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Trauma-Informed (As A Matter of) Course

Natalie Netzel

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TRAUMA-INFORMED (AS A MATTER OF) COURSE

NATALIE NETZEL*

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I. INTRODUCTION

Law students are impacted by trauma and law professors are in a position to help by adopting a trauma-informed approach as a matter of universal precaution. The 2021 Survey of Law Student Well-Being (“SLSWB”) revealed that over twenty percent of responding law students meet criteria that indicate they should be evaluated for post-traumatic stress disorder

(“PTSD”).¹ The study also revealed that almost fifty percent of responding students reported an important motivation for attending law school was experiencing a trauma or injustice.² Put differently, law schools are full of law students who have experienced trauma, many of whom are actively struggling with trauma. Students are coming to law school not just in spite of their trauma histories but *because* of their trauma histories.

Law schools must respond accordingly. Armed with this new knowledge, legal educators have the opportunity to transgress and transform to provide trauma-informed legal education. It has long been known that legal systems are full of people with trauma histories and that interacting with the legal system can be traumatic.³ Given the pervasive presence of those with trauma histories in law schools and the legal system,⁴ law professors must have a basic understanding of trauma and trauma-informed practices to do their jobs well. If they do not, they risk retraumatizing both law students and clients they seek to serve.

This Article will explore what law professors need to know about trauma, why law professors need to understand trauma, and how to employ a trauma-informed approach in their doctrinal courses as a matter of universal design. It contributes to existing conversations on trauma-informed better practices⁵

1. David Jaffe et al., “*It Is Okay to Not Be Okay*”: *The 2021 Survey of Law Student Well-Being*, 60 U. LOUISVILLE L. REV. 441, 468 (2022). The SLSWB also revealed over eighty percent of responding law students have experienced one potentially traumatic event, and roughly seventy percent of students have experienced two or more potentially traumatic events. *Id.*

2. *Id.* at 496.

3. See Jan Jeske & Mary Louise Klas, *Adverse Childhood Experiences: Implications for Family Law Practice and the Family Court System*, 50 FAM. L.Q. 123, 123 (2016) (noting the need for those working with families in the court system to be aware of the ACEs studies); Phelan Wyrick & Kadee Atkinson, *Examining the Relationship Between Childhood Trauma and Involvement in the Justice System*, 283 NAT’L INST. JUST. J. 1, 1–2 (2021) (considering pathways from violence exposure and trauma involvement in the justice system); Samantha Buckingham, *Trauma Informed Juvenile Justice*, 53 AM. CRIM. L. REV. 641, 645, 648 (2016) (noting trauma as a frequent underlying cause of offending behavior and the need to avoid further traumatizing youth in the juvenile justice system); Courtney Evans & Kelly Graves, *Trauma Among Children and Legal Implications*, 4 COGENT SOC. SCI. 1, 6 (2018) (advocating for the legal system to understand the role that trauma plays in the lives of survivors and not re-expose them to added trauma).

4. See Jaffe et al., *supra* note 1, at 468.

5. I prefer the term “better practices” to the term “best practices” because “better practice” implies practices can always improve.

and trauma stewardship.⁶ Additionally, it provides practical, solution-focused, strengths-based tools for teaching through a trauma-informed lens. It adds to a body of legal scholarship on trauma-informed pedagogy and lawyering and is grounded in scholarship from other disciplines. It also relies on my own learned-experience from my efforts to teach and practice law in a trauma-informed manner.⁷

II. BACKGROUND

I come by my knowledge of trauma-informed lawyering honestly. As a family defender I have observed how the family regulation system purports to be moving in the direction of being trauma-informed; however, much of the time, “trauma” and “trauma-informed” are just hollow words tossed around courtrooms without a true underlying understanding of what they mean.⁸ When systems label their actions “trauma-informed” without truly embodying trauma-informed principles, it can cause additional harm. My court experiences crystallized the importance of being able to articulate, with specificity, what I mean when I say I am engaging in trauma-informed lawyering.

One byproduct of striving to be a trauma-informed professor and lawyer is that I have become attuned to my own susceptibility to the negative effects and manifestation of vicarious trauma. While, like the overwhelming

6. See generally LAURA VAN DERNOOT LIPSKY & CONNIE BURK, TRAUMA STEWARDSHIP: AN EVERYDAY GUIDE TO CARING FOR SELF WHILE CARING FOR OTHERS (Stacy Carlson & Karen Cook eds., 2009) (providing an in-depth explanation of how to effectively take care of oneself while taking care of others using the umbrella term “trauma stewardship”).

7. My personal experiences as a law professor and lawyer inform this Article and provide useful context for this scholarship. I teach a holistic, interdisciplinary clinic where law students represent parents, children, and relatives in the family regulation (child welfare) system. Cf. Emma Williams, *‘Family Regulation,’ Not ‘Child Welfare’: Abolition Starts with Changing Our Language*, THE IMPRINT (July 28, 2020), <https://imprintnews.org/opinion/family-regulation-not-child-welfare-abolition-starts-changing-language/45586> (advocating for use of the term “family regulation system” in lieu of “child welfare system”).

8. The seed for this Article was planted years ago when my clinic was put in a position to litigate the definition of “trauma-informed” therapy in a termination of parental rights matter. We relied on the tenets of trauma-informed care. See SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., DEP’T OF HEALTH & HUMAN SERVS., TRAUMA INFORMED CARE IN BEHAVIORAL HEALTH SERVS. 1, 9, 23–24 (2014) [hereinafter SAMSHA’S CONCEPT OF TRAUMA] (describing foundational tenets of trauma-informed care).

majority of law students,⁹ I have experienced potentially traumatic events in my own life, my trauma history is not extensive. Despite this fact, I have had significant struggles as a lawyer that can be readily explained as negative effects of vicarious trauma.¹⁰ Adopting a trauma-informed approach to teaching and lawyering has drastically improved my life, and the lives of those around me. It caused me to reevaluate the role of prioritizing my own self-care. This led to a radical transformation in how I discuss self-care with others, reframing it as a need for “mutual care”—a term I define as a communal response to self-care that recognizes people are best able to engage in self-care only when the systems they are a part of recognize the value *and* create circumstances that allow for self-care.¹¹

My personal and practical experiences also pushed me to reflect more broadly on my role as a law professor teaching students to be trauma-informed lawyers. I became curious about the application of the tenets of trauma-informed care in other arenas of my work, specifically my doctrinal law courses.¹² This Article contributes to a growing body of legal

9. See Jaffe et al., *supra* note 1, at 468 (noting that over eighty percent of respondents in survey on law student mental health reported having experienced trauma).

10. See Natalie Netzel, *Hiding in Plain Sight*, 79 BENCH & BAR MINN. 20 (2022) (revealing my personal experience with vicarious trauma as a result of practicing law).

11. Along with my Mitchell Hamline School of Law colleagues, Lynn LeMoine, Miriam Itzkowitz, Leanne Fuith, and Debbie Shapiro, I first presented on *Making the Shift to Mutual Care* at the inaugural Institute for Well-Being in Law Conference in January of 2022. Our vision of mutual care was shaped through conversations with law students who felt harmed by our well-intentioned reminders to them to engage in self-care while in law school. As one delightfully insightful student, Adrienne Baker, wrote:

Schools have . . . noted the importance of ‘self-care,’ and encourage students to take breaks from school, to eat well, to get enough sleep, and to get exercise. Some law schools require students to create a self-care plan. The premise seems so simple, so easy. Yet, these measures fail because the expectation is that the individual responds to a system-imposed harm. It is not enough to promote “self-care.” Self-care is framed as an antidote, but the individual responsibility is still placed on the *student*. Rather, the issue is better resolved upstream. Law schools must transgress and transform.

Adrienne Baker, *Radical Imagination: Fostering Community in Legal Education*, MITCHELL HAMLINE OPEN ACCESS STUDENT SCHOLARSHIP 1, 3 (May 10, 2021), <https://open.mitchellhamline.edu/stusch/9>.

12. Among other doctrinal courses, I teach first-year criminal law. Criminal law courses are often full of traumatic scenarios in case law that are deeply disturbing and run a risk of triggering, retraumatizing, and vicariously traumatizing law students. Mine is no different. One thing that seems to help students is a pedagogy centered on the tenets of trauma-informed care.

scholarship on a variety of topics related to trauma.¹³ Given the ever-deepening understanding that trauma and law are intertwined, this Article is responsive to calls for legal educators to become trauma-informed.¹⁴

Finally, a word for the skeptics. As I have presented on this topic and workshopped this paper, I have been challenged on the concept of “trauma drama”—the expansion of the use of the term trauma in popular culture such that the term loses its meaning.¹⁵ To avoid watering down the term trauma, this Article is careful to distinguish between potentially traumatic events (“PTEs”) and trauma. Further, it will not suggest that law professors lower standards nor will it suggest students should not be held accountable to their educational goals. Instead, it will ask law professors to recognize that, as the data clearly demonstrates, we have a significant number of students in our courses that have experienced trauma to the level they may meet a medical diagnosis. With this understanding, it will provide a positive, strengths-based approach to further adjust our pedagogy to minimize harm. I trust that law professors have a vested interest in educating their students. So, I humbly offer that, even if you do not buy into the trauma framework, the suggestions regarding the applications of the tenets of trauma-informed care to doctrinal pedagogy can strengthen your relationships with students and, thus, better help them achieve their ultimate learning goals.

13. See, e.g., Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma Informed Lawyering*, 22 CLINICAL L. REV. 359, 361 (2016) (arguing that teaching trauma-informed practice in law school clinics furthers the objectives of clinical teaching); Lindsay M. Harris & Hillary Mellinger, *Asylum Attorney Burnout and Secondary Trauma*, 56 WAKE FOREST L. REV. 733, 747 (2021) (discussing how asylum lawyering is particularly likely to cause secondary traumatic stress); Sarah Katz, *The Trauma-Informed Law Classroom: Incorporating Principles of Trauma-Informed Practice into the Pandemic Age Law School Classroom*, 25 U.C. DAVIS SOC. JUST. L. REV. 17, 17 (2020) (exploring how trauma-informed practices can be incorporated into law school classrooms to help students).

14. See Harris & Mellinger, *supra* note 13, at 802 (“Legal educators must address issues of trauma and burnout within their clinical and nonclinical classrooms.”). See generally Myrna McCallum, *The Trauma-Informed Lawyer*, SIMPLECAST (May 21, 2020), <https://thetraumainformedlawyer.simplecast.com/> (“This podcast was created for lawyers however anyone who works with people will benefit from this content. Through inspiring interviews, courageous conversations and thoughtful commentary, Myrna and her guests shine a light on a critical ethical competency lawyers missed in law school: trauma-informed lawyering.”).

15. See Lexi Pandell, *How Trauma Became the Word of the Decade*, VOX (Jan. 17, 2022), <https://www.vox.com/the-highlight/22876522/trauma-covid-word-origina-mental-health> (discussing adoption of the word “trauma” into mainstream culture).

III. WHAT LAW PROFESSORS NEED TO UNDERSTAND ABOUT TRAUMA: A CRASH COURSE

The vast majority of law professors were not educated about trauma as a part of their own legal education.¹⁶ However, much has been written about trauma responses over the last one hundred years,¹⁷ and conversations about trauma have reached the mainstream.¹⁸ There are numerous incredible resources, many outside of the scope of this Article, for any person who is interested in learning more about trauma.¹⁹ The depth and breadth of knowledge on trauma cannot be understated and, may in fact, be overwhelming to a law professor early in their journey to become more trauma informed. With that in mind, this section is meant to be a foundational “crash course” in trauma education.

16. See Katz, *supra* note 13, at 32 (“While psychologists, social workers and other mental health professionals are trained in trauma and trauma-informed practice as part of their professional education, traditional legal education, other than in some law school clinics, usually does not focus on trauma-informed practice.”); see also Katz & Haldar, *supra* note 13, at 361 (“Although there is a body of clinical legal education literature devoted to the value of teaching and developing law students’ empathy toward their clients, less attention has been devoted to the importance of teaching trauma-informed practice, the pedagogy of teaching law students to recognize and understand trauma, and the effect of vicarious trauma on law students (and attorneys) who work with clients who have experienced serious trauma.”). Unfortunately, as a result, the vast majority of currently practicing lawyers and judges likely did not receive education in law school on trauma and must take this learning on themselves. See GABOR MATÉ & DANIEL MATÉ, *THE MYTH OF NORMAL: TRAUMA, ILLNESS, AND HEALING IN A TOXIC CULTURE* 489 (Avery 2022) (“[L]egal training leaves the average lawyer or judge even more woefully trauma-ignorant than their medical counterparts.”).

17. See, e.g., Norman B. Schmidt et. al., *Exploring Human Freeze Responses to a Threat Stressor*, 39 J. BEHAV. THERAPY & EXPERIMENTAL PSYCHIATRY 292, 292 (2008) (“The phrase ‘fight or flight’ was coined . . . in the 1920s to describe key behaviors that occur in the context of perceived threat.”).

18. See Elisabeth Egan, *Does a Writer Ever Get Cozy on the Best-Seller List? Bessel van der Kolk Says No*, N.Y. TIMES (July 8, 2021), <https://www.nytimes.com/2021/07/08/books/review/the-body-keeps-score-bessel-van-der-kolk> (noting that a book on healing trauma spent twenty-seven weeks in first place of the New York Times best-selling nonfiction paperback list); see also BRUCE D. PERRY & OPRAH WINFREY, *WHAT HAPPENED TO YOU? CONVERSATIONS ON TRAUMA, RESILIENCE, AND HEALING* 102 (2021).

19. See, e.g., MARK WOLYNN, *IT DIDN’T START WITH YOU: HOW INHERITED FAMILY TRAUMA SHAPES WHO WE ARE AND HOW TO END THE CYCLE* 1 (2017) (exploring how trauma is passed from one generation to the next); McCallum, *supra* note 14 (hosting conversations related to trauma-informed lawyering).

A. *Trauma-Informed Defined*

“Trauma-informed” is a term that is widely used and often not clearly defined. For the purposes of this Article, a trauma-informed approach is one that seeks to ameliorate the conditions that trauma creates by intentionally creating the safe, stable, predictable conditions that were not present when the trauma occurred. A trauma-informed approach recognizes that trauma responses are maladaptive behaviors and thus, a trauma-informed law professor strives to help law students who may suffer from adverse effects of trauma to have a less reactive stress response system.²⁰ At their core, trauma-informed professors make every effort to “first, do no harm” and then minimize risk for inadvertent re-traumatization in their courses.²¹

In recent years, “trauma-informed” has become an aspirational principle that, at times, is nothing more than a hollow buzzword.²² To be trauma-informed is certainly more than merely being nice and respectful to people, although that is a part of it. And, while being informed about trauma, its origins, and its effects, is a *part* of being trauma-informed, a trauma-informed approach is about more than merely being informed about trauma.²³ Because a trauma-informed person has an understanding of trauma and how it manifests, when confronted with the potential manifestation of trauma, they move away from guilt, shame, and blame and asks the quintessential trauma-informed question, “what happened to you?” in place

20. See PERRY & WINFREY, *supra* note 18, at 28.

21. Janise Carello & Lisa D. Butler, *Practicing What We Teach: Trauma-Informed Educational Practice*, 35 J. TEACHING SOC. WORK 262, 265–66 (2015) (discussing how professors should accommodate traumatized students). Even when individual professionals aim to help, they can “unintentionally retraumatize survivors through negative statements, behaviors, and attitudes.” Negar Katirai, *Retraumatized in Court*, 62 ARIZ. L. REV. 81, 88–89 (2020) (explaining re-traumatization, also known as secondary victimization, as “the experience of survivors who encounter ‘victim-blaming attitudes, behaviors, and practices’ from service providers and institutions ‘which result in additional trauma.’”).

22. See Jessica D. Cless & Briana S. Nelson Goff, *Teaching Trauma: A Model for Introducing Traumatic Materials in the Classroom*, 18 ADVANCES SOC. WORK 25, 25 (2017) (noting that “trauma” has become a cultural buzzword); see also Christopher Menschner & Alexandra Maul, *Brief: Key Ingredients For Successful Trauma-Informed Care Implementation*, 2016 CTR. FOR HEALTH CARE STRATEGIES, 1, 11 (“There is [a] disagreement about the need for a standard definition of trauma and trauma-informed care terminology.”).

