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The Lawyer's Guide to *Um*

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In 2006, my son came home from his first day of eighth grade and reported that his Language Arts teacher, whom I will call Mr. Sweeney, had made a dire announcement: He planned to charge students a nickel each time they used *uh* or *um* in class. I was pleased that Mr. Sweeney wanted his students to become better speakers, but I questioned his methods. Given my son's pained reaction, I suspected it was going to be a quiet year in Language Arts.

Intrigued, I sent an e-mail describing Mr. Sweeney's strategy to Elizabeth Shriberg, a psycholinguist at SRI International in California. She quickly responded and said that using *uh* and *um* was not only "perfectly normal," but also helpful in furthering effective communication.[1] As for Mr. Sweeney, she said, "Unless your language arts teacher wants to have people speak only when they've completely 'rehearsed' what to say (as in a play), he will need to allow the children to pause within their turns."[2] And if they pause, she said, the appropriate thing to do is to fill that pause with *uh* or *um*.[3]

Having had my maternal instincts confirmed by a psycholinguist, I filed away Dr. Shriberg's e-mail, and the issue of *uh* and *um* receded to the background where, as it turns out, it rightfully belongs. But some years later, *uh* and *um* reappeared. In 2012, while judging a moot court competition, I heard a seasoned legal writing professor suggest to a student

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1 E-mail from Elizabeth Shriberg to Barbara Gotthelf (Sept. 27, 2006) (copy on file with the author).

2 *Id.*

3 *Id.*

advocate that she had used perhaps a few too many *uh*s and *um*s. The blushing student apologized profusely. Recalling Mr. Sweeney's methods and Dr. Shriberg's e-mail, I silently questioned whether the professor's criticism was useful. I began consulting books on public speaking, including texts written specifically for lawyers, and they all gave the impression that using *uh* and *um* might be the single worst thing any speaker could do. This advice seemed to be at odds with Dr. Shriberg's e-mail. Digging further, I discovered a body of scientific literature that supports Dr. Shriberg's views and demonstrates that, contrary to public perception, *uh* and *um* are not only inevitable, but actually useful bits of communication.

Here, then, is my formal response—albeit delayed—to Mr. Sweeney, and a plea to speakers and listeners everywhere to give up the *um* fixation and focus again on the substance of our spoken communication.

I. Disfluency

A. Definition

Read a page from any deposition or trial transcript and your eyes will tell you what your ears may not: spoken English is vastly imperfect. Not only do our sentences lack the thoughtful syntax and grammar of our written work, but our speech is rife with what linguists call "discourse markers" and "disfluencies." Discourse markers, which are viewed as actual words with distinct meanings and include *like, well, you know, oh, now, I mean, mind you, everything, sort of, kind of,* and *so,* are used in different contexts and do not appear to be interchangeable.[4] *Oh*, for example, alerts listeners that the speaker has remembered specific information. *Well* indicates that a seemingly irrelevant interpretation is actually relevant, and the despised *like* suggests that the speaker is deliberately using vague or informal language.[5] Disfluencies, in contrast, are not distinct words, but instead consist of hesitations, repeated words or phrases, false starts and restarts, and the use of *uh* and *um.* Many linguists refer to *uh* and *um* specifically as "verbal fillers" or "filled pauses." These verbal fillers typically operate under the radar and may be missed or, more often, excised by the conscientious court reporter. The full range of disfluencies can account for up to six percent of what we utter, and the verbal fillers *uh* and *um* make up a third to more than half of all disfluencies.[6]

4 Jean E. Fox Tree, *Discourse Markers across Speakers and Settings*, 4 Lang. & Linguistics Compass 269, 272 (May 2010); Susan E. Brennan and Maurice Williams, *The Feeling of Another's Knowing: Prosody and Filled Pauses as Cues to Listeners about the Metacognitive States of Speakers*, 34 J. Memory & Lang. 383, 391 (1995).

5 Fox Tree, *supra* n. 4, at 276–77.

6 Scott H. Fraundorf & Duane G. Watson, *The Disfluent Discourse: Effects of Filled Pauses on Recall*, 65 J. Memory and Lang. 161, 161 (2011).

While they keep company with other disfluencies, the verbal fillers *uh* and *um* march to their own linguistic drumbeat. For example, while most disfluencies consistently increase with the speaker's anxiety, *uh*s and *um*s generally do not.[7] Longer sentences contain more disfluencies overall, but *uh* and *um* remain relatively constant.[8] And, while men use *uh* and *um* more often than women, both genders demonstrate similar levels of other disfluencies. [9]

These differences in usage have led linguists to study the verbal fillers *uh* and *um* as unique phenomena. For lawyers, understanding verbal fillers provides a lesson in how to approach these pesky utterances, which for most of us have come with a lifetime of stern admonishments to avoid using them at all costs. On a broader scale, the study of verbal fillers provides a glimpse into a larger world of actual spoken communication. For years, linguists resisted this world, choosing instead to define disfluencies as "errors" that needed to be eliminated from the study of pure language.[10] More recently, linguists have acknowledged—and at times even embraced—disfluency as an integral part of how we communicate. Starting with *uh* and *um*, lawyers can gain a better appreciation of what disfluency means for oral advocacy, and whether, or how, we need to address the messy reality of our spoken language.

B. The Ubiquitous *Uh* and *Um*

Ironically, while lawyers are expected to be eloquent and well spoken, they also match the profile of the frequent *ummer*. Well-educated and conscious of their speech, lawyers are faced with the cognitive and social demands that almost guarantee the appearance of *uh* and *um* in their spoken communication.

The verbal fillers *uh* and *um* are defined as "verbal interruptions that do not relate to the proposition of the main message."[11] As described by psychologist Herbert Clark, speech proceeds along two parallel paths. The primary track is the "official business, or topics of discourse"—the substance of what we want to say.[12] A secondary, or collateral, track refers to the act of speaking itself: "to timing, delays, re-phrasings, mistakes,

7 Nicholas Christenfeld & Beth Creager, *Anxiety, Alcohol, Aphasia, and* Ums, 70 J. Personality & Soc. Psychol. 451, 454 (1996).

8 Heather Bortfeld, Silvia D. Leon, Jonathan E. Bloom, Michael F. Schober & Susan E. Brennan, *Disfluency Rates in Conversation: Effects of Age, Relationship, Topic, Role, and Gender*, 44 Lang. & Speech, 123, 125 (2001) (citing Elizabeth Shriberg, *Disfluenices in Switchboard*, Proc. Intl. Conf. on Spoken Lang. Processing, Addendum, 11 (1996)).

9 Bortfeld et al., *supra* n. 8 at 128, 141–42. Overall, men used 3.04 verbal fillers per 100 words compared to a rate of 2.07 for women. Men also had more word repeats (e.g., *just on the left left side*), at 1.74 to 1.21 per 100 words. *Id.* at 141.

10 Herbert H. Clark & Jean E. Fox Tree, *Using* Uh *and* Um *in Spontaneous Speaking*, 84 Cognition 73, 74 (2002).

11 Fraundorf & Watson, *supra* n. 6, at 161.

12 Clark & Fox Tree, *supra* n. 10, at 74.

repairs, intentions to speak, and the like."[13] *Uh* and *um* move along this collateral track, allowing speakers "in effect, to *manage* [their] on-going performance."[14]

Verbal fillers appear in all languages and are typically monosyllabic with a *schwa* core vowel sound.[15] Speakers of English use *uh* and *um*. The British spell these fillers *er* and *um*, but pronounce them the same as in North American English. Germans use *äh* and *ähm*; the French use *eu, euh, em, eh*, and *oh*, and Spanish-speaking people use *eh, em, este*, and *pues.*[16] There is even a sign for *um* in American Sign Language.[17]

Virtually everyone uses verbal fillers, though the frequency can vary greatly from person to person.[18] A study of one language database showed that speakers produced between 1.2 and 88.5 *uh*s and *um*s for every thousand words, with a median filler rate of 17.3 per thousand words.[19] Other databases show anywhere from three to twenty *uh*s and *um*s for every thousand words, placing *uh* and *um* thirty-first in a ranking of most commonly used utterances, just ahead of *or* and just after *not*.[20] A British study showed that, contrary to popular expectations, the use of verbal fillers does not indicate a lack of education or manners; instead, the use of *uh* and *um* increases with education and socioeconomic status, a finding with particular implications for the legal profession.[21] Older people use more *uh*s and *um*s than younger people, and, curiously, men consistently use verbal fillers more often than women—a finding that has been replicated across several studies.[22] Women, for their part, appear to use a higher ratio of *um*s to *uh*s than their male counterparts.[23]

For those who believe that they have eliminated *uh* and *um* from their speech—and many people hold this view—studies show that people are notoriously unable to accurately assess who is saying *uh* or *um*, or how often these fillers are being used.[24] The question, then, isn't whether we use *uh* and *um,* but why we use them.

13 *Id.*

14 *Id.* at 78 (emphasis in original).

15 Daniel C. O'Connell & Sabine Kowal, *Communicating with One Another: Toward a Psychology of Spontaneous Spoken Discourse* 128 (2008). The *schwa* sound is the *a* sound initializing and ending *America*. *Merriam Webster's Collegiate Dictionary* 1111 (11th ed. 2005).

