

THE “SILENT BUT GIFTED” LAW STUDENT: TRANSFORMING ANXIOUS PUBLIC SPEAKERS INTO WELL-ROUNDED ADVOCATES

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Consider the experience of this law student:

The first time I was asked to give a presentation in class, I thought I was having a heart attack. I felt as if an iron band had been fastened around my chest and was slowly squeezing the breath out of me. As the band tightened, I became progressively dizzy and found focusing a struggle. My heart rate increased, and as panic and fear set in, my hands began to perspire and my face became flushed. I tried to calm myself, but as my heart refused to slow down, I began to feel even more out of control and self-conscious. Possibly the worst of it though was that when I opened my mouth I found my vocal cords had been strangled by the iron chest band, and only a shaky whisper emerged. The more I felt like my peers were aware of my anxiety, the more I felt unable to cope. I do extra preparation for class to ensure that I am well prepared, with every case properly briefed should

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The Author expresses gratitude to her former LRW students at Chapman University School of Law, Jessica Bagdanov and Lindzey Schindler, for their review of and assistance with this Article, and especially Kasey Phillips for her attention to detail in editing drafts. She also expresses heartfelt thanks to the faculty at various law schools nationwide who responded to her requests for data and information about public-speaking anxiety issues. The Author greatly appreciates the research stipend for this Article provided by Chapman University School of Law. Finally, she is incredibly grateful to New York Law School (NYLS) for the opportunity to work with such creative faculty and students committed to positive change in legal education, especially Professor Cynara Hermes, who co-launched NYLS's inaugural Overcoming Public Speaking Anxiety (OPSA) workshop series, and students Nur Jalal, Matthew James, and Andrew Heymann for their support.

the professor call on me. Unfortunately, no preparation serves to overcome the anxiety that hits with my name being called. What makes it worse is that I feel that my professors and peers look at me as if I [am] ill-prepared and unable to produce an answer, neither of which is true. I fare slightly better when I am able to prepare a presentation in advance, but the idea of delivering my oral argument still gave me nightmares for weeks. Cold calling strikes right at the Achilles heel of my public speaking anxiety and can never show me at my best.

Anonymous Law Student, 2011

Many law students with genuine interest in ruminating over complex legal analyses, and who exhibit strong legal writing skills, experience severe public speaking anxiety. They falter at the Socratic Method and other “on-demand” public-speaking challenges like first-year oral-argument competitions. These “silent but gifted” law students might be lifetime introverts or shy individuals for whom public speaking has always been a discomfort zone. Alternatively, law school disconcertingly may have triggered this unfamiliar new stress. In the competitive culture of law school, where classroom participation often offers the only opportunity to impress a professor besides an anonymously graded final exam, this issue can impose a serious psychological strain on students lacking vocal confidence. Law school professors unwittingly might laud the “talkers” in the classroom,¹ who gain even more confidence and momentum with each Socratic banter; meanwhile, silent scribes scattered among more vocal colleagues struggle to find their “lawyer voice.” Assuming they are alone in their angst, some of these quiet students erroneously begin to doubt their qualifications for the rigors of legal discourse.²

1. Sarah E. Ricks, *Some Strategies to Teach Reluctant Talkers to Talk about Law*, 54 *J. Leg. Educ.* 570, 571 (2004) (“While many law teachers reward fluent and frequent talkers, helping to groom them for leadership positions inside the law school and beyond, they focus less attention on students who are not as verbally quick.”); see also Susan Cain, *Quiet: The Power of Introverts in a World That Can’t Stop Talking* 4–5 (Crown Publishers 2012) (“[R]esearch shows that the voluble are considered smarter than the reticent—even though there’s zero correlation between the gift of gab and good ideas.”).

2. Jennifer Jolly-Ryan, *Promoting Mental Health in Law School: What Law School Can Do for Law Students to Help Them Become Happy, Mentally Healthy Lawyers*, 48 *U. Louisville L. Rev.* 95, 124 (2009) (“[A] law student who has difficulty performing a first-year oral argument or participating in Socratic exchanges in the classroom may likely feel unfit to be a lawyer, even though the student has other valuable gifts. The student may be

Given the current state of the legal economy and the cost of legal education today, students do not need any more impetus for self-doubt or worry, as they trade up to \$50,000 annually for the law school classroom experience. In fact, students encountering this affliction should hear that: (a) they are not alone; (b) there is zero correlation between their classroom public speaking struggles and their future success in the legal practice; and (c) they can overcome this hurdle with the right assistance. Law schools need to acknowledge this obstacle, invite students to self-identify and ask for help, and offer classroom strategies and workable programs tailored for growth. Across the country, law schools offer a vast array of support programs³ to students struggling in other areas—writing, test-taking, bar passage⁴—but offer very little, if anything, to students with major public speaking anxiety.

The premise of this Article is that a certain cluster of students in every law school experiences severe public speaking anxiety (as contrasted with standard low-grade nerves)—whether because of childhood upbringing, adolescent or college experiences, or new environmental triggers—and needs support to gain control of this fear instead of repressing it as a perceived weakness. This Article proposes that, with the right level of awareness and a thoughtful psychological approach, law schools can, and should, develop programs to assist students in overcoming this stumbling block. To do so, law professors first must understand that it is not only confident extroverts who make strong legal advocates.

Part I of this Article urges law professors to recognize that introverted or quiet law students should not be discounted as “not lawyer material,” but in fact may possess overlooked attributes,

a terrific legal writer and thinker, with strong auditory learning skills, but those strong skills may be hindered during oral presentations. Consequently, the student may hide in the back of the class, in hopes of staying under the radar of the professor’s attention.”).

3. Louis N. Schulze, Jr., *Alternative Justifications for Law School Academic Support Programs: Self-Determination Theory, Autonomy Support, and Humanizing the Law School*, 5 Charleston L. Rev. 269, 277 (2011) (“Most law schools now have an ASP. . . .”) (citing Kevin H. Smith, *Program Evaluation: Defining and Measuring “Success” in Academic Support Programs*, 2003 L. Rev. Mich. St. U. Det. C.L. 177, 178 (“The number of law schools with [ASPs] increased dramatically over the past decade. The vast majority of ABA-accredited law schools now offer some form of [ASP].”)).

4. Linda Jellum, *Cool Data on a Hot Issue: Empirical Evidence That a Law School Bar Support Program Enhances Bar Performance*, 5 Nev. L.J. 646, 647 (2005) (“A significant number of law schools are now offering programs ‘specifically designed’ to improve their graduates’ performance on the bar examination.”).

including deeper legal insights and thoughtful analyses.⁵ Part II discusses the particular effect the Socratic Method, and other on-demand public speaking events, can have on the “silent but gifted” law student. Part III explains how prodding these particular students with slogans like “Just do it!” is not an effective long-term solution. Part IV prompts professors to consider how widespread severe public speaking anxiety may be in their particular classrooms or schools and summarizes how certain institutions have addressed the issue to date. Part V asserts that law schools can do more and offers cost-effective holistic solutions for helping students begin to tackle public speaking challenges, including: (a) strategies for fostering a healthy communicative classroom dynamic without sacrificing intellectual rigor, and (b) practical steps for developing “Overcoming Public Speaking Anxiety” workshops.

*I. INTROVERTED OR “SILENT” LAW STUDENTS
SHOULD NOT BE DISCOUNTED AS “NOT
LAWYER MATERIAL,” BUT IN FACT MAY
POSSESS OVERLOOKED ATTRIBUTES*

Fear of public speaking obviously is not a new concept. As humor columnist Dave Barry notes, as quoted in *The Francis Effect: The Real Reason You Hate Public Speaking and How to Get Over It*:

All of us are born with a set of instinctive fears—of falling, of the dark, of lobsters, of falling on lobsters in the dark or speaking before the Rotary Club and of the words “Some assembly required.”⁶

Ivy Naistadt,⁷ a public speaking coach to high-profile corporate executives, reminds us that “[d]ynamic and effective public speaking has been a concern since the days when Demosthenes stuffed marbles in his mouth to keep from stuttering at his le-

5. Jolly-Ryan, *supra* n. 2, at 124 (“Some students never volunteer, but despite an apparent lack of participation in class, those students may just quietly absorb everything that is said.”).

6. M. F. Fensholt, *The Francis Effect: The Real Reason You Hate Public Speaking and How to Get Over It* 3 (Oakmont Press 2006).

7. Ivy Naistadt is a graduate of Ithaca College with a B.F.A. in acting, and has served on the faculty of New York University’s Continuing Education Program.

gions of listeners in the Parthenon.”⁸ Despite the ubiquitous demands for public speaking in our daily lives, Naistadt states, “According to a recent Gallup poll, *forty* percent of Americans are terrified at the thought of talking to an audience (the only thing they dread more is snakes!).”⁹ Law students and lawyers are no exception to this condition.¹⁰ While no poll definitively quantifies the actual percentages of law students who fear public speaking, students anecdotally report this anxiety when given a safe forum to admit it.¹¹

Unfortunately, legal and other educators devote insufficient attention to this state of affairs. According to Natalie H. Rogers, author of *The New Talk Power*:

Not only is there an individual silence about fear of speaking in public, there is also a national silence. . . . [The problem] receives so little attention you would think it does not exist. [For example, t]here are no public speaking phobia specialists attached to speech departments in colleges and universities. There is no National Public-Speaking Phobia Society; even the *Encyclopedia Britannica*, under the category of “speech,” has no reference to this condition. In the phobia category, although various esoteric conditions and maladies are cited, there is no listing of public-speaking phobia itself, although it has a name: glossophobia.¹²

Rogers asks, “Why is it that in the United States—one of the few countries in the world where freedom of speech is guaranteed by a Constitution—fear of speaking in public is the number one phobia?”¹³

Often when the issue of fear of, or anxiety toward, public speaking in law school arises, eyebrows arch and scholarly

8. Ivy Naistadt, *Speak Without Fear: A Total System for Becoming a Natural, Confident Communicator* 1 (Harper Collins 2004).

9. *Id.* (emphasis in original).

10. Lisa T. McElroy, *From Grimm to Glory: Simulated Oral Argument as a Component of Legal Education's Signature Pedagogy*, 84 *Ind. L. J.* 589, 597 (2009) (“Polls and research show that public speaking ranks near the top of a list of fears . . . Law students tend to be afraid to speak in class, just as lawyers are apt to fear getting up on their feet and speaking to the court.” (Footnote omitted)).

11. *See infra* pt. IV.

12. Natalie H. Rogers, *The New Talk Power: The Mind-Body Way to Speak Like a Pro* 5–6 (Capital Bks., Inc. 2000).

13. *Id.* at 5. Different polls rank public speaking phobia as the most common or second most common fear, usually neck-and-neck with fear of death or snakes.

mouths murmur, “Well if these students are afraid to speak, then maybe they should rethink law school.” If this is the only viable answer, the legal profession will suffer a tremendous loss of gifted individuals. As a threshold matter, if law schools only welcome eager extroverted public speakers into their hallowed hallways, a significant percentage of the population will be overlooked. Studies vary on the precise ratio of extroverts to introverts in the general population but, according to Laurie Helgoe, Ph.D., author of *Introvert Power: Why Your Inner Life Is Your Hidden Strength*, “[I]ntroverts represent 57 percent of the population, and extroverts trail behind at 43 percent.”¹⁴ Moreover, Carol Bainbridge indicates that introverts comprise approximately 60 percent of the “gifted” population, determined by IQ.¹⁵ In the 2012 book, *Quiet: The Power of Introverts in a World That Can’t Stop Talking*, author Susan Cain notes that “introverts are significantly more likely than extroverts to fear public speaking.”¹⁶

Instead of jumping to the conclusion that introverts¹⁷ or anxious public speakers are less equipped for rigorous legal discourse, schools should consider that these introspective students bring something special to the classroom dynamic.¹⁸ According to

14. Laurie Helgoe, *Introvert Power: Why Your Inner Life Is Your Hidden Strength* 41 (Sourcebooks, Inc. 2008). Other studies indicate that introverts comprise 25 to 50 percent of the general population. See Cain, *supra* n. 1, at 278.

15. Carol Bainbridge has a B.A. degree in psychology and is completing a doctoral degree in linguistics, with a focus on verbally gifted children. She has been a board member of the Indiana Association for the Gifted since 1999. See generally About.com, *Gifted Children*, <http://giftedkids.about.com/> (accessed Feb. 28, 2013).

16. Cain, *supra* n. 1, at 108.

17. According to The Myers & Briggs Foundation, Swiss psychiatrist Carl G. Jung

applied the words *extravert* and *introvert* in a different manner than they are most often used in today’s world. As they are *popularly* used, the term *extraverted* is understood to mean sociable or outgoing, while the term *introverted* is understood to mean shy or withdrawn. Jung, however, originally intended the words to have an entirely different meaning. He used the words to describe the preferred focus of one’s energy on either the outer or the inner world. Extraverts orient their energy to the outer world, while Introverts orient their energy to the inner world.

The Myers & Briggs Found., *MBTI Basics, Extravert and Introvert*, <http://myersbriggs.org/my-mbti-personality-type/mbti-basics/extravert-and-introvert.asp> (accessed Feb. 28, 2013) (adapted from Gordon Lawrence & Charles Martin, *Building People, Building Programs: A Practitioner’s Guide to Introducing the MBTI® to Individuals and Organizations* (Ctr. for Applications of Psychol. Types 2001)).

18. Madeleine Schachter, *The Law Professor’s Handbook: A Practical Guide to Teaching Law* 244 (Carolina Academic Press 2004) (“[A] student who volunteers infrequently is

M. F. Fensholt, “Creativity and emotional sensitivity are two positive traits often shared by people who experience anxiety.”¹⁹ Likewise, in her study of introverts, Cain suggests that traits like “alertness, sensitivity to nuance, complex emotionality—turn out to be highly underrated powers.”²⁰ For scholars calling for a greater emphasis on emotional intelligence in the law school curriculum,²¹ this is a consideration worth analyzing.

