

Cuing Safety in the Law School Classroom: Using a Polyvagal Theory Framework in Support of Trauma-Informed Teaching Practices

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INTRODUCTION

The past few decades have seen a welcomed focus on “Trauma-informed education.” This focus is often traced back to the 1997 Adverse Childhood Experiences study, which identified many significant negative outcomes that resulted from childhood trauma.¹ While the original study focused on outcomes such as chronic health problems, incarceration, and employment challenges, later researchers focused on the negative impacts on education and learning as a result of trauma.² Educators continue to work with this research trying to figure out how to be more “trauma-informed,” and to better reach those students whose lives and learning capacity have been affected by Trauma. This work usually begins with an exploration classroom and curricular adaptations designed to avoid retraumatizing students. Unfortunately, it often ends there. Researchers don’t usually take what we see as the next step. They don’t usually explore the psychological and physiological changes caused by trauma, and the negative effects these changes have on the capacity to learn. And they do not suggest possible steps to address those negative effects. We aim to do this here by first digging into the ways in which trauma affects the brain, through a larger discussion of the application of Steven Porges’ “Polyvagal

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1. Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 AM. J. PREVENTIVE MED. 245 (1998).

2. Elizabeth Crouch et al., *Challenges to School Success and the Role of Adverse Childhood Experiences*, 19 ACAD. PEDIATRICS 899 (2019).

theory”³ to education. And we will conclude by suggesting concrete steps you can take to address the negative effects of trauma in the classroom.

A NOTE ON VOCABULARY

Some sources conflate trauma-related terms such as “traumatized,” “traumatic incident,” “trauma-affected,” and “trauma-response.” However, we believe these terms have independent, although related, meanings. For clarity, in this article we try to use the terms as follows:

- “Trauma” or “traumatic incident” refers to something a student experienced in the past that caused the types of reactions we are talking about here.
- “Trauma-affected” is used primarily to describe a brain that has been impacted by trauma or a traumatic incident. This is used specifically to avoid phrases like “a normal brain,” which as far as we can tell, is an apocryphal tale told to educators, full of apparent authority, signifying nothing⁴ (for more on what we mean by “trauma-affected,” see the section below on “how trauma affects the brain”).
- “Trauma response” describes a student’s physical and emotional response to either a past traumatic incidents or a classroom event that triggers a response directly tied to trauma, such as fight-or-flight, or freeze.
- “Re-traumatization” means that something in the current course content or classroom is bringing up the student’s past trauma/traumatic incident in a way that is harmful to the student in the present.

3. See *infra* Part Two: Polyvagal Theory.

4. Apologies to Shakespeare.

WHAT IS TRAUMA?

In order to best understand how trauma affects the capacity to learn and necessary classroom adaptations to address these effects, we must first understand trauma itself. “Individual trauma is best understood as the result of ‘an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects.’”⁵ It is important to note the fundamentally subjective nature of this definition, i.e. the “‘event... is experienced by *an individual* as harmful or life threatening.”⁶ What is traumatic for one student may not be traumatic for another. Similarly, a past trauma does not necessarily affect a student’s present ability to grapple with topics related to that trauma, just as past trauma may not affect a student’s capacity for positive social engagement and learning.

Some scholars and commentators have noted that the word “trauma” is often wildly overused, wielded, almost weaponized, by folks who feel even the least discomfort.⁷ “Trauma,” as we use it here, is set apart from mere discomfort by the requirement that a traumatizing event “has lasting adverse effects.”⁸ “Trauma,” as we use it here, is that thing that has lasting psychological and neurological effects; it is more than extreme anger, frustration or sadness. But ultimately, for the purposes of adapting classroom policies and practices to effectively reach every student, it should not matter that the word trauma is overused. As we will point out, what we call trauma-informed teaching is, in the end, simply good teaching.

5. Carrie Gaffney, *When Schools Cause Trauma*, LEARNING FOR JUST. (2019), <https://www.learningforjustice.org/magazine/summer-2019/when-schools-cause-trauma> (quoting a report from Substance Abuse and Mental Health Services Administration).

6. *Id.*

7. Amanda Ann Gregory, *Are You Misusing the Term “Trauma”?*, PSYCH. TODAY (Jan. 10, 2023), <https://www.psychologytoday.com/us/blog/simplifying-complex-trauma/202301/are-you-misusing-the-term-trauma>.

8. SAMHSA’S TRAUMA AND JUST. STRATEGIC INITIATIVE, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., SAMHSA’S CONCEPT OF TRAUMA AND GUIDANCE FOR A TRAUMA-INFORMED APPROACH, 7 (2014), <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4884.pdf> [hereinafter SAMHSA].

HOW COMMON IS TRAUMA?

Understanding what trauma is only the first step. Second, we must understand who has experienced trauma. Without hyperbole, the answer is quite likely *nearly every student*. By college, 66 to 85% of youth *report* at least one traumatic event, and 60% of adults have *reported* abuse or “other difficult family circumstances during childhood.”⁹ However, the actual numbers for trauma are likely significantly higher. “Trauma, especially sexual trauma, is notoriously unreported and underreported.”¹⁰

We also cannot ignore identity characteristics and their relation to trauma, especially if we seek to minimize the risk of re-traumatizing our students. First, we must acknowledge that our classrooms are currently filled with mostly Gen Z, or “Zoomer,” students.¹¹ “Since birth, Zoomers have lived in a world of perpetual crisis, beginning with the terrorist attacks on September 11, 2001.”¹² They lived through the Great Recession, “watched their parents lose their jobs and perhaps their homes,” and 20% of them lived in households that were food-insecure.¹³ Moreover, this generation grew up associating school with trauma, as they “learn[ed] how to quietly hide from an active shooter before they learn[ed] how to tie their shoes.”¹⁴ Additionally, the college education of most of the current student population of law students was disrupted by Covid-19, and it will not be until around 2040 that law schools will matriculate students for whom school at some grade level was not affected by the pandemic. While it is perhaps too early to fully know how the pandemic impacted the mental health of our student population, preliminary studies do show that rates of alcohol use and abuse,

9. Alexandra Thompson & Susannah N. Tapp, *Criminal Victimization, 2021*, U.S. DEP’T OF JUST., <https://bjs.ojp.gov/content/pub/pdf/cv21.pdf> (July 5, 2023); Shannon Davidson, *Trauma-Informed Practices for Post-Secondary Education: A Guide*, 1, 5, (2017), <https://educationnorthwest.org/sites/default/files/resources/trauma-informed-practices-postsecondary.pdf> (internal citations omitted).

10. See *id.*; Kim D. Chanbonpin, *Crisis and Trigger Warnings: Reflections on Legal Education and the Social Value of the Law*, 90 CHI.-KENT L. REV. 615, 628-29 (2015) (citing sexual assault and under-reporting statistics).

11. Olivia R. Smith Schlinck, *Ok, Zoomer: Teaching Legal Research to Gen Z.*, 115 L. LIBR. J. 269, 273 & 292 (2023) (defining Gen Z as “the group of people born between 1995 and 2012.”) (“[T]oday, most law students are Zoomers.”).

12. *Id.* at 274.

13. *Id.* at 281.

14. *Id.* at 288.

substance use and abuse, suicidal ideation, depression, and anxiety have increased.¹⁵

In 2014, the Survey on Law Student Well-Being (“SLSWB”) revealed that 42% of law students felt they needed help managing “emotional or mental health problems such as feeling sad, blue, anxious, or nervous.”¹⁶ In 2019, some studies indicated that over 50% of law students have some form of depression, and over 60% have some form of anxiety.¹⁷ The 2021 SLSWB indicated significant increases in law student mental health challenges: 68.7% of students—a 26.7% increase—now felt they needed help managing their mental and emotional health.¹⁸ Notably, suicidal ideation increased from 3.9% to 9.9% from 2014 to 2021.¹⁹ In short, our students “are a generation forged by trauma and loss.”²⁰ Thus, based on birth year alone, our current students have experienced more collective trauma than their previous counterparts, and we must acknowledge that this trauma is present with us in the classroom.

Within our student body as a whole, we need to know that the groups with the highest risk of being re-traumatized in our classrooms are female students with a history of sexual trauma, students with ethnic minority status, and students from a lower socioeconomic status.²¹ That being said, instructors should remember that nearly every student has experienced trauma, without hyperfocusing on certain student groups. To teach through a trauma-informed lens, it is not required, and perhaps even ill-advised, for instructors to attempt to identify students who have

15. See generally David Jaffe et al., “It’s Okay to Not Be Okay”: The 2021 Survey of Law Student Well-Being, 60 U. LOUISVILLE L. REV. 441 (2022) https://digitalcommons.wcl.american.edu/facsch_lawrev/2137.

16. *Id.* at 463.

17. *Id.* at 447, 447 nn. 46-48 (surveying over 1,700 second semester, first year law students at forty-four law schools in which students reported their degrees of depression as follows: 13% mild, 19% moderate, 10% severe, and 15% extremely severe and students reported their degrees of anxiety as follows: 8% mild, 18% moderate, 10% severe, and 26% extremely severe).

18. *Id.* at 463.

19. *Id.* at 458.

20. Schlinck, *supra* note 11, at 283.

21. See ANDREA BLANCH, NAT’L CTR. FOR TRAUMA-INFORMED CARE, SAMHSA’S NATIONAL CENTER FOR TRAUMA-INFORMED CARE, NAT’L CTR. FOR TRAUMA-INFORMED CARE 8 (2012); See also Brenda D. Gibson, *Teaching in the Midst of Trauma*, 27 J. LEGAL WRITING INST. 251, 261-62 (2023) (“Minoritized students often suffer trauma simply by being students of color in law school—an institution, like many in America, which was founded without their existence in mind and refuses to reform to acknowledge their diverse needs today.”).

experienced trauma and what type of trauma they have experienced. In fact, it is both inappropriate and impossible for the instructor to know what may trigger a trauma response in a student.²² Rather, a more effective working model is to assume every student has experienced some type of trauma, and thus to commit to minimizing risk or re-traumatization and maximizing safety cues. Simply put, trauma is present with us in the classroom. We should do everything we can to avoid re-traumatizing those who have experienced trauma, and we should adapt our teaching, and our classroom policies and procedures to best reach those whose capacity to learn has been affected by trauma. And as we will repeat throughout this paper, trauma-informed teaching benefits all students, not just those affected by trauma.

A BRIEF HISTORY OF TRAUMA-INFORMED TEACHING AND LEARNING

Trauma-informed teaching, speaking generally, grew out of trauma-informed care in the medical setting.²³ Researchers found connections between veterans with PTSD and children with adverse childhood experiences (ACE).²⁴ The research from the 1860s on veterans' mental health led to the Adverse Childhood Experiences Study in the 1990s, which led to modern-day trauma-informed education practices for K-12 educators and students.²⁵ In 2000, Congress created the National Child Traumatic Stress Network (NCTSN) as part of the Children's Health Act.²⁶ Its goal is to "raise the standard of care and increase access to services for children and families who experience or witness traumatic events." To date, "over 10,000 local and state partnerships have been established by NCTSN members in their work to integrate trauma-informed services,²⁷" including education. Additionally, trauma-sensitive teaching practices are also a

22. See Francesca Laguardia et al., *Trigger Warnings: From Panic to Data*, 66 J. LEGAL EDUC. 882, 900 (2017).

23. M. Shelley Thomas et al., *Trauma-Informed Practices in Schools Across Two Decades: An Interdisciplinary Review of Research*, 43 REV. RSCH. EDUC. 422, 424-25 (2019).

24. *Id.* at 424.

25. *Id.*

26. About Us: Who We Are, NAT'L CHILD TRAUMATIC STRESS NETWORK, <https://www.nctsn.org/about-us/who-we-are#page> (last visited Mar. 24, 2024).

