

# Preparing Law Students for Disappointing Exam Results: Lessons from *Casey at the Bat*

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“Poetry may be defined as the mysterious divulgence of the ineffable.”

—Ernest Lawrence Thayer<sup>1</sup>

## I. INTRODUCTION: FAILING OUR STUDENTS

In an article recently published in the *Journal of Legal Education*, the author—a law school dean—asserted: “The quality of legal education in

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1. Ernest Lawrence Thayer, *Half-Minutes with the Poets*, HARVARD LAMPOON, Oct. 17, 1884, reprinted in JIM MOORE & NATALIE VERMILYEA, ERNEST THAYER’S “CASEY AT THE BAT” 150 (1994).

America has never been better.”<sup>2</sup> To support his claim, Dean Morrissey cited improvements in physical facilities, development of state of the art classrooms, expansion of library holdings, and the addition of new faculty, administrators, and support staff.<sup>3</sup>

The quality of legal education, however, cannot be measured by the financial resources devoted to it. It can only be measured by weighing the educational benefit received by students against the cost of that education—psychological and physical as well as financial—to those students.<sup>4</sup> By that measure, the quality of American legal education is far less impressive. In fact, it is an abject failure.

Stated simply, legal education is hazardous to the health of law students. In 1986, a large empirical study published in the *American Bar Foundation Research Journal* reported that seventeen to forty percent of the 320 students and alumni studied “suffered significant levels of depression”<sup>5</sup> and that twenty to forty percent “reported other significantly elevated symptoms, including obsessive-compulsive, interpersonal sensitivity, anxiety, hostility, paranoid ideation, and psychoticism (social alienation and isolation).”<sup>6</sup> Andrew Benjamin and his colleagues found that before entering law school, these individuals tested within the normal range for such symptoms, but that within a few months after law school began, first-year law students developed significant symptomatology—they scored two standard deviations above normal expectation.<sup>7</sup> Think of it. Within a few months of falling under our tutelage, as many as two-fifths of our students are experiencing severe psychological disturbances.<sup>8</sup> Law school is indeed a dangerous place.

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2. Daniel J. Morrissey, *Saving Legal Education*, 56 J. LEGAL EDUC. 254, 254 (2006).

3. *Id.*

4. In his article, Dean Morrissey focused exclusively on the financial burden that law school places on students, noting that the “substantial gains in legal education have been made at great costs, paid largely by the law students themselves in the form of ever-increasing tuition.” *Id.* at 255. He acknowledged that the “lion’s share” of increased funding for law schools has come “from the students themselves in the form of higher tuition.” *Id.* at 262.

5. G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 236 (1986).

6. *Id.*

7. *Id.* at 240.

8. After only six months of law school, students were reported to be suffering extreme stress. They were concerned about their ability to meet the perceived high standards of law school, and they experienced feelings of inadequacy and inferiority. *Id.* at 244. First-year students were overwhelmed. *Id.* at 247. See also Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 LAW & HUM. BEHAV. 55, 63 (1999) (reporting that in some studies, anxiety measured in law students is “comparable to psychiatric populations”).

The authors of this study expressed concern about the “grim prospect”<sup>9</sup> that future research on this issue “would have little applied value if the people involved in legal education refuse to recognize the distress that many law students develop.”<sup>10</sup> Their concern was well justified. Legal educators have not responded to their students’ anguish. In a longitudinal study of law students published in the *Journal of Legal Education* in 2002, Kennon Sheldon and Lawrence Krieger confirmed the conclusions of the Benjamin study.<sup>11</sup> Although students entered law school as normal, healthy human beings, “[w]ithin six months, . . . [they] experienced marked decreases in well-being and life satisfaction and marked increases in depression, negative affect, and physical symptoms.”<sup>12</sup> In the sixteen years since the startling results of the Benjamin study were published, nothing had changed.

The problem of law student anxiety and stress is not a new one. In a study published in 1957—a full half century ago—researchers found that “freshmen law students, as a group, give test evidence of a significantly greater degree of anxiety . . . than freshmen medical students.”<sup>13</sup> Although we know that too much stress affects people deleteriously—it can cause psychological and physical symptoms and actual illness<sup>14</sup>—did legal educators respond to the findings of this early study? They did not. In a study published twenty-six years after the first, researchers confirmed the earlier findings, reporting that law students suffered significantly more academic stress and fear-of-failing stress than did medical students.<sup>15</sup>

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Law students also reported suffering depression at a higher rate than experienced by the general population and by comparison groups, such as medical students. *Id.* at 67.

9. Benjamin et al., *supra* note 5, at 251.

10. *Id.*

11. Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 122 (2002). Although Lawrence Krieger is the sole author of this article, the research project was conducted by Kennon Sheldon and Lawrence Krieger. *Id.* For a more complete discussion of the research, see Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261 (2004).

12. Krieger, *supra* note 11, at 122.

13. Leonard D. Eron & Robert S. Redmount, *The Effect of Legal Education on Attitudes*, 9 J. LEGAL EDUC. 431, 438 (1957). The study compared first-year students at Yale Law School with first-year students at Yale Medical School. *Id.* at 431–32.

14. See Marilyn Heins et al., *Law Students and Medical Students: A Comparison of Perceived Stress*, 33 J. LEGAL EDUC. 511, 512 (1983). Excess stress can also cause poor performance. *Id.*

15. *Id.* at 519.

As law professors, we are well aware of the psychological distress we inflict upon our students. We need not rely solely on empirical research findings. Several law review articles have been published attesting to the stress and anxiety experienced by law students and to the negative consequences of such distress. These articles have been written by psychiatrists who are professors at prestigious law schools,<sup>16</sup> other law professors<sup>17</sup>—including leading authorities in legal education<sup>18</sup>—and by law students currently suffering such discomfort.<sup>19</sup>

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16. Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 423 (1971) (“Law school . . . presents a significant threat to the student’s ego-ideal.”); *id.* at 426 (“The crucial human attribute which the law school ignores, and indeed in many cases defeats, is the student’s sense of self-esteem.”); Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 93, 121 (1968) (“I have never seen more manifest anxieties in a group of persons under ‘normal’ circumstances than is visible in first year law students.”). Dr. Stone is the Touroff-Glueck Professor of Law and Psychiatry at Harvard Law School. Dr. Watson was a Professor of Law and a Professor of Psychiatry at the University of Michigan.

17. See, e.g., B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 630 (1991) (“[T]he extreme pressure of legal education interferes with learning, teaches inappropriate interpersonal skills, and encourages counterproductive behaviors and attitudes among students.”); Stephen C. Halpern, *On the Politics and Pathology of Legal Education*, 32 J. LEGAL EDUC. 383, 388 (1982) (“Fear, intimidation, and psychological manipulation of a law student’s sense of self is an integral part of the first year of legal education.”); Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 75 (2002) (“Many students experience the law school environment as stressful, intensely competitive, and alienating. Many suffer from high levels of psychological distress and substance abuse. During law school a significant number lose self-confidence, motivation to do public interest work, and their passion for learning.”); Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?*, 8 LEGAL WRITING: J. LEGAL WRITING INST. 229, 231 (2002) (“[T]he current system places enormous amounts of emotional stress on students that negatively affects, perhaps irreparably, students’ self-esteem, their ability to perform, their short-term and long-term health, and their ultimate satisfaction with the profession.”); James B. Taylor, *Law School Stress and the “Deformation Professionnelle,”* 27 J. LEGAL EDUC. 251, 253 (1975) (“It is generally agreed that emotional stress is high in law school, and especially during the first year.”); *id.* at 261 (“Stressful life events are thought to play an important role in the development of physical illness, and in the appearance of psychiatric disorder.”).

18. See, e.g., Paul D. Carrington & James J. Conley, *The Alienation of Law Students*, 75 MICH. L. REV. 887, 887 (1977) (“[R]oughly one in seven Michigan law students now drops out emotionally and intellectually, without formally withdrawing from the school.”); Roger C. Cramton, *The Current State of the Law Curriculum*, 32 J. LEGAL EDUC. 321, 333 (1982) (“[M]any students view law school as an obstacle course on the way to an initial law job . . .”).

19. See, e.g., Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 YALE J.L. & SOC. ACTION 71, 73 (1970) (“Few will deny that the atmosphere of the first year classroom is as heavy with fear as it is tense with intellectual excitement.”). Duncan Kennedy is currently Carter Professor of General Jurisprudence at Harvard Law School. When he authored this article, however, he was a student at Yale Law School. See also Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027, 2027 (1998) (asserting that many students at Harvard Law School are “demoralized, dispirited, and profoundly disengaged from the law school experience.”).

The authors of these and other articles clearly and repeatedly identify the sources of psychological distress to law students—especially to first-year law students. For example, the nearly exclusive use of the case method in the first year—a method that focuses narrowly on specific issues presented in appellate court cases and the intellectual analysis of those issues by the judges<sup>20</sup>—fails to provide students with a theoretical framework to serve as a needed context for their understanding of the area of law under consideration.<sup>21</sup> Does the particular case under discussion stand for a generally accepted proposition, or for some possible future trend, or even as an exception to the general rule? Without such a framework, students—especially first-year students—are confused.

Additionally, by narrowly focusing students' attention on the development of analytical skills, the case method ignores students' values and emotions and the role they play in conflict resolution.<sup>22</sup> They are not considered

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[They] become subdued, withdrawn, and uncertain of their own self-worth over the course of their legal education.”); *id.* at 2028 (“[T]he pacification of Harvard Law students is a direct consequence of the psychological distress that so often accompanies a Harvard Law School education.”); Lawrence Silver, Comment, *Anxiety and the First Semester of Law School*, 1968 WIS. L. REV. 1201, 1201 (discussing “a variety of factors contribut[ing] to an intense concern about failing in law school among first year students.”).

20. The case method was introduced at Harvard Law School in 1870 by Christopher Columbus Langdell and was responsible for shifting the training of lawyers from law offices as apprentices to the university classroom as students. Langdell believed that law’s rational decision making process can be subjected to scientific inquiry in the classroom through the study of appellate court decisions. Thus, to Langdell, legal education was a science to be taught at a university, not a craft to be learned at a lawyer’s side. See John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 160 (1993).

21. See Alan Watson, *Legal Education Reform: Modest Suggestions*, 51 J. LEGAL EDUC. 91, 93 (2001) (asserting that in the absence of such framework, cases cannot be fully understood and appreciated, because they are “largely incomprehensible” to students).