A quiet student does not correlate necessarily to a lazy, distracted, unmotivated, or unintelligent²² law student—or one who is not connecting to the material. Quite the contrary, this student very well might have dedicated study habits, a fierce work ethic, and an intense desire to succeed.²³ Introverted students just have different processes for learning²⁴ and digesting complex information. Dr. Helgoe explains, “Introverts think before speaking, and need time *within* conversations to develop their ideas and responses.”²⁵ Quoting the 2003 *MBTI® Manual*, she notes: “Introverts appear to do their best thinking in anticipation rather than on the spot; it now seems clear that this is because their minds are so naturally abuzz with activity that they need to shut out external distractions in order to prepare their ideas.”²⁶ Reiterating the concept that an introverted law student may have a more

not necessarily shy or unprepared. The individual who deliberates about whether to volunteer, first reflecting on the value of his contribution and whether his point will be a mere reiteration of an earlier remark, is to be commended.”).

19. Fensholt, *supra* n. 6, at 67.

20. Cain, *supra* n. 1, at 104.

21. See e.g. Paul J. Cain, *A First Step toward Introducing Emotional Intelligence into the Law School Curriculum: The “Emotional Intelligence and the Clinic Student” Class*, 14 Leg. Educ. Rev. 1 (2004); John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. Toledo L. Rev. 323 (2008); Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 Psychol. Pub. Policy & L. 1173 (1999); Robin Wellford Slocum, *An Inconvenient Truth: The Need to Educate Emotionally Competent Lawyers*, 45 Creighton L. Rev. 727 (2012).

22. Cain, *supra* n. 1, at 51 (“We perceive talkers as smarter than quiet types—even though grade-point averages and SAT and intelligence test scores reveal this perception to be inaccurate.”); *id.* at 167 (“At the university level, introversion predicts academic performance better than cognitive ability.”).

23. Nancy J. Soonpaa, *Stress in Law Students: A Comparative Study of First-Year, Second-Year, and Third-Year Students*, 36 Conn. L. Rev. 353, 363 (2004) (“A study showed that introversion correlated with a higher first-semester grade point average, which makes sense when one considers how much learning occurs outside the classroom and how much performance is assessed by written, rather than oral, examination.”).

24. Cain, *supra* n. 1, at 255 (“Extroverts tend to like movement, stimulation, collaborative work. Introverts prefer lectures, downtime, and independent projects.”).

25. Helgoe, *supra* n. 14, at 234.

26. *Id.* at 13.

astute analysis (than a more readily vocal student) lurking in his or her brain if given the time to reflect, Dr. Helgoe comments, “An introvert who sits back in a meeting, taking in the arguments, dreamily reflecting on the big picture, may be seen as not contributing—that is, until he works out the solution that all the contributors missed.”²⁷ Likewise, Cain explains, “[T]he most spectacularly creative people in many fields are often introverted. . . . [A] person sitting quietly under a tree in the backyard, while everyone else is clinking glasses on the patio, is more likely to have an apple land on his head.”²⁸

Classroom leaders should also contemplate the difference between shyness and introversion. According to Cain, “Shyness is the fear of social disapproval or humiliation, while introversion is a preference for environments that are not overstimulating. Shyness is inherently painful; introversion is not.”²⁹ Introverts “listen more than they talk, think before they speak, and often feel as though they express themselves better in writing than in conversation.”³⁰ Cain emphasizes that while introverts “focus on the meaning they make of the events swirling around them,” they can get overwhelmed by too much stimulation.³¹

Of course, in a law school class, students do not have the luxury to sit back quietly, pondering the nuances of the law, the fair result, or the greater good, awaiting the moment when they feel comfortable enough to share their thoughts. While legal writing assignments allow introspection and quiet processing, the Socratic Method demands immediate answers; oral arguments require instantaneous responses to judges’ questions. However, both scenarios can produce anxiety³² for many introverted students whose

27. *Id.* at 88.

28. Susan Cain, *The Rise of the New Groupthink*, N.Y. Times SR1 (Jan. 13, 2012).

29. Cain, *supra* n. 1, at 12. Cain explains,

The mental state of a shy extrovert sitting quietly in a business meeting may be very different from that of a calm introvert—the shy person is afraid to speak up, while the introvert is simply overstimulated—but to the outside world, the two appear to be the same. This can give both types insight into how our reverence for alpha status blinds us to things that are good and smart and wise.

Id.

30. *Id.* at 11.

31. *Id.* at 10–11.

32. Ricks, *supra* n. 1, at 572 (“[E]ven if law students intuitively grasp the importance of learning to talk about law, they often feel intimidated and distressed in the classroom and consequently are reluctant to speak in class.”).

preference is to think rather than speak, and can incite extreme stress for a smaller subsection of that group with a more serious fear of public speaking.³³ As Dr. Helgoe notes, “In this culture of competition, it is no wonder that those of us who prefer introversion feel anxious. We are expected to ‘think on our feet,’ but we think best when we’re still. We’re pressured to join and keep up, when we’d rather follow an inner guide.”³⁴ As this scenario plays out in the law school classroom, the extroverted students seem to “win,” while the introverted or quieter students “lose.”³⁵

Professors should entertain the possibility that silent students may have a thoughtful, deeper analysis not yet touched on by the class but which remains hidden by internal resistance to outward expression.³⁶ Instead of jumping to conclusions about these students’ intellectual capabilities, writing them off, or simply forcing them to perform at the risk of losing valuable class participation points, professors first might try to understand the underlying psychology of public speaking anxiety, and then experiment with alternative methods of drawing out these students’ thoughts.

II. UNDERSTANDING THE POTENTIAL EFFECT OF THE SOCRATIC METHOD, AND OTHER ON-DEMAND PUBLIC SPEAKING EVENTS, ON THE “SILENT BUT GIFTED” LAW STUDENT

Unfortunately, the current “culture of competition” of the first year of law school—driven by the Socratic Method, mandato-

33. Cain, *supra* n. 1, at 6 (“If you’re an introvert, you also know that the bias against quiet can cause deep psychic pain.”).

34. Helgoe, *supra* n. 14, at xviii.

35. Ricks, *supra* n. 1, at 571 (“[T]he louder, more confident students jockey for the teacher’s attention; the less loquacious or less self-assured students end up participating less, meaning they have fewer institutionalized opportunities to interact with their teachers and classmates.” (quoting Bethany Rubin Henderson, *Asking the Lost Question: What Is the Purpose of Law School*, 53 J. Leg. Educ. 48, 64 (2003))).

36. *Id.* (“[M]any of the most insightful writers in my first-year classes do not volunteer to speak in class. All too often, at final exam time, a teacher finds that ‘some silent, barely known soul [has received] one of the highest grades in the class . . .’ It may be that one characteristic of effective writers—internalized self-criticism—inhibits the student from speaking in front of others before the ideas are fully fleshed out on paper—a fourth reason some students are reluctant to speak in class. A common law school classroom structure may reward quick responses, sometimes at the expense of more thoughtful responses from students not as quick to speak or not as willing to think out loud.” (quoting Jay Feinman & Marc Feldman, *Pedagogy & Politics*, 73 Geo. L.J. 875, 881 (1985))).

ry class participation, and oral arguments—can exacerbate public speaking struggles for certain students. Professor Orin S. Kerr, in his article, *The Decline of the Socratic Method at Harvard*, quoted a well-regarded professor as stating, “No one has ever died because of the Socratic Method.”³⁷ This prompts the question: Is this really the appropriate standard of care?

Law school is stressful, as it should be to a reasonable degree; after all, the academy trains scholar-apprentice to perform an important and difficult job with moral, ethical, and societal implications. However, it is essential to examine whether avoidable and purposeless stressors detrimentally affect the psychological health of students and future members of the legal profession³⁸—especially at a time when students also face unprecedented economic volatility, balancing astronomical law school debt against a shrinking legal job market.

Some analysts hypothesize that law school attracts high-stress personality types, more prone to anxiety than the average person. However, as Professor Jennifer Jolly-Ryan noted, “Empirical research shows that entering law students possess ‘normal psychological markers.’ However, they ‘shift quickly to major psychological distress during the first year of law school.’”³⁹ Professor Nancy J. Soonpaa also analyzed this issue and explained,

In considering the possibility that law students bring higher stress levels and/or emotional problems with them to law school, some researchers controlled for that possibility and found that while law students entered law school within the normal range on psychological tests, they became disproportionately more dysfunctional during law school.⁴⁰

37. Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 Neb. L. Rev. 113, 127 (1999).

38. G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress among Students and Lawyers*, 1986 Am. B. Found. Research J. 225, 252 (1986) (“[E]ven if elevated stress levels might be shown to be necessary for successful adversarial practice, what costs arise in the lawyers’ personal lives, and what effect will these costs have on the subsequent quality of their lawyering?”).

39. Jolly-Ryan, *supra* n. 2, at 103 (quoting Susan Grover, *Personal Integration and Outsider Status as Factors in Law School Well Being*, 47 Washburn L.J. 419, 421 n. 16 (2008)); *id.* (“The culture of the traditional law school provides many likely reasons for this shift. Therefore, it is up to law schools to examine the culture, and how it detrimentally fosters students’ unhappiness and eventual discontent as a legal professional.” (internal citations omitted)).

40. Soonpaa, *supra* n. 23, at 359 n. 46; *see also* Bridget A. Maloney, *Distress among the*

Indeed, some scholars contend that law school actually can change a student's personality type.⁴¹ For example, some students who never experienced public speaking anxiety in high school or college report that they suddenly developed this fear in law school.

This phenomenon occurs partly because students enter law school with distinctive talents or attributes that they often perceive they need to downplay to survive. As Professor Jolly-Ryan poignantly notes,

Some law students do come to law school with great gifts, including people skills. They possess the ability to empathize and communicate. They are interesting and have backgrounds that can even assist in the legal education and development of other students. But law school "teaches many students to put aside their personal life and health and accept persistent discomfort, angst, isolation, even depression as the cost of becoming a lawyer."⁴²

Interestingly, studies show that law school imposes more sustained stress on students than medical school does.⁴³ Law school

Legal Profession: What Law Schools Can Do about It, 15 Notre Dame J.L. Ethics & Pub. Policy 307, 314 (2001) ("These findings suggest that it is not the type of person who comes to law school; rather, it is the law school institution itself that causes the stress."); Benjamin et al., *supra* n. 38, at 247 ("It also appears that the law school educational process itself affects individuals rather than that certain types of individuals choosing to enter law school overreact to the process because of their unique and rare vulnerabilities.").

41. Maloney, *supra* n. 40, at 322.

42. Jolly-Ryan, *supra* n. 2, at 124–125.

43. Soonpaa, *supra* n. 23, at 359; *see also* Benjamin et al., *supra* n. 38, at 247 ("[L]aw students developed significantly more distress than medical students for all symptoms except somatization and phobic anxiety."); Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. Leg. Educ. 75, 77 (2002) ("Compared to the general population and to medical students, law students experience significantly more anxiety and distress."); Jolly-Ryan, *supra* n. 2, at 97 ("Research indicates that law students suffer from much higher levels of stress than medical students"); Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. Leg. Educ. 65, 66, 69, 70 (1985) ("[T]he few existing comparative studies reveal that law students experience problems at higher levels of intensity than medical students or other graduate students, although there is some contradictory data in this regard. . . . [L]aw students have higher rates of psychiatric distress than either a contrasting normative population or a medical student population Law school appears to be less nurturant of students than medical school. . . . [Law school teachers] are seen as distant and less supportive than medical school teachers."); Adam J. Shapiro, *Defining the Rights of Law Students with Mental Disabilities*, 58 U. Miami L. Rev. 923, 932 (2004) ("One study was designed to compare the levels of stress among four graduate programs—law, medicine, psychology, and chemistry. The study found that law students experienced the highest

is not perceived as a nurturing or mentoring learning environment,⁴⁴ but rather is viewed as alienating⁴⁵ to students. Administration and faculty are characterized (accurately or not) as unconcerned with developing students' psychological well-being.⁴⁶ Law schools are described as fostering poor stress-management habits, incubating an environment in which some students shy away from seeking help for anxiety.⁴⁷ Unhealthy competition reigns.⁴⁸

Many educators acknowledge that a moderate level of stress is necessary and can improve learning.⁴⁹ However, dysfunctional levels of stress,⁵⁰ like extreme public speaking anxiety, must be addressed, especially when they lead to mental health issues and substance abuse⁵¹ problems in law students.⁵² These unproduc-

levels of "overall stress." (Footnotes omitted).

44. Maloney, *supra* n. 40, at 315 ("The 'academy,' however, is becoming just as hostile to the idea of mentoring its students as the profession is to mentoring its young attorneys.").

45. Hess, *supra* n. 43, at 75 ("Legal education literature documents a number of disturbing effects of law school on law students. Many students experience the law school environment as stressful, intensely competitive, and alienating.").

46. Benjamin et al., *supra* n. 38, at 225 ("Law school is the very place in which practitioners should learn to cope effectively with the demands of the profession as well as with the demands of everyday life. The development and maintenance of the psychological well-being of law students, however, may be stunted by the process of legal education; at best, it is ignored.").

47. B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 Conn. L. Rev. 627, 661 (1991) ("[L]aw students are even more reluctant than a general student population to seek formal psychological counseling."); Shapiro, *supra* n. 43, at 936 ("While stress is common to most law students, the culture of law school tends to suppress students' responses to anxiety." (Footnotes omitted)).

48. Shanfield & Benjamin, *supra* n. 43, at 70 ("The law school environment fosters an intense sense of competition among students."); Clifford S. Zimmerman, "Thinking Beyond My Own Interpretation." *Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 Ariz. St. L.J. 957, 975 (1999) ("[C]ompetitiveness is a very real part of legal education. However, the determination that instilling competitiveness as the only way to advance student achievement is short-sighted.").

