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## This Is Your Brain on Law School: The Impact of Fear-Based Narratives on Law Students

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# THIS IS YOUR BRAIN ON LAW SCHOOL: THE IMPACT OF FEAR-BASED NARRATIVES ON LAW STUDENTS

Abigail A. Patthoff\*

## I. INTRODUCTION

Fear is primal. Ask any 1L in the grips of the Socratic method: fear is one of the most visceral and powerful human motivators. Indeed, evolution has ensured that fear has an express lane in our brain circuitry: information from the senses has a direct route to the amygdala, the brain's fear manufacturer.<sup>1</sup> Information moves along this route unfiltered by the neocortex, the area of the brain responsible for higher-order thinking like reasoning and logic.<sup>2</sup> Indeed, before the neocortex receives information from the senses, the amygdala has already made a "quick and dirty" appraisal of the information for potential threats and has begun sending its evaluation to the neocortex.<sup>3</sup> The amygdala blasts these messages to the neocortex along profuse pathways—pathways that far outnumber those that travel from the neocortex back to the amygdala.<sup>4</sup> So, while the amygdala is capable of filling the "thinking brain"<sup>5</sup> with fear messages, the ability of the thinking brain to send rational

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\* © 2015 Abigail A. Patthoff. Professor of Legal Writing, Dale E. Fowler School of Law, Chapman University. I am grateful to the facilitators and participants of the Legal Writing Institute's 2013 Writers' Workshop, particularly Professors Jill Ramsfield, Diane Kraft, and Julie Clement for their feedback and encouragement regarding an early draft of this Article. Thanks are also due to Professors Robin Wellford Slocum, Jane K. Stoever, and Deepa Badrinarayana for their time and thoughtful comments. Finally, special thanks to Professor Rita Barnett-Rose for her support and willingness to read multiple drafts.

<sup>1</sup> JOSEPH LEDOUX, *THE EMOTIONAL BRAIN* 164 (1996).

<sup>2</sup> Joseph LeDoux, professor of neuroscience and psychology at New York University, describes this circuitry as containing a "high road" and a "low road." *Id.* at 161–65. The high road transmits sensory information (sight, touch, sound, smell) from the thalamus to the cortex (the logical, "thinking" brain) before sending that information on to the amygdala. *Id.* The low road, on the other hand, bypasses the cortex. *Id.* Sensory information from the thalamus travels directly to the amygdala with no detours through the "thinking" brain—making the low road significantly faster and enabling us to respond more quickly to potential threats. *Id.*

<sup>3</sup> *Id.* at 163–65.

<sup>4</sup> *Id.* at 303 ("[P]athways from the amygdala to the cortex overshadow the pathways from the cortex to the amygdala."); see also RITA CARTER, *MAPPING THE MIND* 98 (1998) ("[T]he wiring of the brain favours emotion—the connections from the emotional systems to the cognitive systems are stronger than the connections that run the other way.").

<sup>5</sup> Neuroscientists divide the brain into three basic regions: the "primitive" brain, the oldest of the three, which governs basic motor functions and involuntary bodily activities; the emotional brain, or "limbic system," which generates emotions and is responsible for our "fight or flight" instincts; and the "thinking brain," which governs reasoning, language, and analysis. See JUDITH HORSTMAN, *THE SCIENTIFIC AMERICAN: BRAVE NEW BRAIN* 3–4 (2010). The amygdala is seated in the limbic system. See *id.* at 4.

messages to the amygdala is hobbled.<sup>6</sup> This wiring permits fear to easily overtake reason and all but ensures the primacy of fear's power to motivate.<sup>7</sup>

It is no wonder then that fear-arousing messages are a favored technique of those with an audience to persuade. Fear commands attention. It rises from the primitive parts of our brains to shout "run for your life!" even when the threat takes the shape of a professor asking a pointed question about the rule of perpetuities rather than the shape of a hungry bear. Since the time of Aristotle, scholars have recognized this persuasive potential of fear. In his most influential work on the topic of persuasion, Aristotle noted that "fear makes people inclined to deliberation."<sup>8</sup> Because of its persuasive power, fear is pervasive in advertisements,<sup>9</sup> in public health campaigns,<sup>10</sup> in children's fables,<sup>11</sup> and even in education.<sup>12</sup> Legal education, in particular, is steeped in fear-based messages. Cautionary tales are a common type of fear-based message that law professors use to motivate students to engage in a number of positive, professional behaviors: to proofread their work, to be candid with the court, to be attentive to citation form, and to update their authority.<sup>13</sup> These

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<sup>6</sup> LEDOUX, *supra* note 1, at 303 ("[T]he amygdala has a greater influence on the cortex than the cortex has on the amygdala, allowing emotional arousal to dominate and control thinking.").

<sup>7</sup> *See id.*; *see also* DEAN BUONOMANO, BRAIN BUGS: HOW THE BRAIN'S FLAWS SHAPE OUR LIVES 139–40 (2011) (giving examples of fear overcoming reason in history).

<sup>8</sup> ARISTOTLE, ON RHETORIC: A THEORY OF CIVIC DISCOURSE 141 (George A. Kennedy trans., Oxford University Press 1991) (n.d.).

<sup>9</sup> *See, e.g.*, KIM WITTE ET AL., EFFECTIVE HEALTH RISK MESSAGES: A STEP-BY-STEP GUIDE 4–5 (2001) (discussing the fear appeal in a Clorox bleach advertisement); Michael S. LaTour et al., *Don't be Afraid to Use Fear Appeals: An Experimental Study*, J. ADVERTISING RES., Mar./Apr. 1996, at 59, 60 (noting that "the use of fear appeals is quite popular" in advertising); Kaylene C. Williams, *Fear Appeal Theory*, 5 RES. BUS. & ECON. J. 1, 3 (2012) (listing a host of examples of fear appeals in advertising including "Michelin tires and the baby, Talon zippers and 'gaposis,' Wisk and ring around the collar, Bayer aspirin and heart attack prevention, . . . [and] J&J Advanced Care cholesterol test product").

<sup>10</sup> *See, e.g.*, Williams, *supra* note 9, at 3 (listing a host of examples of fear appeals in public health campaigns, including "[anti-]smoking, dental hygiene, personal safety, pregnancy warnings, child abuse, AIDS prevention, safe driving practices, insurance, financial security, sun exposure, climate change, food additives, social embarrassment, motorcycle helmets, anti-drug abuse, immunization, smoke detectors, cell phones, safe sex, stress, and regular health exams").

<sup>11</sup> MARIA TATAR, OFF WITH THEIR HEADS!: FAIRY TALES AND THE CULTURE OF CHILDHOOD 35 (1992) (discussing "Little Red Riding Hood" and various other Grimm's tales, as well as children's works by Hans Christian Andersen).

<sup>12</sup> *See, e.g.*, David William Putwain & Natalie Best, *Fear Appeals in the Primary Classroom: Effects on Test Anxiety and Test Grade*, 21 LEARNING & INDIVIDUAL DIFFERENCES 580, 580 (2011); David W. Putwain & Wendy Symes, *Teachers' Use of Fear Appeals in the Mathematics Classroom: Worrying or Motivating Students?*, 81 BRIT. J. EDUC. PSYCHOL. 456, 456–58 (2011); Rose Sprinkle et al., *Fear in the Classroom: An Examination of Teachers' Use of Fear Appeals and Students' Learning Outcomes*, 55 COMM. EDUC. 389, 389–91 (2006).

<sup>13</sup> *See, e.g.*, Almas Khan, *Opening Class with Panache, Professionalism Pointers, and*

kinds of narratives have great potential to persuade students to adopt such behaviors; however, they also have potential to backfire.<sup>14</sup>

In social science literature, fear-arousing messages such as cautionary tales are called “fear appeals.”<sup>15</sup> A “fear appeal” is a scare tactic: it is a message designed to frighten the listener into adopting a particular behavior.<sup>16</sup> Messages that invoke fear persuade by triggering emotion. Like messages that invoke anger, pity, or sadness, fear-based messages rely on emotional appeals, more formally called “pathos,” to convince the audience.<sup>17</sup> Social scientists studying the relationship between fear and persuasion have recognized, however, that there is a point at which scare tactics actually have the perverse effect of discouraging listeners to adopt recommended behaviors.<sup>18</sup> In fact, at the critical point when the listener’s perception of the danger conveyed by the fear appeal outweighs his perception of his ability to avoid the danger, the listener is more likely to engage in undesired responses to the fear appeal—downplaying the threat, denying the existence of the threat, or rejecting the recommended behaviors for averting the threat. In other words, the listeners who are most fearful following a fear appeal are also the listeners who are least likely to benefit from the fear appeal. In populations that are already high in pre-existing fear or anxiety, the risk that fear appeals will trigger undesired effects is particularly acute.<sup>19</sup> When a listener’s fear is already elevated prior to a fear appeal, that listener is likely to reach the critical point sooner. Thus, fear appeals are more likely to backfire among listeners who are already fearful.

Although the persuasive power of fear has been recognized since the classical era, only contemporarily have communication scholars been working to understand how and why fear appeals operate to persuade.<sup>20</sup> This area of research has been evolving since the 1950s, yet it has only been sparsely applied in the general education context and has not been applied at all in the legal education context. Because law school is well-recognized as a “breeding ground” for anxiety and law student distress,<sup>21</sup> law students may be a population that is more likely to react in

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*a Pinch of Humor*, 20 PERSP.: TEACHING LEGAL RES. & WRITING 117, 117 (2012); Kristen E. Murray, *Legal Writing Missteps: Ethics and Professionalism in the First-Year Legal Research and Writing Classroom*, 20 PERSP.: TEACHING LEGAL RES. & WRITING 134, 134 (2012).

<sup>14</sup> See discussion *infra* Part III.A.

<sup>15</sup> Kim Witte, *Putting the Fear Back into Fear Appeals: The Extended Parallel Process Model*, 59 COMM. MONOGRAPHS 329, 329 (1992).

<sup>16</sup> *Id.*; WITTE ET AL., *supra* note 9, at 2.

<sup>17</sup> See WITTE ET AL., *supra* note 9, at 1.

<sup>18</sup> See discussion *infra* Part III.A.

<sup>19</sup> See discussion *infra* Part III.A.

<sup>20</sup> The first study of “fear appeals” was published in 1953. See Irving L. Janis & Seymour Feshbach, *Effects of Fear-Arousing Communications*, 48 J. ABNORMAL & SOC. PSYCHOL. 78, 78 (1953). Since that time, fear appeals have spawned multiple theories and hundreds of empirical studies. See Kim Witte & Mike Allen, *A Meta-Analysis of Fear Appeals: Implications for Effective Public Health Campaigns*, 27 HEALTH EDUC. & BEHAV. 591 (2000) (reviewing the history of fear appeal theory).

<sup>21</sup> Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the*

perverse ways in response to fear appeals. Thus, it is particularly important that law professors scrutinize the impact of introducing additional fear into the classroom as a pedagogical tool. Indeed, in light of the well-documented connection between anxiety and poor test performance,<sup>22</sup> in some instances we may be doing our students more harm than good when using cautionary tales as an educational device. This Article takes lessons from existing social science research, applies them to the law school classroom, and suggests ways that professors can achieve more positive results from cautionary tales. Specifically, Part II introduces cautionary tales in general, followed by examples of cautionary tales commonly told in law school. Part III looks at fear appeals research and highlights a theory known as the Extended Parallel Process Model (EPPM) that predicts how people will react to fear-inducing messages. Part III then applies the EPPM to the law school setting to determine the point at which fear appeals may be most effective, concluding that low-threat/high efficacy or no threat/high efficacy messages achieve the best results. Finally, Part IV provides specific techniques for law school professors to more effectively use cautionary tales in teaching students, without causing unnecessary additional stress and anxiety.

## II. FEAR-BASED NARRATIVES

*[S]he had read several nice little stories about children who had got burnt, and eaten up by wild beasts, and other unpleasant things, all because they would not remember the simple rules their friends had taught them: such as, that a red-hot poker will burn you if you hold it too long; and that, if you cut your finger very deeply with a knife, it usually bleeds; and she had never forgotten that, if you drink much from a bottle marked "poison," it is almost certain to disagree with you, sooner or later.*<sup>23</sup>

### A. What Is a Cautionary Tale?

Cautionary tales are stories meant to warn the listener.<sup>24</sup> In these stories, the central character behaves badly: he fails to heed advice, or she acts carelessly. This behavior then triggers consequences ranging from unpleasant to dire.<sup>25</sup> As the consequences unfold, the listener is regaled, often in vivid detail, with the punishments the character suffers for having failed to do what he was told. Because

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*Problem and Can We Be Part of the Solution?*, 8 J. LEGAL WRITING INST. 229, 229 (2002).

<sup>22</sup> See *infra* notes 176–183 and accompanying text.

<sup>23</sup> LEWIS CARROLL, *THE ANNOTATED ALICE: ALICE'S ADVENTURES IN WONDERLAND & THROUGH THE LOOKING GLASS* 31 (Martin Gardner ed., Charleston N. Potter, Inc. 1960) (1865).

