D. dissertation, University at Buffalo, State University of New York).

by some external possibility of harm, or prosecute those who threaten society. Transactional lawyers must anticipate all that might potentially go wrong in a contractual relationship. The job of lawyer revolves around threats—and therefore the law student mind is trained to look for them. But that cognitive training bears psychological costs and impacts students' psyches in ways that harm mental health, intellectual performance, and overall well-being.

#### ***D. Traditional Law School Pedagogy***

Traditional law school pedagogy also contributes to the creation of a learning environment that facilitates students' threat appraisals. Two aspects of the conventional pedagogy are particularly detrimental: the typical mode of engagement between teacher and student, and the approach to assessment.

The conventional mode of engagement in the law school classroom stems from the Langdellian case method, a pedagogical approach to teaching law invented by Harvard professor Christopher Langdell over 150 years ago. Under the approach, a professor questions a few students each class period in front of their peers about their reading of assigned appellate court opinions. Many law professors agree that the Langdellian case method is woefully outdated—"invented, that is, not just before the Internet, but before the telephone; not just before man reached the moon, but before he reached the North Pole; not just before Foucault, but before Freud; not just before *Brown v. Board of Education*, but before *Plessy v. Ferguson*."<sup>121</sup> And yet despite its outdatedness, many professors still use the method, in large part because of its ease; they have seen it done before, and the approach integrates easily with textbook cases.

Martha Nussbaum points out the limits of this method:

The so-called Socratic Method [as used in law schools] is not very Socratic: Emphasis is placed on the ability to give quick answers, and to admit to being puzzled—a key Socratic virtue—will not get the student very far. Silence and introspective searching, often the hallmarks of good Socratic inquiry, are not much in evidence in the law school

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<sup>121</sup> Rakoff & Minow, *supra* note 82, at 597.

classroom. The classroom culture usually values assertiveness, quickness, and confidence—qualities we associate more with Socrates’s interlocutors, such as Euthyphro and Critias, rather than with Socrates himself . . . . Young lawyers will still rightly think that in certain contexts their proper role is to win, not to search for the truth, and to defeat, rather than to respect their opponent.<sup>122</sup>

Other scholars acknowledge that this mode of engagement between professor and students “encourages law students to identify good lawyering primarily with skillful and quick-witted verbal combat.”<sup>123</sup> In classes of sixty to eighty students, a typical size for foundational doctrinal classes, this public showcasing approach feels more like a performance, is often shaming, and invites comparison between students.

It also encourages students to focus primarily on what the professor “wants to hear.”<sup>124</sup> Pavel Wonsowicz termed his early approach to teacher-student engagement in the classroom “Guess what Pavel is thinking today”:

Pavel: Well, Student, let’s do problem 7. What’s Pavel thinking today?

Student: Um, that this is hearsay?

Pavel: No, that is not what Pavel is thinking today!<sup>125</sup>

Without question, many students experience the dynamic as more of a threat than a challenge. Students frequently appraise this public classroom performance as being high in personal significance but low in controllability. Students are uncertain whether they will be called upon and whether they will succeed in the interaction—many doubt their ability to handle it well.

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<sup>122</sup> Martha C. Nussbaum, *Cultivating Humanity in Legal Education*, 70 *UNIV. CHI. L. REV.* 265, 272–73 (2003).

<sup>123</sup> Sturm & Guinier, *supra* note 70, at 527; *See also*, Davis & Steinglass, *supra* note 72.

<sup>124</sup> Sturm & Guinier, *supra* note 70, at 532.

<sup>125</sup> Pavel Wonsowicz, *To Show Virtue Her Own Feature*, 59 *UCLA L. REV. DISC.* 162, 167 (2012).

Evidence also suggests that women and students of color may experience cold calls as more threatening than white men do.<sup>126</sup>

One student's experience at the onset of COVID-19 illustrates how this mode of engagement affects students' secondary appraisal process. Before the pandemic, Monica felt severe stomach pain nearly every day of her 1L year—each time she faced the possibility of being called on in a large class setting. She appraised cold calls as threatening. When her classes went online in March 2020, her stomach pain and anxiety disappeared overnight. She attributes her sudden relief to the sense of control she experienced in the new online class format:

I wasn't afraid to go to class every time . . . . Exposure to [an] environment that felt threatening [was] more limited. [. . . I had] control, too, because I could just turn [Zoom] off. I knew at any moment I could just *click* [turn off my internet], and then write a cute little email to the professor saying, "I'm so sorry I suddenly was gone." . . . I knew I could do that at any given time. I never did, but I knew I could completely retreat, and I had control of that.<sup>127</sup>

As Monica felt a greater sense of control in an online class environment, her evaluation of her ability to cope with the learning situation changed dramatically; she now had resources to help her handle the possibility of being called on. Her sense of threat lessened as the nature of classroom engagement changed.

Grading practices constitute a second way that conventional law school pedagogy facilitates students' threat appraisals. In many traditional doctrinal classes, grades are largely determined by a single exam at the end of the semester. In many cases, classes do not prepare students to take the exam. This approach to assessment has been widely criticized:

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<sup>126</sup> Young, *supra* note 105, at 2589. See also Erin C. Lain, *Racialized Interactions in the Law School Classroom*, 67 J. LEGAL EDUC., 780 (2018); Davis & Steinglass, *supra* note 72; Russell A. McClain, *Bottled at the Source: Recapturing the Essence of Academic Support as a Primary Tool of Education Equity for Minority Law Students*, 18 UNIV. MD. L. J. RACE, RELIGION, GENDER & CLASS 139 (2018).

<sup>127</sup> Student interview (May 23, 2022) (Recording on file with author).

The ability cleverly to amass and organize a lot of material in a short time is the road to success, rather than the patient searching characteristic of Socratic inquiry . . . . Examinations are a bad way to produce good arguments, and having to grade 150 examinations very rapidly is a very, very bad way to scrutinize the structure of an argument.<sup>128</sup>

Students typically receive little to no feedback from instructors on their performance at any point in the semester, including on the final; professors rarely explain why they give students particular grades. Students frequently express an inability to predict what grade they will receive, even when feeling confident about their mastery of course material. After grades are given, they similarly voice an inability to explain why they received a grade in a particular class.<sup>129</sup>

This orientation toward assessment increases the likelihood that students will appraise the learning situation as a threat rather than as a challenge. For many students, grades feel low in controllability but high in significance—a combination that spells threat appraisal for Lazarus and Folkman. This dynamic is compounded by the weight that grades receive in other law school competitions and on the job market. Students sense that the resources available for them to deal with the situation may not be enough to ensure their success, facilitating a threat response.

Thankfully, many legal educators are starting to move away from these traditional approaches to teaching and assessment.<sup>130</sup> The ABA's 2016 formative assessment standards encourage faculty to consider different formative assessment models.<sup>131</sup>

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<sup>128</sup> Nussbaum, *supra* note 122, at 273.

<sup>129</sup> John M. Burman, *Out-of-Class Assignments as a Method of Teaching and Evaluating Law Students*, 42 J. LEGAL EDUC. 447, 450 (1992).

<sup>130</sup> See, e.g., Myron Moskowitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241 (1992).