23. See Cless & Goff, *supra* note 22, at 25, 26 (detailing components of trauma-informed care); see also Katz & Haldar, *supra* note 13, at 363 (framing the “four hallmarks of trauma-informed legal practice [as]: (1) identifying trauma; (2) adjusting the lawyer-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma.”).

of “what is wrong with you?”²⁴

The term “trauma-informed” has been most commonly used in medical and mental health settings and in prevention and intervention programs.²⁵ However, its use has expanded to various disciplines, settings, and systems, including education, child welfare, first responders, health care, juvenile justice, and social work.²⁶ This Article draws on scholarship from multiple fields, including law, as a foundation for the discussion on trauma-informed pedagogy. Given the complexities of trauma, perfecting a trauma-informed approach to teaching doctrinal courses is much easier said than done. At the same time, intentionally applying simple trauma-informed principles to one’s teaching is not complicated. Perfect should not be the enemy of good in the embodiment of a trauma-informed approach. This Article aims to help professors identify the measures they already take that are consistent with a trauma-informed approach, and, once identified, to empower professors to strengthen those skills and identify new tools to become even better.²⁷

Specifically, the final section of this Article explores the application of the SAMHSA’s tenets (“the tenets”) of trauma-informed care to doctrinal law school courses. The tenets are safety; trustworthiness and transparency; peer support; collaboration and mutuality; empowerment, voice, and choice; and recognizing cultural, historical, and gender issues.²⁸ Similar to Katz and Haldar’s first hallmark of a trauma-informed legal practice, the successful implementation of these tenets requires a foundational understanding of trauma.²⁹

B. Trauma Defined

To implement a trauma-informed approach in any setting, one must begin by becoming informed about trauma. On its most basic level, trauma occurs

24. See Menschner & Maul, *supra* note 22, at 2 (discussing benefits of trauma-informed approaches); see also PERRY & WINFREY, *supra* note 18, at 29.

25. See Cless & Goff, *supra* note 22, at 26 (discussing history of the term “trauma-informed”).

26. See *id.* (detailing expansion of trauma-informed practice); Susan J. Ko et. al., *Creating Trauma-Informed Systems: Child Welfare, Education, First Responders, Health Care, Juvenile Justice*, 39 PRO. PSYCH.: RSCH. & PRAC. 396, 397–401 (2008).

27. To this extent, the paragraph is modeling a trauma-informed approach. It (rightfully) presumes the reader already has strengths and capacities to build on as a trauma-informed lawyer or professor. It then empowers the reader to embrace these strengths and become even more trauma-informed with the knowledge gained or the ideas that resonate with the reader in the remainder of this Article.

28. See SAMHSA’S CONCEPT OF TRAUMA, *supra* note 8, at 23–24, 96, 123.

29. Cless & Goff, *supra* note 22, at 25–26; see also Katz & Haldar, *supra* note 13, at 363.

when an event happens to an individual or group, over which they have no control and little power to change their circumstances, which overwhelms their ability to cope.³⁰ While bad things a person experiences have the *potential* to turn into trauma, not all bad things result in trauma. It is important that law professors recognize that there is a difference between events that are potentially traumatic experiences and experiences that lead to actual trauma. This is because people experience different outcomes, for a variety of reasons (some understood, some still unknown) and “bracket creep” is a concern as conversations about trauma become more and more mainstream.³¹

1. *Potentially Traumatic Events*

While many events are potentially traumatic, not all potentially traumatic events experienced by individuals lead to ongoing trauma responses. This Article uses the phrase “potentially traumatic event” (“PTE”) to recognize that people may exhibit drastically different responses to the same or similar experiences.³² An event that is a traumatic stress event for one person may be just an acute stress event for another person.³³ The difference between an acutely stressful event and trauma is how the person experiences the event and how it affects their ability to cope.³⁴ PTEs are common. Most people will be exposed to at least one PTE in their lifetime severe enough to meet the criteria from the *Diagnostic and Statistical Manual of Mental Disorders* for a psychological trauma.³⁵ Further, fight, flight, freeze, or fawn reactions

30. BESSEL VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* 21 (2014); SAMHSA’S CONCEPT OF TRAUMA, *supra* note 8, at 7.

31. Richard J. McNally, *The Expanding Empire of Posttraumatic Stress Disorder*, 8 *MEDSCAPE GEN. MED.* 9, 9 (2006). Bracket creep refers to a conceptual framework of trauma whereby ordinary stressors are now deemed capable of producing post-traumatic stress disorder. *Id.* Risks associated with bracket creep include less credibility for PTSD diagnosis and over medicalization of normal emotional responses to stress. *Id.*

32. George A. Bonanno et. al., *Resilience to Loss and Potential Trauma*, 7 *ANN. REV. CLINICAL PSYCH.* 511, 512 (2011). Prospective and longitudinal research supports the phenomenon that individuals’ reactions to PTEs differ, for instance, “[s]ome people feel overwhelmed. Others struggle for months and then gradually recover, while still others manage to continue functioning at normal levels even soon after the event and appear resilient. Indeed, the marked variability in adaptation to such events suggests that the commonly used term “traumatic” is a misnomer. Rather, such events are more appropriately referred to as “potentially traumatic events” or PTEs.” *Id.*

33. SAMHSA’S CONCEPT OF TRAUMA, *supra* note 8, at 61; PERRY & WINFREY, *supra* note 18, at 102.

34. PERRY & WINFREY, *supra* note 18, at 102.

35. Bonanno et al., *supra* note 32, at 512.

in direct response to direct harm are normal and adaptive. Problems arise when individuals experience maladaptive trauma responses triggered when no direct harm is present.

It then follows that many people experience events over which they have no control, with little power to change their circumstances, but remain able to effectively cope.³⁶ The SLSWB results reflect this concept.³⁷ Whereas over eighty percent of students have experienced PTEs, only about a quarter of those students meet the criteria to be evaluated for PTSD.³⁸

2. *Trauma*

Modern research about traumatic stress and the effects of trauma has existed since the early 1970s.³⁹ Over the past fifty years, trauma has been widely researched.⁴⁰ From this research, we know that when PTEs happen without the buffer of supportive connections or the availability of healing practices, brain chemistry changes in fundamental ways.⁴¹ Understood through this lens, trauma is more than just a past event. Instead, it is the imprint that such an experience leaves on the mind, brain, and body.⁴² Trauma can evoke feelings of fear, terror, helplessness, hopelessness, and despair. These intense feelings are often subjectively experienced as a threat to one's own survival.⁴³ Put another way, trauma is an individual's psychopathological reaction to a PTE.⁴⁴

The most common diagnosable traumatic stress responses are PTSD, major depressive disorder, and complicated grief.⁴⁵ These traumatic stress reactions account for the subset of people who experience PTEs and suffer lasting psychological difficulties as a result.⁴⁶ Greater exposure to PTEs,

36. *See id.* at 515–16 (noting that while PTEs are common, PTSD is typically observed in only five to ten percent of people who experience PTEs and only ten to fifteen percent of bereaved people will experience chronically elevated grief).

37. *See Jaffe et al., supra* note 1, at 468.

38. *See id.*

39. VAN DER KOLK, *supra* note 30, at 21 (explaining the field initially studied the effects of trauma in war veterans).

40. PERRY & WINFREY, *supra* note 18, at 102.

41. Camelia E. Hostinar & Megan R. Gunnar, *Social Support Can Buffer Against Stress and Shape Brain Activity*, 6 AM. J. BIOETHICS NEUROSCIENCE 34, 34 (2015).

42. VAN DER KOLK, *supra* note 30, at 21.

43. Hostinar & Gunnar, *supra* note 41, at 35.

44. Bonanno et al., *supra* note 32, at 513, 529.

45. *Id.* at 513.

46. *See id.* at 520 (citing various risk factors are associated with trauma as a result

being in immediate physical danger, and/or witnessing death or serious injury to others, loss of social and economic resources, and past and current life stress are also associated with poorer psychological adjustment.⁴⁷ Trauma is exacerbated by situations and circumstances that cause fear, stress, and anxiety.⁴⁸

3. *Pair of ACEs Model*

Experiencing PTEs is associated with an increased risk of adverse outcomes. Groundbreaking research in the mid-1990s into Adverse Childhood Experiences (“ACEs”) showed a causal connection between experiencing specific adverse events in childhood and resulting adverse health and social outcomes.⁴⁹ The original ACEs research demonstrates a connection between a greater number of ACEs and “high-risk” behaviors (such as substance use and alcoholism).⁵⁰ These high-risk behaviors are correlated with a greater number of ACEs which predispose individuals to have more interaction with legal systems.⁵¹ More recent research also shows a connection between increased ACE scores and criminal behavior.⁵²

ACEs is a useful tool for understanding the types of events that can lead to poor outcomes in several areas. At the same time, it focuses primarily on discrete events that happen in an individual’s life. To truly understand the effects of trauma, it is helpful to also consider the role of environment and systems as we think about trauma. The “Pair of ACEs” model recognizes that both adverse childhood experiences and adverse *community* experiences contribute to trauma.⁵³ Things like mass incarceration through the criminal

of experiencing a PTE). Personality traits, including negative affectivity and ruminative response style, are associated with increased risk. *Id.*

47. *Id.*

48. SAMHSA’S CONCEPT OF TRAUMA, *supra* note 8, at, 86.

49. See *About the CDC-Kaiser ACE Study*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 6, 2021), <https://www.cdc.gov/violenceprevention/aces/about.html>.

50. 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, 249 (1998).

51. Wyrick & Atkinson, *supra* note 3, at 1 (noting risk factors include risk for further victimization, delinquency and adult criminality, substance abuse, poor school performance, depression, and chronic disease).

52. James A. Reavis et al., *Adverse Childhood Experiences and Adult Criminality: How Long Must We Live Before We Possess Our Own Lives?*, 17 PERMANENTE J. 44, 44 (2013).

53. HOWARD PINDERHUGHES ET AL., PREVENTION INST., ADVERSE COMMUNITY EXPERIENCES AND RESILIENCE: A FRAMEWORK FOR ADDRESSING AND PREVENTING

justice system and family separation through child welfare and immigration systems also weaken communities and diminish their strength. This Pair of ACEs model acknowledges that trauma is not caused purely by individual experiences and is a helpful framework for understanding how the experience of PTEs and adverse experiences can compound and increase the likelihood that one will experience trauma as a result.⁵⁴

C. Trauma Caused by Legal Systems

In addition to being full of people who have extensive trauma histories, our legal systems contribute to adverse individual and community experiences.⁵⁵ As such, for many people who interact with the legal system, their interaction with the legal system itself represents an event that overwhelms their ability to cope, and over which they have little, if any, control, and may be traumatic in and of itself.⁵⁶ Our legal systems frequently traumatize and retraumatize people who interact with them.⁵⁷ For example, victims are retraumatized by their participation in court proceedings.⁵⁸ Perpetrators of criminal behavior are also traumatized by their interactions with legal systems, despite how our systems are loathe to acknowledge the

COMMUNITY TRAUMA, 1, 4, 17 (2015) (noting that for example, for communities that experience violence, the whole community may be viewed as having experienced trauma in addition to individual victims).

54. See SAMHSA'S CONCEPT OF TRAUMA, *supra* note 8, at 85 (noting that “[w]hen individuals experience multiple traumas, prolonged and repeated trauma during childhood, or repetitive trauma in the context of significant interpersonal relationships, their reactions to trauma have unique characteristics.” (citation omitted)).

55. See Catherine D.P. Duarte et al., *Policy Determinants of Inequitable Exposure to the Criminal Legal System and Their Health Consequences Among Young People*, 110 AM. J. PUB. HEALTH S1, S45 (2020); see also MATÉ & MATÉ, *supra* note 16, at 489 (“In North America, and in many parts of the world, the current model [of criminal justice systems] should more accurately be called a ‘trauma-punishing-and-inducing system.’”).

56. See Katirai, *supra* note 21, at 88–89. For example, the legal system’s destruction of families through our criminal legal system, family regulation system, and immigration system oppresses communities and diminish their strength. Wrongful conviction, mass incarceration, and police brutality in our criminal legal systems all are PTEs.

57. See *id.* at 89–90, 102, 106.

58. See *id.* at 102 (noting that abusive partners use our court systems as a means to inflict additional abuse); see, e.g., WASH. REV. CODE § 26.51.010 (2022) (“Court proceedings can provide a means for an abuser to exert and reestablish power and control over a domestic violence survivor long after a relationship has ended. The legal system unwittingly becomes another avenue that abusers exploit to cause psychological, emotional, and financial devastation.”); Evans & Graves, *supra* note 3, at 5 (finding that our juvenile justice system harshly and more frequently punishes children who are also subjects of dependency proceedings that woefully fail to help them).

trauma of offending.⁵⁹ Our criminal justice and child protection systems disproportionately harm people of color, and this systemic racism is often experienced as an adverse community experience.⁶⁰ Arguably, at times lawyers may even experience their work as a trauma given the adversarial and high stakes nature of their interactions coupled with the level of power and control courts have over attorneys' lives.

D. Vicarious Trauma

Trauma does not just impact those directly exposed to PTEs. It is well documented that traumatic stress also impacts those who have indirect exposure. Professionals who work with individuals with trauma histories often experience traumatic responses as if they themselves were experiencing the trauma.⁶¹ This Article uses the term "vicarious trauma" to explain this phenomenon. Vicarious means "experienced or realized through imaginative or sympathetic participation in the experience of another;"⁶² when paired with the word trauma, the term "vicarious trauma" highlights the reality that the mere imagining of and sympathizing with another person's trauma can evoke traumatic stress responses. Thus, vicarious trauma refers to the "harmful changes that occur in professionals' views of themselves, others, and the world, as a result of exposure to their clients' graphic and/or traumatic material."⁶³ This Article relies on the term vicarious trauma as a matter of preference over other similar terms because,

59. See McCallum, *supra* note 14. The concept of the trauma of offending refers to the recognition that people who cause harm to others may experience the causing of harm a PTE too. See *The Trauma-Informed Lawyer: Community is Key to Healing*, SIMPLECAST (Sept. 7, 2022), <https://thetraumainformedlawyer.simplecast.com/episodes/community-is-key-to-healing> [<https://perma.cc/A7TT-HWA7>] (discussing the relationship between alcohol and offending and noting that many people who suffer from substance use disorders cause harms when they are using that they would never cause when they are sober). I have also observed this phenomenon in mothers in the child protection system who have harmed their children (who they love very much), and as a response feel immense guilt, shame, and sadness that can result in ongoing trauma responses.

60. See Paul Lanier, *Racism is an Adverse Childhood Experience (ACE)*, UNC: THE JORDAN INST. FOR FAMS. (July 2, 2020), <https://jordaninstituteforfamilies.org/2020/racism-is-an-adverse-childhood-experience-ace/>.

61. Andrew P. Levin et al., *Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients*, 199 J. NERVOUS & MENTAL DISEASE 946, 946 (2011).

62. *Vicarious*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/vicarious> (last visited Feb. 4, 2023).

63. See Katie Baird & Amanda C. Kracen, *Vicarious Traumatization and Secondary Traumatic Stress: A Research Synthesis*, 19 COUNSELLING PSYCH. Q. 181, 181 (2006).

on its face, it most broadly represents the multitude of risks law students and lawyers encounter in their legal education and practice.⁶⁴

An ability to recognize and address vicarious trauma, in oneself and others, is central to a trauma-informed approach. Signs and symptoms of adverse effects of vicarious trauma include: feeling helpless and hopeless; a sense that one can never do enough; hyper-vigilance; diminished creativity; inability to embrace complexity; minimizing; chronic exhaustion or physical ailments; inability to listen or deliberate avoidance; dissociative moments; a sense of persecution; guilt; fear; anger and cynicism; inability to empathize/numbness; addictions; and grandiosity (an inflated sense of importance related to one's work).⁶⁵ Vicarious trauma is a normal and foreseeable experience for helping professionals, including lawyers.⁶⁶ Like trauma, vicarious trauma can be healed. As a part of the healing process, the experience needs to be acknowledged and normalized such that people who experience these signs and symptoms don't feel guilt or shame for being impacted.⁶⁷

A law professor who aims to be trauma-informed must also understand the significance of vicarious trauma. Because law professors are likely to interact with students and clients that experience trauma and systems that induce trauma, they too are at risk for experiencing vicarious trauma themselves. Additionally, law professors, often by necessity, teach traumatic material that may inadvertently, elicit vicarious trauma responses in

64. Vicarious trauma is often used interchangeably with other related terms, including "secondary traumatic stress," "compassion fatigue," and "burnout." For an excellent and comprehensive explanation on the differences overlaps and imprecise boundaries between these terms, see Harris & Mellinger, *supra* note 13, at 744–47. Understanding the precise overlap, similarities, and differences of these terms is not necessary for purpose of this Article, although, personally, I wish the term "compassion fatigue" would be used less often. On its face, it implies fatigue results from compassion, and I fear it discourages the act of fostering compassion. Practitioners of mindfulness might say that practicing compassion (for self and others) is an extremely powerful *antidote* to protecting against the negative effects of vicarious trauma. John Engel, *Compassion Meditation, Antidote for Compassion Fatigue*, TRAUMATIC STRESS INST. (Apr. 12, 2021), <https://blog.traumaticstressinstitute.com/blog/rc-monthly-mindfulness-blog-come-fill-your-cup> [<https://perma.cc/RN8Z-YMV2>]. Based on my own personal experience, I would encourage people to lean into, and not fear or shy away from, strengthening compassion towards others.

