

## At the Lectern

# Talk Less, Smile More<sup>1</sup>

Julie A. Oseid

It's the first day of my (In)Famous Trials class. I've taught the course four times before, but this time I'll teach it as a condensed course for two straight weeks—in January, during a particularly bitter Minneapolis cold spell. And I can't talk.

Laryngitis is no stranger to me. It visits me every couple of years for a day or two. But this time it lasts a solid six days, which includes the entire first week of this seminar. Of course, I don't know at first that I won't be able to speak for six days. On the first day, I use a microphone to amplify my hoarse whisper, but that works for only about thirty minutes before even my whisper vanishes. Well, I think, at least I'll be able to talk tomorrow.

Nope. I can't speak at all until the second half of the class.

If asked to list the critical attributes of a successful law professor, many people would include a brilliant mind, experience, a nimble ability to respond to what is happening in the classroom, a capacity to both coax and encourage students, a sense of humor, a curiosity about the law and teaching, and resilience in adapting to a changing world. That is really a very fine list. If I thought hard, my own list would also include the ability to speak.

Or maybe not.

The loss of my voice sparks my most successful teaching experience and teaches me five things about teaching.

**Julie A. Oseid** is Professor of Law at the University of St. Thomas School of Law in Minneapolis, Minn. She thanks all the students in her January 2018 (In)Famous Trials class: Molly Butler, Peter Dotson, Connor Doyle, Emily Ginsburg, Zach Graham, Jordan Hinkle, Molly Hough, Brittany Leidle, Olivia Luther, Christopher Nichols, Maggie Owen, Kacie Phillips, William Reynaga, Lindsey Rowland, Elizabeth Runde, and Rachel Wescott. I have told several colleagues about my experience teaching with laryngitis; several have said that maybe it wasn't me at all, but this marvelous group of students. I agree. But in my experience that is the way it is with all teaching—my students have much more to do with the success of the class than I. Still, I am grateful for this particular group—smart, funny, respectful, and willing to try any new thing I dreamed up. I also thank Professor Douglas O. Linder, University of Missouri Kansas City, for creating an excellent website about many famous trials. Finally, thanks to my brother Professor Stephen D. Easton, University of Wyoming School of Law, for all his fabulous advice about teaching and his graciousness in sharing the materials from his (In)Famous Trials class.

1. LIN-MANUEL MIRANDA, AARON BURR, SIR from HAMILTON, lyrics available at <https://genius.com/Lin-manuel-miranda-aaron-burr-sir-lyrics>.

### 1. I talk way more than I think I do.

Maybe you do too. I suppose I secretly believe that an uninhibited ability to go on and on and on—about the law and other subjects—is practically a prerequisite for a law faculty position. I marvel at my colleagues who seem able to talk—in detail and with expertise—on many, many subjects. If you doubt me, try this small experiment. The next time you are at a faculty event, ask this question: “What do you think ‘reasonableness’ really means?” My guess is that every law professor who hears the question will need at least thirty minutes to answer.

But here’s the thing. When you can’t talk—and I mean you really can’t talk because it is physically impossible—you learn just how much you talk during class. This lesson may hold even if you think, as I did, that you talk in class less than most law professors. I’ve heard about experiments where psychologists observe how often people talk during the day.<sup>2</sup> I would have guessed that I talked about fifteen percent of the time while teaching (In)Famous Trials. Losing my voice showed me that my estimate was wildly inaccurate. My estimate now is at least double that, and I would not be surprised to learn that I talk for over a third of the class time.

My (In)Famous Trials class is a discussion course. Students read two to four hours of material about each assigned trial, including original documents, media coverage, and various articles about the trial.<sup>3</sup> I include reading material from authors with a wide variety of opinions about the fairness of the proceedings and the accuracy of the verdict. After a short quiz to begin each class, and perhaps a video clip about the trial, we spend the rest of class time in discussion. Before this year, I was proud that I did not dictate what we would discuss. Instead, I had a broad list of discussion questions, and I let the students’ interest in topics guide our discussion. At least, that is what I thought was happening.