49. Hess, *supra* n. 43, at 80 ("In general, moderate levels of stress improve student performance while low or high levels of stress decrease performance. The more difficult the learning task, the greater the negative effects of stress on learning.").

50. Shanfield & Benjamin, *supra* n. 43, at 65 ("There is general agreement among legal educators that the stress of legal education is high. Indeed, some students are felt to have levels of distress that are dysfunctional.").

51. A law student who responded to the questionnaire mentioned in part IV stated, "[L]aw students are humans with real emotions and a law professor can devastate a student's self-esteem and drive them to heavy drinking and suicidal thoughts."

52. Jolly-Ryan, *supra* n. 2, at 97 ("Empirical studies show that law students suffer more mental health and substance abuse problems than society in general.").

tive levels of mental strain clearly interfere with the learning process.⁵³

Some might question how much law faculty should focus on students' psychological health; after all, law professors are attorneys, not licensed therapists, and are hired to teach students to think like lawyers, not work through personal problems. However, Adam J. Shapiro, in *Defining the Rights of Law Students with Mental Disabilities*, underscores the importance of appreciating students' emotional and psychological challenges, emphasizing that the consequences of law school stress can have a broader ripple effect; Shapiro warns against "the societal danger of lawyers who are trained to function as unfeeling robots."⁵⁴ Likewise, Professor Ruth Ann McKinney, Clinical Professor of Law Emeritus at the University of North Carolina School of Law, maintains that "[l]aw school continues to do harm to its own, and the profession continues to reel from the repercussions of these initial injuries."⁵⁵ Professor Jolly-Ryan concurs: "This large number of unhappy, stressed-out, psychologically impaired law students has grave implications for the legal profession and the public it serves because these students, with all of their deficiencies, morph into lawyers."⁵⁶ She cautions, "Unhappy, stressed-out, depressed law students often become unhappy, stressed-out lawyers."⁵⁷

Fortunately, law school administrators and faculty have the power—and professional responsibility⁵⁸—to alter this trend. As Professor Barbara Glesner states, "If legal educators dismiss the obligation to confront this increasing stress as 'not our job,' we ignore the role that law school itself plays in fostering bad stress-

53. Glesner, *supra* n. 47, at 635 ("Overall, undue stress interferes with learning."); *id.* at 645 ("Certainly I do not advocate that we can or should eliminate all tension in legal education, only that we consider when tension is productive and when it is not."); *see also* Hess, *supra* n. 43, at 80 ("Stress inhibits students from receiving and processing information when anxiety distracts them from the learning task."); John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 Wm. Mitchell L. Rev. 303, 339-40 (2007) ("Too much psychological distress provides no benefit and does not aid in the long-term goal of training effective lawyers.").

54. Shapiro, *supra* n. 43, at 936.

55. Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?* 8 Leg. Writing 229, 232 (2002).

56. Jolly-Ryan, *supra* n. 2, at 97.

57. *Id.* at 100.

58. *See* Glesner, *supra* n. 47, at 628 ("Faculty members have a professional responsibility to address their students' fear and loathing. There is much that can and should be done to improve the psychological climate of law schools. We need to find the proper way of helping students test their mettle rather than allowing them to burn out.").

management habits.”⁵⁹ Further, “[e]ven if one sees our responsibility as solely to impart a body of knowledge, then one must necessarily address those factors within our control that impede that goal, including the psychological climate of the law school.”⁶⁰

This Article does not suggest law professors should downgrade the intellectual rigor of their teaching, or “molly-coddle”⁶¹ their students, but law professors can demand high educational standards and teach students how to be well-rounded advocates, without subjecting them to Def-Con 1 stress levels.⁶² Professors must take a closer look at the human factor in the audience. Just because a student might hesitate at the opportunity to experience a public grilling on *Hadley v. Baxendale* does not mean the student eventually is not destined for robust courtroom or boardroom debate.⁶³ In fact, the student’s future legal acumen might be quite astounding if given the opportunity to gain confidence by stepping safely beyond his or her comfort zone.

One way to accomplish this metamorphosis without sacrificing intellectual rigor is, as Jennifer L. Rosato, Dean and Professor of Law at Northern Illinois University College of Law, describes, “fostering an ethic of care in the classroom.”⁶⁴ By making an effort to look at each student as human and individual, the stu-

59. *Id.* at 630.

60. *Id.* at 641.

61. *Id.* at 644 (“In addressing any change in education methods, some critics fear changing the educational climate for the worse. When they speak of ‘mollycoddling’ students or bemoan the prevalence of ‘spoon feeding’ and other ‘hand-holding’ efforts, they are speaking of a fear of undermining the development of rigorous, analytical self-determinism. Without ‘tough law,’ goes the argument, law schools will produce attorneys who will be lazy, uncontrollably emotional, and ill-equipped to handle the pressures of law practice.”).

62. See Hess, *supra* n. 43, at 76 (“Law school profoundly affects students. The impacts of the law school environment contribute to their day-to-day experience and their psychological health.”).

63. Glesner, *supra* n. 47, at 644 (“There remains the attitude that only certain students are subject to the effects of stress. These students, goes the theory, are not ‘equipped’ for law practice in any case. However, studies examining the stress of law school emphasize that we cannot so easily classify groups of students as unfit without acknowledging that these students would be better suited to the rigors of law school if certain unnecessary stressors were eliminated.” (Footnotes omitted)).

64. Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don’t Feminize*, 7 S. Cal. Rev. L. & Women’s Stud. 37, 59–60 (1997) (“Fostering an ethic of care in the classroom is necessary to counter the unnecessary competition and alienation that may take place in the law school classroom.”). Further, “[s]tudents who are struggling with the material or who become nervous when called on also need to be assured that they are valued in the classroom.” *Id.* at 60.

dent's true "gifts,"⁶⁵ possibly not apparent at first glance under the harsh strobe light of a Socratic query, might have room to flourish.

This Article also does not purport to tackle the myriad pros and cons of the Socratic Method. However, it is relevant to recognize the effect the Method⁶⁶ might have on students who are not readily gifted at public speaking, or worse, experience extreme anxiety when on-call. Clearly, "Socratic questioning is perceived as a rite of passage that all law students endure in their first year of law school."⁶⁷ Unfortunately, a student's "success" or "failure" in exposure to the Method is often perceived as one way of harvesting the cream of the crop;⁶⁸ however, relying on a system that favors garrulous students is not an accurate way to predict a student's success as a lawyer.⁶⁹

65. Jolly-Ryan, *supra* n. 2, at 124 ("Law students enter law school with unique gifts. Some are brilliant writers but are anxious and awkward when speaking in class or in front of an audience. Some are brilliant oral advocates but have difficulty writing. Other student gifts lie in their ability to empathize with others, deal with chaotic situations, and listen to a client's problems and solve them. However, law school can often destroy law students' gifts. Law school can often highlight a student's weaknesses rather than strengths." (Footnotes omitted)).

66. In his article, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?*, Jeffrey D. Jackson defines the Method as follows:

[T]he heart of the Socratic [M]ethod lies in professor-student interaction. In the most traditional sense, the professor calls upon a student and engages that student in a colloquy, either about a case or about some other problem. As the student answers, the professor poses other questions in an attempt to get the student to delve into the problem in more detail. The professor may continue with one student for a time or pose questions to a number of students. The students who are not actively answering the question are expected to be following along and considering the problems and answers in case they are called upon next.

Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?* 43 Cal. W. L. Rev. 267, 272–273 (2007) (Footnotes omitted).

67. Kerr, *supra* n. 37, at 113.

68. Zimmerman, *supra* n. 48, at 972 ("The Socratic [M]ethod of teaching involves competitiveness insofar as it challenges the student to perform in class or else another student will be found who can. This begins the separation of the wheat from the chaff in legal education." (Footnotes omitted)); see also Sheilah Vance, *Should the Academic Support Professional Look to Counseling Theory and Practice to Help Students Achieve?* 69 UMKC L. Rev. 499, 501 n. 10 (2001) ("Many legal educators believe that law schools should deliver legal education, particularly in the first year, in the same way (Socratically) to all students, that one test per semester is a true measure of student competency, and that those who don't succeed under that [M]ethod should be excluded from law school for academic reasons.").

69. Jackson, *supra* n. 66, at 294 n. 126 ("[Professor Lani] Guinier disagrees with those who would argue that women who are reluctant to participate in class are 'not cut out to be

Many scholars have exalted the Socratic Method's alleged virtues, contending that it (1) allows doctrinal professors to engage large bodies of students;⁷⁰ (2) teaches students to "think like a lawyer";⁷¹ (3) assists students in practicing verbal skills;⁷² (4) prepares students for the practice of law; and (5) simulates a "real" courtroom experience.⁷³ Other scholars challenge these "practical" arguments, contending the Method fails to teach the "real work of lawyers," i.e., problem-solving or handling clients,⁷⁴ because it focuses on abstract principles and limits students' "raw materials" to appellate decisions.⁷⁵ Other critiques note that the Socratic Method fails to develop public speaking skills in an effective manner because students are called on so sporadically.⁷⁶ Other

good lawyers.' She notes that lawyers are basically problem solvers and that while being able to answer quickly is a useful skill, 'students who function cooperatively . . . are more likely to arrive at the optimal solution . . . than are those who approach problems in a competitive, adversarial manner.'").

70. Kerr, *supra* n. 37, at 116 ("Proponents of the Socratic [M]ethod extol its capacity to teach sophisticated legal reasoning effectively to a large class of students."); *see also* Jackson, *supra* n. 66, at 273.

71. Keith A. Findley, *Rediscovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 Wis. Intl. L.J. 295, 301 (2006) ("The method, therefore, is designed to teach at least some of what it takes to 'think like a lawyer.'" (Footnote omitted)); Jackson, *supra* n. 66, at 273.

72. Hess, *supra* n. 43, at 81; Jackson, *supra* n. 66, at 274 (The Socratic [M]ethod "helps students to hone their verbal skills.").

73. Stephanie B. Goldberg, *Beyond the Socratic Method*, 36 Student Law. 18, 19 (Oct. 2007) ("While the Socratic Method forces students to think on their feet, it also replicates the tension of standing before a judge in court, knowing he or she can humble you at any moment.").

74. Kerr, *supra* n. 37, at 119 ("[T]he true work of a lawyer consists of solving the real problems of real clients. It does not pivot around the abstract legal rules, principles, and theories explored in Socratic dialogue."); *id.* at 120 ("[O]ther commentators have picked up on this theme and criticized the Socratic [M]ethod for failing to teach cooperation, working with and representing a client, and citizenship. These commentators argue that students trained by the Socratic [M]ethod lack the skills needed to be effective lawyers." (Footnotes omitted)).

75. Findley, *supra* n. 71, at 302 ("While the [M]ethod does a fair job of teaching case-analysis skills, its focus on doctrine and analysis of judicial opinions fails to develop the full range of intellectual capacities and skills required of a lawyer. . . . [L]awyers do not just analyze judicial decisions. Lawyers solve problems, and they work with raw materials much more complex and variable than judicial opinions.").

76. Kerr, *supra* n. 37, at 129 ("For example, two professors doubted that Socratic classes develop public speaking skills particularly well. They both noted that students are called on to speak so rarely that it is unlikely that Socratic classes provide much speaking experience." (Footnotes omitted)); *see also* Jane Korn, *Teaching Talking: Oral Communication Skills in a Law Course*, 54 J. Leg. Educ. 588, 588 (2004) (stating that "calling on students may not even teach them oral communication skills").

detractors decry the Method's over-emphasis on skills based on competition,⁷⁷ adversarial conflict,⁷⁸ and confrontation.⁷⁹

Most importantly for purposes of this Article, foes of the Socratic Method virtually consider it a "WMD": a "pathological"⁸⁰ "weapon"⁸¹ of mass psychological destruction, and one of the "worst"⁸² teaching methods when wielded by professors who use it to "humiliate" students.⁸³ It is no secret that the Method causes distress,⁸⁴ anxiety,⁸⁵ erosion of self-esteem,⁸⁶ and a sense of alien-

77. Rosato, *supra* n. 64, at 42 (The Socratic Method "fosters competitiveness because students focus on gaining the professor's favor rather than communicating with one another." (Footnotes omitted)).

78. Benjamin et al., *supra* n. 38, at 251 ("[T]he singular purpose of most law school curricula was to prepare law students for adversarial conflict rather than for the gentler arts of reconciliation and negotiation.").

79. Thomas C. Fischer, *Legal Education: Law Practice and the Economy* 40 (Fred B. Rothman & Co. 1990) ("[T]he modern law student is trained in a manner that emphasizes adversariness. . . . [T]he law school curriculum reinforces the notion that legal practice consists largely of preparation for and execution of a series of courtroom confrontations. Nothing could be farther from the truth."); *id.* at 40–41 ("[L]egal education can distort the reality of legal practice and put unwarranted emphasis on confrontation and litigation.").

80. Kara Abramson, "Art for a Better Life: A New Image of American Legal Education," 2006 BYU Educ. & L.J. 227, 274 ("To opponents of the [Socratic] method—and indeed this is a method of such forceful symbolic value that it has not merely critics but actual opponents—the method stands for the ills of modern-day legal education. The problem is pathological. The method transmits a virus that plagues not only legal education but also law students themselves.").

81. Kerr, *supra* n. 37, at 115 (noting that some scholars "present the Socratic method as a weapon used to oppress students and eradicate independent thinking, while others celebrate it as a talismanic key to knowledge, truth, and morality").

82. Abramson, *supra* n. 80, at 232 ("Alfred Reed, a Carnegie Foundation staff member who studied professional education, noted, 'I believe that while in the hands of a genuine scholar, skilled in the Socratic method, the case method is indubitably the best, in the hands of a mediocre man it is the very worst of all possible modes of instruction.'").