65. See LIPSKY & BURK, *supra* note 6, at 47–113. This book has been paradigm shifting in my own work and understanding of trauma stewardship. I frequently assign it to law students.

66. Netzel, *supra* note 10, at 23.

67. *Id.*

themselves and students.⁶⁸ Understanding the risks of vicarious trauma can help professors take preventative measures to guard against it, and respond appropriately when it presents itself.

E. Resilience and Recovery

Discussions about trauma are not complete unless they include a discussion on resilience.⁶⁹ Experiencing resilience after a PTE is normal and the most common outcome.⁷⁰ Another outcome of PTEs is recovery.⁷¹ Researchers have identified various risk and resilience factors related to personality traits, demographics, amount of trauma exposure, available resources, past and current life stress, worldview, and emotions associated with responses to PTEs.⁷²

While resilience and recovery are distinct outcomes of PTEs,⁷³ both reflect that exposure to PTEs does not leave a person doomed to a life of suffering.⁷⁴ Thus, because people have a great capacity for resilience in the face of trauma, a trauma-informed approach should not make assumptions about any

68. See Lisa A. Henshaw, *Building Trauma-Informed Approaches in Higher Education*, 12 BEHAV. SCI. 368, 369–70 (2022).

69. Bonanno et al., *supra* note 32, at 513. For the purpose of this Article, resilience is “an outcome pattern following a PTE characterized by a stable trajectory of healthy psychological and physical functioning.” *Id.*

70. *Id.* at 511–12.

71. *Id.* at 515. For the purpose of this Article, recovery is “an outcome pattern characterized by elevated symptoms and functional impairment after the PTE, followed by a gradual return to baseline functioning.” *Id.* Recovery usually occurs within one to two years of experiencing the PTE.

72. *Id.* at 519–22. Resilience is not associated with specific dominant factors, but instead, “various risk and resilience factors coalesce in a cumulative or additive manner, each contributing or subtracting from the overall likelihood of a resilient outcome.” *Id.* at 519. For example, emotional support, instrumental support (“assistance with the tasks of daily living”), having a positive worldview, and arriving at a meaning from the PTE are all associated with resilient outcomes. *Id.* at 521.

73. *Id.* at 515 (“An increasing number of studies have demonstrated that resilience and recovery can be mapped as discrete and empirically separable outcome trajectories in response to widely varying acute stressors . . .”).

74. This explanation on resilience and recovery as common outcomes to PTEs is in line with the results in the SLSWB which reveal that while eighty percent of survey respondents experienced a PTE, only twenty-six percent met criteria to be screened for PTSD. Jaffe et al., *supra* note 1, at 468. It follows that many survey respondents experienced either resilience or recovery as an outcome to their PTE. See Bonanno et al., *supra* note 32, at 515 (“The capacity for resilience is part and parcel of ordinary human capabilities, as witnessed by the substantial proportion of people who endure PTEs with relatively small effects on their everyday lives.” (citations omitted)).

person who has experienced a PTE. Further, recovery is a hopeful outcome in response to PTEs because it recognizes that people can suffer from trauma and still heal from trauma. A trauma-informed approach seeks to help in the healing process or, at a minimum, not interfere in the healing process.

F. *Post-Traumatic Growth*

Another encouraging concept that is a necessary part of any complete conversation on trauma-informed practices is post-traumatic growth. Post-traumatic growth refers to the possibility of growth and wisdom that emerge from the struggle with trauma.⁷⁵ The phenomenon is not unique to any particular kind of person or exposure to a specific PTE.⁷⁶ Instead, it represents a transformational response to trauma—above and beyond mere resilience as a trauma outcome—and refers to changes in people that go beyond an ability to avoid being harmed by highly stressful circumstances; it involves a movement beyond pre-trauma levels of adaptation.⁷⁷

An awareness of post-traumatic growth is an essential element to a trauma-informed approach. Although those with trauma histories are more *likely* to experience problems stemming from those histories, this by no means suggests that they *will* experience inhibited normative functioning.⁷⁸ To the contrary, this is to suggest that some of those with the unfortunate experience of struggling in the aftermath of a PTE will possess unique and valuable wisdom born from their struggle. A trauma-informed approach recognizes the potential growth and wisdom born from trauma as a unique strength some trauma survivors may possess. It goes beyond stigmas often associated with those who have been victimized and takes a strengths-based approach to

75. Richard G. Tedeschi & Lawrence G. Calhoun, *Posttraumatic Growth: Conceptual Foundations and Empirical Evidence*, 15 PSYCH. INQUIRY 1, 1–2 (2004); see also I. Rozentsvit, *The Post-Traumatic Growth: The Wisdom of the Mind, Its Clinical and Neuropsychanalytic Vicissitudes*, 33 EUR. PSYCHIATRY 1, 1–2 (2016).

76. Tedeschi & Calhoun, *supra* note 75, at 3.

77. *Id.* at 5. (“The affective quality of the learning and change in posttraumatic growth may distinguish it from other normative developmental processes that lead people to report that they have been improving or maturing over time. Because of the affect involved, and the restructuring of the fundamental components of the assumptive world, growth seems to have a qualitative and quantitative difference in trauma survivors. Their attributions that growth was accomplished because of, and in the aftermath of, the struggle with trauma may be acknowledgments that much cognitive processing and affective engagement went into the changes they report. Research indicates that when persons who have experienced severe trauma have been compared with those who do not report trauma, positive personal changes are reported at a reliably higher level among trauma survivors.”).

78. See, e.g., Reavis et al., *supra* note 52, at 48.

working with people who have experienced PTEs.⁷⁹

G. *Vicarious Resilience*

Yet another encouraging concept is vicarious resilience. In the same way that vicarious trauma is a normal and foreseeable risk for professionals who work closely with those who experience trauma, vicarious resilience is also a recognized phenomenon for people who work closely with those who experience trauma.⁸⁰ Qualitative research has shown that “helpful professionals who are empathetic towards trauma survivors and their harrowing accounts experience a vicarious [post-traumatic growth] which causes changes in their philosophy of life, goals, and perspectives.”⁸¹ Vicarious resilience brings hope to the conversation because it highlights the benefits, in addition to the risks, of working with those who have experienced trauma. While the conversation on vicarious trauma is necessary to normalize the experience,⁸² it is only one part of the conversation because there is also a significant personal benefit derived when one can vicariously connect with the post-traumatic wisdom of the people they seek to serve.⁸³

H. *Trigger and Trauma Response*

Another term that is used often and often misunderstood is “trigger.” For purposes of this Article, a trigger is an evocative cue that reminds the brain

79. *But see* Tedeschi & Calhoun, *supra* note 75, at 6–7 (“[T]he presence of growth does not necessarily signal an end to pain or distress, and usually it is not accompanied by a perspective that views the crisis, loss, or trauma itself as desirable. Many persons facing devastating tragedies do experience growth arising from their struggles. The events themselves, however, are not viewed as desirable—only the good that has come out of having to face them.”).

80. Pilar Hernandez-Wolfe, *Vicarious Resilience: A Comprehensive Review*, 66 REV. DE ESTUDIOS SOCIALES 9, 10 (2018). While research on vicarious resilience has been limited, it is a documented phenomenon in psychotherapists, educators, and community leaders who work closely with people who have been victims of torture.

81. *Id.* at 13.

82. Megan Zwisohn et al., *Vicarious Trauma in Public Service Lawyering: How Chronic Exposure to Trauma Affects the Brain and Body*, 22 RICH. PUB. INT. L. REV. 269, 288 (2019) (providing the article on vicarious trauma in public service lawyering is “not meant to scare anyone away from a legal career of public service. The message is that those who have similar experiences are not alone or crazy; these experiences are simply a product of the valiant work they have chosen to do. This type of career literally changes the brain. It affects one’s personality, relationships, and world outlook. The only way to have a very long career in public service is to understand how and from where those changes are coming.”).

83. *See* Hernandez-Wolfe, *supra* note 80, at 15.

or body of a traumatic experience.⁸⁴ A “trauma response” is a reflexive coping mechanism to real or perceived trauma.⁸⁵ A person in the midst of a trauma response is unable to emotionally regulate. Emotional regulation refers to a brain’s ability to control thoughts, feelings, and actions in service of one’s longer-term goals; the ability to think before acting or speaking; or to act consistent with ones values and goals.⁸⁶ A person who has experienced trauma can become dysregulated when they are exposed to a trigger.⁸⁷ When a person is triggered and they experience a loss of control because their brain shifts into survival mode, they are having a trauma response.⁸⁸ Trauma responses can occur when there is no real or present threat and, as a result, trauma survivors often feel unsafe in their bodies, minds, and relationship with others.⁸⁹

Trauma responses are often categorized as fight, flight, freeze, or fawn.⁹⁰ These responses, when they occur during a threatening situation, are reflexive adaptive coping mechanisms; however, when a trauma response occurs in response to a non-threatening situation, it is a maladaptive coping mechanism.⁹¹ A helpful psychological tool for understanding regulation and dysregulation is the “window of tolerance.”⁹² When a person is emotionally

84. SAMHSA’S CONCEPT OF TRAUMA, *supra* note 8, at 68 (“A trigger is a stimulus that sets off a memory of a trauma or a specific portion of a traumatic experience.”).

85. Julie Nguyen, *Fight, Flight, Freeze, Fawn: Examining the 4 Trauma Responses*, MINDBODYGREEN (Sept. 11, 2021), <https://www.mindbodygreen.com/articles/fight-flight-freeze-fawn-trauma-responses>.

86. Kendra Brodin, *Emotional Regulation: What It Is and Why Lawyers Need It*, LAW PRAC. TODAY (Dec. 14, 2021), <https://www.lawpracticetoday.org/article/emotional-regulation-what-it-is-and-why-lawyers-need-it/>.

87. SAMHSA’S CONCEPT OF TRAUMA, *supra* note 8, at 66 (“[I]ntrusive thoughts and memories can easily trigger strong emotional and behavioral reactions, as if the trauma was recurring in the present.”).

88. Nguyen, *supra* note 85.

89. SUDIE E. BACK ET AL., CONCURRENT TREATMENT OF PTSD AND SUBSTANCE USE DISORDERS USING PROLONGED EXPOSURE (COPE): PATIENT WORKBOOK app. at 138–40 (2014). Triggers eliciting trauma responses may include places, times of day, certain smells or noises, or any other situation that evokes the circumstances under which the initial trauma occurred. *Id.* Some people reexperience traumatic events through flashbacks and nightmares. *Id.* Others are in a state of continuous vigilance and may feel on guard, jumpy, jittery, shaky, nervous, on edge, be easily startled, and have trouble concentrating or sleeping. *Id.* Anger, guilt, shame, grief, depression, anxiety, and negative self-imagined and world view are all normal responses to trauma. *Id.*

90. *See* Nguyen, *supra* note 85.

91. *Id.*

92. Frank Corrigan et al., *Autonomic Dysregulation and the Window of Tolerance*

regulated, they are within their window of tolerance. When a person is outside their window of tolerance they are dysregulated. People experiencing dysregulation may be emotionally flooded, reactive, impulsive, hypervigilant, fearful, or angry. They may experience intrusive imagery and affects, racing thoughts, flashbacks, and nightmares. They may exhibit high-risk behavior, be cognitively dissociated, or otherwise have an inability to think. Or they may appear collapsed with disabled defensive responses, and/or feel helpless and hopeless.⁹³ In sum, triggers can cause a person to emotionally dysregulate such that they are well outside of optimal functioning.

IV. WHY LAW PROFESSORS NEED TO ADOPT TRAUMA-INFORMED PRACTICES

Trauma and vicarious trauma, as well as their counterparts resilience and vicarious resilience, are prevalent in legal systems and law school. This section explores the concepts highlighted above as they exist in law schools. It aims to deepen understanding about trauma in law school and argues that it is imperative for law professors to adopt trauma-informed practices.

A. Reflections on the SLSWB Data

At first glance, the SLSWB data on law students and trauma is staggering and, as the authors describe it, “surprising.”⁹⁴ Yet, there is room for hope buried in these results. First, while those without foundational knowledge about trauma might be shocked to learn that eighty percent of responding law students have experienced a PTE, this number is not dissimilar from the prevalence of PTE exposure in the general population.⁹⁵ If anything, the statistics demonstrate that law students are not exceptional in avoiding PTEs in their lifetime. Thus, the SLSWB data finally illuminates a problem that

Model of the Effects of Complex Emotional Trauma, 25 J. PSYCHOPHARMACOLOGY 17, 17 (2011) (“One model for understanding and explaining the fluctuations in clinical features that can occur unpredictably and rapidly in the disorders that arise from the effects of severe trauma is the ‘Window of Tolerance’ model of autonomic arousal. [Psychiatrist and neurobiologist] Siegel proposes that between the extremes of sympathetic hyperarousal and parasympathetic hypoarousal is a ‘window’ or range of optimal arousal states in which emotions can be experienced as tolerable and experience can be integrated.” (citations omitted)).

93. *Id.* at 18 (discussing the effects of trauma on student cognition and behavior).

94. Jaffe et al., *supra* note 1, at 468.

95. *Id.* at 468 (addressing implications of trauma data among law student survey respondents); Bonanno et al., *supra* note 32, at 512 (discussing population-based studies related to trauma and resilient outcomes).

has always existed.

Second, while it is alarming to learn that over a quarter of respondents who have experienced PTEs suffer such that they should be screened for PTSD, the prevalence of students who suffer while in law school is not new. Indeed, it has been known since the late 1980s that law students have an increased risk of mental health issues over similarly situated people in other professional programs.⁹⁶ These mental health issues in law students and lawyers have persisted and are well-documented.⁹⁷ The legal field has been aware of general mental health issues for at least 35 years, so the fact that PTSD is one of these issues for law students in 2021 is only cause for new alarm to the extent that the legal profession (despite significant efforts) has been slow to make meaningful progress to address the issue.⁹⁸ An additional hopeful reframe on this statistic: three quarters of responding students who have experienced PTEs do *not* meet the criteria to necessitate screening for PTSD. While it cannot be assumed that the failure to meet the criteria to necessitate screening for PTSD means these students are thriving, it is, at a minimum, in line with research that resilience and recovery are the most common outcomes of exposure to PTEs.⁹⁹

Finally, given that fifty percent of respondents were motivated to attend law school, in part, because they experienced a trauma or injustice,¹⁰⁰ there is reason to believe some students have unique wisdom gained from the

96. G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 AM. BAR FOUND. RSCH. J. 225, 247 (1986) (explaining that aspects of legal education compound elevated levels of psychological distress among law students).

97. Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 48 (2016) (revealing alarming data on attorney mental health including as many as thirty-six percent of responding attorneys having problematic drinking behavior, struggling with depression and nineteen percent struggling with severe anxiety); Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 116 (2016) (revealing that in the 2016 SLSWB survey forty-three percent of responding students reported binge drinking, seventeen percent experienced depression, fourteen percent experienced severe anxiety, and twenty-three percent had mild or moderate anxiety); see also Jaffe et al., *supra* note 1, at 495–96 (revealing that double the number of students surveyed in 2021 reported a diagnosis of depression or anxiety compared to students surveyed in 2014, but fewer students engaged in binge drinking).

98. See Jaffe et al., *supra* note 1, at 445 (discussing the inflexibility of law schools in responding to student needs).

