Safe Spaces" and "Brave Spaces": The Case for Creating Law School Classrooms That Are Both

Laura P. Graham

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LAURA P. GRAHAM[*]

Over the past decade, the subject of "safe spaces" on college and university campuses has received much press. As originally conceived, the term "safe space" refers to an environment—often a physical space—in which "everyone feels comfortable expressing themselves and participating fully, without fear of attack, ridicule, or denial of experience." And while this original conception may not seem controversial, the meaning of "safe spaces" as applied to higher education classrooms is a subject of ongoing vigorous debate. On one side of the debate are those who believe that safe spaces foster learning by making it possible for students to be exposed to diverse perspectives in an atmosphere of honesty, respect, and empathy. On the other side of the debate are those who believe that safe spaces threaten academic freedom by requiring professors and students to refrain from expressing any viewpoint or idea that might be threatening or "triggering" to others.

Student demand for safe spaces has been on the rise for decades, and there is reason to believe that with the arrival of Generation Z ("Gen Z") students on college and university campuses, the demand will increase. As a group, Gen Z students tend to be more anxious than their predecessor generations, and with the confluence of the COVID-19

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pandemic and the racial unrest of 2020, they have much to be anxious about.

Moreover, many Gen Z students have become accustomed to being protected from difficult situations (some refer to them as "coddled"). But at the same time, Gen Z is widely recognized as being more activist than their Millennial predecessors, on issues ranging from racial justice to human trafficking to climate change. It stands to reason that faculty, staff, and administrators in the higher education setting will need to figure out how to provide a learning environment that balances Gen Z students' insistence on addressing difficult social issues with their desire to do so in a safe space.

But what exactly is a safe space? And should creating safe spaces be a goal of institutions of higher learning?

Those questions take on added weight in the law school context because of the key role of the law in shaping society. Unlike undergraduate education, legal education is specifically designed to equip students to enter the profession, where they will encounter myriad situations that require them to step out of their comfort zones. This has perhaps never been truer than in 2021, as racial and social justice issues have risen to the forefront of the American consciousness at the same time that our country has experienced unprecedented political polarization. It is in this environment that lawyers are increasingly being called on to step forward and use their legal training to effect systemic change. Thus, as legal educators train future lawyers who will serve "on the front lines," it is critical that difficult racial and social justice issues be discussed in law school classrooms. So the question becomes, can law school classrooms ever be truly safe spaces?

This Article provides one context within which law schools can examine how best to create an environment, both in and out of the classroom, that maximizes student learning in an age where it is more important than ever that difficult racial, social, and global issues be raised and discussed. The Article begins by tracing the development of the safe spaces movement and discussing how the traditional type of safe space manifests in today's law schools. It then

*highlights the many and sometimes competing understand-
ings of the nature and role of safe spaces and identifies some
of the criticisms of the safe spaces concept, especially as
those criticisms relate to "intellectual safe spaces" within
the law school classroom. The Article then shifts to a discus-
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INTRODUCTION

> *[W]e do not condone the creation of intellectual "safe spaces" where individuals can retreat from ideas and perspectives at odds with their own.*

> — John Ellison[1]

> *I'm an economist, not a sociologist or psychologist, but those experts tell me that students don't fully embrace uncomfortable learning unless they are themselves comfortable. Safe spaces provide that comfort.*

> — Morton Schapiro[2]

These two statements, made in the same year by the presidents of two universities located in the same city, represent two divergent views on the wisdom of creating so-called "safe spaces"[3] in the university environment. As originally conceived, the term "safe space" refers to an environment—often a physical space—where "everyone feels comfortable in expressing themselves and participating fully, without fear of attack, ridicule, or denial of experience."[4] While this original conception may seem uncontroversial, the meaning of safe spaces as applied to higher education classrooms is a subject of ongoing vigorous debate.[5]

On one side of the debate are those who believe that safe spaces foster learning by making it possible for students to gain exposure

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[1]   Letter from John (Jay) Ellison, Dean of Students in the Coll., Univ. of Chi., to Class of 2020 Students (Aug. 2016), https://news.uchicago.edu/sites/default/files/attachments/Dear_Class_of_2020_Students.pdf.

[2]   Morton Schapiro, *I'm Northwestern's President. Here's Why Safe Spaces for Students are Important.*, WASH. POST: OPS. (Jan. 15, 2016), https://www.washingtonpost.com/opinions/how-to-create-inclusive-campus-communities-first-create-safe-places/2016/01/15/069f3a66-bb94-11e5-829c-26ffb874a18d_story.html.

[3]   I have chosen not to put this term in quotation marks for the remainder of the Article, unless the term is part of a quotation that does so.

[4]   *NCDD Glossary*, NAT'L COAL. FOR DIALOGUE & DELIBERATION, https://ncdd.org/rc/glossary/#S (last visited Oct. 1, 2021).

[5]   *See* Ashutosh Bhagwat & John Inazu, *Searching for Safe Spaces*, INSIDE HIGHER ED, (Mar. 21, 2017), https://www.insidehighered.com/views/2017/03/21/easily-caricatured-safe-spaces-can-help-students-learn-essay.

to diverse perspectives in an atmosphere of honesty, respect, and empathy.[6] On the other side of the debate are those who believe that safe spaces threaten academic freedom by requiring professors and students to refrain from expressing any viewpoint or idea that might be threatening or "triggering" to others.[7]

Student demand for safe spaces has been on the rise for decades, and there is reason to believe that the arrival of Gen Z[8] students on college and university campuses will further increase that demand.[9] As a group, Gen Z students tend to be more anxious than their pre-decessor generations,[10] and with the confluence of the COVID-19 pandemic and the racial unrest of 2020, they have much to be anx-ious about.[11] Moreover, many Gen Z students have become accus-tomed to being protected from difficult situations[12] (some refer to them as being "coddl[ed]").[13] But at the same time, Gen Z is widely recognized as being more activist than their Millennial predecessors, on issues ranging from racial justice to human trafficking to climate change.[14] It stands to reason that faculty, staff, and administrators in

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[6]   *See* Vinay Harpalani, *"Safe Spaces" and the Educational Benefits of Di-versity,* 13 DUKE J. CONST. L. & PUB. POL'Y 117, 126–27 (2017).

[7]   *See, e.g., On Trigger Warnings*, AM. ASS'N. UNIV. PROFESSORS (Aug. 2014), https://www.aaup.org/report/trigger-warnings. For a full discussion of the various and sometimes competing understandings of the nature and value of safe spaces, see *infra* Section I.B.

[8]   Most generational theorists place Gen Z members as being born between 1995 and 2010. *See* Laura P. Graham, *Generation Z Goes to Law School: Teach-ing and Reaching Law Students in the Post-Millennial Generation,* 41 U. ARK. LITTLE ROCK L. REV. 29, 37 (2018).

[9]   *Id.* at 46.

[10]   *Id.* at 42–44.

[11]   Kat McAlpine, *Depression, Anxiety, Loneliness Are Peaking in College Students*, BRINK @ BOS. U. (Feb. 17, 2021), https://www.bu.edu/articles/2021/de-pression-anxiety-loneliness-are-peaking-in-college-students/.

[12]   *See* Graham*, supra* note 8, at 44–48 (discussing the co-piloting relationship between Gen Z and their parents); *see also infra* Section I.C.2.

[13]   *See*, *e.g.*, Greg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind*, ATLANTIC (Sept. 2015), https://www.theatlantic.com/magazine/ar-chive/2015/09/the-coddling-of-the-american-mind/399356/ (evaluating the cur-rent movement of protecting students from "words, ideas, and subjects that might cause discomfort or give offense" and its impact on students themselves).

[14]   *See* Tiffany D. Atkins, *#FortheCulture: Generation Z and the Future of Legal Education*, 26 MICH. J. RACE & L. 115, 127–32 (2020) [hereinafter Atkins, *#FortheCulture*].

the higher education setting will need to figure out how to provide a learning environment that balances Gen Z students' insistence on addressing difficult social issues with their desire to do so in a safe space.

But what exactly is a safe space? And should creating safe spaces be a goal of institutions of higher learning?

Those questions take on added weight in the law school context "because of the nature of law and how it intersects with society."[15] Unlike undergraduate education, legal education is specifically designed to equip students to enter that profession, where they will encounter myriad situations that require them to step out of their comfort zones.[16] This training has perhaps never been more vital than in 2021, as racial and social justice issues have risen to the forefront of the American consciousness at the same time that our country has experienced unprecedented political polarization.[17] It is in this environment that lawyers are increasingly being called on to step forward to use their legal training to effect systemic change.[18] Thus, "considering our purpose of training future lawyers who will serve on the front lines,"[19] it is critical that difficult racial and social justice issues be discussed in law school classrooms. So the question becomes, can law school classrooms ever be truly safe spaces?

This Article provides one context within which law schools can examine how best to create an environment, both in and out of the classroom, that maximizes student learning in an age where it is more important than ever to raise and discuss difficult racial, social, and global issues. The Article begins by tracing the development of

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[15]   Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 781 (2018).

[16]   *See infra* Section I.C.2.

[17]   *See* Christie Aschwanden, *Why Hatred and 'Othering' of Political Foes Has Spiked to Extreme Levels*, SCI. AM., (Oct. 29, 2021), https://www.scientificamerican.com/article/why-hatred-and-othering-of-political-foes-has-spiked-to-extreme-levels/.

[18]   *See* Spencer Rand, *Social Justice as a Professional Duty: Effectively Meeting Law Student Demand for Social Justice by Teaching Social Justice as a Professional Competency*, 87 U. CIN. L. REV. 77, 78 (2018) (noting that students, the ABA, and many other law school stakeholders are "all striving toward the same goal" of training lawyers to represent and "support the powerless" by practicing law through a social justice lens).

[19]   Lain, *supra* note 15, at 781.

the safe spaces movement and discussing how the traditional type of safe space manifests in today's law schools. It then highlights the many and sometimes competing understandings of the nature and role of safe spaces and identifies some of the criticisms of the safe spaces concept, especially as those criticisms relate to "intellectual safe spaces" within the law school classroom. This Article then shifts to a discussion of the relatively new concept of "brave spaces,"[20] tracing the development of that movement and arguing that the brave spaces concept better describes the optimal law school classroom. Finally, the Article suggests some strategies law school administrators, professors, and students can use to begin to create classrooms that are both safe and brave spaces in which to foster the dialogue needed to equip students to become lawyers who are agents for social change.

It bears stating at the outset that in this Article, I do not advocate doing away with safe spaces as they were originally intended to function. Rather, I suggest that law schools should be careful to balance the need for places where marginalized students can "retreat from the very real threats and demands they face by their very existence"—the true safe spaces—with the need to encourage and facilitate classrooms where students can "process new and uncomfortable ideas productively"—brave spaces.[21]

As a White[22] cisgender American woman, I realize that I cannot speak from personal experience about how marginalization and isolation affect law students of other races, nationalities, or sexual identities. And I cannot easily fathom the discomfort they often feel (and the outright harms they sometimes suffer) because of the explicit and implicit biases of administrators, professors, and other students. But I know that I want to be part of the solution, and I know that I want my classroom to be both safe and brave for all students. Writing this Article has been part of the journey of self-examination I

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[20] Again, I have chosen not to put this term in quotation marks for the remainder of the Article, unless the term is part of a quotation that does so.