27. *Id.*

corrective measure to zero-tolerance policies “which have affected black youth disproportionately since their inception.”²⁸

Despite these national and federally-funded efforts, the challenge continues to be that “empirical work informing trauma-informed teaching and teacher education” is under-researched and inconsistently implemented.²⁹ In particular, educators may struggle to justify a trauma-based approach because there is a lack of evidence “that the guidance offered” with respect to trauma-informed teaching practices is “rooted in an empirical base.”³⁰ While it is true that the number of education researchers focused on trauma-informed practices in schools is growing, the currentness of this endeavor means that “research emanating from education researchers” is scarce.³¹ Nevertheless, it is safe to say that educators agree that trauma-informed teaching practices are critical to student success, as they represent “a significant shift towards educational practices and policies which seek to better understand who students are, why they may present with challenges at school, and how staff and systems can respond to these challenges, using student strengths to build resilience.”³²

TRAUMA-INFORMED PRACTICES IN HIGHER EDUCATION/LAW SCHOOLS

Most pedagogical research related to trauma-informed education has traditionally focused on K-12 education, though in the past decade there has been more interest and scholarship at the graduate level, most notably in both social work education³³ and medical education.³⁴ However, the vast majority of research and scholarship

28. Sydney Ford, Learning While Black: How “Zero Tolerance” Policies Disproportionately Affect Black Students. 32 U. Fla. J. L. & Pub. Pol’y 49, 53

29. Thomas et al., *supra* note 23, at 422.

30. *Id.* at 443.

31. *Id.* at 422.

32. Stacy A. Gherardi et al., *Trauma-Sensitive Schools and Social Justice: A Critical Analysis*, 52 URB. REV. 482, 497 (2020).

33. E.g., Janice Carello & Lisa D. Butler, *Potentially Perilous Pedagogies: Teaching Trauma Is Not the Same as Trauma-Informed Teaching*, 15 J. TRAUMA & DISSOCIATION 153 (2014) [hereinafter Carello I].

34. See Taylor Brown et al., *Trauma-Informed Medical Education (TIME): Advancing Curricular Content and Educational Context*, 96 ACAD. MED. 661 (2021).

focuses on school-based interventions for school-aged children because of the "unique position of schools within the lives of students and their families as sites for identification and screening of children for services."³⁵ That lens, of using trauma-informed approaches to identify children and families in need of social services, is nearly wholly irrelevant to law schools, thus making it challenging for legal educators to know what to implement and how.

That said, trauma-informed teaching is happening at law schools in a limited way.³⁶ It primarily occurs in the clinical context.³⁷ In law school clinics, students are taught to employ trauma-informed practices in their work with clients.³⁸ In this setting, trauma-informed practice occurs "when the practitioner, here a law student, puts the realities of the clients' trauma experiences at the forefront in engaging with clients and adjusts the practice approach informed by the individual client's trauma experience."³⁹ In clinics, students are "taught how to connect with their clients, while drawing the appropriate boundaries of the attorney-client relationship."⁴⁰ While this is certainly a necessary skill set for all practicing attorneys, and the implementation in the clinical setting is laudable, the application of trauma-informed learning in law schools is too narrow. Legal educators must realize that all of their students will, upon graduation and bar passage, no longer be student-attorneys but simply attorneys of the non-student variety who will need these skills, too. But trauma-informed teaching is about so much more than educating our students for their work with clients after graduation. It is about how we teach our students now, as they embark on a legal education, not later when they begin a legal career. We must remember that we are educators who can and should use a trauma-informed approach as we teach our students, in every context where we meet them.

35. Thomas et al., *supra* note 23, at 431.

36. See Mallika Kaur, *Negotiating Trauma & Teaching Law*, 35 J.L. & SOC. POL'Y 113 (2021); see also Sarah Katz, *We Need to Talk About Trauma: Integrating Trauma-Informed Practice into the Family Law Classroom*, 60 FAM. CT. REV. 757 (2022) [hereinafter Katz I].

37. Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 359 [hereinafter Katz II]; Lynette M. Parker, *Increasing Law Students' Effectiveness When Representing Traumatized Clients: A Case Study of the Katharine & George Alexander Community Law Center*, 21 GEO. IMMIGR. L.J. 163 (2007).

38. Katz II, *supra* note 37, at 361.

39. *Id.*

40. *Id.*

Is legal practice really that different from medical practice, or perhaps more apt, are medical students really that different from law students? As both fields often require significant interfacing with the public during a time of heightened stress, it makes sense that law schools should include trauma-based lessons in training their clinical students.⁴¹ However, there is no explanation for the fact that medical students enjoy trauma-informed teaching from their professors while law students apparently do not.⁴² Given the content of 1L classes, one could argue that it's even more important for law students to receive instruction rooted in trauma-informed practices immediately, as opposed to hearing about it only in upper-level clinics.⁴³ Are we to believe that Gross Anatomy is more traumatic for first-year medical students than the blatant racism, sexism, homophobia, discrimination, and oppression present in Constitutional Law courses is for first-year law students?⁴⁴

41. Articles about teaching trauma-related skills, such as cultural competence, tend to focus on student attorneys who need these skills in order to work effectively with the clients of their clinic. *See, e.g.* Jennifer Safstrom & Joseph Mead, *Developing Inclusive Language Competency in Clinical Teaching*, 29 CLINICAL L. REV. 349 (2023).

42. *Id.* at 350, 350 n. 6 (“This is why other client-focused disciplines, like medicine, emphasize language training as part of their professional development, recognizing that using proper language can have an outsized impact on the professional-client relationship.”) (citing Amy F. Crocker & Susan N. Smith, *Person-First Language: Are We Practicing What We Preach?*, 12 J. MULTIDISCIPLINARY HEALTHCARE 125, 125-29 (2019) (advocating for inclusive teaching practices while acknowledging difficulties in “maintain[ing] this practice while performing patient care” because of a disconnect with the “norm[s] in most practice settings”).

43. *See* Maryam Ahranjani, “*Toughen Up, Buttercup*” versus #TimesUp: Initial Findings of the ABA Women in Criminal Justice Task Force, 25 BERKLEY J. CRIM. L. 99, 103-04 (2020) (identifying criminal law as causing secondary and vicarious trauma, especially to women of color); Laura P. Graham, “*Safe Spaces*” and “*Brave Spaces*”: The Case for Creating Law School Classrooms That Are Both, 76 U. MIAMI L. REV. 84, 118 (2021) (“As too the curriculum, many law courses implicate difficult issues surrounding race, gender, poverty, discrimination, and human rights. As Gersen puts it, not only criminal law, but also torts, evidence, employment law, contracts, property, constitutional law, international law, legislative and administrative law, and civil procedure “can include plenty of topics that students may associate with trauma.”); Nancy Freeman, *No One Here*, 20 CHICANO-LATINO L. REV. 47, 48 (1999) [hereinafter *No One Here*] (“I sit in Constitutional Minority Procedure which some call Constitutional Criminal Procedure, understanding that criminal and minority are interchangeable, knowing the course would be more accurately entitled Unconstitutional Negro Procedure . . .”); Christophe G. Courchesne, “*A Suggestion of a Fundamental Nature*”: *Imagining a Legal Education of Solely Electives Taught as Discussions*, 29 RUTGERS L. REC. 21, 37-38 (2005) (describing law students as the “walking wounded”).

44. It is not just instructor-to-student practices where law schools are behind. *See* Graham, *supra* note 43, at 146-47 (noting that other disciplines regularly train faculty on trauma-

Despite the countless ways the world has changed and despite the growth of scientifically-based educational research, law school content, delivery, and assessment have remained relatively unchanged for the last fifty years, at least for first-year students.⁴⁵ Most first-year doctrinal courses still employ the Socratic method and one final exam.⁴⁶ The 1L student experience also remains much the same: rooted in competition and mentally and physically exhausting.⁴⁷

That said, those in legal education are not wholly resistant to change and adaptation. Certainly, law professors are, and have been, grappling with issues related to classroom climate by making well-intentioned changes to their courses. For better or worse, recent years have seen the rise of trigger and content warnings,⁴⁸ removal of challenging content from syllabi and exams,⁴⁹ excusing students from readings and other assignments if completing them would be harmful,⁵⁰ not using the Socratic method “when covering potentially (re)traumatizing cases,” assigning students to cases while allowing them to swap,⁵¹ and increased discussion of and training around cultural

responsive methods such as cross-cultural competence while law schools do not) (“Cross-cultural training for law faculty, staff, and administrators should be a regular, systematic part of their professional development, as it has been for years in other post-graduate disciplines, including medicine, social work, and business.”).

45. See Stephanie Roberts Hartung, *Book Review*, 69 J. LEGAL EDUC. 217, 217-18 (2019) (reviewing BEYOND ONE L: STORIES ABOUT FINDING MEANING AND MAKING A DIFFERENCE IN LAW (Nancy Levit & Allen Rostron eds., 2019) (noting the book “reminds us how many aspects of legal education remain the same” since publication of *One L* in 1975).

46. *Id.*

47. *Id.* at 218; Courchesne, *supra* note 43, at 28-29.

48. Laguardia et al., *supra* note 22, at 882.

49. See *Creating Inclusive Classrooms Through “Trauma-Informed Teaching,”* UC S.F. L. (Oct. 22, 2021), <https://www.uchastings.edu/2021/10/22/creating-inclusive-classrooms/> (permitting survivors of violence to omit a certain case to avoid harming them); *Id.* (highlighting Prof. Lois Schwartz’s teaching methods).

50. *Id.*

51. Hartung, *supra* note 45, at 223 (summarizing Adrien Katherine Wing’s essay as discussing the “added layer of trauma” of being a 1L of color, and her approach now as a law professor and call for “profound change in legal education” including “replac[ing] the demoralizing Socratic method with a more compassionate approach.”); Graham, *supra* note 43, at 119-20 (noting that the Socratic method “can compound the ‘triggering’ that law students may feel when difficult issues arise in class”); Conor Friedersdorf, *At Law School, Is Insensitivity Grounds for an Objection?*, ATL. (Dec. 19, 2014), <https://www.theatlantic.com/education/archive/2014/12/at-law-school-is-insensitivity-grounds-for-an-objection/383882/>.

competence.⁵² Others, who are no less thoughtful, decry these practices as creating graduates who are ill-equipped to face the realities of practice.⁵³ These scholars argue that while some traditional legal education practices may traumatize or re-traumatize students, they view them as a necessary aspect of a complete legal education.⁵⁴ Scholars have even defended the use of slurs in the classroom, with the rationale that whether hearing the word traumatizes a law student or not, lawyers will hear it in practice and must be prepared to engage competently regardless of their personal feelings.⁵⁵

In short, while there is some emerging scholarship about trauma-informed learning in law school classrooms, and while law professors have made and continue to make attempts towards more sensitivity in their pedagogy, these steps are not explicitly grounded in science. Because of this, they are often less effective than they could be. They are also more susceptible to the criticism that professors are simply caving to complaints of student discomfort or treating students as customers, and thus coddling them.⁵⁶ Further, because trauma-informed

52. Safstrom & Mead, *supra* note 41, at 356; Phyllis Taitte & Nicola “Nicky” Boothe, *Teaching Cultural Competence in Law School Curricula: An Essential Step to Facilitate Diversity, Equity, & Inclusion in the Legal Profession*, 2022 UTAH L. REV. 813, 818 (2022) (“[L]aw students must be prepared to provide competent representation in an increasingly connected and diverse world.”).

53. See, e.g., GREG LUKIANOFF & JONATHAN HAIDT, *THE CODDLING OF THE AMERICAN MIND: HOW GOOD INTENTIONS AND BAD IDEAS ARE SETTING UP A GENERATION FOR FAILURE* (2018).

54. Laguardia et al., *supra* note 22, at 893; Chanbonpin, *supra* note 10, at 616 (“Faculty are concerned that students who require trigger warnings to mediate their educational experience will ultimately be poorly prepared for professional careers and personal lives which will undoubtedly be infected with violence of all sorts – misogyny, homophobia, and racism, among them.”).

55. See Randall Kennedy & Eugene Volokh, *The New Taboo: Quoting Epithets in the Classroom and Beyond*, 49 CAP. U. L. REV. 1 (2021).

56. Christopher J. Roederer, *Free Speech on the Law School Campus: Is it the Hammer or the Wrecking Ball that Speaks?*, 15 U. ST. THOMAS L.J. 26, 68, 78-79 (2018) (discussing “student-as-customer” model); Chanbonpin, *supra* note 10, at 621 (“For the student-consumer, law degrees come with a hefty price tag, and in this consumer transaction, students come to expect a reciprocal level of customer service and attention. And as consumers, students assert the power to dictate the content and other particulars of their legal education.”); Graham, *supra* note 43, at 103-04 (“[M]any colleges and universities have acceded to student demands to cancel speakers and events and to censor speech or writing that might cause emotional discomfort to some students.”).

teaching practices may not be explicitly grounded in science, they are also too slow in coming.⁵⁷

It is possible that this disconnect between effort and outcome is rooted in a misunderstanding of what trauma looks like in the classroom. Legal educators may misunderstand how trauma presents, and thus, see no need to employ trauma-informed pedagogy because they do not believe students are exhibiting trauma responses in their classrooms.