99. Bonanno et al., *supra* note 32, at 515.

100. Jaffe et al., *supra* note 1, at 496

hopeful phenomenon of post-traumatic growth.¹⁰¹ Thus, if law professors can learn to teach in a trauma-informed way and minimize retraumatization of these students, the legal profession, the clients it serves, and the systems it upholds can capitalize on the benefit of lawyers who embody post-traumatic wisdom. Anecdotally, I have observed students go on to excel in their career perhaps because of the wisdom gained and resilience developed in experiencing PTEs which helped them develop a special skillset for working in challenging situations in a challenging profession.¹⁰²

B. Teaching Traumatized Students

As observed by Katz, a leading scholar in the area of trauma-informed lawyering, “[a]s law professors in the midst of the pandemic, we no longer have to wonder whether our law students have been exposed to trauma, but rather how our students have been and will continue to be impacted by trauma.”¹⁰³ Many law students arrive at the door of law school having experienced PTEs, ACEs, and adverse community experiences, some of whom with resulting trauma. Law school is known to cause fear, stress, and

101. Tedeschi & Calhoun, *supra* note 75, at 3

102. I have been deeply inspired by a number of students in this regard who have been courageous enough to share their stories publicly and are all changing the world for the better. *See generally* Kirsty Liedman, *A Life in the Law: Fostering A Career Helping Families*, MITCHELL HAMLIN SCH. L. (Apr. 5, 2022), <https://mitchellhamline.edu/news/2022/04/05/a-life-in-the-law-fostering-a-career-helping-families/> (trauma-informed family law attorney Kirsty Liedman experienced foster care in her youth); Nancy Crotti, *Family's Experience with Legal Aid Attorney Inspires Student's Work in Child Protection Clinic*, MITCHELL HAMLIN SCH. L. (Jan. 1, 2019), <https://mitchellhamline.edu/news/2019/01/01/familys-experience-with-legal-aid-attorney-inspires-students-work-in-child-protection-clinic/> (family defense attorney Scotty DuCharme had significant interactions with courts as a child subject to court jurisdiction); Amber Goodwin, *'I Was Expected to Be Married and Have Kids at 41. I Chose a Different Road and Couldn't Be Happier.'* NEWSWEEK (June 23, 2021), <https://www.newsweek.com/41-expected-kids-different-path-happy-1602887>; *SBA President Amber Goodwin Attends White House Event on Gun Violence Prevention*, MITCHELL HAMLIN SCH. L. (Apr. 8, 2021), <https://mitchellhamline.edu/news/2021/04/08/sba-president-amber-goodwin-attends-white-house-event-on-gun-violence-prevention/> (gun reform advocate Amber Goodwin was arrested at a protest in her twenties); Samantha Hoanglong, *A Voice for Change: Alum Seeks to Destigmatize Criminality*, MITCHELL HAMLIN SCH. L. (Sept. 14, 2021), <https://mitchellhamline.edu/news/2021/09/14/a-voice-for-change-alum-seeks-to-destigmatize-criminality/>; THE WAITING ROOM WITH NADINE GRAVES, <https://twrpodcast.libsyn.com/> (criminal justice reform advocate and podcast host Nadine Graves was involved in the juvenile justice system as a teenager).

103. Katz, *supra* note 13, at 18 (characterizing the onset of COVID-19 as a collective trauma experienced globally).

anxiety.¹⁰⁴ Given that trauma is exacerbated by situations and circumstances that cause fear, stress, and anxiety, trauma is likely to be exacerbated by the current state of legal education.¹⁰⁵ Thus, if law professors do not wish to cause further harm to already traumatized students, it is critical that law professors develop pedagogy consistent with trauma-informed practices.

In light of the SLSWB data on the prevalence of law students who have experienced trauma,¹⁰⁶ this Article furthers the idea that legal educators must consider the way students' documented trauma histories are impacted in the law school classroom. This is not to say that law professors have intentionally sought to cause harm to students. Instead, it is an acknowledgement that impact is different than intent. Nor is it to shame law professors for having utilized pedagogical practices that have unintentionally triggered trauma responses from students. Rather, this Article seeks to encourage law professors to “[d]o the best you can until you know better. Then when you know better, do better.”¹⁰⁷

Law professors have a responsibility to both understand trauma and aim to be trauma-informed to adequately serve their students who are known to have experienced trauma before coming to law school.¹⁰⁸ Based on the SLSWB data, one would be hard pressed to find a law professor who will not encounter students at risk for experiencing adverse effects associated with experiencing a PTE.¹⁰⁹ Some professors are fortunate enough to have earned student trust such that students share their need for help. Yet, in many instances, all professors know is that they are guaranteed to have students with trauma histories, without confirmation of who the students are, their

104. Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320, 2331–32 (2017) (suggesting that law school instructors have the power to trigger traumatic life experiences for students through the use of Socratic cold-calls).

105. See Debra S. Austin, *Positive Legal Education: Flourishing Law Students and Thriving Law Schools*, 77 MD. L. REV. 649, 649 (2018) (positing that legal education is the catalyst for the well-being crisis in the legal field).

106. Jaffe et al., *supra* note 1, at 467 (discussing additional survey questions included in the SLSWB to promote greater understanding of students' experiences and challenges in dealing with trauma).

107. See Garson O'Toole, *You Did What You Knew How to Do, and When You Knew Better, You Did Better*, QUOTE INVESTIGATOR (Nov. 30, 2022), <https://quoteinvestigator.com/2022/11/30/did-better/#more-442285> (exploring the origins of the quote which is often attributed to Maya Angelou).

108. Jaffe et al., *supra* note 1, at 484 (explaining that recent changes to the ABA standards have created a window of opportunity in which to better support law student well-being).

109. See *id.* at 468 (noting that over eighty percent of student respondents indicated that they have experienced some form of trauma).

specific triggers, or their resulting needs. As such, law professors must adopt a trauma-informed approach as a matter of universal precaution by implementing principles of universal design.¹¹⁰

1. Fight, Flight, Freeze, and Fawn Responses: Recognizing Trauma Responses in Law Students

While this Article advocates adopting a trauma-informed approach as a matter of universal precaution, it is also fundamental to understand the nature of trauma responses and the broad spectrum of ways in which they manifest.¹¹¹ When a professor can identify potential trauma responses in students, they may be more likely to ask the ultimate trauma-informed question “what happened to you?” and, in turn, be more empathetic towards their students’ behavior and performance issues in their classroom.¹¹² This section explores the trauma responses fight, flight, freeze, fawn, and the adverse effects of vicarious trauma; specifically, how they manifest in law students.

Regulation is a precursor to reasoning.¹¹³ An ability to reason is necessary for law students. A student who is outside of their window of tolerance and in the midst of any kind of trauma response is not in a position for optimal learning.¹¹⁴ To do well as a law student, one must be able to effectively access foundational cognitive tools like the ability to reason and problem

110. Universal Design for Learning (UDL) is a framework that “empowers educators to proactively design curriculum and instruction so that all learners can increase their brain power and accelerate their learning.” MIRKO CHARDIN & KATIE NOVAK, EQUITY BY DESIGN: DELIVERING ON THE POWER AND PROMISE OF UDL 2 (Corwin Press, Inc. 2020). UDL aims to ensure that “all students have equal access to teaching and learning.” *Id.* at 9.

111. Larry Bohannon et al., *Responding to College Students Who Exhibit Adverse Manifestations of Stress and Trauma in the College Classroom*, 5 FIRE: F. FOR INT’L RSCH. IN EDUC. 66, 68–69 (2019) (highlighting policies centered on trauma-informed pedagogy and noting ongoing impacts of trauma in classroom setting).

112. As world renowned neuroscientist and trauma expert Bruce Perry noted, “[o]ver the years, I’ve found that seemingly senseless behavior makes sense once you look at what is behind it.” PERRY & WINFREY, *supra* note 18, at 23; *see also* Katz, *supra* note 13, at 36 (discussing law student behaviors that may be due to traumatic stress).

113. PERRY & WINFREY, *supra* note 18, at 142 (discussing the sequence of engagement, whereby an individual’s perceptions are sorted and processed through a neural network that begins in the lower brain and rises to the cortex, the part responsible for complex thinking); *see also id.* (explaining the series begins with the regulation of sensory perceptions, proceeds to networking and relations, and culminates in reasoning).

114. Bohannon et al., *supra* note 111, at 69 (describing physical manifestations of trauma and stress that inhibit optimal student performance in higher education).

solve, and the ability to access and retrieve memory.¹¹⁵ Trauma responses, which cause a person to dysregulate, can significantly interfere with success in law school. In even more simple terms, a student cannot access the smartest part of their brain when they are dysregulated.¹¹⁶ A regulated student can learn, a dysregulated student cannot.¹¹⁷ It follows that professors who are able to recognize dysregulation in their students, make efforts to keep students regulated in their classes, and correct course to help students regulate, will create circumstances for more optimal learning.

A general understanding of trauma responses is helpful for a professor adopting a trauma-informed stance. Much has been written about fight, flight, and freeze responses. Fight-or-flight responses are often discussed together because both are involuntary, hyperaroused states which cause a person to act before they think, resulting in an overwhelming tendency to act in response to an alarm.¹¹⁸ Fight responses are associated with anger.¹¹⁹ Flight is the overwhelming tendency to flee in response to fear.¹²⁰ Freeze responses are mute, terrified, frozen defense states of hypoarousal.¹²¹ In the

115. See PERRY & WINFREY, *supra* note 18, at 146 (discussing necessary tools for optimal learning).

116. See *id.* at 143 (explaining that the cognitive and somatic process of dysregulation prevents information relayed to an individual from getting to their cortex, which is the part of the brain that needs to activate for reasoning and rational communication).

117. *Id.* (reiterating that regulation precedes positive relations, which in turn is processed through reasoning).

118. Fight responses are when an individual who has experienced trauma “may shift into episodes of overwhelming rage [in response to] situations or contexts that trigger cognitive or somatic reminders of past trauma.” Kasia Kozłowska et al., *Fear and the Defense Cascade: Clinical Implications and Management*, 23 HARV. REV. PSYCHIATRY 263, 269 (2015). Flight responses are when an individual who has experienced trauma seeks to “escape from situations or contexts that trigger cognitive or somatic reminders of past trauma.” *Id.* In the face of a threat or danger flighting and fighting are adaptive behaviors. They become maladaptive when they occur as a response to a trigger and not the original trauma. Bessel van der Kolk, *Posttraumatic Stress Disorder and the Nature of Trauma*, 2 DIALOGUES CLINICAL NEUROSCIENCE 7, 9, 11 (2000).

119. Josalin J. Hunter, *Clinician’s Voice: Trauma-Informed Practices in Higher Education*, 2022 NEW DIRECTIONS FOR STUDENT SERVS. 26, 27, 30 (noting that fight responses include conflict, anger, and/or rage).

120. Kozłowska et al., *supra* note 118, at 269 (explaining traumatized individuals often respond to various triggers by seeking to escape or by projecting their rage externally).

121. See Kozłowska et al., *supra* note 118, at 270 (characterizing the freeze response as a short-lived and transient state of hypoarousal in response to various stimuli); Trever R. Biles et. al., *Should Catatonia Be Conceptualized as a Pathological Response to Trauma?*, 209 J. NERVOUS & MENTAL DISEASE 320, 320-21 (2021) (linking

face of a threat or danger, these are adaptive behaviors.¹²² When the threat or danger is no longer present, they are maladaptive behaviors.

A more recent addition to the language around trauma responses is the “fawn” response.¹²³ Fawning is a maladaptive “instinctual response associated with a need to avoid conflict and trauma via appeasing behaviors.”¹²⁴ When a person exhibits a fawn response, they “seek safety by merging with the wishes, needs and demands of others.”¹²⁵ They may behave “as if they unconsciously believe that the price of admission to any relationship is the forfeiture of all their needs, rights, preferences and

psychological trauma and clinical signs of catatonia with rigidity and tonic immobility); Schmidt et al., *supra* note 17, at 293 (stating that individuals who experience the freeze response often feel a sense of paralysis, which is characterized by powerlessness, despite awareness or consciousness); *see also* Corrigan et al., *supra* note 92, at 18–19 (discussing approaches to trauma-informed treatment that support posttraumatic growth by targeting various symptoms and states of hyperarousal).

122. *See* Eve B. Carlson & Constance Dalenberg, *A Conceptual Framework for the Impact of Traumatic Events*, 1 TRAUMA, VIOLENCE, & ABUSE 4, 13 (2000) (noting that avoidance of situations that remind the person of the trauma, such as the place where it happened, are common in a person exhibiting a flight response); *see also* BACK ET AL., *supra* note 89, at 126 (explaining confrontations with scary situations sometimes trigger avoidant behaviors, which impedes regulation of sensory perceptions).

123. *What’s Happening in the Nervous System of Patients Who “Please and Appear” (or Fawn) in Response to Trauma? With Stephen Porges, PhD, NAT’L INST. FOR CLINICAL APPLICATION BEHAV. MED.*, <https://www.nicabm.com/working-with-please-and-appear/> (last visited Feb. 4, 2023) (explaining common misconceptions and recent research related to the fawn response); *see also* Rebecca Mandeville, *Recognizing the C-PTSD-Based Fawn Response*, PACES CONNECTION (Nov. 19, 2020, 10:13 AM), <https://www.pacesconnection.com/blog/the-trauma-response-of-fawning-aka-people-pleasing-part-one> (crediting Pete Walker with coining the term ‘fawn’ as a trauma response in 2003); Crystal Raypole, *The Beginner’s Guide to Trauma Responses*, HEALTHLINE (Aug. 26, 2021), <https://www.healthline.com/health/mental-health/fight-flight-freeze-fawn#freeze> (explaining that the fawn response often involves unconscious behavior aimed to please and appease the threat for safety and survival).

124. *See* Mandeville, *supra* note 123 (suggesting that the fawn response can manifest in children as a way of coping with an abusive parent or non-nurturing relationship).

125. *See* Pete Walker, *The 4Fs: A Trauma Typology in Complex PTSD*, http://pete-walker.com/fourFs_TraumaTypologyComplexPTSD.htm (last visited Feb. 4, 2023) (describing the overwhelming tendency of fawn types to seek out codependent relationships); *see also* Schmidt et al., *supra* note 17, at 292–93 (observing that the flight and fight responses, and freeze response were coined in the mid-1920s and 1970s, respectively). There is significantly less empirical research on the fawn response compared to the fight, flight, and freeze responses, due to its novelty; none-the-less, it warrants conversation in this Article for purposes of better understanding how students might present to law professors, in light of the power dynamics involved, when they are impacted by trauma.

boundaries.”¹²⁶ Fawning is a “maladaptive way of creating safety . . . by essentially mirroring the imagined expectations and desires of other people.”¹²⁷ People who experience fawn responses may be harder to identify because of their appeasing nature. The fawn response often stems from a recognition that appeasing an abuser is one way to prevent abuse.¹²⁸ It may be triggered in response to being involved in relationships with power differentials.¹²⁹

i. Recognizing Fight Responses in Law Students

Law students in the midst of a fight response may present as combative.¹³⁰ For example, a student who has an outburst of anger in a class discussion, especially around traumatic material may be in the midst of a fight response. Further, a student who directs excessive anger at a professor or appears unwilling to accept constructive feedback and in turn, blames a professor instead of taking accountability for their own learning, may also be in the midst of a fight response.¹³¹ Fight responses can diminish physical and psychological safety in the classroom for the target of the response and observers of the interaction. When recognized through a trauma-informed lens, a professor can be careful not to get caught up in the emotion of being on the receiving end of a fight response. A calm and measured approach, which deescalates fight responses, can benefit the student having the trauma response and everyone else in the interaction, and, thus, clear the way to get all students the help they need. Aggressive behaviors in the classroom

126. Schmidt et al., *supra* note 17, at 292–93 (noting a tendency of fawn types to forfeit or suppress their own socio-emotional needs for the sake of appeasing others).

127. Sam Dylan Finch, *7 Subtle Signs Your Trauma Response is People Pleasing*, HEALTHLINE (Dec. 12, 2022), <https://www.healthline.com/health/mental-health/7-subtle-signs-your-trauma-response-is-people-pleasing> (suggesting the maladaptive behaviors of fawn types are often rooted in childhood upbringing).

128. Mandeville, *supra* note 123 (describing typical ‘fawners’ as individuals who were conditioned by their primary caregivers to suppress self-expression).

129. See Biles, *supra* note 121, at 322 (explaining fawn response is a defense mechanism that kicks in when the fight or flight response is rendered useless under the circumstances).

130. Hunter, *supra* note 119, at 30 (recognizing manifestations of trauma responses in college students who appear combative or confrontational with instructors); see also National Child Traumatic Stress Network, Justice Consortium Attorney Workgroup Subcommittee, *The Impact of Trauma on the Attorney-Client Relationship*, 36 AM. BAR ASS’N CHILD LAW PRACTICE TODAY 1, 3 (2017) (“A client who suddenly becomes loud or combative may be going into ‘fight mode’ in order to keep herself safe by pushing others away.”).