16 Clark & Fox Tree, *supra* n. 10, at 92.

17 Michael Erard, *Um . . . : Slips, Stumbles, and Verbal Blunders, and What They Mean* 142 (2008). The sign for *um* is an open palm, with five fingers slightly apart, and a repeated circling of the forearm away from and toward the speaker. *Id.*

18 Clark & Fox Tree, *supra* n. 10, at 97.

19 *Id.*

20 Göran Kjellmer, *Hesitation. In Defence of* Er *and* Erm, 84 English Stud. 170, 172 (2003).

21 *See* Gunnel Tottie, Uh *and* Um *as Sociolinguistic Markers in British English*, 16 Intl. J. of Corpus Linguistics 173, 192 (2011). Michael Erard cautions that such conclusions should not be viewed as a measure of intelligence, but instead reflect the norms of one's community. Erard, *supra* n. 17, at 100.

22 *See* Tottie, *supra* n. 21, at 192; *see also* Bortfeld, et al., *supra* n. 8, at 139.

23 Tottie, *supra* n. 21, at 192.

24 *See e.g.* Nicholas Christenfeld, *Does it Hurt to Say Um?*, 19 J. Nonverbal Behavior 171, 178–80 (1995).

II. The Forensics of Verbal Fillers

Broadly stated, speakers tend to use the verbal fillers *uh* and *um* when something has interrupted the enormously complicated task of speech production. That interruption can come from the difficulty of the subject matter that is being discussed, or it can come from the speaker's self-consciousness about the act of speaking. Researchers refer to these forms of interruption as "task complexity" and "task concern," and both are highly relevant for lawyers, who are required to speak about difficult and abstract concepts in a stressful, and often very public, setting.

A. Task Complexity

The theory of task complexity proposes that the use of *uh* and *um* increases along with the complexity of the subject matter the speaker is addressing. The more challenging and varied the options are for the speaker, the more verbal fillers he will use.

Linguists adhere to the widely held view that speakers use verbal fillers when they are, in effect, searching their brains for information, essentially in the same manner that a computer scans a hard drive for data. The speaker may be looking for the next word, phrase, or idea, or making a decision about the next thought.[25] Accordingly, the rate of *uh*s and *um*s increases when the topic is more abstract, as well as when the speaker is choosing from a larger vocabulary.[26] As the range of options increases, so does the task complexity and the likelihood that the speaker will fill the delay imposed by the process with *uh* or *um.* This was the conclusion reached in an oft-cited study at Columbia University, where researchers counted the number of verbal fillers used by professors during lectures given to undergraduate students in three separate academic divisions: the natural sciences, the social sciences, and the humanities.[27] The natural-sciences professors used the fewest verbal fillers, with a mean rate of 1.39 *uh*s per minute.[28] The social-science professors had a mean rate of 3.84 *uh*s per minute, and the rate for humanities professors was 6.46 *uh*s per minute. Yet these same professors, when interviewed on the same topic (one unrelated to their disciplines), used about the same number of fillers per minute.[29] Thus it appeared that the academic disciplines, and not the speakers, drove the frequency of fillers.

25 Stanley Schachter, Nicholas Christenfeld, Bernard Ravina & Frances Bilous, *Speech Disfluency and the Structure of Knowledge*, 60 J. Personality & Soc. Psychol. 362, 362 (1991); *see also* Clark & Fox Tree, *supra* n. 10, at 87–88.

26 Christenfeld, *supra* n. 24, at 172.

27 Schachter et al., *supra* n. 25.

28 *Id.* at 364.

29 *Id.* at 365.

The Columbia researchers concluded that lectures about natural sciences produced fewer fillers simply because the speakers had fewer options to choose from in deciding what to say. As the authors explained, there are no synonyms for *molecule* or *atom* or *ion*. But humanities professors—much like lawyers—have many alternatives for the words found in their discipline. A humanities professor may discuss abstract and subjective concepts like *affection*, *class structure*, *prejudice*, *beauty*, or *style*.[30] Lawyers may discuss concepts like *duty*, *consideration*, *mutuality*, *scienter*, or *malice*. And, whereas concepts like $E=mc^2$ are fixed, the options for interpreting a passage from *King Lear* (or *Roe v. Wade*) seem limitless.[31] Such options increase the complexity of the task and, concurrently, the rate of verbal fillers.[32]

Researchers have tested the task-complexity theory in other ways, with similar results. Study subjects asked to "talk" their way through mazes used more verbal fillers when confronted with mazes that could be navigated using multiple routes.[33] Conversely, mazes with a single path (and fewer choices) produced fewer fillers.[34] But the maze study produced another interesting result: When study subjects were told they could use only four words to talk their way through the maze (left, right, up, down), they began to use more verbal fillers, even when describing simple mazes.[35] Researchers posited that the "lexical suppression" created by limiting speakers to four words triggered a stopping and starting of the speech apparatus that prevented speakers from developing a normal speech rhythm.[36] Thus, while verbal fillers are a mark of task complexity, they also appear where, "for some other reason, the flow of speech is disrupted."[37] That "other reason" may be the speaker's self-consciousness about the act of speaking itself, or "task concern."

B. Task Concern

While the theory of task complexity attributes the use of *uh* and *um* to the difficulty of the topic being discussed, the theory of task concern proposes that people say *uh* and *um* when something has shifted their attention away from *what* they are saying and moved it toward *how* they are saying it. In other words, the task-concern theory holds that *uh* and *um* are not so much a product of how difficult the subject matter is, but an

30 *Id.* at 362.

31 *See id.*

32 *Id.* at 365.

33 Nicholas Christenfeld, *Options* and *Ums*, 13 J. Lang. & Soc. Psychol. 192, 197 (1994).

34 *Id.*

35 *Id.* at 197–98.

36 *Id.* at 198.

37 *Id.*

indication of how preoccupied the speaker is with how he sounds to his audience.

The theory of task concern developed when researchers looked at word repairs, where, for example, a speaker might say, "Today is Mon–*uh*–Tuesday." Researchers theorized that when a speaker detects a word error, the normal flow of speech is interrupted and the speaker becomes focused, if just for an instant, on the act of speaking.[38] In that moment, the speaker produces an *uh* or *um.* This finding raised the question of whether conscious attention to the act of speaking on a broader scale, not just at the word-repair level, might make speakers use more *uh*s and *um*s throughout their speech. Two psychologists at the University of California, San Diego—Nicholas Christenfeld and Beth Creager—took a novel approach to answering this question by studying a topic of relevance to all speakers, including lawyers: anxiety.[39] The researchers found that anxiety makes speakers use more *uh*s and *um*s only when the anxiety shifts the speaker's focus to the act of speaking.

Christenfeld and Creager began by examining the popular perception that people produce more *uh*s and *um*s when they are generally anxious or nervous. If that perception is true, this situation would create a dilemma for public speakers, including lawyers, who believe that the only way to improve their performance is by finding a magic cure for their jitters. For a time, the literature on anxiety and verbal fillers was hopelessly mixed, with some studies showing that anxiety does increase filler rates, one study showing that it does not, and many studies showing no effect at all.[40] Christenfeld and Creager suggested that researchers had missed the mark by failing to distinguish between the sources and the effects of anxiety. Their hypothesis was that anxiety will increase verbal filler rates only if it interrupts the automatic flow of speech by making speakers self-conscious about how they sound.[41] In other words, thinking about speaking might make people "choke," in much the same way that any conscious attention to a skilled performance can disrupt, and limit, that performance.[42] Choking, in turn, would make people use more *uh*s and *um*s. Christenfeld and Creager's hypothesis also predicted that a more generalized anxiety that is unrelated to the act of speaking would not increase filler rates.[43]

To test their hypothesis, Christenfeld and Creager devised a number of experiments that manipulated anxiety and self-consciousness. They consistently found that generalized anxiety did not increase filler rates, but

38 Christenfeld & Creager, *supra* n. 7, at 451–52.

39 *Id.*

40 *Id.* at 451.

41 *Id.* at 452.

42 *Id.*

43 *Id.*

anxiety that created self-consciousness about speaking did. In one experiment, speakers who were told that their recorded speech would be evaluated to see how creative they were—a condition designed to increase self-consciousness—produced significantly more verbal fillers than speakers who were told that their speech would be used only for routine grammatical coding.[44] Another experiment compared filler rates between speakers who wore headphones that amplified their own voices and speakers who were asked to dance by themselves in front of a camera while talking.[45] This study was designed to make members of the headphone-wearing group self-conscious about their speech, while making people in the dancing group anxious about an act unrelated to speech. The results showed that the speech-conscious group used more than twice the number of fillers per minute (5.61 per minute) as the anxious dancers (2.07 per minute).[46] Moreover, the speech-conscious group also used more fillers than a third group that had been asked to speak on a more complex topic (3.85 per minute), reinforcing the notion that self-consciousness—or "task concern"—may create even more fillers than task complexity.[47]

Christenfeld and Creager confirmed their conclusions about task concern and task complexity by measuring verbal filler rates in a unique set of study subjects: people who have been drinking. Interviewing patrons at eight bars in the San Diego area, the authors accurately predicted that as people become more intoxicated, they use fewer verbal fillers.[48] This observation ran counter to the notion that *uh* and *um* are markers of careless or lax speech. To the contrary, the more awareness people had of their speech, the more fillers they used. As levels of intoxication increased and people became less concerned with how they sounded, their filler rates dropped, even as the act of speaking became more difficult. In other words, task concern—the province of the sober—rather than task complexity determined filler rates.[49]

This work convincingly limits the idea that garden-variety anxiety increases filler rates, while also proposing a theory of *um*s that "moves away from the cognitive complexity notions" advanced by studies like the one done at Columbia.[50] According to Christenfeld and Creager, "rather than indicating when a tough decision is being made by the normal speech

44 *Id.* at 453. The "creative" speakers used an average of 7.03 *um*s per minute, compared to 4.07 *um*s per minute in the grammatical coding group.