TRAUMA IN THE CLASSROOM: WHAT DOES IT LOOK LIKE?

It is highly likely that you have witnessed trauma responses from students in your classroom. It is also highly likely that you did not label these behaviors as trauma responses. You may not have noticed them at all; or, you may have mischaracterized them as a different type of behavior stemming from a different cause. This is because trauma responses rarely look like what we might expect. Trauma responses in a formal social setting such as a graduate-level class will likely not present as outbursts or panic attacks, despite the fact that a student experiencing a trauma response is often in “flight-or-fight” mode.⁵⁸ If a student is in “fight” mode, the “response may manifest in monopolizing the classroom dialogue, a raised voice, reddened face, or even crying.”⁵⁹ If a student is in either “flight” or “freeze,” the visible responses are similar: “students getting up to leave the room, withdrawing from the conversation, or not finding the words to articulate thoughts.”⁶⁰ Students in fight, flight, or freeze mode also commonly exhibit hyperactivity, disengagement, or in some instances, misplaced aggression.⁶¹ Students’ speech may become monotone or otherwise “not conducive to

57. Gibson, *supra* note 21, at 255 (“Historically, the legal profession has lagged behind other professions in addressing various societal and professional challenges, like racism, addiction, gender bias, and pay equity.”); Taite & Boothe, *supra* note 52, at 818.

58. Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 785 (2018) (“When students experience high emotional responses during a racialized interaction within the classroom, elements of fight, flight, or freeze response are triggered that stem from our threat coping mechanism. For different individuals, being faced with a highly charged topic—such as race within the classroom—may evoke symptoms of escape, such as flight or freeze, or a defensive response, such as fight.”).

59. *Id.* at 785-86.

60. *Id.* at 786.

61. Kenneth Tobin et al., *Expression of Emotions and Physiological Changes During Teaching*, 11 CULTURAL STUD. SCI. EDUC. 669, 673 (2016).

communication.”⁶² Students “might not clearly hear what others are saying because of an inability to differentiate the human voice from other environmental noise.”⁶³ Students’ physiological responses may also include “high heart rate, flushed cheeks, increased perspiration, and feeling faint” combined with “large drops in blood pressure . . . and an inability to express facial emotions.”⁶⁴ It seems obvious, but is perhaps worth mentioning nevertheless, that “[p]hysiological conditions such as these do not seem to be conducive to good teaching and learning.”⁶⁵ Thus, if we want our students to be in the best state to learn, we must cue safety to prevent to the extent possible students entering the flight or fight state. It is also important that instructors shift their perspective: rather than “viewing students’ undesirable behaviors (e.g., avoidance, aggression, disengagement) as inherently bad or oppositional,” we must “view[] each student as having been affected in some way by their experiences . . . Using a trauma lens when handling difficulties with students means shifting the question from ‘what is wrong with you’” to ‘what is happening with you?’”⁶⁶

HOW TRAUMA AFFECTS THE BRAIN

Very often discussions of trauma-informed education have devolved for some into an internal debate between coddling students on one side, and preparing them for the “real world” on the other. This is a false choice. Trauma-informed education is not about insulating students from the realities of law practice. It is an overall strategy to make legal education accessible to everyone in the room. Being trauma-informed is certainly a pedagogical best practice; it is also an equity issue.⁶⁷ Nevertheless, the false dichotomy persists. It is in part for this reason that we dig deeply into the physiological changes in the brain wrought by trauma: we defer to hard science to respond to those who think we are just being soft on our students.

62. *Id.*

63. *Id.*

64. *Id.* at 680.

65. *Id.* at 673.

66. Thomas et al., *supra* note 23, at 428.

67. Taite & Boothe, *supra* note 52, at 815.

PART 1: WHAT IF THE BEAR LIVES WITH YOU?

In order to better understand trauma-informed education practices, it's important to have a basic understanding of how trauma affects the brain. In a non-trauma-affected brain, when we see, hear, or otherwise sense something, that sensation first comes in through a part of the brain called the thalamus, and then it goes in two directions.⁶⁸ First, it goes to the amygdala, which is like the brain's smoke detector.⁶⁹ Its job is to determine whether what we see or hear poses any kind of threat, e.g. an angry bear or snake.⁷⁰ If there is a threat, the amygdala kicks us into action by initiating the production of stress hormones, specifically adrenaline and cortisol.⁷¹ These hormones increase the heart rate and breathing, redirecting energy from the cerebral cortex, and so turning down the higher order processing.⁷² This makes a certain amount of sense: higher order processing takes up valuable resources that are suddenly needed to escape whatever the danger is. We commonly refer to this survival mode as "fight or flight," and it is an effective evolutionary defense against threat.⁷³

At almost the same time, the same information about what we see and hear goes to a part of the brain called the prefrontal cortex.⁷⁴ This is the part of the brain responsible for higher order processing, nuanced emotional responses, and, for our purposes here, learning.⁷⁵ The prefrontal cortex helps interpret the threat-response of the amygdala.⁷⁶ For example, you see something you don't immediately identify and you jump away, and then the prefrontal cortex says, 'Nope, that's not a snake; it's a coiled hose.' "As long as you are not too upset, your [prefrontal cortex] can restore your balance by helping you realize that you are responding to a false alarm and abort the stress response."⁷⁷

68. BESSEL A. VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA*, 60-61 (2014).

69. *Id.*; NADINE BURKE HARRIS, *THE DEEPEST WELL: HEALING THE LONG-TERM EFFECTS OF CHILDHOOD ADVERSITY*, 49 (2018).

70. VAN DER KOLK, *supra* note 68, at 57; HARRIS *supra* note 69, at 48-51

71. *Id.*

72. *Id.*

73. HARRIS, *supra* note 69, at 50-51.

74. VAN DER KOLK, *supra* note 68, at 62.

75. *Id.*

76. *Id.*

77. *Id.*

For someone trauma-affected, extended exposure to traumatic circumstances or an extreme traumatic event has disrupted the neural pathways to the amygdala and the prefrontal cortex.⁷⁸ Traumatic events “enhance[] amygdala reactivity during the presentation of negative emotional stimuli and weaken[] amygdala-prefrontal cortex...connectivity.”⁷⁹ These neural pathways are entirely out of balance and unreliable. For someone trauma-affected, the amygdala is predisposed to interpret any input as a threat and initiate the stress response.⁸⁰ The ability of the prefrontal cortex to interpret a stress response as a false alarm and restore balance is slowed and sometimes completely stopped. Simply put: someone trauma-affected is quick to interpret an event or environment as threatening, and quick to jump to “fight or flight.” A person living in “fight or flight” mode has diminished capacity for higher order processing of nuanced emotion, and for our purposes here, of learning.

Nadine Burke Harris has a great way of conceptualizing how a brain becomes trauma-affected.⁸¹ Imagine that you are walking through the woods - up the driveway towards the cabin perhaps - and you encounter a bear. Immediately the fight or flight response kicks in. The amygdala tells the hippocampus to dump adrenaline and cortisol into your system, and you move quickly into survival mode. As you run to the cabin you are hypervigilant for any sign that you may be in imminent danger, any sign that the bear is following you. When you finally get to the cabin, you begin to feel safe. You take a deep breath and relax. “[A]fter the threat passes, the body metabolizes the stress hormones, and returns to a state of homeostasis.”⁸²

78. See Angela Guadagno et al., *Effects of Early Life Stress on the Developing Basolateral Amygdala-Prefrontal Cortex Circuit: The Emerging Role of Local Inhibition and Perineuronal Nets*, 15 FRONTIERS HUM. NEUROSCIENCE (2021), <https://www.frontiersin.org/articles/10.3389/fnhum.2021.669120/full> (internal citations omitted).

79. *Id.*

80. VAN DER KOLK, *supra* note 70, at 73 (“While the smoke detector is usually pretty good at picking up danger clues, trauma increases the risk of misinterpreting whether a particular situation is dangerous or safe.”).

81. Much of the analogy of the bear here is drawn from Melissa Tayles, *Trauma-Informed Writing Pedagogy: Ways to Support Student Writers Affected by Trauma and Traumatic Stress*, 48 TEACHING ENG. THE TWO-YEAR COLL. 295, 299 (internal citations omitted).

82. *Id.*

But imagine that the bear lives in the cabin with you.⁸³ You are constantly on alert, constantly prepared to escape or fight back. You live in a state of hyperarousal. The constant overflow of adrenaline and cortisol completely disrupts the reliable neural pathways for so long that they become unreliable. “The term for this is disruption of feedback inhibition, which is a science-y way of saying that the body’s stress thermostat is broken. instead of shutting off the supply of ‘heat’ when a certain point is reached, it just keeps on blasting cortisol through your system.”⁸⁴ You are quick to interpret something as a threat, quick to jump to fight or flight, and slow to return to homeostasis. Colloquially, you are easily “triggered.” Now imagine that the bear is an abusive partner or family member; imagine the bear is racism or poverty; imagine the bear is the pandemic where you are perpetually hyper vigilant.

Many of our students come to class in this state of hypervigilance, quick to read an environment as unsafe, and jump to a state that makes their learning much more difficult. Knowing this, we have a responsibility to send cues that the classroom and we are safe, in order to keep them available for learning. In addition, “trauma increases susceptibility to depression, and trauma symptoms are more likely to co-occur with depression symptoms.”⁸⁵ Thus, our trauma-affected students may be grappling with the effects of their trauma in multiple ways simultaneously. Again, given the number of students affected by trauma, and what we know about teaching in ways that help them learn, teaching from a trauma-informed lens is an equity issue.

PART 2: POLYVAGAL THEORY

The Polyvagal Theory provides another frame through which to view the body’s response to trauma. Stephen Porges identifies three basic psychophysiological states, “adaptive stress and coping systems” that we adopt in response to the perception of threat or danger: the “social engagement system,” fight or flight, and freeze.⁸⁶ As we will

83. HARRIS, *supra* note 69, 73at 52.

84. *Id.* at 53.

85. Davidson, *supra* note **Error! Bookmark not defined.**, at 3 (internal citations omitted).

86. Stephen W. Porges, *The Polyvagal Theory: Phylogenetic Substrates of a Social Nervous System*. 42 INT’L J. PSYCHOPHYSIOLOGY 123, 129 (2001) [hereinafter Porges I]; Stephen

discuss in some depth below, this “perception of threat or danger” is at an unconscious, neurological level. “Feeling safe is a nonconscious experience that is assessed by our autonomic nervous system (ANS) through a process Porges refers to as neuroception.”⁸⁷ In the classroom, “[f]eeling safe goes beyond physical aspects; safety also refers to the emotional and psychological security of the student.”⁸⁸ Psychological safety is “the sense that one’s identity, perspectives, and contributions are valuable, despite the experience or possibility of discomfort or harm within a learning setting. . . . When safety is lacking, students invoke defense mechanisms that monopolize the students’ cognitive energy. Thus, they spend much of their energy coping rather than learning.”⁸⁹

Each of the three psychophysiological states involves a different branch of the vagus nerve, hence “polyvagal theory.”⁹⁰ The vagus nerve “is a sophisticated pathway that carries messages quickly from the brainstem to the heart, lungs, and intestines. It regulates some facial muscles, including the ear, and can enhance our ability to give others appropriate facial cues and even hear them better.”⁹¹ The vagus nerve also influences heart rate and breathing.⁹²

The most advanced psychophysiological state mediated by the vagus nerve is social engagement, which is the most advanced of the three states.⁹³ This state occurs when the vagus nerve is activated. The vagus nerve lowers the heart rate, decreases respiration, and slows

W. Porges, *Polyvagal Theory: A Science of Safety*, 16 FRONTIERS INTEGRATIVE NEUROSCIENCE 1, 6 (2022), <https://www.frontiersin.org/articles/10.3389/fnint.2022.871227/full> [hereinafter Porges II].

87. Niki Elliot, *Using Mind-Body Practices to Uproot Unconscious Bias in the Education Profession*, AILACTE J. 133, 137 (2021).

