

## MAIMING THE CUBS

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In the last twenty years much has been written about the deleterious effect that law school has on the mental well-being of law students.<sup>1</sup> Many have called for “humanizing” law school. In support of their case, the advocates of humanizing cite numerous anecdotes, much scholarly writing in the psychology literature and even a few rigorous studies of law students. A principal voice is that of Professor Krieger who is on the panel today and who has done the most careful and elaborate study, a study of students at two law schools.

You should understand that Professor Krieger and his cohorts do not merely claim that we make our students more anxious, more depressed and generally mentally sicker, but that this sickness may bring about permanent changes that plague our students for years to come. So the claim, at least by inference, is not just that law students are made unhappy by law school, but that they are maimed.

I was asked to speak because I was perceived to be hostile to or at least critical of the claims of the humanists. I first address a few generalities and then I will consider the report of Professors Krieger and Sheldon that was published in 2004.

### In General

I find it easy to believe that students are made anxious and even depressed by law school and that that anxiety and depression stays with many students throughout school. I find it harder to believe that these stresses cause permanent and irreversible change and that the ills of lawyers are traced in any meaningful way to the stresses of the three years of law school.

Why am I skeptical? A law professor’s claim that he or that law school attendance has such influence over his students shows an unbecoming egotism. I am happy if I can get my students to learn some rudimentary rules about the holder in due course doctrine for next week, never mind what effect I might have a year or five years from now. Our students’ lives are filled with countless events, dozens of relationships and a multitude of worries. Only a handful of those events and worries come directly from law school. How could any law school experience overshadow any one of hundreds of things that happen to each student in the first year after

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<sup>1</sup> A list of these writings can be found at the Humanizing Legal Education website:

[http://www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool.php](http://www.law.fsu.edu/academic_programs/humanizing_lawschool.php)

These writings include: Benjamin, et. al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 Am. B. Found. Res. J. 225 (1986); Daicoff, Susan, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 Am. U. L. Rev. 1337 (1997); Hess, Gerald F., *Heads and Hearts: The Teaching and Learning Environment in Law Schools*, 52 J. Legal Educ. 75 (2002); Iijima, Ann L., *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. Legal Educ. 524 (1998); Krieger, Lawrence S., *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. Legal Educ. 112 (2002); Mixon, John, and Robert P. Schuwerk, *The Personal Dimension of Professional Responsibility*, 58 Law & Contemporary Problems 87 (1995); Morin, Laurie A., *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service From the Inside Out*, 35 Tulsa L.J. 227 (2000); Schuwerk, Robert P., *The Law Professor as Fiduciary: What Duties Do We Owe Our Students?*, 45 S. Tex. L.Rev. 753 (2004); Shanfield, Stephen B. and Benjamin, G. Andrew H., *Psychiatric Distress in Law Students*, 35 J. Legal Educ. 65 (1985); Sheldon, K. and Krieger, L., *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being* 22 Behav. Sci. and Law 261 (2004).

school? Where is the evidence that our pushing them to think like lawyers has turned them permanently off course? To my mind, students are more like sea going tankers than fragile skiffs; their courses change only slowly and at response to greater pressure than law school and law teachers can muster.

On the other hand, that law school causes stress and that such stress might foster anxiety, depression and possibly even larger transitory psychological disturbances is easy to believe. Many of our students come from undergraduate disciplines where they earned certain and predictable rewards for hard study and diligent recollection. Recall the common claim of a student who got a low grade despite the fact that he had studied hard and “knew the material.” In many law school classes students must distill general principles from the cases for themselves and must show some analytical ability on the examination. When one’s practiced modes of learning no longer work, stress and anxiety are inevitable. And these are only some of the causes of stress in law school; I deal with others below.

I wonder, too, whether the anxiety and depression that we observe in some of our law students is the unavoidable consequence of the challenge of hard learning and of confronting the looming need to prepare to behave as a lawyer. Soon after they come to law school, students must sense that however hard Contracts or Torts is, learning to be a successful practicing lawyer is harder, and that the road to success in the profession is even less clearly marked than the road to law school success.

One study suggests that the anxiety caused by medical school is smaller than that created by law school, but there are few other studies that compares law students’ psychological state with the state of students who are learning other demanding professions. What do we know about military pilots or candidates for elite military units like the seals? And what about PhD candidates in Philosophy who, at least at my school, suffer a powerful judgmental ranking by the faculty (viz. we will not recommend you for any philosophy department in the top 100.)?