<sup>131</sup> See AM. BAR ASS'N, *Standard 314: Assessment of Student Learning*, in ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016-2017 23 (2016), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2016\\_2017\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure_authcheckdam.pdf); Olympia Duhart, *The 'F' Word: The Top Five Complaints (and Solutions) About Formative Assessment*, 67 J. LEGAL



Overreliance on a single final exam is lessening.<sup>132</sup> Despite this progress, however, traditional law school pedagogy remains well entrenched.<sup>133</sup> In our efforts to reassess teaching and assessment methods, we must connect the design of all learning activities with a continuum of assessments that feels high in controllability for students.<sup>134</sup> Otherwise, the approach can feed students' sense of threat.

#### IV. RECOMMENDATIONS

What is to be done? How might law schools facilitate challenge responses instead of threat states? If we ignore these issues, students will continue to experience negative outcomes—academically, emotionally, and socially. By turning a blind eye to the ways that law schools unintentionally foster threatening learning environments, we leave learning on the table.

Furthermore, doing nothing ignores the responsibility that comes with being an educator. Law schools have an obligation to support students through the process of learning to handle threatening environments and, wherever possible, to reduce unnecessary experiences of threat. Schools should do all they can to lessen the extent to which students experience threats within their walls. And in situations in which that sense of threat is perhaps an inevitable part of learning to “think like a lawyer,” legal educators have an obligation to prepare students to navigate those threatening situations. We cannot simply teach students to think like a lawyer without simultaneously equipping them with tools to handle that new mindset and to mitigate its negative consequences.

I now offer several strategies law schools can use to reduce overexposing students to environments of threat. These suggestions constitute a beginning to the conversation and are not an exhaustive list by any means. I have chosen to emphasize

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EDUC. 531, 532 (2018); Steven I. Friedland, *Rescuing Pluto from the Cold: Creating an Assessment-Centered Legal Education*, 67 J. LEGAL EDUC. 592 (2018).

<sup>132</sup> Duhart, *supra* note 131, at 531.

<sup>133</sup> See Friedland, *supra* note 131, at 592.

<sup>134</sup> See GRANT WIGGINS & JAY MCTIGHE, UNDERSTANDING BY DESIGN 148 (2d ed. 2005).

practical, empirically supported recommendations that are likely both implementable and impactful. Many of these recommendations have been championed in other contexts by other legal scholars; I am not the first to suggest them. I raise them here as important strategies for reducing students' threat responses. They are also likely to improve other aspects of law school teaching and learning, as previous scholarship suggests.

Part A calls on faculty to embrace a constructivist approach to teaching. Honest inner work and the adoption of active learning strategies can increase the likelihood that students will appraise classroom stressors as challenges rather than threats. Part B calls for mindfulness training for law students and faculty. Research consistently demonstrates that mindful individuals appraise stressful situations in less threatening ways. Part C advocates for greater balance in the law school curriculum—giving more weight to the development of interpersonal skills. Part D explores the impact of emotional intelligence training on students' ability to reappraise threatening situations as challenges. The *stress reappraisal* technique, in particular, promises to be especially helpful for lessening threat perception. Finally, Part E discusses how service and friendship can reduce threat states through the hormone oxytocin. I conclude with several suggestions for how law schools can develop cultures of service, friendship, and connection.

#### A. *Embrace a Constructivist Approach to Teaching*

To create classrooms that are high-challenge, low-threat environments, law faculty can start by embracing a constructivist approach to teaching. Constructivist theories of learning<sup>135</sup> posit that knowledge is not merely transmitted to students (or poured into empty vessels) but is rather *constructed* by students. Learners do not passively perceive understanding but construct it through experience and discourse. According to this view, students learn

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<sup>135</sup> Constructivism has its historical roots in the work of Dewey, Bruner, Vygotsky, and Piaget, who is considered the originator of constructivism. See JOHN DEWEY, *THE QUEST FOR CERTAINTY* (1929); Jerome S. Bruner, *The Act of Discovery*, 31 HARV. EDUC. REV. 23 (1961); LEV VYGOTSKY, *THOUGHT AND LANGUAGE* (1962); Jean Piaget, *The Psychogenesis of Knowledge and Its Epistemological Significance*, LANGUAGE AND LEARNING (Massimo Piatelli-Palmarini ed., 1980).

best by actively engaging with new material—forging new links between their prior experience and the new information presented. They come to construct knowledge as their own, through a process of experiencing, reflecting, and incorporating new material into their preexisting knowledge.<sup>136</sup>

Constructivism is a theory of learning, not a pedagogy—but as such, it carries significant implications for pedagogy. In a constructivist classroom,

the professor functions as a “guide on the side,” facilitating learning in less directive ways. The professor is still responsible for presenting the course material, but he or she presents that material in ways that make the students do something with the information—interact with it—manipulate the ideas and relate them to what they already know. Essentially, the professor’s role is to facilitate students’ interaction with the material and with each other in their knowledge-producing endeavor.<sup>137</sup>

Constructivist approaches to teaching and learning seem to lessen threat response. According to a constructivist framework, the locus of knowledge creation is the individual student—not the professor, as is the case with more traditional, transmittal, “sage on the stage” approaches to teaching. As the locus of knowledge creation shifts from the professor to the individual student, students come to possess a greater sense of control over their ability to succeed in the learning enterprise, which lowers their threat response. Furthermore, teachers who support students in their own process of knowledge construction are perceived by students as added resources to help them in their mastery—expanding the pool of available resources upon which students can draw to help them succeed. Threat perception lessens when teaching methods align with how students learn.

What can law professors do to align their teaching with this constructivist, “guide on the side” approach? The journey begins

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<sup>136</sup> See R. KEITH SAWYER, *THE CAMBRIDGE HANDBOOK OF THE LEARNING SCIENCES* 31 (3d ed. 2022).

<sup>137</sup> Alison King, *From Sage on the Stage to Guide on the Side*, 41 *COLL. TEACHING* 30, 30 (1993).

with honest inner work.<sup>138</sup> Professors must honestly and compassionately examine their own motivations and assumptions—inquiring curiously into their unconscious beliefs about teaching, authority, the content, and their students. We must continually confront our motivations: What is my intention here? What am I assuming? Classroom decisions flow directly from the internal motivations and assumptions of teachers. Honest reflection constitutes the first step in any teacher’s quest to embrace a constructivist approach.

Having conducted this inner work, professors become more free to consider how students learn best and design classroom experiences accordingly. Less constrained by inherited pedagogical traditions or their own self-focused needs, teachers can focus their energies on intentionally creating high-challenge, low-threat classroom environments.

The look and feel of each constructivist classroom will vary, depending on the subject matter and the teacher, but by and large, constructivist classrooms place significant emphasis on active learning.<sup>139</sup> Constructivist teachers find ways to get students

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<sup>138</sup> See, e.g., PARKER J. PALMER, *THE COURAGE TO TEACH: EXPLORING THE INNER LANDSCAPE OF A TEACHER’S LIFE* (2009); Steve O. Bada, *Constructivism Learning Theory: A Paradigm for Teaching and Learning*, 5 J. RSCH. & METHOD EDUC. 66 (2015).