45 *Id.* at 454–55.

46 *Id.* at 456.

47 *Id.*

48 *Id.* at 457–58.

49 *Id.* at 458–59. The study authors warn, "Before suggesting intoxication as a strategy to concerned public speakers, it should be noted that, to eliminate the average speaker's ums, about 19 drinks in the course of an evening are required." *Id.* at 457.

50 *Id.* at 458.

production apparatus, ums may indicate when the speaker changes modes and gives deliberate attention to some aspect of the speech."[51] That deliberate attention, or self-consciousness, removes the act of speaking from its "fluid automatic mode" and triggers the use of verbal fillers.[52]

Christenfeld and Creager acknowledge that the theory of task concern is not incompatible with the theory of task complexity.[53] A difficult cognitive task—finding the right word, thought, or idea—can make the speaker more self-conscious about the act of speech production. But they maintain that a speaker's use of verbal fillers is more likely related to the "social context of the utterance" than to the complexity of the task.[54] For this reason, Christenfeld and Creager believe that the nature of the speaker's audience should have a profound effect on filler rates.[55] Consequently, "[t]elling a story to one's best friend may lead to fewer filled pauses than telling the same story to a parole officer."[56]

III. From Symptoms to Signals

Although the production of verbal fillers may not be deliberate, research has shown that fillers may serve distinct communicative functions. Lawyers who speak before courts, clients, and other discerning audiences should know how fillers function to communicate information; they should understand that the actual effects of fillers on listeners may be less dire than imagined and may even be beneficial under some circumstances.

For many years, linguists adhered to the view that verbal fillers were merely symptoms of a breakdown in the speech process. They viewed *uh* and *um* as "errors" that fell outside the proper study of language.[57] Accordingly, linguistic study was focused exclusively on the "fluent, idealized utterances" that form "an uninterrupted sequence of words that follows the rules of English syntax."[58] But as any lawyer knows, even the most polished advocate rarely speaks in perfect prose.

Gradually, linguists began to consider that verbal fillers might not be symptoms of a problem, but actual signals used by speakers to communicate information. What were once "errors" became "verbal fillers" or "filled pauses." Some linguists rejected even these terms as misnomers. A pause is silent by definition, making the term "filled pause" anomalous.[59]

51 *Id.* at 459.

52 *Id.* at 452; 458–59.

53 *Id.* at 459.

54 *Id.*

55 *Id.*

56 *Id.*

57 Clark & Fox Tree, *supra* n. 10, at 74.

58 Bortfeld et al., *supra* n. 8, at 124.

59 O'Connell & Kowal, *supra* n. 15, at 126.

As described by psycholinguists Daniel C. O'Connell and Sabine Kowal, "fillers are neither pauses nor are they used necessarily where there would otherwise be a silence; they are not a sort of putty used to fill the cracks in window frames—to stuff something into a silence. They are simply legitimate hesitations."[60] Linguists who rejected "filler" as an "uninformative default term" instead began to describe *uh* and *um* as "planners"[61] or "speech management phenomena."[62] Serious study of verbal fillers produced a wealth of scientific data, and while linguists disagree on the details, a consensus emerged in which *uh* and *um* are viewed as signals that perform communicative functions.

A. Defining Filler Functions

The study of verbal fillers began with the threshold question of whether listeners even hear them. The good news is, unless they are specifically focused on a speaker's use of verbal fillers, listeners—including judges—will naturally ignore most *uh*s and *um*s, at least on a conscious level.[63] As explained by Susan E. Brennan, a cognitive scientist at the State University of New York at Stony Brook, and her colleague Michael Schober, "much of the time, listeners don't experience disfluencies as disruptive, and when they do detect disfluencies, they have trouble categorizing or locating them precisely."[64] In fact, listeners are notoriously unable to estimate the number or location of verbal fillers in a spoken message.[65] Nicholas Christenfeld found that when study subjects listened to speech both with and without verbal fillers, their estimates of the frequency of *uh*s and *um*s were "profoundly skewed."[66] Not only did the subjects overestimate the frequency of fillers in speech where fillers actually occurred, but they guessed that they had heard an average of 22.1 *um*s during a three-minute tape that did not contain a single filler.[67]

While listeners may not be aware of most verbal fillers on a conscious level, there is strong evidence that fillers are not being filtered out to create a "sanitized," or fluent, version of the message.[68] Instead, verbal fillers are processed by listeners and used as information.[69] Studies of verbal fillers

60 *Id.*

61 Tottie, *supra* n. 21, at 193.

62 O'Connell & Kowal, *supra* n. 15, at 128.

63 *See* Erard, *supra* n. 17, at 134.

64 Susan Brennan & Michael F. Schober, *How Listeners Compensate for Disfluencies in Spontaneous Speech*, 44 J. Memory & Lang. 274, 275 (2001).

65 *See* O'Connell & Kowal, *supra* n. 15, at 130–31; *see also* Karl G.D. Bailey and Fernanda Ferreira, *Disfluencies Affect the Parsing of Garden-Path Sentences*, 49 J. Memory & Lang. 183, 184 (2003).

66 Christenfeld, *supra* n. 24, at 178.

67 *Id.* at 180.

68 *See* Bailey & Ferreira, *supra* n. 66, at 184.

69 *Id.* at 184–85.

demonstrate that they perform certain defined functions, which can, and often will, overlap.[70] Filler functions can be divided into five categories:

1. Signal of delay: At their core, *uh* and *um* are used to signal delay, and this is their chief use as well as their "stock dictionary characterization."[71] By using a verbal filler, the speaker is telling the listener that, for however brief a time, "I am unable to proceed."[72] The delay may be caused by task complexity or task concern, which in turn can have a number of underlying causes, as discussed above.[73]

2. Conversational signposting: Verbal fillers can be seen as signposts for people engaged in the complex give and take of conversation, which may be particularly relevant for lawyers in the context of oral argument.[74] Here, *uh* and *um* can serve multiple, sometimes contradictory, purposes. Speakers use *uh* and *um* for *turn-takin*g—to indicate that they are taking their turn to speak; for *turn-holding*—to indicate that they are not finished speaking and wish to hold the floor; and for *turn-yielding*—to give up the floor.[75] Speakers help listeners distinguish between these signals by the manner in which they vocalize *uh* and *um*. For example, an *uh* or *um* that trails off can signal that the speaker has finished speaking. [76] *Uh* and *um* spoken with a rising intonation suggest that the speaker has run into trouble and is looking for help from the listener to complete a thought.[77]

3. Attracting attention: At perhaps their simplest level, *uh* and *um* can be used to attract attention to the speaker and to establish contact, as in "*Uh,* hello?"[78]

70 Kjellmer, *supra* n. 20, at 182–90.

71 *Id.* at 183.

72 Clark & Fox Tree, *supra* n. 10, at 90.

73 *See* discussion *supra* at sec. II (A, B). Surveying the literature, Clark and Fox Tree identify the following bases for delay: (1) The speaker is experiencing a planning problem; (2) the speaker is searching memory for a word; (3) the speaker is hesitating about something; (4) the speaker is in doubt or uncertain about something; (5) the speaker is engaged in "speech-productive labor," such as deciding what to say or how to say it. Clark & Fox Tree, *supra* n. 10, at 90.

74 *See* Kjellmer, *supra* n. 20, at 183.

75 *Id.* at 183–86; *see also* Clark, Fox Tree, *supra* n. 10, at 89–90.

76 Kjellmer, *supra* n. 20, at 185. Kjeller notes that in some instances, "One can almost hear the voice of the speaker trailing off at the end, hoping to be relieved," as in the sentence, "I don't know, I mean *er*[,] *er* . . . . " *Id.* at 185–86.

77 Clark & Fox Tree, *supra* n. 10, at 89–90. Clark and Fox Tree cite to the following exchange, in which the speaker (Sam) repeatedly invites the listener (William) to interject. William does so only after the third *uh*:

> **Sam:** [B]ut the whole object of this, is to talk about, . . . first, naturally the department, . . . but but also if anybody wants to raise anything else about the college, . . . *uh*, do please do so, . . . I mean it's abs- total free for all, . . . *um* . . . how about things generally, I mean have you *uh* let's start with the accommodation, . . . obviously this is a problem, . . . *uh* . . .
> **William:** I think it's a problem . . . .

Id. at 90 (ellipses substituted for marks designating internal pauses of different lengths). Here, "Sam uses *uh* and *um* not to hold the floor, but to signal his willingness to give it up." *Id.*

78 Kjellmer, *supra* n. 20, at 186.

4. Highlighting: Speakers can use *uh* and *um* to focus the listener's attention on whatever comes after the filler.[79] In this sense, *uh* and *um* are "a sort of verbal italics" or "semantic booster."[80] A verbal filler that precedes a word or phrase "highlights the following element, suggests that it is being chosen circumspectly and focuses the listener's attention on it."[81]

5. Correction: Verbal fillers can be used to signal that the speaker has gotten off on the wrong track, perhaps by choosing the wrong word or phrase or by mispronouncing a word. Here, the speaker is indicating that "a more correct or suitable word or phrase than the one(s) just said will follow."[82] On a broader level, using *uh* or *um* can signal a change, or correction, in the topic being addressed. Either way, verbal fillers signal that the speaker intends to revise the message, and the listener should take note of the change.[83] As University of Edinburgh researcher Martin Corley explains, *uh* and *um* in this context tell the listener, "'pay attention, the speaker's in trouble and the next part of the message might not be what you predicted.'"[84]

B. Filler Utility

Significantly for lawyers conveying complex information, these filler functions, either individually or in combination, demonstrably increase listeners' memory and comprehension. The mechanisms by which this happens are complex. But simply put, verbal fillers make listeners pay attention, though often (and ideally) on an unconscious level. Because of our shared knowledge about communication, a listener who hears a speaker use a verbal filler knows that the speaker has encountered a disruption in the speech-planning process. That information causes the listener to be more attentive. That heightened attentiveness, in turn, can help the listener to better predict, understand, and remember the information that follows *uh* or *um.*

This view of verbal fillers has been demonstrated in a variety of ways. Martin Corley, Lucy J. MacGregor, and David I. Donaldson, at the Universities of Edinburgh and Stirling, measured the neural activity of listeners and found a "profound" difference in the speed at which they processed words that were preceded by a verbal filler.[85] This effect

79 *Id.* at 187.