[21] DIANA ALI, SAFE SPACES AND BRAVE SPACES: HISTORICAL CONTEXT AND RECOMMENDATIONS FOR STUDENT AFFAIRS PROFESSIONALS (2017), https://www.naspa.org/images/uploads/main/Policy_and_Practice_No_2_Safe_Brave_Spaces.pdf [hereinafter *NASPA Report*].

[22] I have chosen to capitalize the word "White" consistently throughout this Article, unless it is part of a quotation in which it is not capitalized in the original.

have been on (and am still on) as I seek to develop the same bravery I strive to help my students cultivate. I hope that this Article will provide some encouragement and some modest suggestions for others who are (or who want to be) on this journey with me.

I.   THE SAFE SPACES MOVEMENT

To understand the impetus behind the brave spaces movement, we must first go back in time to examine the movement that preceded it—the safe spaces movement.[23] This look backward reveals that the concept of brave spaces is not inconsistent with the original intent behind the development of safe spaces in the higher education environment.

A.   *Evolution of the Safe Spaces Movement*

The exact origin of the safe spaces movement is unclear.[24] One theory is that the movement traces as far back as the 1940s when corporations first started requiring "sensitivity training" for their executives.[25] Clinical psychologist Vaughan Bell credits social psychologist Kurt Lewin with helping formalize the concept of safe spaces as a result of Lewin's leadership development program for corporate bosses.[26] According to Bell, Lewin's workshops rested on his foundational belief that "honesty and change would only occur if people could be frank and challenge others in an environment of psychological safety."[27]

But the far more common view is that the safe spaces movement grew out of three prior activist movements: the women's movement of the 1960s and 1970s;[28] the campus activist movement of students

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[23]   *See NASPA Report*, *supra* note 21, at 3.

[24]   *See* Harpalani, *supra* note 6, at 125.

[25]   *Id.* (citing Vaughn Bell, *The Real History of the "Safe Space"*, MIND HACKS (Nov. 12, 2015), https://mindhacks.com/2015/11/12/the-real-history-of-the-safe-space). Lewin believed that sensitivity training could succeed only if it proceeded "without judgment" and had an "explicit rule that everyone agrees to at the start of the group" requiring participants to allow others to "mention concerns without fear of being condemned for them . . . ." *Id.* at 125 n.33.

[26]   Bell, *supra* note 25.

[27]   *Id.*

[28]   Harpalani, *supra* note 6, at 125.

of color at about the same time;[29] and the nascent LGBT[30] move-ment of the early 1990s.[31] Within these movements, students looked for places where they felt "'safe' to express perspectives and engage in debates that [were] outside of mainstream discourse and not properly considered in other campus venues."[32] In response to the demands of these activist groups, many colleges and universities created campus centers devoted to particular racial and ethnic mi-nority groups, to women, and later to LGBTQIA+ students.[33] Even-tually, these centers came to be known as "safe spaces."[34]

Neither these centers nor the movements that birthed them were originally referred to as "safe spaces."[35] One scholar posits that the term "safe spaces" itself "began appearing in academic literature in the mid-1990s, in the context of LGBTQ rights on campus, and it was also applied to other resources focused on marginalized groups."[36] For example, in the 1990s, many university professors were urged to place rainbow stickers or signs on their office doors; the stickers signified (or explicitly stated) that those offices were safe spaces for LGBTQIA+ students.[37]

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[29]   *Id.*

[30]   In the early 1990s, "LGBT" was a common acronym to describe the move-ment that now encompasses other gender identities and sexual orientations and is often referred to as "LGBTQIA+." *See* Michael Gold, *The ABCs of L.G.B.T.Q.I.A.+*, N.Y. TIMES (June 7, 2019), https://www.nytimes.com/2018/06/21/style/lgbtq-gender-language.html.

[31]   Harpalani, *supra* note 6, at 125–26; *see also* Judith Shulevitz, *In College and Hiding From Scary Ideas*, N.Y. TIMES: OP. (Mar. 21, 2015), https://www.nytimes.com/2015/03/22/opinion/sunday/judith-shulevitz-hiding-from-scary-ideas.html.

[32]   Harpalani, *supra* note 6, at 126.

[33]   *Id.* at 125–26.

[34]   *See* Sarah Brown & Katherine Mangan, *What 'Safe Spaces' Really Look Like on College Campuses,* CHRON. HIGHER EDUC. (Sept. 8, 2016), https://www.chronicle.com/article/what-safe-spaces-really-look-like-on-college-cam-puses/?cid2=gen_login_refresh&cid=gen_sign_in.

[35]   Harpalani, *supra* note 6, at 126.

[36]   *Id.*

[37]   *See generally* Leah Shafer, *More Than Safe*: *Creating a School Where LGBTQ Students Thrive,* HARV. GRADUATE SCH. EDUC.: USABLE KNOWLEDGE (Oct. 25, 2016), https://www.gse.harvard.edu/news/uk/16/10/more-safe ("In the past several decades, gay-straight alliances (GSAs), antibullying programs, and 'safe space' stickers have become commonplace practices to protect LGBTQ youth from harmful harassment."); Ted Gideonse, *The Christian Closet*,

An early manifestation of the safe spaces movement on campuses—one that is still thriving in today's colleges and universities—was the formation of student organizations centered on students from marginalized groups.[38] In the law school setting, this kind of safe space has taken the form of affinity groups for students of color, gay and lesbian students, and women law students.[39] The Black Law Students Association ("BLSA")[40] is perhaps the most well-recognized affinity group for law students, but there are many similar groups thriving at law schools across the country, including associations for Latinx students,[41] Asian Pacific American

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ADVOCATE, 42–43 (Sept. 29, 1998), https://books.google.com/books?id=c2MEAAAAMBAJ&printsec=frontcover&rview=1&lr=#v=onepage&q&f=false ("A number of the schools with resource centers for gay students have started 'safe space' programs in which faculty and staff, gay and straight, are designated as information sources; they have rainbow stickers on their doors.").

[38] *See* Harpalani, *supra* note 6, at 127–49 (describing the various ways these campus affinity groups serve as "support mechanisms for minority students").

[39] *See id.* ("Beyond physical spaces, racial/ethnic student organizations can also serve as safe spaces . . . ."); Meera E. Deo, *Two Sides of a Coin: Safe Space and Segregation in Race/Ethnic-Specific Law Student Organizations*, 42 WASH. U. J. L. & POL'Y 83, 110 (2013) [hereinafter Deo, *Two Sides of a Coin*] (addressing the increasing number of non-traditional students, such as women, people of color, and LGBTQIA+ students, enrolling in law school).

[40] According to the website of the National BLSA, there are currently more than 200 BLSA chapters in the United States and Canada, and BLSA is one of the largest student-run non-profits in the U.S. NAT'L BLACK L. STUDENTS ASS'N, https://www.nblsa.org (last visited Oct. 1, 2021).

[41] NAT'L LATINO/A L. STUDENTS ASS'N, https://www.nllsa.org (last visited Oct. 1, 2021).

students,[42] Native American students,[43] LGBTQIA+ students,[44] Jewish students,[45] Muslim students,[46] and first-generation law students.[47]

Although many affinity groups have existed at colleges and universities for decades, the need for these groups is even more acute today.[48] Recent studies show that minority students feel increasingly isolated on campuses.[49] For example, in 2016, Northwestern University released the results of a study investigating the experiences and satisfaction of African American/Black students at the

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[42] NAT'L ASIAN PACIFIC AM. L. STUDENTS ASS'N, https://www.napalsa.com (last visited Oct. 1, 2021).

[43] NAT'L NATIVE AM. L. STUDENTS ASS'N, https://www.nationalnalsa.org (last visited Oct. 1, 2021).

[44] Although there appears to be no national student-run organization for LGBTQIA+ students, the National LGBT Bar Association operates a law school affiliate program, providing assistance to affinity groups at law schools throughout the country. *Law School Affiliate Program*, NAT'L LGBTQ+ BAR ASS'N, https://lgbtqbar.org/programs/law-students/law-school-affiliate-program/ (last visited Oct. 1, 2021). Many law schools have their own student-run organizations for LGBTQIA+ students; a common name for these groups is OUTLaw (or some variant thereof); *see, e.g.*, *OUTLaw*, UNIV. MIA. SCH. L., https://www.law.miami.edu/students/law-student-organizations/outlaw (last visited Oct. 1, 2021); *OUTLaws @ Yale Law School*, YALE UNIV.: OFF. LGBTQ RES., https://lgbtq.yale.edu/resources/outlaws-yale-law-school (last visited Oct. 1, 2021).

[45] *See, e.g.*, HARV. JEWISH L. STUDENTS ASS'N, https://orgs.law.harvard.edu/jlsa/ (last visited Oct. 1, 2021); *Jewish Law Students Association*, GEO. MASON UNIV. ANTONIN SCALIA L. SCH. (Oct. 1, 2021), https://www.law.gmu.edu/students/orgs/jlsa; *Student Activities,* UNIV. MICH. L. SCH. (Oct. 1, 2021), https://michigan.law.umich.edu/student-life-and-community/student-activities.

[46] *See, e.g., Muslim Law Students Association*, MITCHELL HAMLINE SCH. L. (Oct. 1, 2021), https://mitchellhamline.edu/dean-of-students/student-organizations/muslim-law-students-association/; *Muslim Law Students Association*, LOY. UNIV. CHI. SCH. L. (Oct. 1, 2021), https://www.luc.edu/law/studentlife/organizations/muslim.html.

[47] *See, e.g., First Generation Law Students Association*, UCLA: FIRST TO GO, https://firsttogo.ucla.edu/For-Graduate-Students/First-Generation-Law-Students-Association (last visited Oct. 1, 2021); *see* Kayla Molina, *First-Generation Students Face Unique Challenges*, A.B.A. FOR L. STUDENTS: STUDENT L. (Jan. 1, 2020), https://abaforlawstudents.com/2020/01/01/first-generation-students-face-unique-challenges/, for a discussion on law schools' efforts to help first-generation students navigate law school and the importance of affinity groups for first-generation law students.

[48] *See infra* note 63 and accompanying text.

[49] Harpalani, *supra* note 6, at 128–29.

university; one theme that emerged from the study was that "'[b]eing the only one' in multiple campus settings day in and day out is isolating, lonely, and exhausting for African American/Black undergraduates. Many wonder if they belong at Northwestern."[50] Another theme was that "[s]pace is important to African American/Black undergraduates. This includes the Black House and spaces where African American/Black students feel comfortable socializing."[51]

Similarly, a 2017 study of more than 66,000 queer-spectrum and trans-spectrum college students[52] revealed that "many queer-spectrum and trans-spectrum students continue to navigate stigma, peer aggression, and exclusion well into their college years—experiences that too frequently precipitate symptoms of depression, anxiety, and

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[50]   BLACK STUDENT EXPERIENCE TASK FORCE, NW. UNIV., THE AFRICAN AMERICAN/BLACK STUDENT EXPERIENCE 11 (2016), https://www.northwestern.edu/inclusion/reviews-and-reports/bs-experience-pages/black-student-experience-task-force-report-2016.pdf.