131. Katz, *supra* note 13, at 18 (suggesting that law professors have the transformative power to meaningfully support student well-being through trauma-informed practices).

should not be tolerated, but trauma-informed professors seek to stop aggressive behaviors with an eye to helping students all involved, without shaming and blaming what could be a trauma response.

ii. Recognizing Flight Responses in Law Students

Law students in the midst of a flight response may present as avoidant. For example, if a student is triggered by material, they may distance themselves from the triggering material intentionally or unintentionally. Poor attendance, low participation, and failing to complete assignments are all potential indicators that a student is having a flight response.¹³²

When understood through a trauma-informed lens, avoidant behaviors are less likely to be misunderstood as lazy or complacent. This is especially true in law school where students spend a lot of time, money, and energy to obtain this degree after a record of academic success sufficient to get them through the admissions process.¹³³ In acknowledging the possibility that avoidance of course work may be a trauma response and may be an “instance of self-protection rather than of resistance, or evidence of lack of preparation,” the professor may also feel benefit.¹³⁴ Understanding avoidance through a trauma-informed lens makes it less about the professor and more about the past and outside circumstances of the student. In a classroom setting the flight response is easily masked by students, and often misunderstood by professors. Students rely so heavily on technology in the classroom that it can be hard for a professor to distill general distraction from trauma-response based disengagement. Depersonalizing the potential trauma response might help professors adjust their teaching style to fit the needs of their students.

132. See Cless & Goff, *supra* note 22, at 32 (observing that instructors can strategically implement check-ins with students who appear to be withdrawn or disengaged); see also Bohannon et al., *supra* note 111, at 69 (providing responses to trauma in higher education might include work avoidance, learned helplessness, and lack of self-efficacy).

133. The law school where I teach conducted an anonymous wellness survey where we asked our students “What would be most helpful to promoting your well-being?” One sobering student answer stood out to me: “If my professors were required to be cognizant of the fact that every single student in front of them has their future on the line. No one goes to law school for fun. No one who makes it through 1L is there because they can’t decide what they want to do. This is our lives. Our entire lives are riding on this degree. Don’t threaten us with those comments that solidify our deepest fears that we may let our families down and we may not make it.” (Survey on file with author).

134. Carello & Butler, *supra* note 21, at 270 (suggesting educators can incorporate trauma-informed practices in the classroom by previewing or disclosing any difficult content that may trigger mental or physical reminders of previous trauma).

iii. *Recognizing Freeze Responses in Law Students*

Law students in the midst of a freeze response may present as disengaged. For example, a student exhibiting a freeze response may be physically present but dissociated; unable to process or remember information.¹³⁵ Students may give the all too familiar deer-in-the-headlights look, unable to answer when a professor poses a question.¹³⁶ When recognized through a trauma-informed lens, a professor can be careful not to assume a student is unintelligent or unprepared just because a student is unable to engage in the classroom. In turn, a professor can recognize that not all pedagogical practices work for all students.¹³⁷

iv. *Recognizing Fawn Responses in Law Students*

At first glance, a law student who aims to “please and appease” in response to a traumatic stress, may seem like the ideal law student. To a certain degree, most law students likely aim to please and appease professors. This is not an inherently bad thing. Aiming to meet a professor’s expectations and do well is a healthy goal in law school. Doing well in a class can open doors to a variety of positive outcomes such as becoming a research assistant, obtaining a letter of recommendation, or receiving help networking with other legal professionals. However, because fawning is such a desirable trauma response for a professor to be on the flip side of, law professors may unintentionally encourage and reward fawning to the detriment of students.

Fawning as a trauma response becomes problematic for a law student when they set aside their own “needs, rights, preferences, and boundaries” for the sake of appeasing their professor, or because the student feels the “price of admission” to success in law school “is the forfeiture” of their own

135. See Nat’l Child Traumatic Stress Network, *supra* note 130, at 5 (acknowledging that clients in a ‘freeze’ response may sometimes dissociate or appear withdrawn or disengaged).

136. Hunter, *supra* note 119, at 30 (noting freeze responses present as no affect, unresponsive, and/or inattentiveness).

137. For example, the Socratic method may not be well suited for students who struggle with trauma. This Article does not take the position that the Socratic method has no place in a law school classroom; however, a student’s ability to benefit from that tool may be limited if they exhibit certain trauma responses. This Article suggests that if a tool doesn’t work well, a professor should be slow to reach the conclusion that the issue is one of the student’s overall competence. The professor may just be using the wrong tool for the specific student. See, e.g., Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 25 BERKELEY LA RAZA L. J. 1, 18 (2015) (noting that transformative professors “[u]se the Socratic method to teach, not intimidate. [And to] [c]reate an environment where compassionate cold calling is the norm.”).

needs.¹³⁸ A major concern is that, given the inherent power dynamic between a law professor and law student, professors may evoke the fawn response from students. I have observed (and personally experienced both as a professor and when I was a law student) that professors have a blind spot for the amount of power they unintentionally wield over students. Law students may have a more challenging time saying “no” to professors than professors realize.

When viewed through a trauma-informed lens, and in light of the decades long mental health crisis in law students, is important for professors to be aware of the inherent power imbalance that exacerbates fawning. Not all appeasing behaviors towards professors from law students are bad, but a trauma-informed professor recognizes they must intentionally create circumstances where law students know they do not need to forfeit their own needs (especially their mental health needs) to be successful in law school. Law professors are well situated to empower students to recognize their needs and set boundaries as a means of meeting their own definition of professional success.

C. *Teaching Traumatic Material*

A challenge law professors face, considering the prevalence of PTEs in law students, is the abundance of potentially traumatic material inherent in the law school curriculum. Our legal system is both full of people with significant trauma histories and it causes additional trauma to individuals and communities.¹³⁹ Some of the core law school subjects tested on the bar exam rely heavily on caselaw with significantly traumatic content. Arguing for the inclusion of trauma stewardship in law school curriculum, I wrote:

As a professor of criminal law, every week I assign my students a copious amount of reading that, at its core, is about traumas. Murders, physical and sexual assaults, burglaries—I bombard students and desensitize them. While some students recognize this during the semester, many others, perhaps, read appellate court opinions like just another episode of *Law & Order: SVU*, detached and removed from the traumatic content. The desensitization sets them up for failure when they begin practicing law and encounter real people experiencing trauma.¹⁴⁰

This is only one of the many ways potentially traumatic material arises in law school courses, such that students may be traumatized, retraumatized, or

138. See *supra* notes 123–26 and accompanying text.

139. See *supra* notes 54–58 and accompanying text.

140. Netzel, *supra* note 10, at 23.

vicariously traumatized in their legal education.¹⁴¹ A trauma-informed professor will reflect on the potentially traumatic course material to consider how they might mitigate harm without sacrificing educational benefit when teaching traumatic course content.

V. HOW LAW PROFESSORS CAN CREATE A TRAUMA-INFORMED DOCTRINAL COURSE

A law professor who recognizes the prevalence of trauma and has a basic understanding of what it is and how it manifests, may find themselves asking, “What can I do about it?” This section seeks to answer that question through a strengths-based, practical, and concrete approach. It explores the application of the SAMHSA tenets of trauma-informed care to doctrinal law school classrooms that can be implemented as a matter of universal design. While this Article might be particularly useful for professors who teach courses with inherently traumatic material, it is also likely to be of use to any professor interested in creating a safer space in their classroom.¹⁴²

Trauma-informed pedagogy is “focused on approaching the teaching and learning process with an informed understanding of the impact trauma can have on learners.”¹⁴³ It recognizes that trauma is a barrier, based on its psychological and physiological impact, to some students’ ability to be present in the classroom.¹⁴⁴ Relying on principles of universal design, a

141. *Id.* In addition to criminal law, a non-exhaustive list of bar-tested law school course subjects that contain potentially traumatic content includes tort law, evidence, criminal procedure, property law, constitutional law, and family law. Further, some material taught in law school is highly traumatic for people from marginalized communities, and students without lived experience may not understand the depth of that trauma. For example, in an increasingly polarized world, some students without significant exposure or awareness to the harms of systemic racism may become defensive and double down on racist beliefs upon learning how racism has defined our legal system. If not managed well by a professor, this defensive behavior can result in an actively traumatizing classroom environment.

142. See Cless & Goff, *supra* note 22, at 34; see also *Safer Space Guidelines*, ACADIA UNIV., <https://www2.acadiau.ca/files/files/Files%20~%20Student%20Life/Equity%20and%20Judicial/Safer%20Space%20Guidelines%20-%20Equity%20Handout%2020201.pdf> (last visited Feb. 4, 2023) (“A safer space is a supportive, non-threatening environment where all participants can feel comfortable to express themselves and share experiences without fear of discrimination or reprisal. We use the word safer to acknowledge that safety is relative: not everyone feels safe under the same conditions. By acknowledging the experiences of each person in the room, we hope to create as safe an environment as possible.”).

143. CHARDIN & NOVACK, *supra* note 110, at 30 (citing Brian Cavanaugh, *Trauma-Informed Classrooms and Schools*, 25 *BEYOND BEHAV.* 41, 41–46 (2016)).

144. *Id.* at 31.

trauma-informed professor seeks to ensure that their actions are not unintentionally triggering, they remove harmful practices and increase helpful practices, and otherwise minimize barriers for students who experience trauma and stress.¹⁴⁵

It is a reasonable assumption, based on data about law student mental health since the late 1980s, that many pedagogical practices in law schools create barriers for students who experience trauma.¹⁴⁶ This is not to say law professors intentionally seek to cause harm.¹⁴⁷ Instead it is, most likely, an issue of disconnect between impact and intentions.¹⁴⁸ In speaking with other professors as I worked on this Article, a critique I received is that it might be challenging for professors to read that they have (potentially) caused harm to students through pedagogical practices. To this point, adopting a trauma-informed approach to doctrinal law school courses is about being “morally courageous enough to acknowledge publicly that what we are both currently doing and expected to do isn’t working for all students.”¹⁴⁹

A. Safety

The first tenet of trauma-informed care is safety, which encompasses both physical and psychological safety.¹⁵⁰ A trauma-informed professor ensures that both the physical setting is safe and that interpersonal interactions promote a sense of safety.¹⁵¹ Safety is a precondition to learning.¹⁵² Because all professors are (or should be) invested in their students’ learning, all professors should be invested in ensuring the psychological and physical safety of students in their classrooms.¹⁵³

145. *Id.*

146. *See supra* notes 92–97 and accompanying text.

147. To the contrary, based on my own experiences as a law student and my observations of and conversations with other law professors, law professors want what is best for their law students. *But see* CHARDIN & NOVACK, *supra* note 110, at 57 (“Good intentions are not good enough, and educators must regularly reflect upon and evaluate their impact in and on the lives of their students.”).

148. *See id.* at 14. “A socially just education is not solely about what we say or what we aspire to; it’s about what we do. It’s about how we measure impact.” *Id.* at 57.

149. *Id.* at 15.

150. SAMHSA’S CONCEPT OF TRAUMA, *supra* note 8, at 11.

151. *Id.* (“Understanding safety as defined by those served is a high priority”).

152. Carello & Butler, *supra* note 21, at 264.

153. This Article does not conflate safety with comfort. Safe is defined as “secure from threat of danger, harm, or loss.” *Safe*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/safe> (last visited Feb. 5, 2023). In contrast, comfort is defined as “a satisfying or enjoyable experience.” *Comfort*, MERRIAM WEBSTER,

1. *Psychological Safety*

Psychological safety refers to a shared belief that it is safe to take interpersonal risks within a group of people.¹⁵⁴ In a law school classroom, psychological safety includes students feeling comfortable asking questions and sharing opinions without fear of humiliation from their professor or peers. Establishing psychological safety allows for challenging conversations where students are able to learn and “explore differences without fear and work toward positive outcomes with courage.”¹⁵⁵

Psychological safety can be fostered both structurally and through a professor’s “use of self” in a classroom setting.¹⁵⁶ Creating a course structure with trust and transparency at the forefront enhances safety.¹⁵⁷ To foster safety in a classroom, a professor must be aware of their own behavior and identity.¹⁵⁸ Professors should not minimize or dismiss student concerns.¹⁵⁹ They should never use or permit the use of threats, ridicule, or displays of

<https://www.merriam-webster.com/dictionary/comfort> (last visited Feb. 5, 2023). For the purpose of this Article, a safe space is one where all students have an opportunity to express ideas and ask questions free from blame and shame such that uncomfortable and challenging conversations can be had to further learning. *See also* Michael S. Roth, *Don’t Dismiss ‘Safe Spaces,’* N.Y. TIMES (Apr. 29, 2019), <https://www.nytimes.com/2019/08/29/opinion/safe-spaces-campus.html> (rejecting the idea that professors should engage in “counterproductive coddling of students who feel fragile,” noting “classrooms should never be so comfortable that intellectual confrontation becomes taboo or assumptions go unchallenged because everyone’s emotional well-being is overprotected,” and concluding that “students should be able to participate in argument and inquiry without the threat of harassment or intimidation . . . to promote a basic sense of inclusion and respect that enables all students to thrive—to be open to ideas and perspectives so that the differences they encounter are educative and not destructive.”).

154. Amy Edmondson, *Psychological Safety and Learning Behavior in Work Teams*, 44 ADMIN. SCI. Q. 350, 354 (1999). The term was first coined in reference to teams of people at work.

155. Roth, *supra* note 153.

156. Cless & Goff, *supra* note 22, at 29 (noting that “use of self” is a term common in social work literature which refers to “efficiently and rationally using the knowledge, skills, and values of the social work profession to enhance the well-being of a client—whether individual, group, community, or society as a whole.”); *see* Archana Kaushik, *Use of Self in Social Work: Rhetoric or Reality*, 14 J. SOC. WORK VALUES & ETHICS, 21, 21 (2017). When I use ‘use of self’ in reference to law professors in doctrinal courses, I mean that professors should view themselves, their identity, and how they consciously present in the classroom as a pedagogical tool.

157. Cless & Goff, *supra* note 22, at 29; *see* Part V.B, *infra*.

158. *See* Carello & Butler, *supra* note 21, at 271.

159. *Id.*

power, and should be cautious not to demonstrate impatience or disappointment.¹⁶⁰ Professors should use strengths-based language in the classroom and take a strengths-based approach to feedback and grading.¹⁶¹ Professors who seek to foster psychological safety understand and validate student concerns, create a learning community grounded in mutual respect, demonstrate patience, and express reassurance and approval.

Because trauma responses vary, at times they may be at odds with one another or introduce additional conflict into a classroom setting. Assuming that most students who act out in a classroom have some underlying emotional need that is not being met, a trauma-informed professor might come back to the core question of “what happened to you?” and, for example, aim to feel empathy in response to a student exhibiting behavior consistent with a “fight” trauma response.¹⁶² At the same time, this kind of behavior is likely to be triggering for other students.¹⁶³ Aggressive or disrespectful behavior towards students or professors in the classroom requires intervention by the professor.¹⁶⁴

2. *Physical Safety*

A trauma-informed professor also works to ensure physical safety in their classrooms. There is not a one-size-fits-all approach to physical safety. Conditions that allow students to feel physically safe in a classroom may differ. For example, some students may need their back to wall, some may need to be in close proximity to an exit, some may need to sit near (or away from) windows. Some students may need to sit close to other students who are emotionally supportive and/or far away from students who are in some

160. *Id.*

161. *Id.*; see, e.g., Tonya Kowalski, *Mentoring New Legal Writers*, 81 J. KAN. BAR ASS’N 12, 14 (2012) (suggesting legal writing professors motivate students by identifying strengths).

162. See Dylan Marron, *Empathy is Not Endorsement*, TED at 08:23 (Apr. 27, 2018), https://www.ted.com/talks/dylan_marron_empathy_is_not_endorsement?language=en (“Empathy is not endorsement.”). Professors can understand a student’s behavior through a trauma lens and feel for the multitude of experiences students carry with them into the classroom while still recognizing that some behaviors are unacceptable. The goal in a trauma-informed approach is to recognize how the manifestation of trauma causes people to act and then have our own responses ameliorate the trauma in a way that causes the least amount of additional harm. This is a hard thing to do, especially in large classes. As such, a trauma-informed professor recognized conflict resolution as a skill that they need to develop and seek out the necessary training to have a base line competency with that skill.