80 *Id.*

81 *Id.*

82 *Id.* at 188.

83 *Id.* at 189.

84 Martin Corley & Oliver W. Stewart, *Hesitation Disfluencies in Spontaneous Speech: The Meaning of* um, 2 Lang. & Linguistics Compass 589, 602 (2008).

85 Martin Corley, Lucy J. McGregor & David I. Donaldson, *It's the Way That You, Er, Say It: Hesitations in Speech Affect Language Comprehension*, 105 Cognition 658, 667 (2007).

persisted over time. Even after a delay of up to fifty-five minutes, listeners were better able to remember words preceded by a verbal filler.[86] Jean E. Fox Tree, a professor of psychology at the University of California, Santa Cruz, obtained similar results with *uh*, which helped listeners recognize words in upcoming speech.[87] Fox Tree asked listeners to press a buzzer when they heard a specific "target" word, which they had committed to memory. Listeners responded faster when the target word was preceded by *uh* than when the *uh* had been excised.[88] A team of linguists at the University of Rochester demonstrated that disfluency overall is a cue to listeners that the speaker is referring to new information.[89] When used as a correction, verbal fillers have been shown to help listeners process and understand word repairs more quickly.[90]

Studies show that these benefits in comprehension apply not only to words, but to entire narratives—an important consideration for lawyers conveying their clients' stories. In a study conducted by Scott H. Fraundorf and Duane G. Watson at the University of Illinois, groups of listeners heard stories paraphrased from Lewis Carroll's *Alice in Wonderland*.[91] Some of the stories were told fluently—that is, without verbal fillers or pauses—and other stories were marked by *uh*s and *um*s. After hearing different versions of the stories—some told fluently, some spliced with verbal fillers, and some interrupted by coughing—listeners were asked to verbally recall the stories in as much detail as possible.[92] Listeners were consistently better able to remember the stories with the fillers.[93] This effect occurred regardless of whether fillers were inserted at key plot points, where they might naturally appear, or randomly sprinkled throughout the story.[94]

Some researchers suggest that, in addition to increasing comprehension by sharpening the listener's attention, the placement of verbal fillers before new thoughts or ideas also helps to organize spoken language for listeners and give it a type of structure.[95] Some linguists go even further and argue that verbal fillers are *necessary* elements in spoken discourse and that removing them for the sake of an ideal of fluency

86 *Id.*

87 Jean E. Fox Tree, *Listeners' Uses of Uh and Um in Speech Comprehension*, 29 Memory & Cognition 320, 324 (2001).

88 *Id.* Interestingly, Fox Tree found an increase in recognition of words preceded by *uh*, but not *um*.

89 Jennifer E. Arnold, Michael K. Tanenhaus, Rebecca J. Altmann & Maria Fagnano, *The Old and Thee, uh, New: Disfluency and Reference Resolution*, 15 Psychol. Sci. 578, 581 (2004).

90 Brennan & Schober, *supra* n. 64, at 293. Brennan & Schober caution that listeners are better able to understand fluent speech. Where, however, a word interruption or repair occurred, a correction that included a filler enhanced comprehension. *Id.* at 293, 295.

91 Fraundorf & Watson, *supra* n. 4.

92 *Id.* at 165.

93 *Id.* at 166.

94 *Id.* at 170.

95 *See* Kjellmer, *supra* n. 20, at 190.

actually shortchanges listeners.[96] In support of this theory, linguists point to the comprehension problems listeners encounter when written work is read aloud. As the late linguist Göran Kjellmer explained, "A lecture that is read aloud from the written page is often difficult to take in when its delivery lacks the verbal guides and signposts that we more or less subconsciously expect to find in speech."[97] Consequently, listeners who hear text read aloud "are in danger of missing the point of the argument."[98] Citing the essayist Louis Menand, O'Connell and Kowal go so far as to describe writing as an inferior form of communication, precisely because it lacks the disfluencies that mark our speech.[99] To them, writing is a hieroglyph, while speaking is "a symphony."[100]

If the forensics of verbal fillers were the whole story, it would end here. We know that most, if not all, speakers use verbal fillers. There is strong evidence that listeners are better able to understand and remember messages that include verbal fillers. Yet, from the time we are able to speak, it seems, we are exhorted to eliminate *uh*s and *um*s from our speech. Why are verbal fillers so despised, and what should speakers do about them?

IV. *Um's* Bum Rap

For all their ubiquity, *uh* and *um* are notoriously disfavored, triggering the reflexive attempts at behavior modification used by well-meaning teachers like Mr. Sweeney, as well as by speech coaches and law professors with years of experience. In his book *Um . . . : Slips, Stumbles, and Verbal Blunders, and What They Mean*, author Michael Erard describes the cultural popularity of *uh* and *um* as akin to "spitting or picking one's nose."[101] Erard says that our distaste for *uh* and *um* is not just a judgment about a person's speech, "but a deeper judgment about how much control he should have over his self-presentation and his identity."[102] Until fairly recently, this negative view of verbal fillers was shared by the linguistic community. Indeed, some early researchers viewed the use of verbal fillers as a possible window into mental illness. Clinical psychologists working in the 1950s believed that "[i]ndividuals using 'ah' most frequently were weaned early, had strict parents, and have obsessive traits."[103]

Although the linguistic landscape has changed over the last several decades, the lay perception stubbornly remains that verbal fillers are "a

96 *Id.*

97 *Id.*

98 *Id.*

99 O'Connell & Kowal, *supra* n. 15, at 222.

100 *Id.*

101 Erard, *supra* n. 17, at 136.

102 *Id.* at 112.

103 O'Connell & Kowal, *supra* n. 15, at 128 (internal quotations omitted).

kind of debris" lying in the way of proper speech.[104] Nowhere is this perception more evident than at Toastmasters International, the well-known organization that promotes public-speaking skills and bills itself as "a world leader in communication and leadership."[105] The group's website includes advice on how to eliminate verbal fillers, and warns of the dire consequences of failing to do so. According to Toastmasters, Caroline Kennedy's failed run at a Senate seat in 2008 can be traced to a "disaster" of a media interview in which she used no fewer than 27 *um*s in five minutes.[106] And the group's prohibition against *um* is not limited to high-profile public speaking, but extends to general conversation as well. Toastmaster's founder, Ralph Smedley, has said that "'the 'grunt'—the 'ah' and the 'er-r' with which many speakers fill in the gaps between their words'"—constitutes "'a bad habit [that] should be broken by every speaker—even by every conversationalist. '"[107]

Guided by the mainstream view of verbal fillers, academics in the legal community take a similarly dim view of *uh* and *um*. In *Tongue-Tied America: Reviving the Art of Verbal Persuasion*, the authors include a discussion of verbal disfluencies in a section titled, *Unpersuasive Rhetoric: The Bad and Ugly*.[108] They describe a "bombardment of aahs, umms, likes, and you-knows" as "vocal tics," and include them on a list of "style failings" alongside arrogance and cockiness; a stiff, cold delivery; and speaking in a monotone.[109] The authors suggest that these vocal tics demonstrate a lack of conviction, and constitute "the exclusive province of the beginner."[110] Bryan Garner urges advocates to "purge your speech of 'ums,' 'ers,' and 'ahs.'"[111] Surveying the advice on verbal fillers, Garner finds that they are called "fungi," and "[t]he worst foe of vocal composure."[112] "[S]ome people use 'uh,' 'um,' or 'er' as many as 900 times per hour, a sickening thought to professional speakers. . . . Some lawyers are literally unable to speak without uttering one of these unneeded words or sounds."[113] In *Advanced Legal Writing and Oral Advocacy: Trials, Appeals, and Moot Court*, the

104 *See* Kjellmer, *supra* n. 21, at 170.

105 Toastmasters International (available at http://www.toastmasters.org/) (accessed March 14, 2014).

106 William H. Stevenson, III, *Cutting Out Filler Words* (available at http://www.toastmasters.org/toastmasters-magazine/toastmasterarchive/2011/february/cuttingoutfillerwords.aspx) (accessed March 14, 2013). Kennedy was also criticized for using 38 "you knows" during her interview. *Id.*

107 Erard, *supra* n. 17, at 112.

108 Robert N. Sayler & Molly Bishop Shadel, *Tongue-tied in America: Reviving the Art of Verbal Persuasion* 142–44 (2011).

109 *Id.* at 144.

110 *Id.*

111 Bryan Garner, *The Winning Oral Argument* 23 (2009).

112 *Id.* at 23.