88. Lain, *supra* note 58 at 786.

89. *Id.*

90. The vagus nerve, the tenth cranial nerve, is the longest nerve in the body. It controls the autonomic functions of the body, e.g. digestion, heart rate, and respiration. It is also part of the neural complex that controls the muscles of the face and head, e.g. the eyes, the ears, and the muscles involved in vocalization.

91. Steven W. Porges, *The Polyvagal Theory: Phylogenetic Contributions to Social Behavior*, 79 PHYSIOLOGY & BEHAV. 503, 504 (2003) [hereinafter Porges III]; Jennifer Wright, *Social Engagement - A Pathway to Relaxation*, CHELSEA PSYCH., <http://www.chelseapsychology.com.au/index.php/library/34-social-engagement-could-be-a-pathway-to-relaxation> (last visited Mar. 24, 2024).

92. Porges III, *supra* note 91, at 504; Wright, *supra* note 91.

93. Porges I, *supra* note 86, at 124.

digestion, Porges refers to this as the “vagal brake.”⁹⁴ When our bodies are in the social engagement state, our blood pressure goes down, our heart rate and breathing slow; we exhibit less stress.⁹⁵ Vital energy is repurposed to the prefrontal cortex for higher order processing, and specifically, learning: “a stressed student has trouble with retention of information – something that is critical to success in law school.”⁹⁶ In the social engagement state, we are physically calm and “feel safe enough to move closer to another person.”⁹⁷ We have the capacity to connect and collaborate with others, experience and express nuanced emotion, and for our purposes here, learn new information.

However, when an environment is perceived as unsafe,⁹⁸ we move to the next state: mobilization.⁹⁹ The vagal brake is deactivated, the sympathetic nervous system takes over, and the heart-rate and respiration increase.¹⁰⁰ This state is more commonly known as the fight or flight state. At a neurological level, we are repurposing valuable energy from the prefrontal cortex, directing it towards escaping from whatever the perceived danger is.¹⁰¹ In the woods, confronted by a predator, this is a valuable adaptation. In the classroom, confronted by a cold-calling Socratic professor in a class for which you didn’t really understand the reading, or the reading included codification of systemic racism or any other -ism that has caused you trauma, it is less valuable.

If the danger persists or is seen as inescapable, the final neurophysiological state is the immobilization or freeze state.¹⁰² The body moves towards shutting down, conserving resources. This is where you play dead and hope that the threat passes. This reaction is mediated by the most primitive branch of the vagus nerve, the unmyelinated

94. *Id.* at 129.

95. *Id.* at 125.

96. Gibson, *supra* note 21, at 263.

97. Porges III, *supra* note 91, at 504; Wright, *supra* note 91.

98. Notably, this perception is often at an unconscious level. *See* section: The Polyvagal Theory: Neuroception and Co-Regulation of Emotion *infra*.

99. Porges I, *supra* note 86, at 130-32.

100. *Id.*

101. HARRIS, *supra* note 61, at 50-51.

102. Tobin et al., *supra* note 61 at 672 (internal citations omitted).

“dorsal vagal complex.”¹⁰³ Students who reach this state are incapable of real learning.¹⁰⁴

“Polyvagal theory proposes a *hierarchical* response strategy to environmental challenges,” with the most sophisticated state, the social engagement state, accessed first and typically serving as the default state.¹⁰⁵ When not activated by trauma, people tend to live in the social engagement system, able to communicate, make connections, and again, learn. In response to a perceived threat, a person moves into the next state, fight or flight, where they prepare either to respond aggressively to whatever the threat is, or to flee.¹⁰⁶ Stress increases, and learning becomes more difficult. If the threat persists, grows, or proves to be inescapable, the body shifts into the third state with the vagus nerve further slowing the body down to conserve resources.¹⁰⁷ In this “freeze” state, the ability to learn is nearly nonexistent.

The key takeaways for educators are, first, that the heart and brain are intensely connected; and second, that people must perceive their environments as physically and socially safe to learn.¹⁰⁸ Polyvagal theory is useful for educators in framing their understanding of ways to keep students in the social engagement state, rather than allowing a trauma response to deactivate the vagus and push them to fight/flight, or to engage the primitive vagus and cause them to freeze. The goal, clearly, is to keep our students in the social engagement system, where connection and learning are possible. To do this, we have to actively signal that the environment is safe (we will refer to this as “cuing safety”), especially for those who have been affected by trauma.

103. Porges I, *supra* note 86, at 131.

104. Graham, *supra* note 43, at 140 (“Optimal learning occurs only when students feel psychologically safe,” and when students feel unsafe, their “cognitive energy is monopolized by coping rather than learning.”).

105. Porges I, *supra* note 86, at 132.

106. *Id.* at 130.

107. *Id.* at 131.

108. Graham, *supra* note 43, at 140.

ELEMENTS OF TRAUMA-INFORMED PRACTICE

Because different professions have recognized the importance of being trauma-informed in working with clients and students, writers in these different fields enumerate the elements of “trauma-informed practice” differently.¹⁰⁹ The Substance Abuse and Mental Health Administration has identified “six key principles, which provide the foundation for [trauma-informed teaching] activities. They include: (1) safety; (2) trustworthiness and transparency; (3) peer support; (4) collaboration and mutuality; (5) empowerment, voice and choice; and (6) cultural, historical, and gender issues.”¹¹⁰ And, across disciplines, there are commonalities in each description: each writer talks about the absolute necessity to cue safety in the classroom.¹¹¹ Also, each suggests giving students some aspect of choice and control over what is expected of them. Further, they all talk about making sure that students understand the relevance of what they are doing to their life and profession (what Bessel Van der Kolk calls “Reflex of Purpose.”). And finally, they all point out that the positive and trusting relationship with the teacher or professor is paramount.¹¹²

CUING SAFETY

Cuing safety is by far the most essential element of a trauma-informed practice. Post-secondary administrators acknowledge that “a

109. SAMHSA, *supra* note 8, at 11; Phyllis Thompson & Heidi Marsh, *Centering Equity: Trauma-Informed Principles and Feminist Practice*, in *TRAUMA-INFORMED PEDAGOGIES: A GUIDE FOR RESPONDING TO CRISIS AND INEQUALITY IN HIGHER EDUCATION* 15, 17 (Phyllis Thompson & Janice Carello eds., 2022); Mays Imad, *Our Brains, Emotions, and Learning: Eight Principles of Trauma-Informed Teaching*, in *TRAUMA-INFORMED PEDAGOGIES: A GUIDE FOR RESPONDING TO CRISIS AND INEQUALITY IN HIGHER EDUCATION* 35, 39-44 (Phyllis Thompson & Janice Carello eds., 2022); Janice Carello & Lisa D. Butler, *Practicing What We Teach: Trauma-Informed Education Practice*, 35 *J. TEACHING SOC. WORK* 262, 264-65 (2015) [hereinafter Carello II]; Roger D. Fallout & Maxine Harris, *Creating Cultures of Trauma Informed Care (CCTIC): A Self-Assessment and Planning Protocol*, ANNA INST. (2009), <http://www.theannainstitute.org/CCTICSELFASSPP.pdf>.

110. Stacy A. Gheradi et al., *Trauma-Sensitive Schools and Social Justice: A Critical Analysis*, 52 *URB. REV.* 482, 486 (2020) (citing SAMHSA 2014b).

111. Some of the articles talk about trauma informed clinical practice and being trauma informed for clients. For convenience and ease of understanding, I am going to use “classroom/student” even where “clinic/client” might be more accurate.

112. SAMHSA, *supra* note 8, at 11; Thompson, *supra* note 109, at 17; Carello II, *supra* note 109, at 264-65; Fallout & Harris, *supra* note 109.

feeling of safety is necessary in any inclusive space” because “students don’t fully embrace uncomfortable learning unless they are themselves comfortable.”¹¹³ We have divided the idea of cuing safety into two broad areas: first, recalling the polyvagal theory, we cue safety by being aware of our position in the classroom, and by presenting in ways that keep students in the social engagement system through what Porges calls “neuroception.”¹¹⁴ And second, cuing safety by being conscious and transparent about the content of what we present, giving students opportunities to be aware of their own possible negative responses, and inviting them to find ways to take care of themselves, to feel safe, and to remain socially engaged. Thus, while cuing safety begins with the instructor in both areas, students have some responsibility for identifying and addressing the ways in which the classroom or curriculum makes them feel unsafe.

THE POLYVAGAL THEORY: NEUROCEPTION AND CO-REGULATION OF EMOTION

Looking at trauma-informed teaching through the lens of polyvagal theory invites us to cue safety at an unconscious level. Our students are perpetually scanning their environment for threat, both consciously and unconsciously. “If a learner assesses the environment and registers a neuroception of safety, the ventral vagal parasympathetic branch of the ANS is activated, allowing social engagement and optimum learning.”¹¹⁵ Polyvagal theory “emphasizes that in the presence of cues of predictable social interactions of support,” we can manage “our innate reactions to threat.”¹¹⁶ This proves true “whether the threat is tangible and observable or invisible and imaginable.”¹¹⁷ When someone neurocepts danger, their “heart rate and/or the oxygenation level might signal, through the unmyelinated vagus, that

113. Laguardia et al., *supra* note 22, at 882.

114. STEPHEN W. PORGES, *THE POLYVAGAL THEORY: NEUROPHYSIOLOGICAL FOUNDATIONS OF EMOTIONS, ATTACHMENT, COMMUNICATIONS AND SELF-REGULATION* 57-59 (2011).

115. Elliot, *supra* note 87.

116. Stephen W. Porges, *The COVID-19 Pandemic is a Paradoxical Challenge to our Nervous System: A Polyvagal Perspective*, 17(2) *CLINICAL NEUROPSYCHIATRY* 135, 136 (2020) [hereinafter Porges IV].

117. Tobin et al., *supra* note 61.

immobilization is desirable.” i.e. they are liable to freeze.¹¹⁸ In the classroom, possible danger can take the form of “new . . . subject matter that is perceived to be difficult.”¹¹⁹

The goal of a trauma-informed educator is to cue safety consistently and continuously during the lesson so that students remain in the social engagement state instead of neurocepting danger and moving to the mobilization (flight or fight) or immobilization (freeze) state. Further, instructors should cue safety because “[e]mpirical evidence suggests that a positive classroom climate is linked to better academic performance and learning outcomes.”¹²⁰ And while trauma-informed teaching practices such as cuing safety exist in order to make learning accessible to those with trauma-affected brains, the reality is that these practices improve accessibility for *all* students. In this way, trauma-informed teaching practices are akin to Universal Design: they are just best educational practices, plain and simple. Just as “[t]rauma-informed lawyering is not a radical concept, but rather [is] simply good lawyering,”¹²¹ trauma-informed teaching is also not a radical concept, but is simply good teaching.

So how do we cue safety at the level of neuroception? According to the polyvagal theory, we do this through things like tone of voice, facial expression, conscious eye contact, and self-regulation.¹²² We cue safety by accessing the “social engagement system, which focuses only on the neural regulation of the striated muscles of the face and head and the specific autonomic functions mediated by the vagus.”¹²³ “The social engagement system has a control component in the cortex, [which controls] eyelid opening (e.g. looking);, facial muscles (e.g. emotional expression); middle ear muscles (e.g. extracting human voice from background noise); muscles of mastication (e.g. ingestion); laryngeal

118. *Id.*

119. *Id.*

120. Sara Scrimin et al., *Classroom Climate, Cardiac Vagal Tone, and Inhibitory Control: Links to Focused Attention in First Graders*. 12 MIND, BRAIN, & EDUC. 61, 62 (2018) (noting also that a positive classroom climate is linked to increased motivation and emotion regulation skills) (internal citations omitted).

121. Katz I, *supra* note 36.

122. Rebecca Bailey & Elizabeth Bailey, *Effective Communication with Participants in Court Hearings: Using Polyvagal Theory in the Courtroom*, 73 JUV. FAM. CT. J. 57, 58 (2022).