Now I know that I was forcing some of my own ideas about interesting topics onto the class. Without a voice, I have to write the following question on the board: “What did you think was the most interesting thing about the trial?” In past years, I asked about the two kinds of experts (handwriting and wood) used in the Lindbergh baby kidnapping trial because I thought that was interesting. I write the question, “Do you think the Defendant received a fair trial?” on the board, instead of immediately jumping to the potential prejudice against Richard Hauptmann, a German immigrant who fought in

2. See David P. Schmitt, *Sex Differences in Talkativeness?*, PSYCHOLOGY TODAY (Mar. 17, 2016) <https://www.psychologytoday.com/us/blog/sexual-personalities/201603/sex-differences-in-talkativeness> (subtitled “Women don’t talk more than men do; well, a little more”).
3. Professor Douglas O. Linder, University of Missouri Kansas City Law School, has created an excellent website about many famous trials. See Douglas O. Linder, FAMOUS TRIALS, <http://www.famous-trials.com/>. My reading assignments always start with excerpts from the Linder website. I also include reading from other sources, so that my students see a wide variety of opinions.

World War I against the United States. My written, open-ended questions generate discussions about topics that I have never covered before.

Plus, I learn that students will come up with interesting discussion questions. During our study of the Scopes Monkey Trial, one of my students, usually very quiet, asks if everyone in the class can describe how they learned about evolution in high school. My students are from several states: Washington, Colorado, Montana, Minnesota, South Dakota, and Wisconsin. One student, while attending a public high school, had learned nothing about evolution because the topic was prohibited by the school district. Two other students recall that a signed parental permission form was required before any student could remain in class during the evolution section. Another student can't recall if the topic was covered at all. Several students remember a joint presentation about evolution and intelligent design. One says evolution was presented the same way as every other topic in biology.

I had never thought to ask that question. It generates one of the richest discussions of the semester.

## **2. Forced creativity is still creativity.**

You've perhaps heard that blind people often develop a heightened ability in their other senses, and now there is some brain research to support that idea.<sup>4</sup> Something similar happens when I lose my voice. I have to plan assuming that I will not be able to talk the next day, so I have to innovate.

I'm not sure all my ideas will work, but I happily take new risks because I don't have a choice. I am normally organized, careful, and cautious. I plan my individual class sessions weeks in advance. I reflect on the class after it is finished and make meticulous notes about improvements I can make the next time I teach the class. Now I throw out a planned discussion and replace it with something else within hours, or even minutes, of the start of class. I have to push against the nagging sense that my new teaching plans aren't really creative or thoughtful because I was forced into making the changes. But when I experience a tiny bit of success I adopt a new mantra: Forced creativity is still creativity.

This should not come as a shock to me. Writers often say that if they waited for inspiration they would never complete a project. John Updike said, "I've never believed that one should wait until one is inspired because the pleasures of not writing are so great that if you ever start indulging them you will never write again."<sup>5</sup> Stephen King is blunt: "But if you don't want to work your ass off, you have no business trying to write well . . . ."<sup>6</sup>

I do not wait for inspiration, but get to work. Here are a few examples of what we do:

4. Sara G. Miller, *Why Other Senses May Be Heightened in Blind People*, LIVE SCIENCE (Mar. 22, 2017), <https://www.livescience.com/58373-blindness-heightened-senses.html>.
5. MASON CURREY, *DAILY RITUALS: HOW ARTISTS WORK* 298 (2013).
6. STEPHEN KING, *ON WRITING: A MEMOIR OF THE CRAFT* 144 (2000).

*Lincoln Conspiracy Trial*

The Lincoln Military Commission tried eight defendants: Lewis Powell (Pane), David Herold, George Atzerodt, Mary Surratt, Michael O’Laughlen, Sam Arnold, Edman Spangler, and Dr. Samuel Mudd. I print and laminate a large photo of each defendant and randomly pass one photo to a pair of students who are then officially representing that Defendant. I hand the students a worksheet that includes a legal description of the elements required to prove conspiracy and the elements required to prove aiding and abetting in 1865. I then ask the students to answer the following questions in preparation for their presentation to the whole class:

1. What evidence did the United States have against your Defendant? In other words, what were the acts the government claimed your Defendant committed?
2. What was the defense of your client at the time (in 1865)?
3. What did the military commission decide?
4. What happened to your Defendant?
5. What additional defenses would you make in favor of your Defendant?
6. Was your Defendant guilty of conspiracy?
7. Was your Defendant guilty of aiding and abetting?
8. Would your Defendant believe that s/he received a fair trial?
9. Do you believe your Defendant received a fair trial?