<sup>24</sup> 1 *THE GREENWOOD ENCYCLOPEDIA OF FOLKTALES AND FAIRY TALES* 170 (Donald Haase ed., 2008).

<sup>25</sup> TATAR, *supra* note 11, at 42 (“[T]he basic narrative unit of the cautionary tale consists of a prohibition and its violation . . .”).

of the moralistic, didactic nature of cautionary tales, examples of these stories are particularly abundant in children's literature.<sup>26</sup>

For instance, in a well-known cautionary tale about the dangers of talking to strangers, Little Red Riding Hood stops to talk to a wolf while on her way to her grandmother's house. Because of this act of recklessness, she and her grandmother are, in the earliest literary version of *Little Red Riding Hood*,<sup>27</sup> ultimately both devoured by the wolf.<sup>28</sup> This genre of cautionary children's literature was so popular in the late eighteenth and nineteenth centuries that it gave rise to "cautionary verse," a satire of overly moralistic stories for children.<sup>29</sup> Characteristic of satire, these cautionary verses exaggerated the traditional cautionary tale for comic effect and underscored the basic format of cautionary tales: a warning, a defiant act, and punishment. In particular, cautionary verse is known for exaggerating the consequences element of the narrative; for childish misbehavior the main character often suffers a disproportionately gruesome penalty.<sup>30</sup> In one verse story, a mother tells her daughter not to cry so much, but the girl does not listen and at the end of the story, she literally cries her eyes out:

And now the poor creature is cautiously crawling  
And feeling her way all around;  
And now from their sockets her eyeballs are falling;  
See, there they are down on the ground.  
My children, from such an example take warning,  
And happily live while you may;  
And say to yourselves, when you rise in the morning,  
"I'll try to be cheerful today."<sup>31</sup>

In another story, an even more macabre ending awaits little Pauline who, against her mother's instructions, plays with matches and is "burnt with all her clothes, / And arms and hands, and eyes and nose; / Till she had nothing more to

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<sup>26</sup> 1 THE OXFORD ENCYCLOPEDIA OF CHILDREN'S LITERATURE 269–70 (Jack Zipes ed., 2006) [hereinafter OXFORD ENCYCLOPEDIA].

<sup>27</sup> THE NORTON ANTHOLOGY OF CHILDREN'S LITERATURE 342–44 (Jack Zipes et al. eds., 2005).

<sup>28</sup> *Id.* Perrault provides the moral of his tale at the end of the story:

Young children, as this tale will show, / And mainly pretty girls with charm,  
/ Do wrong and often come to harm / In letting those they do not know / Stay  
talking to them when they meet. / And if they don't do as they ought, / It's no  
surprise that some are caught / By wolves who take them off to eat.

CHARLES PERRAULT, THE COMPLETE FAIRY TALES 103 (Christopher Betts trans., 2010).

<sup>29</sup> OXFORD ENCYCLOPEDIA, *supra* note 26, at 270.

<sup>30</sup> *Id.*

<sup>31</sup> HENRY HOFFMANN, SLOVENLY BETSY 42 (Applewood Books 1995) (1911).

lose / Except her little scarlet shoes; / And nothing else but these was found / Among her ashes on the ground.”<sup>32</sup>

Cautionary tales, however, are not reserved for children. The cautionary tale has, for example, been variously targeted at adult populations in public health campaigns, in public service announcements, and in advertising.<sup>33</sup> Unlike the fairy tales into which cautionary tales for children are often embedded, cautionary tales for adults are decidedly more realistic. Without the dark humor of cautionary verse or the magic of fairy tales to mitigate the consequences detailed in such stories, these “grown-up” cautionary tales can be scarier still.

Lawyers and law students are the audience for their own subset of these grown-up cautionary tales. The basic structure of these tales involves a lawyer or law student behaving unprofessionally and then suffering consequences. These kinds of tales perennially make headlines: attorneys who were sanctioned for poor citation form, attorneys who were publically “bench-slapped” in a court opinion for writing an incoherent brief, or attorneys who lost a client millions with an errant comma.<sup>34</sup> In an era where social media, blogs, and internet news are prominent, these tales are easy to find. Websites like *abovethelaw.com*, a site devoted to law-related news and gossip, regularly post cautionary tales about lawyers and law students behaving badly. To be sure, lawyers who are unfortunate enough to have made humorous or particularly disastrous mistakes can quickly find their stories going viral.

For example, an attorney who neglected to proofread an appellate brief before submitting it with a California court found himself responsible for an embarrassing autocorrect error. The error, which caused the words “sea sponge” to appear in place of the legal term “sua sponte,” garnered negative attention for the solo practitioner and prompted one writer at *law.com* to wonder, “Will SpongeBob be filing an amicus brief?”<sup>35</sup> In another instance of proofreading gone awry, the consequences were more than reputational. A firm’s failure to notice a misplaced comma in a contract cost its client, Rogers Communication, \$2.13 million.<sup>36</sup> Despite the client’s

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<sup>32</sup> *Id.* at 26; see also HILAIRE BELLOC, CAUTIONARY TALES FOR CHILDREN (Project Gutenberg ed., 2008) (1907), available at <http://www.gutenberg.org/files/27424/27424-h/27424-h.htm>, archived at <http://perma.cc/Y9J2-ETUD> (including stories such as *Jim, Who Ran Away from His Nurse, and Was Eaten by a Lion*, and *Matilda, Who Told Lies, and Was Burned to Death*).

<sup>33</sup> See *supra* notes 9–10; see also *infra* notes 81–88 and accompanying text (describing public health campaigns that utilize cautionary tales).

<sup>34</sup> See, e.g., *infra* notes 35–38 and accompanying text; see also Judith D. Fischer, *Bareheaded and Barefaced Counsel: Courts React to Unprofessionalism in Lawyers’ Papers*, 31 SUFFOLK U. L. REV. 1, 12–16 (1997) (cataloguing dozens of instances of judges publically rebuking lawyers for unprofessional behavior).

<sup>35</sup> Mike McKee, *Solo’s Errant Spell-Check Causes ‘Sea Sponge’ Invasion*, LEGAL TECH. NEWS (Mar. 2, 2006), <http://www.legaltechnews.com/id=900005448269>, archived at <http://perma.cc/5D8H-TAPL> (describing an attorney’s appellate brief that referred to “sua sponte” as “sea sponge” throughout the brief because of an auto-spellcheck error).

<sup>36</sup> Grant Robertson, *Comma Quirk Irks Rogers*, GLOBE & MAIL (Aug. 6, 2006, 11:30 PM), <http://www.theglobeandmail.com/report-on-business/comma-quirk-irks-rogers/article1101686/>, archived at <http://perma.cc/AYN9-S8WU>.

belief that it had entered into a five-year contract with Bell Aliant for use of certain utility poles, the errant comma allowed Bell Aliant to terminate the contract earlier, and renegotiate with Rogers at a higher fee.<sup>37</sup> One newspaper explicitly noted the cautionary nature of the story, calling it “an expensive reminder of the importance of punctuation.”<sup>38</sup>

Law students are similarly not immune to finding themselves at the center of cautionary tales gone viral. *Above the Law*'s most-read story of 2010<sup>39</sup> involved a 3L at Harvard Law School, who learned an important lesson about email the hard way: never put anything in an email that you would not want the world to see. In an email to several classmates, the student stated her belief in the possibility that black people may be genetically predisposed to be less intelligent than white people.<sup>40</sup> Inevitably, one of those classmates clicked “forward,” and the message found its way into inboxes across the country, including those of members of the Black Law Students Association.<sup>41</sup> The law student who authored the email was excoriated across the blogosphere, and it remains to be seen whether the email will have a lasting effect on her legal career.<sup>42</sup>

### B. *The Cautionary Tale Goes to Law School*

Cautionary tales are inherently didactic. Judicial opinions, news articles, and personal anecdotes about the missteps of lawyers often seem to provide ideal

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<sup>37</sup> *Id.* Specifically, the provision at issue provided that the agreement “shall continue in force for a period of five years from the date it is made, and thereafter for successive five year terms, unless and until terminated by one year prior notice in writing by either party.” *Id.* The insertion of the second comma in the provision allowed Aliant to terminate the contract *at any time* following one year’s notice. *Id.* If the comma had not been included, Aliant would have been bound for an initial five-year period—the arrangement that Rogers Communications argued was intended. *Id.*

<sup>38</sup> *Id.*; see also David Lat, *Sullivan and Cromwell’s Mailroom of Death: A Law Firm’s Error Could Cost a Man His Life*, ABOVE THE LAW (Aug. 3, 2010, 4:43 PM), <http://abovethelaw.com/2010/08/sullivan-cromwells-mailroom-of-death/>, archived at <http://perma.cc/4FPK-G8YZ> (describing how a law firm’s error might cost a death row inmate his life).

<sup>39</sup> David Lat, *Above the Law’s Top Ten Most Popular Stories of 2010*, ABOVE THE LAW (Dec. 31, 2010, 11:22 AM), <http://abovethelaw.com/2010/12/above-the-laws-top-ten-most-popular-stories-of-2010/>, archived at <http://perma.cc/V25T-H9M7>.

<sup>40</sup> Kashmir Hill, *Harvard Law School 3L’s Racist Email Goes National*, ABOVE THE LAW (Apr. 28, 2010, 10:12 AM), <http://abovethelaw.com/2010/04/hls-3ls-racist-email-goes-national/>, archived at <http://perma.cc/DC64-NT8T>.

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

<sup>42</sup> *Id.* Other law students have made similarly ill-fated decisions with respect to email conversations. See, e.g., Peter Lattman, *We Reap the Emails that You Sew*, WALL ST. J. L. BLOG (Feb. 16, 2006, 9:51 AM), <http://blogs.wsj.com/law/2006/02/16/we-reap-the-e-mails/>, archived at <http://perma.cc/KCV2-5M5F> (describing how, after renegeing on a job offer, a recent law grad exchanged a series of increasingly snarky emails with her disappointed would-be employer, which were then widely circulated on the internet).



“teachable moments” for law students. These stories serve as vignettes; they help law professors usher students into the conventions of the legal profession—conventions that frequently require more attention to detail than entering students are accustomed to. By attaching concrete consequences to failing to attend to these details, cautionary tales help break down the walls between the classroom and the “real world.”

Law professors of all subjects often look to legal news for timely examples of doctrine in action.<sup>43</sup> For example, ethics and professional responsibility professors mine disciplinary opinions for illustrations of conduct lawyers should avoid.<sup>44</sup> And legal writing professors seek out stories that will underscore the importance of learning to produce competent, complete, and fluent legal analysis. Indeed, legal writing professors have been among the most vocal legal educators in their praise of the potential pedagogical value of cautionary tales.<sup>45</sup> Links to news articles and judicial opinions containing stories of misbehaving or ill-prepared lawyers are routinely circulated on the legal writing professor listserv.<sup>46</sup> Legal writing professors

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<sup>43</sup> See, e.g., Susan J. Becker, *Advice for the New Law Professor: A View from the Trenches*, 42 J. LEGAL EDUC. 432, 434 (1992); Michael L. Seigel, *The Effective Use of War Stories in Teaching Evidence*, 50 ST. LOUIS U. L.J. 1191, 1206 (2006).

<sup>44</sup> See, e.g., MICHAEL L. SEIGEL & JAMES L. KELLEY, *LAWYERS CROSSING LINES: TEN STORIES* ix (2d ed. 2010); Stephen Gillers, *Getting Personal*, 58 LAW & CONTEMP. PROBS. 61, 66 (1995).

<sup>45</sup> See, e.g., Fischer, *supra* note 34 (pointing out common mistakes attorneys make); Khan, *supra* note 13, at 117 (noting that fun facts and stories are especially useful in legal writing classes); Murray, *supra* note 13, at 134–37 (noting “that seeing the mistakes of others in action underscores the importance of seemingly technical tasks”); Rachel Stabler, *Using Sea Sponges, Boomerangs, and Sewing Kits to Teach Ethics and Professionalism in the Legal Writing Classroom*, SECOND DRAFT, Fall 2012, at 20, 20–21 (discussing an attorney who did not use spell check and submitted a brief that changed the term “sua sponte” to “sea sponge” at least five times); Amy R. Stein, *This Time It’s For Real Continued: More Ways to Use Law-Related Current Events in the Classroom*, 21 PERSP.: TEACHING LEGAL RES. & WRITING 18, 18 (2012) (“[T]hey do more than just elicit a laugh, they also provide the opening to a discussion of more serious matters . . . .”); Mary Whisner, *When Judges Scold Lawyers*, 96 LAW LIBR. J. 557, 557 (2004) (“From time to time, professors have asked me to find opinions in which judges chide attorneys for sloppy drafting or research. Professors who teach legal writing and research may hope that a vivid example or two will get the students’ attention and motivate them to develop better skills.”).