163. Carello & Butler, *supra* note 21, at 272.

164. *Id.*

way triggering to them.¹⁶⁵ Further, changes in physical characteristics of a classroom (including lighting and sound) may startle students who are in a state of hyperarousal.¹⁶⁶

Applying principles of universal design, professors could consider policies that allow for all students to make decisions about their physical space without needing to make an affirmative request or disclose a reason for such request. For example, allowing students to choose their own seats and switch seats throughout the semester as needed is one such principle. Professors can also identify student's needs by soliciting feedback for improving safety and physical comfort in a classroom.¹⁶⁷ Professors can also encourage students to let them know when an issue arises and assure students that reasonable accommodations will be made to enhance physical safety when a student makes a request.¹⁶⁸ Further, professors should let students know they do not need to over explain reasons for requests because the professor operates from a place of trusting students, where students are empowered to exercise their voice.¹⁶⁹

A growing trend in some law school classrooms is to begin class with a brief mindfulness activity.¹⁷⁰ One reason to do this is because mindfulness improves cognitive performance, which is helpful for almost any law student.¹⁷¹ Additionally, it provides students a brief opportunity, to check in with their thoughts, feelings, and emotions. It can also contribute to physical safety by helping students feel grounded in their own bodies.¹⁷² A trauma-

165. *Id.* In suggesting that a student might be “triggered” by another student, I am not suggesting if a student feels unsafe for a specific interpersonal reason that the right response is to merely separate students without further intervention. Instead, a student might be triggered by another student due to no fault of either student, if for example one student physically resembles a student’s abuser (or even has a similar scent because they wear a similar cologne to a person who has caused trauma in the student’s life). See PERRY & WINFREY, *supra* note 18, at 143–44.

166. Carello & Butler, *supra* note 21, at 272.

167. *Id.*

168. *Id.*

169. See Part V.B, C, *infra*.

170. See Jaffe et al., *supra* note 1, at 487, 489 n.150; Charity Scott & Paul Verhaeghen, *Calming Down and Waking Up: An Empirical Study of the Effects of Mindfulness Training on Law Students*, 21 NEV. L.J. 277, 279 (2020); Scott L. Rogers, *What Do We Want? Mindfulness in Law!*, 62 LA. B.J. 268, 269 (2015) (discussing the “rapidly growing presence of mindfulness across the legal landscape”); Rhonda V. Magee, *Educating Lawyers to Meditate?*, 79 UMKC L. REV. 535, 547 (2011).

171. See Scott & Verhaeghen, *supra* note 170, at 304.

172. See, e.g., Rachel Casper, *Mindfulness Essential for Lawyers + Law Students*,

informed professor should also be aware that—for people who have experienced significant trauma—meditation may be harmful.¹⁷³ With that in mind, if a professor elects to offer mindful moments, they should invite, but not require, students to participate. Offering a choice to engage encourages student self-care and autonomy.¹⁷⁴

In courses with particularly intense material, professors should find ways not only to assess students learning, but also to assess and monitor students' reactivity to the material. To do so, a professor might create anonymous survey questions to ask students how they are doing at managing the material and if additional support is needed in a general sense. This provides another opportunity to acknowledge the intensity and accept feedback. Professors might also have the utility of trauma-informed practices reinforced if they ask what *is* working for students in relationship to learning intense material.¹⁷⁵

B. Trustworthiness and Transparency

The next tenet is trustworthiness and transparency.¹⁷⁶ The embodiment of this tenet ensures “operations and decisions are conducted with transparency

LAWS. CONCERNED FOR LAWS. (Mar. 21, 2019), <https://www.lclma.org/2019/03/21/mindfulness-essentials-for-lawyers/>.

173. Rachel Casper, *Mindfulness & Meditation Apps: 6 Options and 3 Warnings for the Legal Profession*, LAWS. CONCERNED FOR LAWS. (May 28, 2020), <https://www.lclma.org/2020/05/28/mindfulness-meditation-app-alternatives-warnings/>.

174. In this regard, I have experienced success in my own classroom. While I incorporate mindful moments, I also try not to take them too seriously. I allow students freedom to judge the concept and respect that some students have zero interest in mindfulness. To bring levity and choice into class, I share that I abhorred mindfulness for the longest time, and only recently came to see a benefit. I go on to say that for anyone who is “like me five years ago” please just “do the rest of us a solid” by doing their best not to distract anyone who wants to take advantage of the moment. To date, no student has complained about mindfulness in my classroom when I take this approach and many students have expressed immense gratitude for the moments. As one student wrote, “As someone managing depression and anxiety who has undergone years of outpatient treatment, it was so uplifting to see a law school professor integrate meditation/breathing practices into her course. Normalizing these practices means so much to me. I will remember to weave self-care into my academic career and not leave it at the door as something to be done only in my ‘personal’ life.” (Teaching evaluation on file with author).

175. My teaching evaluations have reflected that merely acknowledging the traumatic nature of criminal law and the potential of vicarious trauma has been helpful to students in working through the material and experience.

176. SAMHSA’S CONCEPT OF TRAUMA, *supra* note 8, at 11.

with the goal of building and maintaining trust”¹⁷⁷ Trauma-informed professors foster trustworthiness and transparency in their courses and interactions with students. Trustworthiness and transparency are especially important when teaching potentially traumatic material and when a student discloses trauma to a professor. Each will be discussed in turn. It is my hope that, in this section, many professors will identify that they already teach in a transparent manner, will see how trustworthiness and transparency are integral to trauma-informed pedagogy, and, as a result, will be able to build on strengths they already possess.

1. *General*

Trustworthiness and transparency are hallmarks of good pedagogical practices in legal education.¹⁷⁸ A transparent educator is “explicit about the process, purpose, and rationale of instructional activities.”¹⁷⁹ Transparency in a law school course includes providing students with all relevant information necessary for success in their class. This may include more information than a professor thinks they should provide, because there is a significant amount of “hidden curriculum” in law school courses.¹⁸⁰ For example, in addition to providing clear learning objectives, a professor could explicitly explain their timing and method of grading, the nature of the curve, the purpose and aim of all assessments, and the professor’s reasons for selecting specific pedagogical practices.¹⁸¹ Transparency in all of those arenas can reduce unnecessary stress that law students experience. Law school needs to be challenging, and at the same time professors should not

177. *Id.*

178. Darling-Hammond & Holmquist, *supra* note 137, at 31 (discussing the importance of clarity and transparency in legal education).

179. Shuzhan Li, *Critical Transparent Pedagogy in Teacher Education*, 10 *TESOL J.*, 1, 1 (2018) (providing “[h]ere’s what we are going to do, here’s how we are going to do it, and here’s why we are doing this” as a simple example of transparency in action).

180. Austin, *supra* note 105, at 654 (“hidden legal curriculum permeates the culture of both classroom and school, and it socializes law students to the values of law practice”); CHARDIN & NOVACK, *supra* note 110, at 12 (“Hidden curriculum” is a term that explains “the phenomenon where teachers share their expectations of students through their instruction” including “how they define student success”).

181. As a further example, I attempt to uncover hidden curriculum by recording and embedding short videos into my 1L criminal law course. For example, in a video I titled *What the Heck Do I Mean When I Say “The Curve,”* I explain that by the law school requiring an average grade of 3.0 for the course my hands are tied in that I cannot give too many “A’s,” I rarely fail people, and I give a lot of “B’s.” I further encourage my students to press me on my “why” for any aspect of the course that does not make sense to them. My students have consistently shared how much they appreciate it because they trust that I am doing my best to not “hide the ball” from them.

confuse necessary challenge with unnecessary stress and should attempt to mitigate the latter. Further, when professors are transparent about critical aspects of their course and follow through in a reliable, predictable, and consistent manner, it fosters trust in the professor-student relationship. Trust is a critical element to psychological safety.¹⁸²

2. *Teaching Potentially Traumatic Material*

One way to establish trust and teach transparently is to let students know, in advance and in general, what material will be covered.¹⁸³ Professors should also specifically acknowledge the intensity of potentially traumatic course materials.¹⁸⁴ A professor operating through a trauma-informed lens acknowledges to students that they cannot predict triggering material with any certainty and takes an approach grounded in universal design. For example, a professor could include a one sentence description of the nature of each case on the syllabus paired with a statement and verbal reminder that if a student has concerns about specific material, the student can talk to the professor. Professors can also reinforce this by sending emails to students that acknowledge the intensity of material in advance of difficult readings and discussions.¹⁸⁵ These gestures may seem insignificant, but when strategically implemented, they reinforce the professor's commitment to student well-being and trauma-informed practice.¹⁸⁶

Professors can also normalize and discuss the intensity of feelings that may arise when students encounter difficult material.¹⁸⁷ One way to normalize these feelings is to assign books and articles on the well-documented phenomenon of vicarious trauma.¹⁸⁸ Further, being able to

182. See Part V.A, *supra*.

183. Cless & Goff, *supra* note 22, at 28.

184. *Id.* at 30; see also Katz, *supra* note 13, at 34 (encouraging law professors to develop strategies for handling challenging material).

185. Cless & Goff, *supra* note 22, at 32.

186. *Id.*

187. Carello & Butler, *supra* note 21, at 270. A professor who is open to teaching from a place of vulnerability could share with a class about a time that they experienced intense emotions related to course material and then share how they learned to manage their emotional responses. See *id.* In my own experience, when I share with students about the emotional impact lawyering has on me, they have reflected back sincere appreciation and gratitude.

188. See generally LIPSKY & BURK, *supra* note 6; Harris & Mellinger, *supra* note 13, at 746–47; Myrna McCallum, *The Trauma-Informed Lawyer: Vulnerability and Vicarious Trauma: A Personal Story*, SIMPLECAST (Aug. 8, 2020), <https://thetraumainformedlawyer.simplecast.com/episodes/vulnerability-and-vicarious->

identify and access emotions like helplessness, hopelessness, overwhelm, anger, shame, and guilt (among others) can help students better understand the experience of clients who struggle with trauma.¹⁸⁹ To the extent professors can aid students in identifying and processing their very normal responses to traumatic material, it can help students develop the skill of empathy and better understand the need for trauma-informed lawyering.¹⁹⁰ Professors can help shape students to productively utilize the emotions that traumatic material often elicits. In turn, professors can reframe the experience of vicarious trauma from one of weakness to one of strength. Helping students process trauma in law school—in a controlled setting on a smaller scale—works to build resilience and helps students tap into the wisdom available to them in post-traumatic growth.¹⁹¹ Of course, these feelings may in fact overwhelm some students, especially those with trauma histories who find the material particularly triggering, and professors must be mindful not to push students too far or too fast in viewing intense reactions through a positive lens.

3. *Handling Disclosures with Care*

When a professor teaches traumatic material in a trauma-informed manner and has earned students' trust, it is possible that students will disclose trauma or trauma histories to the professor.¹⁹² When this inevitably happens, a trauma-informed professor handles student disclosures with care and maintains appropriate boundaries.¹⁹³ It is not required or ethical for a trauma-informed professor to provide direct mental health support to students.¹⁹⁴

Embodying the tenet of trustworthiness and transparency, a professor should provide all students with information about their boundaries and likely response if trauma is disclosed by a student. For example, a professor

trauma-a-personal-story; Libby Coreno, *Trauma, Mental Health and the Lawyer*, N.Y. STATE BAR ASS'N (Dec. 14, 2022), <https://nysba.org/trauma-mental-health-and-the-lawyer>. In addition to providing resources, professors can discuss the importance of law student wellness, trauma-informed lawyering, and how the skills will be developed in the course. Katz, *supra* note 13, at 34.

189. Carello & Butler, *supra* note 21, at 270.

190. See, e.g., Talia Kraemer & Eliza Patten, *Establishing a Trauma-Informed Lawyer-Client Relationship (Part One)*, 33 AM. BAR ASS'N CHILD L. PRAC. TODAY 197, 197 (2014); Nat'l Child Traumatic Stress Network, *supra* note 130.

191. See Parts III.E–F, IV.A, *supra*.

192. Katz, *supra* note 13, at 36.

193. Cless & Goff, *supra* note 22, at 28, 30.

194. Hunter, *supra* note 119, at 27.

might share with the whole class that their primary role is to educate students and, as such, students are free to—but not required to—privately disclose issues that might interfere with their learning.¹⁹⁵ A professor might share at the outset that while they are not able to provide therapeutic support, they can help connect the student with resources in the institution to help address issues that are outside of the scope of the professor's role.¹⁹⁶ Professors should be clear about what they are able to offer and are not able to offer in general terms (e.g., information about the extension policy, or whether assignments could be modified to account for uniquely triggering material), how the professor views their role, and when a student should disclose.¹⁹⁷

Course syllabi and online course management systems are two places a professor could include information on disclosures and resources.¹⁹⁸ Professors should include specific information about resources available to students to receive support (without needing to make any disclosure to the professor) including student services, disability services, counseling services, and academic support within the school, as well as support available outside of the school like local lawyer assistance programs and other non-profits supporting mental health and well-being in the area. Professors may also consider links to relevant episodes, podcasts, websites, apps, books, and articles that support well-being. The specifics of the information are, perhaps, less important than the act of including the information in the course. The act of inclusion signifies that student well-being is an important aspect of their law school career and that the professor recognizes the importance of fostering wellbeing. This is one more way a professor can earn student trust.

When a student discloses information directly to a professor, it may feel

195. Cless & Goff, *supra* note 22, at 30.

196. Katz, *supra* note 13, at 35.

197. For example, I tell my students I am open to knowing when there is something major in their life or their past (that they are comfortable sharing with me) that is interfering with their learning. I further share my reasoning is because I want to make sure I am doing what I can to make the course content accessible to them and support their educational success.

198. Carello & Butler, *supra* note 21, at 271 (highlighting the importance of specific information for referrals including contact information). At MHSL, we recently created a wellness module that professors can opt-in to having as a part of their online course management system. This is in addition to having the resources on our website and frequent reminder emails about our resources from our Dean of Student Services. This wellness module appears at the top of the page when students log on. Among other things, students can schedule appointments with counseling services directing through a link in the module. The idea behind this approach was that we wanted to put the information in the virtual place the students access most often.

uncomfortable (even if the student feels it necessary) for both the student and the professor. It helps if a professor has thought through how they will respond in advance. For example, a professor can thank the student for sharing, empathize with the underlying feelings expressed, and normalize the experience. Professors should avoid commenting on what is “right” or “wrong” in relationship to the disclosure, but can help a student frame the experience in relationship to their law school experience.¹⁹⁹ It may be helpful to share with the student that many people with trauma histories (or students who have strong vicarious trauma responses regardless of trauma histories) have meaningful and successful legal careers, and that the important thing is how the student manages their trauma.²⁰⁰ Next, a professor can ask what support systems the student already has in place, and whether the student feels sufficiently supported.²⁰¹ It is important that the professor clarifies the limits of their role and the potential limits of confidentiality;²⁰² however, professors can and should help students identify their support systems and connect students with resources available to them.²⁰³

C. Peer Support

The next tenet is peer support which acknowledges that “[p]eer support and mutual self-help are key vehicles for establishing safety and hope, building trust, enhancing collaboration, and utilizing . . . stories and lived

199. Cless & Goff, *supra* note 22, at 30.

200. Many students have expressed the fear that their history will serve as a barrier to success. Anecdotally, I have observed many lawyers and students who have excelled in their career, perhaps because the wisdom gained through, and the resilience developed in working through their trauma has helped them develop a unique and special skillset for working in a challenging profession in challenging situations. *See supra* note 102, and accompanying text.

201. For example, does the student have a supportive network outside of law school and of peers in law school? Does the student have professional support they need? If not, do they have an understanding of resources available to them?

202. Cless & Goff, *supra* note 22, at 31. I view my role as discussing issues in students’ lives enough to be able to effectively teach them, supervise their client work, and contribute to their professional growth. I am cautious to avoid any interaction that looks or feels like therapy, and I avoid creating an overdependence on me in their personal growth and development.

203. At Mitchell Hamline School of Law, where I teach, we heard from students that they wanted increased access to mental health resources. In response, we hired additional counseling staff with diverse identities. These services are available to students for free and students work with their counselors to determine how many sessions are necessary. *Counseling Services*, MITCHELL HAMLINE SCHOOL OF LAW, <https://mitchellhamline.edu/counseling-services/> (last visited Feb. 5, 2023). In making services easily accessible we have significantly reduced stigma associated with student’s getting help.

experience to promote recovery and healing.”²⁰⁴ In the context of the tenets of trauma-informed care “peers” refers to “individuals with lived experiences of trauma.”²⁰⁵ Thanks to the SLSWB data, professors definitively know that the majority of law students have experienced a PTE, and many students struggle with trauma while in law school.²⁰⁶ However, connection with peers in law school is beneficial to all.²⁰⁷ Consistent with universal design principles, professors should aim to create opportunities for law students to work with their peers in meaningful, productive, and collaborative ways.²⁰⁸ This section will address how professors can encourage peer support in general by elevating the importance of mutual care and how professors can pave a path to help peers who have experienced trauma support each other.