22. See Lila A. Coleburn & Julia C. Spring, *Socrates Unbound: Developmental Perspectives on the Law School Experience*, 24 LAW & PSYCHOL. REV. 5, 23–24 (2000) (asserting that cognitive science informs us that “[r]eason and emotion are melded in human cognition . . . [W]ithout the development of emotional skills such as empathy, reflectiveness, and tolerance of disappointment, which allow the grey-area thinking needed to appreciate complexity, conflict resolution is impossible . . . .”); Michael Meltsner, *Feeling Like a Lawyer*, 33 J. LEGAL EDUC. 624, 633 (1983) (“While only an extreme anti-intellectual would disregard the importance of objective thought, rational deduction, and empirical proof to the practice of law, a method of training lawyers which ignores the intuitive, the emotive, and the personal belongs not to the history of science but to the history of pseudoscience.”).

worthy of class discussion. In our relentless quest to teach students “to think like<sup>23</sup> lawyers,” we fail to teach them to “feel like lawyers.”<sup>24</sup> We deny students the opportunity to develop as well-rounded human beings with high ethical values and with the interpersonal skills necessary to understand<sup>25</sup> and respond appropriately to their clients’ concerns.<sup>26</sup> When values and emotional issues are neglected, students are depersonalized<sup>27</sup> and their level of distress rises.<sup>28</sup>

Langdell’s legacy, however, is not merely the case method.<sup>29</sup> Rather, it is the teaching of the case method in large classes. It is legal education on the cheap!<sup>30</sup> With one professor teaching 75, or 100, or more students in a first-year class, “universities were delighted to welcome the low-cost, high-return law school.”<sup>31</sup> In those classes, the case method is taught

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23. Although the expressions “to think like a lawyer” and “to think like lawyers” are commonly used, correct English grammar calls for the substitution of *as* for *like*. Thus, a well-educated law student thinks *as* a lawyer thinks.

24. I do not agree with those who assert that teaching students to feel like lawyers means teaching that it is right to be controlling, cool, dispassionate, unfeeling, and arrogant. See Michael Meltsner, *Feeling Like a Lawyer*, 33 J. LEGAL EDUC. 624, 624 (1983) (attributing the statement to David Kaplow). Rather, feeling like lawyers requires that students consider the emotional and social consequences of decisions. See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1381 (1997).

25. For example, in discussing the Equal Protection Clause, should we consider the perspective of an African-American person on a segregated bus in the south in the 1950s? He or she was permitted to ride on the bus and to arrive at his or her destination at the same time as a white person, and the fare for both passengers was equal. But is the African-American person denied equal protection if he or she was compelled to ride only in the back of the bus? Ask Rosa Parks for her opinion.

26. See Watson, *supra* note 16, at 117. In my opinion, issues of professional responsibility and practical lawyering skills development should not be delayed until students’ second or third year of law school. The typical first-year requirement that law students write a memorandum of law in their first semester and that they write an appellate brief and make an appellate moot court argument in their second semester does not suffice.

27. See Hess, *supra* note 17, at 78–79 (asserting that law school “teaches that tough-minded analysis, hard facts, and cold logic are the tools of a good lawyer, and it has little room for emotion, imagination, and morality. For some students, ‘learning to think like a lawyer’ means abandoning their ideals, ethical values, and sense of self.”); Krieger, *supra* note 11, at 117 (“Thinking ‘like a lawyer’ is fundamentally negative; it is critical, pessimistic, and depersonalizing.”).

28. Benjamin et al., *supra* note 5, at 225.

29. Some have suggested that Langdell’s vision of law as a science taught through rigorous intellectual analysis of appellate cases “failed to survive the legal realist assaults of the 1920s and 1930s.” Costonis, *supra* note 20, at 160.

30. See Cramton, *supra* note 18, at 333 (“Langdell’s most lasting imprint on American legal education is not the case method . . . but the large classes, poor student-faculty ratios, and favorable balance of trade with the central university—aspects that continue to characterize legal education today.”).

31. Costonis, *supra* note 20, at 161. John Costonis asserted, therefore, that the case method “is more significant as an *economic* than as a *pedagogical* phenomenon.” *Id.* at 160.

using a Socratic dialogue.<sup>32</sup> Students are not permitted to sit passively and listen to lectures from a professor who obviously knows far more than they do about the topic being discussed. Rather, before this large group of colleagues, a student is forced to respond to a professor's interrogation. When each attempted answer elicits another question from the professor who never seems satisfied with any response,<sup>33</sup> the student being questioned becomes anxious,<sup>34</sup> embarrassed,<sup>35</sup> vulnerable,<sup>36</sup> intimidated,<sup>37</sup> and even terrified.<sup>38</sup> As Duncan Kennedy, then a law student at Yale, aptly asserted: "[T]here is a point at which *no* amount of intellectual interest will overcome your fear and revulsion at the spectacle of the professor smiling quietly to himself as he prepares to lay your guts out on the floor yet once again, paternally."<sup>39</sup> Even well-intentioned professors, employing a "kinder and gentler" Socratic version,

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32. A survey of law schools revealed that the Socratic dialogue is the predominant teaching methodology used in law school classes. Socratic dialogue is used in 97% of first-year courses, 93% of upper class courses, and even 67% of seminars. Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 27 (1996).

33. See, e.g., Watson, *supra* note 16, at 123 ("Since most professorial responses are questions, they are perceived as never-ending demands, and hoped-for relief never comes into sight.").

34. See, e.g., *id.* at 121 (specifically mentioning anxiety as a student response to a law professor's use of Socratic dialogue).

35. Michael J. Patton, *The Student, the Situation, and Performance During the First Year of Law School*, 21 J. LEGAL EDUC. 10, 37 (1968) (specifically mentioning embarrassment as a student response to a law professor's use of Socratic dialogue).

36. Watson, *supra* note 16, at 121 (specifically mentioning a "sense of helpless vulnerability" as a student response to a law professor's use of Socratic dialogue).

37. Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 641 (1973) (specifically mentioning a feeling of intimidation as a student response to a law professor's use of Socratic dialogue). See Watson, *supra* note 21, at 91 (asserting that "[s]ome teachers deliberately set out to intimidate students.").

38. See ALAN WATSON, *THE SHAME OF AMERICAN LEGAL EDUCATION* 88 (2006) ("[F]irst-year law school is education by terror . . ."); Watson, *supra* note 21, at 91 (reporting that students assert that first-year legal education is terrifying). Duncan Kennedy, writing as a law student, asserted that the terror experienced by first-year law students is "a particular kind of terror: that of a person who knows himself defenseless before a person who has a demonstrated desire to hurt him. . . . The fear is the fear of the victim." Kennedy, *supra* note 19, at 75. See also JOHN JAY OSBORN, JR., *THE PAPER CHASE* 6 (Whitston Publishing Co. 2003) (1971) ("When Hart, seat 259, heard his name, he froze. Caught unprepared, he simply stopped functioning. Then he felt his heart beat faster than he could ever remember its beating and his palms and arms break out in sweat.").

39. Kennedy, *supra* note 19, at 80.

may be perceived—or misperceived—by students as sadistic<sup>40</sup> enemies,<sup>41</sup> trying to destroy them.

“Feedback,” wrote Terri LeClercq, “is an essential element of all education: it helps steer students as they absorb what they are being taught and as they attempt to express their new knowledge.”<sup>42</sup> Nevertheless, law students typically receive little, if any, feedback during class as to how well they are performing.<sup>43</sup> In their haste to frame the next question to be asked, professors rarely take the time to acknowledge the value of a student’s contribution to the discussion.<sup>44</sup> Without any evaluation of in-class performance, students who have been selected to respond to the professor’s questions, and even those who volunteer to answer, may believe they have performed inadequately.<sup>45</sup> Uncertainty as to one’s adequacy creates anxiety, depression, and other psychological symptoms.

Uncertainty as to students’ in-class performance is replicated by uncertainty as to students’ in-course performance. In large classes taught in the first year, examinations—especially examinations that count toward the final course grade—are rarely given. Often, the final course grade is a result of one final exam, with no opportunity for students to learn from exam writing experiences during the semester. Although this absence of feedback defies educational theory, it is standard practice.<sup>46</sup> If psychological distress can be produced by the lack of feedback as to performance in an

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40. See *id.* at 74 (acknowledging that not all law professors are unrestrained sadists, but asserting “there must be something deeply corrupting about the daily exercise of a license to inflict pain.”); Watson, *supra* note 16, at 109 (“I will not go so far as to use the word sadistic to describe [the feeling experienced by professors teaching first-year classes], but there can be no doubt that they are enjoying their work. They view their task as nearly a holy mission to root out all ill-conceived and unreasoned attitudes in their students.”).

41. See, e.g., Watson, *supra* note 16, at 123 (asserting that “the Socratic teacher, . . . in the eyes of the student, tends to turn into an enemy . . .”).

42. Terri LeClercq, *Principle 4: Good Practice Gives Prompt Feedback*, 49 J. LEGAL EDUC. 418, 418 (1999).

43. See, e.g., Silver, *supra* note 19, at 1205 (“Many of the students’ comments in the class seem correct, some seem irrelevant, some wrong, but the professor rarely indicates what the ‘right’ answer should be.”); LeClercq, *supra* note 42, at 423 (“[F]irst-year courses offer the least amount of feedback to our most insecure students.”).

44. LeClercq, *supra* note 42, at 423 (“All too often, . . . the teacher does not let them know whether an answer is correct or even in the ballpark. Instead, the teacher moves on to another topic or another student.”).

45. *Id.* (asserting that the absence of in-class feedback frustrates students and that, without feedback, students are uncertain as to “whether they have grasped the concepts and important distinctions.”).

46. See Patrick Wiseman, “When You Come to a Fork in the Road, Take It,” and *Other Sage Advice for First-Time Law School Exam Takers*, 22 GA. ST. U. L. REV. 653, 655 n.8 (2006).



individual class session, such distress is surely multiplied when little or no feedback is provided for an entire semester.<sup>47</sup>

All of these sources of distress, however, pale in comparison to the psychological distress generated by students' first final examinations. Undoubtedly, examinations—and the grades that students receive on those examinations—“are the dominant source of anxiety and preoccupation among the first-year class.”<sup>48</sup> Roger Cramton aptly noted: “First-year grades control the distribution of goodies: honors, law review, job placement, and, because of the importance placed on these matters by the law school culture, even the student's sense of personal worth.”<sup>49</sup>

To be accepted at most law schools today, an applicant must have achieved academic success as an undergraduate. That applicant must also have achieved success in the LSAT examination—a test which measures aptitude for the study of law and which is considered to be a predictor of success in examinations based on that study. Even at law schools that are not among the fifteen or so that claim to be ranked in the top ten, or in the next group of fifteen or twenty law schools that can assert some claim to being “prestigious,” admission credentials of students are excellent.<sup>50</sup> Those students have succeeded in their prior academic endeavors, and they expect to succeed in law school.<sup>51</sup>

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47. Another common complaint is that the workload for first-year students is excessive. As one author asserted, “It is not uncommon for the workload to be such that it is physically impossible to complete assignments on time. For the many highly motivated first-year students this can lead to a near constant state of anxiety. Physical and psychological exhaustion are, I think, programmed into the first year.” Halpern, *supra* note 17, at 388. Nevertheless, I question whether the excessive workload complaint is a separate issue or whether it is attributable, at least in part, to the absence of feedback to students about their performance in class and their progress in understanding the material in their courses. In their uncertainty about how much they are learning and how well they are doing, diligent, but anxious, first-year students may be devoting more time than they need to devote to their studies. If only they could feel more confident, so that they could relax and enjoy—yes, enjoy—the learning process.