[51]   *Id.* at 38. The "Black House" refers to "a place where Black students can congregate and get together." *Id.* at 39. One member of a women's focus group said,

> When I first got here, I definitely felt like—just not a part of campus in terms of demographic and in terms of culture. I struggled with that a lot freshman year. But also coming into the Black House for me—one in particular—I think it was a game night. It was a 90s game and it was so much fun. Being around Black students, just hanging out and relaxing, in that space felt infectious. It definitely made me feel like, I can do this. I can stay here.

Id.

[52]   According to the American Psychological Association (APA), "queer" is "an umbrella term that individuals may use to describe a sexual orientation, gender identity, or gender expression that does not conform to dominant societal norms . . . . Some youth may adopt 'queer' as an identity term to avoid limiting themselves to the gender binaries of male and female or to the perceived restrictions imposed by lesbian, gay, and bisexual sexual orientations." AM. PSYCH. ASS'N, KEY TERMS AND CONCEPTS IN UNDERSTANDING GENDER DIVERSITY AND SEXUAL ORIENTATION AMONG STUDENTS 22 (2015), https://www.apa.org/pi/lgbt/programs/safe-supportive/lgbt/key-terms.pdf. The APA defines "transgender," also abbreviated as "trans," as "an umbrella term that incorporates differences in gender identity wherein one's assigned biological sex doesn't match their felt identity . . . . Individuals in this category may feel as if they are in the wrong gender, but this perception may not correlate with a desire for surgical or hormonal reassignment." *Id.*

self-injury."[53] One of the recommendations that emerged from the study was that colleges and universities should "[d]evelop curricular/co-curricular programming that convenes queer-spectrum and trans-spectrum students and highlights positive aspects of these communities. When connected to other queer-spectrum and trans-spectrum peers, students are more likely to engage in positive identity development—a fundamental protective factor mitigating psychological distress."[54]

Though these studies were not focused on law students, the data suggest that the same feelings of isolation and lack of belonging are common among law students.[55] In 2020, the Law School Survey of Student Engagement ("LSSSE") included a Diversity and Inclusion Module in its survey of over 13,000 law students at sixty-eight law schools.[56] The following findings were among the most salient:

- Almost a quarter (21%) of law students who are Black, Latinx, or Native American, and almost a third (32%) of first-generation students (students whose parents did not finish high school) said they "do not feel comfortable being [themselves]

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[53]   Maren Greathouse, *It Doesn't Always Get Better for Queer-Spectrum and Trans-Spectrum College Students*, HIGHER EDUC. TODAY (June 6, 2018), https://www.higheredtoday.org/2018/06/06/doesnt-always-get-better-queer-spectrum-trans-spectrum-college-students/ [hereinafter *It Doesn't Always Get Better for Queer-Spectrum and Trans-Spectrum College Students*]. The study was conducted by the Tyler Clementi Center at Rutgers University in partnership with several national research centers, and the full report of the study's findings is published in a white paper, which is available at MAREN GREATHOUSE ET AL., RUTGERS UNIV., QUEER-SPECTRUM AND TRANS-SPECTRUM STUDENT EXPERIENCES IN AMERICAN HIGHER EDUCATION 4, 20 (2018), https://nbdiversity.rutgers.edu/sites/default/files/2021-02/White-Paper-Final.pdf.

[54]   *See It Doesn't Always Get Better for Queer-Spectrum and Trans-Spectrum College Students*, *supra* note 53.

[55]   *See, e.g.,* MEERA E. DEO & CHAD CHRISTENSEN, INDIANA UNIV. CTR. FOR POSTSECONDARY RSCH.: LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, DIVERSITY & EXCLUSION: 2020 ANNUAL SURVEY 6 (2020), https://lssse.indiana.edu/wp-content/uploads/2020/09/Diversity-and-Exclusion-Final-9.29.20.pdf [hereinafter LSSSE REPORT].

[56]   *Id.*

at this institution," compared to just 12% of White students.[57]

- A quarter (25%) of Black students said their law schools do "very little" to prevent students from being stigmatized based on characteristics like race/ethnicity, gender, religion, and sexual orientation.[58] Only 9.3% of White students agreed.[59]

- Twenty percent of gay students, 16% of lesbian students, 15% of bisexual students, and 19% of students who identified as another sexual orientation see their schools as doing "very little" to avoid identity-based stigma.[60]

In response to the data from the LSSSE Diversity and Inclusion Module, LSSSE Director Meera Deo wrote that "once students enroll [in law school], we owe it to them to provide a safe and welcoming environment, one where they feel valued, where they can be themselves, where they acquire the tools they need to succeed in the workplace, and where they can thrive."[61]

Long before the 2020 LSSSE results, Deo took the position that affinity groups like BLSA are essential to making law schools safe spaces for marginalized students.[62] Deo calls them "'counter spaces'" that serve as "buffers from the broader community."[63] Deo has identified four purposes for such organizations.[64]

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[57] *Id.* at 10.

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *Id.* at 5.

[62] *See* Deo, *Two Sides of a Coin*, *supra* note 39, at 87.

[63] *Id*. Deo recognizes that while such affinity groups do segregate students from "the mainstream campus," "'safe space' and 'segregation' are actually two sides to the same coin, both accurate characteristics of the race/ethnic-specific student organization, one necessary to the other and both required for the groups and individual members to succeed." *Id.* at 88–89.

[64] Meera E. Deo, *Separate, Unequal, and Seeking Support*, 28 HARV. J. RACIAL & ETHNIC JUST. 9, 27–28 (2012) [hereinafter Deo, *Separate, Unequal, and Seeking Support*].

First, they provide social support, allowing marginalized students to build close friendships and social interactions with peers.[65] Second, they provide cultural support, allowing marginalized students to promote their "sense of shared identity" and to celebrate their "'common experiences.'"[66] Third, they provide emotional support, allowing marginalized students to "rely on each other."[67] Fourth, they may provide academic support, allowing marginalized students easier access to "mentorship, mock exams, and other educational resources . . . ."[68]

As Deo acknowledges, such affinity groups attract criticism,[69] some of which is valid. One criticism that has been leveled against some race/ethnic-specific organizations, and that could be leveled against other affinity groups as well, is that they "perpetuate or exacerbate segregation or exclusivity on campus."[70] However, Deo believes this kind of segregation may be "necessary to create the sovereignty that students of color feel is important to the sense of support their race/ethnic-specific groups provide."[71] Put another way, "keeping the space safe depends on keeping it somewhat exclusive—not in an elitist way, but in a protective way."[72]

Another criticism is that such groups are "open to infiltration" by students who are not members of the particular affinity group.[73] For example, a White student might join a race/ethnic-specific group out of solidarity or a desire to better appreciate the challenges faced by members of the group, especially when issues surrounding the

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[65]   *Id.*

[66]   *Id.* at 29–31.

[67]   *Id.* at 32. For example, "[l]aw students of color facing microaggressions that may cause Mundane Extreme Environmental Stress (MEES) sometimes create and join 'counter spaces' as a 'positive coping strategy.'" Deo, *Two Sides of a Coin*, *supra* note 39, at 112.

[68]   Deo, *Separate, Unequal, and Seeking Support*, *supra* note 64, at 36.

[69]   Deo, *Two Sides of a Coin*, *supra* note 39, at 103.

[70]   *Id.* Although Deo's article focuses on race/ethnic-specific organizations, the same criticism could be valid for other kinds of affinity groups as well.

[71]   *Id.* at 104.

[72]   *Id.* at 124.

[73]   *See* Harpalani, *supra* note 6, at 162 ("Although safe spaces are open to White students, their primary function is to cater to the needs of students of color. As such, it is possible that the frequent presence of too many White students may prevent students of color from feeling 'safe' in these spaces.").

"axes of marginality" are rarely discussed in other contexts.[74] And while White students can certainly learn from being in safe spaces devoted to minorities, they may also consciously or unconsciously place the burden on the members of the race/ethnic-specific group to educate their White peers about race.[75]

These criticisms notwithstanding, most educators would likely acknowledge the importance of physical, emotional, and psychological safety[76] in the campus environment.[77] Students cannot thrive when their campuses, or any part of them, are places where they are subject to threats, insults, or humiliation.[78] And in law schools, where students learn to become agents for social justice, "violence of any kind—physical, emotional, and psychological—is antithetical" to the challenging work of "authentic engagement with regard to issues of identity, oppression, power, and privilege."[79] Even in

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[74]   *Id.* at 161–62. For an example of this effort to "infiltrate" a safe space in the context of gender, *see* The Roestone Collective, *Safe Space: Towards a Reconceptualization*, 46 ANTIPODE 1346, 1351 (2014) [hereinafter Roestone Collective] (describing a disagreement over whether to allow men to participate in a Take Back the Night March in Washington D.C. on the final night of Anti-Rape Week and noting that eventually "men were included but instructed to walk behind the women's contingent").

[75]   Harpalani, *supra* note 6, at 163. In 2016, shortly after Judith Shulevitz's piece criticizing safe spaces, *see supra* note 31 and accompanying text, Lily Zheng, a Stanford student, wrote an opinion piece in the *Stanford Daily* highlighting this very danger. Lily Zheng, *Why Your Brave Space Sucks*, STAN. DAILY (May 15, 2016), https://www.stanforddaily.com/2016/05/15/why-your-brave-space-sucks/. Zheng said,

> If privileged people are gaining knowledge at the expense of marginalized peoples' well-being, then your brave space sucks. And if your brave space absolutely, necessarily requires marginalized people to be doing the teaching—then you damn better be paying them a living wage for their work. Or your brave space will suck.

Id.

[76]   *See* Lain, *supra* note 15, at 786–88 (discussing the importance of psychological safety in the law school setting).

[77]   *See, e.g.,* Brian Arao & Kristi Clemens, *From Safe Spaces to Brave Spaces: A New Way to Frame Dialogue Around Diversity and Social Justice*, *in* THE ART OF EFFECTIVE FACILITATION: REFLECTIONS FROM SOCIAL JUSTICE EDUCATORS 135, 139 (Lisa M. Landreman, ed., 2013) (denouncing "physical, emotional, and psychological" violence in the classroom).

[78]   *See id.*

[79]   *Id.*

the absence of violence, specific threats, or insults, the safety of marginalized students can be jeopardized, such as when a student makes an insensitive or harmful comment in class, and their professor does nothing to address it.[80] Thus, to the extent that affinity groups like BLSA, Latina/o Law Students Association ("LLSA"), and Asian Pacific American Law Students Association ("APALSA"), contribute to students' physical, emotional, and psychological safety, law schools should do everything within their power to support these traditional safe spaces.

B.   *The Shift in the Definition of Safe Spaces and the Resulting Criticisms of the Movement*

Scholars seem to agree that originally, the term "safe space" did not refer to a place where students would be "shielded from opposing perspectives," but rather where students would feel "'safe' to express perspectives and engage in debates that are outside of mainstream discourse and not properly considered in other campus venues."[81] Thus, the idea that a safe space would be free from all discomfort was not part of the original conception. On the contrary, true safe spaces like BLSA, LLSA, and other student groups "can serve as miniature 'marketplaces of ideas,' where students share different perspectives that are not considered elsewhere on campus . . . . Safe spaces are thus venues for novel, enriching, and uncomfortable conversations that otherwise would not happen on campus."[82]

And if this had remained the prevailing definition of "safe spaces," the growing call for such spaces by Gen Z students would likely not be problematic. But that is not what has happened.[83] Unfortunately, the term "safe spaces" has morphed into an umbrella term that is used to mean many different things, often creating confusion and misunderstanding.[84] In 2017, a writer for the Harvard Political Review aptly summarized this confusion:

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[80]   Tori DeAngelis, *Unmasking 'racial micro aggressions,'* AM. PSYCH. ASS'N (Feb. 2009), https://www.apa.org/monitor/2009/02/microaggression.