Finally, I ask the students to prepare a closing argument for their Defendant. After each closing, the rest of the class votes on the guilt or innocence of each Defendant.

*Scopes Monkey Trial*

Students get bored when they hear only my voice—even if they can hear me—so I always introduce other voices into my classes. Luckily, I have a talented friend, Minneapolis lawyer Randall Tietjen, who agrees to speak to my class about *In the Clutches of the Law: Clarence Darrow’s Letters*.<sup>7</sup> Tietjen is a brilliant scholar and a fantastic storyteller. His own story of how he discovered

7. CLARENCE DARROW, *IN THE CLUTCHES OF THE LAW: CLARENCE DARROW’S LETTERS* (Randall Tietjen ed., 2013).

many of Darrow's letters is enough to captivate any audience. He was a young lawyer, about the same age as many of my students, when he spent his free time tracking down Darrow's letters. Anyone interested in Darrow or the perseverance and creativity of a young lawyer should buy and read the book, but I will tell you that Tietjen eventually found himself in the Chicago basement of Darrow's granddaughter looking at "hundreds of letters to and from Darrow"<sup>8</sup> that "spanned nearly his entire adult life."<sup>9</sup> The letters were found in unmarked boxes and in one labeled "Christmas ornaments."<sup>10</sup> I challenge anyone not to smile when they learn that Darrow's granddaughter allowed Tietjen to take all the letters and papers to a photocopying store, where he stayed up all night, carefully copying every letter and envelope.

Tietjen alone would have been enough to save that class. He plays a clip of Darrow, late in his life, explaining the problems with the criminal justice system. One student later called it the "most transformative hour" of his entire law school career.

But it also sparks a discussion about which of the many talented and colorful lawyers in the case impressed each student. It is no surprise when most pick Darrow, but a few choose William Jennings Bryan. And one student says, "Dudley Field Malone. I'm not a very flamboyant person, so both Darrow and Bryan seemed out of reach for me. Malone was the model for how I want to practice law. He worked really hard, kept his cool, respected everyone, and did an incredible job. I hope to be like him."

*Insanity Trials: John Hinckley, Jr. and Charles Manson*

I break the students into groups of three. I then provide all the different insanity defense standards, written on sheets of paper, to the groups. These include the familiar tests: M'Naghten, Irresistible Impulse, Durham, and the ALI Model Penal Code, in both its old and new versions. Then I ask them to discuss all the standards for insanity and to answer the following questions:

1. Which insanity test do you think is the most appropriate?
2. What are the problems with the standards in these insanity tests?
3. What are the advantages?
4. Can you think of a better test? Please draft that test and the jury instruction/s you would request on behalf of a client claiming the insanity defense.

8. *Id.* at xiv.

9. *Id.* at xv.

10. *Id.* at xiv.

Each group then shares its answers with the entire class. We also review current scientific brain research and ponder whether all the tests someday might be antiquated.

### **3. Talking is the easy way to teach.**

When I had my list of ten discussion topics with several questions under each topic, I was in control. After teaching the course a couple of times, I knew those particular topics in detail. I had studied points of view on both sides of most issues related to the trials. I knew the questions that students would likely ask and the areas that they would likely struggle to understand. I suppose that at some point I became an expert. Still, I resisted taking the role of an expert because I believed that we were all discovering new things about the trials as we studied each one.<sup>11</sup>

Don't misunderstand me. I adore experts when they are enthusiastic about their area of expertise. I'll listen for a very long time to someone talking about something I know absolutely nothing about—sailing, oil painting, chemistry, or Eastern European history. Without fail, I am entertained and enlightened. But I admit that I often remember only one or two things, and I suspect that I don't remember it quite right. That's probably okay, because I won't be asked to sail a boat, paint, conduct a chemistry experiment, or explain Eastern European history.

But I want more than that for my students. I want them to debate and hear opposing views and reach a tentative conclusion and think some more and read some more and maybe change their minds or maybe not. In short, I want them to grapple with the material by thinking critically.

I have never been shy about my goals for my students. I wrote in the syllabus, "Because the subject of our study—the jury trial—is inherently interesting, educational, and even entertaining, I am hoping that this course will be interesting, educational, and even entertaining. There is much to learn from the great spectacle of the American criminal trial." I promised to help them learn how to analyze and critically evaluate ideas, arguments, and points of view. I wanted them to work together as a team. I wanted them to develop their oral and writing skills.