113 Celia W. Childress, *Persuasive Delivery in the Courtroom* 331–32 (1995) (quoted in Garner, *supra* n. 111, at 23–24); *see also* David J. Dempsey, *Legally Speaking* 136 (2002) (describing "uh," "um," "er," "you know," "so," and "okay" as "awkward hesitations, which speakers fill with meaningless verbal clutter"). Dempsey adds, "Surprisingly, these irritating filler words frequently permeate the speeches of many otherwise excellent speakers. Rather than using these filler words, pause, be silent, collect your thoughts, and then continue." *Id.*

authors admonish student advocates that, above all, they must "try to consciously eliminate verbal fillers such as 'uhhh,' 'ahhh,' 'ummm,' and lackluster vernacular phrases such as 'uh-huh,' 'ya-know,' 'like' (as in 'It's like so illegal,' or 'The Constitution like bans this conduct.')"[114] The authors warn that "[t]hese phrases are distracting and can make a judge tune you out. Worse yet, the judge might start a score card with how many 'uhhh's' and 'ummm's' you say in the argument; take it from us—that judge is not paying proper attention to the substance of your argument."[115]

A. Tracing *Uh's* and *Um's* Bad Rap

How did *uh* and *um* become the objects of such scorn? Michael Erard offers an explanation for the public distaste for *uh* and *um* that parallels Christenfeld's view of verbal fillers as symptomatic of verbal self-consciousness. Simply put, no one worried about *uh* and *um* until we started thinking about them. And, as any linguistic researcher will confirm, once we start thinking about *uh* and *um*, it is nearly impossible to stop.

Historically, there is no evidence that *uh* and *um* factored into discussions about public speaking. The writings of Aristotle, Cicero, and Quintilian fail to address verbal fillers.[116] Yet, as Erard notes, "[i]t would be a fallacy to think that the ancient Greeks and Romans didn't say 'um' simply because they appear not to have recorded it."[117] More likely, they just weren't focused on the issue. Similarly, etiquette books from the early nineteenth century offered advice about being "courteous, serene, and self-disciplined," and manuals on elocution included complex rules for using pauses to elicit specific rhetorical effects.[118] Yet none of these books prohibited, or even discussed, the use of verbal fillers.

According to Erard, public distaste for verbal fillers can be traced to a single moment in time: the invention of the gramophone. By 1908, Thomas Edison had sold more than one million gramophones, and for the first time people not only heard their own voices, but they could replay and study them.[119] Just like lawyers who cringe at the sight of their first deposition transcript, these speakers were stunned to hear the disfluencies in their own speech. The "natural filters that kept the 'uhs' and 'ums' of daily life beyond the limits of people's conscious attention" had been swept

114 Michael D. Murray & Christy Hallam DeSanctis, *Advanced Legal Writing and Oral Advocacy: Trials, Appeals, and Moot Court* 453 (2009). Like many authors and public-speaking coaches, these authors mistakenly assume that verbal fillers and discourse markers are interchangeable phenomena. *See* Brennan & Williams, *supra* n. 4, at 391.

115 Murray & DeSanctis, *supra* n. 114, at 453.

116 Erard, *supra* n. 17, at 113–15.

117 *Id.* at 116.

118 *Id.* at 121.

119 *Id.* at 127–28.

away, ushering in what Erard calls "the aesthetic of umlessness."[120] Radio followed quickly on the heels of the gramophone, giving people limitless opportunities to hear "real speaking."[121] Suddenly, people began to prize "umlessness," which became the "standard for speaking in the electric age."[122]

B. Public perception versus science

The public perception of *uh* and *um* is at odds with the science of verbal fillers, which demonstrates that fillers increase listener comprehension. Some researchers seek to harmonize the two views by suggesting that verbal fillers increase listener comprehension precisely *because* they are viewed in a negative light. According to this theory, the delay signaled by an *uh* or *um* makes the listener less confident in the speaker. Because they are less confident, listeners pay more attention, which in turn increases comprehension.[123] If true, this theory would militate against the use of *uh* and *um* at oral argument. Obviously, lawyers would not want to increase the court's comprehension at the expense of their own credibility. But other researchers question this theory, and they offer an alternative view that suggests that verbal fillers might serve a useful purpose at oral argument. Christenfeld argues that the delay signaled by verbal fillers is nothing more than "an indication that the speaker is thinking."[124] In most situations, he adds, this "is nothing to be ashamed of."[125] Gunnel Tottie, a professor at the University of Zurich who prefers the term "planners" to "verbal fillers," notes that "[p]lanning is usually regarded as a fundamental property of intelligent behavior."[126] Erard espouses a similar view, arguing that "disfluency is utterly normal, [and] our rules for what counts as 'good speaking' are resistant to the biological facts about it."[127]

As it turns out, what people say they think about *uh* and *um* may be quite different from what they naturally perceive as listeners. When they are asked to describe what they think about speakers who use *uh* and *um*, people are consistently harsh. Subjects in one of Christenfeld's studies described speakers who use verbal fillers as "uncomfortable, inarticulate, uninteresting, ill-prepared, nervous, disfluent, unattractive, monotonous, unsophisticated, and lacking confidence."[128] Clearly such listeners "do not admire ums or think they are a sign of rhetorical wizardry."[129] These subjects also believed that they would take an individual speaker's use of

120 *Id.* at 131.

121 *Id.* at 130.

122 *Id.* at 131.

123 Fraundorf & Watson, *supra* n. 4, at 172.

124 Christenfeld, *supra* n. 24, at 172.

125 *Id.*

126 Tottie, *supra* n. 21, at 193 (internal quotations omitted).

127 Erard, *supra* n. 17, at 245.

128 Christenfeld, *supra* n. 24, at 173.

129 *Id.*

verbal fillers into account in forming an opinion of that speaker. But the actual sensitivity of these subjects to *uh* and *um* told another story. Christenfeld's subjects did prefer speech that was perfectly fluent: speech without verbal fillers or silent pauses.[130] But as between speakers who used *uh* and *um* and speakers who silently paused, listeners viewed speakers who used verbal fillers as being more relaxed. In addition, listeners found no difference in the degree of eloquence between speakers who used fillers and speakers who paused.

Not all studies are consistent with Christenfeld's. At the University of California, Santa Cruz, Jean Fox Tree's comparison of *uh* and *um* with silent pauses produced mixed results.[131] Long pauses created more problems than verbal fillers: Listeners who heard a long silent pause instead of an *um* thought the speaker was having more planning problems.[132] This result is consistent with studies showing that silent pauses of more than about a second tend to make listeners uncomfortable.[133] These empty pauses may leave listeners wondering about the cause of the delay. Filling the pause with *uh* or *um* signals that the speaker is still present in the conversation, but working on the message.[134]

While Fox Tree's subjects disliked long pauses, they found silent pauses and *um*s of equal duration to have the same negative effect. In both cases, listeners judged the speaker to be less honest and less comfortable.[135] Researchers Susan Brennan and Maurice Williams, in contrast, found a distinct listener preference for silent pauses over fillers. Their listeners rated answers preceded by *uh* or *um* as less likely to be correct than answers preceded by a silent pause of the same duration.[136]

These studies and others provide no clear answer to the vexing question whether speakers confronted with a delay should give in to the tendency to say *uh* or *um* or try to replace fillers with silent pauses. The data suggest that speaking without using verbal fillers *or* silent pauses may create the most favorable impression. But eliminating all hesitations from speech may be impossible, especially if an attorney is standing at a podium, fielding questions from a judge. If we accept that both filled and silent pauses are signals of delay, then the only way to eliminate the pause is to eliminate the delay. Such advice is tantamount to telling people that they need to think faster.

From the standpoint of comprehension, the choice between verbal fillers and silent pauses may not matter. In some studies, both seem to do

130 *Id.* at 181.

131 Jean E. Fox Tree, *Interpreting Pauses and* Um*s at Turn Exchanges,* 34 Discourse Processes 37, 37–55 (2002).

132 *Id.* at 51.

133 *Id.* at 40.

134 Clark & Fox Tree, *supra* n. 10, at 89.

135 Fox Tree, *supra* n. 131, at 51.

136 Brennan & Williams, *supra* n. 4, at 395.

the same work. Martin Corley and Robert Hartsuiker demonstrated that both *uh* or *um* and a silent pause of equal duration are equally effective in helping listeners to recognize words.[137] Susan Brennan and Michael Schober found no difference in listener response when word repairs were marked by an *uh* or with a silent pause of equal duration.[138] In both scenarios, listeners responded to the correction with equivalent speed and accuracy.[139]

Predictably, teachers and public-speaking coaches who are critical of verbal fillers typically recommend that speakers learn to replace *uh* and *um* with a silent pause.[140] But this popular advice finds spotty support in the jumble of mixed messages coming out of the scientific community. And no one seems to have conclusively answered what may be the most obvious and vexing question of all: Given the almost religious fervor of the anti-*um* aesthetic, why do speakers continue to use verbal fillers? Even if listeners don't *actually* think less of people who use fillers, they believe that they do. And yet virtually everyone uses *uh* and *um* with astonishing frequency. Public-speaking coaches would have us believe that using *uh* and *um* is simply a bad habit, which can and should be broken. But what other "bad habit" is shared by virtually all speakers across all languages, even in the face of harsh public criticism? Certainly people are better able to manage other "bad habits," like spitting and nose-picking—habits the public may view as akin to saying *uh* and *um*, according to Erard.[141] Yet no one needs to pay a nickel per spit to learn not to spit in public. Some linguists seem to agree that speakers should limit their use of verbal fillers,[142] while others suggest that we persist in using verbal fillers because as speakers, we intuitively know that they have a communicative value, and we are unwilling to abandon our "symphony" of disfluency.[143]

If there is a message to be drawn from the hectic intersection of public perception and linguistic study, it is this: When both speakers and

137 Martin Corley & Robert J. Hartsuiker, *Why* Um *Helps Auditory Word Recognition*: *The Temporal Delay Hypothesis*, 6 PLoS ONE e19792, 3 (2011) (www.plosone.org/ article/info%3Adoi%2F10.1371%2Fjournal.pone.0019792).