<sup>139</sup> See, e.g., JOEL J. MINTZES & EMILY M. WALTER, *ACTIVE LEARNING IN COLLEGE SCIENCE: THE CASE FOR EVIDENCE-BASED PRACTICE* (2020); Kelsey H. Cattaneo, *Telling Active Learning Pedagogies Apart: From Theory to Practice*, 6 J. NEW APPROACHES EDUC. RSCH. 144 (2017); Charles C. Bonwell & James A. Eisen, *Active Learning: Creating Excitement in the Classroom*, ASHE-ERIC HIGHER EDUCATION REPORT 19 (1991) (Active learning refers to all “instructional activities involving students in doing things and *thinking about what they are doing*” (emphasis added)). See RICHARD E. MAYER, *CONSTRUCTIVISM AS A THEORY OF LEARNING VERSUS CONSTRUCTIVISM AS A PRESCRIPTION FOR INSTRUCTION* (2009) (Note that constructivism does not prescribe that learners always be *behaviorally* active while learning; the focus is on *cognitive* active learning. Well-designed “hands-on” activities do lead to deeper learning, but even some passive instructional methods (such as a multimedia presentation) that are “minds on” can generate active cognitive learning. Constructivist learning theory supports both approaches). See Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 NE. U.L.J. 87 (2013) (for examples of active learning in law schools); Cynthia Ho et al., *An Active-Learning Approach to Teaching*

involved with the information presented, engaging them in actively linking new material with previous experiences and prior knowledge.<sup>140</sup> For every major concept presented or covered in a text, educational experts recommend offering students at least one activity that requires learners to generate meaning about that concept.<sup>141</sup>

King offers a helpful list of possible active learning activities that “guide on the side” teachers can employ in the classroom:<sup>142</sup>

<b>Student activity</b>	<b>Explanation or example</b>
<b>Think-pair-share</b>	Students individually think about a question posed, then pair up with a classmate to discuss their insights;
<b>Generating examples</b>	Individually or in pairs, students think up a new example of a concept presented or develop scenarios of how the concept should be applied;
<b>Concept mapping</b>	Students draw a concept map (i.e., a graphic representation such as a web) depicting relationships among aspects of a principle;
<b>Flowcharting</b>	Students sketch a flowchart showing how a procedure or process works;
<b>Predicting</b>	Given certain concepts, students write down their predictions about what might happen in a specific situation;
<b>Developing rebuttals</b>	Students individually develop rebuttals for arguments presented in lecture and then pair up with another student to argue for and against;

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*Tough Topics: Personal Jurisdiction as an Example*, 65 J. LEGAL EDUC. 772 (2016); Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1 (2003).

<sup>140</sup> Davis & Steinglass, *supra* note 72, at 274.

<sup>141</sup> King, *supra* note 137, at 31.

<sup>142</sup> *Id.*

**Analogical thinking** Students propose a metaphor or analogy for a principle

**Problem posing** Working individually or in small groups, students make up a real-world problem regarding a particular concept, then exchange problems with another group for solving;

**Pair summarizing/checking** Students work in pairs—one summarizes what's been presented and the other listens and checks for errors, correcting errors when noted.

Several legal scholars suggest additional active learning strategies,<sup>143</sup> including Guided Reciprocal Peer Questioning,<sup>144</sup> Directed Questions,<sup>145</sup> simulations,<sup>146</sup> role plays,<sup>147</sup> theatrical

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<sup>143</sup> See, e.g., GERALD F. HESS ET AL., TECHNIQUES FOR TEACHING LAW 2 (2011); STEVEN FRIEDLAND & GERALD F. HESS, TEACHING THE LAW SCHOOL CURRICULUM (2004); MICHAEL H. SCHWARTZ ET AL., TEACHING LAW BY DESIGN (2009); KIMBERLY E. O'LEARY ET AL., IMPROVING STUDENT LEARNING IN THE DOCTRINAL LAW SCHOOL CLASSROOM (2020).

<sup>144</sup> In this technique, students are offered a set of generic questions that they will use to come up with their own questions about the class content. Generic questions include: What is the main idea of \_\_\_? What if \_\_\_? How does \_\_\_ affect \_\_\_? Why is \_\_\_ important? Explain why \_\_\_. Explain how \_\_\_. How does this relate to what I've learned before? How are \_\_\_ and \_\_\_ similar? Students first individually generate two or three questions based on the class presentation. Working in groups of three or four, they then ask their questions to their group and answer one another's questions. See King, *supra* note 137, at 32.

<sup>145</sup> See Kris Franklin & Rory Bahadur, *Directed Questions: A Non-Socratic Dialogue About Non-Socratic Teaching*, 99 UNIV. DET. MERCY L. REV. 1 (2021).

<sup>146</sup> See Shawn M. Boyne, *Crisis in the Classroom: Using Simulations to Enhance Decision-Making Skills*, 62 J. LEGAL EDUC. 311 (2012); David B. Oppenheimer, *Using a Simulated Case File to Teach Civil Procedure: The Ninety-Percent Solution*, 65 J. LEGAL EDUC. 817 (2016).

<sup>147</sup> See Nellie Munin & Yael Efron, *Role-Playing Brings Theory to Life in a Multicultural Learning Environment*, 66 J. LEGAL EDUC. 309 (2017).

readings,<sup>148</sup> debates, team projects,<sup>149</sup> individual reflections,<sup>150</sup> quizzes,<sup>151</sup> small-group discussions,<sup>152</sup> science demonstrations, video clips,<sup>153</sup> the teaching of metacognitive skills,<sup>154</sup> and so on.

By teaching material in a way that matches how students learn, professors can begin to lessen the threat response that all too often accompanies more traditional “sage on the stage” methods. Constructivist approaches facilitate challenge states.

### ***B. Encourage Mindfulness***

My second recommendation for lessening students’ sense of threat is to promote mindfulness among students, staff, and faculty. Mindfulness refers to a state of being where individuals consciously cultivate their ability to be present, aware, clear, calm, and equanimous—more able to “accept what is without resistance.”<sup>155</sup> Mindful individuals notice the way things are. They come to observe their own experiences nonjudgmentally in a state of acceptance, attend to sensations, avoid reacting to inner

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<sup>148</sup> Columbia Law Professor Bert Huang asks students to read excerpts from *Romeo and Juliet* on their first day of torts, illustrating the different roles of lawyers in a courtroom. As presented during AALS Virtual Workshop, *Best Practices (and Common Pitfalls) in Law School Pedagogy*, July 28, 2022.

<sup>149</sup> See Melissa H. Weresh, *Assessment, Collaboration, and Empowerment: Team-Based Learning*, 68 J. LEGAL EDUC. 303 (2019).

<sup>150</sup> See Laurie A. Morin & Susan L. Waysdorf, *Teaching the Reflective Approach Within the Service-Learning Model*, 62 J. LEGAL EDUC. 600 (2013); PATRICIA CRANTON, UNDERSTANDING & PROMOTING TRANSFORMATIVE LEARNING: A GUIDE TO THEORY AND PRACTICE (3d ed. 2016).