123. Porges I, *supra* note 86, at 124.

and pharyngeal muscles (e.g. vocalization and language); and head turning (e.g. social gesture and orientation).”¹²⁴

By being conscious of vocal tone, facial expression, and overall demeanor, we help co-regulate students’ psychophysiological states, helping to keep them in a place where learning is possible. This begs the question: what kind of facial expression, demeanor, tone, and eye contact? The answer is certainly unique to each person, and context and content dependent. The type of eye contact and student engagement possible in a small seminar class is very different from the type of engagement possible in, say, a legal research class (where laptops are a necessary evil), which is different from the kind of engagement available to a professor in a large lecture hall. But we have a literal catalog of *What the Best Law Teachers Do*¹²⁵ describing how effective classroom teachers consciously create a classroom presence to keep their students in this social engagement space. When engaging students directly, they “lean[] in and nod [their] head,”¹²⁶ using “body language and facial expressions”¹²⁷ that communicate genuine interest and joy in student learning. In describing his engaged warmth in the classroom, one professor’s students explained how “his demeanor makes them feel safe.”¹²⁸ “Human connections depend on eye contact, postural signaling, and other verbal and nonverbal cues to cultivate students’ ‘immediacy’ or proximity to the teacher’s conversant with the material, thereby helping them to make that proficiency their own.”¹²⁹

The instructor/student relationship is paramount in cuing safety, and polyvagal theory indicates that we can use co-regulation of emotion to strengthen this relationship. One of the most practical applications of the polyvagal theory is in the co-regulation of emotion. “Co-regulation” is the neurological process by which our own self-regulation is reflected by people with whom we are interacting.¹³⁰ If we actively cue that we are socially engaged and safe, not only do we regulate our own

124. *Id.*

125. MICHAEL HUNTER SCHWARTZ ET AL., *WHAT THE BEST LAW TEACHERS DO* (2013).

126. *Id.* at 189.

127. *Id.*

128. *Id.* at 57.

129. Paula A. Franzese, *The Power of Empathy in the Classroom*, 47 SETON HALL L. REV. 693, 702 (2017).

130. Davidson, *supra* note **Error! Bookmark not defined.**

emotions, but we help our students regulate their own emotional state. Essentially, “[a] calm nervous system is able to calm another nervous system.”¹³¹ Thus, by projecting that we—the instructor—are in the social engagement space, we can have a direct effect on our students’ emotional regulation, keeping them available for social engagement and learning. And by cuing safety by means of vocal tone, eye movement, and facial expression, we make positive relationships with our students possible.¹³²

CONTENT

One of the clearest elements of cuing safety is paying attention to the contents of the curriculum. One of the most commonplace ways of doing this is by prefixing a “trigger warning” on any material that the professor anticipates will be challenging for or might trigger students. However, as we discuss below, we are not convinced that trigger warnings, as they have been historically used and conceived, are the right approach. Notably, the bulk of the science in this area is inconclusive “about how to handle sensitive subjects in an educational setting.”¹³³ Thus, we are proponents of content interrogation through a trauma-informed lens.

Before we dig into why we are not proponents of trigger warnings as part of a trauma-informed approach, we also must acknowledge that individuals often misuse the word “trigger.” It does not mean “making someone feel uncomfortable,” although individuals often use it that way, especially our students.¹³⁴ Rather, individuals should use it “as a shorthand signifier for the stimulus that precipitates a return to the autonomic stress reaction that individuals experience’ after suffering or witnessing a catastrophe, such as ‘combat, violent crimes, sexual assault, kidnapping, natural disasters, car accidents, and imprisonment.’”¹³⁵ In short, individuals should only use the term “trigger” when the student’s body is having a physical reaction based on prior traumatic experiences, activating the fight-or-flight response.

131. Imad, *supra* note 109, at 39.

132. Tobin et al., *supra* note 61, at 673.

133. Kenneth Lasson, *The Decline of Free Speech on the Postmodern Campus: The Troubling Evolution of the Heckler’s Veto*, 37 QUINNIPIAC L. REV. 1, 78 (2018).

134. Graham, *supra* note 43, at 117.

135. *Id.*

JUST SAY NO TO TRIGGER WARNINGS

First, it is worth noting that the very idea of a trigger warning relies on instructor bias and judgment. The process first involves the instructor identifying the material as triggering thus making assumptions about what is or is not triggering for students (a dangerous and impossible task).¹³⁶ Historically, instructors reserved “‘Trigger warnings’ or ‘content notices’” for instances such as a single class session on sex crimes during a semester of Criminal Law.¹³⁷ As such, this type of warning is of “little help to the student who was the victim of a carjacking . . . Or the student whose California family lost everything in the Paradise fires . . . Or the student . . . whose father lost his business and livelihood to partners who had more savvy contract lawyers.”¹³⁸ An instructor’s implicit bias is on display in predicting what a student may find triggering, and in reality, students may not know themselves what may retraumatize them. Providing isolated trigger warnings when covering content you *assume* is likely to retraumatize students is not the best approach to cueing safety.

Furthermore, a number of studies over the past few years have shown that trigger warnings are at best “[f]unctionally inert” and more likely harmful.¹³⁹ “[S]tudies strongly imply that trigger warnings reliably cause small increases in anxiety in college students without a history of trauma. This finding is consistent with research suggesting that trigger warnings increase anxiety in the short term.”¹⁴⁰ A trigger warning has the capacity to activate the hypervigilance in trauma-affected students, pushing them closer to fight-or-flight mode even before the triggering material appears. Trigger warnings may also prolong the distress of negative memories and reinforce the beliefs of trauma survivors “that trauma was central (rather than incidental or

136. Laguardia et al., *supra* note 22, at 882-83.

137. Chanbonpin, *supra* note 10, at 618.

138. Kaur, *supra* note 36, at 113.

139. Benjamin W. Bellet et al., *Trigger Warnings and Resilience in College Students: A Preregistered Replication and Extension*, 26 J. EXPERIMENTAL PSYCH. APPLIED 5, 721 (2020).

140. *Id.*

peripheral) to their identity.”¹⁴¹ One researcher called this “one of the most well documented relationships in traumatology.¹⁴²” Another opines that “[t]rigger warnings upset the stability of the classroom by demanding that individual and personal experiences with crime, law, and social policy should be recognized as making significant contributions to the learning process.”¹⁴³ The perverse consequence of trigger warnings, then, may be that they harm the people they are intended to protect.

Finally, we would be remiss if we did not acknowledge that a portion of law school instructors eschew trigger warnings as violative of academic freedom because “[a]ny mandate to include prescribed language infringes on a faculty member’s autonomy in the classroom.”¹⁴⁴ According to the National Coalition Against Censorship, “Trigger warnings suggest that classrooms should offer protection and comfort rather than an intellectually challenging education,” and that this has “a negative effect on academic freedom.”¹⁴⁵ However, while instructors typically use the “marketplace of ideas” to bolster claims of academic freedom, and “the marketplace of ideas allows for equal treatment of ideas, democracies require more than simply equality of ideas—they require that truths become separated from fictions through a system of democratic competence that is enhanced by academic freedom.”¹⁴⁶ Further, some scholars support a narrow view of academic freedom and “suggest[] that many academic freedom claims by faculty members are undeserving of academic freedom protection.”¹⁴⁷ Thus, we are not convinced that academic freedom is a proper defense to trigger warnings or content notifications.

In our classes, we do not provide trigger warnings for potentially sensitive material, and in fact, we do not provide trigger warnings at all. However, this is not because we don’t think that students should be alerted to potentially traumatizing material. Rather, we feel quite the

141. Jeannie Suk Gersen, *What if Trigger Warnings Don’t Work?*, NEW YORKER (Sept. 28, 2021), <https://www.newyorker.com/news/our-columnists/what-if-trigger-warnings-dont-work>.

¹⁴² *Id.*

143. Chanbonpin, *supra* note 10, at 627.

144. Chanbonpin, *supra* note 10, at 625.

145. Lasson, *supra* note 133.

146. Jason M. Shepard & Kathleen B. Culver, *Culture Wars on Campus: Academic Freedom, the First Amendment, and Partisan Outrage in Polarized Times*, 55 SAN DIEGO L. REV. 87, 122 (2018).

147. *Id.*

opposite, and so we provide a content notice for every class, normalizing the practice of telling students not only the learning objectives of the class but also letting them know what topics we will cover.¹⁴⁸ Unlike trigger warnings, content notices “do not generally allow students to skip material or opt out of class and do not require professors to provide alternate material.”¹⁴⁹ As a result, “they are tools of *inclusion*, not *exclusion*.”¹⁵⁰ Our policy to avoid trigger warnings while simultaneously providing thorough content notifications is perhaps best summed up by Joan Bertin, former director of the National Coalition Against Censorship: “By all means, tell students what you’ll be teaching in your course. But don’t tell them how they’re going to feel about it.”¹⁵¹

Because these notices are consistent and do not single out specific types of information, they are not warnings; rather, they are information. And notably, every content notice ends with the invitation to “do what you need to do to take care of yourself.” So, one class might begin: “today we will be using examples drawn from cases about student loans and bankruptcy. Do what you need to do to take care of yourself.” Another starts, “today we will be talking about character and fitness and admission to the bar, do what you need to do” And so when a class begins, “today we will be using examples related to the murder of George Floyd and Black Lives Matter protests,” the notice does not have the weight of a trigger warning; rather, it is informational.

As a final note, we acknowledge that the idea of the trigger warning has become so ingrained in some academic spaces that simply removing it from the classroom might seem abrupt. So, if you plan to move towards a regular content notice prefixed to *every* class rather than a trigger warning at the start of only potentially problematic classes, we suggest beginning the year with some kind of announcement, e.g.: “I’ve been looking at the research, and I’ve learned that the familiar ‘trigger warning’ may actually do more harm than good. With this in mind, I am going to begin each class with an indication of what topics will be covered that day. I will leave it to you to recognize your level of comfort

148. Graham, *supra* note 43, at 151-52.

149. *Id.*

150. *Id.* at 152.

151. Katy Waldman, *The Trapdoor of Trigger Words*, SLATE (Sept. 5, 2016, 8:00 PM), https://www.slate.com/articles/double_x/cover_story/2016/09/what_science_can_tell_us_about_trigger_warnings.html.

with the material, and as always, do what you need to do to take care of yourself.”

CONTENT INTERROGATION AND COURSE POLICIES

We are not saying that professors should teach the content of their classes with no regard for how it might affect students in the room. Professors should certainly interrogate their classroom materials and assignments using a trauma-sensitive lens and identify sensitive or triggering material. If they find potentially problematic material, they should make an intentional and, again, trauma-sensitive decision whether to retain the material or whether to look for a viable alternative.¹⁵² If they choose to retain it, they should present it in a way that acknowledges the sensitive nature of the material.

Some scholars also argue for integration of cultural competency and diversity, equity, and inclusion (DEI) into the course rather than supplementing the course with these topics, and thus, instructors must interrogate their courses for this integration.¹⁵³ This includes interrogating their selection of a coursebook, as “[m]ost coursebooks do not directly address cultural competency or DEI. As such, the professor must do the extra work to determine the best places to integrate the information.”¹⁵⁴ “If instructors complete this form of interrogation prior to writing course policies, assignments, online content, and feedback on student writing, they can make significant strides in creating safer learning environments for their students.”¹⁵⁵

152. There has been a good deal of scholarship recently about finding material that might replace triggering or biased material. *See, e.g.*, Kathleen D. Fletcher, *Casebooks, Bias, and Information Literacy—Do Law Librarians Have a Duty?*, 40 LEGAL REFERENCE SERVS. Q. 184 (2021); Justin Simard, *Citing Slavery*, 72 STAN. L. REV. 79 (2020); Etienne C. Toussaint, *The Miseducation of Public Citizens*, 29 GEO. J. ON POVERTY L. & POL’Y 287, 300 (2022) (recounting student experience of learning law of reasonableness with respect to deadly force and self-defense through *People v. Goetz*, where white man’s fear that four unarmed Black teenagers might harm him as reasonable, justifying his shooting and wounding them).

153. Taite & Boothe, *supra* note 53, at 815-16.

154. *Id.*

155. Tayles, *supra* note 81, at 307.

CLASSROOM SPACE: SAFE SPACE OR BRAVE SPACE OR NEITHER?

The actual classroom space is one of the most important and yet most often overlooked aspects of how a student feels in class. Students' physical location has a huge impact on their ability to learn because of everything they take in, or neurocept. In law schools, we likely take the physical classroom for granted, with instructors having no sense of "ownership" of the space. Compare this to elementary school teachers we all know who spend a week in August setting up their classroom and posting images on social media. There are practical reasons law school instructors feel divorced from the space, of course: we teach where the registrar assigns us, many other instructors use the classroom, and we may teach in a different classroom every semester.