I. Mutual Care

Professors can embody the tenet of peer support by encouraging all students to create communities of “mutual care.”²⁰⁹ The concept of mutual care embraces reciprocal and supportive relationships, values authentic connection with others, and understands that giving what one can and receiving what one needs in terms of support, resources, time, and energy is central to be able to counter power structures (like those in legal education and law) that are larger than any one individual.²¹⁰ In a law school setting, mutual care could include study groups that are intentional about reflecting on the highs and lows of law school where students are vulnerable with one another. Vulnerability begets vulnerability, and communities of mutual care amongst students support each other not just academically, but socially and emotionally as well.²¹¹

204. SAMHSA’S CONCEPT OF TRAUMA, *supra* note 8, at 11.

205. *Id.*

206. Jaffee et al., *supra* note 1, at 468 (over eighty percent of respondents in survey on law student mental health reported having experienced trauma).

207. See Bohannon et al., *supra* note 111, at 74 (discussing the benefit of peer support in higher education)

208. *Id.*

209. See *supra* note 11, and accompanying text.

210. Hannah Burton, Grace Hoffman & Amanda Shepard, Presentation at Mitchell Hamline School of Law Clinic Kick Off: Mutual Care (Aug. 12. 2022) (on file with author). After conversations with these students about mutual care in the clinic I teach, they furthered my understanding of mutual care such that I asked them to present on the topic for other students. Citing their presentation here is an effort to honor the teacher and scholar that is ever present in law students.

211. Often, privately in my office, students share with me that they feel as if they are

The process of building a community of mutual care serves not only the tenet of peer support, but also the tenets of empowerment, voice, and choice, and collaboration and mutuality. A classroom full of communities of mutual care also can contribute to psychological safety.

2. *Paving the Path*

Building on the communities of mutual care in general, professors can also create pathways to connect students who struggle with trauma histories while in law school. To start, professors can openly acknowledge the prevalence of students with trauma histories.²¹² In my experience, analytical law students like data. The SLSWB survey data can be used as a tool to show that students with trauma histories are not the exception, and they are not alone. Other statistical measures can be used as well.²¹³ Sharing data with law students helps to normalize their experience without putting any person on the spot to discuss trauma and without a need to discuss traumatic content.

In my experience, sharing data has led to students publicly and privately revealing they have had past struggles. At first, I feared this; however, in most instances where I have observed students disclose a past struggle, they have been met with support from other students. I then use it as an opportunity to further normalize the experience and remind students of all of the resources our school has to offer for additional support—including each other.

the *only* person struggling in law school. In an effort to make this common and unseen phenomenon visible to students, I share this with my class as a whole and challenge any student who feels that way to check in with at least one other student in the class to see if my comments resonated with them. This is one way to prod the development of communities of mutual care.

212. Cless & Goff, *supra* note 22, at 28.

213. For example, in my criminal law syllabus, I attempt to normalize traumatic experiences by highlighting things like the percentage of the population who have an incarcerated relative and the percentage of the population who are victims of abuse. Further, because I have taught numerous formerly incarcerated students, I highlight the incredible work of Emily Baxter which explores the reality that, we are all criminals. *See WE ARE CRIMINALS*, <https://www.weareallcriminals.org/> (last visited Feb. 5, 2023). I encourage students to reflect on the fact that they do not know the histories of other students in their learning community and to consider this when they are speaking from a place of judgment in class. While this is likely important at all law schools, it is especially important at Mitchell Hamline School of Law where we are the first ABA accredited law school to teach currently incarcerated students. *Mitchell Hamline Accepts Incarcerated Person to Law Program*, CBS MINN. (June 13, 2022), <https://www.cbsnews.com/minnesota/news/mitchell-hamline-accepts-incarcerated-person-for-law-program-a-first-in-the-us/>.

In addition to sharing data and fostering connections, professors may consider providing students with opportunities to hear anecdotal experiences. Some lawyers with trauma histories are happy to share their experiences. Lawyers who have meaningful law careers despite their past or current struggles can make excellent speakers to model pathways to success for law students with trauma histories.

D. Collaboration and Mutuality

The next tenet is collaboration and mutuality and includes an “importance . . . placed on partnering and the leveling of power differences”²¹⁴ It also acknowledges “that healing happens in relationships and in the meaningful sharing of power and decision-making[, and] recognizes that everyone has a role to play in a trauma-informed approach.”²¹⁵

1. Recognizing Power Dynamics

A trauma-informed professor recognizes the need for collaboration and mutuality in the learning experience and recognizes the power of creating symbiotic professor-student relationships. Professors who take a collaborative approach to teaching view their classroom as an opportunity to work jointly with their students as partners in their learning. Professors who create a space with the intention of mutuality aim to level power differentials, to the extent possible, in their classrooms.²¹⁶

Professors who embody the tenet of collaboration and mutuality begin by acknowledging the immense power dynamic that exists in the law professor/law student relationship.²¹⁷ Trauma responses are often triggered in response to power dynamics.²¹⁸ Core to a trauma-informed approach to teaching is that we take students seriously and trust that they know what is best for their own safety in learning.²¹⁹ Thus, professors must recognize the value of moving away from methods of teaching that reinforce the inherent power dynamic.

For example, a professor might intentionally embody humility in their

214. SAMHSA’S CONCEPT OF TRAUMA, *supra* note 8, at 11.

215. *Id.*

216. *See id.* and accompanying text.

217. CHARDIN & NOVACK, *supra* note 110, at 6 (“Educators hold incredible power: power to design learning experiences, power to set expectations for students, power to elevate and inspire student voices, power to inspire and motivate, power to create consequences, and power to allow for choice and personalization.”).

218. *See* Carello & Butler, *supra* note 21, at 271.

219. *See id.* at 273.

pedagogical approach and acknowledge to students that they recognize that students are also teachers. This can be achieved by letting students know they are free to provide feedback throughout the semester, coupled with being responsive to student feedback.²²⁰ Professors can share how they use teaching evaluations and provide examples to students of changes they have made to the course based on past feedback. The information that can be gained is invaluable, and students will be more willing to share feedback if they know a professor is open to making changes in response.²²¹ It also allows law professors an opportunity to acknowledge that mistakes are inevitable and model how to handle them.

2. *Maintaining Flexibility*

Another way law professors can share power is to add elements of flexibility to their courses, acknowledging that reactions to trauma are variant and that some students may have different needs based on different course material.²²² Flexibility could include alternate assignments, an option to attend a lecture remotely or watch a recording, or providing alternatives for students to demonstrate their learning in a different way.²²³ The curve and issues of fairness related to grading on a curve, of course, limits options or gives rise to a need for creativity.²²⁴ Flexibility is not intended to advantage one student over another and should instead aim to level the playing field for people who might be triggered by intense material.

A professor may also consider allowing students to opt out of being cold-

220. See Darling-Hammond & Holmquist, *supra* note 137, at 35 (“transformative professors indicated the importance of connecting with students and understanding student experiences”).

221. While not all suggestions need to be implemented, all feedback adds value. For example, when I am told assignments in my class are “busy work” I do not (necessarily) alter the assignment the next time I teach the course, but I do aim to be clearer in explaining both the assignment’s objective and how it relates to the course objectives. If I am unable to clearly explain the objective, then I recognize that the student made an excellent point, and the assignment was, in fact, busy work.

222. See Cless & Goff, *supra* note 22, at 31; see also Bohannon et al., *supra* note 111, at 72 (suggesting professors differentiate instruction to help students who have experienced trauma).

223. See *id.* at 31–32.

224. In addition to limiting flexibility and creativity, the curve is generally not consistent with trauma-informed principles in that it creates and reinforces power structures. See Phil Lord, *Black Lives Matter: On Challenging the Soul of Legal Education*, 54 TEX. TECH L. REV. 89, 104 (2021) (critiquing the curve in the context of the legal profession’s concern with status and prestige as upholding the deep and structural nature of the barriers to equity in legal education).

called or being “on-call” without requiring an explanation, providing a caveat that students should only take this option when they really need it. This serves the values of mutuality and recognizes that the value of trustworthiness is a two-way street as well. Just like professors aim to foster trusting relationships with students, professors can demonstrate that they trust students by implementing this type of policy. By expressly sharing the underlying reasoning for the trust, it also models the value of transparency.

E. Empowerment, Voice, and Choice

The next tenet is empowerment, voice, and choice, in which “individuals’ strengths and experiences are recognized and built upon.”²²⁵ As applied to a law school classroom, a professor “fosters a belief in the primacy of the people served, in resilience, and in the ability of individuals, organizations, and communities to heal and promote recovery from trauma.”²²⁶ A professor embodying this tenet “understand[s] the importance of power differentials” and ways in which law students, historically, have “been diminished in voice and choice.”²²⁷ Students are “supported in shared decision-making, choice, and goal setting” and “in cultivating self-advocacy skills.”²²⁸ Professors identify as “facilitators” of learning rather than “controllers” of learning.²²⁹ Professor and students “are empowered to do their work as well as possible by adequate organizational support.”²³⁰ It is a “parallel process” in that professors need to feel safe, as much as students.²³¹ Through a lens of universal design, professors optimize student voice and choice because, when professors see and hear their students, they give them power.²³²

1. Self-Care

Empowering law students begins with utilizing instructional strategies that “elevate and celebrate” student voices.²³³ Professors can encourage students to use their voices as vehicles to identify their own barriers to success and help to eliminate them.²³⁴

225. SAMHSA’S CONCEPT OF TRAUMA, *supra* note 8, at 11.

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. CHARDIN & NOVACK, *supra* note 110, at 76.

233. *Id.*

234. *Id.*

One way professors can empower students is to educate them about, emphasize the importance of, and allow space to engage in, self-care.²³⁵ This is especially true in courses that deal with potentially traumatic content.²³⁶ A professor can begin by including conversations about self-care, defined by the National Institute of Mental Health as “taking the time to do things that help you live well and improve both your physical health and mental health,” in the law school classroom.²³⁷ Next, a professor can emphasize the importance of self-care by framing it as a matter of professional responsibility which may help students set aside thoughts that self-care is selfish.²³⁸ Additionally, professors can model their own self-care practices (and, as a prerequisite, professors should actually have self-care practices) which encourages students to value self-care.²³⁹ In these conversations, it is critical to recognize that touting self-care as the primary solution to coping with negative effects of trauma and vicarious trauma may be harmful to law students who have limited time, high stress, and may view neglecting self-care as another personal failure.²⁴⁰ Professors can acknowledge this as a systemic failure of legal education.²⁴¹ Ultimately, a professor will need to strike a balance between touting self-care and recognizing limitations due to the current state of legal education. Due to the tension, I often provide self-

235. See Susan L. Brooks et al., *Moving Toward a Competency-Based Model for Fostering Law Students’ Relational Skills*, 28 *CLINICAL L. REV.* 369, 400 (2022) (arguing for a competency-based model to foster relational skills in law school including wellbeing and self-care).

236. See Cless & Goff, *supra* note 22, at 33.

237. See *Caring for Your Mental Health*, NAT’L INST. MENTAL HEALTH, <https://www.nimh.nih.gov/health/topics/caring-for-your-mental-health> (last visited Feb. 5, 2023) (explaining that self-care includes things like regular exercise, healthy meals and hydration, sleep, relaxing, setting priorities and goals, gratitude practice, and connection); see also Jessica R. Blaemire, *Analysis: Lawyer Self-Care is Getting its Moment in the Sun (I)*, *BLOOMBERG L.* (Oct. 12, 2022, 5:00 AM), <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-lawyer-self-care-is-getting-its-moment-in-the-sun> (stating that a recent survey of lawyers found an increase in time spent on self-care).

238. See Carello & Butler, *supra* note 21, at 272–73 (encouraging social work professors to stress the professional and ethical rationale for self-care).

239. See *id.* at 272; see also Katz, *supra* note 13, at 37 (discussing the importance of modeling self-care as part of a trauma-informed law school classroom).

240. Baker, *supra* note 11, at 2–3.

241. A professor who wants to make deeper connections to material could draw parallels between systemic failures in law school and the larger systemic failures in our legal system.

care ideas for my students that can be done in ten minutes or less.²⁴²

2. *Boundaries*

Another critical aspect to empowerment is encouraging students to define and enforce healthy boundaries.²⁴³ Boundaries can include the following categories: emotional, time/energy, mental, physical, and material.²⁴⁴ Healthy boundaries are those that are not too rigid or too porous.²⁴⁵ Boundaries give a person control to determine their own stopping point.²⁴⁶ Current law school culture seemingly rewards having porous boundaries in regard to time, yet rigid boundaries in regard to emotional and mental needs.²⁴⁷ A lack of boundaries can lead to burnout and other mental health issues.²⁴⁸ Boundaries are important for everyone in a law school classroom (students and professors alike), but are especially important for people with trauma histories.²⁴⁹

242. For example, I suggest students incorporate movement into studying, engage in deliberate rest, practice positive self-talk, self-compassion, and gratitude, and write their own personal mission, vision, and purpose statements for law school.

243. See Brooks et al., *supra* note 235, at 405 (“Law students need to learn to appreciate appropriate boundaries in order to maintain their own well-being. Only by taking care of themselves are they able to take care of their clients”).

244. See Leah Campbell, *Why Personal Boundaries are Important and How to Set Them*, PSYCHCENTRAL (June 8, 2021), <https://psychcentral.com/lib/what-are-personal-boundaries-how-do-i-get-some#why-its-important>.

245. See *What are Personal Boundaries?*, THERAPIST AID (2016), https://uhs.berkeley.edu/sites/default/files/relationships_personal_boundaries.pdf.

246. See Rachel Casper, *Setting Boundaries: Essential Tips for Lawyers + Law Students*, LAWS. CONCERNED FOR LAWS. (June 26, 2020), <https://www.lclma.org/2020/06/26/setting-boundaries-essential-tips-lawyers-law-students/>.

247. This begins on day one when students are introduced to the curve. They need to work harder and harder than everyone else in the room, and, in an effort to seem competent, they do not express their need for emotional and mental support. When students fail to express their need for support, other struggling students around them do not receive the benefit of knowing that they are not alone in their experience that law school is mentally and emotionally challenging. As such, the cycle perpetuates itself and, unless broken, continues throughout one’s legal career. Add to this that new professors navigating climbing the ranks of academia often repeat this same cycle and continue to perpetuate it once they reach the security of tenure.

248. See Susan Biali Haas, *Why Lack of Boundaries Can Lead to Burnout*, PSYCH. TODAY (Feb. 5, 2019), <https://www.psychologytoday.com/us/blog/prescriptions-for-life/201902/why-lack-of-boundaries-can-lead-to-burnout>.

249. See *Why Consistent Boundaries are so Important for People Recovering from Trauma*, KHIRON CLINICS BLOG (July 4, 2019), <https://khironclinics.com/blog/why-consistent-boundaries-are-so-important-for-people-recovering-from-trauma/>.

3. *Teaching Post-Traumatic Growth and Wisdom*

A professor embodying the tenet of empowerment, voice, and choice may consider explicitly instructing on post-traumatic growth. As a person heals from trauma, they reach the “reconnection” phase where they are able to “create and define a new future self” in light of their trauma history.²⁵⁰ Law school is a time of change, and transformation might occur in the law school classroom.²⁵¹ While aspirational, a trauma-informed professor might recognize this as a possible outcome of embodying trauma-informed pedagogy in their classroom.

Instruction on post-traumatic growth goes beyond normalizing trauma in law school for the purpose of facilitating peer support.²⁵² Done well, it helps students who have experienced trauma view themselves as uniquely situated to contribute to the legal profession. In that vein, trauma-informed pedagogy is more than just an approach that seeks to ameliorate harm. At their best, a trauma-informed professor aims to empower students to make the most of their post-traumatic wisdom and resilience and share that knowledge and power by becoming a trauma-informed lawyer.

4. *Assessing Student Experience*

There is an inherent power differential between professors and law students.²⁵³ Professors must view all interactions with law students through this lens and periodically reflect on how the power differential affects their teaching.²⁵⁴ Power differentials cause people to need to engage in relational calculus.²⁵⁵ When people are on top of the power differential, they often fail to see the impact their presence has on other people and situations.²⁵⁶ To counteract this, student voice can be amplified by a professor checking in to assess whether they have an authentic sense of how students perceive their

250. See Cless & Goff, *supra* note 22, at 30.

251. See Orla T. Muldoon et al., *The Social Psychology of Responses to Trauma: Social Identity Pathways Associated with Divergent Traumatic Responses*, 30 EUR. REV. SOC. PSYCH. 311, 338 (2019) (explaining that trauma has a capacity to restructure a person’s self-concept ranging from destruction to enhanced sense of self and that enhanced meaning often occurs where “trauma provides both a stimulus and platform for people to advocate for positive forms of social change”).

252. See Part V.C, *supra*.

253. Part V.D, *supra*.

254. PERRY & WINFREY, *supra* note 18, at 148.

255. *Id.* at 145.