48. Note, *supra* note 19, at 2033; *see also* Glesner, *supra* note 17, at 657 (asserting that “the most pervasive and stressful aspect of legal education” is examinations and the grades students receive on those exams).

49. Cramton, *supra* note 18, at 329.

50. For example, although the University of San Diego School of Law (USD) is an excellent law school, it is not ranked among the top thirty law schools by any known ranking of law schools. At most, it is a school that aspires to greatness, although it has not yet achieved such distinction. Nevertheless, the student with the median LSAT score for full-time law students entering USD in the fall of 2005 scored in the top 13% of all persons taking the LSAT examination and had a 3.34 undergraduate grade point average. In 2006, there was a national decline in the number of applications for admission to law schools. Even though the number of applications for admission to USD in 2006 declined

At the time they begin their law school studies, students are enthusiastic, eager to learn, and, perhaps, a bit nervous. In their classes, however, cases are taught without an adequate framework for discussion by professors who emphasize analytical reasoning while stifling discussion of emotions and moral values and who continually question student responses to previous questions without providing in-class or in-course feedback on student understanding of topics that have been addressed. Thus, as the semester progresses, student confidence is replaced by student confusion. And as final exams loom closer, stress, anxiety, and psychological distress increase exponentially. Following the Thanksgiving vacation break, when only a week or so remains until course instruction ends, the class atmosphere changes dramatically. The room is quiet as students listen intently to their professor's every word—desperately hoping that he or she will say something that will clarify unresolved issues or will reveal some insight about a potential examination question that he or she might ask them. Perhaps Scott Turow best expressed this change in mood:

Final exams play on a law student's world like some weirdly orbiting moon. They are always in sight; but while they're at a distance, they serve merely to create the tensions which swell daily like tides—to read, to keep pace, to understand. As exams draw close, however, in December and May, their gravitational force starts to shake the whole place to pieces.<sup>52</sup>

Final examinations inflict a double whammy. There is pre-exam anxiety, intensified by students' inability to project their prospects for success. And, for most of these previously high-achieving students, there is post-exam disappointment.<sup>53</sup> A relatively small number of law students are awarded a grade of A, an eagerly sought "scarlet letter" acknowledging their accomplishment. Many are branded with a grade of B, indicating that they are merely ordinary. Others are condemned

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by over 450, the student with the median LSAT for USD's entering class in the fall of 2006 scored in the top 16% of all persons taking the LSAT examination and had a 3.32 undergraduate grade point average. E-mails from Kevin Cole, Dean, University of San Diego School of Law, to tenured and tenure-track faculty, University of San Diego School of Law (Aug. 25, 2006, 06:53:14 PDT; Sept. 11, 2006, 17:02:53 PDT) (on file with author).

51. See Patton, *supra* note 35, at 16–17.

52. SCOTT TUROW, ONE L 174 (1977). Turow added: "As we entered the last week of the term, . . . most of the students at the law school seemed to abandon any effort to maintain a brave front in the face of exams. The evidence of great apprehension was widespread." *Id.* at 179.

53. In a few short sentences, Scott Turow expressed the effect that exams—and disappointing exam results—have on students: "In the aftermath of exams, I felt bitter and cheated." *Id.* at 196. "[E]xams which for me took a relish out of law school that was never quite restored." *Id.* at 197. "I felt insulted by them—there's no other way to put it." *Id.*

with a grade of *C*, suggesting that they are marginal at best. Philip Kissam suggested that grades—and class rankings based solely on those grades—divide students into three distinct groups: “winners,” that is, students who received the highest grades; “journeymen” or “role players,” that is, students who ranked in the middle range; and “losers,” that is, students who received low grades.<sup>54</sup>

To maintain fairness between students in different sections of first-year courses, most schools have imposed a mandatory grading curve on professors teaching those courses. Obviously, one student should not receive a higher grade than another simply because he or she was placed in a section with an easy grader. But mandatory grading curves ensure that distinctions between students will be drawn even if the differences in student answers are minimal. After all, the limited number of *A* grades that can be awarded is pre-ordained. Thus, as Roger Cramton acknowledged: “[T]he system rewards only a few, punishes the rest, and is perceived as largely unresponsive to the degree of effort devoted to study . . . .”<sup>55</sup>

Although a mandatory grading curve demands that there be “winners” and “losers” in the law school examination grading process, for students who have previously scored highly on examinations as undergraduates, anything less than competitive success on law school exams is interpreted by them as failure.<sup>56</sup> Mediocre or poor grades “punctures the balloon of omniscience”<sup>57</sup> that they believed surrounded them. The grading process has discredited them—in their minds, they are now

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54. Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 480 (1989). Kissam’s classification system may remind readers of the line from the song *Atlantic City*: “Down here it’s just winners and losers and don’t get caught on the wrong side of that line.” BRUCE SPRINGSTEEN, *Atlantic City, on NEBRASKA* (1982).

55. Cramton, *supra* note 18, at 329. A popular guide to law school study is HELENE SHAPO & MARSHALL SHAPO, *LAW SCHOOL WITHOUT FEAR: STRATEGIES FOR SUCCESS* (2002). The title suggests that if a student employs the strategies described in the book, he or she should succeed in law school—including succeeding on examinations. *See id.* at 173–89 (recommending strategies for taking law school examinations). Consider, however, if every student in a class read the book and employed the recommended strategies. Although individual students in that class might fare better or worse in the grading process, a mandatory grading curve assures that no more students would be awarded high grades. The number of students who succeed remains constant.

56. Stone, *supra* note 16, at 424. In fact, even students who rank in the top 10% of their class may be dissatisfied with their class standing. Michael E. Carney, *Narcissistic Concerns in the Educational Experience of Law Students*, 18 J. PSYCHIATRY & L. 9, 18 (1990).

57. Carney, *supra* note 56, at 16.

second-class citizens.<sup>58</sup> Because they feel consigned to an inferior status, their sense of self-esteem plummets.<sup>59</sup> They are not merely deflated, they are defeated.

To know the effect of first final examination grades on students, one need only teach a first-year class on the day, early in the spring semester, that students are informed of their grades. It is not merely a long-awaited day of reckoning;<sup>60</sup> for first-year law students, it is Judgment Day. The classroom is quiet—but this time students are not listening to their professor's every word. Rather, they are contemplating their examination results. Many have been traumatized, shocked, and humiliated by the grades they have received.<sup>61</sup> Disappointing examination results cause many students to question their investment of time studying for class.<sup>62</sup> They are discouraged that their hard work did not pay off. They doubt—probably correctly—that continued hard work will enable them to be successful on future examinations.<sup>63</sup> They doubt—probably correctly—that they will be able to raise their class standing significantly.<sup>64</sup> As a sense of futility envelops them, they withdraw from the legal education

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58. Patton, *supra* note 35, at 50.

59. See Coleburn & Spring, *supra* note 22, at 22 (“[D]isappointing grades mean demotions in self-esteem.”); Krieger, *supra* note 11, at 118 (“Those who falter in the competition by receiving less-than-stellar grades often become thoroughly deflated; their sense of confidence, security, and personal worth plummets.”); Stone, *supra* note 16, at 425 (“The ego-ideals of students who compete and do not finish as winners in the first year examination struggle . . . are severely threatened.”). Disappointed students “develop attitudes of hostility, isolation, emotional detachment, and malaise.” Kissam, *supra* note 54, at 481.

60. Krieger, *supra* note 11, at 117 (characterizing the day that first-semester grades are posted as “the day of reckoning”).

61. Note, *supra* note 19, at 2034 (“When the first-term grades eventually come out in February, it is an extremely traumatic experience for many first-year students.” Silence in class “arises among a group of people who are, for the most part, too shocked and humiliated to go public with the very information that made them feel this way.”).

62. See Glesner, *supra* note 17, at 658 (“Burnout occurs when one’s investment of resources does not yield a sufficient return. For a significant percentage of law students after the first year, there is the perception of low return on investment.”).

63. See Patton, *supra* note 35, at 50 (asserting that among students who did poorly on their first-year final exams, “there was a pervasive belief that once the first-year grade average was obtained, there was little one could do to improve it substantially. While this may be true arithmetically, its effect psychologically seemed to be that of depressing second and third-year attempts to improve one’s position.”).

64. “Insanity” has been defined as “doing the same thing over and over again and expecting different results.” The source of the quotation is uncertain. Although it is most often attributed to Albert Einstein, see, e.g., Wisdom Quotes, <http://www.wisdomquotes.com/002899.html> (last visited Apr. 22, 2007) it has also been attributed to Benjamin Franklin, Brainy Quote, <http://www.brainyquote.com/quotes/quotes/b/benjaminfr109067.html> (last visited Apr. 22, 2007), John Dryden, World of Quotes, <http://www.worldofquotes.com> (follow “Search” hyperlink, type “Dryden, insanity,” and search for all terms) (last visited Apr. 22, 2007), and others.

process<sup>65</sup> and become alienated<sup>66</sup> from the law school.<sup>67</sup> They are frustrated and bitter, and they resolve to do only the minimum amount of work necessary to complete law school and move on with their lives.<sup>68</sup>

More than twenty years ago, Dean Robert McKay asserted: “Legal education is not a topic that interests many people; not even law teachers are particularly attracted to the subject.”<sup>69</sup> Law professors were guilty, he intimated, of indifference, of apathy, of not caring about those we teach.<sup>70</sup> We remain guilty today. We have failed our students.

As professors, we can no longer ignore the psychological distress that we inflict upon our students by our teaching methods and our examinations.<sup>71</sup>

65. Note, *supra* note 19, at 2034 (asserting that after students receive the results of their first final examinations, some students become unenthusiastic and disengaged from the study of law).

66. Carrington & Conley, *supra* note 18, at 890 (“The essential attitude of the alienated student is disinterest or disengagement. He is not hostile so much as uncaring or ‘turned off.’”).

67. Carney, *supra* note 56, at 18–19 (asserting that students defend against potential threats to their self-esteem by withdrawing psychic investment in their law school experience).