Following the COVID-19 pandemic, most schools, especially law schools, rushed to return to in-person classes as soon as safety allowed. However, the legal academy may have failed to consider the many benefits of a virtual classroom. For example, "Many minoritized students reported feeling more comfortable speaking in virtual classrooms as they were still in the safe spaces of their homes."¹⁵⁶ We recognize that many educators may roll their eyes at the term "safe space." However, Gen Z students are "widely recognized as being more activist than their Millennial predecessors," and thus, "administrators in the higher education setting will need to figure out how to provide a learning environment that balances Gen Z students' insistence on addressing difficult social issues with their desire to do so in a safe space."¹⁵⁷ If their homes cannot serve as that space—and in law schools, virtual classes are scarce¹⁵⁸—then the classroom may have to become a

156. Gibson, *supra* note 21, at 265-66.

157. Graham, *supra* note 43, at 89-90.

158. There are only fifteen ABA-accredited law schools with hybrid or fully remote programs. In 2021, the ABA approved the first fully online JD program at St. Mary's University in San Antonio, Texas. See Stephen Burnett, *Law Schools Are Moving Online. Here's How Schools Can Build Strategy and Support for Virtual Law Programs*, ALM | LAW.COM (Feb. 6, 2023, 9:33 AM), <https://www.law.com/legaltechnews/2023/02/06/law-schools-are-moving-online-heres-how-schools-can-build-strategy-and-support-for-virtual-law-programs/>. It is unclear how many fully online JD programs are ABA accredited at this time, but it is less than five.

safe space or, its cousin, a brave space, to the extent that is even possible.¹⁵⁹

Laura P. Graham has suggested that law schools balance safe spaces with brave spaces.¹⁶⁰ Brave spaces are “classrooms where students can ‘process new and uncomfortable ideas productively.’”¹⁶¹ Educators should be comforted by the fact that the term “safe space,” as originally conceived, did not mean that students would avoid discomfort or be “‘shielded from opposing perspectives.’”¹⁶² Instead, safe spaces were supposed to be areas “where students would feel ‘safe’ to express perspectives and engage in debates that are outside of mainstream discourse.”¹⁶³ Nevertheless, the term has devolved, and understandably legal educators are wary of classifying their classrooms as safe spaces, as doing so could stifle “critical thought and intellectual growth – two linchpins of an effective legal education.”¹⁶⁴

So how can you ensure that your classroom is a brave space, if you are so inclined? Brave spaces require a “learning environment that allows students to engage with one another over controversial issues with honesty, sensitivity, and respect.”¹⁶⁵ First, students need a setting that fosters engagement with one another. Instead of large lecture halls where students disappear behind their laptop screens and stare at the backs of each other’s heads, consider a setup that ensures eye contact and encourages discussion. Whenever possible, we are proponents of Harkness tables and a discussion-style course.

The history of Harkness tables is fascinating and remains applicable nearly 100 years after its initial conception. In 1930, Phillips Exeter Academy tasked Edward S. Harkness with transforming American secondary education, and he proposed a classroom “where [students] could sit around a table with a teacher who would talk with them and instruct them by a sort of tutorial or conference method, where

159. Graham, *supra* note 43, at 90 (suggesting law school classrooms may not ever be “truly safe spaces”).

160. *Id.* at 91.

161. *Id.* at 92 (internal citation omitted).

162. *Id.* at 101.

163. *Id.*

164. *Id.* at 105.

165. Brian Arao & Kristi Clemens, *From Safe Spaces to Brave Spaces: A New Way to Frame Dialogue Around Diversity and Social Justice*, in *THE ART OF EFFECTIVE FACILITATION* 135, 135 (2013).

[each student] would feel encouraged to speak up.”¹⁶⁶ Harkness described this as “a real revolution in methods.”¹⁶⁷ To accomplish Harkness’ vision, Phillips Exeter commissioned custom tables. However, upon completion, they did not meet Harkness’ requirements because “he could not see the eyes of every other person at the table.”¹⁶⁸ And so, the tables were reworked to be rounder, as Harkness insisted on eye contact for all.¹⁶⁹ The Harkness model requires students to “build academic relationships with each other, even more than with the faculty leader.”¹⁷⁰

Second, though, engagement is not enough. Students have to be prepared to engage honestly, sensitively, and respectfully. They must be encouraged to agree to disagree, but in doing so, must not retreat from the conversation.¹⁷¹ The instructor must encourage the students to explore the conflict.¹⁷² Equally important is that the instructor “emphasizes owning intentions and impacts,” because by doing so, “students learn that ‘the impact of [their] actions is not always congruent with [their] intentions and that positive or neutral intentions do not trump negative impact.’”¹⁷³

Next, although we do recommend giving students a limited ability to opt out of aspects of the course that are too difficult for them, brave spaces instead ask students to “critically interrogate reasons why [they] want to opt out.”¹⁷⁴ Further, the instructor must encourage students “to explore the different ways that respect for others may manifest itself,” because by doing so, students are less likely to “automatically . . . interpret[] challenges from others as acts of disrespect.”¹⁷⁵ Finally, students must consider the difference between a “personal attack on an individual and a challenge to that individual’s idea or belief or statement that simply makes an individual feel

166. Courchesne, *supra* note 43, at 26.

167. *Id.*

168. *Id.* at 27.

169. *Id.*

170. *Id.* at 46.

171. Graham, *supra* note 43, at 129.

172. *Id.* at 130.

173. *Id.* at 130-31.

174. Arao & Clemens, *supra* note 165, at 147.

175. Graham, *supra* note 43, at 131-32.

uncomfortable.”¹⁷⁶ By offering opportunities for students to lean into their discomfort, the student engagement will become more honest, more sensitive, and more respectful.

Finally, we are big fans of Russell McClain and what he calls “H.A.V.E.N. Principles.”¹⁷⁷ H.A.V.E.N. is an acronym that stands for humility, authenticity and transparency, vulnerability, empathy, and non-judgment.¹⁷⁸ We have tweaked it a bit, and in our classes “A” stands for “assume good intentions.” We then define “V” as “vulnerability, and its cousins, authenticity and transparency.” At the start of the semester, we introduce H.A.V.E.N. Principles to our students, and we remind them of them throughout the semester, especially before group discussions. Doing this, we believe, fosters a learning community that is willing to engage bravely and builds trust between all present that, although at times they may feel uncomfortable, they are “dignity safe.”¹⁷⁹

INSTRUCTOR/STUDENT RELATIONSHIP

One of the essential aspects, if not the most essential aspect, of trauma-informed education is a positive relationship between the instructor and the student, and the feeling of community among everyone in the classroom.¹⁸⁰ In fact, “‘fostering a sense of belonging and inclusion is an important first step’ in ensuring student success.”¹⁸¹ There are many different aspects of this: the instructor has to be seen as fair and consistent in creating and implementing policies and in grading; the instructor must be culturally competent, recognizing and owning whatever privilege they may have in the classroom; and the instructor should make an effort to be seen as fully human, present, even vulnerable. The instructor/student relationship is impacted by the

176. Arao & Clemens, *supra* note 165, at 148.

177. Albany Law School, *Lunch and Learn Professor Russell McClain*, YOUTUBE (June 9, 2021), <https://youtu.be/SNdlrUlqT8U> (discussing his book *A GUIDE TO BELONGING IN LAW SCHOOL*) [hereinafter McClain].

178. *Id.*

179. Graham, *supra* note 43, at 140 (quoting Eamonn Callan, *Education in Safe and Unsafe Spaces*, 24 PHIL. INQUIRY EDUC. 64, 67 (2016)) (defining “dignity safe” as “an environment where ‘members can participate without reasonable worry that they are likely to be humiliated by others.’”).

180. Gibson, *supra* note 21, at 266.

181. *Id.* (quoting Autumn A. Arnett, *COVID-19 Pandemic Exacerbates Mental Health Issues for Black Students*, DIVERSE: ISSUES IN HIGHER EDUCATION (May 11, 2022).

choices they make in setting policies around each category discussed below. We believe that each of these categories/policies drives the instructor/student relationship, and that by making trauma-responsive choices, instructors will be more likely to build positive relationships with their students. Further, students are highly unlikely to have a positive relationship with an instructor who rarely cues safety, or who cues safety inconsistently. Thus, each category/policy below is discussed through the lens of cuing safety as part of a trauma-informed teaching practice.

RECORDING CLASSES

We have made a practice of recording classes wherever possible and making them available to students. As discussed above, trauma responses are not always visible and are even less predictable. No matter how much care we take to adapt our teaching and classroom policies, there will always be students who move from social engagement to fight, flight, or freeze during class. Missing valuable class time while they are struggling against the impulse to flee, fight, or freeze only adds a layer of anxiety to the trauma response. We believe that letting students know that the classes are being recorded and are available for review at any time without special permission can help assuage this panic. And, it allows students to review the class for any material they may have missed without having to reveal to the instructor their need to do so. Because we do not believe that instructors should be in the position of knowing students' past traumas or what may trigger them now, we believe that this policy best protects all parties.

PREDICTABLE LEARNING ENVIRONMENT

“Creating a structured and predictable learning environment that fosters a sense of safety is challenging for any educator working with adults who are... traumatized.”¹⁸² It is nevertheless an important element of creating a classroom environment free from anxiety and insecurity. An unpredictable learning environment is not merely frustrating. It can be perceived as a threat to a student for whom

182. Carello II, *supra* note 109, at 266.

unpredictability immediately evokes the sense memory of trauma growing out of such unpredictability: food insecurity, a volatile and sometimes abusive partner, or a precarious housing situation.¹⁸³ Thus, a predictable learning environment is vital to ensuring students learn because “[t]he more successful students will be at predicting the structure of the course, the more their brain will feel in control and at ease.”¹⁸⁴

Practically speaking, this means being clear about assignments and grading practices, for example using and making available rubrics, and clear articulation of how grades are calculated. This means making sure that students know the goals and objectives for each class, each topic, and the course as a whole. “Offer a clear roadmap for the short, the medium, and the long term for how to succeed in your course.”¹⁸⁵ This also means that if you do something like a daily content notice or reflection journal (which we do), that you do it consistently. Most legal educators already strive to do these things, but it is a useful shift in perspective to see them not just as good educational practice, but as an element of a trauma-informed practice.

Further, this may mean limiting or eliminating cold-calling and traditional Socratic practices, which are unpredictable by definition and cause students “performance-related stress, embarrassment, and frustration.”^{186, 187} Heavy reliance on the Socratic method may create “a classroom atmosphere that is perceived as aggressive or hostile, causing some students to ‘shut down, freeze, dissociate, and/or experience a flashback or panic attack.’”¹⁸⁸ The Socratic method “can compound the ‘triggering’ that law students may feel when difficult issues arise in class.”¹⁸⁹ Though called “Socratic dialogue,” in most law school classrooms, “there is very little true dialogue. Instead, faculty and

183. *How Trauma-Informed Schools Help Every Student Succeed*, CRISIS PREVENTION INST. (Mar. 31, 2021), <https://www.crisisprevention.com/Blog/Trauma-Informed-Schools> (“Specifically, a trauma-informed school promotes a safe and welcoming climate; seeks to create a structured and predictable learning environment that minimizes unnecessary trauma and loss reminders . . .”) (internal citation omitted).

184. Imad, *supra* note 109, at 41

185. *Id.*

186. Chanbonpin, *supra* note 10, at 615; Graham, *supra* note 43, at 148 (“[W]hile cold-calling does allow professors to ensure that all students have the opportunity to participate in class, it is not the optimal tool for creating brave classrooms.”).

188. *Id.* at 120.