[81]   Harpalani, *supra* note 6, at 126.

[82]   *Id.* at 123.

[83]   *See id.* at 119–22.

[84]   *See, e.g.*, *NASPA Report*, *supra* note 21, at 6 ("[the term safe spaces has been] reappropriated within conversations about freedom of expression—without

> [B]ecause the term "safe space" is used interchange-
> ably to refer to two very different ideas [emotional
> safe spaces and academic safe spaces], the concepts
> themselves become conflated . . . .A new iteration of
> the concept has emerged—some students advocate to
> expand emotional safe spaces to encompass the cam-
> pus as a whole.[85]

An early example of this new iteration of the safe spaces concept was chronicled by journalist Judith Shulevitz in her widely-read opinion piece, *In College and Hiding from Scary Ideas*.[86] She re-counted that in November 2014, Brown University announced plans to host a debate about campus sexual assault where one participant was expected to criticize the term "rape culture."[87] Student members of Brown's Sexual Assault Task Force protested, fearing that bring-ing in that speaker might "invalidate people's experiences."[88] In re-sponse to those students' concerns, Brown decided to plan a "sim-ultaneous, competing talk," and the students "put up posters adver-tising that a 'safe space' would be available for anyone who found the debate too upsetting."[89] Members of the Sexual Assault Task Force explained that the space "was intended to give people who might find comments 'troubling' or 'triggering,' a place to recuper-ate."[90] Several dozen people took advantage of the safe space,

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a clear understanding of the nuanced context from which the term has been drawn . . . . Assumptions and concerns rose from multiple definitions and under-standings of the term, all under the umbrella of safe spaces within the debate."). For example, at the University of Nebraska Lincoln, the webpage for the LGBTQA+ Resource Center refers to the Center as a "brave space" and uses guidelines adapted from UC-Berkeley's Brave Space Guidelines. *See LGBTQA+ Center*, UNIV. NEB.-LINCOLN (Sept. 9, 2021), https://lbgtqa.unl.edu (providing various downloadable resources with information on and ways to access "safe spaces" or "brave spaces").

   [85]   Katherine Ho, *Tackling the Term: What is a Safe Space?*, HARV. POL. REV. (Jan. 30, 2017), https://harvardpolitics.com/what-is-a-safe-space/.

   [86]   Shulevitz, *supra* note 31.

   [87]   *Id.*

   [88]   *Id.*

   [89]   *Id.*

   [90]   *Id.* Furthermore, the room was set up to include "cookies, coloring books, bubbles, Play-Doh, calming music, pillows, blankets and a video of frolicking puppies, as well as students and staff members trained to deal with trauma." *Id.*

including one student who, after hearing part of the debate, said she had to return to the room because she "was feeling bombarded by a lot of viewpoints that really [went] against [her] dearly and closely held beliefs."[91]

After describing the events at Brown (and other similar occurrences at other universities), Shulevitz provided her opinion on safe spaces.[92] She stated that in most cases, safe spaces are "innocuous gatherings of like-minded people who agree to refrain from ridicule, criticism or what they term microaggressions . . . so that everyone can relax enough to explore the nuances of, say, a fluid gender identity."[93] Shulevitz then opined, "As long as all parties consent to such restrictions, these little islands of self-restraint seem like a perfectly fine idea."[94] "But," she continued, "the notion that ticklish conversations must be scrubbed clean of controversy has a way of leaking out and spreading. Once you designate some spaces as safe, you imply that the rest are unsafe. It follows that they should be made safer."[95]

In fact, as part of their efforts to make campuses wholly "safe," many colleges and universities have acceded to student demands to cancel speakers and events and to censor speech or writing that might cause emotional discomfort to some students.[96] The examples of such cancellations are numerous and familiar;[97] in fact, the term

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91   *Id.*

92   *Id.*

93   *Id.* Microaggressions are "brief and commonplace daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults toward people of color." Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 AM. PSYCH. 271, 271 (2007). Microaggression in all its forms has many harmful or unpleasant psychological impacts "for both the perpetrator and the target person. It creates psychological dilemmas that unless adequately resolved lead to increased levels of racial anger, mistrust, and loss of self-esteem for persons of color; prevent White people from perceiving a different racial reality; and create impediments to harmonious race-relations." *Id.* at 275.

94   Shulevitz, *supra* note 31.

95   *Id.*

96   *See id.*; *see also NASPA Report*, *supra* note 21, at 6 (listing numerous examples of student protests regarding campus speakers and events).

97   *See* Shulevitz, *supra* note 31; *NASPA Report*, *supra* note 21, at 6.

"cancel culture" is now part of the mainstream vocabulary.[98] This trend towards cancelling speech that some students deem "unsafe" is cited by many critics of the safe spaces movement as emblematic of the threat that the movement poses to First Amendment freedoms.[99]

Indeed, John Palfrey has written an entire book on this subject, called *Safe Spaces, Brave Spaces: Diversity and Free Expression in Education.*[100] A central tenet of Palfrey's book is that educational institutions that restrict speech to make students feel safe, or comfortable, are robbing students of the educational benefits of diversity.[101] Palfrey recognizes that the original concept of safe spaces has value:

> Most people benefit from some sort of safe space in their life. That might be as simple as the kitchen or "hearth" at home to which we retreat after a busy day, surrounded by family or friends. This safe space is an environment in which one can "be oneself" in a manner different from the public-facing persona one assumes during the rest of the day.[102]

Palfrey argues that on college campuses, students need these traditional safe spaces, such as those maintained by affinity groups, "to decompress and to explore ideas without fear or a sensation of risk."[103]

But, Palfrey posits, in the classroom setting, restricting speech to create a "safe" environment in fact prevents students from developing a tolerance for the offensive or disagreeable views of others.[104] He writes:

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[98] The term "cancel culture" now appears in the Merriam-Webster Dictionary, where it is defined as "the practice or tendency of engaging in mass cancelling as a way of expressing disapproval and exerting social pressure." *Cancel Culture*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/cancel%20culture (last visited Sept. 9, 2021).

[99] *See, e.g.,* JOHN PALFREY, SAFE SPACES, BRAVE SPACES: DIVERSITY OF FREE EXPRESSION IN EDUCATION (2017).

[100] *See generally id.*

[101] *See id.* at 119–21.

[102] *Id.* at 28–29.

[103] *Id.* at 29.

[104] *See id.* at 119.

> The tolerance theory of free expression . . . makes plain this connection [between diversity and free expression]. A primary rationale for free expression derives from its propensity to increase tolerance in individuals and communities. The tolerance theory holds that the act of forgiving those who express hurtful views develops empathy and strength in those who forgive. And young people benefit from being able to express their views freely—up to a point— regardless of whether they perceive adults to be expounding a "right answer."[105]

But there is a more fundamental criticism of safe spaces within the university setting—one that seems especially potent in the context of legal education. Put simply, the idea of a safe space as one where all participants can be "free from discomfort"[106] is directly at odds with the idea of the classroom as a place for critical thought and intellectual growth—two linchpins of an effective legal education.

Among the most thoughtful and eloquent critics of the idea of safe spaces in the educational setting is Robert Boostrom, whose 1997 article, "*Unsafe Spaces": Reflections on a Specimen of Educational Jargon,*[107] has been widely cited in the safe spaces literature of the last two decades. Boostrom's critique stemmed from his conviction that "learning necessarily involves not merely risk, but the pain of giving up a former condition in favour of a new way of seeing things"—a conviction shared by great teachers from Plato to Dewey to Rousseau.[108] Boostrom conceded that students learn best in classrooms where individuality is freely expressed, but he

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[105] *Id.* The "tolerance theory" criticism of safe spaces is itself subject to criticism, to the extent that it could be seen as normalizing expressions that may be traumatizing to historically oppressed groups. For example, it would be very offensive and harmful for a law professor to use the "n-word" when referring to litigants in a slavery case; such language simply should no longer be tolerated, even in service of free speech.

[106] Harpalani, *supra* note 6, at 159.

[107] ROBERT BOOSTROM, "UNSAFE SPACES": REFLECTIONS ON A SPECIMEN OF EDUCATIONAL JARGON (1997).

[108] *Id.* at 2.

rejected the belief that the classroom must be "safe" for this free expression to occur.[109]

According to Boostrom, "a 'safe space' is a place without stress. In a 'safe space' classroom, students are not isolated, alienated, threatened, intimidated, or 'stressed-out.' Teachers who create 'safe spaces' care about their students, and because they care, they eliminate the pain from education."[110] Boostrom then elaborated on this definition: The "space" is "safe" when individuals and groups know that they will not face criticisms that would challenge their expressions of identity.[111] In a "safe space," people are encouraged to speak their minds freely and to share their experiences openly, and they are guaranteed that their expressions of self will be as well regarded as anyone else's.[112] Self-expression is protected by a figurative "refrigerator box" that guards the individual from the coercion of the group and guards the minority group from the oppression of the majority.[113] Expressions of self (individual or collective) cannot be challenged.[114]

Boostrom then powerfully stated his objection to the demand that classrooms be safe:[115]

> Understood as the avoidance of stress, the 'safe space' metaphor drains from classroom life every impulse toward critical reflection. It's one thing to say that students should not be laughed at for posing a question or for offering a wrong answer. It's another to say that students must never be conscious of their ignorance. It's one thing to say that students should not be belittled for a personal preference or harassed because of an unpopular opinion. It's another to say that students must never be asked why their preferences and opinions are different from

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109   *Id.* at 5–6.
110   *Id.* at 16.
111   *Id.* at 17–18.
112   *Id.*
113   *Id.*
114   *Id.* at 16–18.
115   *Id*. at 17–18. Boostrom asks, "Yet, why the emphasis on safety? Being interrogated by Socrates would evoke many feelings, but would a feeling of safety be among them?" *Id.* at 2–3.

those of others. It's one thing to say that students should be capable of self-revelation. It's another to say that they must always like what they see revealed.[116]

Boostrom concluded his piece with this poignant observation:

> When everyone's voice is accepted, no one's voice can be criticized. The tendency of 'safe space' talk to censor critical reflection turns sympathy into sentimentality, open-mindedness into empty-headedness. That we need to hear other voices in order to grow is certainly true, but we also need to be able respond to those voices, to criticize them, to challenge them, to sharpen our own perspectives through the friction of dialogue. A person can learn, says Socrates, 'if he is brave and does not tire of the search' . . . .We have to be brave because along the way we are going to be 'vulnerable and exposed'; we are going to encounter images that are 'alienating and shocking.' We are going to be very unsafe.[117]

Later critics of the safe spaces concept seem to agree with Boostrom's assertion that classrooms cannot be truly safe, though some are slower to eschew the term "safe spaces."[118] For example, in 2017, law professor Vinay Harpalani posited that in the classroom context, a safe space is not a place where marginalized students just "'retreat' and stay quiet."[119] In fact, he said, safe spaces function to "'address difficult or tension-filled learning encounters,'" by creating "'learning environment[s] that allow students to engage each other with honesty, sensitivity, and respect.' As such, the goal of safe spaces is to facilitate engagement of uncomfortable issues and to provide a supportive atmosphere for this endeavor."[120]

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[116]   *Id.* at 17–18.