<sup>46</sup> See, e.g., Posting of Jan M. Levine, Dir., Legal Research & Writing Program, Duquesne Univ. Sch. of Law to LRWPROF-L@listserv.iupui.edu (October 8, 2008) (on file with Utah Law Review) (linking to a judicial opinion in which the court cut an award of attorney fees by \$154,000 because of the attorney’s sloppy, error-ridden filings); Posting of Joseph Mastro Simone, Assoc. Professor of Law, Washburn Univ. Sch. of Law to LRWPROF-L@listserv.iupui.edu (November 29, 2011) (on file with Utah Law Review) (linking to a judicial opinion “taking the parties to task for not citing and discussing adverse precedent”); Posting of Lisa A. Mазzie, Assoc. Professor of Legal Writing, Marquette Univ. Law Sch. to LRWPROF-L@iupui.edu (September 17, 2014) (on file with Utah Law Review) (linking to a story describing a federal judge’s displeasure with BP counsel for flouting court line-spacing rules to exceed the page limit); Posting of Susan K. Sloane, Dir., Legal Research

also represent a significant majority of the legal educators who have written or presented about using cautionary tales in the classroom.<sup>47</sup> Educators who use cautionary tales as a technique to teach law students have identified several significant benefits of incorporating these stories.<sup>48</sup>

First, cautionary tales help professors achieve student buy-in.<sup>49</sup> Students who understand the applicability of a lesson to their future success as attorneys will be more receptive to that lesson.<sup>50</sup> Yet, anyone who has ever attempted to sell the importance of comma placement to a group of adult learners knows that achieving buy-in can sometimes be a tough job. For teaching students the importance of attention to even the least glamorous, detail-oriented aspects of lawyering, the cautionary tale seems to fit the bill.

Second, cautionary tales help professors teach students ethics and professionalism.<sup>51</sup> As legal educators, we do not just want our students to think like good lawyers, we want them to behave like good lawyers. Yet for a student body increasingly steeped in the informalities of texting and social media, the conventions of professionalism may not be familiar, let alone second nature.<sup>52</sup> On the heels of

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& Writing, Ne. Univ. Sch. of Law to LRWPROF-L@list.iupui.edu (February 15, 2013) (on file with Utah Law Review) (providing a list of over a dozen judicial opinions in which judges chastised attorneys for sloppy lawyering).

<sup>47</sup> See *supra* note 45.

<sup>48</sup> Cautionary tales, as referred to in this article, are distinct from the “problem-based” method of teaching. A cautionary tale is simply that—a story. In the classroom context, the story is told by the professor to illustrate a point or to highlight a danger. Such a story may or may not be accompanied by explicit instruction regarding how to avoid the consequences that befell the protagonist in the story. The problem-based method of teaching, on the other hand, requires students to engage with a mock problem designed to give students the opportunity to apply the skills and knowledge that they are learning in the course. Unlike cautionary tales, where student engagement with the story is passive, the problem-based method requires active student participation. Additionally, the problem-based method requires students to devise a solution to the mock problem; thus, when done right, the problem-based method necessarily includes feedback regarding “best practices” (or “efficacy”) for resolving the problem. See, e.g., Shirley Lung, *The Problem Method: No Simple Solution*, 45 WILLAMETTE L. REV. 723, 765 (2009) (“To generate opportunities for feedback, teachers must engage students in different kinds of concrete tasks . . .”).

<sup>49</sup> Becker, *supra* note 43, at 434 (noting that war stories “add[] a practical dimension to the educational experience”).

<sup>50</sup> “Adult learning theory suggests that our students will learn best if they have a context for what they are learning.” Deborah Maranville, *Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences*, 7 CLINICAL L. REV. 123, 128 (2000).

<sup>51</sup> Murray, *supra* note 13, at 136; Stabler, *supra* note 45, at 20; Stein, *supra* note 45, at 18.

<sup>52</sup> Helia Garrido Hull, *Legal Ethics for the Millennials: Avoiding the Compromise of Integrity*, 80 UMKC L. REV. 271, 277–80 (2011); see also ROBIN WELLFORD SLOCUM, LEGAL REASONING, WRITING, AND OTHER LAWYERING SKILLS 319–20 (3d ed. 2011) (cautioning students that professional email communications should not contain slang, acronyms, or emoticons that are typical of an email or text to a friend or family member).

several significant reports calling for reform in legal education,<sup>53</sup> law schools everywhere have been experiencing increasing pressure to integrate the teaching of ethics and professionalism across the curriculum.<sup>54</sup> In today's climate of stiff competition for law jobs, the calls for reform have become even more urgent.<sup>55</sup> Thus, cautionary tales may help law professors integrate an element of ethics and professionalism into every class rather than relegating it to a single Professional Responsibility course.

Third, if the cautionary tale is a "war story"—i.e. a story from the instructor's own professional experience—the story may enhance the instructor's credibility.<sup>56</sup> A professor's ability to motivate students depends in part on students' perceptions of professor credibility and expertise.<sup>57</sup> If students perceive a professor to be knowledgeable and competent in the subject matter being taught, students tend to respond more positively to the professor and to the lessons at hand.<sup>58</sup> In fact, it has been shown that students' positive perceptions of professor expertise can improve learning.<sup>59</sup> Thus, when cautionary tales are based on personal experience, those tales

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<sup>53</sup> See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 236–60 (1992); ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 1 (2007); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 12 (2007).

<sup>54</sup> See, e.g., Miriam R. Albert & Jennifer A. Gundlach, *Bridging the Gap: How Introducing Ethical Skills Exercises Will Enrich Learning in First-Year Courses*, 5 DREXEL L. REV. 165, 177–80 (2012).

<sup>55</sup> See, e.g., Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES, Feb. 10, 2013, [http://www.nytimes.com/2013/02/11/us/lawyers-call-for-drastic-change-in-educating-new-lawyers.html?\\_r=0](http://www.nytimes.com/2013/02/11/us/lawyers-call-for-drastic-change-in-educating-new-lawyers.html?_r=0), archived at <http://perma.cc/7LJQ-RSDK> (noting "a sharp drop in law school applications, the outsourcing of research over the Internet, a glut of underemployed and indebted law school graduates and a high percentage of the legal needs of Americans going unmet" is fueling the pressure on law schools to reform).

<sup>56</sup> Becker, *supra* note 43, at 434 (observing that war stories are particularly useful for lending gravitas to a new professor); Seigel, *supra* note 43, at 1206 ("Nothing is more powerful in terms of preserving humility, humanity, and credibility in front of the classroom than using illustrations from practice in which you made a mistake—small, large, or in-between.").

<sup>57</sup> Credibility of the speaker, or *ethos*, is one of the three pillars of persuasion identified by Aristotle in his theory of rhetoric. LANE COOPER, THE RHETORIC OF ARISTOTLE 8 (1932). In fact, Aristotle believed it to be the most important pillar: "[*ethos*] is the most potent of all the means to persuasion" because "as a rule we trust men of probity more, and more quickly, about things in general . . . [and] where opinion is divided, we trust them absolutely." *Id.* at 8–9; see also James C. McCroskey & Virginia P. Richmond, *Power in the Classroom I: Teacher and Student Perceptions*, 32 COMM. EDUC. 175, 177 (1983) (noting the persuasiveness of instructor *ethos*, or "expert power," in the classroom).

<sup>58</sup> See McCroskey & Richmond, *supra* note 57, at 183.

<sup>59</sup> Virginia P. Richmond & James C. McCroskey, *Power in the Classroom II: Power and Learning*, 33 COMM. EDUC. 125, 135 (1984) ("[T]he communication of power," such as the power stemming from teacher expertise in the field, "has a major association with student

may lend gravitas to the professor, which may positively affect student learning outcomes.<sup>60</sup>

Fourth, cautionary tales break up the rhythm of a lecture. Socratic lectures remain a prominent mode of law teaching, but, used alone, lectures have the potential to cause students to zone out.<sup>61</sup> However, when lectures are punctuated with other modes of teaching such as group work, demonstrations, games, and storytelling, students are encouraged to be more active learners.<sup>62</sup> Thus, by including cautionary tales as one of several presentation methods, professors may keep students more engaged.<sup>63</sup>

Despite these benefits, law professors have reason to be careful about using cautionary tales in the classroom.<sup>64</sup> Cautionary tales belong to a genre of persuasion known as “fear appeals.”<sup>65</sup> Fear appeals are messages designed to motivate the listener by instilling fear.<sup>66</sup> As stories go, cautionary tales are tragedies. Unlike

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learning, both cognitive and affective.”).

<sup>60</sup> Enhancing professor credibility is also good for professor retention. Students who perceive professors to have expertise are more likely to give the professor a higher rating on student evaluations. *See id.* at 134.

<sup>61</sup> *See, e.g.,* 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, 3 (2003) (“The Socratic approach to case method teaching is premised upon the assumption that law students are actively engaged while a dialogue proceeds between a single student and a professor. This may be true for a handful of students who have learning-style strengths in auditory learning. But most students do not learn well this way and would learn better if they were engaged in truly active learning.” (citations omitted)); Suzanne Dallimore, *The Socratic Method—More Harm than Good*, 3 J. CONTEMP. L. 177, 181–82 (1977) (noting that “over-use of the Socratic method may tend to encourage laziness on the part of both students and professors”).

<sup>62</sup> *See, e.g.,* Boyle, *supra* note 61, at 3–4; Paul L. Caron & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning*, 54 J. LEGAL EDUC. 551, 558–69 (2004); Christine N. Coughlin et. al., *See One, Do One, Teach One: Dissecting the Use of Medical Education’s Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. U. L. REV. 361, 361–63, 382–84, 396 (2010); Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 13 (1996); Jennifer L. Rosato, *All I Ever Needed to Know About Teaching Law School I Learned Teaching Kindergarten: Introducing Gaming Techniques into the Law School Classroom*, 45 J. LEGAL EDUC. 568, 570–71 (1995); Douglas K. Rush & Suzanne J. Schmitz, *Universal Instructional Design: Engaging the Whole Class*, 19 WIDENER L.J. 183, 194–212 (2009).

<sup>63</sup> Gillers, *supra* note 44, at 66 (“The fact that the story occurred . . . is a magnet for student attention.”); Stein, *supra* note 45, at 18, 21 (observing that cautionary tales can help “increase student engagement”); Whisner, *supra* note 45, at 557 (noting that librarians, as well as professors who teach legal research and writing, use cautionary tales with the hope that they “will get the students’ attention and motivate them to develop better skills”).

<sup>64</sup> Abigail Patthoff, *Happily Ever After: Providing Students with Epilogues for Cautionary Tales*, 19 LAW TCHR. 28, 28 (2013).

<sup>65</sup> Witte, *supra* note 15, at 329.

<sup>66</sup> *Id.*

conventional narratives, which feature a protagonist's struggle and ultimate resolution of that struggle, in a cautionary tale the protagonist does not prevail. These protagonists are attorneys with whom our students are supposed to identify. Thus, the primary emotion that cautionary tales are intended to arouse in a student is fear of failure.

Although some fear is productive and can motivate students to achieve, too much fear can be debilitating and distracting. A decline in well-being among law students, attributed to stress, has been well documented.<sup>67</sup> Fear is one of the culprits contributing to this distress.<sup>68</sup> The Socratic method is famously intimidating,<sup>69</sup> grades are often exclusively earned via one make-or-break exam at the end of the semester,<sup>70</sup> and the news is replete with reports about dwindling job opportunities for law graduates.<sup>71</sup> Law students are not short on reasons to fear.

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<sup>67</sup> See, e.g., G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 225, 246; Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 LAW & HUM. BEHAV. 55, 63, 67 (1999); B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 627 (1991); 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, 112 (2002); Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65, 65 (1985); *Uncommon Counsel*, DAVE NEE FOUND., <http://www.daveneefoundation.org/uncommon-counsel/>, archived at <http://perma.cc/8R46-NNXC> (last visited Feb. 11, 2015) (stating that the foundation's Uncommon Counsel program educates law students about depression and available treatment options).

<sup>68</sup> See, e.g., Debra S. Austin, *Killing Them Softly: Neuroscience Reveals How Brain Cells Die from Law School Stress and How Neural Self-Hacking Can Optimize Cognitive Performance*, 59 LOY. L. REV. 791, 793–95, 848 (2013) (describing the “dominant feeling” of anxiety reported by law students and explaining that in the brain anxiety and fear are equivalent); Glesner, *supra* note 67, at 627–28 (noting the “fight or flight” response many students have to the law school educational process).

<sup>69</sup> See e.g., ANDREW J. MCCLURG, *IL OF A RIDE: A WELL-TRAVELED PROFESSOR'S ROADMAP TO SUCCESS IN THE FIRST YEAR OF LAW SCHOOL* 33 (2d ed. 2013); SCOTT TUROW, *ONE L: THE TURBULENT TRUE STORY OF A FIRST YEAR AT HARVARD LAW SCHOOL* 119 (1977); *THE PAPER CHASE* (20th Century Fox Film Corp. 1973).