189. *Id.* at 119-20.

students are pitted against each other in a ‘lopsided format and [imbalance] of knowledge [that] affords little opportunity to debate in any meaningful sense.’”¹⁹⁰ Even legal educators who think they are tweaking Socratic discussions to account for the triggering effect it can have may still be getting it wrong. For example, “a professor who leads ‘volunteer-driven’ Socratic discussions, ‘in which some voices are more likely to be silent, ignored, or talked over,’ may be entrenching gender, race, and class hierarchies, making it more difficult for marginalized students to reap the benefits of the class discussion.”¹⁹¹

IDENTITY AND PRIVILEGE: RECOGNIZING NEUTRALITY AND STRIVING FOR NON-NEUTRALITY

As we consider the elements of trauma-informed pedagogy as a way of cuing safety in classroom spaces, we should consider also that “[some] feminist and queer theorists argue that safety is a privilege, and is impossible for some identities to experience.”¹⁹² Learning environments can evoke a trauma response in some students not just because of their experience of trauma, but because of their experience as a member of a marginalized group, for example, a BIPOC student or member of the LGBTQ+ community.¹⁹³ This does not mean that we should ignore or discount those identities; indeed, just the opposite. Part of being trauma-informed is recognizing cultural, historical, and gender issues that contribute to trauma and “mov[ing] past cultural stereotypes and biases.”¹⁹⁴ Just as we should acknowledge the existence of trauma in our classrooms, we need to acknowledge the diverse identities of our students, e.g. race, gender, sexuality, class, ethnicity, religion, ability. We do this, not by asking students to self-identify, or by calling out particular marginalized identities. Rather we acknowledge our own positionality with respect to these identities, recognizing our own

190. Chanbonpin, *supra* note 10, at 627 (quoting SpearIt, *Priorities of Pedagogy: Classroom Justice in the Law School Setting*, 48 CAL. W. L. REV. 467, 470 (2012)).

191. Graham, *supra* note 43, at 120 & 149 (explaining that taking volunteers skews white and male and “away from women and minorities.”); see Toussaint, *supra* note 152, at 300 (identifying student silence as a way “to survive our intellectual trauma.”).

192. Tayles, *supra* note 81, at 306.

193. Lain, *supra* note 58, at 783; Chanbonpin, *supra* note **Error! Bookmark not defined.**, at 629.

194. Imad, *supra* note 109, at 16.

privilege and how it informs the way we approach our material, the way we teach, and our relationship to our students.

When designing a course and creating class policies, educators should strive for non-neutrality.¹⁹⁵ This means intentional wrestling with inequities like racism, sexism, homophobia, and other types of inequality. Neutrality “is wholly inadequate when there are power disparities that reinforce inequities or issues for which such a stance favors the status quo.”¹⁹⁶ Rather than “whitewashing” the content for “neutral” academic discussion, instructors are encouraged to shine a light on the lack of equality, bringing it to the forefront as an integral part of the lesson.¹⁹⁷

Creating a non-neutral curriculum is not without its challenges. At the forefront may be instructor fear, as inclusive positions on law and legal change may often run afoul of more conservative mindsets. With groups like Turning Point USA “dedicated to documenting and exposing professors who discriminate against conservative students and promote anti-American, left wing propaganda in the classroom,” it can be attractive to avoid controversial topics.¹⁹⁸ Further, the fact that “[u]niversities are punishing faculty who, outside of professional settings, express views that are considered controversial or even offensive” may make faculty disinclined to engage with challenging issues at all.¹⁹⁹

However, although neutralization of the law and “minimizing racialized interaction within the classroom is a common response among professors, . . . this strategy provides little cultivation of psychological safety, and it can be harmful because it provides no learning opportunity.”²⁰⁰ Moreover, neutralization of the law has high

195. Frank Dukes & Selena Cozart, *Rethinking Systems Design for Racial Justice & Equity: “We Don’t Want Any of That Neutrality” and Other Lessons from Mediating Race and Equity*, 38 OHIO ST. J. ON DISP. RESOL. 341, 363-64 (2023) (“Neutrality involves impartiality—not favoring one party over another . . . But historically, neutrality also connotes a detachment from the outcome . . .”).

196. *Id.* at 364.

197. Lasson, *supra* note 133, at 59 (“We should not try to erase the past merely because it does not fit the present. We should learn from history, not whitewash it.”).

198. Shepard & Culver, *supra* note 146, at 102.

199. Howard Gillman & Erwin Chermersky, *Professors Are Losing Their Freedom of Expression*, POST & GAZETTE (Nov. 19, 2017), <https://www.post-gazette.com/opinion/Op-Ed/2017/11/19/div-class-libPageBodyLinebreak-Professors-are-losing-their-freedom-of-expression-br-div-div-class-libPageBodyLinebreak-div/stories/201711190052>.

200. Lain, *supra* note 58, at 790.

potential to traumatize and re-traumatize students, moving them out of the social engagement state. Neutrality fails to “level power dynamics between students, which allows for dominant narratives to flourish at the expense of marginalized students.”²⁰¹ When traumatic events are presented with neutrality, students with personal experience may be silenced. This silence comes from ““a perceived lack of safety and power in the classroom[,]”” because “[l]istening to other students’ unchecked cavalier attitudes about rape or sitting through a professor’s lecture in which sexual assault is made abstract or sanitized by objective language places students into a defensive posture where silence becomes a defense tactic.”²⁰² “The harms of the ‘perspectiveless’ approach are searing and complex for students of color.”²⁰³

One student reported to us that she fell silent during a 1L class on *Dred Scott v. Sandford* because the professor conducted the entire lecture without ever once mentioning Dred Scott’s race. It’s not that the identity characteristics of parties to cases are always relevant, and mentioning identity characteristics when irrelevant may reflect an instructor’s bias.²⁰⁴ However, legal educators must remember that sometimes “a person’s race or disability, even if not legally relevant, is important to understand the complete picture” and should include it in the lesson.²⁰⁵ Failing to do so can cause students to disengage and feel disconnected from anything that is being taught.²⁰⁶

Non-neutrality is easy to address when the course content is explicit, such as “legalized segregation and the Jim Crow era.”²⁰⁷ But what legal instructors must grapple with is presenting non-explicit content in a non-neutral way, and thus tackling head-on “the

201. Sarah Craig, *When Neutrality Isn’t Enough: Exploring Multipartiality in the Classroom*, GEO. VOICE (May 21, 2021), <https://georgetownvoice.com/2021/05/21/exploring-multipartiality-in-the-classroom/>.

202. Chanbonpin, *supra* note 10, at 629.

203. Jamie R. Abrams, *Legal Education’s Curricular Tipping Point Toward Inclusive Socratic Teaching*, 49 HOFSTRA L. REV. 897, 905 (2021) (citing Anastasia M. Boles, *Seeking Inclusion from the Inside Out: Towards a Paradigm of Culturally Proficient Legal Education*, 11 CHARLESTON L. REV. 209, 232 (2017)) [hereinafter Abrams I].

204. Safstrom & Mead, *supra* note 41, at 364.

205. *Id.*

206. No One Here, *supra* note 43, at 49 (“And I sit in your classrooms in racialized silence and I cringe and I wonder if the students in the class think that it is odd that all the defendants are black.”).

207. Taite & Boothe, *supra* note 52, at 823.

misconception that we live in a post-racial, post-*Obergefell* world where racial and LGBTQ+ discrimination no longer exist.”²⁰⁸ We have to teach students to look for what has been omitted and to question whether it is relevant; we cannot sacrifice context or ignore subtext in favor of holdings and legal substance.²⁰⁹ Our students are likely looking for us to “contextualize the lawyer’s role” when faced with a “dilemma” where legal standards are rooted in historical, systemic racism.²¹⁰ If we do not, we risk inflicting intellectual trauma on our students.²¹¹ Our students expect us not to avoid “the discomfort of having to critically interrogate all aspects of a person’s identity” and we must know then when we fail to do so, it “increases the odds that bias will surface.”²¹² Student perception of instructor bias could harm the student/instructor relationship, and a positive student/instructor relationship is fundamental to a trauma-informed education.²¹³

In addition to not sanitizing the identities of the people we discuss in the law school classroom, we must also be mindful of the language we use to discuss them. Inclusive language is its own topic, and we won’t dwell too much on it here, but legal education scholars urge that we “use ‘terms that describe what people are rather than . . . what they are not[,]’” so as not to “invite comparison” or “implicitly treat[]” one characteristic as the “dominant norm.”²¹⁴ By doing this, you “[e]mphasize the person over the difference.”²¹⁵ It is also important to practice “*parallelism*—if identifying characters in the narrative as transgender because it is relevant, consider identifying others as cisgender.”²¹⁶

208. *Id.*

209. No One Here, *supra* note 43, at 50 (criticizing UCLA Law School by saying “The bottom line is that the party line is that curriculum is everything. Substance is the idol that we worship overall.”).

210. Toussaint, *supra* note 151, at 291 (describing the failure of an instructor to contextualize *People v. Goetz* as “intellectually violent.”).

211. *Id.* at 291-301 (listing all of the context that was not discussed when studying *People v. Goetz*, including the victims, their communities, poverty, racially-based policing, the related civil suit, Goetz’s failure to pay a penny of the \$43M civil judgment, the ethics and racially-charged vocabulary of the defense attorneys; the defense team’s choice to re-enact the shooting by using four large, Black adult men to play the victims, and empirical evidence of implicit bias).

212. Safstrom & Mead, *supra* note 41, at 365.

213. Gibson, *supra* note 21, at 266.

214. Safstrom & Mead, *supra* note 41, at 366.

215. *Id.*

216. *Id.* at 364.

Finally, our current student population of Zoomers is invested in the ways that identity shapes policy. For example, they “believe Black people are treated ‘less fairly’ than White people in the United States.”²¹⁷ They care about social and political issues and “are passionate about fighting racism, economic inequality, and climate change.”²¹⁸ This generation is demanding change in the way legal education is delivered, but they also intend to use their law degrees to create “a more equitable, competent, antiracist world.”²¹⁹ Thus, our current student population does not want a legal education steeped in neutrality, and it may be traumatic for them to learn the law this way.

In sum, instructors must be mindful of their identities and privilege, those of their students, and those of the people in the cases and curriculum. Incorporating identity and privilege in a non-neutral manner is a trauma-responsive teaching practice that enhances the instructor-student relationship. A positive student-instructor relationship is key to creating psychological safety, and thus, it is key to keeping students in the social engagement state where they learn best.²²⁰

VULNERABILITY AND SELF CARE

One aspect of a trauma-informed classroom involves lessening the extreme hierarchy between instructors and students. Instructors should no longer be the infallible expert dispensing wisdom; rather, we should be the mediators of knowledge in a learning community.²²¹ Freed from having to hold that authoritarian space, we can be real, show vulnerability, and importantly, model self-care. At times, especially when teaching during the pandemic, we may have felt that self-care was not for us, but rather, was “disproportionately centered in the lower

217. Schlinck, *supra* note 11, at 284.

218. *Id.* at 275.

219. *Id.* at 284.

220. *How Trauma-Informed Schools Help Every Student Succeed*, *supra* note 183 (citing the National Child Traumatic Stress Network’s guidance for trauma-informed schools) (“Specifically, a trauma-informed school . . . focuses on building positive and attuned relationships between teachers and students.”); Graham, *supra* note 43, at 140 (“Optimal learning occurs only when students feel psychologically safe,” and when students feel unsafe, their “cognitive energy is monopolized by coping rather than learning.”).

221. Schlinck, *supra* note 11, at 286 (“Gen Z see their professors as ‘guides rather than authorities’ whose job it is to facilitate, not lecture.”).

ranks of the profession,” on “newer lawyers, untenured faculty, law school staff, and our students.”²²² However, trauma-informed educators are wise to resist the urge to “pretend that we [are] fine.”²²³ We should resist “the propensity of attorneys and law professors to simply ‘push through’ challenging events, responding slowly, ineptly, or not at all,”²²⁴ and “respond differently, as if our very lives depended on it,” because the legal profession as a whole “absolutely does depend on our responding differently.”²²⁵ For our students, “appropriate transparency is a must” because “it helps them to establish more realistic expectations of themselves, their professors, and what their professional selves will be.”²²⁶ This aligns with the authenticity that appears in H.A.V.E.N. Principles.²²⁷

While teaching during the pandemic, many of us learned to ask students what they were doing to take care of themselves, as a way of mediating the chaos wrought by an unprecedented crisis. We should continue this practice as we attempt to regain “normal,” incorporating it as part of creating trauma-informed classrooms. We are fond of saying that self-care is a lawyering skill; however, it is a lawyering skill that needs to be taught.²²⁸ The best way to teach this is to model it in law school, at the beginning of a legal career.