[117]   *Id.* at 20.

[118]   *See generally* Harpalani, *supra* note 6, at 153.

[119]   *Id.*

[120]   *Id.* at 126–27 (citations omitted); *see also* Roestone Collective, *supra* note 74, at 1355 (first alteration in original) ("Discursive, pedagogical safe space is therefore not static, but a constant movement between safe and unsafe, individual and collective, agreement and disagreement. Advocates of such spaces assert that

C.   *Why the Concept of Safe Spaces is Problematic in the Law School Setting*

These criticisms of the classroom as a pure safe space seem well-founded, and perhaps they would not be viewed as controversial as an intellectual matter. It is difficult to imagine any professor denying the importance of learning environments that foster honesty, sensitivity, and respect among students. And nowhere is the need for honest, sensitive, and respectful discussion about difficult issues greater than in the law school classroom, where a salient goal is to train students to critically examine problems and develop legal solutions so that they can be deployed to "serve the public in the pursuit of justice."[121] But as a practical matter, the new generation of law students, Gen Z,[122] may double down on the idea that law school

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they allow 'individuals in a collective environment . . . [to] be empowered to encounter risk on their own terms,' knowing that these risks will vary by student. Safe space thus becomes 'a euphemism for the processual act of ever-becoming, of messy negotiations.'").

[121]   Deborah L. Rhode, *Legal Education: Professional Interests and Public Values*, 34 IND. L. REV. 23, 24 (2000). A non-exhaustive survey of the mission statements of U.S. law schools suggests that training students to be agents of social change is at the heart of the work of most law schools. *See, e.g.*, *About UW Law School*, UNIV. WISC. L. SCH., https://law.wisc.edu/about/(last visited Oct. 2, 2021) ("Our curriculum emphasizes the dynamics of the law—how the law relates to social change and to society as a whole—while at the same time stressing skill development."); *Strategic Plan*, ALB. L. SCH., https://www.albanylaw.edu/about/strategic-plan (last visited Oct. 2, 2021) ("We connect the classroom to the profession, government, and the community through experienced-based learning, engaged scholarship, and a robust network of alumni and supporters. Our students develop a sophisticated understanding of legal policy and doctrine, a broad range of professional competencies, and a deep commitment to justice and ethical values."); *Mission, Goals, and Values*, VAND. L. SCH., https://law.vanderbilt.edu/about-the-school/VLSmission.php (last visited Oct. 2, 2021) ("The mission of Vanderbilt University Law School is to educate leaders who contribute to the advancement of justice.").

[122]   The foremost experts on Generation Z, or Gen Z for short, posit that members of this generation were born approximately between 1995 and 2010. *See* COREY SEEMILLER & MEGHAN GRACE, GENERATION Z GOES TO COLLEGE 6 (2016); *see also* JEAN M. TWENGE, IGEN: WHY TODAY'S SUPER-CONNECTED KIDS ARE GROWING UP LESS REBELLIOUS, MORE TOLERANT, LESS HAPPY—AND COMPLETELY UNPREPARED FOR ADULTHOOD 5–6 (2017) (estimating that 1995–2012 is the birth year range for Gen Z). For a thorough discussion of the peer personality of Generation Z students, see Graham, *supra* note 8, at 36–48.

classrooms must be safe in the free-from-discomfort sense.[123] There are three primary reasons this may be so.

1. GEN Z STUDENTS' DIVERSITY WILL NECESSITATE CANDID CROSS-CULTURAL DISCUSSION IN LAW SCHOOLS

First, Gen Z is a richly diverse generation.[124] The Pew Research Center reported in 2020 that "[a] bare majority (52%) are non-Hispanic White—significantly smaller than the share of Millennials who were non-Hispanic White in 2002 (61%). Twenty-five percent of Gen Zers are Hispanic, 14% are Black, 6% are Asian, and 5% are some other race or two or more races."[125] And 22% of Gen Zers have at least one parent who is an immigrant.[126] Taking into account the number of Gen Z immigrants who are expected to join the U.S. population in the next few years, the United States Census Bureau projects that by 2026, Gen Z will be majority non-White.[127]

Gen Z's diversity has far-reaching implications in all facets of American life. Employers are becoming more conscious of the importance of diversity in the workplace—something that Gen Z members will demand.[128] Retailers are acknowledging the effects of their

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[123]   *See* Lukianoff & Haidt, *supra* note 13 ("A movement is arising, undirected and driven largely by students, to scrub campuses clean of words, ideas, and subjects that might cause discomfort or give offense."); s*ee also* Graham, *supra* note 8, at 48 (noting Gen Z's increasing "desire for protection from uncomfortable or unfamiliar ideas" in law school settings).

[124]   Kim Parker & Ruth Igielnik, *On the Cusp of Adulthood and Facing an Uncertain Future: What We Know About Gen Z So Far*, PEW RSCH. CTR. (May 16, 2020), https://www.pewresearch.org/social-trends/2020/05/14/on-the-cusp-of-adulthood-and-facing-an-uncertain-future-what-we-know-about-gen-z-so-far-2/.

[125]   *Id.*

[126]   *Id.*

[127]   *Id.* (citing U.S. CENSUS BUREAU, 2017 NATIONAL POPULATION PROJECTIONS DATASETS (2017), https://www.census.gov/programs-surveys/popproj/data/datasets.html).

[128]   *See, e.g.*, Jennifer Miller, *For Younger Job Seekers, Diversity and Inclusion in the Workplace Aren't a Preference. They're a Requirement.*, WASH. POST (Feb. 18, 2021), https://www.washingtonpost.com/business/2021/02/18/millennial-genz-workplace-diversity-equity-inclusion/ (noting Gen Z jobseekers want employers who will hire a diverse workforce); *Diversity and Inclusion? Gen Z's About that*, BUS. WIRE (Oct. 21, 2020, 8:30 AM), https://www.business-wire.com/news/home/20201021005098/en/Diversity-and-Inclusion-Gen-Z%E2%80%99s-About-That ("'Jobseekers have stressed the significance of diversity

marketing decisions and discriminatory practices on the buying be-havior of Gen Z consumers.[129] Colleges and universities are also seeking ways to make their campuses more welcoming to and inclu-sive of non-White students.[130]

As student bodies become more diverse with the arrival of Gen Z students, law schools, like all other educational institutions, will be required "to find ways to overcome long-standing barriers to cul-tural proficiency, including 'resistance to change, unawareness of the need to adapt, the presumption of entitlement, and systems of oppression and privilege.'"[131] Yet it is largely in the context of dis-cussing these barriers—something that seems inevitable in law school classrooms—that many students are likely to call for safe spaces.[132]

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and inclusion for decades, but Generation Z could be the generation that really forces employers to take this issue . . . more seriously than they ever have be-fore.'").

[129]   *See, e.g.*, Shannon Cook, *How Millennials and Gen Z Are Pushing Brands on Diversity and Inclusion,* BUS. BECAUSE (Mar. 3, 2021), https://www.business-because.com/news/insights/7504/millennial-gen-z-diversity-and-inclusion (not-ing how "[a]uthentic brand activism" led Nike's sales to increase by 31% after the company enlisted Colin Kaepernick, an NFL player and activist who kneeled in protest during the national anthem, for a Just Do It campaign in 2018).

[130]   *See, e.g.*, Sarah Brown, *Students of Color are Not OK. Here's How Col-leges Can Support Them.*, CHRON. HIGHER EDUC. (July 6, 2020), https://www.chronicle.com/article/students-of-color-are-not-ok-heres-how-colleges-can-support-them (demonstrating how colleges and universities are attempting to make mental health resources more available to students of color to combat stig-mas associated with seeking mental health services); Josh Moody, *Diversity in College and Why It Matters*, U.S. NEWS & WORLD REP. (Mar. 31, 2020, 9:23AM), https://www.usnews.com/education/best-colleges/articles/diversity-in-college-and-why-it-matters.

[131]   *See* Graham, *supra* note 8, at 40 (citing Anastasia M. Boles, *Seeking Inclu-sion from the Inside Out: Towards a Paradigm of Culturally Proficient Legal Ed-ucation*, 11 CHARLESTON L. REV. 209, 258 (2017)).

[132]   *See generally* Shulevitz, *supra* note 31 (explaining that students are increasingly likely to call for safe spaces when dealing with content deemed "discomforting" or "distressing").

2.   Gen Z Students' Upbringing Has Ill-Prepared Them for the "Antagonistic Space" of the Law School Classroom

Second, to some extent, Gen Z students have grown up shielded from difficult situations and issues (at least until the events of 2020).[133] Much has been written about the overprotective parenting Gen Z students experienced,[134] the emphasis placed on protecting their self-esteem at all costs,[135] and the resistance to "adulting" that characterizes Gen Z as a whole.[136] In their widely read 2015 *Atlantic*

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[133]   *See* Lukianoff & Haidt, *supra* note 13 ("'[F]ree range' childhood became less common in the 1980s . . . many parents pulled in the reins and worked harder to keep their children safe.").

[134]   *See* Graham, *supra* note 8, at 44 (noting that parents of Gen Zers have been referred to as "'co-pilots'"—as opposed to "'helicopter parent[s]'"—because rather than "'hovering over'" their children, they are by their sides at all times, available to advise them on all decisions).

[135]   Liz Stillwaggon Swan documents how prior generations vigorously protected Gen Z's self-esteem:

> There was a strong push in the 1990s and beyond to raise the self-esteem of children regardless of both children's actual efficacy and the effectiveness of the social movement itself. Sentiments of this movement, explored by Jean Twenge, Julie Lythcott-Haims, Greg Lukianoff and Jonathan Haidt, included, for example, "trust your feelings," "if you believe it, you can do it," "words can damage you," "accept yourself just as you are," "if it feels right, it is," which collectively, some argue, have gotten into us our current predicament of college students who demand trigger warnings for potentially upsetting topics, safe spaces to escape to, and the presumed right to cancel speaker events on campus that might make them uncomfortable.

Liz Stillwaggon Swan, *Are Gen Z'ers Too in Touch with Their Feelings?,* Psych. Today: Coll. Confidential (Aug. 16, 2020), https://www.psychologyto-day.com/us/blog/college-confidential/202008/are-gen-zers-too-in-touch-their-feelings.