83. Kerr, *supra* n. 37, at 118 ("The most common complaint against the Socratic method is that it is cruel and psychologically abusive. Socratic professors are quick to criticize imperfect student answers, subjecting students to public degradation, humiliation, ridicule, and dehumanization. This torture often scars students for life. Even among students who do not speak in class, the possibility that they will be called on can be incapacitating." (Footnotes omitted)); Jackson, *supra* n. 66, at 284 ("The main charge that has been leveled against the Socratic method's use is that the method humiliates and terrorizes students"); Jackson, *supra* n. 66, at 285 ("[T]here is ample evidence that a large number of students have found the Socratic method, at least in the way it was conducted in their classes, to be both humiliating and terrorizing."); Rosato, *supra* n. 64, at 42 ("According to its critics, the modern Socratic dialogue resembles a game of 'hide the ball' in which the professor asks questions that he knows the answers to while his students do not. The object of the game is to produce the answer that the professor thinks is correct. If the student fails to answer correctly, personal humiliation follows in various forms." (Footnotes omitted)).

84. Sonsteng et al., *supra* n. 53, at 337 ("The Socratic method breeds stress through the arbitrary and sometimes ruthless questioning of students about cases and legal principles that are often subtle, minor, and obscure. Students become distressed about being called on because such questioning creates situations where they inevitably fail, even if

ation⁸⁷ in many students. Accordingly, introverts or naturally introspective students who already experience discomfort with public speaking absorb a great deal of stress in classrooms governed by this Method.⁸⁸

Similarly, the quiet law student often struggles in anticipating the first-year oral argument competition. Obviously, oral argument is not comparable to giving a speech in which the orator maintains control over the subject matter, pacing, transitions, and conclusions. The fear of interruption by judges' questions, and the perceived pressure of winning versus losing the argument, add a nerve-wracking dynamic.⁸⁹

Unfortunately, some professors might perceive students' struggles with the Socratic Method or oral advocacy as a "failure of intelligence."⁹⁰ They insist that students need to experience

their original answer or thought was correct." (Footnotes omitted)).

85. Abramson, *supra* n. 80, at 274 ("Some of the strongest critiques of the method assert that it harms students by cultivating severe anxiety. Anecdotes of clever volleys lobbed by a particularly cruel professor bent on carrying out a one-sided battle hint at the extent of harm that may be inflicted on students." (Footnotes omitted)); Michael Hunter Schwartz et al., *Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam* 92 (Carolina Academic Press 2009) ("[T]he research strongly suggests that law students suffer real losses in their sense of autonomy and competence as a result of the law school Socratic approach. Many become depressed, anxious, and disengaged."); Schachter, *supra* n. 18, at 24–44 ("[M]any students experience trepidation and nervousness when called upon to speak publicly. Classroom discussion may generate feelings of anxiety, particularly insofar as students are asked to extemporize through Socratic questioning. Even gentle probing can be intimidating when the pupil is required to simultaneously recall information from the reading assignments, synthesize principles discussed in class, and respond in front of his classmates to skillful and nuanced questioning by the professor.").

86. Zimmerman, *supra* n. 48, at 968 ("The negative psychological impact of the Socratic and Langdellian methods—including the serious erosion of self-esteem and the alarming increase in student psychological dysfunction—has been well documented. While students attempt to adapt to the anxiety and stress of law school, not all do so successfully—some are continually frustrated and others rationalize to survive." (Footnotes omitted)).

87. Patricia Mell, *Taking Socrates' Pulse*, 81 Mich. B.J. 46, 46 (May 2002) ("The Socratic method can engender alienation and foster a lack of self-confidence in those students subjected to its perceived bullying.").

88. Shapiro, *supra* n. 43, at 938 ("In many instances, the Socratic Method may prove to be anything but beneficial for students who suffer severe anxiety when called on without warning." (Footnotes omitted)).

89. Cain, *supra* n. 1, at 11 (Introverts "tend to dislike conflict."). Cain distinguishes between an introvert who is uncomfortable speaking "extemporaneously," and extrovert who might be appropriately stimulated by spontaneous talking. *Id.* at 122.

90. Goldberg, *supra* n. 73, at 228 ("[L]aw professors, who typically graduated at the top of their class, may assume that it works well because they had no difficulty with this mode of instruction. When students have difficulties, professors conclude that a failure in intelligence is responsible, says Boyle." (quoting Robin A. Boyle, Assistant Dean for Academic Success and Professor of Legal Writing, at St. John's University School of Law)).

the “harshness” of the classroom and adversarial competitions to prepare them for the practice of law.⁹¹ However, the “real-life” argument in support of the Socratic Method is flawed; until a law student or new lawyer learns exactly what types of information judges are looking for and why, how to analyze complex legal questions with the goal of extracting such information, and how to prepare for a courtroom colloquy—all of which takes time and experience—he or she cannot possibly handle hammering questions from a judge in dazzling fashion, especially before an entourage of sixty-to-ninety peers. Instead of distracting students with the “harshness” and adversarial nature of the courtroom experience, we should be building students’ confidence in developing clear analytical skills.

A deeper look at the type of students who tend to waver under such intense scrutiny reveals that intelligence, or fitness for the practice of law, is not the issue.⁹² As suggested above, these students often possess greater gifts than being able to banter spontaneously with a professor or respond to grilling by judges in an oral argument competition. Professors who view students through a single lens risk missing out on these analytical capacities.⁹³ Even more of a concern than overlooking a student’s unique facilities for learning is the peril that the Socratic Method actively stifles a student’s growth. A bad experience with the Socratic Method certainly can discourage students from participation, rather than helping them gain confidence.⁹⁴ The stress of being

91. Jackson, *supra* n. 66, at 287 n. 101 (“According to the standard justification, the humiliation and terror brought on through Socratic questioning are important to prepare students for the stress of law practice.”).

92. *Id.* (“[T]here is no real correlation between the kind of toughness needed to endure being embarrassed by a professor and the toughness needed for law practice. . . . Rather, the practice of law involves dealing with people and, often, cooperating with them. In such circumstances, the toughness brought on by being humiliated by a professor can be counterproductive.”).

93. Jolly-Ryan, *supra* n. 2, at 124 (“Although the student may be a promising future lawyer, professors often give the impression of inadequacy by insisting on high achievement in law school activities that might have little relevance to the student’s future practice area. The law student may be a terrific legal writer, thinker, and one-on-one communicator, but may experience high anxiety when asked by a professor to engage in a Socratic exchange in front of a crowded classroom. The law student may believe that classroom performance is the litmus test for law school and future professional success, and devalue other gifts if not given an opportunity to use them.”).

94. Bonita London et al., *Studying Institutional Engagement: Utilizing Social Psychology Research Methodologies to Study Law Student Engagement*, 30 Harv. J.L. & Gender 389, 402 (2007) (“[M]any students reported feeling anxious and threatened by the Socratic

called on can undermine students' focus on learning the matter at hand.⁹⁵ Students can detach from the learning process, or worse, from the law school experience.⁹⁶ Conversely, a good experience in responding to questions delivered by a professor who possesses a broadened awareness of silent students' struggles can have the opposite effect.⁹⁷

III. TELLING OUR STUDENTS "JUST DO IT, AND YOU'LL GET OVER IT" IS NOT THE SOLUTION

Anxiety-ridden public speakers often receive trite advice: "Thoroughly prepare, and you'll be fine." "Just practice, and you'll get used to it." "Toughen up, and you'll get through it." Often, the common theme in this aspect of legal education reflects the Nike slogan, "Just Do It," or worse, the self-help tape advertised by *The Simpsons* character Troy McClure: "Get Confident, Stupid."⁹⁸ Natalie Rogers, author of *The New Talk Power*, quotes Helen Yalof, retired Chairman of the Speech and Theater Department at City University in New York City, as stating, "When I was studying to be a speech teacher, fear of public speaking and nervousness was never mentioned. The assumption was if you

Method. Because professors are not only representatives of the institutional culture, but also sources of authority and potential academic validation, performing poorly under the academic spotlight significantly contributed to feelings of alienation. . . . For many students, one incident of disapproval or perceived failure in the eyes of a professor undermines their willingness to participate and engage in the future."); see also Maloney, *supra* n. 40, at 324 ("this form of dialogue is supposed to invite discussion, yet, it freezes students with fear and keeps them from raising their hands to participate." (Footnotes omitted)); Schwartz et al., *supra* n. 85, at 13 ("Classrooms that feature humiliation, intimidation, or denigration lead many students to withdraw from participation and learning.").

95. Kerr, *supra* n. 37, at 130 ("Another professor [noted] that some people are so scared in Socratic classes that they are too frightened to learn if they are called on and too relieved to pay attention if they are not.").

96. Ingrid Loreen, *Therapeutic Jurisprudence and the Law School Asylum Clinic*, 17 *St. Thomas L. Rev.* 835, 844 (2005) ("In fact, the Socratic method can alienate students not only from the classroom experience, but can lead to a withdrawal of psychological commitment from law school and the practice of law.").

97. Ricks, *supra* n. 1, at 575-576, ("The development of oral communication skills in the first year of law school may be encouraged by an early successful experience. As Gerald Hess has said, "Successfully meeting and overcoming a frightening challenge in law school makes courage easier the next time around." A former student recently wrote to me, "A positive speaking experience at the outset of law school is crucial for those who, for whatever reason, lack confidence or have speaking anxieties, because confidence is not a natural attribute—it derives from encouragement, affirmation, recognition, challenge." (quoting Hess, *supra* n. 43, at 94-96)).

98. *The Simpsons*, TV Series, "Bart's Inner Child" (Fox Nov. 11, 1993).

did it long enough, you would get over it.”⁹⁹ Psychology experts confirm that simply forcing an anxious public speaker to perform is not the remedy.

Banal “solutions” such as: (1) thorough preparation; (2) confronting one’s fear and pushing through it; or (3) motivation through class participation grades or other accolades, unfortunately do not work. As Janet E. Esposito, author of *In the Spotlight: Overcome Your Fear of Public Speaking and Performing*, explains, “Being well-prepared and rehearsed does little to reduce the intense fear for those of us who have a much stronger case of stage fright.”¹⁰⁰ Hearing that advice—as if the solution is as simple as practicing a few times in front of the mirror—exacerbates the feelings of trepidation and prompts the tentative speaker to ask, “What is wrong with me?”¹⁰¹ The concept of simply confronting one’s fear is an empty mantra for these individuals,¹⁰² and the idea that the promise of accolades can override nervous tension is also wholly flawed. Fensholt notes, “[T]he promise of all the rewards in the world won’t eliminate the anxiety, the fear, and the uncomfortable physical changes that so often come with public speaking.”¹⁰³ True, public speaking experts emphasize the need to understand the “biological underpinnings” of public speaking fear, and warn that glossing over an individual’s physiological response to stress is “not productive.”¹⁰⁴

The more flashy and popular public speaking “gurus” typically sidestep the underlying psychological and biological roots of the fear, focusing instead on superficial techniques to dazzle audiences. These types of surface-level programs never will unravel the core condition. Naistadt urges that the first step to true recovery is identifying emotional hindrances and working to eliminate them; “Missing from all other books and methods on public speaking, and winning friends and influencing people, this component is critical.”¹⁰⁵ She explains,

99. Rogers, *supra* n. 12, at 31.

100. Janet E. Esposito, *In the Spotlight: Overcome Your Fear of Public Speaking and Performing* 8 (Strong Bks. 2000).

101. *Id.* (“It makes us feel even more alone and misunderstood.”).

102. Rogers, *supra* n. 12, at xx.

103. Fensholt, *supra* n. 6, at 8.

104. *Id.* at 37.

105. Naistadt, *supra* n. 8, at 3.

Look at it like putting out a fire where there is a lot of billowing smoke. Similar to nervousness, which is just a symptom of what's holding you back, the smoke is just a symptom of the fire. Aiming a hose at the smoke won't put the fire out. You need to identify the source of the fire in order to extinguish it. Without adding this critical component to the mix, no amount of tools, tips, or other how-tos for auditioning, interviewing, speechmaking, or presenting effectively will produce results that last.¹⁰⁶

Rogers agrees that typical public speaking seminars fail to address the problem adequately; “except for the suggestion to relax, the sole focus [is] on the preparation of the speech, with no serious attention paid to the painful loss of confidence that many students [are] experiencing.”¹⁰⁷ Likewise, Fensholt notes how “[m]uch of the literature dismisses the fear of public speaking as being caused by ‘performance anxiety.’ In short, the experts will tell you that ‘you are anxious about performing because of performance anxiety.’ This clearly begs the question. You might as well say, ‘It’s painful because it hurts.’”¹⁰⁸

It is necessary to tackle public speaking anxiety “from an emotional, physical, and spiritual perspective, not just a practical one, in order to achieve a total and sustained solution.”¹⁰⁹ Naistadt reiterates that “determining the real issues at play that are holding us back from speaking without fear is, more often than not, the overlooked weapon in the communicator’s arsenal, and very often the most important one.”¹¹⁰ Rogers agrees, “People with anxiety about speaking in public cannot overcome their problem with cavalier advice. The only reasonable solution is a method that will eliminate the fear and its devastating effects.”¹¹¹

106. *Id.* at 3–4. Naistadt explains that most books and seminars on overcoming public speaking anxiety skip over the step of getting to the root of the problem:

I went to every store in New York looking for a book on combating stage fright in different situations. I found books on how to speak powerfully in public and books on what makes a successful presenter, but as far as I was concerned, this put the cart before the horse. Nothing I found explored the entire issue; nothing went deeper into *why* I was afraid and how to get beyond it.

Id. at 14–15 (emphasis in original).

107. Rogers, *supra* n. 12, at xvi.

108. Fensholt, *supra* n. 6, at 5.

109. Naistadt, *supra* n. 8, at 79.

110. *Id.* at 18.