<sup>70</sup> Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 79 (2010) (“In most law school courses, particularly in the critical first year, the only assessment most students experience is a three or four hour end-of-the-semester final exam.”).

<sup>71</sup> See, e.g., Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES, July 14, 2012, <http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html>, archived at <http://perma.cc/WZH6-UC3G>; Dimitra Kessenides, *Jobs Are Still Scarce for New Law School Grads*, BLOOMBERG BUSINESSWEEK (June 20, 2014), <http://www.bloomberg.com/bw/articles/2014-06-20/the-employment-rate-falls-again-for-recent-law-school-graduates>, archived at <http://perma.cc/QGQ6-YNGM>; Kyle McEntee, *New Law School Jobs Data Indicate Flat Entry-Level Legal Market*, LAW SCH. TRANSPARENCY (Apr. 9, 2014, 4:43 PM), <http://www.lawschooltransparency.com/blog/2014/04/new-law-school-jobs-data-indicate-flat-entry-level-legal-market/>, archived at

In this environment, it is particularly important that we consider the impact that deliberately fear-arousing messages like cautionary tales might have on a student body that is already overloaded with anxiety. Because social scientists have long been studying messages that are designed to arouse fear in the listener, legal educators need not reinvent the wheel. By borrowing from the insights of that research we can develop best practices for using cautionary tales in the law classroom.

### III. WHAT FEAR APPEALS RESEARCH CAN TEACH LAW PROFESSORS

Although research on the use of fear appeals in the classroom setting is sparse, educators who have studied fear appeals in instructional contexts agree: an instructor's use of fear-arousing messages is accompanied by a risk of retarding motivation, affective learning, and healthy student-teacher interaction.<sup>72</sup> For example, in 2006 a group of instructional communication scholars gave each of 226 undergraduate students one of four sets of feedback on their performance on a hypothetical assignment.<sup>73</sup> The feedback contained one of the following: a threat-only message (statements about the consequences of poor performance),<sup>74</sup> an efficacy-only message (statements about how to improve performance),<sup>75</sup> a threat and efficacy message (statements about both the consequences of poor performance

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<http://perma.cc/C3CA-8QLV>; Zach Needles, *Legal Job Market Still Tough for Law Schools Graduates*, PITTSBURGH POST-GAZETTE (Apr. 28, 2014, 11:04 PM), <http://www.post-gazette.com/business/legal/2014/04/29/Legal-Job-Market-Still-Tough-for-Law-Schools-Graduates/stories/201404290005>, archived at <http://perma.cc/79YW-LMZV>.

<sup>72</sup> See Putwain & Best, *supra* note 12, at 580–83; Sprinkle et al., *supra* note 12, at 389, 397–98.

<sup>73</sup> Sprinkle et al., *supra* note 12, at 389, 394. This experiment was designed using the Extended Parallel Process Model, discussed *infra* Part III.A, as a theoretical framework.

<sup>74</sup> *Id.* at 395 (“The grades on this speech were average, and you need to improve greatly before the persuasive speech, otherwise you will do very poorly, and your grade will suffer tremendously, and you will look foolish and unprepared in front of your classmates. A poor grade in this class is going to hurt you in many ways. You might have to take COM 110 again, you might lose financial aid or a scholarship, and you might even be disqualified for internships or jobs you are applying for. It is your responsibility to make the necessary improvements for the persuasive speech.”).

<sup>75</sup> *Id.* (“The grades on this speech were average, and you need to improve before the persuasive speech. I will do anything I possibly can to help you get the grade you want. I am extending my office hours and would be happy to look at your outlines, give you as many suggestions as I can before you speak, and help you develop your arguments. If you put the required time and work into the speech, including visiting the speech lab, and working closely with me in preparing the speech, you will improve dramatically.”).

and how to improve performance),<sup>76</sup> or a no threat or efficacy message.<sup>77</sup> Results of the study showed that threat-only feedback lowered student motivation and reduced the likelihood that they would turn to the professor for help on future assignments.<sup>78</sup> Additionally, while the feedback that used threat and efficacy together significantly improved student motivation and learning when compared to the threat-only feedback, that feedback also had a negative effect on some students when compared with the efficacy-only feedback.<sup>79</sup> Thus, the study concluded, instructors should use fear-arousing messages sparingly, carefully, and never without an accompanying efficacy message.<sup>80</sup>

Fear appeal research outside of the education context supports this conclusion. The bulk of fear appeal research has been conducted in the context of health-risk communications like anti-drug and anti-smoking ads.<sup>81</sup> Indeed, anti-drug and anti-smoking campaigns have produced some of the most iconic uses of fear appeals in the United States. Perhaps the most famous example of a fear appeal was created by the Partnership for a Drug Free America in the late 1980s. In a television ad, a male actor speaks directly to the viewing audience. He picks up an egg and announces, “This is your brain.”<sup>82</sup> He points to a hot frying pan, “This is drugs.”<sup>83</sup> The actor then cracks the egg into the frying pan. As the egg sizzles and spits, the actor says,

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<sup>76</sup> *Id.* (“The grades on this speech were average, and you need to improve greatly before the persuasive speech, otherwise you will do very poorly, and your grade will suffer tremendously, and you will look foolish and unprepared in front of your classmates. A poor grade in this class is going to hurt you in many ways. You might have to take COM 110 again, you might lose financial aid or a scholarship, and you might even be disqualified for internships or jobs you are applying for. I will do anything I possibly can to help you get the grade you want. I am extending my office hours and would be happy to look at your outlines, give you as many suggestions as I can before you speak, and help you develop your arguments. If you put the required time and work into the speech, including visiting the speech lab, and working closely with me in preparing the speech, you will improve dramatically.”).

<sup>77</sup> *Id.* (“The grades on this speech were average, and you need to improve before the persuasive speech. It is your responsibility to make the necessary improvements for the persuasive speech.”).

<sup>78</sup> *Id.* at 398–99.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 399.

<sup>81</sup> See, e.g., Ryan Goei et al., *An Examination of EPPM Predictions When Threat Is Perceived Externally: An Asthma Intervention with School Workers*, 25 HEALTH COMM. 333, 333 (2010); Thomas D. Gore & Cheryl Campanella Bracken, *Testing the Theoretical Design of a Health Risk Message: Reexamining the Major Tenets of the Extended Parallel Process Model*, 32 HEALTH EDUC. & BEHAV. 27, 32–33 (2005); Mark T. Morman, *The Influence of Fear Appeals, Message Design, and Masculinity on Men’s Motivation to Perform the Testicular Self-Exam*, 28 J. APPLIED COMM. RES. 91, 93–94 (2000); Witte & Allen, *supra* note 20, at 594–95.

<sup>82</sup> *This is Your Brain on Drugs PSA* (Partnership for a Drug-Free America 1987), available at <http://www.youtube.com/watch?v=o5wwECXTJbg>, archived at <http://perma.cc/Y2ZY-VF76>.

<sup>83</sup> *Id.*

“This is your brain on drugs. Any questions?”<sup>84</sup> The Partnership’s campaign included additional print and television ads, all following this basic structure: an egg, a frying pan, and a fried egg.<sup>85</sup> By asserting that doing drugs will “fry” your brains, the message was designed to arouse fear of drug use and to motivate the audience to say “no” to drugs.

Another memorable example of a fear appeal was sponsored by the California Department of Health Services in the mid-1990s to highlight the dangers of smoking. In it, a middle-aged woman with a visible, half-dollar sized hole in her throat recounts her nearly life-long relationship with cigarettes and her attempt to quit smoking.<sup>86</sup> In a raspy, belabored voice, she tells the camera, “They say nicotine isn’t addictive.”<sup>87</sup> Then, tilting her head back and taking a drag from a cigarette through the hole in her throat, she asks, “How could they say that?”<sup>88</sup> This haunting ad presents a vivid threat—cancer of the larynx and the accompanying disfigurement from surgery—to arouse fear of smoking and to motivate the audience to either quit smoking or avoid starting.

The fear-appeal theories that were first developed to explain audience reactions to these types of public health campaigns have been successfully applied to, among other areas, product marketing,<sup>89</sup> violence prevention,<sup>90</sup> and secondary<sup>91</sup> and higher education.<sup>92</sup> Before applying those findings to a novel context—law schools—we must first understand what is currently known about when fear appeals succeed in changing behavior and when they do not. A prevailing theory, called the Extended Parallel Process Model,<sup>93</sup> provides an explanation of both.

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<sup>84</sup> *Id.*

<sup>85</sup> See *This Is Your Brain on Drugs*, WIKIPEDIA, [http://en.wikipedia.org/wiki/This\\_Is\\_Your\\_Brain\\_on\\_Drugs](http://en.wikipedia.org/wiki/This_Is_Your_Brain_on_Drugs), archived at <http://perma.cc/TC6W-FR5B> (last modified Jan. 9, 2015).

<sup>86</sup> A biography of Debi Austin, the middle-aged woman, and a link to the ad are available at *Debi Austin, M.A.*, DEBIAUSTIN1950, <https://sites.google.com/site/debiaustin1950/>, archived at <http://perma.cc/E7J9-CJSM> (last visited Feb. 11, 2015).

<sup>87</sup> TobaccoFreeCA, *Debi Austin “Voicebox,”* YOUTUBE (June 19, 2012), <https://www.youtube.com/watch?v=wAaGbsHBacE>, archived at <http://perma.cc/8E32-BTFX>.

<sup>88</sup> *Id.*

<sup>89</sup> Williams, *supra* note 9, at 1; LaTour et al., *supra* note 9, at 59.

<sup>90</sup> Jeffrey Duong & Catherine P. Bradshaw, *Using the Extended Parallel Process Model to Examine Teachers’ Likelihood of Intervening in Bullying*, 83 J. SCH. HEALTH 422, 423 (2013).

<sup>91</sup> Putwain & Best, *supra* note 12, at 580–82; Putwain & Symes, *supra* note 12, at 456, 466–67.

<sup>92</sup> Sprinkle et al., *supra* note 12, at 389, 394.

<sup>93</sup> The model takes its name from Leventhal’s “Parallel Process Model,” one of the three earlier fear appeals theories on which it is based. Professor Kim Witte, the author of the “Extended Parallel Process Model,” expanded on Leventhal’s model by, among other things, adding a framework for predicting an audience’s likely reaction to a particular fear appeal. WITTE ET AL., *supra* note 9, at 24.



A. *The Extended Parallel Process Model: A Theory of Fear-Based Persuasion*

The Extended Parallel Process Model (EPPM) is a theory of persuasion.<sup>94</sup> This theory predicts how an audience will react to a message that attempts to persuade by arousing fear.<sup>95</sup> It was first developed to advance the study of fear appeals and to help health-care practitioners more effectively convince people to protect themselves against health risks.<sup>96</sup> Since it was proposed two decades ago, it has become one of the most widely used theoretical frameworks for explaining how fear appeals work.<sup>97</sup> The model has garnered considerable empirical support<sup>98</sup> across varying populations of people<sup>99</sup> and varying subject matters,<sup>100</sup> both inside and outside of the healthcare context. The model synthesizes forty years of fear appeal and persuasion research, in an attempt to reconcile some of the inconsistencies in earlier research, and offers a framework for understanding not only why fear appeals

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<sup>94</sup> *Id.* at 23–31.

<sup>95</sup> *See id.* at 24.

<sup>96</sup> *Id.* at 4, 24.

<sup>97</sup> *See, e.g.*, Erin K. Maloney et al., *Fear Appeals and Persuasion: A Review and Update of the Extended Parallel Process Model*, 5 SOC. & PERSONALITY PSYCHOL. COMPASS 206, 206 (2011) (describing the EPPM as “one of the predominant theories in the fear appeal literature”).

<sup>98</sup> WITTE ET AL., *supra* note 9, at 31; *see, e.g.*, Michael Basil et al., *Applying the Extended Parallel Process Model to Workplace Safety Messages*, 28 HEALTH COMM. 29, 36 (2013); Goei et al., *supra* note 81, at 342–43; Gore & Bracken, *supra* note 81, at 36; Shari McMahan et al., *The Perception of Risk Messages Regarding Electromagnetic Fields: Extending the Extended Parallel Process Model to an Unknown Risk*, 10 HEALTH COMM. 247, 258 (1998); Morman, *supra* note 81, at 104–08; Anthony J. Roberto et al., *The Short-Term Effects of a Computer-Based Pregnancy, STD, and HIV Prevention Program*, 56 COMM. Q. 29, 32–34 (2008); Michael T. Stephenson & Kim Witte, *Fear, Threat, and Perceptions of Efficacy from Frightening Skin Cancer Messages*, 26 PUBLIC HEALTH REV. 147, 147 (1998); Kim Witte et al., *Addressing Underlying Mechanisms to HIV/AIDS Preventative Behaviors in Ethiopia*, 21 INT’L Q. COMMUNITY HEALTH EDUC. 163 (2003); Kim Witte et al., *Preventing the Spread of Genital Warts: Using Fear Appeals to Promote Self-Protective Behaviors*, 25 HEALTH EDUC. & BEHAV. 571, 581–82 (1998) [hereinafter Witte et al., *Preventing Genital Warts*]; Kim Witte, *Fear Control and Danger Control: A Test of the Extended Parallel Process Model (EPPM)*, 61 COMM. MONOGRAPHS 113, 114–18 (1994) [hereinafter Witte, *Fear Control and Danger Control*]; Kim Witte et al., *Preventing Tractor-Related Injuries and Deaths in Rural Populations: Using a Persuasive Health Message Framework in Formative Evaluation Research*, 13 INT’L Q. COMMUNITY HEALTH EDUC. 219, 241 (1993). *But see* Lucy Popova, *The Extended Parallel Process Model: Illuminating the Gaps in Research*, 39 HEALTH EDUC. & BEHAV. 455, 455 (2012) (asserting that “none of the EPPM’s propositions [have] received unequivocal support”).