[136]   Laura Graham discusses Gen Zers' tendency to delay adulthood:

> Chief among the adult activities that are being delayed by Gen Z are having sex, drinking, dating, working for pay, going out without their parents, and driving. And the delay is driven not so much by their parents as it is by Gen Z members themselves; in Twenge's independent research, she discovered that almost all the Gen Z members she talked to said that "being a child was better than being an adult [because] being an adult involved too much responsibility." In fact, Twenge reports that Gen Z college students scored "markedly higher" on a measure of

article, *The Coddling of the American Mind*, Greg Lukianoff and Jonathan Haidt used the phrase "*vindictive protectiveness*" to describe the trend at American colleges and universities of "scrub[bing] campuses clean" of anything that might damage the extraordinarily fragile psyches of students.[137] Additionally, Lukianoff and Haidt noted the significant increase in the reporting of emotional crises among college students.[138]

Though many viewed Lukianoff and Haidt's article as overly harsh towards today's college students,[139] it is true that Gen Z is widely considered the most anxious generation ever.[140] Gen Z's

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> "maturity fears" than their predecessors in the Millennial gen-
> eration.

Graham, *supra* note 8, at 45 (quoting TWENGE, *supra* note 122, at 45–46). This decline occurred across races, genders, geographic locations, and socioeconomic statuses. *Id.* at 45 n.111 (citing Jean M. Twenge & Heejung Park, *The Decline in Adult Activities Among U.S. Adolescents, 1976−2016*, 90 CHILD DEV. 638, 646 (2019)).

[137]   Lukianoff & Haidt, *supra* note 13 ("*[V]indictive protectiveness* . . . is creating a culture in which everyone must think twice before speaking up, lest they face charges of insensitivity, aggression, or worse.").

[138]   *Id.* Over half of college students surveyed by the American College Health Association in 2014 reported they "felt overwhelming anxiety" during the previous twelve months, "up 49 percent in the same survey just five years earlier." *Id.*

[139]   For example, John K. Wilson critiqued Lukianoff & Haidt's view of Gen Z for Academe Blog:

> By latching on to a common (but untrue) myth of young people
> as coddled and protected (this generation has been exposed to
> far more sex, violence, profanity, and offensive ideas than any
> previous generations), Lukianoff and Haidt think they have un-
> covered a new psychological cause for censorship. The truth is
> far more mundane–censorship on campus is pretty much the
> same as it has always been: powerful administrators silence
> controversial faculty and students. It's a political problem, not
> a psychological one.

John K. Wilson, *The Coddled Kids are All Right*, ACADEME BLOG (Sept. 1, 2015), https://academeblog.org/2015/09/01/the-coddled-kids-are-all-right/.

[140]   *See* Graham, *supra* note 8, at 42; *see also* Sue Shellenbarger, *The Most Anxious Generation Goes to Work*, WALL STREET J. (May 9, 2019, 12:22 PM), https://www.wsj.com/articles/the-most-anxious-generation-goes-to-work-11557418951 ("[Gen Z is] reporting anxiety [more] than any other generation"); Shelley White, *Generation Z: The Kids Who'll Save the World?*, GLOBE & MAIL (Sept. 25, 2014), https://www.theglobeandmail.com/life/giving/generation-z-the-kids-wholl-save-the-world/article20790237 (discussing the traumatizing effects of Gen Z's easy access to information about world issues).

high levels of anxiety are not surprising considering the events that shaped their early years. The oldest Gen Zers were just four years old when the Columbine High School shooting occurred in 1999 and just six years old when the September 11th attacks occurred in 2001.[141] As teenagers, they watched reports about the Sandy Hook school shooting in 2012 and the Boston Marathon bombing in 2013.[142] Gen Zers have not known a world without TSA screenings[143] and lockdown drills.[144] And because Gen Zers have grown up with smartphones in their hands,[145] they have had instant, twenty-four-seven access to images of violence, chaos, and civil unrest in their communities and around the globe.[146]

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[141]   *See* SEEMILLER & GRACE, *supra* note 122, at 34–36; *see also* Rachel Janfaza, *'We're tired of waiting': GenZ is Ready for a Revolution*, CBS12 (June 22, 2020), https://cbs12.com/news/nation-world/were-tired-of-waiting-genz-is-ready-for-a-revolution.

[142]   *See, e.g.*, James Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. TIMES (Dec. 14, 2012), https://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html; Ben Atherton et al., *Terror in Boston as Deadly Blasts Hit Marathon,* AUSTL. BROAD. CORP., https://www.abc.net.au/news/2013-04-16/explosions-at-boston-marathon-finish-line/4631036?nw=0 (last updated Apr. 17, 2013, 3:12 PM).

[143]   *See* SEEMILLER & GRACE, *supra* note 122, at 35. The Transportation Security Administration was created in November 2001. *Transportation Security Timeline* (Illustration)*,* TSA, https://www.tsa.gov/timeline (last visited Oct. 2, 2021).

[144]   *See* Nathaniel Minor & Olivia Dukakis, *How Effective Are School Lockdown Drills?*, NPR (Apr. 19, 2019, 2:08 PM), https://www.npr.org/2019/04/19/715193493/how-effective-are-school-lockdown-drills (linking the prevalence of lockdown drills today directly to the events surrounding the Columbine shooting).

[145]   *See* Jean M. Twenge, *Have Smartphones Destroyed a Generation?*, ATLANTIC (Sept. 2017), https://www.theatlantic.com/magazine/archive/2017/09/has-the-smartphone-destroyed-a- generation/534198/ (noting that the first iPhone was released in 2007, when the oldest Gen Zers were about twelve years old); Graham, *supra* note 8, at 49 (reporting that about ninety-five percent of Gen Zers own a smartphone). For an in-depth discussion on the effects of smartphone use on Gen Z's health and learning, see Graham, *supra* note 8, at 49–57.

[146]   *See, e.g.*, SEEMILLER & GRACE, *supra* note 122, at 36 (noting that "[w]ith one click on a website," Gen Zers can access video footage, read transcripts, and see interviews about these mass violence episodes, "making the event[s] feel even closer to home and even more frightening.").

When these Gen Z students transition to law school, their anxiety often worsens.[147] This increased anxiety is partly due to the inherently stressful nature of law school;[148] however, the uncomfortable, difficult, or even triggering subjects that are impossible to avoid in law school classes may also worsen their anxiety.[149] In course after course, Gen Z students are required to read cases addressing such issues as rape, sexual assault, racial and

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[147] Law students experience higher levels of anxiety than both medical students and graduate students:

> Nearly all law students — 96 percent — experience "significant stress" as compared to 70 percent of medical students and 43 percent of graduate students, according to the Dave Nee Foundation, an organization dedicated to eliminating the stigma associated with depression. Upon entering law school, students have a psychological profile similar to that of the general public; by graduation, 20 to 40 percent will experience a psychological dysfunction, according to the foundation.

Mariah Stewart, *Improving the Legal Profession's Mental Health Crisis Begins in Law School*, INSIGHT INTO DIVERSITY (June 25, 2020), https://www.insight-intodiversity.com/improving-the-legal-professions-mental-health-crisis-begins-in-law-school/ (citing 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, 146 (2016)). Recognizing this concerning data, the ABA continues to expand its webpage listing resources for law school mental health. *Law Student Mental Health Resources*, A.B.A. FOR L. STUDENTS, https://abaforlawstudents.com/events/initiatives-and-awards/mental-health-resources/ (last visited Oct. 2, 2021) ("let[ting] [troubled students] know that they are not alone by raising awareness of mental health issues").

[148] *See* Organ et al., *supra* note 147, at 146 ("The transition for many of our students from college to law school, which includes learning the new language of the law, dealing with anxieties about their future beyond graduation, and managing the debt many take on to finance their legal education, creates stressors for which many are unprepared."); *see also* Graham, *supra* note 8, at 43–44 ("[t]he anxiety and stress common to many Gen Z students is likely to be exacerbated when they enter the law school environment"). Moreover, those law students most in need of help reported being reluctant to seek help. Graham, *supra* note 8, at 44 (citing Organ et al., *supra* note 147, at 116).

[149] *See generally* Jeannie Suk Gersen, *The Trouble with Teaching Rape Law*, NEW YORKER (Dec. 15, 2014), https://www.newyorker.com/news/news-desk/trouble-teaching-rape-law [hereinafter Gersen, *The Trouble with Teaching Rape Law*] ("[s]tudents seem more anxious about classroom discussion, and about approaching the law of sexual violence in particular").

gender discrimination, and poverty.[150] Legal educators consider it an obligation to teach these subjects, as difficult as they may be, to fully train students for the practice of law; after all, practicing attorneys cannot always choose their cases and clients to avoid these subjects.[151]

In 2014, Harvard Law Professor Jeannie Suk Gersen wrote about her students' reactions to her plan to teach rape law as part of her criminal law course.[152] She noted that women's organizations at the law school "routinely advise students that they should not feel pressured to attend or participate in class sessions that focus on the law of sexual violence, and which might therefore be traumatic."[153] Criminal law teachers, Gersen wrote, are often asked to "warn their classes that the rape law unit might 'trigger' traumatic memories."[154] And individual students even ask professors "not to include the law of rape on exams for fear that the material would cause them to perform less well."[155]

Whether professors should accede to the demand for "trigger warnings" that Gersen alludes to has been the subject of much disagreement among academics for some time now.[156] For example, The American Association of University Professors ("AAUP") issued a 2014 report titled *On Trigger Warnings*, which summarized the views of those who believe trigger warnings stifle critical thinking and threaten academic freedom.[157] The report noted that

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[150]   *See* Gary Stern, *Social Justice Education at Law Schools: Imperative or Imposition?*, INSIGHT INTO DIVERSITY (June 24, 2016), https://www.insightinto-diversity.com/social-justice-education-at-law-schools-imperative-or-imposition/ ("For many law students, social justice classes, pro-bono work, and an awareness of the needs of the disenfranchised are woven into their legal education."); *see also* Gersen, *The Trouble with Teaching Rape Law*, *supra* note 149.

[151]   *See* Graham, *supra* note 8, at 48 ("the work of a lawyer 'demands intellectual engagement with people and ideas one might find uncongenial or wrong'" (quoting Lukianoff & Haidt, *supra* note 13)).

[152]   Gersen, *The Trouble with Teaching Rape Law*, *supra* note 149.

[153]   *Id.*

[154]   *Id.*

[155]   *Id.*

[156]   *See, e.g.*, *id.* (expressing her disagreement with many teachers who have opted out of teaching certain subject matter to prevent student discomfort).