111. Rogers, *supra* n. 12, at xx; see also Esposito, *supra* n. 100, at 110 (“As with most

Extroverted students and professors might not readily understand the depths of the stress and anxiety for some classroom colleagues and might wonder what all the fuss is about. It might seem illogical. It is exactly this lack of logic that makes this phenomenon so frustrating. Fensholt reiterates that “[t]hese symptoms—and the resulting discomfort and stress—cause frustration and embarrassment in otherwise confident and knowledgeable people.”¹¹² For some reason, these law students—“attractive, successful people, with every reason to feel confident and proud of themselves”—experience low self-valuation and often shame in certain public scenarios.¹¹³ Fensholt emphasizes,

When there seems to be no logical reason for the anxiety and it still hits, a logical person becomes understandably frustrated. When that logical person is accustomed to feeling competent, in control, even powerful, feeling helpless to prevent the anxiety can be even more frustrating.¹¹⁴

Whether a student has experienced public speaking anxiety for most of his or her life, or if law school is a fresh trigger, the root cause is internal and needs to be excavated.¹¹⁵ Naistadt encourages, “Identifying these issues can spell the difference between combating stage fright successfully and sustaining the kind of ambient anxiety that works like a low-grade virus.”¹¹⁶ She warns, “If you allow the source of this anxiety to remain unde-

things, it makes sense to deal with the root of the problem rather than only trying to remedy the symptoms.”)

112. Fensholt, *supra* n. 6, at 8.

113. Esposito, *supra* n. 100, at 4 (“Experiencing panic and dread of public speaking or performing often creates feelings of shame and a feeling of being alone in your suffering.”); *id.* at 9 (“Fear of public speaking and performing often takes a big toll on our self-esteem and leads us to feel some degree of inadequacy and inferiority, especially when we compare ourselves to others who seem able to speak or perform with ease and confidence.”); Rogers, *supra* n. 12, at 24.

114. Fensholt, *supra* n. 6, at 16.

115. *Id.* at 69 (“The first step to minimizing the anxiety is to identify the causes.”); Esposito, *supra* n. 100, at 11 (“Understanding its origins and how it may have taken hold in your life is generally helpful in coming to greater self-acceptance about having the problem.”); Naistadt, *supra* n. 8, at 16–17 (“The key to speaking without fear is exposing the core issues behind your stage fright (issues that can be different for each of us but have common denominators) and rooting them out, then developing a solid technique you can count on for creating and delivering your message.”).

116. Naistadt, *supra* n. 8, at 16–17.

tected, or force it underground, you keep yourself from ever being free of it.”¹¹⁷

Therefore, instead of trying “quick fix” gimmicks, which do not work, students truly committed to conquering this encumbrance can take a five-pronged approach, based on steps offered in Naistadt’s book. The first step is to take time to reflect upon negative or critical messages received in the past.¹¹⁸ These “sound-bites,” that are often internalized and ingrained in one’s formative years, can appear—like unwanted banner advertisements—later in life. Naistadt explains that “messages sent to us in the past by significant people in our lives, whether unintentional or intentional, can leave lasting impressions . . . creating inhibitions that affect how we deal with the present.”¹¹⁹ This undermining dicta can come from parents, siblings, peers, or third-parties like teachers, coaches, or religious leaders.¹²⁰ This first step—detecting past messages—is not designed to shift blame, but it is important to reflect on how long ago the roots of self-doubt in public expression may have taken hold. Esposito encourages individuals to consider

life experiences along the way that have created a deep fear of loss of control and a loss of trust in [themselves] and often in others. . . . [T]here is generally a deep-seated feeling of not being good enough, of being deficient or defective in some way, or of being different from others in a way that will not be accepted by others. This creates a feeling of shame and a fear of embarrassment and humiliation in exposing [their] true sel[ves] in front of others.¹²¹

Second, law students may have adopted—whether years ago, or in their first few months in law school—certain self-defeating fables that recur in their internal dialogue, and replay in their

117. *Id.* at 17.

118. *Id.* at 11–12.

119. *Id.*

120. *Id.* at 71 (referring to, for example, “unsolicited, unwanted, and sometimes downright thoughtless remarks of a teacher, a guidance counselor, a coach, a minister, or some other figure in a position of authority and respect”); see also Rogers, *supra* n. 12, at 28–29 (listing the potential sources of negative messaging, as some of the following: “Authoritarian parents, abusive parents, overly critical parents, perfectionist parents, obsessive parental focus on child’s behavior, alcoholic parents, depressed parents, parents with low self-esteem, jealous older brothers or sisters, abusive teachers, shaming relatives”).

121. Esposito, *supra* n. 100, at 10.

minds during spotlight performance scenarios.¹²² Naistadt explains that myths¹²³ about public speaking “fuel[] the stage fright we experience in situations where we’re called upon to put ourselves on the line before a group or person.”¹²⁴ These might include: (1) “nervousness is a sign of weakness”;¹²⁵ (2) “you have to be perfect”;¹²⁶ (3) public speaking is “a talent you have to be born with”;¹²⁷ (4) “my nervousness is worse than everyone else’s”;¹²⁸ and (5) “it’s all over if you make a mistake.”¹²⁹

Third, students may be restrained by more deeply-rooted psychological barriers that take more dedicated focus to exhume, such as: (1) fear of criticism¹³⁰ or being judged negatively (fear of being characterized as different by our peers);¹³¹ (2) fear of forgetting;¹³² (3) fear of embarrassment or humiliation;¹³³ (4) fear of

122. Rogers, *supra* n. 12, at 73 (“Although people may have no problem speaking and thinking in a one-on-one, where a friendly or even a professional exchange is the usual style of talking, whenever the speech-phobic individual is in a performance mode, being observed or judged by others, intense anxiety occurs and the result is thought-blocking, and an inability to perform.”).

123. Naistadt, *supra* n. 8, at 31–41.

124. *Id.* at 30.

125. *Id.* at 31. “Nervousness is *not* a sign of weakness! It is a sign of *excess energy* that you must learn to control and redirect.” *Id.* at 33 (emphasis in original).

126. *Id.*

127. *Id.* at 35.

128. *Id.* at 37.

129. *Id.* at 40.

130. *Id.* at 52; *see also* Rogers, *supra* n. 12, at 73 (“The hardest thing for a speech-phobic person to do is think his own thoughts while other people (the audience) are watching. The reason for this is that, as children, they were interrupted by powerful others who barged in upon them and humiliated, challenged, or criticized them. Again and again, students report that they were punished for speaking up and voicing their opinions. Little attention was paid to their feelings or boundaries as mothers, fathers, sisters, brothers and teachers dismissed their expression as if it were worthless.”); Rogers, *supra* n. 12, at 247. Rogers counsels speech-phobic individuals,

It is important for you to recognize that because you were actually trained—by parents, teachers, or peers—to expect to be dismissed, attacked, or punished for your thoughts or ideas, you have learned to place little value on yourself. What started as a lack of interest or the admonitions of parents, teachers, or friends became internalized. And now you are self-governed by a complex, invisible “police state” in your mind that denies you the right to express yourself.

Rogers, *supra* n. 12, at 247.

131. Naistadt, *supra* n. 8, at 54 (“Nothing, not even fear of criticism, is irreversible.”).

132. *Id.*

133. *Id.* at 56. Regarding childhood embarrassment by teachers, Naistadt emphasizes, “These experiences are tremendous blows to our self-esteem that may leave considerable personal devastation in their wake. The bad news is that if you don’t work through the fear by pinpointing the source and clearing it away, it will very likely continue to get the better of you.” *Id.* at 57.

failure (or success);¹³⁴ (5) fear of the unknown;¹³⁵ and (6) fear of bad past experiences.¹³⁶

Fourth, students must study and observe the ways anxiety manifests in their physical bodies.¹³⁷ These symptoms can vary from individual to individual. Shortness of breath, a rapid heart-beat, shaking, sweating, and breaking out in hives are normal physical and biological reactions to stress. There are surprisingly simple ways to recognize and control these responses,¹³⁸ such as breathing techniques, physical stance, and channeling excess energy into tangible objects like podiums, pens, and desktops.

Finally, once individuals become aware of and process the foregoing negative sound-bites, personal fables, hidden blockages, and physical manifestations, they can work on re-framing and re-inventing themselves as they prepare for specific public speaking opportunities.¹³⁹ Students who approach this process with an open mind will engage in a tremendous opportunity for growth.

IV. GAUGING HOW WIDESPREAD SEVERE PUBLIC SPEAKING ANXIETY IS IN OUR LAW SCHOOLS AND WHAT SCHOOLS ARE DOING ABOUT IT

In an informal email query to Deans of Students and Academic Support Program Directors at our nation's Top 100 law schools,¹⁴⁰ these administrators and faculty were asked whether their law schools (a) have encountered students with extreme public speaking fear, and/or (b) have programs in place to assist students in overcoming public speaking anxiety. Many respondents acknowledged an awareness of students struggling with this challenge, but indicated that very few students come forward to discuss it openly or seek direct help. The low frequency in student reporting could stem from a reluctance to admit a perceived

134. *Id.* at 57–58.

135. *Id.* at 59–60.

136. *Id.* at 60–61.

137. *Id.* at 142–174.

138. *Id.* at 147–168.

139. *Id.* at 74–87.

140. U.S. News & World Rpt., *Best Law Schools Rankings* 2010, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/rankings> (indicating that forty-one faculty members responded out of 100 schools queried in emails to Deans of Students and Academic Support Program Directors at the Top 100 law schools).

weakness, thus presenting difficulty in accurately quantifying how many students at a given law school, or law schools nationwide, experience public speaking anxiety, or would benefit from a program which would directly address the matter. Anecdotally, however, students are willing to discuss the issue when specifically asked in a safe non-judgmental forum. In a non-scientific, and recognizably small, study, four sections of LRW students at Chapman University School of Law, totaling seventy-two students (thirty-six first-year students who just completed their year-long LRW course, and thirty-six second-year students who completed their LRW course in the 2009–2010 school year)¹⁴¹ were asked if they would be interested in completing a ten-part questionnaire (that the Author developed) regarding fear of public speaking in law school. Twenty-four students responded, revealing they had experienced at least some form of public speaking anxiety in college or law school. Many of these students stated that no one in their academic career had ever asked them about public speaking anxiety.

Some students who completed the questionnaire confided that they dreaded going to certain classes every day for fear of being on-call. Some experienced panic and anxiety the moment they were called upon in class, or if their responses to questions did not go well. Some expressed that “being called on in class produces such extreme anxiety . . . that it makes my fear of public speaking worse.” Sadly, some shared that “unless I overcome my fear of public speaking, I will probably avoid a career in litigation.”

The students explained that their fears tied to the Socratic Method and oral arguments related mostly to possible embarrassment in front of peers, public perception of a lack of intelligence, and worry that poor performance correlated to their future ability as a lawyer. According to these students, the onset of public speaking anxiety came during varied life phases, ranging from childhood, to high school, to college, to law school. Reflecting on whether childhood experiences could have been possible triggers, certain students commented that they were told as children not to be a “show-off,” and were discouraged from expressing their opinions. Students remarked:

141. Heidi K. Brown, *Public Speaking Survey* (June 30, 2010) (unpublished survey, on file with Author).

“I was expected to be a humble winner.”

“I was always told to keep my mouth shut.”

“We were supposed to . . . not run around or ‘make a scene.’”

“I was told to be quiet a lot.”

“I . . . was not allowed to have an opinion at home.”

“My parents never (and still don’t) want me to speak my mind.”

“I always felt timid to express my own opinions.”

“Any opinion different from my parents was not open to discussion.”

The most dramatic response was: “My father would often become physically violent when I would express my opinion. It led to me leaving home at the age of 13.”

Almost all the students who completed the questionnaire articulated a desire to overcome their fear of public speaking, and believed it would be helpful for law schools to recognize this issue more overtly.¹⁴² All the students agreed that “if there were a law school program that would help me to understand my fear of pub-

142. *Id.* When given the opportunity to comment regarding what they wished law professors would realize about students’ fear of public speaking, the students offered the following comments:

- “[Fear of public speaking] affects [students’] performance not only in class but in preparing for class”; “Lack of clear and concise responses does not equal lack of preparation or knowledge”;
- “[B]eing unprofessional and rude to the student is not going to assist the student in overcoming his/her anxiety”;
- “Students typically have no background in public speaking and so we need to start from ground zero—the very basics”;
- “[I]t is terrifying for students to participate in activities when the students have no experience or understanding of what they are doing and are still forced to do the activities”;
- “I think professors DO realize students have fear of it, but simply ‘go with the program’ and don’t give it any special attention”;
- “It does not make them a better professor when they embarrass a student”;
- “[Professors] are sometimes the reason we are scared of speaking”;
- “Students are more intelligent than their public speaking skills demonstrate”;
- “We don’t understand the questions as the professors ask them. Talk in basic, simple English. We know our professors are geniuses. Talk simply”;
- “The ‘scare-tactic’ of law school is outdated and worthless”; and
- “It’s like throwing a dog that doesn’t know how to swim into a cold pool.”

lic speaking, and work on overcoming it, in a non-confrontational environment, I would like to participate in it.”

Notably, most of the law school administrators and faculty who answered the email query indicated they have no formal program in place specifically related to extreme public speaking anxiety issues. As described in Section V below, only two schools (out of the 41 who responded) offer specifically tailored programs. Nonetheless, many respondents acknowledged the reality of this concern. Diane B. Kraft, former Director of Academic Success at the University of Kentucky College of Law, stated, “We don’t have any Academic Success workshops for dealing with fear of public speaking . . . but I think we should! I know the fear is out there—I saw it with some excellent legal writing students.”¹⁴³ Likewise, John Mollenkamp, former Director of Academic Support and Clinical Professor at Cornell Law School, expressed,

I wish that Cornell students were immune from fear of public speaking. My first year here, I actually had a student suddenly burst into tears after saying “May it please the Court.” Never before or since, but it gives some idea that even the very high-scoring students do have challenges.¹⁴⁴

In schools with no formal public speaking anxiety programs, professors tend to handle public speaking issues through general class-wide oral argument workshops, classroom lectures, public speaking course offerings in the second or third year, one-on-one counseling, or for more serious cases, referrals to university-based professional counseling services. For oral arguments, for example, some schools offer extra preparation sessions, focusing on practical advice for standing at the podium, general performance anxiety, strategies for handling questions, and practice in a non-threatening environment.¹⁴⁵ Certain professors have addressed

143. Email from Diane Kraft, Dir. of Academic Success, U. of Ky. College of L., to Heidi K. Brown, Assoc. Prof. of Leg. Research & Writing, Chapman U. Sch. of L., *Research Regarding Academic Support for “Assisting Law Students in Overcoming Public Speaking Fear”* (June 23, 2010 10:46 a.m. PST) (on file with Author).