STUDENT CHOICE AND EMPOWERMENT

Implicit in nearly every concept of “threat” is the feeling of being trapped. Feeling threatened or trapped can lead to the fight or flight response.²²⁹ Feeling helpless and unable to escape can lead to the freeze/immobilization response.²³⁰ Giving a student a sense of control over expectation can forestall these responses and keep them in the

222. Gibson, *supra* note 21, at 251.

223. *Id.* at 252.

224. *Id.*

225. *Id.*

226. *Id.* at 270.

227. See McClain, *supra* note 177.

228. Janet Ellen Stearns, *Inoculating the Next Generation of Lawyers: Mandating Substance Use and Mental Health Education for Law Students*, 60 U. LOUISVILLE L. REV. 497, 518 (2022) (“... lawyer professionalism, which includes the ability to take care of oneself and address well-being. . .”).

229. Imad, *supra* note 109, at 37.

230. Tobin et al., *supra* note 61, at 673.

social engagement state.²³¹ While it is impractical to give students complete control over the curriculum, giving them some say in, for example, when they will be called on in class, the topic of an assignment, or the due date or timing of a conference is a way to give them agency, a way to make them feel safer.

Instructors can experiment with incorporating student choice into their curriculum in a myriad of ways. Consider the flipped classroom model, where “students learn the content on their own time and use in-class time to practice applying that material.”²³² This allows students to choose when they learn and whether they want to review the lesson multiple times. Content notices also empower students: they “provide students a necessary heads-up, an opportunity to mentally prepare for a challenging classroom discussion,” or to “avoid certain course material or to forego participation altogether, . . . mak[ing] these choices theirs.”²³³ “By offering choices for participating and encouraging their sense of agency, educators help students feel some control over their lives.”²³⁴ This, in turn, can help keep students in the social engagement state and keep them available for learning.²³⁵

CLASSROOM ADAPTATIONS

What follows is a list of trauma-informed practices that we have encountered in the literature, or that we have tried to implement ourselves. Though it is not exhaustive, there is a lot here. You do not need to do it all at once. The important thing is to commit to being more trauma-informed in the way you approach your instruction.

- **Content Interrogation:** Be intentional about what you teach, the cases you use to illustrate different concepts, and the way you write assignments and exams. For example, do you really

231. Imad, *supra* note 109, at 42.

232. Schlinck, *supra* note 11, at 294.

233. Chonbonpin, *supra* note 10, at 632.

234. Davidson, *supra* note **Error! Bookmark not defined.**, at 18.

235. Imad, *supra* note 109, at 42.

need to use a contracts or property case that was decided in the context of slavery?²³⁶ BUT....

- **Non-Neutral Content Presentation:** This does not mean that you must sanitize all content in your class. “The goal of [trauma-informed education] is to remove possible barriers to learning, not to remove traumatic, sensitive, or difficult material from the curriculum.”²³⁷
- **Model Self-Care:** Find an opportunity to share with students what you do for self-care, or invite them to share with the class or with one another something they do or have done to take care of themselves. This can be as simple as “turn to your neighbor and tell them something you did over the weekend for self-care.”
- **Prepare for and Model Bravery:** Rather than failing to acknowledge a harmful comment, or merely stating that use of a slur is unacceptable in the classroom, instructors must “guide students through these interactions.”²³⁸ Erin Lain, in her article “Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment,” suggests three approaches: attunement, authenticity, and power-sharing.²³⁹
- To best model bravery, instructors should likely prepare in advance and even practice with a colleague. This ensures that, in the moment, instructors have familiar tools available to respond in a trauma-informed manner that goes beyond “merely stop[ping]” the speaker from continuing to insult or verbally

236. Simard, *supra* note 152.

237. Carello & Butler, *supra* note 109, at 265.

238. Graham, *supra* note 43, at 136 (quoting Lain, *supra* note 58, at 791).

239. Lain, *supra* note 58, at 792.

assault others.²⁴⁰ Instructors should in fact avoid an “authoritarian response,” because the result is the same as avoiding responding altogether.²⁴¹ It is vital that instructors are prepared, especially for difficult conversations that involve race, because “[i]mproperly navigated racialized interactions diminish psychological safety for all students, but in particular for students of color.”²⁴²

- **Rethinking Cold-Calling and Socratic Dialogue:** As we’ve discussed above, the Socratic method as it is currently deployed is often an invitation to fight, flight, or freeze.²⁴³ It has been called a “humiliation ritual of adversarial interchange predicated on ‘guess what I’m thinking’²⁴⁴” But despite its critics, it still has many proponents who “applaud and revere its intellectual rigor.”²⁴⁵ Still, legal educators should explore ways of making it more effective by making it more student and client centered, such as:

- Professors could use formative assessment techniques, creating a more instructive interaction as opposed to an adversarial climate.²⁴⁶

240. Graham, *supra* note 43, at 140-42 (providing sample responses for common classroom scenarios).

241. Lain, *supra* note 58, at 791 (“If the faculty member’s authoritarian response manifests in a lecture to students, the result is essentially the same as with avoidance. Students construct their own narratives and dialogues about the incident outside of the classroom without guidance. The authoritarian lecture likely does not change the mind of the aggressors in the situation because they were not able to analyze the interaction and hear different perspectives. Similarly, those who feel victimized by the interaction can also feel further stigma as a result of the professor’s need to rescue and rehabilitate the class with his or her authority, much as being the teacher’s pet produces a need to be protected.”).

242. *Id.* at 783.

243. Graham, *supra* note 43, at 120 (noting that the Socratic method “can compound the ‘triggering’ that law students may feel when difficult issues arise in class.”).

244. Catharine A. MacKinnon, *Mainstreaming Feminism in Legal Education*, 53 J. LEGAL EDUC. 199, 212 (2003).

245. Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. LEGAL EDUC. 562, 565-66 (2015).

246. Abrams I, *supra* note 203, at 930.

- Instructors might have students engage with one another as well as with them,²⁴⁷ and examine where some of the concepts examined are present in students' communities.²⁴⁸
- For instructors who do not want to give up cold-calling and Socratic questioning, they should do *more* of it, not less, which may seem counterintuitive. However, in increasing the number of cold-call experiences each student has, they are employing strategies that “significantly reduce the stakes of each individual cold-call,” such as “call[ing] on a large number of students every class” and “call[ing] on each student many times in a semester.”²⁴⁹ By providing more opportunities to participate in class in this manner, “[m]istakes and stumbles are less magnified” and “[i]t becomes routine for students to hear their own voices and voices of classmates,” which “makes for greater equalization and collaboration among students.”²⁵⁰ One caveat to this practice, though, is that initially, students will still experience the same negative effects. It will take time for the Socratic practice to become routine. Where there is research suggesting law school in general and 1L in particular are their own traumatic experiences, the instructor must fully interrogate this practice and determine for themselves whether the Socratic method and cold-calling are worth it.²⁵¹

247. *Id.* at 931.

248. *Id.*

249. Graham, *supra* note 43, at 149.

250. *Id.*

251. Peggy Cooper Davis et al., *Making Law Students Healthy, Skillful and Wise*, 56 N.Y.L. SCH. L. REV. 487, 490, 490 n. 9 (2012) (“reporting, based on a longitudinal study of law students, that ‘before law school the students’ depression levels were similar to general population norms,’ but that, ‘at the end of their first and third years,’ the students’ depression levels were similar ‘to those of individuals who had undergone major life traumas (e.g., death of spouse, marital separation)’”).

- Provide the questions in advance and ask students to reflect on them or journal their responses.²⁵²
- **Consistent Content Identification:** Stop trying to predict what will cause trauma to students. Normalizing content notes at the beginning of every class goes a long way towards removing the attendant anxiety of the “trigger warning” (i.e. you are not saying “look out, you are going to be triggered soon”). This also frees the instructor from responsibility for predicting what will be triggering.
- **Use Rubrics** to make evaluation and grading more predictable and consistent.
- **Short Writings:** Minute-papers - where after a perceived difficult topic, students are invited to free-write for a minute, to “clear a channel” and get what they are thinking out. Not to be turned in or shown to anyone. “Reflective writing has been shown to reduce emotional stress.”²⁵³ And related to this....
- **Grounding Techniques:** There may be some situations where students and attorneys have to face material that has the potential to trigger or retraumatize. In these situations, many researchers have explored grounding techniques that can help keep students present and available for learning, and stave off the various trauma-responses we have talked about.²⁵⁴ These tend to be very similar to mindfulness techniques, such as focusing on the senses (e.g. conscious breathing, conscious

252. Graham, *supra* note 43, at 149-50.

253. Lain, *supra* note 58, at 800.

254. Jessica Gladden et al., *Teaching Trauma Content in Higher Education: A Systematic Literature Review*, 24(5) TRAUMA, VIOLENCE & ABUSE 3384, 3394 (2022) (citing 11 articles that specifically discuss applying relaxation and grounding techniques in the classroom).

awareness of your body in a chair or your feet on the floor), or on the mind (e.g. counting, or repeating a mantra).²⁵⁵

- **Drinking or Eating:** Handing out candy is not just a way to curry favor with tired students. “In polyvagal terms, it can actually help physiologically to apply the ‘brake’ that is necessary for regulation.”²⁵⁶ The structures involved in the suck-swallow-breathe-vocalize cycle are all linked to the myelinated vagus, and activating it invokes the social engagement system.²⁵⁷
- **Vocal Tone and Facial Expression:** So much of cuing safety happens at an unconscious level through neuroception.²⁵⁸ Be intentional about your self-presentation in the classroom. If you are carrying stress or anxiety into class, take a moment to breathe, being conscious about what you are reflecting to students.²⁵⁹ Listen to yourself to the extent possible: are you talking too fast out of anxiety? Do you sound frustrated or angry? It is always ok to take as much time as you need to reset. Something as simple as taking a sip of water or adding a short break for everyone into the class will help.
- **Collective breathing:** A moment of mindfulness through collective intentional breathing, either at the beginning of class or after a break, is a way of assuaging growing anxiety.²⁶⁰

255. Jeremy Sutton, *7 Best Grounding Tools and Techniques to Manage Anxiety*, POSITIVE PSYCH. (Jan. 2, 2022), <https://positivepsychology.com/grounding-tools-techniques/>.

256. Bailey & Bailey, *supra* note 122, at 61.

257. Stephen W. Porges & Senta A. Furman, *The Early Development of the Autonomic Nervous System Provides a Neural Platform for Social Behavior: A Polyvagal Perspective*, 20 INFANT CHILD DEV. 106, 111 (2011).

258. Kaur, *supra* note 33, at 117.

259. Franzese, *supra* note 129.

260. Elliot, *supra* note 87, at 144.

- **Recording every class and making the recordings universally available:** As discussed above, this allows students to revisit portions of class that they may have missed or not understood while protecting their privacy.

- **Student choice and empowerment:** Student agency is included on every list of the elements of trauma-informed practice. Student input on the timing or content of an assignment may not always be practical, but find ways to take “a break from the power hierarchies in the classrooms that worsen the experience for survivors of certain traumas.”²⁶¹
Ideas include:
 - Student choice for on-call days/cases/topics
 - Student-selected due dates
 - Student options to work in a small group, with a partner, or alone
 - Student choice to conduct conferences in-person or remotely

CONCLUSION

Trauma-informed teaching, especially through the lens of Polyvagal Theory, has been reduced by some to the simple adage: “Maslow before Bloom.”²⁶² That is to say: attend to Maslow’s hierarchy of needs before you try to engage Bloom’s Taxonomy of Learning. If a student doesn’t feel safe in your classroom, all of the time and effort you spend making sure your lessons and curricula correspond with Bloom’s Taxonomy of Learning and engage students at different levels of learning is wasted.

If nothing else we’ve said has persuaded you, consider this: “When we stand back and look at all the ways individuals fail to reach

261. Gun R. Semin and John T. Cacioppo, *From Embodied Representation to Coregulation*, in MIRROR NEURON SYSTEMS: THE ROLE OF MIRRORING PROCESSES IN SOCIAL COGNITION 107, 115-17 (Jamie A. Pineda ed., 2008).

262. Imad, *supra* note 109, at 38.

their full potential in our culture, trauma stands out as the most significant common factor across settings.”²⁶³ Let your classroom be a setting that contributes to your students achieving their full potential, not an experience that prevents them from reaching it.

263. Davidson, *supra* note Error! Bookmark not defined., at 22.