[157]   *On Trigger Warnings*, *supra* note 7.

the specific call for "trigger warnings" began in the blogosphere as a caution about graphic depictions of rape on feminist sites and has now migrated to university campuses in the form of requirements or proposals that students be alerted to all manner of topics that some believe may deeply offend and even set off a post-traumatic stress disorder ("PTSD") response in some individuals.[158]

The report then strongly condemned the rationales offered by trigger warning proponents:

> The presumption that students need to be protected rather than challenged in a classroom is at once infantilizing and anti-intellectual. It makes comfort a higher priority than intellectual engagement and . . . it singles out politically controversial topics like sex, race, class, capitalism, and colonialism for attention. Indeed, if such topics are associated with triggers, correctly or not, they are likely to be marginalized if not avoided altogether by faculty who fear complaints for offending or discomforting some of their students. Although all faculty are affected by potential charges of this kind, non-tenured and contingent faculty are particularly at risk. In this way the demand for trigger warnings creates a repressive, "chilly climate" for critical thinking in the classroom.[159]

In contrast, a 2017 article in *The Journal of Legal Education* defended the use of trigger warnings.[160] The authors acknowledged the "glaring lack of empirical research on the benefit or harm" of trigger

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[158] *Id.*

[159] *Id.* As an example of a trigger warning policy that the AAUP considered unreasonable, the report cited a proposed policy at Oberlin College that listed these examples of possible trigger topics: "racism, classism, sexism, heterosexism, cissexism, ableism, and other issues of privilege and oppression." *Id.*

[160] Francesca Laguardia et al., *Trigger Warnings: From Panic to Data*, 66 J. LEGAL EDUC. 882, 882 (2017).

warnings in the university teaching setting.[161] But they firmly disagreed with the AAUP's position, arguing that "trigger warnings, rather than stifling academic freedom, allow learning to happen more easily by acknowledging the challenges that students bring to their higher education classrooms."[162] The authors looked to the science of trauma to refute the characterization of "triggering" as merely "making someone feel uncomfortable[;]" rather, "the term 'trigger' has been used as a shorthand signifier for the stimulus that precipitates a return to the autonomic stress reaction that individuals experience" after suffering or witnessing a catastrophe, such as "combat, violent crimes, sexual assault, kidnapping, natural disasters, car accidents, and imprisonment."[163]

This physical response to a trauma trigger, the authors stated, does have a concrete effect on learning.[164]

> Students who have experienced trauma are therefore already at risk in the classroom. The ongoing effects of trauma intrude on their participation, recollection, and organization skills. Already, an acknowledged achievement gap exists between students who have been victimized and those who have not. The added physiological effects of traumatic triggering can only further imperil these students (or at least their grades), making an already challenging situation impossible for as long as the response lasts.[165]

So will we see an increase in the demand for trigger warnings among law students as Gen Zers enter our halls? There are some good reasons to think we will, in light of the "antagonistic" nature

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[161] *Id.* at 883–85 (summarizing the "thousand critiques" of the practice of issuing trigger warnings in syllabuses and classroom activities). The authors note that there is a relationship between safe spaces and trigger warnings, with the same people usually supporting both. *Id.* at 884–85.

[162] *Id.* at 884 (citing Angus Johnson, *Why I'll Add a Trigger Warning*, INSIDE HIGHER ED. (May 29, 2014, 3:00 AM), https://www.insidehighered.com/views/2014/05/29/essay-why-professor-adding-trigger-warning-his-syllabus).

[163] *Id.* at 886–87.

[164] *Id.* at 886.

[165] *Id.* at 888.

of the law school classroom.[166] The descriptor "antagonistic" encompasses both the content of the law school curriculum and the atmosphere of the law school classroom.[167]

As to the curriculum, many law courses implicate difficult issues surrounding race, gender, poverty, discrimination, and human rights.[168] As Gersen puts it, not only criminal law, but also torts, evidence, employment law, contracts, property, constitutional law, international law, legislative and administrative law, and civil procedure "can include plenty of topics that students may associate with trauma."[169]

For example, Professor Palma Joy Strand wrote at length about her experience teaching Trusts and Estates at Creighton Law School.[170] Professor Strand noted that, "like many areas of law today, [trusts and estates] operates with facial neutrality in matters of race and gender. The law of testation does not contain racial categorizations. Primogeniture has been abolished, as have dower and curtesy. Intestacy statutes are gender-neutral as to children and descendants as well as to surviving spouses. Not far below the surface, however, lie swift currents of equity and inequity."[171]

> Gender and race resurface throughout the semester. We discuss the equities of a wife's claim on assets built jointly but titled in her husband's name in a separate property state when we read the insane delusion case of *Honigman*. We discuss these equities again in the context of community and separate property legal regimes for marital property. We note the greater likelihood of informality in child-rearing

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[166]   *See generally* Palma Joy Strand, *We are All on the Journey: Transforming Antagonistic Spaces in Law School Classrooms*, 67 J. LEGAL EDUC. 176, 176–77 (2017).

[167]   *See id*. at 177.

[168]   *See* Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma,* 130 HARV. L. REV. 2320, 2338 (2017) [hereinafter Gersen, *The Socratic Method in the Age of Trauma*]. "How the law school classroom handles 'hot' topics with a diverse student body is a sign of how well legal education is equipped to train students for difficult conversations in a diverse society." *Id.* at 2341.

[169]   *Id.* at 2338.

[170]   Strand, *supra* note 166, at 181.

[171]   *Id.* at 182.

arrangements in the African-American community
when we cover *O'Neal*, the equitable adoption case.
The doctrines of undue influence and duress provide
a cornucopia of examples of courts bringing social
mores about difference to bear on estate decisions:
interracial relationships; women's rights; gay part-
nerships; older women and younger men. All of these
differences make an appearance. Do they explain the
court decisions? Would those decisions be decided
the same way today? What "of course" social mores
of today will we look askance at in the future? All of
these questions thread into the class discussion.[172]

No doubt law school professors in every subject area could enumer-
ate similar themes of racial, gender, and other inequalities that per-
meate their course content, which can engender some difficult and
even antagonistic conversations.[173]

As to the atmosphere of the law school classroom, it is antago-
nistic in several ways.[174] First, law school classes are often curved,
in effect putting students in competition with each other.[175] Students
who have been affected by trauma are "already at risk in the class-
room" because of how "the ongoing effects of trauma intrude on
their participation, recollection, and organization skills."[176] For
these students in curved classes, "[t]riggering [them] with no warn-
ing is . . . similar to kicking their legs out from under them in the
middle of a race."[177]

Second, many law professors continue to use some variation of
the Socratic method as a teaching tool,[178] which can compound the

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[172]   *Id.* at 183–84 (citations omitted).

[173]   *See id.* at 182–84; *see also* Gersen, *The Socratic Method in the Age of
Trauma*, *supra* note 168, at 2338 ("[A] great many courses in the law school cur-
riculum—Torts, Evidence, Employment Law, Contracts, Property, Constitutional
Law, International Law, Legislation and Regulation, and Civil Procedure, to name
a few—can include plenty of topics that students may associate with trauma.").

[174]   Strand, *supra* note 166, at 176.

[175]   Laguardia et al., *supra* note 160, at 888.

[176]   *Id.*

[177]   *Id*. at 889.

[178]   Ilana Kowarski, *What is the Socratic Method that Law Schools Use?,* US
NEWS (Apr. 4, 2019, 10:57 AM), https://www.usnews.com/education/best-

"triggering" that law students may feel when difficult issues arise in class. The Socratic method refers to "a way of teaching that fosters critical thinking, in part by encouraging students to question their own unexamined beliefs, as well as the received wisdom of those around them."[179] But, as Gersen pointed out in her compelling article, *The Socratic Method in the Age of Trauma*, many law professors do not use the Socratic method as thoughtfully or sensitively as they could.[180] For example, a professor who leads "volunteer-driven" Socratic discussions, "in which some voices are more likely to be silent, ignored, or talked over," may be entrenching gender, race, and class hierarchies, making it more difficult for marginalized students to reap the benefits of the class discussion.[181] A professor who relies heavily on cold calling may be creating a classroom atmosphere that is perceived as aggressive or hostile, causing some students to "'shut down, freeze, dissociate, and/or experience a flashback or panic attack.'"[182]

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graduate-schools/top-law-schools/articles/2019-04-04/what-is-the-socratic-method-and-why-do-law-schools-use-it.

[179]   Lukianoff & Haidt, *supra* note 13.

[180]   *See* Gersen, *The Socratic Method in the Age of Trauma*, *supra* note 168, at 2332–43.

[181]   *Id.* at 2342. Gersen posited that "women and people of color tend to be 'reluctant partners in the Socratic exchange,' thriving instead on smaller and more informal class situations." *Id.* at 2330–31 (quoting LANI GUINIER ET AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE 91 (1997)). In an early study, Lani Guinier and others found that:

> [t]he pedagogical structure of the first year-large classes, often constrained by limits on student participation, fierce competition, a mandatory grading curve, and few women faculty—produces alienation and a gender-stratified hierarchy . . . . Many women report, however, that when speaking feels like a "performance," they respond with silence rather than participation, especially when the Socratic method is employed to intimidate or to establish a hierarchy within large classes. This pressure to speak is especially problematic for students who perceive that they are expected to "perform" as spokespersons for their racial or gender group.

Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School,* 143 U. PA. L. REV., 1, 45–46 (1994).

[182]   Gersen, *The Socratic Method in the Age of Trauma*, *supra* note 168, at 2331 (quoting *Why Alter the Socratic Method?*, HARV. L. SCH. HALT, https://orgs.law.harvard.edu/halt/trauma-recognition-in=law-schools/why-alter-the-socratic-method/ [https://perma.cc/2MFP-MJMY] (last visited Oct. 3, 2021)). Especially

Thus, both the peer personality of Gen Z students—anxious and eager to avoid discomfort—and the nature of the law school classroom—competitive and full of difficult subject matter—make it increasingly likely that law students will call for the antagonistic space of the law school classroom to be made safe.[183]

3. GEN Z STUDENTS' PASSION FOR ACTIVISM AND SOCIAL JUSTICE WILL REQUIRE DIFFICULT DISCUSSIONS IN THE LAW SCHOOL CLASSROOM

In one of many contradictions when it comes to Gen Z students, their tendency to avoid difficult or uncomfortable situations is accompanied by a desire to be activists who make the world a better place.[184] For example, when public outrage over the police killings of unarmed Black men and women reached a boiling point with the killing of George Floyd in 2020, leading to social unrest and increased awareness of and emphasis on racial injustice and systemic inequalities, Gen Z law students were among those who mobilized into immediate action.[185] They "marched, protested, wrote passionate letters to their deans and college presidents, and demanded their faculty speak up against these atrocities in class."[186] Motivated by a desire for social justice, Gen Z law students "aren't afraid to use their voices to challenge prejudice and racism."[187] It stands to reason

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for students with PTSD, the cold-calling aspect of the Socratic method might prompt them to "'panic'" or "'dissociate'"—in other words, it might trigger a fight or flight response, thus retraumatizing the student. *Id.* at 2331–32.

[183]   *See, e.g.,* Graham, *supra* note 8, at 36–48; Strand, *supra* note 166, at 176.

[184]   *See, e.g.,* ALEC TYSON ET AL., PEW RSCH. CTR., GEN Z, MILLENNIALS STAND OUT FOR CLIMATE CHANGE ACTIVISM, SOCIAL MEDIA ENGAGEMENT WITH ISSUE 6 (2021) https://www.pewresearch.org/science/2021/05/26/gen-z-millennials-stand-out-for-climate-change-activism-social-media-engagement-with-issue/; Rachel Hatzipanagos, *Gen Z is Making Change, One Protest at a Time*, WASH. POST (Mar. 15, 2021, 8:00 AM), https://www.washingtonpost.com/nation/2021/03/15/gen-z-is-making-change-one-protest-time/.

[185]   *See* Atkins, *#FortheCulture*, *supra* note 14, at 118.

[186]   *Id.* at 118. A recent Business Insider poll showed that more than 77% of Gen Zers participated in Black Lives Matter protests following the death of George Floyd. *Id.* at 129 (citing Dominic Madori-Davis, *The Action Generation*, BUS. INSIDER (June 10, 2020, 9:12 AM), https://www.businessinsider.com/how-gen-z-feels-about-george-floyd-protests-2020-6).