<sup>99</sup> Populations include “juvenile delinquents, high school students, Kenyan prostitutes, college students, African-American homeowners, farmers, gun owners, and the general public.” WITTE ET AL., *supra* note 9, at 31.

<sup>100</sup> Topics include “[t]ractor safety, skin cancer, HIV/AIDS prevention, dental hygiene, genital warts, radon awareness, violence prevention, and electromagnetic fields.” *Id.* at 31.

work but also why they fail.<sup>101</sup> In this way, the model provides insight into how fear appeal messages can be better tailored to motivate an audience to adopt a recommended behavior.<sup>102</sup>

Professor Kim Witte, the author of the model, defines fear appeals as “persuasive messages designed to scare people by describing the terrible things that will happen to them if they do not do what the message recommends.”<sup>103</sup> These messages are typically made up of two parts: (1) the threat and (2) the efficacy.<sup>104</sup> The threat is the portion of the message that describes a danger to the audience.<sup>105</sup> The efficacy is the portion of the message that tells the audience how to avoid the danger.<sup>106</sup> At base, the EPPM posits that the interaction between audience perceptions of the threat and the efficacy predicts the audience’s likely response to a fear appeal.<sup>107</sup> In other words, the way that the audience evaluates the threat and efficacy components explains the way that the audience will react to the message.

In order to motivate an audience to change, a fear appeal must be designed to optimize the audience’s thoughts, or “cognitive appraisals,” about the threat and the efficacy.<sup>108</sup> According to the EPPM, the audience will first evaluate the threat presented in the message before moving on to evaluate the efficacy.<sup>109</sup> If the threat is not sufficiently relevant or serious, the audience will not be motivated to think about ways that they can avoid the threat. Indeed, when faced with various demands for their time and attention, an audience is unlikely to give further thought, let alone priority, to avoiding a threat that seems irrelevant or trivial.

So, when presented with a threat, an audience considers whether they are susceptible to the threat (e.g., “As a smoker, I am more likely to be diagnosed with lung cancer.”) and whether the threat is severe (e.g., “I could die from lung

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<sup>101</sup> See *id.* at 1. In particular, the EPPM draws liberally from the work of Rogers’s protection motivation theory, Leventhal’s parallel process model, and Janis’s drive model. See Janis & Feshbach, *supra* note 20, at 87–92; Howard Leventhal, *Findings and Theory in the Study of Fear Communications*, in 5 *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 119, 120 (Leonard Berkowitz ed., 1970); Ronald W. Rogers, *A Protection Motivation Theory of Fear Appeals and Attitude Change*, 91 *J. PSYCHOL.* 93, 93 (1975); Ronald W. Rogers, *Cognitive and Physiological Processes in Fear Appeals and Attitude Change: A Revised Theory of Protection Motivation*, in *SOCIAL PSYCHOPHYSIOLOGY: A SOURCEBOOK* 153, 155–60 (John T. Cacioppo & Richard E. Petty eds., 1983).

<sup>102</sup> WITTE ET AL., *supra* note 9, at 24.

<sup>103</sup> Witte, *supra* note 15, at 329.

<sup>104</sup> WITTE ET AL., *supra* note 9, at 4, 24.

<sup>105</sup> *Id.* at 4.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 24.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* The EPPM’s prediction about the primacy of the threat appraisal is consistent with neuroscience research, which has confirmed the human brain has a fast lane, or “low road,” which it uses to evaluate all incoming sensory information for threats before the “thinking” part of the brain is even engaged with that information. See LEDOUX, *supra* note 1, at 163–65.

cancer.”).<sup>110</sup> The audience’s thoughts about these two aspects of threat—perceived susceptibility and perceived severity—affect whether the audience will pay attention to the threat.<sup>111</sup> If the audience believes both that they are part of the population that the bad thing happens to and that the threat is significant, the audience is likely to experience fear<sup>112</sup> or anxiety. A fearful or anxious audience, the EPPM predicts, will be moved to consider taking steps to avoid the threat.

But, getting the audience to pay attention to the threat is only half of the battle. Once the audience is willing to think about avoiding the threat, the audience will then evaluate the efficacy component of the fear appeal.<sup>113</sup> Like threat, efficacy also has two aspects: perceived response efficacy and perceived self-efficacy.<sup>114</sup> Perceived response efficacy represents the audience’s belief that the recommended response to the threat will actually work (e.g., “If I quit smoking, my risk of lung cancer will significantly decrease.”).<sup>115</sup> Perceived self-efficacy represents the audience’s belief that they are capable of performing the recommended response (e.g., “I am able to quit smoking.”).<sup>116</sup> Both types of efficacy must exist before members of the audience are likely to change their behavior positively in response to a threat.<sup>117</sup>

Responses to fear appeals tend to fall into three basic categories: (1) no response; (2) danger control responses; and (3) fear control responses.<sup>118</sup> The no response outcome is just like it sounds; the audience thinks about the fear appeal message and does nothing in response. This outcome commonly occurs when the audience believes the threat is trivial or irrelevant.<sup>119</sup> In the face of a low perceived threat, the audience is not motivated to consider how to avoid the threat, let alone to take action to avoid the threat.<sup>120</sup> Thus, the audience never moves past the threat component of the message to appraise the efficacy component.

The “danger control” outcome is the desired outcome. It is what designers of fear appeals are hoping to achieve: the audience thinks about the message and decides to change their behavior to avoid the danger revealed in the message. When

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<sup>110</sup> WITTE ET AL., *supra* note 9, at 24.

<sup>111</sup> *Id.*

<sup>112</sup> In fear appeal literature, fear includes a number of more nuanced psychological emotions (anxiety, concern, worry), as well as physiological responses (sweating, increased heart rate). *See* Witte, *supra* note 15, at 331.

<sup>113</sup> WITTE ET AL., *supra* note 9, at 24.

<sup>114</sup> *Id.* at 26.

<sup>115</sup> *Id.*

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

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

<sup>118</sup> Maloney et al., *supra* note 97, at 206.

<sup>119</sup> Witte, *Fear Control and Danger Control*, *supra* note 98, at 115.

<sup>120</sup> *Id.*; *see also* Witte et al., *Preventing Genital Warts*, *supra* note 98, at 582 (noting that women who “did not feel susceptible to genital warts . . . did not respond in either a positive or negative way to [a fear appeal] campaign” to decrease the spread of genital warts); Norman C.H. Wong & Joseph N. Cappella, *Anti-Smoking Threat and Efficacy Appeals: Effects on Smoking Cessation Intentions for Smokers Low and High in Readiness to Quit*, 37 J. APPLIED COMM. RES. 1, 2–3 (2009).

members of the audience engage in danger control, their actions are generally the result of a conscious thought process.<sup>121</sup> In that process, audience members accept that they are personally at risk of suffering a serious harm, believe that they are capable of doing something to minimize the risk, and then resolve to take preventative action. This thought process, and the danger control outcome, are most likely to occur when the audience's perceptions of the threat and the efficacy are both high.<sup>122</sup> A high threat/high efficacy message, for example, might convince an audience that they are a population susceptible to contracting HIV/AIDS (high susceptibility), that HIV/AIDS is a deadly disease (high severity), that condoms prevent the transmission of HIV/AIDS (high response efficacy), and that condoms are easy to obtain and use (high self-efficacy). According to the EPPM, this message would be the most effective kind of message available to inspire change in the intentions and behaviors of the audience.<sup>123</sup>

The "fear control" outcome, on the other hand, is the opposite of what the designer of the message hopes to achieve. It happens when the fear appeal backfires. In this outcome, instead of attempting to control the actual danger presented, the audience attempts to control their fear of the danger.<sup>124</sup> Unlike the danger control outcome, which is primarily a cognitive process, the fear control outcome is primarily an emotional process. Indeed, it is believed that "fear control responses may occur automatically and outside conscious awareness."<sup>125</sup> In other words, when audience members engage in fear control, they are not thinking logically; they are acting instinctually on their emotions. A fear control response, then, is a coping mechanism. Common fear control methods of coping with the anxiety brought on by a fear appeal include denial, ("Lung cancer won't happen to me; I've got good genes"), message avoidance ("I don't want to hear about the risk of lung cancer"), and reactance ("You can't tell me what to do! I'm going to smoke even more!").<sup>126</sup> These maladaptive outcomes are most likely to occur when the audience's

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<sup>121</sup> Witte, *supra* note 15, at 340; Witte, *Fear Control and Danger Control*, *supra* note 98, at 129.

<sup>122</sup> See Witte, *Fear Control and Danger Control*, *supra* note 98, at 115–16; Michael C. Kleinot & Ronald W. Rogers, *Identifying Effective Components of Alcohol Misuse Prevention Programs*, 43 J. STUD. ON ALCOHOL 802, 808–09 (1982); Patricia A. Rippetoe & Ronald W. Rogers, *Effects of Components of Protection-Motivation Theory on Adaptive and Maladaptive Coping with a Health Threat*, 52 J. PERSONALITY & SOC. PSYCHOL. 596, 601–03 (1987); Anthony J. Roberto & Catherine E. Goodall, *Using the Extended Parallel Process Model to Explain Physicians' Decisions to Test Their Patients for Kidney Disease*, 14 J. HEALTH COMM. 400, 400 (2009); Ronald W. Rogers & C. Ronald Mewborn, *Fear Appeals and Attitude Change: Effects of a Threat's Noxiousness, Probability of Occurrence, and the Efficacy of the Coping Responses*, 34 J. PERSONALITY & SOC. PSYCHOL. 54, 59–61 (1976); Jodi L. Smalec & Renee Storm Klinge, *Bulimia Interventions via Interpersonal Influence: The Role of Threat and Efficacy in Persuading Bulimics to Seek Help*, 23 J. BEHAV. MED. 37, 37 (2000).

<sup>123</sup> WITTE ET AL., *supra* note 9, at 26–28.

<sup>124</sup> *Id.* at 26.

<sup>125</sup> Witte, *Fear Control and Danger Control*, *supra* note 98, at 116.

<sup>126</sup> WITTE ET AL., *supra* note 9, at 26–27; Witte, *supra* note 15, at 332.

perception of the threat is high but their perception of the efficacy is low.<sup>127</sup> In other words, fear control outcomes begin occurring at a critical tipping point—when fear of the threat begins to overtake perceptions about whether the threat can be avoided. For example, in a study designed to raise awareness about the risks of radon exposure, participants who believed that the consequences of exposure were high but also believed that there was very little they could do to avoid exposure, responded with reactance.<sup>128</sup> Instead of attempting to take rational steps to control their risk of exposure, these participants responded to the radon fear appeal by convincing themselves that radon is just a government conspiracy created to scare people.<sup>129</sup> In this way, those participants effectively reduced their fear about radon (fear control), even though they did nothing to reduce their actual risk of radon exposure (danger control).

To promote danger control responses, a fear appeal should be designed to trigger perceptions that threat (perceived severity and susceptibility) and efficacy (perceived response and self-efficacy) are both high. The EPPM predicts, and research has borne out, that fear appeals with high levels of threat and high levels of efficacy are the most effective in changing audience behavior.<sup>130</sup> Conversely, fear appeals with high levels of threat and low levels of efficacy are most likely to backfire, causing fear control responses like denial and reactance.<sup>131</sup> The remaining two configurations—low threat/low efficacy and low threat/high efficacy—are not particularly persuasive either. Low threat/low efficacy messages are the most likely to be ignored entirely by the audience.<sup>132</sup> And low threat/high efficacy messages tend to lead to mixed results: some listeners never make it past the threat appraisal—finding the threat to be insignificant, they are unmotivated to consider the recommended response—while other listeners behave proactively and change their behavior.<sup>133</sup> Thus, the EPPM offers clear advice to those with an audience to persuade: develop messages that are high threat/high efficacy.<sup>134</sup>

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<sup>127</sup> See WITTE ET AL., *supra* note 9, at 26; Kleinot & Rogers, *supra* note 122, at 807; Rippetoe & Rogers, *supra* note 122, at 598–600; Rogers & Mewborn, *supra* note 122, at 59; Witte & Allen, *supra* note 20, at 606–07.