138 Brennan & Schober, *supra* n. 64, at 293.

139 *Id.* Subjects in Brennan and Schober's experiments were asked to select and move between objects on a computer screen, e.g., "Move to the pur-*uh*-yellow square" versus "move to the pur¾yellow square." Subjects responded with equal speed regardless of whether the pause was silent or filled with an *uh*. *Id.* at 292–93.

140 Professor James A. Dimitri, for example, advises law students that "[i]nstead of using verbal pauses, simply pause silently." James A. Dimitri, *Stepping Up to the Podium with Confidence: A Primer for Law Students on Preparing and Delivering an Appellate Oral Argument*, 38 Stetson L. Rev. 75, 104 (2008). Toastmasters advises that "[a] pause is actually more impressive than a filler word. Listeners know that the speaker is thinking, trying to find the right word." *See* Stevenson, *supra* n. 107.

141 Erard, *supra* n. 17, at 136.

142 *See infra* sec. VI(A) (discussing limitation of fillers in formal speech).

143 *See* O'Connell & Kowal, *supra* n. 15, at 222.

listeners focus on *what* the speaker is saying and not *how* he is saying it, the issue of verbal fillers remains where it belongs: in the background. The good news for advocates is that this view appears to implicitly be held by our most discerning audience: the judges who hear our oral arguments.

V. Verbal Disfluency and Oral Argument

By all indications, judges do not appear to have joined the ranks of teachers, coaches, and authors seeking to banish verbal fillers. When asked what they are looking for in oral argument, judges consistently and overwhelmingly emphasize the content of the argument and not the advocate's speaking style. This focus is particularly reassuring in light of the paradoxical challenge created by oral argument: Lawyers are expected to display eloquence and confidence while speaking under circumstances that amount to a recipe for disfluency.

A. Just answer the question.

Like Aristotle, Cicero, and Quintilian, modern-day judges do not appear to be focused on the issue of verbal fillers. Instead, what judges want, first and foremost, are answers to their questions. Judges consistently say that an advocate's ability to answer questions is primary; the polish with which such answers are given is peripheral at best. As Missouri Supreme Court Judge Michael A. Wolf (Ret.) explained, "When the whole point of oral argument becomes an exercise in answering the judge's questions, the role of rhetoric, of dramatic flourish that we all dream of as advocates, evaporates. Time has crunched us and taken away the opportunity for high suasion."[144] U.S. District Court Judge Mark R. Kravitz goes even further, stating, "I find value in requiring lawyers to respond to my questions, even when the lawyers are not so good. I believe that Judge Posner got it right when he observed that 'although the average quality of oral argument in federal courts (including the Supreme Court) is not high, the value of oral argument to judges is very high.'"[145]

In other words, as Justice Byron White has said, judges view lawyers "as a resource rather than as orators."[146] And, as one former federal law clerk observed, "The best oral arguments I saw were ones in which the

144 Michael A. Wolff, *From the Mouth of a Fish: An Appellate Judge Reflects on Oral Argument*, 45 St. Louis U. L.J. 1097, 1102 (2001).

145 Mark R. Kravitz, *Written and Oral Persuasion in the United States Courts: A District Judge's Perspective on their History, Function, and Future*, 10 J. App. Prac. & Process 247, 270 (2009).

146 *Id.* at 266 (quoting Justice Byron White, *The Work of the Supreme Court: A Nuts and Bolts Description*, 54 N.Y. State Bar J. 346, 383 (1982)).

attorneys effectively answered all of the judge's questions; they were not the ones in which the attorneys gave the best speeches."[147]

Not only do judges want their questions answered, they want them answered in a conversational style. As research has shown, that style is bound to contain verbal fillers. Judges want to feel that they are engaged in a discussion with the advocate, and that discussion is almost certain to include delays marked by *uh*s and *um*s as lawyers grapple with difficult subject matter and self-consciousness. But at the same time, the use of fillers may be serving to highlight thoughts, words, and ideas, while managing turn-taking between the advocate and the court. As Justice Ruth Bader Ginsburg explained, "Oral argument, at its best, is an exchange of ideas about the case, a dialogue or discussion between court and counsel."[148] Judge Kravitz describes oral argument at its best as "a conversation between the lawyer and the judge about the case."[149] He cautions that "[a] 'set-piece argument is not a good use of any lawyers' or judges' time.'"[150] Instead, the discussion between the court and the advocate should have "maturity" and "spontaneity" and should allow the court "to clarify issues, obtain concessions, gain perspective, and even eliminate issues" from a written opinion.[151]

When judges do discuss style, their advice is brief and succinct. Though it seems obvious that advocates should not read from their briefs, former Chief Justice William Rehnquist observed, "The Supreme Court gets more advocates than it should who regard oral argument as a 'brief with gestures.'"[152] "Lawyers," Rehnquist advised, "should . . . consider the different contexts in which oral argument and brief reading occur. Brief reading is a solitary occupation; it is very difficult to get much out of someone else's reading a brief for you."[153] Rehnquist advised advocates that "the more you can keep your tone conversational, rather than hortatory, the better your case will fare."[154] Justice Ginsburg suggested that "[a]t argument, gems will be missed if counsel forgets to speak clearly, slowly, with a full voice, and to maintain good eye contact with the judges."[155]

147 Rachel Clark Hughey, *Effective Appellate Advocacy Before the Federal Circuit: A Former Law Clerk's Perspective*, 11 J. App. Prac. & Process 401, 434 (2010).

148 Ruth Bader Ginsburg, *Remarks on Appellate Advocacy*, 50 S.C. L. Rev. 567, 569 (1999).

149 Kravitz, *supra* n. 145, at 264.

150 *Id.* at 271.

151 *Id.* at 266.

152 William J. Rehnquist, *Oral Advocacy: A Disappearing Art,* 35 Mercer L. Rev. 1015, 1024 (1984).

153 *Id.* at 1025. Justice Rehnquist's advice fits squarely within the recommendations of linguists. As Göran Kjellmer notes, "A lecture that is read aloud from the written page is often difficult to take in when its delivery lacks the verbal guides and signposts that we more or less subconsciously expect to find in speech; as listeners we are in danger of missing the point of the argument." Kjellmer, *supra* n. 20, at 190. In contrast, "a lecture that is delivered more freely without direct recourse to a written manuscript is easier to follow, precisely because of the presence of such assisting elements." *Id.*

154 Rehnquist, *supra* n. 152, at 1024.

155 Ginsburg, *supra* n. 148, at 569.

In addition to spontaneity (or at least the appearance of spontaneity), judges are also seeking immediacy and conviction. As Chief Justice Rehnquist said, "[W]hen it comes to oral argument, the more flesh and blood you can insert into it, as opposed to a dry recitation of principles of law or decided cases, the more interesting and effective that argument can be."[156] Echoing the sentiments of many linguists, Judge Kravitz noted that "speech is dynamic in a way that writing never can be."[157] He explained, "Oral argument can convey a sense of urgency, sincerity, and (dare I say?) emotion that is not easily communicated by a written brief."[158] Unlike writers, speakers have at their disposal "intonation, gesture, and other non-verbal cues."[159] Consequently, Judge Kravitz believes that "speech can be more immediate and sincere than a writing."[160]

B. Oral argument: a recipe for disfluency

While judges say they want to engage in a conversation with the advocate, such conversations are, as Albany Law Professor Dorothy Hill tells her students, "unlike any you have ever had."[161] What the judge may view as spontaneity is likely something the advocate has been pondering and preparing for months or longer. And it is a conversation that may well decide the fortunes of an individual client or even a larger swath of commercial, political, or public interests. If the stakes are high enough, this "conversation" has been practiced and rehearsed multiple times for multiple audiences. Advocates have anticipated questions well in advance, and they have prepared a range of possible answers. When this conversation finally takes place, the advocate's words are likely to be dissected by the court and challenged by the advocate's adversary.

Certainly this is a "conversation" in which the advocate wants to appear as confident, assured, and persuasive as possible. But at the same time, the unique circumstances of oral argument are a trigger for disfluency, especially the use of verbal fillers.

Statistically, lawyers are apt to be more disfluent in the first place: the use of *uh* and *um* has been shown to increase with education and socioeconomic levels.[162] But more importantly, oral argument presents both the task complexity and task concern that have been demonstrated to increase the use of verbal fillers. The law is complex, and the issues being addressed by the advocate are likely to be abstract and imprecise, making the task of oral argument more like a lecture in the humanities than one in the

156 Rehnquist, *supra* n. 152, at 1024.

157 Kravitz, *supra* n. 145, at 267.

158 *Id.*

159 *Id.* at 267–68.

160 *Id.* at 268.

161 Interview with Dorothy E. Hill, J.D., Associate Lawyering Professor, Albany Law School (July 1, 2013).

162 *See* Tottie, *supra* n. 20, at 192.

natural sciences. Like the humanities professors at Columbia University, who talk about *affection*, *class structure*, *prejudice*, *beauty*, or *style*,[163] lawyers are likely to face a range of options in describing abstract legal theories, and they will need to choose from a vast vocabulary to express often-imprecise concepts. At the same time, task concern is likely to be high. Christenfeld and Creager tell us that the nature of the audience should have a profound effect on filler rates.[164] Just as a story told to a best friend may sound very different when told to a parole officer,[165] an argument practiced in front of a mirror, while driving a car, or even before peers is likely to unfold much differently in the courtroom. Indeed, there are few audiences more challenging than a panel of inquisitive judges firing off questions in a public courtroom. Those questions will interrupt the advocate's natural flow of speech, and the high-stakes courtroom setting is almost certain to create self-consciousness about the speech process.