<sup>151</sup> See Heather Garretson et al., *The Value of Variety in Teaching: A Professor’s Guide*, 64 J. LEGAL EDUC. 65 (2014).

<sup>152</sup> Schwartz et al., *supra* note 143.

<sup>153</sup> George Fisher, *Evidence by the Video Method*, 68 J. LEGAL EDUC. 15 (2018).

<sup>154</sup> See Patti Alleva & Jennifer A. Gundlach, *Learning Intentionally and the Metacognitive Task*, 65 J. LEGAL EDUC. 710 (2016) (Teaching metacognitive skills refers to teaching students how they learn. This approach may be especially helpful in doctrinal classes covering large amounts of unfamiliar information).

<sup>155</sup> MARIA GONZALEZ, MINDFUL LEADERSHIP: THE 9 WAYS TO SELF-AWARENESS, TRANSFORMING YOURSELF, AND INSPIRING OTHERS 16 (2012).

experiences, and act with awareness.<sup>156</sup> Through mindfulness exercises and a regular meditation practice, mindful individuals build greater awareness of their emotions, intentions, physical sensations, and whatever else may arise internally. This awareness improves their ability to be present, compassionate, and open-minded when interacting with classmates, colleagues, and clients.

Mindfulness programs for law students have proliferated over the past twenty-five years. Dozens of law schools now offer mindfulness programs, including UC Berkeley, Northwestern, the University of Miami, the University of Florida, South Texas College of Law, Roger Williams University, University of Buffalo, Georgetown, Vanderbilt, the University of Pennsylvania, CUNY, and many others<sup>157</sup>—too many to exhaustively document here. Some schools offer entire courses on the topic. Others integrate mindfulness into existing courses on negotiation, mediation, interviewing, professional responsibility, and trial practice. Many schools offer mindfulness programs that do not count for credit (such as weekly meditation sessions or periodic workshops).<sup>158</sup> Mindfulness also appears as a frequent continuing education topic for lawyers and in programs sponsored by the ABA, the Association of American Law Schools (“AALS”), law firms, courts, and government agencies.<sup>159</sup> Thousands of law students and law professionals have received mindfulness training over the past decade.<sup>160</sup>

Despite this proliferation, mindfulness in many cases is “still unknown to the vast bulk of law students, lawyers, and

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<sup>156</sup> Ruth A. Baer et al., *Using Self-report Assessment Methods to Explore Facets of Mindfulness*, 13 ASSESSMENT 27, 29 (2006).

<sup>157</sup> See, e.g., Leonard L. Riskin, *Awareness and the Legal Profession: An Introduction to the Mindful Lawyer Symposium*, 61 J. LEGAL EDUC. 634, 637 (2012); Katerina P. Lewinbuk, *Mindfulness Meditation: Is the Practice a Saving Grace for Law Students?*, 78 TEXAS BAR J. 454 (2015); David M. Zlotnick, *Integrating Mindfulness Theory and Practice Into Trial Advocacy*, 61 J. LEGAL EDUC. 654 (2012); Angela P. Harris, *Toward Lawyering as Peacemaking: A Seminar on Mindfulness, Morality, and Professional Identity*, 61 J. LEGAL EDUC. 647 (2012).

<sup>158</sup> Riskin, *supra* note 157.

<sup>159</sup> *Id.* at 638.

<sup>160</sup> *Id.* at 634.



judgments.”<sup>161</sup> There is ample room for the field to grow. Schools that have not yet developed mindfulness-related offerings can start; schools with existing programs can improve their efforts and reach more students.

Mindfulness programs stand to significantly help students in their ability to handle perceived threats and regulate negative emotions. Research indicates that mindful individuals are more likely to appraise future situations in nonthreatening ways.<sup>162</sup> A series of studies with college students found that mindful students appraised upcoming exams as less threatening than non-mindful students.<sup>163</sup> Greater mindfulness predicts lower emotional reactivity to threatening situations.<sup>164</sup> In the presence of stress, being psychologically present expands an individual’s options for responding and invites healthier, more adaptive responses to the stress experienced.<sup>165</sup> Greater present-moment awareness during stressful experiences is associated with greater self-efficacy.<sup>166</sup> Increased self-efficacy in turn lessens threat appraisals, as it widens the resources one has available to draw on.<sup>167</sup>

Mindfulness has also been linked with the *reappraisal* of stressful situations, or the modification of appraisals made.<sup>168</sup>

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<sup>161</sup> *Id.* at 639.

<sup>162</sup> See Netta Weinstein et al., *A Multi-method Examination of the Effects of Mindfulness on Stress Attribution, Coping, and Emotional Well-being*, 43 J. RSCH. PERS. 374, 383 (2009).

<sup>163</sup> *Id.*

<sup>164</sup> Joanna J. Arch & Michelle G. Craske, *Mechanisms of Mindfulness: Emotion Regulation Following a Focused Breathing Induction*, 44 BEHAVIOUR RSCH. AND THERAPY 1849, 1857 (2006); See also J. D. Creswell et al., *Neural Correlates of Dispositional Mindfulness During Affect Labeling*, 69 PSYCHOSOMATIC MED. 560 (2007).

<sup>165</sup> Kirk W. Brown et al., *Mindfulness: Theoretical Foundations and Evidence for its Salutary Effects*, 18 PSYCH. INQUIRY 211, 225 (2007); Shauna L. Shapiro et al., *Mechanisms of Mindfulness*, 62 J. CLINICAL PSYCH. 373, 381 (2006).

<sup>166</sup> James N. Donald et al., *Daily Stress and the Benefits of Mindfulness: Examining the Daily and Longitudinal Relations Between Present-Moment Awareness and Stress Responses*, 65 J. RSCH. PERS. 30, 32 (2016).

<sup>167</sup> See Matthias Jerusalem & Ralf Schwarzer, *Self-Efficacy as a Resource Factor in Stress Appraisal Processes*, in SELF-EFFICACY: THOUGHT CONTROL OF ACTION (Ralf Schwarzer ed., 1992).

<sup>168</sup> See Jamieson et al., *supra* note 37. See also Daniel Houston, Eric Garland & Norman Farb, *Mechanisms of Mindfulness in Communication*

Mindful acceptance can help people distance themselves from initial threat appraisals and reappraise situations as benign or positive instead of threatening.<sup>169</sup> By developing greater mindfulness, students lessen their threat response and broaden their ability to respond effectively when facing either real or perceived threats.

In pursuing efforts to promote mindfulness among law students, schools should keep in mind the importance of exposing students to various types of mindfulness and meditation. Mindfulness experts affirm that not everyone responds to mindfulness practices in the same way or benefits equally from the same practice.<sup>170</sup> To account for this, students should be exposed to a variety of mindfulness tools or meditation practices and have the freedom to adopt approaches that yield the greatest benefit to them personally.

Furthermore, some students report feeling pressured to have a certain kind of “experience” while meditating and can even stress themselves out trying to have a positive experience.<sup>171</sup> This obviously defeats the purpose. Students should be encouraged to gently, nonjudgmentally accept whatever they might experience while engaging in mindfulness practices and to let go of any expectations for having a certain experience. Teachers should be

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*Training*, 39 J. APPLIED COMMUN. RSCH. 406 (2011) (A quasi-experimental study comparing college students participating in a mindful communication course with those receiving a standard communications curriculum found that mindfulness training was associated with significant increases in dispositional mindfulness, which were correlated with increases in positive reappraisal).