68. Patton, *supra* note 35, at 50.

69. Robert B. McKay, *What Law Schools Can and Should Do (and Sometimes Do)*, 30 N.Y.L. SCH. L. REV. 491, 491 (1985). Consider, for example, the faculty colloquium series at the University of San Diego School of Law. During the 2006–2007 academic year, of the more than thirty presentations at this weekly series, only one was devoted to instructional issues, that is, to the need to improve what and how we teach. Even when law faculties approve changes to the curriculum, they fail to consider the psychological impact of those decisions on students. For example, a few years ago, at the University of San Diego School of Law, first-year courses in contracts, property, and torts were year-long, six-credit courses. Examinations at the end of the first (fall) semester in those courses were weighted as one-third of the final grade in each course, and examinations at the end of the second (spring) semester were weighted as two-thirds of the final grade in each course. When the faculty voted to shorten those courses from year-long, six-credit courses to semester-long, four-credit courses, they did not consider whether confronting students with final course examinations after only fourteen weeks of instruction would increase significantly the anxiety and stress they suffer when they take those examinations.

70. See James B. Levy, *As a Last Resort, Ask the Students: What They Say Makes Someone an Effective Law Teacher*, 58 ME. L. REV. 50, 55 (2006) (asserting that, from the students’ perspective, an important quality of the ideal law professor is that he or she cares that they learn).

71. Benjamin et al., *supra* note 5, at 251 (asserting that research on psychological distress produced by legal education will “have little applied value if the people involved in legal education refuse to recognize the distress that many law students develop”); Krieger, *supra* note 11, at 115 (asserting that despite our awareness of the health and distress issues experienced by our students, “[n]onetheless, we maintain the status quo, at times by ignoring the problems outright, and at other times by deflecting concern in ways that avoid any constructive approach to them.”).

We can no longer deny that the problem exists, rationalizing our refusal to respond.<sup>72</sup> We can no longer be so self-centered that we obtain gratification from our position as professors exclusively through our scholarship.<sup>73</sup> While we publish, our students perish.

Fifty years ago, the researchers who reported that first-year law student anxiety is greater than first-year medical student anxiety<sup>74</sup> also asserted that “[t]he role of the law teacher as a psychological conveyor of attitudes [is] of crucial importance.”<sup>75</sup> We can exercise that role in a negative way—increasing unnecessary psychological distress that we cause our students. We can, however, exercise that role in a positive way—reducing unnecessary<sup>76</sup> psychological distress that we cause our students. The challenge for us is to act in a positive way. We should do so because the students in our classes are not merely law students, they are *our* law students.<sup>77</sup>

In this article, I explain how I confront the seemingly intractable problem of post-exam disappointment by law students who are experiencing their first final examinations. Although I acknowledge to my students that many of them will be disappointed by their examination results, I

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72. Lawrence Krieger gives several examples of rationalizations for nonaction by law professors. For example, professors may assert—erroneously—that other students, such as medical students, suffer as much, or—equally erroneously—that at the time they entered law school, students were already experiencing psychological symptoms outside the normal range. Krieger, *supra* note 11, at 115; *see also supra* text accompanying notes 7, 11–15. Professors may also assert that addressing student psychological problems is not their job or that they are not trained to do so. Krieger, *supra* note 11, at 115; *see also* Cramton, *supra* note 18, at 333–34 (asserting that professors “are threatened by discussions of values, by messy human emotions, by personal involvement with students or clients, and we place these matters out of bounds for classroom discussion.”).

73. *See* LeClercq, *supra* note 42, at 427 (“Law faculty are rewarded for their scholarship above and before any awards for their teaching: hiring, promotion, and tenure all emphasize scholarship. And so law faculty, who constantly receive this feedback, constantly emphasize scholarship over teaching.”).

74. Eron & Redmount, *supra* note 13, at 438. *See supra* text accompanying note 13.

75. Eron & Redmount, *supra* note 13, at 442.

76. I am not suggesting that all psychological discomfort should be eliminated from legal education. Some stress may even facilitate the learning process. *See* Levy, *supra* note 70, at 70 n.93. Examinations are stressful but are necessary to evaluate student competence. Unnecessary psychological distress, however, especially distress that debilitates the student or discourages the student from the learning process, should be addressed and eliminated. *See* Heins et al., *supra* note 14, at 524–25 (asserting that a stressless environment is a fantasy in a professional school, but that professional schools should attempt to eliminate the causes of unnecessary stress).

77. *See* Cramton, *supra* note 18, at 322 (“[O]ur task as teachers is to organize, inspire, and facilitate the learner in acquiring new knowledge, skills, and potentialities.”); Glesner, *supra* note 17, at 641 (declaring that the power of our position as teachers “implies a moral duty to exercise our influence reflectively and competently.”); Krieger, *supra* note 11, at 116 (“We have our own professional and moral responsibilities to try to prevent or alleviate the distress of our students . . .”).

attempt to convince them that those results, while important, should not discourage them from participating actively in the learning process.

My strategy for discussing disappointing grades with students is to make a PowerPoint presentation on the last day of class analyzing *Casey at the Bat*, Ernest Lawrence Thayer's immortal poem about failure. Through the slides, I analogize Casey's fateful at bat to a student taking his or her first final examinations. My use of this semi-serious, semi-comic poem enables the issue to be presented in a manner that does not threaten students, while enabling me to express concern and empathy for them as they are about to begin the examination process. To encourage students to maintain their enthusiasm for law study regardless of their examination results, I hypothesize on how Casey would respond to his failure. In Part II, *The Windup*, I discuss what I do at the beginning of the semester to prepare students for my surprise PowerPoint presentation. In Part III, *The Pitch*, the PowerPoint slides, through which I analyze *Casey* on the last day of class, are presented. Although I would not expect other law professors to "borrow" my presentation,<sup>78</sup> I hope that publication of this article will inspire them to develop their own strategies—for example, choose a different poem to analyze—to address this important issue.

## II. THE WINDUP

### A. *The Three Ps*

At our law school's orientation program, professors teaching courses to first-year students are given the opportunity to meet with the students in their classes. Typically, we give short speeches and then answer student questions about our courses and about law school in general. I use that occasion to encourage students not merely to survive law school,<sup>79</sup> but rather, to succeed in it. Students who do well in law school, I inform them, are more likely to succeed in passing the bar exam on their first attempt than those who do poorly. Students who do

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78. It is, after all, copyrighted by me.

79. I inform students that survival is simply not an issue for most students. The school does not fail out one-third of the entering class. At the University of San Diego School of Law, typically 3% of students decide not to complete their legal education and voluntarily withdraw from the school. An additional 2 to 3% are dismissed for academic reasons. Thus, I tell law students not to look at the person on their left and the person on their right. All three of you are likely to graduate.

well in law school are far more likely to have offers of permanent employment at the time of graduation than those who do poorly.

How does one achieve success in law school?<sup>80</sup> The answer is to follow the three *Ps*. The first *P* is course *preparation*. Bobby Knight, the coach with the most wins in college basketball history,<sup>81</sup> once said: “The will to win is not nearly as important as the will to prepare to win.”<sup>82</sup> I then discuss how students should prepare for each class. As a part of that discussion, I try to instill a sense of ethical obligation. What does it mean, I ask, to be a member of the legal profession? A client’s property, a client’s family, a client’s liberty, or a client’s life may depend on how well you prepared. Would you go into court and say to a judge, “I’m sorry, Your Honor, but I’m not prepared to represent my client today. I didn’t feel well last night; I was busy; I had other cases I was working on; I had a job interview.” If those excuses are unacceptable to a judge—and I assure the students that they are—then they are equally unacceptable to me for why you are unprepared on the assignment for a class session. As a professor, I tell them, I expect you to accept the responsibilities of preparing to become a lawyer.

The second *P* is *participation*. I urge students to participate actively in class discussion. In the words of Wayne Gretzky, considered to be the greatest hockey player in history, “You miss 100% of the shots you don’t take.”<sup>83</sup> Do not be so afraid of giving a wrong answer that you cower in fear and fail to participate. Ty Cobb holds the record for the highest career batting average in major league baseball. His career batting average is only .366.<sup>84</sup> That means he succeeded in getting a hit

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80. I believe that humor, if appropriately timed and in appropriate doses, is an effective tool to lessen anxiety and relieve tension that students experience as they commence their legal education. Therefore, my first response to the question of how one achieves success in law school is to say, “The answer is simple. Bribe your professors!” I then look down at my notes, pull out a page from the binder, and show the students that the page contains, in large letters, the words, “Bribe your professors.” I quickly crumple the page, throw it to the floor, and exclaim: “No, that’s not the answer.” See Hess, *supra* note 17, at 105 (suggesting that humor by a professor enhances the classroom experience, provided that the humor is not at the expense of the student); Levy, *supra* note 70, at 82 (indicating that students appreciate humor by their professor to make the class entertaining).

81. Bobby Knight retired on February 4, 2008, with 902 career victories. Jeff Walker, *Exclusive: Knight Speaks About Retirement Decision*, LUBBOCK ONLINE, Feb. 4, 2008, [http://www.lubbockonline.com/stories/020408/loc\\_243647726.shtml](http://www.lubbockonline.com/stories/020408/loc_243647726.shtml) (last visited Mar. 5, 2008).

82. World of Quotes, <http://www.worldofquotes.com/author/Bobby-Knight/1/index/html> (last visited Jan. 9, 2007).

83. Thinkexist, [http://thinkexist.com/quotes/wayne\\_gretzky/](http://thinkexist.com/quotes/wayne_gretzky/) (last visited Jan. 10, 2007).

84. Baseball Almanac, <http://www.baseball-almanac.com/hitting/hibavg1.shtml> (last visited Jan. 10, 2007).



in fewer than four of every ten times he batted. Joe DiMaggio holds the record—a record that may never be broken—for the most consecutive games in which the batter got at least one hit—fifty-six straight games.<sup>85</sup> And what was Joe DiMaggio's batting average at the time his streak began? He was batting a paltry .184.<sup>86</sup> That means he was hitting safely in fewer than two of every ten attempts. If that low batting average had deterred him, he never would have achieved either the record he now holds or baseball immortality. Joe DiMaggio is remembered for his consecutive game batting streak, not for his batting average before he began that streak. And this principle does not apply only to batters. Cy Young holds the major league record for most career wins by a pitcher—an astounding 511 wins.<sup>87</sup> But who holds the record for most career losses by a pitcher? None other than Cy Young—an astounding 316 losses.<sup>88</sup> But Cy Young is remembered for his victories, not his losses.<sup>89</sup> I tell students: “Don't be afraid. Give it your best shot. Participate actively in class discussion.”

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85. Baseball Almanac, [http://www.baseball-almanac.com/recbooks/rb\\_bstrk.shtml](http://www.baseball-almanac.com/recbooks/rb_bstrk.shtml) (last visited Jan. 10, 2007). During that fifty-six game consecutive game hitting streak, Joe DiMaggio hit safely ninety-one times in 223 at bats, a batting average of .409. Baseball Almanac, <http://www.baseball-almanac.com/feats/feats3.shtml> (last visited Jan. 10, 2007).