Given these circumstances, it may be surprising that lawyers can speak at all in oral argument, much less speak with perfect fluency. Yet well-intentioned law-school professors and professional speech coaches urge advocates to do just that. Such advice may be especially prevalent in some law-school appellate-advocacy programs where style is overemphasized. Critics of such programs assert that students come away from their moot-court experience thinking that the goal of oral argument is to give a presentation, rather than to address the court's concerns.[166] These critics fault not just the instruction students receive, but the quality and commitment of another well-intentioned group: people who volunteer to judge moot court programs. Volunteer judges with only a superficial knowledge of the issues being argued are apt to fall back on style as a basis to select a winner.[167] Even judges who commit to a deeper understanding of the relevant legal issues may be handed oral-argument score sheets that award points for "style & appearance" and deduct points for the use of verbal fillers and discourse markers.[168] It is no surprise, then, that students may "misconstrue the purpose of oral argument and view it as high drama in which they are giving a theatrical performance."[169]

There is, however, a movement underway to shift the moot-court experience toward a more content-based approach. In 2012, the Legal

163 Schachter et al., *supra* n. 25, at 362.

164 Christenfeld & Creager, *supra* n. 7, at 459.

165 *See id.*

166 *See* Michael Vitiello, *Teaching Effective Oral Argument Skills: Forget About the Drama Coach*, 75 Miss. L.J. 869, 885 (2006).

167 *Id.* at 882.

168 *See id.* at 882, n. 80 (referencing score sheets in moot court competitions).

169 *Id.* at 880.

Writing Institute tackled the problem of moot-court competitions by issuing model guidelines for volunteer judges.[170] The LWI guidelines specifically warn against placing too much emphasis on the student's "forensic (i.e. stylistic) performance," and instead urge judges to focus on content.[171] The guidelines state, "While a lawyer's forensic performance is a very important part of effectively arguing an appeal, real appellate-court judges also focus on the substance of the appeal. Therefore, please ask the students questions that focus on the appeal's substance."[172]

VI. Can We, *Um,* Stop Now?

A. To *Um* or Not to *Um*

Somewhat surprisingly, many linguists and the general public do agree on one point: speakers can use too many verbal fillers, particularly in situations—like oral argument—that demand a level of deference and formality. Herbert Clark, a strenuous *um* supporter who argues that verbal fillers should be viewed and studied as actual words in the English language, recommends that public speakers "honor their audience by removing 'uh' and 'um' from their speeches, just as one wouldn't wear flip-flops to a formal occasion."[173] Jean Fox Tree tells her students not to say *uh* or *um* during job interviews.[174] But in informal conversations, both Clark and Fox Tree urge speakers to *Um away*.[175] Göran Kjellmer, another *um* advocate and the author of an article entitled, *In Defence of Er and Erm,* also hedges by stating that "[s]ince we are most of the time unaware of [verbal fillers], their *(moderate)* use will not normally affect adversely our impression of a speaker's fluency or eloquence."[176]

Kjellmer doesn't define what constitutes the "moderate" use of verbal fillers, nor does Clark or Fox Tree explain how speakers are to selectively purge *uh* and *um* from some forms of speech. Clark's and Fox Tree's suggestion that speakers should deliberately opt to eliminate *uh* and *um* in formal speech runs counter to Christenfeld's conclusion that people who consciously try to speak well may use *more* verbal fillers. Christenfeld would likely view a job interview as precisely the type of stressful social setting that will increase filler rates.[177]

170 Legal Writing Institute Moot Court Committee, *Model Oral Argument Judgment Guidelines* (available at http://www.lwionline.org/uploads/FileUpload/MootCourtModelJudgingGuidelines.pdf).

171 *Id.* at 2.

172 *Id.*

173 Erard, *supra* n. 17, at 140 (quoting Herbert Clark).

174 *Id.*

175 *Id. See* Fox Tree & Clark, *supra* n. 10, at 73 (abstract) ("*[U]h* and *um* are conventional English words, and speakers plan for, formulate, and produce them just as they would any word.")

176 Kjellmer, *supra* n. 20, at 191 (emphasis added).

177 Christenfeld & Creager, *supra* n. 9, at 459.

Lawyers who believe they must make a deliberate effort to stop using *um* and *uh* have a range of Pavlovian techniques at their disposal, but whether these techniques work—or work for more than a short while—is, at best, unproven. At worst, these techniques may actually increase filler rates.

Many public-speaking coaches attempt to eliminate *uh*s and *um*s by making speakers aware of when they use them. Taking this idea to its extreme, Toastmasters assigns audience members to the role of "Ah Counter," and provides an array of options that can be used to alert speakers each time they use a verbal filler.[178] The "Ah Counter" listening to a speech can charge a nickel per *um*, ring a bell, drop a nail in a bucket, or have groups of listeners tap their drinking glasses with silverware every time they hear a filler.[179]

Clark believes these techniques can work: "By God," he tells Erard, "these guys [at Toastmasters] learn how to get rid of [*um*s and *uh*s]."[180] But, he adds, they often do so "at some other expense."[181] The price of *umlessness* may be that speakers "have to go do other things to deal with the problems they usually use 'uh' and 'um' for."[182] What those "other things" may be remains unclear, but lawyers should be wary of eliminating a known pause mechanism—*uh* and *um*—in favor of one that is unknown.

If Nicholas Christenfeld is right, lawyers who try to eliminate *uh*s and *um*s by focusing on them may be setting themselves up to increase their filler rates. Christenfeld tells us that focusing the attention of both speakers and listeners on *uh* and *um* can set up a vicious cycle of hypersensitivity. Simply put, once we start thinking about *uh* and *um*, it is almost impossible to stop. After concluding one of his studies, Christenfeld noted, "It had dawned on us [that] after months of counting ums, . . . we had no idea of anything speakers were saying, except for um."[183] For the coders in the study of Columbia professors, identifying fillers became so ingrained that they "had to make a special effort to stop mentally coding these filled pauses when off duty."[184] After more than thirty years of studying verbal fillers, researcher Daniel O'Connell makes a deliberate effort not to listen for *uh*s and *um*s, a practice he describes as "profoundly impolite."[185]

This hypersensitivity to fillers may produce the exact opposite of the intended effect. If, as some research suggests, task concern and self-consciousness about speech increase filler rates, then trying not to use

178 Stevenson, *supra* n. 106.

179 *Id.*

180 Erard, *supra* n. 17, at 148 (quoting Herbert Clark).

181 *Id.* (quoting Herbert Clark).

182 *Id.* (quoting Herbert Clark).

183 Christenfeld, *supra* n. 24, at 177.

184 Schachter et al., *supra* n. 25, at 363.

185 Erard, *supra* n. 17, at 103 (quoting Daniel O'Connell).

verbal fillers will make lawyers use even more *uh*s and *um*s. Consequently, it may be that the best way to ensure that lawyers say *um* is to tell them to stop.[186] Even Toastmasters acknowledges this risk. The group advises its "Ah-Counters" to issue filler alerts with care. Some speakers who are rattled by the Ah Counter's interference "[will] use more filler words, causing more bell ringing and glass tapping, causing still more filler words."[187] Toastmasters chalks this up to individual speakers' personalities and recommends that the filler alerts must be tailored to each speaker, without explaining how to do so.[188]

There may be more productive ways for lawyers to reduce verbal fillers, though the cause-and-effect mechanisms are far from clear. Researchers have found a strong correlation between gesturing and verbal fillers: when people gesture, they are far less likely to use verbal fillers.[189] It is unknown whether gesturing actually reduces the use of verbal fillers, or whether people just gesture when, for some other reason, they are not using fillers.[190] Interestingly, as Michael Higdon notes in his examination of nonverbal persuasion, gesturing also has been demonstrated to increase a speaker's persuasiveness, provided that the gestures are "synchronized with and support[ive] of the vocal/verbal stream."[191] Eye contact is also related to the use of verbal fillers, but again the nature of the relationship is unclear. Research shows that people are more disfluent overall when they talk on the telephone than when they are in face-to-face conversation, suggesting that eye contact and other nonverbal cues may reduce a speaker's filler rate.[192] Here again, Higdon describes "a strong correlation between eye contact and persuasion."[193] Both gesturing and eye contact may indicate that speech is flowing unimpeded, a condition associated with a reduction in verbal fillers. Or, gesturing and eye contact may be a substitute for *uh* and *um*, providing listeners with a different cue for sign-posting or indicating difficulty with speech planning.[194]

When done in a natural and organic manner, gesturing and making eye contact with the court have no downside, and these techniques can increase the lawyer's level of confidence and persuasiveness. Whether gesturing and eye contact will actually reduce the lawyer's filler rate remains unknown. But, as discussed below, the increased confidence and

186 Christenfeld & Creager, *supra* n. 7, at 458–59.

187 Stevenson, *supra* n. 106.

188 *Id.*

189 *See* Nicholas Christenfeld, Stanley Schachter & Frances Bilous, *Filled Pauses and Gestures: It's Not a Coincidence*, 20 J. Psycholinguistic Research 1, 8–9 (1991).

190 *Id.*

191 Michael J. Higdon, *Oral Argument and Impression Management: Harnessing the Power of Nonverbal Persuasion for a Judicial Audience*, 57 U. Kan. L. Rev. 631, 646 (2008) (quoting Mark L. Knapp & Judith A. Hall, Nonverbal Communication in Human Interaction 243 (6th ed. 2006)).