<sup>169</sup> See, e.g., Eric L. Garland et al., *Mindfulness Broadens Awareness and Builds Eudaimonic Meaning: A Process Model of Mindful Positive Emotion Regulation*, 26 PSYCH. INQUIRY 293 (2015) (Individuals with a mindfulness practice report significantly higher levels of post-traumatic growth than nonpractitioners); Adam Hanley et al., *The Relationship Between Mindfulness and Posttraumatic Growth with Respect to Contemplative Practice Engagement*, 6 MINDFULNESS 654 (2015).

<sup>170</sup> Yuri Dhara, *Introduction to Mediation*, Tibet House, Feb. 5, 2013. See also Jared R. Lindahl et al., *The Varieties of Contemplative Experience: A Mixed-Methods Study of Meditation-Related Challenges in Western Buddhists*, PLOS ONE 1 (2017), <https://doi.org/10.1371/journal.pone.0176239>.

<sup>171</sup> Student conversation (Sept. 16, 2022).

careful to avoid unintentionally pressuring students in the process; reminding students that all reactions are welcome is vital.

Law faculty can also practice mindfulness themselves and serve as needed examples for students. Schools will be more successful in getting students to adopt mindfulness practices when members of the faculty demonstrate a commitment to it. One student explained his hesitancy to meditate for years until learning that a respected professor himself had a committed, fruitful practice:

I have always felt like meditation is something I should be doing. I'm a psychology undergrad, so mindfulness is a pretty common topic . . . I've read so many studies—meditation and mindfulness in general is very beneficial. But I've never been able to really buckle down and do it. Hearing that [my negotiation professor] meditated every day [changed that.] He mentioned how impactful it was in his life, and I really respect him as a person . . . his attitude and his approach affected [me]. Actually diving into it and doing it [daily for an entire semester] was very impactful.<sup>172</sup>

Moreover, law faculty report that their teaching improves when they start to meditate—our teaching can become more clear, open, courageous, and compassionate as a result of increased mindfulness.<sup>173</sup>

### ***C. Provide Greater Curricular Balance***

The third suggestion for reducing law students' threat response is to bring greater balance to the law school curriculum. "Balance" is a broad term with several applications to legal education.<sup>174</sup> The balance I am referring to here deals with the proportion of the curricular canon devoted to training students to spot potential legal claims. Students' entire first year of law school

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<sup>172</sup> Student interview (Dec. 13, 2022) (Recording on file with author).

<sup>173</sup> Richard C. Reuben, *Bringing Mindfulness into the Classroom: A Personal Journal*, 61 J. LEGAL EDUC. 674, 676 (2012).

<sup>174</sup> Bruce J. Winick, *Forward: What Does Balance in Legal Education Mean?* 60 J. LEGAL EDUC. 107, 109 (2010).

largely centers on learning to spot potential legal threats across various subject domains. In subsequent years, many students begin developing other important skills necessary for the successful practice of law—such as creative problem-solving, communication, interpersonal skills, and occasionally teamwork skills. But these “soft skills” are generally considered less important than the logical, analytical skills emphasized in doctrinal courses.<sup>175</sup> If schools are interested in lessening students’ threat perception, these interpersonal and emotional skills should receive greater weight earlier on in a student’s tenure in law school. Doing so will serve as a needed curricular counterbalance to the training in threat perception students receive as first-years.

To achieve greater curricular balance, we need more soft-skill development and leadership training—a type of education that ultimately will require students to read a very different set of texts than the appellate cases reviewed in doctrinal courses. Readings will likely draw on social science literature, business texts, and a variety of interdisciplinary sources. Some assigned readings can directly address threat perception and explicitly educate students about the cognitive processes that relate to threat and challenge states. Other readings can build student understanding of emotions and interpersonal dynamics that affect threat perception. By expanding the material students read to include this wider range of texts, faculty can help students build awareness of their own tendencies when facing potential threats.

#### ***D. Teach Emotional Intelligence***

Emotional intelligence constitutes one specific competency that, if developed, appears particularly promising in its ability to help students better handle threat states. First popularized by Daniel Goleman, emotional intelligence refers to an individual’s capacity to understand and manage their own emotions and in turn recognize and influence the emotions of others.<sup>176</sup> It includes four critical competencies: self-awareness, self-management, social awareness, and relationship management.<sup>177</sup>

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<sup>175</sup> See Sturm & Guinier, *supra* note 70; DEBORAH L. RHODE, *LAWYERS AS LEADERS* (2013).

<sup>176</sup> See Goleman et al., *supra* note 40.

<sup>177</sup> *Id.*

Some approaches to teaching emotional intelligence adopt a flawed view of emotions that will not serve students well or equip them to handle threat states. Referred to as the *classical theory of emotion*, this outdated but still commonly accepted view sees emotions as hard-wired, uncontrollable brain reactions to the world around us. According to this perspective, emotions are triggered by external events. They happen *to* us. When activated, emotions are assumed to flow through built-in circuits in our bodies, prompting a range of bodily reactions. They are considered a fixed aspect of our biological nature—“a kind of brute reflex, very often at odds with our rationality.”<sup>178</sup> Teachers who espouse this classical perspective suppose that developing emotional intelligence involves “overcoming” the primitive, emotional part of the brain using the more deliberate, rational side. This ongoing internal battle between emotion and reason constitutes a prominent narrative in many approaches to developing emotional intelligence.

Modern science refutes the classical theory of emotion. Thousands of brain scans, electrical probes, and physiological studies consistently confirm that the human body does not contain emotion circuits.<sup>179</sup> When scientists measure how the body reacts when experiencing a certain emotion, they find tremendous variety, not uniformity. Though it may feel as though our emotions happen to us, they do not.

Rather, emotions are *built*. According to the more modern, scientifically supported *constructed theory of emotion*, our emotions are not hard-wired or built in, but are simply built—constructed through a combination of the body’s physical properties, a flexible brain that wires itself to whatever environment it develops in, and our culture and upbringing.<sup>180</sup> Backed by decades of scientific research,<sup>181</sup> this theory posits that emotions are predictions; constructed through past experience, emotions predict what the body should do to cope in any given situation.

Because emotions are built, and not built in, we have the potential to change those predictions—to construct our

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<sup>178</sup> LISA FELDMAN BARRETT, *HOW EMOTIONS ARE MADE* xi (2017).

<sup>179</sup> *Id.* at xii.

<sup>180</sup> *Id.* at xii–xiii.

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

experiences differently and in turn experience the world differently. This does not imply that severe depression can be eliminated by merely “performing some Jedi-mind tricks.”<sup>182</sup> But we can learn to lessen emotional suffering, recategorize physical sensations differently, and cultivate the emotional experiences we want to construct again in the future.<sup>183</sup>

The constructed theory of emotion implies that individuals can be taught to reappraise threatening situations as challenges. Teaching emotional intelligence from this viewpoint can empower students to better navigate threat states.