I hope my "talking" version of the class meets those goals, but I know my silent version exceeded the goals. Instead of working on one final project with one other student,<sup>12</sup> my students were working every day as part of a

11. Students always find sources that I have not seen. Students also add new insights. Facts related to the trials also change. During the past two years, Charles Manson died, John Hinckley, Jr., was released from institutional psychiatric care, and O.J. Simpson was granted parole after serving nine years in prison for burglary. I really do learn something new every time I teach the course.

12. My students work in pairs to research, write a report on, and give a class presentation about an important or notorious Minnesota (or other) criminal trial.

team. Instead of making one final presentation to the class,<sup>13</sup> the students were making small presentations every day. Instead of critically thinking about my preordained list of topics, my students were raising, supporting, shouting down, and rehabilitating their positions on racism, sexism, the effect of media coverage, and the impact of celebrity status on American criminal trials. They talked about what lessons we lawyers can learn from the trials and why we seem to repeat some of the same mistakes.

Talking is the easy way to teach. But it doesn't result in the best learning. I found that when the students were doing more of the talking, they were better at formulating and explaining their positions. They challenged one another to support their views with specific references. They admitted that some of their preconceptions were wrong. I haven't had a chance yet to see long-term results. My hope is that their answers to the big question about the fairness of our system will stay with them. I suspect that their understanding was deeper and their recall more acute because I couldn't talk.

#### **4. Students are resilient.**

It isn't that I thought my students would drop the class like flies once they found out I couldn't talk. If you are in Minnesota in January and you don't have a trip planned to somewhere at least 1200 miles south of here, you may as well take a class. Plus, my students were all in their final semester of law school, hoping to crack off a few credits.

Still, I changed the rules and kept changing them. That can be a very disconcerting thing for any student, and particularly mind-blowing for rule-loving law students. They not only went along with my innovations, they seemed to embrace them. In part, it might have been how old it gets to hear whispering. I don't mean just me—because as soon as I started to whisper, every single student in the class was whispering. Hard as they tried, they couldn't respond to me without whispering.

But the constant change also added spark. Students came to class game for every single adaptation. Not every new exercise worked; I think the Insanity class needs more work. As a general rule, the students seemed more invested in the daily classes when they were faced with something new each day. I couldn't help but think that this was a good preview of their work as lawyers, when new and unexpected things happen daily.

13. These presentations have been incredible. One pair of students reenacted, in costume, an 1894 murder that led to the last execution in the state of Minnesota. Another pair reported on a 1936 mafia murder case by showing vintage photographs of all the important locations in the crime alongside recent photographs of the same location. Another pair conducted a live interview of the Ramsey County prosecutor who first used DNA evidence in Minnesota. Another pair interviewed the defense attorney in an insanity case where a mother killed all her children.



### **5. I don't want to talk in the way of my brilliant students.**

I'm five feet ten inches tall, which might seem irrelevant, but bear with me. I most often think of my height as a great advantage. Strangers ask me to reach an item from the top shelf in stores, and we inevitably have a pleasant chat. I've never had to hem sleeves or pants. My children could always find me; I could find them, too. But once in a while my height is a disadvantage. I sometimes forget that I might be blocking the view of someone shorter behind me.

I've come to think of my talking in class in the same way that I think of my height. I wouldn't want to give it up, and it helps me succeed. But I can't lose sight of its downside.

The biggest downside is this: When I talk, that means a student isn't talking. Students have a lot to say. I realize this can go too far. Every teacher has been confronted with a student who dominates the class and seems unwilling to listen to other students and, sometimes, the teacher. So letting students talk too much can definitely be overdone. But this experience showed me that there is a real danger in dominating a class, particularly a seminar class like (In)Famous Trials. I'll continue to step in with comments about substantive topics, but when we discuss the more philosophical questions related to the justice system, I plan to make sure I'm not blocking my students by talking too much.

I'm not much for taking a teaching leap. Maybe you can relate to the comfort that comes with the sense that you have settled into a successful teaching method. I doubt I would have changed anything about my teaching in (In)Famous Trials, so I'm so glad I was forced to be silent. It improved this class. I'll use many of these methods when I teach the class again.

I am stirred with a new zeal to talk less and smile more. Oh, and I'm not waiting for the next bout of laryngitis.