192 *See* Bortfeld et al., *supra* n. 8, at 127.

193 Higdon, *supra* n. 191, at 639.

194 Bortfeld et al., *supra* n. 8, at 127.

authority these techniques confer on the lawyer may serve to keep the court focused on the lawyer's argument, and not his use of *uh* and *um.*

B. *Uh, Um,* and the Company They Keep

Linguistics offers a wealth of interesting data about *uh* and *um*. But the often conflicting studies and theories do not provide clear guidance on how lawyers should approach—or avoid—*uh* and *um*. Verbal fillers do appear to increase listener comprehension and memory. But they may also signal that the lawyer has encountered a problem, which listeners can interpret as a good thing ("this speaker is thinking") or a bad thing ("this speaker is uncertain").

Buried in this swirl of science, theory, opinion, and perception is a single grain of simple truth: No one wants to be known as an *ummer*. Caroline Kennedy's verbal filler "disaster" in 2008 transformed her from a political challenger to an Internet sideshow.[195] Natalie Portman's filler-filled Academy Award acceptance speech in 2011 inspired a spliced piece of YouTube humor.[196] Even Barack Obama, viewed by many as a skilled orator, is also considered a serial *ummer*, complete with his own YouTube tribute.[197] Not surprisingly, *um*s and *uh*s are often excised from the written record of speech. At the Presidential Recordings Program at the University of Virginia, transcriptionists remove verbal fillers from presidential recordings.[198] Such post-hoc clean-up efforts are not limited to prominent public officials. Court reporters transcribing routine depositions similarly omit *uh*s and *um*s, while often leaving other discourse markers in the record. When asked why she removes verbal fillers from the transcript, one court reporter replied, "The attorneys don't want to look stupid."[199]

Interestingly, as much as Caroline Kennedy uses verbal fillers, so does Hillary Clinton.[200] A study of six interviews given by Clinton showed that she and her professional interviewers had significantly higher filler rates than those found in a standard language database.[201] Yet Clinton's disfluency has hardly drawn the attention that Kennedy's did. And

195 *See e.g. The More You Know the Less She Says: Caroline Kennedy* (available at http://www.youtube.com/ watch?v=XfpqMfCs8lU) (accessed March 16, 2014).

196 *Natalie Portman Um Accepts Her Um Oscar Speech in Um Uh Better Quality* (available at www.youtube.com/watch?v=EqjqultMXNs) (accessed March 16, 2014).

197 *Obama: I Give uh Good um Speech* (available at http://www.youtube.com/watch?v=eHgH5i8ug6E) (accessed March 16, 2014).

198 Erard, *supra* n. 17, at 78.

199 Interview with Jennifer P. Wielage, CCR, RPR, CRP (June 25, 2013).

200 Daniel C. O'Connell & Sabine Kowal, Uh *and* Um *Revisited: Are they Interjections for Signaling Delay?*, 34 J. Psycholinguistic Research 555, 561–62 (2005).

201 *Id.* at 562. Clinton was interviewed by Barbara Walters, Katie Couric, Larry King, David Letterman, Terry Gross, and Juan Williams. *Id.*

Kennedy's disfluency rate is not even that startling when viewed in simple terms of *um* count. Her reported use of twenty-seven *um*s in five minutes is only slightly higher than the mean filler rate of the Columbia humanities professors.[202] What distinguishes Kennedy and Clinton—both of whom are lawyers—may not be the frequency with which they say *uh* and *um*. More likely, the difference is what surrounds those verbal fillers. Kennedy's knowledge of the campaign issues seemed generally sketchy, and her use of thirty-eight *you know*s during the same speech also reduced her effectiveness as a speaker.[203] Clinton typically speaks with assurance and conviction. Neither speaker's "style" is dependent upon a mastery of ideal fluency. Instead, Kennedy's and Clinton's relative effectiveness as speakers flows from the content of the messages they deliver, and their commitment to that content. In other words, Kennedy lets us see her disfluency, while Clinton keeps hers under wraps.

Clinton's command of her subject sets up a rhetorical victory and provides a lesson for lawyers on managing verbal fillers. Clinton's knowledge and authority allow her *and* her audience to focus on the content of her message. This, in turn, may actually reduce her filler rate, as well as the likelihood that her audience will consciously hear any fillers. Presumably, Clinton's thorough knowledge of her subject reduces, to some extent, the delay she encounters in formulating her thoughts. Fewer delays mean fewer fillers. Also, by thinking about *what* to say rather than *how* to say it, Clinton allows a natural, uninterrupted flow of speech to emerge. The sheer range and complexity of the topics Clinton is called upon to address almost assures that she will utter some *uh*s and *um*s, and indeed she does just that.[204] But because Clinton is able to keep her audience focused on content, her verbal fillers may operate to increase the communicative value of her message without decreasing the audience's opinion of her as a speaker.

This result is consistent with studies that show that even where filler rates remain constant, listeners view speakers as more eloquent and more relaxed when they are asked to focus on the content of speech, rather than the speaker's style.[205] And it means that lawyers do have a way to manage verbal fillers, though perhaps not in the manner recommended by public-speaking coaches. An informed approach to verbal fillers should not involve clickers, nickels, or electric shocks. Instead, like Clinton, lawyers should keep themselves and their audience focused on the content of the

202 *See* Schachter et al., *supra* n. 25, at 364. At a mean rate of 4.85 *um*s per minute, the Columbia humanities professors theoretically would use 24.25 *um*s in five minutes. *Id.*

203 *See* Stevenson, *supra* n. 106.

204 O'Connell & Kowal, *supra* n. 200, at 561–62.

205 *See* Christenfeld, *supra* n. 24, at 182–84.

message. Such focus comes from the speaker's command of the subject and confidence in his delivery, both of which are achieved only through exhaustive and thorough preparation that is content based. Even Toastmasters seems to recognize this. In a section discussing the importance of the speaker's confidence, the group notes, "To cut out filler words, it also helps if you believe in the importance of what you are saying."[206] Here, Toastmasters echoes Rehnquist's advice that lawyers should put "more flesh and blood" on their arguments,[207] and Judge Kravitz's recommendation that lawyers use "intonation, gesture, and other non-verbal cues" to give their arguments "a sense of urgency, sincerity, and . . . emotion."[208]

Rather than counting verbal fillers or over-rehearsing a planned performance, lawyers are better served by engaging in the arguably more difficult task of studying the record, learning the substantive law, and understanding every nuance of the case. Mastering the content of the argument will limit the "task complexity" of searching for thoughts or words at oral argument, which should correspondingly reduce the use of *uh* and *um.* Extensive preparation should also help with "task concern" by increasing the confidence of advocates in their ability to respond to questions, and the ease with which they are able to do so. Lawyers who are able to focus on the substance of their arguments will be more engaged in the "conversation" with the court and less inclined to be monitoring their own performance. While lawyers do need to be ready with prepared remarks for a cold court, encountering a silent bench is no longer the norm, especially in jurisdictions where oral argument is sparingly granted.[209] Lawyers need to lay a firm foundation for the conversational give and take that is more likely to occur in oral argument, and they must be ready to respond to the court's questions with authority. Eloquence is a byproduct of substantive preparation, and lawyers must be willing to make the investment of time and effort needed to keep the court's attention focused on content.

Ultimately, as Nicholas Christenfeld notes, "just about every speaker produces ums."[210] Where the speaker and the audience are focused on

206 Stevenson, *supra* n. 106.

207 Rehnquist, *supra* n. 152, at 1024.

208 Kravitz, *supra* n. 145, at 267.

209 *See e.g.* Jason Val, Oral Argument's Big Challenge: Fielding Questions from the Court, 1 J. App. Prac. & Process 401, 404 (1999) (noting that cold courts are increasingly rare). "Today, most courts are 'hot,' prepared on the facts and the issues and loaded up with questions." *Id.*; *see also* David R. Cleveland & Steven Wisofsy, *The Decline of Oral Argument in the Federal Courts of Appeals: A Modest Proposal for Reform*, 13 J. App. Prac. & Process 119, 140–42 (2012) The authors note that in 2011, only one quarter of all federal appeals were argued, down from nearly two-thirds in the early 1980s. The time allotted for argument in most circuit courts was 15 minutes or less. *Id.* at 142.

210 Christenfeld, *supra* n. 24, at 185.

stylistic concerns, "[b]ad speakers' ums [are] left for all to see."[211] Conversely, "by keeping substance, not style, as the center of attention, good speakers will effectively hide their hesitations."[212] Accordingly, lawyers who follow *um* with an incomplete or evasive response may be remembered as having a weak style. But lawyers who follow an *um* with an insightful and responsive answer will be remembered for the strength of their argument.

VII. Conclusion

Whether it was the fault of the gramophone, radios, or a flood of reflexive advice on public speaking, verbal fillers have been pulled from their quiet place in the background of speech and thrust into public consciousness, where no one—not speakers, listeners, coaches, or scientists—seems to know exactly what to do with them. Once stuck in our minds, *uh* and *um* take over, deflecting our attention from the substance of speech and turning us all into *Um* police.

Speakers and listeners alike need to return their focus to content and relegate verbal fillers to their rightful and proper place—under the radar of spoken communication. Free of interference from well-meaning teachers and coaches, people will do exactly that. It is, in fact, what the students in Mr. Sweeney's Language Arts class did. After he was forwarded an e-mail from Elizabeth Shriberg about the communicative value of verbal fillers, Mr. Sweeney abandoned his nickel-per-*um* policy. It was a lively class, after all.

211 *Id.*

212 *Id.*