<sup>128</sup> Kim Witte et al., *Radon Awareness and Reduction Campaigns for African-Americans: A Theoretically Based Evaluation*, 25 HEALTH EDUC. & BEHAV. 284, 292 (1998).

<sup>129</sup> *Id.*

<sup>130</sup> Rogers & Mewborn, *supra* note 122, at 59.

<sup>131</sup> WITTE ET AL., *supra* note 9, at 26.

<sup>132</sup> *Id.* at 24.

<sup>133</sup> Compare Witte & Allen, *supra* note 20, at 594–95, 600 (finding that low threat/high efficacy messages produced little, if any, persuasive effect), with Sprinkle et al., *supra* note 12, at 398–99 (finding that no threat/high efficacy messages produced the most persuasive effect).

<sup>134</sup> Witte & Allen, *supra* note 20, at 604 (“A persuader should promote high levels of threat and high levels of efficacy to promote attitude, intention, and behavior changes.”).

	<b>Low Efficacy</b>	<b>High Efficacy</b>
<b>Low Threat</b>	No Response	Mixed (No Response or Danger Control)
<b>High Threat</b>	Fear Control (Denial/Reactance)	Danger Control

### B. The EPPM Meets Law Students

The simplicity of the EPPM's advice, however, is belied when it is applied to law school students—a population high in preexisting anxiety. Communication scholars have studied the impact of individual differences in audience members, like personality traits and demographics, on the processing of fear appeal messages.<sup>135</sup> One individual difference that has received attention from these scholars is anxiety.<sup>136</sup> In social science literature, anxiety is generally divided into two categories: trait anxiety and state anxiety.<sup>137</sup> “Trait anxiety” is a measure of a person's natural anxiety both generally and about a particular topic; it is thought not to change significantly over time.<sup>138</sup> “State anxiety,” on the other hand, is a measure of a person's anxiety during a particular period of time, such as before an important test.<sup>139</sup>

<sup>135</sup> See, e.g., John J. Burnett & Richard L. Oliver, *Fear Appeal Effects in the Field: A Segmentation Approach*, 16 J. MARKETING RES. 181, 182–83 (1979) (studying the impact of fear appeals on individuals from different demographics, including education, age, and income, as well as individuals with different personality traits including self-esteem and assertiveness); John C. Mowen et al., *Personality Traits and Fear Response to Print Advertisements: Theory and an Empirical Study*, 21 PSYCH. & MARKETING 927, 932 (2004) (studying the impact of fear appeals on individuals with various personality traits, including introversion/extraversion; conscientiousness; openness to experience, or creativity; emotional instability, or neuroticism; and agreeableness); Steffen Nestler & Boris Egloff, *When Scary Messages Backfire: Influence of Dispositional Cognitive Avoidance on the Effectiveness of Threat Communications*, 44 J. RES. PERSONALITY 137, 138 (2010) (studying the impact of fear appeals on individuals who tend to cope with threats by “cognitive avoidance”—trying to avoid thinking about the threats).

<sup>136</sup> See, e.g., Irving L. Janis & Seymour Feshbach, *Personality Differences Associated with Responsiveness to Fear-Arousing Communications*, 23 J. PERSONALITY 154, 154 (1954); Karin Mogg et al., *Effects of Stress and Anxiety on the Processing of Threat Stimuli*, 59 J. PERSONALITY & SOC. PSYCHOL. 1230, 1231 (1990); Kim Witte & Kelly Morrison, *Examining the Influence of Trait Anxiety/Repression-Sensitization on Individuals' Reactions to Fear Appeals*, 64 W. J. COMM. 1, 1 (2000).

<sup>137</sup> See Charles D. Spielberger, *Theory and Research on Anxiety*, in ANXIETY AND BEHAVIOR 3, 12–16 (Charles D. Spielberger ed., 1966).

<sup>138</sup> See *id.* at 13.

<sup>139</sup> *Id.*

As a group, law students suffer from chronic, elevated state anxiety.<sup>140</sup> Reports of this kind of law student distress are plentiful. Empirical research has repeatedly confirmed that law students suffer significantly more depression and anxiety than not only the general population<sup>141</sup> but also other graduate-level students.<sup>142</sup> Trait anxiety is not to blame; studies have confirmed that law students are not inherently more anxious people than members of the general public.<sup>143</sup> Rather, the research squarely points to law school as the cause of law student anxiety.<sup>144</sup> In one study, psychologists observed that in a short time, an entering class with distress levels commensurate with those of the general population, exhibited levels of anxiety and depression eight to fifteen times more than the general population.<sup>145</sup> As professors, we are witness to this “undoing of our students’ collective energy, enthusiasm, and engagement after only a few months in law school.”<sup>146</sup> And this anxiety, rather than diminishing as students adjust to their new educational and professional environment, has been demonstrated to actually increase in each year of law school.<sup>147</sup> Indeed, the elevated levels of stress present in the third year of law school have been found to extend into the first years of practice.<sup>148</sup>

For an environment saturated with this kind of preexisting anxiety, fear appeals research does not provide entirely clear recommendations for message designers.<sup>149</sup>

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<sup>140</sup> Benjamin et al., *supra* note 67, at 246.

<sup>141</sup> Dammeyer & Nunez, *supra* note 67, at 67; Shanfield & Benjamin, *supra* note 67, at 68–69.

<sup>142</sup> Dammeyer & Nunez, *supra* note 67, at 67 (“[L]aw students tend[] to report higher levels of depression and anxiety than those reported by among medical students.”); Leonard D. Eron & Robert S. Redmount, *The Effect of Legal Education on Attitudes*, 9 J. LEGAL EDUC. 431, 435–36 (1957) (finding that first-year law students experience more anxiety than first-year medical students); Shanfield & Benjamin, *supra* note 67, at 68–70.

<sup>143</sup> Benjamin et al., *supra* note 67, at 246–47; Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL’Y, L. & ETHICS 357, 359 (2009); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 271 (2004) (finding that entering students arrive with anxiety levels mirroring those of the general population).

<sup>144</sup> Benjamin et al., *supra* note 67, at 247; Dammeyer & Nunez, *supra* note 67, at 61; Sheldon & Krieger, *supra* note 143, at 280–81.

<sup>145</sup> Krieger, *supra* note 67, at 114.

<sup>146</sup> *Id.* at 113.

<sup>147</sup> Eron & Redmount, *supra* note 142, at 435–36.

<sup>148</sup> Benjamin et al., *supra* note 67, at 247–48.

<sup>149</sup> Indeed, the EPPM’s principles do not explicitly account for state anxiety. The author of the EPPM has, however, examined the impact of trait anxiety on the effectiveness of fear appeals. Witte & Morrison, *supra* note 136, at 2. In that study, the author concluded that trait anxiety will affect an individual’s perception of the threat and efficacy components of a fear appeal. *Id.* at 22. In other words, a naturally high-anxiety person will process these message components differently than a naturally low-anxiety person. *Id.* For example, a high-anxiety person is more likely to perceive the threat as more threatening than it really is, and the efficacy as less efficacious than it really is. *Id.*

As one researcher has observed, “there is a notable lack of theoretical and empirical clarity in the fear appeal literature concerning what type of message is most effective” for populations already experiencing high anxiety about a particular topic.<sup>150</sup> Some authors advocate a moderate threat/high efficacy approach,<sup>151</sup> while other authors advocate a no threat/high efficacy approach.<sup>152</sup> Still others question whether, when an audience’s fear crosses some upper limit, any message at all can effectively convince that audience to take a recommended action.<sup>153</sup> Although the literature is inconsistent regarding the ideal balance between threat and efficacy for fearful audiences,<sup>154</sup> the weight of the research does suggest that high threat fear appeals are not effective in populations that have high preexisting fear.<sup>155</sup>

For example, in one study involving 145 undergraduates at a midwestern university, researchers tested the effects of introducing fear-arousing messages about meningitis to college students.<sup>156</sup> Undergraduates, who often live in dorms or other close-quarters, were selected for the study because they are at a significantly elevated risk for contracting meningitis, a nasty and potentially life-threatening disease.<sup>157</sup> Before lecturing about meningitis, researchers administered a pretest that

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<sup>150</sup> Nithya Muthusamy et al., *Scaring the Already Scared: Some Problems with HIV/AIDS Fear Appeals in Namibia*, 59 J. COMM. 317, 318 (2009).

<sup>151</sup> Kenzie A. Cameron et al., *Preventing HIV Transmission Along the Trans-Africa Highway in Kenya: Using Persuasive Message Theory in Formative Education*, 18 INT’L Q. COMMUNITY HEALTH EDUC. 331 (1999).

<sup>152</sup> Kim Witte et al., *A Theoretically Based Evaluation of HIV/AIDS Prevention Campaigns Along the Trans-Africa Highway in Kenya*, 3 J. HEALTH COMM. 345, 359 (1998) (noting that pamphlets focusing on efficacy, while normally not as effective as high threat/high efficacy messages, are persuasive for populations already high in preexisting fear).

<sup>153</sup> Muthusamy et al., *supra* note 150, at 339.

<sup>154</sup> *Id.* at 318 (noting that “[a]lthough some authors advocate a moderate threat/high-efficacy strategy to promote message acceptance in a high preexisting fear context, others advocate a no-threat, high self-efficacy strategy” (citations omitted)).

<sup>155</sup> *See, e.g.*, Franklin J. Boster & Paul Mongeau, *Fear-arousing Persuasive Messages*, in COMMUNICATIONS YEARBOOK 8, at 330 (Robert N. Bostrom & Bruce H. Westley eds., 1984) (finding that high threat messages are less persuasive than low threat messages for anxious audiences); Janis & Feshbach, *supra* note 136, at 162 (“[P]ersons who manifest chronic symptoms of high anxiety are less influenced than others when exposed to a strong fear appeal.”); John J. Wheatley & Sadaomi Oshikawa, *The Relationship Between Anxiety and Positive and Negative Advertising Appeals*, 7 J. MARKETING RES. 85, 87 (1970) (finding that high threat fear appeals are less effective with high-anxiety individuals than low-anxiety individuals); *see also* WITTE ET AL., *supra* note 9, at 28 (noting the EPPM suggests anxiety indirectly influences reactions to fear appeals because “highly anxious people may be more likely to reach the critical point where perceived threat exceeds perceived efficacy . . . sooner”). *But see* Witte & Morrison, *supra* note 136, at 23 (suggesting that “although trait anxiety [as opposed to state anxiety] influences perceptions of threat and efficacy[,] . . . it appears to do so in a manner that has no ultimate influence on attitudes, intentions, and behaviors”).

<sup>156</sup> Gore & Bracken, *supra* note 81, at 31.

<sup>157</sup> *Id.* at 28.



was designed to measure the students' levels of preexisting state anxiety about the disease.<sup>158</sup> Two groups of students emerged—those with high preexisting levels of fear about the risk of contracting meningitis and those with low preexisting levels of fear about the risk of contracting meningitis.<sup>159</sup> Members of each group were then exposed to either a high threat/no efficacy message or a no threat/high efficacy message about meningitis.<sup>160</sup> Results of the study revealed that the high threat message backfired with fearful students.<sup>161</sup> Those students who were already anxious about their risk of contracting meningitis rejected the lecture's warnings and engaged in fear control processes; without an efficacy component, the message triggered students' desire to cope with their fear, through denial or reactance, rather than with the actual danger.<sup>162</sup> On the other hand, anxious students who received the no threat/high efficacy message reported intentions to get vaccinated against the disease—the desired danger control response.<sup>163</sup>

In another study, authors found that all manner of fear appeals failed to change attitudes, intentions, or behaviors in a high fear population.<sup>164</sup> The study's participants were Namibian students, male and female.<sup>165</sup> All had high levels of preexisting fear regarding HIV/AIDS, a disease that was ravaging and continues to ravage the Namibian population.<sup>166</sup> The study randomly assigned participants to receive one of six message designs involving the participants' risk of contracting HIV/AIDS: high threat/high efficacy, high threat/low efficacy, low threat/high efficacy, low threat/low efficacy, no message, and high efficacy only.<sup>167</sup> After analyzing the data, the authors concluded that high threat and low threat fear appeals are ineffective in the face of high preexisting fear.<sup>168</sup> Participants exposed to any level of threatening health-risk message reported little change in their intentions to use condoms to prevent transmission of HIV/AIDS.<sup>169</sup> And, although the data indicated that the efficacy-only messages also failed to change intentions, the

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<sup>158</sup> *Id.* at 34.

<sup>159</sup> *Id.* at 33. The study describes students with high preexisting fear about meningitis as “fear control” students, and students with low preexisting fear about meningitis as “danger control” students. *Id.*

<sup>160</sup> *Id.* at 34.

<sup>161</sup> *Id.* at 35.

<sup>162</sup> *Id.* at 36–37.

<sup>163</sup> *Id.* at 35.