86. *10 Moments in Slump History*, THE SEATTLE TIMES, [http://www.sportsmaker.com/pages/articles/seattle\\_times.htm](http://www.sportsmaker.com/pages/articles/seattle_times.htm) (last visited July 15, 2008). DiMaggio's hitting streak began on May 15, 1941 and ended on July 17, 1941.

87. Baseball Almanac, <http://www.baseball-almanac.com/recbooks/wins-records.shtml> (last visited Jan. 10, 2007). “Just think,” I tell the students, “if you became a major league pitcher at the age of twenty and you won twenty-five games in one year, not just once or twice in your career, but every year for twenty years until you retired at the ripe old age of forty, you still would not have won as many games as Cy Young won in his career.”

88. Baseball Almanac, <http://www.baseball-almanac.com/recbooks/loss-records.shtml> (last visited Jan. 10, 2007). “Just think,” I tell the students, “if you became a major league pitcher at the age of twenty and you lost fifteen games in one year, not just once or twice in your career, but every year for twenty years until you retired at the ripe old age of forty, you still would not have lost as many games as Cy Young lost in his career.”

89. It should be noted that my brief, but early, recitation of the statistical accomplishments and failures of Ty Cobb, Joe DiMaggio, and Cy Young automatically qualifies me—at least in some students' minds—as a true fan and expert on the game of baseball. As such, these students have a favorable first impression of me as a human being—in their minds, I am “a regular guy.” Additionally, my use of baseball statistics in this orientation speech establishes the accuracy of my interpretation of the importance of *Casey at the Bat* in American history, as I discuss in our first class session, see *infra* Part IIB, and the infallibility of my interpretation of how *Casey at the Bat* relates to law school examinations, as I discuss in our final class session, see *infra* Part III.

The third *P* is *perspective*. To succeed in law school, it is important for students to maintain a healthy perspective and a healthy attitude about legal education and about life. I specifically tell students that although I have urged you to spend the time and effort necessary to do well on law school examinations, it is a statistical fact that two-thirds of you will not graduate in the upper one-third of the class.<sup>90</sup> Nevertheless, you can still be very fine law students and very fine attorneys even if you do not score highly on this one measure of success. You should never equate your value as a law student, as an attorney, and most of all, as a human being, by how well or how poorly you do on law school examinations. How well you do, I inform them, depends not just on how well you prepared for that exam or how well you participated in class, but also on whether you were physically sick or physically healthy on the day you took the exam, on how well other students prepared, on what areas of the course the professor emphasized in the examination questions, on the idiosyncrasies of the professor in the grading process, and so on. Similarly, I inform them that in the practice of law, whether you win or lose a case depends upon people and events over which you have little or no control—the facts, the client, witnesses, the opposing attorney, the jury, the judge, the legal principles applicable to the case, and so on.

Do not measure your success by your ability to achieve results over matters that you cannot control.<sup>91</sup> You don't have to prove anything to anybody. Rather, you should attempt to earn your own self-respect.<sup>92</sup>

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90. When I make this statement, many students smile or chuckle quietly. I typically respond, "You laugh now, but will you laugh next January when you learn the results of your final examinations?" I deliberately choose to use the one-third to two-thirds success to failure dichotomy for two reasons. First, I already alluded to the one-third expulsion rate that was common in law schools years ago. *See supra* note 79. Second, and more importantly, I am subtly suggesting that a ranking in the upper one-third of the class constitutes success on law school examinations. I have expanded the success category well beyond the top 10% of the class or even the top 25%. If students accept my categorization, then, perhaps fewer students will be disappointed by their exam results.

91. This simple, but profound, insight was first communicated to me by two psychiatrists, Tom Rusk, M.D., and Randy Read, M.D., who co-taught in my course on Law and Mental Disorder. When I served as Acting Dean of the University of San Diego School of Law in 1977–1978, I invited Drs. Rusk and Read to speak to the entire entering class in our orientation program. The insights that I ascribe to them were conveyed in their presentation to the entering class in August 1977. Drs. Rusk and Read have co-authored two books: TOM RUSK & RANDY READ, *I WANT TO CHANGE BUT I DON'T KNOW HOW* (1978); TOM RUSK & RANDY READ, *TREAT YOUR EGO IN 4 HOURS: "BRIEF THERAPY," THE COMPLETE SELF-HELP PROGRAM HOUR BY HOUR* (1974).

92. Drs. Rusk and Read suggest that a person should look himself or herself in the mirror—you won't lie to yourself if you look in the mirror, they say—and ask whether he or she did the best that he or she could do in preparing for class, answering a professor's question, preparing a case for trial, or any other endeavor about which the person is concerned. A person who can answer "yes" has earned his or her self-respect.

Your success or failure depends on the effort that you make in the learning process, not on how that learning is measured on law school examinations. All that you can ask of yourself, and all that anyone can ever ask of you, is that you do your best—that you try hard.<sup>93</sup>

### B. *The Most Important Date in American History*

At our law school, as a part of the orientation program for first-year law students, a simulated class session is conducted for each section, taught by a professor who teaches a course to those students. The class session is entitled: *Demystifying the Socratic Method*. I always volunteer to teach that session.<sup>94</sup> For this special session, I assign three torts cases to the students.<sup>95</sup> The first case is *I de S et ux. v. W de S*,<sup>96</sup> decided in 1348, and characterized in the Prosser Torts casebook as “the great-grandparent of all assault cases.”<sup>97</sup> The remaining two cases<sup>98</sup> involve the modern tort of intentional infliction of mental or emotional distress and the question of whether a plaintiff may recover for such distress even though the tort of assault has not been committed.

In the *I de S* case, the court ruled that mental distress alone, even without any accompanying physical injury, is itself an injury for which the law, through the tort of assault, will grant compensation to a plaintiff. “Think of it,” I tell the class. “Way back in the year 1348, mental distress was recognized as an injury.” To demonstrate how long ago this case was decided, I ask the class: “What is the most important date in American history?” They typically respond: “July 4, 1776.”

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93. I also suggest that to have a healthy perspective, students need to maintain close, supportive relationships with the nonlegally trained people in their lives. They should not make the study of law a higher priority than their families and their loved ones. Students should also retain or develop interests other than law school interests, for example, reading novels, memorizing poetry, jogging, yoga, or other physical exercise, et cetera.

94. In schools that do not offer such an opportunity as a part of the orientation program, a professor can teach his or her first class session using the methodology that I use in the orientation class session.

95. This simulated class session is presented near the conclusion of the two-day orientation program. In my orientation speech, presented on the first day of orientation, I inform students that I will conduct the class as a regular class session in torts, and that I expect them to be fully prepared on the assignment for this class.

96. Y.B. Lib. Ass. fol. 99, placitum 60 (at the Assizes 1348), reprinted in VICTOR E. SCHWARTZ ET AL., PROSSER, WADE AND SCHWARTZ’S TORTS 37 (11th ed. 2005).

97. SCHWARTZ ET AL., *supra* note 96, at 37.

98. *State Rubbish Collectors Ass’n v. Siliznoff*, 240 P.2d 282 (Cal. 1952); *Slocum v. Food Fair Stores of Florida*, 100 So. 2d 396 (Fla. 1958).

While I inform them that the date they have chosen is indeed important, perhaps there is another date that may rival it in importance. The date I suggest is June 3, 1888. For on that date, the greatest poem in American history was published. As they are contemplating the absurdity of my response, trying to consider what poem could possibly compete with Independence Day as the most important date in American history, I step away from the podium and, with great dramatic flair, I recite from memory the first five stanzas of *Casey at the Bat*. In the fifth stanza, the crowd emits “a lusty yell” as Casey approaches the batter’s box. The yell “rumbled through the valley, it rattled in the dell; it knocked upon the mountain and recoiled upon the flat, for Casey, mighty Casey was advancing to the bat.”<sup>99</sup> “That, my friends,” I say, “is pure poetry. Isn’t that beautiful? Just think, in this world there is so much anger, so much hatred, so much bigotry, prejudice, stress, anxiety, worry, disappointment, so much pain that is inflicted, so much starvation and suffering, and I, dear friends, give you—*beauty*. June 3, 1888—first publication of *Casey at the Bat*—the greatest day in American history!”

Without more, I have introduced the class to the poem that I will use on the last day of class to teach them about pre-exam anxiety, post-exam grade disappointment, and how best to respond. To end the discussion, I note that *Casey at the Bat* was written a long time ago—120 years have passed since it was first published. But the *I de S* case, recognizing mental distress as a compensable injury, was decided 540 years before *Casey* was published. And even if you still believe that July 4, 1776, was the greatest day in American history—a date when thirteen small colonies on the east coast of our country, with a total population of less than four million people,<sup>100</sup> declared their independence from England—that date occurred only 232 years ago. The *I de S* case was decided 428 years before that eventful day.

### III. THE PITCH

In the fall of 2006, a week before the final class meeting with the students in my torts course, I informed them of what I hoped to cover during our final class session. In addition to completing the material

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99. *Casey at the Bat*, SAN FRANCISCO EXAMINER, June 3, 1888, at 4, reprinted in MARTIN GARDNER, *THE ANNOTATED CASEY AT THE BAT* 21 (2d ed. 1984).

100. The first census of the United States occurred in 1790. U.S. Census Bureau, *Dicennial Census—American Fact Finder*, [http://factfinder.census.gov/jsp/saff/SAFFInfo.jsp?\\_pageId=sp4\\_decennial&\\_submenuId=](http://factfinder.census.gov/jsp/saff/SAFFInfo.jsp?_pageId=sp4_decennial&_submenuId=) (last visited Apr. 21, 2008). At that time, the total population of the sixteen states that then comprised the United States was 3,893,874 people, including 694,207 slaves. University of Virginia Library, <http://fisher.lib.virginia.edu/collections/stats/histcensus/php/start.php?year=V1790> (select “total population” and “slaves”; then click on “submit query”) (last visited Mar. 8, 2008).

assigned for the day, I told the class that I would answer any remaining substantive questions they had about the course material, and then I would discuss the final examination, notifying them of the length of the examination, the format and weight of the questions, and the general directions for responding. I also said that I would devote a portion of the final class session to a special lesson on law school exams and the examination experience. To pique their interest, I added, “You won’t want to miss that special lesson.”

For that special lesson, I prepared thirty-two PowerPoint slides analyzing *Casey at the Bat*. In a twenty-minute presentation using those slides, I attempted to accomplish three objectives. First, I wanted to show empathy for the plight of my students, acknowledging their anxiety immediately prior to final exams. Second, because the students were anticipating some specific pointers on how to write a good examination answer, I wanted to offer at least a few valuable insights on exam writing. Third, and most importantly, I wanted to discuss the disappointment that many students experience when examination results are announced. By considering how Casey might respond to his disappointment, I hoped to offer guidance to students on how they could and should respond positively to the disappointing results that many would experience.