144. Email from John Mollenkamp, Dir. of Academic Support, Cornell L. Sch., to Heidi K. Brown, Assoc. Prof. of Leg. Research & Writing, Chapman U. Sch. of L., *Research Regarding Academic Support for “Assisting Law Students in Overcoming Public Speaking Fear”* (June 15, 2010 8:41 p.m. PST) (on file with Author).

145. Grace J. Wigal, Director of the Academic Excellence Program at West Virginia University College of Law, offers her students the opportunity to “watch a video of their ‘real’ performance, and even those who struggle the most come away from the video

the issue of nerves head-on in a group setting. John Mollenkamp invited a theater professor to his regular class period to discuss stage fright.¹⁴⁶ David Baum, Assistant Dean for Student Affairs and Special Counsel for Professional Skills Development at the University of Michigan Law School, summarized a colleague's strategy for directly addressing performance anxiety:

At least one professor addresses the issue of performance anxiety head on from the beginning of her class. She talks about her own intense fear of public speaking and things she has done to ease the anxiety. She gives them specific suggestions regarding how to prepare for oral arguments so they limit the amount of fear they feel (practicing with a friend, in a mirror, etc.). She also starts every oral argument by speaking to the students a bit to put them at ease. She further related that she has never had a student unable to do the oral arguments, though she has had some students with intense (and nearly paralyzing) fear about the process. She always work[s] with them directly and individually if they want the help.¹⁴⁷

To address potential student reticence toward the Socratic Method or mandatory class participation, some professors offer advice in a general classroom lecture about the underlying purposes of the Method and faculty expectations. For example, Jennifer Carr, Director of the Academic Success Program at UNLV William S. Boyd School of law, offered this strategy:

[I] asked a doctrinal professor to come in and discuss what she is looking for from "class participation." Again, we focused very practically—be prepared, here are some transitions you can use to shift the conversation to what you feel

review believing that they handled themselves quite well. The video has proved the very best tool in helping them get over self-doubt. I am often amazed by how good they are the NEXT time they must present an argument!" Email from Grace Wigal, Dir. of Academic Excellence Prog., W. Va. U. College of L., to Heidi K. Brown, Assoc. Prof. of Leg. Research & Writing, Chapman U. Sch. of L., *Research Regarding Academic Support for "Assisting Law Students in Overcoming Public Speaking Fear"* (June 29, 2010 3:04 p.m. PST) (on file with Author).

146. Mollenkamp email, *supra* n. 144.

147. Email from David Baum, Asst. Dean for Student Affairs & Special Counsel for Prof. Skills Dev., U. of Mich. L. Sch., to Heidi K. Brown, Assoc. Prof. of Leg. Research & Writing, Chapman U. Sch. of L., *Research Regarding Academic Support for "Assisting Law Students in Overcoming Public Speaking Fear"* (June 16, 2010 10:53 p.m. PST) (on file with Author).

comfortable talking about, here's how to volunteer, here's how to sense what your professor is looking for, etc.¹⁴⁸

Other schools reported addressing public speaking concerns on a one-on-one basis between a student and his or her professor or an Academic Support advisor. Leslie S. Newman, Director of the Lawyering and Legal Writing Program at Benjamin N. Cardozo School of Law, described the following approach to one-on-one meetings with anxious students:

When these students come to see me, I discuss their reluctance with them. Usually, they express a general dislike of speaking in front of groups, or an experience, often in another law school course where they . . . answered inadequately. I talk to them about the need to see that in context and also about the benefits of volunteering rather than being called on. I also tell them a question or two that I will be asking at the next day's class so they can think ahead about how they might answer it. When they respond by raising their hand to one of these pre-noticed questions in class, I make sure to be positive about their response—to build on it, to show that it was useful.¹⁴⁹

Some law schools specifically offer public speaking courses in the general second- or third-year curriculum. Martha D. Ballenger, Assistant Dean for Student Affairs at the University of Virginia School of Law, remarked that the law school offers “a couple of courses in public speaking that get very good reviews and provide a venue in which students can confront the beast and get guidance on calming exercises, etc.”¹⁵⁰

148. Email from Jennifer Carr, Dir. of Academic Success Prog., UNLV/Boyd Sch. of L., to Heidi K. Brown, Assoc. Prof. of Leg. Research & Writing, Chapman U. Sch. of L., *Research Regarding Academic Support for “Assisting Law Students in Overcoming Public Speaking Fear”* (June 25, 2010 1:10 p.m. PST) (on file with Author).

149. Email from Leslie S. Newman, Dir. of Lawyering & Leg. Writing Prog., at Benjamin N. Cardozo Sch. of L., to Heidi K. Brown, Assoc. Prof. of Leg. Research & Writing, Chapman U. Sch. of L., *Research Regarding Academic Support for “Assisting Law Students in Overcoming Public Speaking Fear”* (June 21, 2010 9:46 a.m. PST) (on file with Author).

150. Email from Martha Ballenger, Asst. Dean for Student Affairs, U. of Va. Sch. of L., to Heidi K. Brown, Assoc. Prof. of Leg. Research & Writing, Chapman U. Sch. of L., *Research Regarding Academic Support for “Assisting Law Students in Overcoming Public Speaking Fear”* (June 26, 2011, 7:57 p.m. PST) (on file with Author).

Finally, many schools, of course, refer students with stress and anxiety issues to university-based counseling services. For example, David Baum explained,

At Michigan, a number of our Legal Practice faculty address this issue ad hoc when it arises, working directly with the student to enable him or her to make the oral presentations, and sometimes sending them to other resources, like the University's Counseling and Psychological Services (CAPS) Office . . . for help.¹⁵¹

Likewise, Peter Horvath, Student Services Program Director at University of Notre Dame Law School, stated that "for students with diagnosed stress or anxiety disorders and for whom public speaking may be an issue, we do consult with our university office . . ." ¹⁵²

While the foregoing strategies certainly provide a good starting point for students struggling with public speaking anxiety, this Article proposes that law schools can do even more with specifically tailored workshops.

*V. "IF WE BUILD IT, THEY WILL COME"¹⁵³:
ADDITIONAL STRATEGIES FOR EFFECTIVELY
AND HOLISTICALLY HELPING STUDENTS
CONQUER PUBLIC SPEAKING ANXIETY*

Certain students will react more negatively than others to the Socratic Method and on-demand public speaking scenarios like the first-year oral argument program, based upon their psychological makeup.¹⁵⁴ This subset of a given law school student body might experience serious psychological and physiological

151. Baum email, *supra* n. 147.

152. Email from Peter Horvath, Dir. of Student Servs. Program at U. of Notre Dame L. Sch., to Heidi K. Brown, Assoc. Prof. of Leg. Research & Writing, Chapman U. Sch. of L., *Research Regarding Academic Support for "Assisting Law Students in Overcoming Public Speaking Fear"* (June 16, 2010, 12:48 p.m. PST) (on file with Author).

153. *Field of Dreams*, Motion Picture (Universal Studios 1989).

154. Glesner, *supra* n. 47, at 634 ("A person's individual makeup influences both the degree to which a demand is threatening and his ability to positively respond. A person's needs and values will in part determine whether the demand constitutes a threat. For someone who has a high need for approval from authority or for certainty in information, a traditional 'Socratic dialogue' class will be more stressful than for someone who is more iconoclastic or more tolerant of ambiguity." (Footnotes omitted)); *see also* Maloney, *supra* n. 40, at 322.

manifestations¹⁵⁵ of stress and anxiety. However, this does not mean these students are underachievers,¹⁵⁶ or not destined for successful legal careers. Instead of simply accepting that a certain percentage of law students will be anxiety-ridden, miserable, or destined for “mediocrity,”¹⁵⁷ this is a call to action. Professors’ efforts to understand and address this issue more fully will improve the law school experience for these students and the classroom dynamics as a whole. Further, these individuals will start to make incremental improvements for the legal profession when they enter the workforce as more well-rounded, less anxious advocates. They will have a greater understanding of themselves and perhaps even their clients’ diverse sensitivities.¹⁵⁸

Likewise, the risks of ignoring this issue go well beyond a single student, classroom, or law school. Law schools need to consider the broader societal effects of perpetuating classroom environments that stifle creative thinking, downplay emotion¹⁵⁹ or sensitivity¹⁶⁰ in legal analysis, and repress individuality.¹⁶¹ Forc-

155. McKinney, *supra* n. 55, at 242 (“When they are called on in class, however, many feel they fail to shine. Some experience strong, negative physiological reactions to speaking publicly under pressure in large classes.”); Glesner, *supra* n. 47, at 631 (“When called upon in specific stressful situations to use reserves of courage and confidence, they may be debilitated; and they often have no reserves to call upon.”).

156. Glesner, *supra* n. 47, at 631 n. 26 (“If faculty see these students as merely ‘unmotivated,’ the reaction may be to further increase demands, thus exacerbating the problem.”).

157. Ricks, *supra* n. 1, at 570 (quoting Jay Feinman & Marc Feldman, *Pedagogy & Politics*, 73 *Geo. L.J.* 875, 895 (1985), “Typically, law teachers are satisfied if a few students excel, some fail, and most muddle through. Student performance is widely distributed, and mediocrity is accepted as inevitable.”).

158. Paula Lustbader, *From Dreams to Reality: The Emerging Role of Law School Academic Support Programs*, 31 *U.S.F. L. Rev.* 839 (1997) (“[C]reating a safe and effective learning environment for diverse students would help diversify the legal profession and ultimately result in a more just legal system and society.”).

159. Loreen, *supra* n. 96, at 843 (“The traditional Langdellian approach to teaching law ignores the psychological and emotional skills that good lawyering demands.”); *id.* at 844 (“Silver notes that the ‘personality profile of the typical law student; the emphasis on rational, analytical discourse and the Socratic method in law school; the talents that are ratified and rewarded in practice: all contribute to the devaluation and denial of emotional processes and influences.” (quoting Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 *Psychol. Pub. Policy & L.* 1173, 1181 (1999)); Abramson, *supra* n. 80, at 257 (“Lawyers confront emotional situations on the job, and spending three years pretending that emotion plays no role in the law cannot adequately prepare students to work as lawyers. By reserving a place for emotion within the legal classroom, students learn how to conduct legal analysis within the context of emotionally or morally difficult cases. They learn to confront their own emotions and to navigate legal problems that involve emotional considerations. A legal classroom that shuns all emotions anesthetizes students to the full force of the law.”).

160. Glesner, *supra* n. 47, at 654 (“We need to convince students that the rewards of a

ing students to try to change their persona, or “fake it till they make it,” is not the recommended solution; the classroom as a whole could lose out on a range of untapped gifts.¹⁶² Some scholars even warn of broader societal effects of allowing anxiety to go unchecked, such as a decline in student altruism.¹⁶³ This concern has spawned a group of scholars to re-emphasize the importance of integrating emotion and humanity into our legal teaching.¹⁶⁴

Law professors are uniquely poised¹⁶⁵ and well-positioned¹⁶⁶ to shape the future lawyers of our nation, in terms of ethics, professional integrity, and humanity.¹⁶⁷ Legal educators can start by identifying the “silent but gifted” in their classrooms, and providing the right coaching to give them the confidence to find their “lawyer voice.” Some might say law faculty not only has an opportunity to help, but a duty,¹⁶⁸ to ensure that these students stay on

successful legal career are not only for those students who earn grades in the top ten percentile, but also depend on their sensitivity, reliability, or honesty.”).

161. Rosato, *supra* n. 64, at 42 (The Socratic Method “dehumanizes the law and diminishes the students’ creativity by rewarding neutral, logical responses rather than responses that allow the students to consider the problem from their personal perspectives (such as narrative) or from alternative perspectives (such as feminism).”).

162. Jolly-Ryan, *supra* n. 2, at 124 (“If law schools and law professors extinguish or discourage any of the unique gifts possessed by law students, they exert ‘a destructive force’ on both the students and the legal profession as a whole.”).

163. Andrew Moore, *Conversion and the Socratic Method in Legal Education: Some Advice for Prospective Law Students*, 80 U. Det. Mercy L. Rev. 505, 508 (2003) (“One of the studies that charted decline in student altruism concluded that anxiety in the first year of law school was the largest factor in students losing their concern for public interest work.”).

164. For additional articles on incorporating emotional intelligence into the law school environment, see, for example, Montgomery, *supra* n. 21; Silver, *supra* n. 159; Slocum, *supra* n. 21.

165. Jolly-Ryan, *supra* n. 2, at 95 (“Sometimes law students need help dealing with their troubles. Law schools are in a position to deliver the help.”).

166. *Id.* at 123 (“Law professors are in a unique position to change legal education and affect the mental health of law students and the future of the legal profession. First, law professors can recognize the individual gifts and talents of their students, while helping them to overcome sometimes-artificial barriers to using those gifts and talents in the legal profession. They can teach to the various learning styles of students, giving them opportunities to demonstrate individual strengths that would likely remain stifled by adherence to the antiquated Socratic method of the traditional law school classroom.”).

167. Glesner, *supra* n. 47, at 642 (“If law schools are to shape values and priorities, emphasize ethical responsibilities, set standards of professional courtesy, and provide a positive vision of the attorney’s role, law professors must take affirmative steps to ensure that these tasks are part of the curriculum.”).