<sup>164</sup> Muthusamy et al., *supra* note 150, at 335.

<sup>165</sup> *Id.* at 324.

<sup>166</sup> *Id.* at 337.

<sup>167</sup> *Id.* at 324.

<sup>168</sup> *Id.* at 339.

<sup>169</sup> *Id.* The authors noted just one “encouraging finding” for fear appeals as a result of this study—that neither the high threat nor the low threat messages seemed to backfire. *Id.* Even though the population in this particular study did not appear to engage in denial, message avoidance, or reactance, the authors did not foreclose that *other* populations might respond that way. *Id.* Indeed, the EPPM predicts such maladaptive responses when individuals engage in fear control. *Id.* Thus, the authors recommended that fear appeals be avoided “when the target audience is already scared.” *Id.*

authors left open the possibility that efficacy-only messages might be effective with high anxiety populations in other circumstances.<sup>170</sup> Specifically, the authors noted that because HIV/AIDS has reached epidemic proportions in Namibia, it was possible that the anxiety the participants felt about the disease was simply too high to overcome with an efficacy message about access to and appropriate use of condoms.<sup>171</sup>

The results of these studies are consistent with the EPPM theory's core prediction: that when perceptions of fear begin to exceed perceptions of efficacy, fear appeals fail. Given that the cardinal rule of persuasion is "know your audience,"<sup>172</sup> law professors ignore the psychological well-being of law students at their peril. Although no empirical research has been conducted regarding the impact of prolonged, general state anxiety rather than time- or topic-specific state anxiety on the processing of fear appeals, a highly anxious student body may be less able to process fear appeals, regardless of topic, in a way that leads to danger control. In other words, if law students are anxious about *everything*, it seems likely that this heightened general anxiety will impact the way they process topic-specific threats (e.g. "being inattentive to commas could cost your client millions") from cautionary tales. Indeed, Witte has recognized that anxious people tend to blow all threats out of proportion and tend to overestimate the difficulty of all recommended responses.<sup>173</sup> Thus, when an anxious law-student population processes the threat component of a fear appeal, those students are likely to reach the EPPM's "critical point" sooner. Once that critical point is reached, students are unlikely to adopt the professor's recommended response. Worse, the EPPM predicts that those students will try to control their fear of the threat by actively rejecting or avoiding the recommended response. Too much fear, then, has the perverse effect of promoting behaviors that will not help a student avoid a risk; students in fear control are less likely to seek out help from the professor or teaching assistants<sup>174</sup> and are more likely to procrastinate.<sup>175</sup>

In addition to promoting imprudent "head in the sand" behaviors, fear appeals may have an even more direct negative impact on law student learning outcomes, at least as they are measured by tests or writing assignments. Fear appeals have been correlated with higher test anxiety and lower test performance, regardless of preexisting levels of anxiety.<sup>176</sup> Although fear appeal research in the classroom

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<sup>170</sup> *Id.* at 338.

<sup>171</sup> *Id.*

<sup>172</sup> *See, e.g.*, MARY BETH BEAZLEY, A PRACTICAL GUIDE TO APPELLATE ADVOCACY 3–6 (4th ed. 2014); MICHAEL D. MURRAY & CHRISTY H. DESANCTIS, ADVERSARIAL LEGAL WRITING AND ORAL ARGUMENT 4 (2006); LOUIS J. SIRICO, JR. & NANCY L. SCHULTZ, PERSUASIVE LEGAL WRITING 109 (3d ed. 2011).

<sup>173</sup> WITTE ET AL., *supra* note 9, at 28.

<sup>174</sup> Sprinkle et al., *supra* note 12, at 396.

<sup>175</sup> *See* Witte, *supra* note 15, at 332 ("Individuals may defensively avoid a message by being inattentive to the communication . . . or by suppressing any thoughts about the threat . . .").

<sup>176</sup> Putwain & Best, *supra* note 12, at 580, 582; Putwain & Symes, *supra* note 12, at

context is sparse, at least one study suggests that fear appeals are causally related to higher test anxiety and lower test performance.<sup>177</sup> In that study, elementary school students were asked to take two math tests: one at the end of a week designed to be high in fear appeals (teachers frequently reminded students of the consequences of failing) and one at the end of a week designed to be low in fear appeals (teachers infrequently reminded students of the consequences of failing).<sup>178</sup> Following the high fear appeal week, students reported significantly more test anxiety and their test scores were significantly lower.<sup>179</sup>

In a comprehensive study of predictors of bar exam performance, a group of psychologists found that test anxiety relates significantly to bar exam failure in both first and second time takers.<sup>180</sup> The authors noted that “even after taking [law school GPA] into account, having greater dispositional test anxiety was debilitating to bar exam performance.”<sup>181</sup> These findings generally confirm what has been known to be true in other educational contexts: “test anxiety is related to deficits in exam performance at all academic levels.”<sup>182</sup> Not only does test anxiety negatively impact performance on an exam, it also inhibits content acquisition before an exam.<sup>183</sup>

In light of the heightened risk that fear appeals will backfire and impede learning outcomes among anxious student populations, professors should proceed with caution when using fear as a persuasive device with law students. The following section recommends ways that professors can minimize the negative consequences of fear appeals in the law school classroom.

#### IV. IMPROVING THE EFFECTIVENESS OF LAW SCHOOL CAUTIONARY TALES

The EPPM teaches that fear appeals can be quite persuasive when message designers are attentive to audience features as well as the balance of threat and efficacy in a particular message. Among law students, who are a population high in preexisting anxiety, and are likely to reach the EPPM’s “critical point” sooner, messages that focus on the efficacy component of a fear appeal and downplay the threat component will be the most likely to motivate law students to adopt danger control responses rather than fear control responses. In other words, based on existing fear appeals literature, law students are likely to respond best to low threat/high efficacy and no threat/high efficacy configurations. From these general,

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458–59; Dave Putwain & Wendy Symes, *Perceived Fear Appeals and Examination Performance: Facilitating or Debilitating Outcomes?*, 21 LEARNING & INDIVIDUAL DIFFERENCES 227, 231 (2011).

<sup>177</sup> Putwain & Best, *supra* note 12, at 580, 582.

<sup>178</sup> *Id.* at 581.

<sup>179</sup> *Id.* at 582.

<sup>180</sup> Keith A. Kaufman et al., *Passing the Bar Exam: Psychological, Educational, and Demographic Predictors of Success*, 57 J. LEGAL EDUC. 205, 213–14 (2007).

<sup>181</sup> *Id.* at 215.

<sup>182</sup> *Id.* at 207.

<sup>183</sup> *Id.*

theory-based configurations, some specific recommendations emerge about message design for law students.

### A. Minimize the “Threat” Level

#### 1. Use Cautionary Tales Sparingly

Any teaching technique becomes less effective when overused. But moderation is particularly important when using fear appeals to persuade students.<sup>184</sup> First, fear appeals may have a cumulative effect. While a student may believe that she is capable of avoiding one particular risk illustrated by one cautionary tale, she may feel incapable of avoiding ten risks illustrated by ten cautionary tales. No matter how simple or elegant a professor believes her efficacy messages to be, the combined weight of a semester’s worth of threats may cause students’ perceptions of the threats to outweigh their perceptions of their ability to avoid those threats. Thus, while a student might believe himself capable of proofreading a brief for punctuation errors, he may not, for example, believe himself capable of proofreading a brief for punctuation errors, *and* accurately citing the law per *The Bluebook*, *and* effectively rebutting adverse authority, *and* using persuasive writing techniques, etc. Certainly, these are just a few of the many pre-writing and writing steps that an attorney must take to craft an effective legal argument, and a law student must learn to be capable of each of these tasks and more, not only in isolation but in conjunction with one another. Yet, with this ultimate goal in mind, a professor’s pedagogy should be planned to ensure that the number of tasks in the writing process that are introduced to students via a fear appeal remains small.

Second, students may become desensitized to fear appeals. The work of two psychologists suggests that people have a finite pool of worry.<sup>185</sup> Once that pool is filled, individuals are incapable of experiencing more worry about a new threat without diminishing existing worry about an old threat.<sup>186</sup> Repeated exposure to fear appeals, then, may not only impede the effectiveness of new fear appeals, but may also undo positive effects on behavior that prior fear appeals motivated. Additionally, if fear appeals are routinely used, students may have difficulty discerning which threats are the most important to address. For example, a string of fear appeals designed to warn students about the impact of needless jargon on

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<sup>184</sup> See Seigel, *supra* note 43, at 1195 (warning against overuse of “war stories” as a teaching technique).

<sup>185</sup> Patricia W. Linville & Gregory W. Fischer, *Preferences for Separating or Combining Events*, 60 J. PERSONALITY & SOC. PSYCHOL. 5, 18 (1991); see also Linda Brennan & Wayne Binney, *Fear, Guilt, and Shame Appeals in Social Marketing*, 63 J. BUS. RES. 140, 144 (2010) (finding that “[p]eople reach a point of emotional saturation with [fear] appeals”).

<sup>186</sup> See Linville & Fischer, *supra* note 185, at 18; Elke U. Weber, *Experience-Based and Description-Based Perceptions of Long-Term Risk: Why Global Warming Does Not Scare Us (Yet)*, 77 CLIMATIC CHANGE 103, 114–15 (2006).

readability might desensitize students to a later fear appeal about a more critical lesson, like the importance of Shephardizing.<sup>187</sup>

By limiting the number of cautionary tales that are told in their courses, professors can preserve the effectiveness of the fear appeal technique and reduce the risk of overwhelming students with fear-arousing messages.

### 2. *Be Attentive to Timing*

Semesters have an ebb and flow. By delivering cautionary tales at lower-stress times in the school year, professors can take advantage of a lull in student anxiety.<sup>188</sup> Students will likely be more receptive to cautionary tales at the beginning of the semester, right after a graded writing assignment is due, or after midterms in doctrinal law classes. When preexisting anxieties are idling lower, adding a fear appeal into that environment is less likely to cause student fears to exceed their perceptions of efficacy. If students believe they can prevent a fear from being actualized, they will be more likely to engage in danger control rather than fear control processes.

### 3. *Avoid Vivid or Personalized Language*

The threats in the cautionary tales that we tell our students are often fairly high. First, the consequence suffered by the protagonist in many cautionary tales is severe—the lawyer is disbarred, loses the client millions of dollars, or is sanctioned by the court. Although the risk is sometimes reputational alone, “benchslaps” also represent serious threats, particularly to a student body that spends much of its time trying to avoid analogous humiliation at the hands of ardent users of the Socratic method. Thus, students’ perceived severity of the threats is likely high.

Second, law students are part of the population of people who are subject to these risks. They are studying to join the legal profession; therefore, they are at risk of running afoul of ethical and professional rules and expectations. So, the perceived susceptibility component of the threat in this context is also high.

Together, both the perceived severity and susceptibility facets of the threat component of fear appeals create a significant threat to our students’ professional well-being. Because theory predicts that law students will be more persuaded by no threat or low threat appeals, law professors should attempt to soften both the perceived severity and perceived susceptibility aspect of cautionary tales. For general populations, which are most persuadable by high threat/high efficacy

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<sup>187</sup> “Shephardizing” means to check the subsequent history and later treatment of a case to determine its precedential value. BLACK’S LAW DICTIONARY 1587 (10th ed. 2014). An attorney who fails to Shephardize a case may find him or herself relying on authority that has been overruled or is otherwise no longer good law.

<sup>188</sup> Certainly, professors should not insert fear into these periods simply so that students have no respite from the anxieties of law school. Rather, I simply suggest that when using fear appeals for a pedagogical purpose, those appeals may be more effective during times in the semester when students are under less immediate pressures.

messages, Professor Witte recommends increasing perceptions of threat by using vivid and personalized language.<sup>189</sup> The inverse then should lower perceptions of threat: using neutral and impersonal language.

For example, in a study regarding the impact of fear appeals on AIDS prevention behaviors among college students, the researcher manipulated threat levels in a fear appeal by changing the language used to convey the threat.<sup>190</sup> To create a high threat condition, the message described the effect of HIV/AIDS on one patient in vivid language: “On admission, the patient complained of fatigue and bleeding, oozing sores all over his body.”<sup>191</sup> Additionally, the message emphasized the susceptibility of the audience to the disease by using personal pronouns (“*your*” risk of getting HIV/AIDS) and highlighting the HIV infection rates in the audience’s population—college students.<sup>192</sup> To create a low threat condition, the message was changed to contain unexpressive language (“On admission, the patient complained of fatigue and a rash”) and avoided both personal pronouns and specific references to the audience’s population.<sup>193</sup> The study found that those students who were exposed to the message with neutral and impersonal language experienced less fear than those who were exposed to the vivid, personalized message.<sup>194</sup>

In a high threat condition, a cautionary tale about the importance of diligent legal research might be described this way:

If your legal research is inadequate, you can be successfully sued for malpractice. Indeed, one lawyer’s failure to locate law that could have been gleaned by using what the court called “standard research techniques,” cost him \$100,000. In *Smith v. Lewis*,<sup>195</sup> a 1975 malpractice action in California, the jury found attorney Lewis negligent and awarded \$100,000 to his client.<sup>196</sup> Although California law at the time indicated the viability of a claim that the client had a community property interest in her husband’s retirement benefits, Lewis failed to assert that interest.<sup>197</sup> As a result, his client lost a substantial amount of pension money to which she was entitled. Claiming litigation strategy is unlikely to protect you from malpractice liability if your research has been deficient. While the court recognized that lawyers are permitted to make tactical decisions in litigation, it warned that a lawyer who fails to perform adequate research does not satisfy his duty to give the client an informed judgment. Calling

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<sup>189</sup> WITTE ET AL., *supra* note 9, at 74.