Was I able to achieve my objectives—especially the third objective? Only time will tell. However, I am pleased to report that at the completion of my presentation, the students applauded. Even though exams were fast approaching, several students responded to my invitation to comment on the special lesson. All the emails I received were quite laudatory. For example, one student wrote that the session “was definitely meaningful and worthwhile, it really brought an excellent sense of closure to a great class.”<sup>101</sup> Another wrote: “Your message is exactly what I think law students need to hear at this point in the semester.”<sup>102</sup>

The PowerPoint slides that I used are presented on the following pages. Although a person may read them in less than five minutes, the presentation actually lasted twenty minutes. For the poem itself,<sup>103</sup> I

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101. E-mail from Thomas Kilby, Student, to Grant H. Morris, Professor of Law, University of San Diego School of Law (Dec. 5, 2006, 11:41:10 PST) (on file with author).

102. E-mail from Carolyn Sam, Student, to Grant H. Morris, Professor of Law, University of San Diego School of Law (Dec. 6, 2006, 21:50:07 PST) (on file with author).

103. *Casey at the Bat*, as originally published in the *San Francisco Examiner* on Sunday morning, June 3, 1888, consisted of thirteen stanzas of four lines each. See

used a custom animation scheme that rolled out the words across the screen, much like a baseball being pitched toward a batter. The slide titles were always presented first and the bullet points were clicked onto the screen at appropriate intervals, after students had time to think about the import of what was already exhibited. At various times in the presentation, I asked students to answer specific questions about a statement in the bullet point under review. In this article, I have included a *Comments* section following various slides explaining what was asked. I also comment on the slides themselves, explaining their significance to the lesson or reasons for their inclusion.

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GARDNER, *supra* note 99, at 20–23. These four-line stanzas are reprinted seriatim at the beginning of slides 7 through 19, *infra*.

SLIDE 1

**A Special Lesson on Law School Exams  
and the Examination Experience**

- **In this lesson, we will not be analyzing a case.**
- **Rather, we will be analyzing . . .**
- **a Casey.**

Comment: When students first see the screen, they can see only the title, reminding them that this special lesson on exams and the examination experience is being presented as a PowerPoint demonstration. As I read the Slide 1 bullet points leading them to Slide 2, students are surprised to learn why this lesson is so special.

SLIDE 2

*Casey at the Bat*

**A Ballad of the Republic, Sung in the Year 1888**

**by Ernest Lawrence Thayer**

**(as originally published in the *San Francisco Examiner*,  
Sunday Morning, June 3, 1888, page 4, column 4)**

**Why was *Casey at the Bat* first published in a newspaper, the *San Francisco Examiner*, rather than in a book of poems by the author?**

- **When Ernest Lawrence Thayer was a student at Harvard, he was a close friend of . . .**
- **William Randolph Hearst.<sup>104</sup>**
- **From October 1883 until February 1885, Thayer was President of the *Harvard Lampoon*, the college's humor magazine, and Hearst was its Business Manager.<sup>105</sup>**
- **Thayer's first job after graduation from Harvard was to write a humor column for the *San Francisco Examiner*, a newspaper run by Hearst.<sup>106</sup>**
- **Although ill health forced Thayer to leave San Francisco and return to his family's home in Worcester, Massachusetts, Thayer continued to submit poems to the *San Francisco Examiner*. *Casey at the Bat* was the final poem that Thayer submitted to that newspaper.<sup>107</sup>**

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104. GARDNER, *supra* note 99, at 2.

105. MOORE & VERMILYEA, *supra* note 1, at 118.

106. GARDNER, *supra* note 99, at 2.

107. *Id.*



## SLIDE 4

**Thayer and Hearst—A Comparison**

- **In 1885, Thayer graduated from Harvard *magna cum laude*, was Phi Beta Kappa, and was the Ivy Orator at graduation.**<sup>108</sup>
- **Thayer wrote and published *Casey at the Bat* when he was 24 years old.**<sup>109</sup>
- **He was paid five dollars for the poem.**<sup>110</sup>
- **Thayer never wrote anything memorable before or after *Casey at the Bat*.**<sup>111</sup>
- **He did, however, write *Casey*.**

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108. *Id.*

109. Ernest Lawrence Thayer was born on August 14, 1863. *Id.* at 1. *Casey at the Bat* was first published on June 3, 1888. *Id.* at 2.

110. MOORE & VERMILYEA, *supra* note 1, at 332.

111. Thayer has been described as “a prize specimen of the ‘one-poem poet.’” GARDNER, *supra* note 99, at xi. Shortly after *Casey* was published, Thayer entered a new phase of his life, devoting his attention to manufacturing wool at the American Woolen Mills, the family-owned business. MOORE & VERMILYEA, *supra* note 1, at 332.

### Thayer and Hearst—A Comparison

- In 1885, Hearst was expelled from Harvard for the numerous practical jokes he played (mostly on professors).<sup>112</sup>
- Hearst was given the *San Francisco Examiner* by his father. Hearst's father received the *Examiner* as payment of a gambling debt.<sup>113</sup>
- Hearst acquired numerous newspapers and used lurid sensationalism—known as “yellow journalism”—to build and expand his publishing empire.<sup>114</sup>
- The stories in the Hearst newspapers about the sinking of the battleship *Maine* in Havana harbor on February 15, 1898, roused public opinion against Spain and contributed significantly to the start of the Spanish-American War.<sup>115</sup>
- Hearst was considered to be one of the most powerful men, if not the most powerful man, in America.<sup>116</sup>

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112. GARDNER, *supra* note 99, at 2. For example, Hearst would send chamber pots to professors with their names inscribed on them. *Id.*

113. William Randolph Hearst, <http://www.zpub.com/sf/history/willh.html> (last visited Dec. 2, 2007).

114. *Id.*

115. Clifford Krauss, *Remember Yellow Journalism*, N.Y. TIMES, Feb. 15, 1998, <http://www.nytimes.com/> (search for article title) (last visited Dec. 4, 2007).

116. See William Randolph Hearst, *supra* note 112. The contrast in the personal lives of the two men is equally interesting. Thayer did not marry until he was fifty years old. He was married in San Diego, and his wedding was reported in the September 10, 1913 *San Diego Union's* “In Society” as “[u]npretentious and quiet but charming in its appointments . . .” MOORE & VERMILYEA, *supra* note 1, at 305. Hearst was married and had five sons. Although he never divorced his wife, he lived in his San Simeon home—Hearst Castle—with actress Marion Davies. William Randolph Hearst, *supra* note 112.

SLIDE 6

**Choosing a Hero**

- **Clearly, Thayer was a greater academic success than Hearst.**
- **Clearly, Hearst was a greater financial success than Thayer.**
- **Which man would you choose as your role model—your hero?**
- **Which man would you choose to emulate; who is your “American Idol”?**
- **As we begin our analysis of *Casey at the Bat*, consider whether you would choose to have incredible wealth and power, or whether you would choose to write a poem that is still recited and admired more than a hundred years after it was written.**

*The outlook wasn't brilliant for the Mudville nine that day;  
The score stood four to two with but one inning more to play.  
And then when Cooney died at first, and Barrows did the same,  
A sickly silence fell upon the patrons of the game.*

- **“The outlook wasn’t brilliant”—With exams rapidly approaching, is that how you feel?**
- **Do you view your chance for succeeding in those exams as poor?**
- **Thayer tells us that “Cooney died at first, and Barrows did the same.” Do you sense impending doom?**
- **“A sickly silence fell upon the patrons of the game.” Does the thought of exams make you feel ill?**
- **In a subsequent version of the poem, published in 1909, Thayer changed the word “sickly” to “pall-like,”<sup>117</sup> another reference to death. This time, death descends upon the fans—those who pay for and observe the game—you.**

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117. MOORE & VERMILYEA, *supra* note 1, at 298. This revised and officially authorized version of the poem was published on January 28, 1909. *Id.*

## SLIDE 8

*A straggling few got up to go in deep despair. The rest  
Clung to that hope which springs eternal in the human breast;  
They thought if only Casey could but get a whack at that—  
We'd put up even money now, with Casey at the bat.*

- **“A straggling few got up to go in deep despair.” Have any of your classmates already dropped out of law school? Did they do so because they despaired at their chances of succeeding in their upcoming final exams?**
- **The rest of you cling to hope. What does it mean to “put up even money now with Casey at the bat”?**
- **Do you really think that there is a better than 50/50 chance of success on your exams if only Casey could bat for you?**
- **Who is your “Casey”? Is Casey your thorough preparation, your rigorous briefing of cases, your course outline, insights learned through regular attendance and frequent participation in your classes? Or is your Casey commercial outlines, canned briefs, a fateful (fatal?) belief in luck itself?**
- **Although all of you are concerned about your ability to succeed, which Casey gives you a greater sense of confidence going into exams?**

Comments: In Slide 7 and the beginning of Slide 8, I ask rhetorical questions comparing the emotions of the fans at a game they seem certain to lose with the emotions of the students as they are about to

undertake exams. By doing so, I acknowledge the anxiety of my students at this critical time in their legal careers. Forty years ago, psychiatrist Andrew Watson urged law professors to admit to their students that their teaching methods cause stress to them. Such an admission reassures students that they are not alone in their struggle to learn and reduces their sense of isolation, helplessness, and vulnerability.<sup>118</sup> Dr. Watson's insight is equally applicable to the stress and anxiety of students confronting their first final examinations.

When I ask the question, "What does it mean to put up even money now with Casey at the bat?," I wait for a volunteer to answer. I want students to carefully consider whether it is foolish to believe that it is more probable than not that any batter, even a Casey, will get a hit in his next at bat.

In analyzing this poem, I use the image of Casey in several different ways. Here I suggest that Casey is the students' crutch, which students rely upon to enable them to succeed. I intimate that they should be more reassured of success on examinations if they have done the hard work of preparing for and participating in classes rather than using shortcuts to lessen their study burden.

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118. Watson, *supra* note 16, at 146.

## SLIDE 9

*But Flynn preceded Casey, as did also Jimmy Blake,  
And the former was a lulu<sup>119</sup> and the latter was a cake;  
So upon that stricken multitude grim melancholy sat,  
For there seemed but little chance of Casey's getting  
to the bat.*

- Two obstacles may prevent Casey from even having an opportunity to bat. There are two outs, and two players—Flynn and Jimmy Blake—precede him.
- “Lulu” is defined as “Something extraordinary, a humdinger.”<sup>120</sup> Here it is used in a derisive sense, suggesting that Flynn is an exceptionally bad hitter. In the 1909 version of the poem, Thayer replaced “lulu” with “hoodoo.”<sup>121</sup> A “hoodoo” is a person who brings bad luck.
- “Cake” is “[a] slang word of the time for a dude, dandy, or male homosexual. Here it probably means no more than a handsome, vain ball player, much concerned about his personal appearance, but a weak player.”<sup>122</sup>
- Because of these obstacles, the crowd’s mindset (and your mindset as you approach exams) is one of “grim melancholy.”