168. Soonpaa, *supra* n. 23, at 380 n. 179 (“Indeed, the faculty, as those who often contribute to the stress felt by law students and as those who are acculturating students to their new profession, have a professional responsibility to help students to deal with the process.”).

course and fulfill their potential.¹⁶⁹ Instead of just telling law students to be more vocal in their advocacy, and then promptly grading them on their success or failure in those attempts, law professors must first teach them how to do so, including how to conquer potentially debilitating nerves. If a professor does not feel equipped to handle this particular learning challenge, he or she should point students in the direction of someone who can. Perhaps William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, and Lee S. Shulman said it best in *Educating Lawyers: Preparation for the Profession of Law*: “They must come to understand thoroughly so they can act competently, and they must act competently in order to serve responsibly.”¹⁷⁰

A holistic yet practical solution is in order. Professors cannot simply pay lip service to the idea. Regarding stress management in law school, Professor Glesner states, “Publishing the phone number of the college counseling center in a student handbook or discussing student stress at a faculty retreat is not enough. Only as part of an entire program of stress intervention can such information truly be effective.”¹⁷¹

An overall strategy of intervention in the arena of public speaking anxiety should involve: (1) acknowledging more than one type of learner¹⁷² and recognizing there could be quite a large percentage of students in each classroom who do not fit the cookie-cutter “factory-assembled” attorney mold;¹⁷³ (2) eliminating or

169. Shapiro, *supra* n. 43, at 936 (“Without help, students may become depressed and lose the motivation to do well in law school.” (Footnotes omitted)).

170. William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 23 (Jossey-Bass 2007).

171. Glesner, *supra* n. 47, at 645–646.

172. Jolly-Ryan, *supra* n. 2, at 123 (“Traditionally, [law school professors] have focused on one kind of learner to the exclusion of all others.”); Ricks, *supra* n. 1, at 570 (“Talking confidently about law is an important skill in legal practice, yet law teachers rarely devote much attention to developing students’ oral skills when fluency doesn’t come to them naturally.”).

173. Sonsteng et al., *supra* n. 53, at 390 (“A system catering to one type of learner can limit a profession by allowing only a small percentage of students who happen to excel best under the predominant learning method to enter the job market successfully.”); *id.* (“Traditional law school instruction focuses almost exclusively on the lecture-based method of teaching and a timed-essay format of testing. Only a small segment of students are able to achieve high academic success within this system. Often discouraged from entering the profession is a segment of students who may be better suited to certain aspects of lawyering, such as client interaction, trial advocacy, mediation, and negotiation, skills that remain untapped and academically unrecognized at many law schools.” (Footnotes omitted)); *id.* at 392–393 (“The factory model was a one-size-fits-all approach; we now know that education is a much more amorphous process than the assembly line metaphor de-

minimizing unnecessarily counter-productive catalysts for anxiety;¹⁷⁴ and (3) adding or maximizing resources for coping with inherent and unavoidable stressors.¹⁷⁵ Two tangible ways to accomplish these goals are: (1) fostering a healthy communicative classroom dynamic in which all students feel safe speaking aloud; and (2) developing tailored workshops geared toward “Overcoming Public Speaking Anxiety.”

A. Fostering a Healthy Communicative Classroom Dynamic

As a foundation, professors can start by engendering a classroom atmosphere that allows more hesitant students a safer forum to take risks. Basic steps to accomplish that goal might include the following:

- (1) Acknowledging that students have different learning styles and personality types,¹⁷⁶ and silent law students are not necessarily unmotivated, lazy, unintelligent or not cut out for the law, but just need help finding their “lawyer voice”;¹⁷⁷
- (2) Recognizing that, for many students, speaking in front of a large group on complex legal issues is a new competency¹⁷⁸ that must be taught before tested;¹⁷⁹

scribes.”).

174. Glesner, *supra* n. 47, at 660 (“To effectively reduce stress, one must not only decrease unnecessary stressors, but also increase resources for coping.”).

175. *Id.*

176. Soonpaa, *supra* n. 23, at 363–364 (“[A] study suggests that awareness of personality types would lead to schools and students being better able to adjust to and meet the variety of learning needs and teaching styles in every classroom, presumably thereby also decreasing stress.”).

177. Korn, *supra* n. 76, at 589 (“Clearly, something better is needed—namely, a course focused on improving communication itself . . . We might start by recognizing that law students, like many other people, may well be afraid of public speaking and need help in overcoming their fears.”).

178. Jackson, *supra* n. 66, at 280 (“[B]ecause undergraduate education relies on a passive mode of learning, many students’ verbal skills have become rusty by the time they arrive at law school, at least rusty in the sense of verbally crafting logical arguments.”).

179. Joseph A. Dickinson, *Understanding the Socratic Method in Law School Teaching after the Carnegie Foundation’s Educating Lawyers*, 31 W. New Eng. L. Rev. 97, 104 (2009) (“The teacher must be aware that while lawyers may often be required to speak their views in public, knowing those views will be subject to critique and criticism, new students are likely not practiced in that skill. They are in a law school class to acquire and practice that skill. Public denigration of a student’s proposition the first time that student responds cannot be sound. Compassion requires coaching not denigration.”).

- (3) Being more open with students about what the law school learning process is (i.e., the Socratic Method, mandatory class participation), why it is important, how it is going to work, and why students might feel initial discomfort learning this new mode of communication;¹⁸⁰
- (4) Clarifying student misperceptions about the Socratic Method and other law school processes;¹⁸¹
- (5) Promising, and delivering, a classroom environment based on respect;¹⁸²
- (6) Re-introducing humanity,¹⁸³ emotion,¹⁸⁴ sensitivity, and creativity into law teaching;

180. Glesner, *supra* n. 47, at 647 (“Faculty must take care in preparing students for the stress of school by positively framing information about the coming challenges.”); Jackson, *supra* n. 66, at 288 (“It is possible to retain the benefits of the Socratic method while at the same time guarding against the risk that students will be humiliated or terrorized by its application. One way to reduce the potential for humiliation and terror is for the professor to provide context for his or her use of the Socratic method. In effect, the professor educates the students about the methodology, explaining that the Socratic method is employed to teach concepts, not to humiliate students, and that while students may make a mistake, such mistakes are not only an inevitable part of the learning process, but also a valuable contribution to the discussion. By explaining the purpose behind the methodology, the professor can ‘demystify’ the process and reassure students that there is indeed a ‘method’ to the professor’s use of the Socratic method, thus reducing the students’ stress.”).

181. Schachter, *supra* n. 18, at 156 (“[T]he student’s perception of the demeanor and process [of the Socratic Method] is an important determinant of the range between enlightenment and humiliation.”).

182. Hess, *supra* n. 43, at 87 (“A respectful environment is one in which teachers and students participate in a dialog, explore ideas, and solve problems creatively. Intimidation, humiliation, and denigration of others’ contributions are disrespectful, cause many students to withdraw from participation, and hinder their learning. But mutual respect does not mean that the participants avoid conflict, hard work, and criticism. To grow, teachers and students must engage in critical reflection and be willing to challenge and be challenged.”); Jackson, *supra* n. 66, at 288 (“If the real problem is not the method itself, but professors’ tendency to misuse the method, then there is an easy antidote: respect.”); Glesner, *supra* n. 47, at 652 (“[A] respectful and supportive relationship is crucial to student willingness to engage themselves in the dialogue.”); Dickinson, *supra* n. 179, at 9 (“[T]he teacher must have an attitude of genuine respect for classroom space and time, for the dialogue process, and for all potential participants. This respect must be evident by the teacher’s preparation. It is further evidenced by a sense of compassion . . .”).

183. Loreen, *supra* n. 96, at 844–845 (“This requires a re-imagination of legal education with a refocusing on the human aspect of lawyering.”).

184. *Id.* at 843–844 (“Marjorie Silver argues that “[w]e fail our students if we fail to prepare them for the impact of their emotional lives, as well of those of their clients, on the practice of law.”).

- (7) Fostering a supportive and collaborative classroom environment;¹⁸⁵
- (8) Developing relationships with students, through questionnaires, office hours, and lunches;¹⁸⁶
- (9) Making learning enjoyable;¹⁸⁷ and
- (10) Being more attuned to,¹⁸⁸ and having compassion¹⁸⁹ and genuine care¹⁹⁰ for, students who may be suffering stress and anxiety.¹⁹¹

Law professors do not need psychology degrees to make these subtle changes in interaction with students.¹⁹²

185. Hess, *supra* n. 43, at 92 (“A supportive environment is an important factor in student motivation and engagement in all law school classrooms, especially those that include the Socratic method and value problem-solving and critical thinking.”); Sonsteng et al., *supra* n. 53, at 398 (“A supportive environment enhances students’ learning, willingness to take risks, and their openness to offering and considering a variety of perspectives.”).

186. Jolly-Ryan, *supra* n. 2, at 125 (“Law professors can encourage students to use their unique gifts by getting to know them better. They can ask students about their hobbies and interests. They can share time and their own interests with students. Additionally, they can teach to law students’ individual learning styles.”).

187. Christopher Guthrie, *A Little Variety Goes a Long Way*, in *Teaching the Law School Curriculum* 384 (Steven Friedland & Gerald F. Hess eds., Carolina Academic Press 2004). (“Real’ Socratic teaching seems to assume that students learn best when they are afraid. Perhaps this is true for some students but I suspect most students learn better when they are enjoying the classroom experience.”).

188. Vance, *supra* n. 68, at 501 (“Behind every student who does not perform well is a story, often with dramatic tinges.”).

189. Dickinson, *supra* n. 179, at 16–17 (“[W]hen a law teacher recognizes the palpably reticent student (who saw [the movie] *The Paper Chase* before starting law school) trembling in anticipation of the possible demand of being called to respond without prior notice—the ‘cold call’—and then calls on that student for a response before his or her classmates, the teacher must respond to that student’s response with gentleness, finding in it a thing of value to the discussion If the valuable response is not the student’s first response, coaching a valuable response from the first response with follow up questions honors the student’s achievement in overcoming reticence and confirms his or her capacity to contribute.”).

190. Schwartz et al., *supra* n. 85, at 15 (“Our attitudes have strong positive effects on students’ motivation, level of engagement in the classroom, willingness to take risks, and openness to new ideas and perspectives. Conversely, the quickest way to fail as a teacher is to communicate our lack of care about our students and their learning.”).

191. Glesner, *supra* n. 47, at 667 (“Perhaps the most direct, though not simple, means to address the psychological climate of law schools is for faculty members to open their eyes and ears to students and be able to help when they appear distressed.”).

192. Benjamin et al., *supra* n. 38, at 250 (“[I]nterventions by informed lay faculty can be as therapeutic as interventions by trained therapists.”). The subtle changes listed above also might enhance law professors’ job satisfaction.

There are many practical techniques professors can employ within the classroom to begin engaging and drawing out hesitant speakers. Lisa T. McElroy, Associate Professor of Law at Earle Mack School of Law at Drexel University, recommends that professors “offer regular, minimally-intimidating opportunities for students to speak about, argue about, debate, and explain the law.”¹⁹³ The professor needs to understand, however, that his or her idea of “minimally-intimidating” might differ from the students’ definition. A student who prefers never to speak at all needs to start with very short, non-antagonistic classroom exchanges, and have several opportunities to perform in that milieu with success and affirmation. To diffuse the intimidation factor, professors might ask students to talk for two minutes about a subject about which they are knowledgeable and passionate. Sarah E. Ricks, Clinical Professor of Law at Rutgers School of Law, reiterates “affirmation” by classmates and the teacher as a way to “expand participation.”¹⁹⁴ She echoes McElroy’s concept of “low-pressure oral presentations and . . . rehearsal opportunities.”¹⁹⁵ For instance, professors can divide the classroom into small groups to practice a question-and-answer exchange before asking a reticent student to speak on a challenging legal topic before the entire crowd.

With specific regard to the Socratic Method, Bonita London, Vanessa Anderson, and Geraldine Downey quoted a student’s suggestion that “the Socratic Method would be a great way to learn if it was done in a more intimate, supportive setting. If I wasn’t so worried about losing face, I think I’d be able to focus on grappling with the actual issues and concepts.”¹⁹⁶ Another student suggested, “[W]hile supportiveness is often associated with smaller, more intimate academic settings, supportiveness could also be conveyed simply in an institutional endorsement of an incremental theory of intelligence, and an insistence that classroom environments focus less on proving competence and more on the process of learning.”¹⁹⁷ The professor might underscore that

193. McElroy, *supra* n. 10, at 598 (summarizing both *The Carnegie Report*, *supra* n. 170, and Roy Stuckey et al., *Best Practices for Legal Education* (Clin. Leg. Educ. Assn. 2007)).

194. Ricks, *supra* n. 1, at 573.

195. *Id.*

196. London et al., *supra* n. 94, at 404 (footnotes omitted).

197. *Id.* at 406.

the Socratic interchange is not intended to be a pass-fail experience with the aim of humiliating a floundering student, but is designed to probe deeper legal analysis through questioning. The professor can set a tone of incremental learning by acknowledging at the beginning of the semester that Socratic dialogue skills are new to students and will be taught and developed, instead of “proven” from Day One.¹⁹⁸ If a professor realizes a student is struggling in a teaching moment, he or she perhaps might switch roles and ask the student to serve as “questioner” to the rest of the class. Rather than allowing the student to “pass,” the professor could hand the student a pre-made flashcard with 3-5 question prompts, keeping the student talking, but alleviating some of the pressure to deliver the “right” answers.