Lisa Feldman Barrett, the pioneer researcher behind the constructed theory of emotion, makes several recommendations for developing greater emotional intelligence that promise to lessen threat perception. Her recommendations include tried-and-true advice like keeping a balanced “body budget,”<sup>184</sup> tracking positive experiences daily,<sup>185</sup> and cultivating awe.<sup>186</sup> She also

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<sup>182</sup> Lisa Feldman Barrett, *You Aren't at the Mercy of Your Emotions: Your Brain Creates Them*, TED (Dec. 2017),

[https://www.ted.com/talks/lisa\\_feldman\\_barrett\\_you\\_aren\\_t\\_at\\_the\\_mercy\\_of\\_your\\_emotions\\_your\\_brain\\_creates\\_them?language=en](https://www.ted.com/talks/lisa_feldman_barrett_you_aren_t_at_the_mercy_of_your_emotions_your_brain_creates_them?language=en).

<sup>183</sup> Barrett, *supra* note 178, at 183.

<sup>184</sup> *Id.* at 177–78. Maintaining a balanced body budget involves eating healthfully, exercising regularly, and getting enough sleep. “The science is crystal clear on healthful food, regular exercise, and sleep as prerequisites for a balanced body budget and a healthy emotional life.” *Id.* at 177–78. Additional recommendations for attending to your body budget include increasing physical comfort, getting enough human touch, yoga, attending to your physical surroundings (i.e., spending time in spaces with less noise or crowds, more greenery, and more natural light), reading a novel, giving to others, being grateful, adopting a pet, walking through the park, and maintaining a healthy hobby.

<sup>185</sup> Every time an individual attends to positive things, the brain reinforces emotional concepts about the positive events and makes them more salient in the individual’s mental model of the world. “These concepts, as patterns of neural activity, get easier and easier for your brain to re-create, like well-trodden walking paths that grow deeper with each passerby’s footsteps . . . . Cultivate the experiences you want to construct again in the future.” *Id.* at 183.

<sup>186</sup> See Lawrence Rafal, *What Balance in Legal Education Means to Me: A Dissenting View*, 60 J. LEGAL EDUC. 135 (2010); Hope Reese, *How a Bit of Awe Can Improve Your Health*, N.Y. TIMES, (Jan. 3, 2023), <https://www.nytimes.com/2023/01/03/well/live/awe-wonder-dacher->

suggests developing higher “emotional granularity,” or the ability to construct finer-grained emotional experiences.<sup>187</sup> People with higher emotional granularity are equipped with more emotion concepts, which helps them reframe stressful situations more easily.<sup>188</sup> Instead of jumping to worst-case conclusions when facing potential threats, individuals with higher emotional granularity have an easier time identifying less threatening conceptions of what may be occurring.

In a similar vein, Barrett recommends recategorizing emotion—a strategy known as *stress reappraisal*—to lessen threat perception.<sup>189</sup> To reappraise a situation, students begin by identifying the purely physical sensation behind an emotion. When sensing anxiety, for example, a student would identify the specific bodily sensations felt—perhaps a fast-beating heart or an aching stomach.<sup>190</sup> Once the emotion has been deconstructed into its mere physical sensations, the individual *recategorizes* it in some other way, drawing on their broader range of emotion concepts. “Perhaps that pounding in your chest is not anxiety but anticipation, or even excitement.”<sup>191</sup>

The development of this skill requires practice and may be met with initial skepticism—but with a proper understanding of what emotions really are, students can learn to deconstruct their feelings into physical sensations and then recategorize them in

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keltner.html.

<sup>187</sup> Barrett, *supra* note 178, at 180. People with high emotional granularity can differentiate between slight variations in feeling. A person with low emotional granularity might know only a few emotion concepts, such as “feeling awesome” and “feeling crappy.” To a person with high emotional granularity, “feeling crappy” could mean many things—angry, aggravated, alarmed, spiteful, grumpy, remorseful, gloomy, mortified, uneasy, dread-ridden, resentful, afraid, envious, woeful, melancholy, and so on. If you can distinguish between “the 50 shades of crappy . . . your brain would have many more options for predicting, categorizing, and perceiving emotion, providing you with the tools for more flexible and functional responses. You could predict and categorize your sensations more efficiently, and better tailor your actions to your environment.” *Id.* at 180.

<sup>188</sup> *Id.* at 182.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.* at 188.

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

some other way. Unlike breathing exercises, stress reappraisals are not aimed at lessening or dampening emotional or physical arousal. Rather, reappraisals focus on reshaping how an individual cognitively constructs their feelings when aroused or threatened.<sup>192</sup>

Empirical evidence indicates that teaching reappraisal strategies to students in academic settings improves performance. One study of GRE exam-takers, for example, randomly assigned participants to either a reappraisal group or a control group. Students in the reappraisal group were taught to see their stress-arousal symptoms as a challenge response; they were told that their symptoms would improve their performance. Control participants were not given this information. Reappraisal participants outperformed their peers in the control group on both a practice GRE-math section and on the actual GRE taken one to three months later.<sup>193</sup> The study's authors conclude:

These findings show that people's appraisals of their internal states are flexible . . . . The manner in which internal states are interpreted can have profound effects on emotions, physiology, and behavior . . . . The data presented here can be applied beyond standardized testing. For instance, if students construe criticism from professors as constructive (challenge) rather than derisive (threat), it could help improve performance.<sup>194</sup>

Similar outcomes have been found with community college students.<sup>195</sup> In another study, remedial math students who received reappraisal training outperformed control students who were taught to ignore their stress.<sup>196</sup> Reappraisal students also reported less anxiety than control students.<sup>197</sup>

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<sup>192</sup> See Jeremy Jamieson et al., *Mind over Matter: Reappraising Arousal Improves Cardiovascular and Cognitive Responses to Stress*, 141 J. EXPERIMENTAL PSYCHOL. GEN. 417 (2012).

<sup>193</sup> Jeremy P. Jamieson et al., *Turning the Knots in Your Stomach into Bows: Reappraising Arousal Improves Performance on the GRE*, 46 J. EXPERIMENTAL SOC. PSYCH. 208 (2010).

<sup>194</sup> *Id.* at 211.

<sup>195</sup> Jamieson et al. (2016), *supra* note 37.

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

<sup>197</sup> A mediation analysis conducted as part of the study found that



These findings are consistent with reappraisal research involving stressful public-speaking tasks<sup>198</sup> and stereotype threat experienced by minority students.<sup>199</sup> It is possible to reappraise threats as challenges: Students can be taught to modify their appraisals in such a way as to limit threat states and tap into challenge responses instead.

Reappraisal strategies and other recommendations for developing emotional intelligence offer law students important tools for handling environments that could be appraised as threatening. The development of these skills can be woven into

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reappraisal improved performance by increasing student perceptions of their own ability to handle the situation (secondary appraisal). *Id.*

<sup>198</sup> See Nader Amir et al., *The Effect of a Single-session Attention Modification Program on Response to a Public-speaking Challenge in Socially Anxious Individuals*, 117 J. ABNORMAL PSYCH. 860 (2008) (Participants taught to reappraise or “rethink” their aroused bodily sensations as beneficial demonstrated increased perceptions of available resources when completing a stressful public-speaking task. This led to improved cardiovascular functioning (similar to that of a challenge state) and less threat-related attentional bias). See also Jamieson et al. (2012), *supra* note 192 (Other clinical research affirms that retraining attention for threat-related stimuli can reduce anxiety symptoms and lead to higher performance).