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119. Martin Gardner, who claimed that he was reprinting “the original version of *Casey*—word for word, comma for comma—exactly as it appeared in the fourth column on the fourth page of the *San Francisco Examiner*, Sunday morning, June 3, 1888,” did not place a comma after the word *lulu*. GARDNER, *supra* note 99, at 20–21. However, Jim Moore and Natalie Vermilyea, who also claimed to reprint *Casey* as it was originally printed in the *San Francisco Examiner*, placed a comma after the word *lulu*. MOORE & VERMILYEA, *supra* note 1, at xiii.

120. GARDNER, *supra* note 99, at 181.

121. MOORE & VERMILYEA, *supra* note 1, at 298.

122. GARDNER, *supra* note 99, at 181.

*But Flynn let drive a single, to the wonderment of all,  
And Blake, the much despis-ed,<sup>123</sup> tore the cover off  
the ball;  
And when the dust had lifted, and the men saw what  
had occurred,  
There was Johnnie safe at second and Flynn  
a-hugging third.*

- **Surprise!!!!** Sometimes you get lucky and do well. Flynn and Blake get hits, allowing Casey to come up to bat.
- **Who's Johnnie?** I thought the much despis-ed Blake's first name was Jimmy.
- **"Johnnie"** was a printer's mistake.<sup>124</sup> Blake's first name was Jimmy. Ironically, Blake is the only player in the poem identified by his first and last names. And yet, in this stanza, he is misidentified as "Johnnie."
- **Lesson to be learned:** when writing an exam answer, always check to make sure that you've identified the names of the parties correctly.

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123. The word used in the poem is *despis-ed*, not *despised*. By adding an extra syllable, perhaps Thayer was attempting to emphasize the negative connotation of the word.

124. GARDNER, *supra* note 99, at 182.



Comments: In the first bullet point of Slide 10, in referring to the hits by Flynn and Blake, I deliberately used the words “sometimes *you* get lucky.” By doing so, I was suggesting to students that sometimes they get lucky on an examination. For example, a student who may not know the answer to a multiple choice question may, nevertheless, answer correctly. A student who knows little about certain portions of a course may, nevertheless, get lucky and be asked essay questions about the portions of the course about which he or she is well versed.

The final bullet point of Slide 10 provides an important insight to students on writing a good exam answer.

## SLIDE 11

*Then from 5,000 throats and more there rose a lusty yell;  
It rumbled through the valley, it rattled in the dell;  
It knocked upon the mountain and recoiled upon the flat,  
For Casey, mighty Casey, was advancing to the bat.*

- **The prayers of the fans have been answered! Their dreams have come true! Their hero—the mighty Casey—has stepped forward to rescue them.**

*There was ease in Casey's manner as he stepped into  
his place;  
There was pride in Casey's bearing and a smile on Casey's  
face.  
And when, responding to the cheers, he lightly doffed his  
hat,<sup>125</sup>  
No stranger in the crowd could doubt 'twas Casey at the bat.*

- **What is the image that Casey projects as he approaches the batter's box—or as he enters the exam room?**
- **Casey is supremely confident. He is proud of what he has already accomplished, and he is at ease knowing the task that lies ahead of him.**
- **Will you enter the exam room with confidence, proud of yourself, with a smile on your face?**

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125. Martin Gardner, in reprinting the original version of *Casey*, used the word *hat*. GARDNER, *supra* note 99, at 21. However, Jim Moore and Natalie Vermilyea, who also claimed to reprint the original version of *Casey*, used the word *cap*. MOORE & VERMILYEA, *supra* note 1, at xiii.

## SLIDE 13

*Ten thousand eyes were on him as he rubbed his hands  
with dirt;  
Five thousand tongues applauded when he wiped them on  
his shirt.  
Then while the writhing pitcher ground the ball into his  
hip,  
Defiance gleamed in Casey's eye, a sneer curled Casey's  
lip.*

- **Note how in one stanza Casey's attitude has changed.**
- **No longer is Casey smiling, acknowledging the cheers of the crowd, graciously accepting the adulation of the fans.**
- **Now, as Casey waits for the ball to be pitched, he is defiant; a sneer curls his lip.**
- **Casey knows there is work to be done—a ball to be hit; an examination to be taken.**

Comment: In the Slide 13 bullet points, I focus on the attitude adjustment that Casey undergoes. As I demonstrate later in the lesson, students must also undergo an attitude adjustment if they are to relieve the emotional pain they experience from disappointing exam results.

*And now the leather-covered sphere came hurtling  
through the air,  
And Casey stood a-watching it in haughty grandeur there.  
Close by the sturdy batsman the ball unheeded sped—  
“That ain’t my style,” said Casey. “Strike one,”  
the umpire said.*

- **We are told that Casey watched the ball come toward him, and go by him, “in haughty grandeur.” Casey is supremely confident—almost to the point of arrogance—scornful of the pitcher who he considers beneath him.**
- **The pitch may be a strike, but Casey refuses to swing. “‘That ain’t my style,’ said Casey.” He knows the pitcher cannot get him out with just one strike.**
- **But on an exam, if there is an issue to be spotted and discussed, can you afford to ignore it, simply because you would prefer to discuss other issues?**
- **After all, the umpire—the professor grading the exam—will call “strike one” against you.**

Comments: The final two bullet points of Slide 14 provide an important insight to students on exam writing. Note also that, for the first time, the professor grading an exam is equated to an umpire calling balls and strikes at a baseball game.

## SLIDE 15

*From the benches, black with people, there went up a  
muffled roar,  
Like the beating of the storm-waves on a stern and distant  
shore.  
“Kill him! Kill the umpire!” shouted some one<sup>126</sup> on  
the stand;  
And it’s likely they’d have killed him had not Casey raised  
his hand.*

- Why are the fans so upset? Why do they want to kill the umpire? Did he do something wrong? Are the fans justified in their anger?
- There is nothing in the poem to suggest that the umpire erred in his assessment. All he did was evaluate the pitch, much like a professor evaluates an examination answer, and determine—probably correctly—that it was a strike.
- There is but one explanation. The umpire, in calling the pitch a strike, has ruled against Casey, their hero.
- The fans are unwilling to fault Casey for refusing to swing at a strike; therefore, they blame the umpire for calling the pitch a strike. Will you blame your professors for your less than stellar results on law exams?

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126. Martin Gardner, in reprinting the original version of *Casey*, used the words *some one*. GARDNER, *supra* note 99, at 22. However, Jim Moore and Natalie Vermilyea, who also claimed to reprint the original version of *Casey*, used the word *someone*. MOORE & VERMILYEA, *supra* note 1, at xiv.

Comments: The Slide 15 bullet points ask for student understanding of the professor's role in grading exams rather than blaming the professor for awarding a disappointing grade. Note also that in the final bullet point, Casey is transformed into the student who has received a bad grade, just as Casey had a pitch called a strike against him.

SLIDE 16

*With a smile of Christian charity great Casey's visage shown;  
He stilled the rising tumult; he bade the game go on;  
He signaled to the pitcher, and once more the spheroid flew;  
But Casey still ignored it, and the umpire said, "Strike two."*

- Casey has enabled the game to continue. He is not disturbed by the umpire's call—perhaps because he knows that the first pitch was, in fact, a strike.
- Another pitch, another called strike.
- Casey has ignored the second pitch, building the drama of the moment. Casey knows that the pitcher cannot get him out with only two strikes.

## SLIDE 17

*“Fraud!” cried the maddened thousands, and echo  
answered fraud;  
But one scornful look from Casey and the audience  
was awed.  
They saw his face grow stern and cold, they saw his  
muscles strain,  
And they knew that Casey wouldn’t let that ball go  
by again.*

- The crowd is “maddened” by the call. “Maddened” means to become mad—to become insane, angry, or wildly excited.
- Again, they blame the umpire for ruling against their hero by calling the second pitch a strike.
- They accuse the umpire of fraud—for deceiving them, for tricking them, for cheating them.
- But has the umpire acted improperly? All he did was evaluate the pitch, much like a professor evaluates an examination answer, and determine—probably correctly—that it was a strike.

Comment: The final bullet point of Slide 17 reiterates—in identical language used in the second bullet point of Slide 15—the role of the professor in grading exams. If students did not get the point the first time it was made, perhaps, they will get it here.

*The sneer is gone from Casey's lip, his teeth are  
clenched<sup>127</sup> in hate;  
He pounds with cruel violence his bat upon the plate.  
And now the pitcher holds the ball, and now he lets it go,  
And now the air is shattered by the force of Casey's blow.*

- “The sneer is gone . . . .” Casey no longer smiles derisively, showing scorn for his adversary.
- Casey’s mood has changed. Casey’s teeth are now clenched in hate. Scorn for the pitcher has been replaced by loathing. Casey detests the pitcher; he feels ill will, hostility, animosity toward him.
- But why? Although the pitcher is trying to strike out Casey, he is simply throwing strikes, providing opportunities for Casey to hit a home run, to be a hero.

Comment: Just as in the bullet points of Slide 13, I emphasize a change in Casey’s attitude in the bullet points of Slide 18.

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127. Martin Gardner, in reprinting the original version of *Casey*, used the word *clenched*. GARDNER, *supra* note 99, at 22. However, Jim Moore and Natalie Vermilyea, who also claimed to reprint the original version of *Casey*, used the word *clinched*. MOORE & VERMILYEA, *supra* note 1, at xiv.



## SLIDE 19

*Oh, somewhere in this favored land the sun is  
shining bright;  
The band is playing somewhere, and somewhere  
hearts are light,<sup>128</sup>  
And somewhere men are laughing, and somewhere  
children shout;  
But there is no joy in Mudville—mighty Casey has  
struck out.*

- Shock and disbelief.
- Our hero, Casey, has failed us.
- We are disappointed, disillusioned, discouraged, dismayed, disheartened, depressed, dejected, despondent. We are defeated.
- The poem ends . . .
- But the lesson continues.

Comment: After I say, “The poem ends,” I delay a moment before I announce, “But the lesson continues.” Of course the lesson continues—my purpose in the lesson is not to leave my students in despair, but rather to offer them a way forward despite their exam grade disappointment.

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128. Martin Gardner, in reprinting the original version of *Casey*, placed a comma after the word *light*. GARDNER, *supra* note 99, at 23. However, Jim Moore and Natalie Vermilyea, who also claimed to reprint the original version of *Casey*, placed a period after the word *light*. MOORE & VERMILYEA, *supra* note 1, at xiv.

Ironically, in two excellent books about human failure, the authors in attempting to reprint the original version of *Casey at the Bat*, differed in five places. See *supra* notes 119, 125–28. Surely, the author or authors of one or, perhaps, both books failed in their attempt.