<sup>190</sup> Witte, *Fear Control and Danger Control*, *supra* note 98, at 120.

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

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* at 124.

<sup>195</sup> 530 P.2d 589 (Cal. 1975).

<sup>196</sup> *Id.* at 597.

<sup>197</sup> *Id.* at 596.

the lawyer's conduct "culpable,"<sup>198</sup> the court scolded, "There is nothing strategic or tactical about ignorance."<sup>199</sup>

To lower the fear likely to be aroused by this cautionary tale, a professor could provide the consequence in less vivid language and could avoid directly referring to students' personal risk of experiencing that consequence. For example:

In *Smith v. Lewis*, a 1975 malpractice action in California, the jury found attorney Lewis liable for malpractice. Although California law at the time indicated the viability of a claim that his client had a community property interest in her husband's retirement benefits, Lewis failed to assert that interest. While the court recognized that lawyers are permitted to make tactical decisions in litigation, it stated that a lawyer who fails to perform adequate research does not satisfy his duty to give the client an informed judgment. The court then outlined an attorney's duty to determine the state of the law: a lawyer must "possess knowledge of those plain and elementary principles of law which are commonly known by well-informed attorneys, and . . . discover those additional rules of law which, although not commonly known, may readily be found by standard research techniques."<sup>200</sup>

In many instances a professor's shift in language and presentation need only be minimal and subtle.

## *B. Maximize Efficacy*

### *1. Narrow the Scope of the Fear Appeal*

Threat motivates action. Whether that action will be a rational, concrete action or an emotional reaction depends on the efficacy component of the message. While threat motivates the audience to move, efficacy governs the direction they will move in—toward the recommended response or away from it. To maximize the number of students moving toward the recommended response, professors should be deliberate about increasing student perceptions of response efficacy and self-efficacy.

To improve student perceptions of both components of efficacy, I avoid telling cautionary tales about attorneys who were, in the words of one court, "alarmingly deficient."<sup>201</sup> These stories are generally too broad and involve too many professional missteps to be paired with simple efficacy messages. For example, in 2011 the Seventh Circuit Court of Appeals issued an opinion in which it affirmed

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<sup>198</sup> *Id.*

<sup>199</sup> *Id.* at 595 (quoting *Pineda v. Craven*, 424 F.2d 369, 372 (9th Cir. 1970)).

<sup>200</sup> *Id.*

<sup>201</sup> *Stanard v. Nygren*, 658 F.3d 792, 801 (7th Cir. 2011).

the dismissal of the plaintiff's case with prejudice and ordered the hapless plaintiff's attorney to show cause why he should not be disbarred for his incomprehensible filings in the case.<sup>202</sup> Among the court's grievances were the lack of punctuation and the length of the plaintiff attorney's sentences, many of which exceeded 100 words, and one of which stretched on for 345 words.<sup>203</sup> The court also noted that the attorney's sentences were often incomprehensible "gibberish" and were riddled with grammatical and spelling errors.<sup>204</sup> Prior to appeal, the district court catalogued some of the errors in the attorney's work and gave the attorney multiple opportunities to refile.<sup>205</sup> Although he refiled, he did not bother to fix the errors that the court identified.<sup>206</sup> Following appeal, the attorney requested three extensions for his opening brief and even with those extensions, he missed the deadline.<sup>207</sup> He was similarly untimely with his filings to the district court, at one point requesting an extension of a September 30 filing deadline on the grounds that his computer was damaged in an earthquake in another state in July.<sup>208</sup> On the whole, the Seventh Circuit expressed its dismay with the attorney's handling of the case and gave the attorney twenty-one days to show cause why he should not be disbarred or suspended for his failures.<sup>209</sup>

Although stories like these might get a laugh out of some students because of the outrageousness of the attorney's mistakes,<sup>210</sup> these stories have the potential to trigger fear responses in other, particularly weaker, students. For weak students who perceive themselves susceptible to a number of this attorney's failings—like writing overly long sentences, making grammatical mistakes, and missing deadlines—it is difficult to offer a simple efficacy message. Professors cannot realistically, in the span of a few minutes or even a class period, provide students with all of the tools necessary to avoid the pitfalls of this attorney. There are just too many. Thus, because professors cannot offer a simple antidote to the risk introduced—beyond "don't be a bad writer like this guy"—students' perceived response efficacy for a story like this is likely to be low.

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<sup>202</sup> *Id.* at 802.

<sup>203</sup> *Id.* at 798.

<sup>204</sup> *Id.* at 799.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* at 796.

<sup>208</sup> *Id.* at 795.

<sup>209</sup> *Id.* at 801–02.

<sup>210</sup> Students who respond to this story with laughter are also unlikely to be motivated by it. According to the EPPM, in order for students to be motivated by a fear appeal, they must perceive that they are susceptible to the threat presented in the fear appeal. WITTE ET AL., *supra* note 9, at 24. Students who think this story is funny probably do not believe that they could find themselves in that attorney's shoes. Indeed, the attorney the Seventh Circuit chastised was so inept that students are unlikely to perceive themselves as susceptible to being that inept. Thus, for those students, while this story may introduce some levity into the classroom, it is unlikely to motivate them to change their behavior.



Additionally, for a student who believes that she is “a bad writer” or “not good at writing,” a story about an attorney almost getting disbarred for filing an incomprehensible brief is unlikely to move her into danger control. Because this story is not a good vehicle for introducing manageable steps to avoid the attorney’s many deficiencies, the students’ perceived self-efficacy is also likely to be low. Without concrete recommendations about how to avoid the risk, the student may not believe herself capable of filing anything other than an “incomprehensible brief”—an abstract label for a host of individual concrete problems. Thus, at best, the student will not respond to the cautionary tale and, at worst, the student will respond with reactance.

Narrower stories better lend themselves to designing messages likely to invoke high perceptions of efficacy. For example, to emphasize the importance of following instructions, I often show students an opinion in which an attorney was sanctioned for failing to follow the instructions in the Federal Rules of Appellate Procedure (FRAP).<sup>211</sup> In that case, an attorney filed a brief with the Ninth Circuit that violated the FRAP by using a smaller typeface for the footnotes than permitted and using 1.5 line spacing rather than double spacing.<sup>212</sup> The court estimated that by fudging the formatting, the attorney exceeded the page limit by fifteen pages.<sup>213</sup> The court also noted that although the attorney fixed the spacing in the reply brief, the footnotes in that brief also did not comply with the FRAP.<sup>214</sup> Because of these violations, the court imposed \$1,500 in sanctions against the attorney.<sup>215</sup> In this cautionary tale, the threat is narrow—being sanctioned for violating the FRAP. Crafting an efficacy message that students will perceive to effectively address the threat and to be easy to execute is a more achievable task for professors.

After sharing this cautionary tale, I help the students locate and look at the specific FRAP that the attorney violated. Students discover that Rule 32 is full of detailed specifications about format and document design for appellate briefs, down to the binding method and the color of paper.<sup>216</sup> Many students are surprised that the federal courts care so much about format, which has the added benefit of making my formatting rules look more reasonable. By reviewing the rule that the attorney violated in the cautionary tale, I am able to give my students a small, concrete step they can take to avoid the negative consequence. The “bad writer” student does not know where to begin to avoid filing an “incomprehensible” brief, but after leaving class she can be confident that she knows how to find the FRAP and how to comply with at least one of its rules. By narrowing the scope of the fear appeal, professors can increase both response efficacy and self-efficacy.

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<sup>211</sup> Kano v. Nat’l Consumer Coop. Bank, 22 F.3d 899 (9th Cir. 1994).

<sup>212</sup> *Id.* at 899.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *See* FED. R. APP. P. 32.

## 2. *Make the Efficacy Explicit*

Explicit recommendations are more effective than implicit recommendations.<sup>217</sup> For example, “check for and review the local rules before filing a brief” and “consult a style manual when you are unsure where to place an apostrophe” are explicit recommendations. They tell the audience exactly what to do to avoid a risk. On the other hand, implicit messages assume that the audience will know what to do to avoid the risk without being told. The “this is your brain on drugs” campaign relies on an implicit efficacy message. It does not tell the listener what to do to avoid the “fried brains” consequence; rather, it assumes that the listener knows what to do. Although the implicit efficacy message may seem plain—“you shouldn’t do drugs”—research has found that audiences do not uniformly reach this implicit message. Rather, a message highlighting the negative consequences of doing drugs might simply convince a listener that drugs are dangerous, not that the listener should stop using them. Because of its failure to articulate an explicit efficacy message, the “this is your brain on drugs” campaign has been criticized by fear appeals researchers as a “good example of a bad fear appeal.”<sup>218</sup>

To improve both components of perceived efficacy, professors should articulate the recommended response—even if that response seems obvious. For example, in a case out of the Wisconsin Court of Appeals, the attorney attempted to cite an unpublished opinion in support of his client’s position.<sup>219</sup> The citation proved problematic in two respects. First, as a general rule, Wisconsin’s rules of appellate procedure prohibit citation of unpublished opinions as precedent.<sup>220</sup> Second, the attorney got half of the case name wrong and failed to follow *The Bluebook* format for the case location information, which forced the court to go through a “time-consuming” effort to locate the actual opinion.<sup>221</sup> For his citation sloppiness, the court fined the attorney \$100.<sup>222</sup>

The “obvious,” implicit recommended response to this story is twofold—consult the local rules and *The Bluebook* before filing a brief. However, students who are unfamiliar with local rules and who are uncomfortable navigating *The Bluebook* not only need that message explicitly, but they also need even more detailed guidance. Thus, to ensure that students feel capable of adopting the recommended response, a professor could walk the students through the process of locating local rules in a jurisdiction to determine whether the use of unpublished opinions is permitted. Then, to test their understanding, students could be asked to

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<sup>217</sup> WITTE ET AL., *supra* note 9, at 7.

<sup>218</sup> Jerold L. Hale & James Price Dillard, *Fear Appeals in Health Promotion Campaigns: Too Much, Too Little, or Just Right?*, in *DESIGNING HEALTH MESSAGES: APPROACHES FROM COMMUNICATION THEORY AND PUBLIC HEALTH PRACTICE* 65, 79 (Edward Maibach & Roxanne Louiselle Parrott eds., 1995).

<sup>219</sup> *Espitia v. Fouche*, 758 N.W.2d 224, 2008 WL 4058057, at \*3 n.5 (Wis. Ct. App. 2008) (unpublished table decision).

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

locate the local rules in another jurisdiction, perhaps in connection with a current writing assignment. Additionally, a professor could demonstrate how to locate *The Bluebook* rules that govern citations to unpublished opinions.

## V. CONCLUSION

Law students regularly top the charts as among the most dissatisfied, demoralized, and depressed of graduate-student populations. As their teachers, we cannot ignore the palpable presence of this stress in our classrooms—unchecked, it stifles learning, encourages counterproductive behavior, and promotes illness.<sup>223</sup>

By more thoughtfully using cautionary tales, we can actively manage one source of law student anxiety. Although reining in cautionary tales will certainly not be a panacea to law student distress, elimination of all law student anxiety is neither a realistic nor a desirable goal. Fear-based stress, in moderation, can compel students to overcome challenges they never thought possible; it can encourage independent learning; and it can prepare students for the pressures of practice.<sup>224</sup> Yet, fear appeal research teaches us that “fear is wielded most effectively as a scalpel rather than a cudgel.”<sup>225</sup> Indeed, Aristotle long ago recognized the importance of this balance: “If there is to be the anguish of uncertainty, there must be some lurking hope of deliverance, and that this is so would appear from the fact . . . that fear sets [people] deliberating—but no one deliberates about things that are hopeless.”<sup>226</sup>

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<sup>223</sup> Glesner, *supra* note 67, at 627–31; *see also* LEDOUX, *supra* note 1, at 240–43 (explaining the physiological effects of prolonged stress and its impact on learning ability).

<sup>224</sup> Glesner, *supra* note 67, at 644–45.

<sup>225</sup> Sharon Begley, *The Roots of Fear*, NEWSWEEK, Dec. 15, 2007, <http://www.newsweek.com/roots-fear-94379>, archived at <http://perma.cc/4WC4-B4VS>.

<sup>226</sup> COOPER, *supra* note 57, at 110.