<sup>199</sup> See, e.g., Geoffrey L. Cohen et al., *Reducing the Racial Achievement Gap: A Social-Psychological Intervention*, 313 SCI. 1307 (2006) (A randomized field experiment found that a reappraisal intervention intended to lessen minority students’ psychological threat related to being negatively stereotyped had a significant impact on reducing the achievement gap. The intervention asked a group of minority students to complete a series of brief, structured writing exercises focused on affirming their “self-integrity” at the beginning of an academic term. Compared with control groups, the intervention increased African American students’ final grades by forty percent. A follow-up study two years later found that the benefit of the intervention persisted; students in the reappraisal group had statistically significant higher grade point averages and lower rates of grade repetition); Geoffrey L. Cohen et al., *Recursive Processes in Self-Affirmation: Intervening to Close the Minority Achievement Gap*, 324 SCI. 400 (2009). See also Paula J. Manning, *Word to the Wise: Feedback Intervention to Moderate the Effects of Stereotype Threat and Attributional Ambiguity on Law Students*, 18 U. MD. L. J. RACE, RELIGION, GENDER & CLASS 99 (2018) (describing how law professors can give feedback statements that mediate the impact of stereotype threat).

coursework related to negotiation, mediation, leadership, professional identity, lawyering, professional responsibility, clinical work, and even doctrinal classes. They can also be taught in non-credit-bearing workshops. By internalizing steps for greater emotional intelligence, students can lessen their threat perception and enjoy greater success in and out of the classroom.

### ***E. Cultivate a Culture of Service and Friendship***

A fifth way to lessen students' threat response is to cultivate a schoolwide culture of service and friendship. Both service and friendship lessen threat perception through the chemical oxytocin, the hormone responsible for love, trust, and friendship. Oxytocin is released into the bloodstream whenever we perform a genuine act of kindness for another person, when another person does something kind for us, or even when we witness an act of kindness.<sup>200</sup> It is the feeling we get when we serve another person without any expectation of receiving something in return. Neuroscientists have found oxytocin to build trust, promote cooperation, and make people more attuned to social cues.<sup>201</sup>

Scientific evidence suggests that "oxytocin may be an important factor in determining a challenge response" over a threat response.<sup>202</sup> When oxytocin enters the bloodstream, fear-related behaviors lessen. Scholars theorize that individuals experiencing high-threat situations have low levels of oxytocin, while those in low-threat situations have high levels of oxytocin.<sup>203</sup> By building friendships and increasing others-oriented service behaviors, students stand to increase their oxytocin levels, lessen perception of threat, and facilitate challenge states instead.

The act of building stronger social supports also promotes challenge responses. Having greater friendships "aids the appraisal process by redefining the situational threat and augmenting the individual's perceived . . . ability to cope."<sup>204</sup> Several studies indicate that having close friends nearby reduces

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<sup>200</sup> SIMON SINEK, *LEADERS EAT LAST* 60–62 (2017).

<sup>201</sup> Greg Miller, *The Promise and Perils of Oxytocin*, 339 *SCI.* 267 (2013).

<sup>202</sup> Meijen et al., *supra* note 86.

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

<sup>204</sup> *Id.* at 7.

a person's perception of task difficulty.<sup>205</sup> By serving classmates and building friendships, students develop tighter support networks, which lessen threat appraisals.

While creating a law school culture of service, friendship, and connection is easier said than done, it is possible. A few suggestions follow. First, teachers can explicitly ask students on the first day of class to take responsibility for their classmates' learning.<sup>206</sup> This notion may feel anathema in many courses, but professors can start by sincerely expecting and asking students to take some ownership for one another's learning. Directly requesting that students care for one another in this way, particularly at the outset of the semester or a student's tenure in law school, goes a long way in shaping a culture where students look out for one another.

This request may feel at odds with students' natural inclination to look out only for themselves—particularly in law schools with competitive grading structures. This leads to a second suggestion: Schools that systemically pit students against one

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<sup>205</sup> Two studies by social psychologists demonstrate this effect. In one, college students were asked to stand at the bottom of a hill, wear a heavy backpack, and then estimate how steep the hill was. Some of the study participants stood alone during the exercise. Others stood next to strangers, friends they had known only a short while, or close friends they had known for a long time. Remarkably, students standing next to close friends estimated the hill to be significantly less steep than those standing alone, next to a stranger, or next to a newer friend. The longer and closer the friendship, the less steep the hill appeared. The presence of a close friend mediated a person's perception of how hard the hill would be to climb. See Simone Schnall et al., *Social Support and the Perception of Geographical Slant*, 44 J. EXPERIMENTAL SOC. PSYCH. (2008).

In the second study, college students were asked to simply remember a positive, neutral, or negative relationship before arriving at the base of a steep hill and being given a heavy backpack to carry. They then estimated the steepness of the hill. Those who were prompted to recall a positive relationship estimated the hill to be significantly less steep than those who recalled a negative or neutral relationship. The closer the participant felt to the person they chose to remember, the less steep the hill subsequently appeared to be. See Schnall et al., *supra* note 205. "The world sounds and looks less stressful when standing next to, or even thinking about, a person to whom one feels close." Way et al., *supra* note 91, at 22.

<sup>206</sup> Thanks to Chris Hoadley for exemplifying this suggestion.

another through rigid curves should consider alternative grading structures. Many law schools have successfully transitioned to alternative grading systems (such as high-pass, pass, fail) that eliminate unnecessary competition among students while still protecting the integrity of grades and meeting marketplace demands for ranked students.<sup>207</sup> At the very least, schools should conduct an audit to determine students' perception of the curve and assess whether it presents an obstacle to building a culture of service and friendship. The removal of structural barriers to greater camaraderie will make a marked difference in reducing students' threat response and fostering a culture of connection.

Teachers can also encourage students to get to know one another better while in class. One professor routinely gives her students a midsemester quiz assessing how many of their classmates' names they know.<sup>208</sup> She alerts her students about the quiz on day one, providing plenty of time and motivation for students to learn one another's names. Another faculty member requires students to interview one other student in the class about their life story—a guided exercise that students report to be surprisingly bonding.<sup>209</sup> Faculty can also make time in class for student introductions—and take those introductions seriously, perhaps spreading them out over multiple class periods. As part of their introduction, students can be asked to share a portion of their life experience that they might not ordinarily discuss. Professors should be prepared to introduce themselves first, modeling the degree of vulnerability and openness they expect from students.

Increasing opportunities for meaningful group work will also help create a culture of friendship and lessen threat response. Law schools are beginning to recognize the need for law students to develop greater collaboration and teamwork skills. Though not the norm, team-based learning and other forms of small-group work are being used by faculty even in doctrinal classrooms.<sup>210</sup>

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<sup>207</sup> See, e.g., Fines, *supra* note 76; Nancy H. Kaufman, *A Survey of Law School Grading Practices*, 44 J. LEGAL EDUC. (1994).