**Is there any hero in this poem?**

- **How about the PITCHER?**
- **After all, despite a hostile crowd, he struck out the mighty Casey on three pitches.**
- **NO!!!!!! He's not *our* hero.**
- **If Goliath had defeated David because he was bigger, stronger, and more powerful, would you quickly switch your allegiance and cheer for the Philistines<sup>129</sup> instead of the Mudville Nine?**
- **Would you root for the professor to strike you out by the curve balls he throws you on your final exam?**

Comments: Slides 20–23 are crucial to the lesson. Casey has failed us as a hero, and we begin a search for a new hero. After showing students the title to Slide 20, I wait for them to answer the question raised. Fortunately, in my test run, students identified the proposed heroes in the order I wished to discuss them in Slides 20–23. If they had not, I would have called on other students until someone gave me the “correct” answer.

Note that in the final bullet point, the professor is identified not as the umpire grading exams, but rather, as the enemy pitcher throwing curve balls at students on the exam.

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129. Disclaimer: To the best of my knowledge, the *Philistines* is not the formal nickname of the major league baseball team located in Philadelphia, Pennsylvania.

SLIDE 21

**Is there any hero in this poem?**

- **How about the UMPIRE?**
- **After all, he courageously continued to call strikes even after he was accused of improprieties (“‘Fraud!’ cried the maddened thousands . . .”) and threatened with death (“‘Kill him! Kill the umpire!’ shouted some one on the stand . . .”).**
- **NO!!!!!! He’s not *our* hero.**
- **He is not even a player in the game; merely a referee. He is not worthy of hero status.**
- **The umpire is simply doing his job—just like a professor grading examinations. All that we ask from him is that he be an impartial arbiter of our work product and evaluate us fairly.**

Comment: In Slide 21, I have restored the professor grading exams to his or her rightful status as umpire. The slide suggests to students that professors do not covet hero status, but rather, they seek only respect for their efforts to be impartial arbiters of student work product.

**Is there any hero in this poem?**

- **How about FLYNN and JIMMY BLAKE—the batters who preceded Casey?**
- **After all, their hits (a single and a double) enabled Casey to come to bat with the tying runs on base.**
- **YES!!!!!! They are heroes.**
- **They played the game, and their efforts kept the game going.**
- **Just think: if only Casey had attempted to hit a single—an easy feat for him—instead of trying to hit a home run, Flynn and Blake would have scored, the teams would have been tied, and the game would have continued.**

Comment: Slide 22 proposes hero status for individuals who have not been responsible for winning the game, but who have enabled the game to continue. The message should be clear to students: success in law school, and the hero status that accompanies success, does not necessarily depend on achieving high grades and a high class ranking. Success can be measured in other ways.

SLIDE 23

Is there any **OTHER** hero in this poem?

- **How about CASEY?**
- **Is Casey to be rejected as a hero, reviled by all Mudville fans forevermore, simply because he failed us this one time?**
- **Do we renounce Casey, holding him in contempt simply because he was all too human—with weaknesses and flaws that we all have?**
- **How many times has Casey succeeded for us in the past? Surely he deserved our admiration; he deserved to be our hero.**
- **Even today, for all we know, Casey may have been responsible for scoring the first two—and the only two—runs scored by Mudville. He may have already succeeded this very day.**
- **When we were willing to bet on Casey—to put up even money on him—could we really have expected him to be successful each and every time he batted?**

Comment: I particularly like Slide 23. I assert that Casey, who failed in this one at bat, may be still a hero. The message is clear: students who are disappointed in their exam grades need not lose self respect. They can retain—or regain—their hero status. Law school exams do not measure one's entitlement to self-esteem.

**How will Casey respond to his failure?**

- **Perhaps Casey's scorn and hatred for the pitcher he faces will be replaced by respect for his adversary.**
- **Perhaps Casey will no longer waste opportunities that are presented to him—perhaps he will swing at the first good pitch that is thrown his way.**
- **Perhaps Casey's overconfidence—his haughty grandeur—will be replaced by humility.**
- **Perhaps next time, he will try harder.**
- **Perhaps next time, he will succeed.**
- **And if he does not succeed next time, perhaps he will succeed the time after that, or at some other time in the future.**

Comment: In Slide 24, I suggest ways in which Casey can alter his mindset and his behavior to improve his chance for success when another opportunity arises. Although success is never guaranteed, one can respond constructively to disappointment in the quest for future success.

## SLIDE 25

**How will *you* respond if your grades on fall semester exams are disappointing?**

- **Will your disappointment cause you to give up on the learning process?**
- **Will you stop preparing your course assignments diligently, no longer seeking to analyze and learn from the material assigned for class?**
- **Will you stop participating in class, no longer hoping to learn from the interaction with your professors and classmates?**
- **Will you simply do the minimum necessary to scrape by, doing only what you must to complete law school with barely passing grades?**
- **Or will you strive to do your best, regardless of the disappointing results and the potential for other disappointing results in the future? Will you earn your own self-respect?**

Comment: In contrast to Casey's positive response to disappointment mentioned in the Slide 24 bullet points, the first four bullet points of Slide 25 suggest ways in which students can and do respond negatively to disappointing exam results. The final bullet point challenges them not to do so.

### Attitude Adjustment

- **As Casey came to bat, his attitude changed from haughty confidence, to scorn of, and then to hatred for, the pitcher.**
- **Thayer does not tell us whether Casey's attitude changed after he struck out. Will his hatred for the pitcher become a hatred for the game itself?**
- **No! If Casey is truly a hero, his love for the game will not be diminished by his failure to succeed in this one at-bat.**
- **As you approach exams, your attitude has changed from an enthusiastic and broadly-based love of learning to a calculated and narrowly focused learning on what you think might be asked on an examination and what you need to regurgitate in order to obtain maximum credit.**
- **Will disappointing exam results change your hatred for exams into a hatred for law school and the learning process?**
- **No, not if you are truly a hero.**

Comment: Just as Casey can be a real hero, not by hitting a home run to win the game, but rather by rededicating himself to excelling in the game he loves, students can become real heroes, not by achieving high grades on law school exams, but rather, by rededicating themselves to becoming the best lawyers they are capable of becoming.



## SLIDE 27

**Maintain a Healthy Perspective**

- **A very wise and insightful professor told you on the first day of orientation, “It is a statistical fact of life that two-thirds of you will not graduate in the upper one-third of the class.”**
- **“However,” this brilliant professor added, “You can still be very fine law students and very fine attorneys even if you do not score highly on this one measure of success.**
- **Do not equate your value as a law student, as an attorney, and most of all, as a human being by how well or how poorly you do on law school examinations.”**

Comment: In Slide 27, I remind students of what I told them on the first day of orientation. The third *P* for success in law school is to maintain a healthy perspective.<sup>130</sup> Now that they have experienced a full semester of law school and are about to take their first final examinations, the message has far more significance to them.

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130. See *supra* text accompanying notes 90–93.

**What is your goal?**

- **When you came to law school, was your goal to obtain grades of A or A+ on all exams, graduate first in the class (or at least in the top 10%), be recruited by a prestigious law firm, and make lots of money (\$\$\$\$\$\$)?**
- **Really??? Kind of a selfish goal, isn't it?**
- **If that was your goal, then your disappointing exam results, and the prospect of other disappointing exam results in the future, may prevent you from achieving your objective.**
- **Will you reflect maturely on this goal and revise it as follows:**
  - **“My goal in law school is to learn as much as I can about the law and lawyering so that as an attorney I can be of greatest help to my clients.”**
  - **This goal is achievable. All you have to do is dedicate yourself to achieving it.**

Comment: In a sense, Slide 28 asks students to reconsider the question raised in Slide 6: Who would you choose as your role model—your hero? The second bullet point suggests that if they chose Thayer because they want academic success for their own personal aggrandizement, or if they chose Hearst because they want wealth and power for their own exultation, they have not chosen wisely. The final bullet points suggest that greatness is achieved through service to others.

SLIDE 29

**What can Casey learn—and what can we learn—  
about disappointment?**

- **In life, you will experience disappointment.**
- **But,**
- **for as long as you live,**
- **there's another game tomorrow.**

Comment: In Slide 29, I make the first of three major points to conclude the presentation. Law school does not end with first semester final grades, even if a student receives disappointing grades. There are more courses to be taken; more knowledge to be acquired.

### The Mudville Fans

- **Why did the Mudville fans remain at the game when their team was behind four to two with two outs in the bottom of the ninth inning?**
- **As we are told in the second stanza of the poem:**
- **“A straggling few got up to go in deep despair. The rest clung to that hope which springs eternal in the human breast.”**
- **Why, after suffering such a devastating defeat in today’s game, will the Mudville fans return for tomorrow’s game?**
- **Hope springs eternal.**

Comment: In Slide 30, I make the second of three major points to conclude the presentation. Even if students receive disappointing grades on their first law exams, there are other courses and other exams to be taken in the future. Do not give up hope for success in those courses and those exams.

## SLIDE 31

**In the words of Winston Churchill:**

**“Success is not final, failure is not fatal:  
it is the courage to continue that counts.”<sup>131</sup>**

Comment: In Slide 31, I make the third of three major points to conclude the presentation. I chose the quotation for two reasons. First, it expresses the exact message that I want to express. Disappointing grades, even failing grades, will not kill you.<sup>132</sup> What is important is your willingness to move forward and not be defeated by the experience. Second, the statement was made by Winston Churchill. In World War II, as leader of Great Britain, he was tested on numerous occasions, and he experienced numerous disappointments and failures. But he had an indomitable spirit. He would not give up. He was a hero—a real-life hero. Although some students may reject the lessons of life taught through analyzing a poem about a hypothetical baseball player who strikes out, they are unlikely to reject the lessons taught by Winston Churchill.<sup>133</sup>

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131. Brainy Quote, <http://www.brainyquote.com/quotes/authors/w/winston-churchill.html> (last visited, Apr. 25, 2007).

132. Churchill's quotation answers a question raised in a Slide 7 bullet point, "Do you sense impending doom?" Merely because the game is lost, death will not descend upon the fans—or upon students who receive disappointing exam grades.

133. I considered, but rejected, using a different quotation about overcoming disappointment, because the source of the quote was far less than heroic.

[T]he greatness comes not when things go always good for you, but the greatness comes and you are really tested, when you take some knocks, some disappointments, when sadness comes, because only if you have been in the deepest valley can you ever know how magnificent it is to be on the highest mountain.

Richard M. Nixon, *Farewell Speech to White House Staff*, Aug. 9, 1974, <http://www.historyplace.com/speeches/nixon-farewell.htm>.

**What does our analysis of *Casey at the Bat* teach us about baseball, about law school exams—and, about life itself?**

**There's another game tomorrow.**

**Hope springs eternal.**

**Play the game!!!!!!!!!!!!!!!!!!!!**