256. *Id.* at 148.

classroom experience.²⁵⁷ When teaching traumatic material, professors fostering empowerment, voice, and choice check in with students to determine how they are doing emotionally, follow up with students when issues arise, and seek student feedback to inform how they present course material in the future.²⁵⁸

For example, explicitly inviting students to share their thoughts on what is and is not working for them as learners during the semester, as opposed to just engaging in the end of semester course evaluation process, can provide meaningful opportunities for the professor to meet the needs of the students through honoring their voices. This can be done anonymously through surveys or real-time feedback tools or by encouraging students to reach out as individuals or groups to share feedback. It is critical that if a professor offers an opportunity for students to exercise voice that the professor completes the feedback loop.²⁵⁹

5. *Choice in Engagement*

Offering choice empowers students in the classroom.²⁶⁰ Choice is especially important for students with trauma histories learning about potentially traumatic material. A trauma-informed professor provides students with enough information about course content to make meaningful choices about how they engage in potentially traumatic content and, to the extent it is equitable, professors should honor those choices.²⁶¹ While law students and lawyers will not be able to avoid all traumatic content, trauma-informed professors recognize that a student who can identify and articulate that they are not able to engage in a discreet topic within a course, is a student

257. CHARDIN & NOVACK, *supra* note 110, at 62. For example, a professor could conduct an anonymous survey of their students to see how students perceive their course. Before a professor reads the answers, the professor should write down how the professor *thinks* students will respond to the questions. This can help a professor assess if they have an accurate view of their student's actual experience. *Id.* Sample prompts a professor might use include, "In my class, my teacher is interested in my well-being beyond my course work."; "My teacher helps me identify my strengths and shows me how to use my strengths to learn."; or "My teacher encourages us to accept different points of view when they are expressed in class." *Id.* at 63.

258. *See* Carello & Butler, *supra* note 21, at 270.

259. For example, in the instance of anonymous feedback, a professor can share with the whole class what the professor learned and what changes the professor intends to make in response. In the instance of non-anonymous feedback, the professors can follow up with the individuals involved, thank them for taking the time to share, and after time to reflect on the feedback, share how the professor intends to incorporate their learning.

260. CHARDIN & NOVACK, *supra* note 110, at 76.

261. *See* Parts IV.C, V.B.2, *supra*.

who has the strength of recognizing a boundary they need to assert to protect themselves from being triggered.²⁶² In this instance, a trauma-informed professor will offer the student a choice in how to engage—or not—with specific course content. As a matter of universal design, professors can also consider offering choice in general.²⁶³ As a matter of universal precaution, professors can inform students that they are able to ask for modification around specific topics that may cause them harm.²⁶⁴

F. Recognizing Cultural, Gender, & Historic Issues

The sixth tenet is recognition of cultural, historical, and gender issues.²⁶⁵ A law professor that embodies this tenet “actively moves past cultural stereotypes and biases.”²⁶⁶ Further, the professor “incorporates policies, protocols, and processes that are responsive to the racial, ethnic and cultural needs of individuals served; and recognizes and addresses historical trauma.”²⁶⁷ Opening the door to humanity, practicing cultural humility, and teaching through an anti-racist lens are three strategies to embody this tenet. Each will be addressed in turn.

1. Opening the Door to Humanity

A good starting point to embody the sixth tenet of trauma-informed care in a doctrinal law school classroom is to remember that no human being is a blank slate. Law students show up to law school with complex, multifaceted identities that provide a lens through how they view the world and impact

262. See Part V.E.2, *supra*.

263. For example, a professor could offer four assignments during a semester and only rely on the top three scores for purposes of grading. Students then have the option to skip an assignment, if that suits them, or at least not feel pressure to do well on every single thing assigned. Professors can also offer the opportunity for students to turn in a draft of an assignment and accept the first grade they receive or do multiple drafts of an assignment to earn a higher score. This allows students to balance what is “good enough” for them in law school against other time constraints and obligations. Another option is to allow student an opportunity to self-schedule exams or assignments within a set period of time, so they have autonomy in controlling at least some of their deadlines.

264. A modification could include, recording a class (or allowing remote participation) for the student so they could take in the information in a safer space than a room of their peers, creating an alternative assignment, or allowing a student to skip a lecture without attendance penalty.

265. SAMHSA’S CONCEPT OF TRAUMA, *supra* note 8, at 11.

266. *Id.* (providing cultural stereotypes and biases include those based on race, ethnicity, sexual orientation, age, religion, and gender).

267. *Id.*

how they experience the world and how others experience them. The same is true, of course, for law professors. When working with students who have experienced trauma it is also important to recognize that trauma among the marginalized is pervasive, generational, and oftentimes, complex in nature.²⁶⁸

A professor who recognizes cultural, gender, and historical issues in their classroom begins with taking measures to ensure that the humanity of all students is recognized in their classroom, especially those students who are historically underrepresented in the legal profession and those students who are from marginalized communities. “If a student sees themselves as valued and visible in classrooms and curriculum and feel like they are being welcomed, they can and will be successful.”²⁶⁹ Recognizing the humanity of all students includes an awareness of the social construction of identities and what identities represent within a broader social context.²⁷⁰

This Article discussed, as a matter of universal design, ways professors can create pathways to connect students who struggle with trauma histories.²⁷¹ Those same strategies which can be used to normalize experiences of students, can also be used to help students understand privileges they have that other students do not. Professors can establish and co-create shared norms around what it means to be a learning community with the shared goal of obtaining a legal education and remind students of their common humanity when engaging in conversations on topics that are potentially triggering, traumatizing, or retraumatizing for members of the learning community.

One strategy professors can employ is that of “mirrors and windows.”²⁷² A professor implementing this strategy starts from a place of their own self-reflection and recognizes that “[l]ooking in the mirror of [their] own identity is not enough[]” and that they “must look outside [themselves], through

268. Hunter, *supra* note 119, at 28.

269. CHARDIN & NOVACK, *supra* note 110, at 57.

270. *Id.* at 35. All teachers have “power and privilege and we must use it as a tool to confront and dismantle inequities, so all students have equal opportunity to learn.” *Id.* at 7. This is especially important when the person who holds the most power in the room, the professor, holds additional power and privilege based on their whiteness. *Id.* at 35. It is also important when the professor identifies as male, cis-gender, heterosexual, middle-to-upper class, able-bodied, neurotypical, or a combination of those identities.

271. See Part V.C.2, *supra*.

272. CHARDIN & NOVACK, *supra* note 110, at 85. Mirrors and windows are consistent with universal design principles that provide a framework for anti-bias education through social justice standards. *Id.* (“If we are to create a world that is socially just, we must first embrace our own identity and recognize privilege and how it has contributed to the world in which we live.”).

windows, to embrace the lived experience of others so [they] can analyze the harmful impact of bias and injustice.”²⁷³ Once a professor engages in their own self inquiry, they should ask their students to do the same.²⁷⁴ This exercise can help a learning community become inclusive across identities, allowing “students with diverse experiences and identities to feel both validated by being included and to have the opportunity to humanize others whose background may differ from them”²⁷⁵ Further, it allows all members of the learning community to feel seen and represented.²⁷⁶

2. *Practicing Cultural Humility*

A trauma-informed professor operates through a lens of cultural humility.²⁷⁷ Cultural humility is consistent with a trauma-informed approach.²⁷⁸ Cultural humility is “a lifelong commitment to understanding and respecting different points of view, while engaging with others humbly, authentically, and from a place of learning.”²⁷⁹ Principles of cultural humility readily implemented by law professors include “a lifelong commitment to self-evaluation and self-critique” and a “desire to fix power

273. *Id.* at 85–86.

274. *Id.* This inquiry is not a one-and-done, and students should be reminded to engage in this exploration throughout the course.

275. *Id.* at 86.

276. *Id.*

277. See Henshaw, *supra* note 68, at 4–5. The term “cultural humility” serves in effort to refine work on cultural competence. Ada K. Wilson et al., “*Newtrality*”: *A Contemporary Alternative to Race-Neutral Pedagogy*, 43 CAMPBELL L. REV. 171, 200 (2021). Cultural humility is “not as a discrete endpoint but as a commitment and active engagement in lifelong process that individuals enter into on an ongoing basis with patients, communities, colleagues, and with [oneself].” Melanie Tervalon & Jann Murray-García, *Cultural Humility Versus Cultural Competence: A Critical Distinction in Defining Physician Training Outcomes in Multicultural Education*, 9 J. HEALTH CARE FOR POOR & UNDERSERVED 117, 118 (1998). In contrast “the notion of ‘competence’ implies a static endpoint and mastery, which is unrealistic in our national community’s increasing intersectionality, diversity, and historical, sociopolitical complexity.” Jann L. Murray-Garcia & Victoria Ngo, “*I Think He’s Nice, Except He Might Be Mad About Something*”: *Cultural Humility and the Interruption of Scripts of Racial Inequality*, 25 U.C. DAVIS SOC. JUST. L. REV. 73, 88 (2021).

278. See MYRNA MCCALLUM & HALEY HRYMAK, RISE WOMEN’S LEGAL CENTRE, DECOLONIZING FAMILY LAW THROUGH TRAUMA-INFORMED PRACTICES 1, 4 (2022) (adopting the cultural humility framework created by Dr. Melanie Tervalon and Dr. Jann Murray-Garcia because the framework “focuses on partnerships, a commitment to self-reflection, lifelong learning, achieving equality, and self-critique” and is “consistent with the principles that underpin trauma-informed lawyering.”).

279. *Id.*

imbalances.”²⁸⁰ A professor operating through the lens of cultural humility takes an interpersonal stance that is “other-oriented” in relation to cultural identity and treats each student as the expert on their own cultural experiences.²⁸¹ Cultural humility goes beyond cultural competence in that it “contends that one can never really [be an expert in] another’s culture, but that we ought to remain respectful and reflective in our approach.”²⁸²

Professors engaged in the practice of cultural humility can begin by critically examining common unconscious biases which feed myths and stereotypes, question their sources of knowledge, and open their minds to new perspectives.²⁸³ Next, they should make efforts to inquire and inform themselves about students’ individual and collective lived experiences in regard to cultural backgrounds.²⁸⁴ This acknowledges students as experts and the professor as the learner.²⁸⁵

3. *Teaching Through an Antiracist Lens*

A trauma-informed professor adopts anti-racist pedagogical tools. In an

280. Wilson et al., *supra* note 277, at 200.

281. *Id.*; Debra Chopp, *Addressing Cultural Bias in the Legal Profession*, 41 N.Y.U. REV. L. & SOC. CHANGE 367, 370 (2017). Inherent in honoring that students are the experts in their own experiences, is a recognition that trust is a two-way street in the professor-student relationship. *See* Part V.B.2, *supra*.

282. Evan Hamman, *Culture, Humility and the Law: Towards a More Transformative Teaching Framework*, 42 ALT. L.J. 156, 156 (2017).

283. *See* MYRNA MCCALLUM & GLORIA NG, WEST COAST LEAF, A TOOLKIT FOR NAVIGATING SECTION 276 AND 278 CRIMINAL CODE MATTERS AS COMPLAINANT COUNSEL IN CRIMINAL PROCEEDINGS 1, 9 (2020) (discussing cultural humility in the context of working with survivors of sexual assault); *see also* Myrna McCallum, *Indigenous Intergenerational Trauma: What You Need to Know about Advocating, Adjudicating and Policing in Indigenous Communities*, THE TRAUMA-INFORMED LAWYER (June 28, 2020), <https://thetraumainformedlawyer.simplecast.com/episodes/trauma-informed-lawyering-indigenous-people-what-you-need-to-know> (discussing cultural humility as a necessary component to trauma-informed lawyering).

284. *See* MCCALLUM & NG, *supra* note 283, at 9 (discussing cultural humility in the context of working with survivors of sexual assault). There are many ways law professors can learn about the individual and collective experiences of their law students. One way is to provide students with opportunities to share within the course. Further, professors can engage with affinity student organizations and the student bar association. In my own experience, a mere curiosity about the law student experience from law professors is met with many students who are eager to share with me. Of course, the burden should not rest on law students to serve as the sole educators of their professors and professors must also engage in secondary learning including (but not limited to) participation in professional development training and seeking out scholarship and other materials that expand their cultural competence.

285. *See id.*

essay on cultural humility as a means of changing the approach of how professors teach criminal law Tariq El-Gabalawy writes:

[The] objective treatment of the traditional doctrine fails to address how our criminal legal system perpetuates racial violence through mass incarceration. Additionally, it works to alienate students in the classroom who have lived through the consequences of the state's racist criminal legal system by placing their experience on equal footing with the opinions and policies that have created the crisis of mass incarceration. Because we learn criminal statutes encapsulate society's collective moral condemnation of specified conduct, those same students are often left with the impression that the law has judged their communities as immoral and has accepted their trauma as a collateral consequence of safety.²⁸⁶

Thus, a trauma-informed professor must actively address systemic racism and the racialized trauma our legal systems continue to perpetuate as a critical part of teaching doctrinal law. The absence of instruction on systemic racism has the potential to cause significant trauma.

Teaching about systemic racism and racialized trauma must not just be done; it must be done well. In an instructive article on an antiracist approach to clinical pedagogy, Professor Norrinda Brown Hayat provides a map to merge critical race theory with other pedagogical tools to illuminate the impact race has on clinic cases to deepen students' understanding of how to analyze and treat race in their case.²⁸⁷ This framework is also helpful, through a trauma-informed lens, to address cultural and historical issues in the law in doctrinal courses. For example, she encourages professors to teach the "ordinariness"²⁸⁸ of racism, "interest convergence,"²⁸⁹ "[s]ocial construction,"²⁹⁰ "[r]evisionist

286. Tariq El-Gabalawy, *Cultural Humility: A Guiding Principle for Changing Approaches to Teaching Criminal Law*, 25 U.C. DAVIS SOC. JUST. L. REV. 60, 61 (2021).

287. Norrinda Brown Hayat, *Freedom Pedagogy: Toward Teaching Antiracist Clinics*, 28 CLINICAL L. REV. 149, 158 (2021) (citing RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* (3d ed. 2017)).

288. *Id.* at 158–59 (noting racism is "normal and not aberrational").

289. *Id.* (noting "[r]acism only gives way when it is in the interest of White people[.]" and "we might teach our students to look for other better positioned groups (particularly Whites) to align with to achieve a freedom goal.").

290. *Id.* (providing "[r]ace is a product of social thought").

history,”²⁹¹ “[c]ritique of liberalism,”²⁹² and “[s]tructural determinism.”²⁹³ The tools she provides are relevant to a wide range of content. For example, she suggests teaching students to examine the impact of race “on the facts and law without exception.”²⁹⁴ Further, professors should have “students examine what they consider racialized behavior and their own biases when formulating case theories and narratives[,]” ask students to “challenge the traditionally offered causes” of societal issues, and teach “students to pressure test ideas that center class instead of or in addition to race.” Ultimately, the specific application of these anti-racist pedagogical tools may vary depending on the doctrinal subject. Therefore, a trauma-informed professor engages in reflection on how these concepts apply to their course and adjust their presentation and inclusion of material accordingly.²⁹⁵

VI. CONCLUSION

The new SLSWB data on the prevalence of trauma in law students is likely to have many caring and compassionate law professors curious about how they can better serve their students who suffer adverse consequences from trauma. Ultimately, being trauma-informed is about the lens through which we look.²⁹⁶ At its core, this Article seeks to help law professors strengthen that lens by recognizing and improving upon the skills they already have that support people who have experienced trauma. Specifically, it seeks to provide knowledge about trauma and related concepts and then offer a framework with concrete and manageable actions professors can take to build trauma-informed classes as a matter of course utilizing principles of universal design.

The aim of this Article is small in that it focuses on what professors can realistically do within their individual capacities. Yet, the aspirations of this Article are large in that there is great power in each and every individual law

291. *Id.* at 159 (providing “America’s historical record is a collection of myths based on majoritarian interpretations”).

292. *Id.* (providing “[c]olorblindness and rights-based analysis cannot resolve structural race problems”).

293. *Id.* (noting “our system is ill-equipped to redress certain racial harms,” and emphasizing the need for “recognition that Black clients may not be able to be made whole by the legal system because it is designed in a way that does not recognize their full personhood under the law”).

294. *Id.*

295. This reflection is also consistent with adopting a stance of cultural humility which includes self-evaluation and self-critique and a desire to fix power imbalances. See Wilson et al., *supra* note 277, at 200.

296. Hunter, *supra* note 119, at 27.

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professor to make significant and positive contributions to the experience of the students entrusted in their care.