<sup>208</sup> Thanks to NYU's Colleen Larson for exemplifying this practice.

<sup>209</sup> Thanks to NYU's Carol Gilligan for exemplifying this practice. Video recording: *The Listening Guide*, New York University Law School (Sept. 22, 2020) (on file with author).

<sup>210</sup> See, e.g., Janet Weinstein et al., *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36 (2013); Weresh, *supra* note 149; Jodi Balsam, *Teaming Up to Learn in the Doctrinal Classroom*, 68 J. LEGAL EDUC. 261

To ensure that in-class group work creates connection and lessens threat response, faculty should be prepared to help teams build psychological safety—the sense that the team is safe for interpersonal risk taking—before putting them to work.<sup>211</sup> This proves especially important if the teams will be working together for an extended period. All group members should feel safe speaking up, making mistakes, and bringing their full self to the team. To build this kind of group dynamic, faculty must intentionally create space for teams to connect and build psychological safety. Not all team icebreaker activities are created equally; teachers can carefully select exercises that help team members be vulnerable with their group and become genuinely open with one another about their mistakes and weaknesses.<sup>212,213</sup>

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(2019); Sophie M. Sparrow & Margaret S. McCabe, *Team-Based Learning in Law*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 153 (2012); Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T. M. COOLEY L. REV. 201 (1999); Barbara G. Fines, *Using Team Based Learning in the Professional Responsibility Course*, excerpted for PROFESSIONAL RESPONSIBILITY: HEROES & VILLAINS (2012), <http://clarkcunningham.org/PR/Glesner-Team%20Based%20Learning.pdf>.

<sup>211</sup> See Amy Edmonson, *Building a Psychologically Safe Workplace*, TEDxHARVARD GRADUATE SCHOOL OF EDUCATION, <https://www.youtube.com/watch?v=Nen4x6A0siI>; Charles Duhigg, *What Google Learned From Its Quest to Build the Perfect Team*, N.Y. Times (Feb. 25, 2016), <https://www.nytimes.com/2016/02/28/magazine/what-google-learned-from-its-quest-to-build-theperfect-team.html>.

<sup>212</sup> PATRICK LENCIONI, THE FIVE DYSFUNCTIONS OF A TEAM: A LEADERSHIP FABLE, 101 (2002).

<sup>213</sup> I have had success building psychological safety among student groups using the Nine Dimensions Activity. Each student is given a worksheet containing a three-by-three grid. Each box in the grid is labeled with a category of life experience (i.e., health & fitness, family & friends, schoolwork, hobbies, personal growth, career / profession, spirituality, etc.). Students then affix one of four colored stickers on each box: a green sticker signals that area of life is going well; a yellow sticker signals it needs some work; a red sticker signals it is not going well; and a blue sticker signals that area is not a priority for them. Students then share their grid with their group, discussing why they assigned the colors they did to the various boxes. Using this activity in the initial stages of group work helps the team set an open, supportive tone.

Research indicates that establishing this level of safety is required before group members will ask for help, focus energy on important issues, engage in productive conflict, extract ideas from all team members, and reach high performance standards.<sup>214</sup>

A final suggestion for building a culture of friendship and service involves modeling vulnerability. In many cases, faculty shield themselves from being vulnerable with students—hiding their humanity, struggles, weaknesses, questions, and feelings from students. But presenting an idealistic, close-to-perfect persona can perpetuate students' notions that they too must be perfect. Research demonstrates that appropriate vulnerability in the classroom promotes connection, friendship, and learning.<sup>215</sup> When teachers consciously showcase emotional vulnerability in class and build a climate of trust, students retain material better.<sup>216</sup>

There are obviously appropriate limits for what faculty should and should not share with students. Newer faculty in particular may feel pressured to exhibit mastery more than vulnerability (especially in law schools that ask about professors' subject-matter mastery on teacher evaluations). Learning to become vulnerable in a classroom setting may take time. But it is an aim worth working toward: Letting students see their professors as human beings can contribute significantly toward building a culture of connection and lessening threat response.

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<sup>214</sup> “As ‘soft’ as all this might sound, it is only when team members are truly comfortable being exposed to one another that they begin to act without concern for protecting themselves. As a result, they can focus their energy and attention completely on the job at hand, rather than on being strategically disingenuous or political with one another.” LENCIONI, *supra* note 212, at 105.

<sup>215</sup> Shannon Huddy, *Vulnerability in the Classroom: Instructor’s Ability to Build Trust Impacts the Student’s Learning Experience*, 10 INT’L J. EDUC. RSCH. (2015). See also BRENE BROWN, *DARING GREATLY: HOW THE COURAGE TO BE VULNERABLE TRANSFORMS THE WAY WE LIVE, LOVE, PARENT, AND LEAD* (2012); Lisa M. Vaughn & Raymond C. Baker, *Psychological Size and Distance: Emphasising the Interpersonal Relationship as a Pathway to Optimal Teaching and Learning Conditions*, 38 MED. EDUC., 1053 (2004).

<sup>216</sup> Gad Yair, *Can We Administer the Scholarship of Teaching? Lessons From Outstanding Professors in Higher Education*, 55 HIGHER EDUC. 447 (2007).

Professors can be vulnerable by sharing personal stories, admitting mistakes and failures, acknowledging when they do not know something, sharing their feelings, showing a willingness to grow as an instructor, and connecting with students outside of class.<sup>217</sup> One recent AALS workshop presenter shared that he admits to his students how nervous he feels on the first day of class.<sup>218</sup> Professors who are appropriately vulnerable with students—not merely for vulnerability’s sake, but for the sake of building students up—foster connection in the classroom and help facilitate challenge states instead of threat states.

## V. CONCLUSION

All too often, law schools facilitate students’ threat responses instead of challenge responses—with detrimental consequences for students’ psyches, health, and academic performance. I have identified four aspects of legal education that facilitate this threat response: (1) law schools’ culture of competition and conformity; (2) a focus on reputation and image; (3) the nature of the first-year curriculum and the job of a lawyer; and (4) traditional law school pedagogy. By overexposing students to conditions that trigger threat responses, law schools further fuel high rates of anxiety, depression, and addiction among law students.

In our efforts to develop the next generation of lawyers, let us proactively adopt approaches that lessen students’ threat perception. I have outlined five recommendations that if followed will promote challenge responses instead of threat states among students: embracing a constructivist approach to teaching; encouraging mindfulness; providing greater balance in the legal curriculum; teaching emotional intelligence; and building a culture of service, friendship, and connection. Empirical evidence suggests that taking these steps will help students shift their appraisals toward a challenge response and improve well-being and performance considerably. It is up to faculty and administrators to deliberately work to lessen students’ threat

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<sup>217</sup> Huddy, *supra* note 215.

<sup>218</sup> *Best Practices (and Common Pitfalls) in Law School Pedagogy*, *supra* note 148.

response, activate challenge states, and equip students for the psychological shifts that come with learning to think like a lawyer.