As Professor Kerr suggests, professors also might consider “counter-traditionalist” teaching methods other than the traditional form of the Socratic Method to foster student participation and engagement, “such as panel systems, lectures, and group problems, to create a classroom atmosphere designed to be less intimidating, less pressured, and more informative than the traditional Socratic classroom.”¹⁹⁹ Professors should keep in mind, however, that certain students might still experience major anxiety even in small groups, where dominant extroverts can still take over. Instead of opting out of public speaking opportunities to the detriment of his or her participation grade, these students perhaps can carve out a classroom role of delivering information aloud with less of a “performance” or competitive element, such as summarizing a rule at the end of a lecture, or reading a summary of a case off a flashcard.

For professors who do not take naturally to experimenting with alternative classroom dynamics, schools could offer faculty

198. For an explanation of the difference between “fixed mindset” learning and “growth mindset” learning, see Carol S. Dweck, *Mindset: The New Psychology of Success* (Random House 2006), or Carrie Sperling & Susan Shapcott, *Fixing Students’ Fixed Mindsets: Paving the Way for Meaningful Assessments*, 18 *Leg. Writing* 39 (2012).

199. Kerr, *supra* n. 37, at 124; see also Maloney, *supra* n. 40, at 330 (“Professors could implement the Socratic method, however, in a couple of different ways. For example, professors could call on students in alphabetical order or allow them an opportunity to pass if they are unprepared. These suggestions provide the students with some predictability, as they have the comfort in knowing when they will be called upon or at least that they have the option of passing. . . . In addition, professors should organize their larger classes into smaller discussion groups, offering more students the chance to participate and have their opinions heard.”).

pedagogy workshops to share other ways to integrate Socratic questioning in a less intimidating way.²⁰⁰

B. Developing Formal “Overcoming Public Speaking Anxiety” Workshops

Indeed, the most effective long-term solution for helping students conquer extreme public speaking anxiety is to empower them to open up and share their common struggle.²⁰¹ Every law school should consider developing a voluntary workshop series to assist students in overcoming major public speaking anxiety in their first year and beyond. These workshops require minimal financial investment but could achieve maximum results.

Notably, two schools—the University of North Carolina School of Law and the University of Miami School of Law—responded to the email query mentioned in part IV above, with descriptions of creative and unique programs tailored to public speaking anxiety, in the context of oral arguments and the Socratic Method. These two exciting examples energized the development of an experimental five-part Overcoming Public Speaking Anxiety (OPSA) workshop at New York Law School in spring 2012, in advance of the NYLS first-year oral arguments, which was repeated in spring 2013. All three of these programs are cost-effective, easy to implement, but have a huge potential upside for students.

Ruth Ann McKinney, Clinical Professor of Law Emeritus at the University of North Carolina School of Law, noted the disconcerting reality that “students who aren’t already speech phobic can become speech phobic if they aren’t well prepared for their first oral argument and then are embarrassed by the experi-

200. Soonpaa, *supra* n. 23, at 380–381 (“[W]orkshops could be offered to sensitize faculty to warning signs that may signal a student’s need for help. Law schools should also consider whether personality tests and other surveys could enable them to better assess their students and offer constructive advice (if not institute curricular changes) to make law school a positive and more manageable experience. Understanding personality characteristics, learning styles, and other personal insights could help students to make sense of the law school experience, better manage the acculturation process, and offer a sense of control and understanding in what often seems to be an out-of-control and confusing experience.”).

201. Glesner, *supra* n. 47, at 664 (“This support need not require a significant investment of resources. Simply acknowledging common feelings among students in a class can do much to reduce strain.”).

ence.”²⁰² With that understanding as a backdrop, Professor McKinney developed an oral argument support group offered to law students in the spring semester of their first year.²⁰³ Interestingly, Professor McKinney commented, “I used to run the group myself, but now the demand is too large.”²⁰⁴ She describes the support group as follows:

I train three or four outstanding upper class students every year and each of them works with about four students who self-identify as being speech phobic or otherwise wanting help. We use basic behavior modification techniques (shaping and systematic desensitization and visualization/relaxation exercises) to help students succeed. Happily, we often end up with award-winning participants (students selected by their writing section teacher to win an Outstanding Oralist award) from our support groups.²⁰⁵

Professor McKinney also provides tutors for students who prefer one-on-one interaction²⁰⁶ and of course “refer[s] students to [the] university’s counseling center for more extensive help if they have really debilitating anxiety that is pervasive in other areas of their lives.”²⁰⁷ The most notable aspect of Professor McKinney’s program is its “pay-it forward” mentality. She emphasizes, “The pay-back is that we ask everyone who receives help to figure out where they have a strength (like strong legal writing) and to find

202. Email from Ruth Ann McKinney, Clin. Prof. of L. Emeritus at the U.N.C. Sch. of L., to Heidi K. Brown, Assoc. Prof. of Leg. Research & Writing, Chapman U. Sch. of L., *Research Regarding Academic Support for “Assisting Law Students in Overcoming Public Speaking Fear”* (June 17, 2010 3:12 p.m. PST) (on file with Author).

203. Professor McKinney graciously shared the text of a flyer advertising several support groups, which describes the oral argument group as follows:

We are also offering our long-standing oral argument support group. The oral argument support group, led by trained upper-class students with a demonstrated gift for public speaking in the law school setting, is specifically designed to help reticent public speakers (students who really dread the thought of speaking publicly) learn how to handle their RRWA oral argument with comfort and success. Your regular RRWA classroom experience will prepare the majority of students, even those with some trepidation, for their oral arguments, but students with serious concerns about conducting an oral argument will enjoy this group.

Id.

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

some time to tutor one of their peers or an incoming student in the future.”²⁰⁸ Not only is such a program empowering students in a safe environment, it sets a standard for giving back to the law school community and beyond.

A similar peer-driven program—focusing more on the Socratic Method—is offered at the University of Miami School of Law. Joanne Harvest Koren, Director of the Academic Achievement Program, explains that the law school “offers students the opportunity to participate in Dean’s Fellow Study Groups—facilitated by an upper-level student. These sessions allow students to ‘try their ideas on for size’ in a safe and non-judgmental setting, before having to speak when called on in class.”²⁰⁹ Further, the University of Miami’s Academic Achievement Program’s “Writing and Resource Center offers one-on-one assistance to students on a walk-in basis. Working with one’s peers often alleviates the stress caused by fear of saying something ‘wrong’ in class.”²¹⁰

Based upon these two models, in advance of the Spring 2012 first-year oral argument program,²¹¹ New York Law School launched an Overcoming Public Speaking Anxiety (OPSA) workshop—a series of five forty-five-minute sessions conducted during the five weeks leading up to the students’ oral arguments.

To recruit students, the law school website ran advertisements for two weeks prior to Spring Break, asking, “Do you suffer from intense public speaking anxiety?” Fliers were posted on school bulletin boards, and professors announced the workshop series in Legal Practice classes. Students were advised that participation was voluntary and would be kept confidential. Fifty-five students expressed interest in the workshop series, indicating in emails that they suffered from major public speaking anxiety and were “terrified” about the upcoming oral arguments. Approximately twenty-four of those students attended all five workshops.

208. *Id.*

209. Email from Joanne Harvest Koren, Dir. of Academic Achievement Prog., at U. of Miami Sch. of L., to Heidi K. Brown, Assoc. Prof. of Leg. Research & Writing, Chapman U. Sch. of L., *Research Regarding Academic Support for “Assisting Law Students in Overcoming Public Speaking Fear”* (June 23, 2010 2:08 p.m. PST) (on file with Author).

210. *Id.*

211. At NYLS, the oral argument is the final graded assignment in the students’ four-credit Legal Practice class, which is a full-year, eight-credit class overall. The oral argument is worth 10 percent of the students’ final spring-semester grade.

The arc of the five sessions tracked chapters of Ivy Naistadt's 201-page book, *Speaking Without Fear*: (1) Workshop #1 focused on getting the group comfortable with sharing their common experience, and then identifying each individual's "nervousness profile";²¹² (2) Workshop #2 prompted the students to reflect on possible negative messaging from their past, identify self-sabotaging "myths" about public speaking, and dig for deeper hidden barriers; (3) Workshop #3 delved into understanding individual physical responses to stress during public speaking, and offered techniques for beginning to clear away identified emotional obstacles; (4) Workshop #4 focused on establishing new coping/conquering techniques, and developing physical and psychological "pre-game" routines for specific public speaking events; and (5) Workshop #5 presented strategies for re-framing and re-inventing oneself for a particular public speaking scenario, such as the upcoming oral argument. In the 2012 program, NYLS provided each committed participant with a copy of Naistadt's book; each week the students read assigned chapters, and completed short writing/self-reflection exercises (kept by the students for personal use only).

Student support for the workshop series was inspiring. One first-year participant developed a supplemental "public speaking club" for OPSA workshop participants to meet separately and practice short presentations in a peer-only environment as they worked toward their oral arguments. A third-year member of the NYLS Moot Court Association (MCA) learned of the workshop series and voluntarily recruited second- and third-year members of MCA and the Dispute Resolution Team (DRT) to mentor OPSA workshop participants one-on-one as they prepared for the oral arguments. MCA and DRT members also attended several of the workshops to share anecdotes and personal stories about overcoming public speaking challenges. In the final workshop, an MCA representative conducted a mock argument, demonstrating some of the coping and physical stress relief techniques discussed in the prior session, so the students could observe a peer in action.

The NYLS participants understood that the five workshops were not a guaranteed "quick fix." However, they each made a

212. Naistadt identifies four "nervousness profiles": Avoider, Anticipator, Adrenalizer, and Improviser. Workshop #1 explained the nature of these four profiles and prompted students to "free write" about why they believe they fit in certain categories. Naistadt, *supra* n. 8, at ch. 2.

committed step in the right direction for getting control of the anxiety and stress surrounding public speaking in their law school experience. The overwhelmingly positive student reaction prompted development of a fall 2012 workshop specifically geared toward understanding and tackling anxiety surrounding the Socratic Method, and planning another spring workshop in advance of the 2013 oral arguments (which had thirty-eight initial registrants and twenty-four regular attendees).

A professor considering developing a similar workshop series can take the following steps: (1) evaluate the most effective time of year to offer the workshops; (2) create and post an invitational flyer around the school; (3) attract students by making announcements at orientations and in classrooms; (4) reserve room spaces and times, (5) develop a workable “curriculum,” including ordering any reading materials and deciding whether students should purchase the books or whether they will be complimentary; and (6) recruit and train upper-class students to help teach the workshop and/or serve as mentors. Professors should also be sure to inform the Office of Student Services (so the administration is aware that the workshops potentially might raise emotional and psychological issues requiring more substantial counseling, and the administrators can refer students they know could benefit from the workshop to attend), the Office of Academic Affairs, the Office of Academic Support, and moot court faculty sponsors—to prevent any unwitting conflicts. It is also essential to make it clear to all interested participants that the workshop is designed for students with major performance anxiety, not for students who simply want to practice their oral advocacy skills. The workshop needs to be limited to students sharing a common quest; otherwise the typical classroom dynamic will take over, with the silent students deferring to the more outgoing and vocally dominant.

Professors developing these workshops could experiment with desensitization/visualization exercises as suggested by Professor McKinney. Other options could include simulating classroom experiences, practicing the Socratic Method, role-playing interaction with professors during office hours, conducting mock oral arguments, rehearsing job interviews, and much more.

Participants must not gloss over the potentially challenging task of identifying the root of their internal conflict; professors should be mindful of emotions this process might trigger. Stu-

dents will need to look inward—even by starting gently—and delve into the roots of their public speaking fear in order to truly overcome it, either on their own or within the “safety” of their small workshop group.²¹³ Guided exercises and self-reflection writing assignments (for personal use only) can help facilitate this process. Students need to understand that this workshop might feel uncomfortable and a bit “touchy-feely” for law school, but there is a purpose behind the introspection.

Whatever the format of the workshop, professors should emphasize that it is designed to enhance the students’ learning experience, not stigmatize or blame them for their struggle.²¹⁴ Workshops should be positive, encouraging, and motivating.

VI. CONCLUSION

If one goal of the legal academy is to graduate attorneys who can be sensitive to, and serve the needs, of a diverse group of clients, law schools should consider how better to address the needs of particular students such as the “silent but gifted.” Through more fully comprehending the psychology behind public speaking anxiety, professors might better understand themselves—by reflecting on where they personally fall on the introversion/extroversion spectrum—and their effect on the classroom dynamic. Professors can start to recognize the nature of students’ struggles, and experiment with creative tactics for drawing out the thoughts of the students experiencing internal conflict at the prospect of outward expression. The suggestions proposed in this

213. Of course, for students with diagnosed anxiety disorders, or even undiagnosed psychological conditions, it might be necessary to refer them to experts in the field for professional assistance. Glesner, *supra* n. 47, at 666 (“For some students, more intensive psychological counseling resources will be necessary. Formalized connections to university counseling centers with information regularly disseminated to students and faculty may be useful for those students willing to seek counseling.”).

214. Lustbader, *supra* n. 158, at 856 (“Of particular concern to [Academic Support Programs] is the issue of stigma and its negative impact on learning. This occurs when programs are remedial rather than based on an excellence model. Students who participate in ASPs need to feel that they are as competent as their counterparts. They need to view the program as supplemental, not remedial.”); *see also* Glesner, *supra* n. 47, at 661 (“[L]aw students are even more reluctant than a general student population to seek formal psychological counseling. ‘Educational programs,’ however, do not cause the same threats to role and self-esteem. A problem with any stress intervention program is the tendency that it will be perceived as blaming the victim. Faculty, therefore, should take care that coping skills programs are not targeted or marketed in a way that implies that the students are deficient or at fault for the stress caused by law school.” (Footnotes omitted)).

Article are simple and cost-effective to implement, but easily can reduce at least a portion of the stress these particular students grapple with every day. These students can come to appreciate their personality traits, take ownership of developing strategies for removing some of the barriers to enjoying and excelling in public speaking, mitigate some of their law school stress, and delve deeper in their learning experience. Ideally, this process and commitment will lead to more open communications between faculty and students, more robust classroom discourse, and happier and well-balanced professors, students, and future attorneys.