My anecdotal experience as an instructor pilot in the Air Force shows that student pilot anxiety (and presumably the accompanying deleterious psychological effects) greatly exceeds that in law students. Student pilots came to me for jet training with between one hundred and one hundred fifty hours of time (including many hours of solo time) in propeller aircraft. We referred to their first flight in jet aircraft as a “dollar ride” because the instructor did all of the flying from the back seat in the same way that a barnstormer (who charged a dollar) might have done at a county fair in 1925. About half of my students would vomit on their dollar ride. Remember these youngsters were already trained in flying prop airplanes, and most went on to become successful Air Force pilots, yet they showed a more extreme response to stress and anxiety than I have ever seen from a law student. Between one third and one half of each pilot training class (but none of mine) “washed out,” so their anxiety about success was justified.

Of course, a comparison to other places where students must learn a difficult skill does not explain away findings about law students, but it does raise the possibility that anxiety of the kind that we observe in law students is endemic to hard learning. It may not be caused by the way law school teaching is done and it suggests that no change in law school pedagogy will alleviate student anxiety. \* \* \*

## Rival Hypotheses

If law students become more depressed and more anxious during the freshman year but the cause of that depression and anxiety is not that we are exalting Mammon, fame and beauty or that we are threatening shame, fear and guilt, then what causes this depression and anxiety? I see at least two plausible hypotheses. First is the possibility that law school attracts a divergent set of students whose personalities dispose them to depression and anxiety. Second is the possibility that all hard learning causes depression and anxiety.

Susan Daicoff<sup>2</sup> favors the first hypothesis, that our students are different: "...lawyers' competitiveness, aggressiveness, need for academic achievement, and low interest in emotions are likely to have been present prior to law school, even though they may have been amplified and increased by the legal education process."<sup>3</sup> While it appears to be the case that pre-law students are no more psychologically distressed than their peers,<sup>4</sup> this finding is entirely compatible with the assertion that many pre-law students possess a unique set of personality traits that, in effect, sets them up for the inevitable decline in mental health that law school brings.

Not all law students will be as academically successful in law school as they were when they were undergraduates. The psychological benefits of undergraduate academic success may at the same both explain pre-law students' lack of psychological distress and mask the particular underlying psychological needs of pre-law students that will not be met in law school. "In law school, if law students equate self-worth with achievement, to the extent that self-esteem depends entirely on continual successes, a less-than-average academic performance equates with personal worthlessness. The law school experience itself frustrates individuals' need for achievement, since formerly top students in college may now be average students in law school. Due to law students' demonstrated high needs for achievement, success, and dominance, this phenomenon may have devastating effects on their self-esteem and self-worth."<sup>5</sup> So law school may be a necessary but not sufficient reason for the anxiety that we observe.

The second hypothesis – that hard learning causes psychological misery – is supported not only by my pilot anecdote but also by a small number of studies of students in other curricula. A study of graduate and professional students published in 2004<sup>6</sup> found high rates of depression, stress, and substance use among graduate and professional students.<sup>7</sup> Although this study used different measuring scales than S&K and is therefore difficult to translate, the fact that 25% of all respondents reported a score on that depression scale<sup>8</sup> that "may be indicative of

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<sup>2</sup> Daicoff, Susan, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 Am. U. L. Rev. 1337 (1997).

<sup>3</sup> Daicoff 1337, 1406.

<sup>4</sup> Daicoff 1337, 1353.

<sup>5</sup> Daicoff 1337, 1418.

<sup>6</sup> Stecker, Tracy, "Well-being in an academic environment," *Medical Education* 2004; 38: 465-478

<sup>7</sup> Respondents included students of pharmacy, physical therapy, dentistry, medicine, nursing, and general graduate students.

<sup>8</sup> The following depression scale was used: How often have you experienced any of the following during the past 4 weeks?

depression”<sup>9</sup> lends support to the hypothesis that law students are not alone. The stress that we observe in law school may be endemic to learning a demanding skill.

### Conclusion

Assuming for the sake of the argument that law school causes anxiety and depression in students, I am not persuaded either that that anxiety and its associated psychological ills persist after law school or that they can be prevented by even Herculean efforts at making law school more humane. Until better data come forward, I will continue the traditional law teacher’s reign of pillage and abuse. I do that happy in the belief that my hectoring will leave my students better, if momentarily sicker, lawyers.

	Never	1–3 times weekly	Most days per week	Nearly every day for 2 weeks
Felt sad, low in spirits or depressed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appetite was less than or greater than usual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gained or lost weight without trying	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Had difficulty falling asleep or sleeping too much	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trouble thinking, concentrating, or making decisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Felt hopeless or worthless	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Thought about death or suicide	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Thought about a specific way to commit suicide	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>9</sup> Stecker pg. 467.