[187]   *Id*. at 140; *see also* Isha Trivedi, *Black Law Students Launch Petition for 'Institutional Change' at Law School*, G.W. HATCHET (July 6, 2020, 5:21 PM),

that as more Gen Z students enter law schools, they will expect and perhaps demand that controversial issues ranging from racial injustice, to poverty, to climate change be meaningfully discussed in their classes.[188]

This expectation was echoed by the American Bar Association ("ABA") when, in May 2021, the ABA Council of the Section on Legal Education and Admission to the Bar approved several proposed changes to the ABA Standards and Rules of Procedure for Approval of Law Schools, including a change to Standard 303 that would require law schools to provide training on "bias, cross-cultural competency, and racism" at least twice during a student's legal education.[189]

And many law schools are already ahead of the ABA, adding courses to their curricula that examine various areas of the law through the lens of systemic racism.[190] For example, Stanford Law

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https://www.gwhatchet.com/2020/07/06/black-law-students-launch-petition-for-institutional-change-at-law-school/#:~:text=The%20petition%20calls%20for%20officials,and%20inclusion%20at%20GW%20Law. Professor Atkins points to the example of entering law students at the University of Michigan in 2020, who wrote a letter to the law school's administration "expressing disappointment at the lack of institutional response to incidents of violence and oppression in the Black community at large and reported incidents of bias by the Black students on campus" and pointedly asking for a response. Atkins, *#FortheCulture*, *supra* note 14, at 140 (citations omitted).

[188]   *See* Atkins, *#FortheCulture*, *supra* note 14, at 154.

[189]   Memorandum from Scott Bales, Council Chair, & William Adams, Managing Dir. of Accreditation and Legal Educ., Am. Bar Ass'n, to Interested Persons and Entities (May 25, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/2021/21-may-notice-and-comment-standards-205-206-303-507-508.pdf. This training would be required "(1) at the start of the program of legal education, and (2) at least once again before graduation." *Id.*

[190]   *See e.g., Diversity, Equity, and Inclusion in Action at SLS*, STAN. L. SCH. https://law.stanford.edu/community/diversity-and-inclusion/ (last visited Oct. 2, 2021). The website of the AALS's "Law Deans Antiracist Clearinghouse Project" has a wealth of information about how law schools are working to respond to racism in the United States. *Law Deans Antiracist Clearinghouse Project*, ASS'N AM. L. SCH., https://www.aals.org/about/publications/antiracist-clearinghouse/ (last visited Oct. 2, 2021). According to the law deans who have signed on to the Project, "[b]y creating a space for our collective voices as leaders of law schools to engage our institutions in the fight for justice and equality, we strive to focus our teaching, scholarship, service, activism, programming, and initiatives on strategies to eradicate racism." *Id.*

now offers the following courses: Critical Race Theory; History of Civil Rights Law; The White Supremacist Constitution; Race, Disadvantage, and Elite Education; and Race, Identity and National Security.[191] Minnesota Law has recently expanded its curriculum to include a course called Public Interest Advocacy and State Attorney General (taught in Fall 2020 by Keith Ellison, who led the prosecution of the four police officers charged in George Floyd's killing) and a course called George Floyd's Minneapolis: Past, Present, and Moving Forward.[192] Some law schools, including USC Gould and Penn State Dickinson, have already made it a graduation requirement for students to take courses examining the intersection of race, social justice, and the law.[193]

It seems clear, then, that law school classrooms can never truly be pure safe spaces in which to engage in the important but difficult discussions that a rigorous, effective legal education requires.[194] But if creating safe classrooms is not feasible, what is the alternative? Enter the brave spaces movement.

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[191] *Diversity, Equity, and Inclusion in Action at SLS*, *supra* note 190.

[192] *Law School Expands Racial Equity and Justice Offerings,* UNIV. MINN. L. SCH. (Oct. 9, 2020), https://www.law.umn.edu/news/2020-10-09-law-school-expands-racial-equity-and-justice-offerings.

[193] *See From Words to Action: Dickinson Law Course Examines Roots of Systemic Racism*, PENN STATE: PENN STATE NEWS (Apr. 15, 2021), https://news.psu.edu/story/654548/2021/04/13/academics/words-action-dickinson-law-course-examines-roots-systemic-racism (describing a new required class for 1Ls called "Race and the Equal Protection of the Laws"); Leslie Ridgeway, *USC Gould to Offer Unique Required Course Focusing on Race in Legal System*, USC GOULD (Feb. 4, 2021), https://gould.usc.edu/about/news/?id=4814.

[194] *See* Atkins, *#FortheCulture*, *supra* note 14, at 154 (noting that Gen Z law students value "sharing, not silence" and will expect professors who can engage in courageous conversations).

II.   DEVELOPMENT OF THE BRAVE SPACES MOVEMENT

An Invitation to Brave Space

Together we will create brave space.
Because there is no such thing as a "safe space" —
We exist in the real world.
We all carry scars and we have all caused wounds.
In this space
We seek to turn down the volume of the outside world,
We amplify voices that fight to be heard elsewhere,
We call each other to more truth and love.
We have the right to start somewhere and continue to grow.
We have the responsibility to examine what we think we know.
We will not be perfect.
This space will not be perfect.
It will not always be what we wish it to be.
But
It *will be our brave space together,*
and
We will work on it side by side. [195]

This widely circulated poem, written in 2020 by The Justice Doula, Micky ScottBey Jones,[196] is assumed by many to be the origin of the phrase "brave spaces."[197] It is true that the concept of brave spaces is relatively new, but the phrase dates back at least to 2013 and has been gaining ground since then.[198]

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[195]   MICKY SCOTTBEY JONES, AN INVITATION TO BRAVE SPACE (2020).
[196]   Her biographical information can be found on the website of Faith Matters Network, a "womanist-led organization focused on personal and social transformation," of which she is a board member. *Meet the Team*, FAITH MATTERS NETWORK, https://www.faithmattersnetwork.org/team.
[197]   CTZNWELL, *Brave Space: Mickey ScottBey Jones*, at 2:30–3:18 (Aug. 5, 2021), https://www.ctznwell.org/ctznpodcast/brave-space-not-safe-space-micky-scottbey-jones.
[198]   *See* Arao & Clemens, *supra* note 77, at 149 ("[B]rave space remains a relatively new framework with ample room for growth and refinement.").

A.   *Where the Brave Spaces Concept Originated*

In 2013, the American College Personnel Association published *The Art of Effective Facilitation: Reflections from Social Justice Educators*,[199] a collaborative effort designed to enable college professors and student affairs administrators "to create programs that go beyond superficial discussion of the issues to fundamentally address the structural and cultural causes of inequity, and provide students with the knowledge and skills to work for a more just society."[200] Two student affairs educators, Brian Arao[201] and Kristi Clemens,[202] co-authored Chapter Eight, titled "From Safe Spaces to Brave Spaces: A New Way to Frame Dialogue Around Diversity and Social Justice."[203]

In the first paragraph of their chapter, Arao and Clemens acknowledged the need for a "learning environment that allows students to engage with one another over controversial issues with honesty, sensitivity, and respect. We often describe such environments as *safe spaces*, terminology we hope will be reassuring to participants who feel anxious about sharing their thoughts and feelings regarding these sensitive and controversial issues."[204] But in fact, as Arao and Clemens explained, by relying on the traditional language of safe spaces, professors and administrators may actually be hindering their own efforts to lead students through challenging and provocative discussions.[205] Thus, Arao and Clemens ultimately proposed a linguistic shift "away from the concept of safety" and instead towards "emphasizing the importance of bravery . . . to help

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[199]   THE ART OF EFFECTIVE FACILITATION: REFLECTIONS FROM SOCIAL JUSTICE EDUCATORS (Lisa M. Landreman, ed., 2013).

[200]   *BaCE Recommended Reading List*, WASH. STATE UNIV. VANCOUVER, https://www.vancouver.wsu.edu/equity-diversity/bace-recommended-reading-list (last visited Oct. 2, 2021).

[201]   Arao is currently the Associate Dean of Students and Chief of Staff at the University of California Santa Cruz. *Staff Directory*, UNIV. CAL. SANTA CRUZ, https://deanofstudents.ucsc.edu/about/staff-directory.html (last visited Oct. 2, 2021).

[202]   Clemens is currently Title IX Coordinator and Acting Senior Director, Institutional Diversity and Equity at Dartmouth College. *Institutional Diversity and Equity – About us*, DARTMOUTH, https://www.dartmouth.edu/ide/about/ (last visited Oct. 2, 2021).

[203]   Arao & Clemens, *supra* note 77, at 135–50.

[204]   *Id.* at 135.

[205]   *Id.*

students better understand—and rise to—the challenges of genuine dialogue on diversity and social justice issues."[206]

Arao and Clemens discussed at length the events that first prompted them to "rethink the framework of safe space."[207] As colleagues in the Department of Residential Education at New York University, Arao and Clemens were asked to develop a ninety-minute module on diversity and social justice as part of the university's training program for resident assistants.[208] Arao and Clemens decided to incorporate the One Step Forward, One Step Back activity (also called Leveling the Playing Field and Crossing the Line).[209] As Arao and Clemens described it:

> In this exercise, participants are lined up in the middle of the room. The facilitator then reads a series of statements related to social identity, privilege, and oppression; participants determine whether these statements are reflective of their lived experiences and then either step forward, step backward, or remain in place as directed. After all prompts have been read, the facilitator leads a group discussion about their interpretations of the pattern of the distribution of participants in the room. Students who hold primarily dominant group identities usually end up in the front of the room, those who hold primarily target group identities in the rear, and those with a more even split of dominant and target group identities in between the other two groups. The goal of the exercise is to visually illustrate the phenomenon of social stratification and injustice and how participants' own lives are thereby affected. The exercise intentionally pushes the boundaries of the participants' comfort

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[206]   *Id.* at 136.

[207]   *Id.*

[208]   *Id.*

[209]   *Id.* A widely viewed video of such an exercise went viral in 2017. Peter D., *Privileges/Class Social Inequalities Explained in a $100 Race*, YOUTUBE (Oct. 14, 2017), https://www.youtube.com/watch?v=4K5fbQ1-zps.

> zones in the hope of spurring them on to powerful
> learning about social justice issues.[210]

After the exercise, feedback from the participating students was mixed.[211] But Arao and Clemens noticed that one critique was common from participants across target and agent groups:[212] "[T]hey experienced the activity as a violation of the safe space ground rules established with each participant group at the outset of the module. The profound feelings of discomfort many of them experienced were, in their view, incongruent with the idea of safety."[213]

As Arao and Clemens evaluated why the exercise had "missed the mark," they "continually returned to the quandary of safe space."[214] They began examining more in-depth the "conventional wisdom of safety as a prerequisite for social justice education and question[ing] to what degree the goal of safety was realistic, compatible, or even appropriate for such learning. What is meant by the concept of safety, and how does that change based on the identities in the room?"[215]

Arao and Clemens then set out to define and reconstruct "safe space" as it relates to diversity and social justice learning environments.[216] They recognized that to support students' "authentic engagement with regard to issues of identity, oppression, power, and privilege," educators must carefully "balance contradiction to a student's current way of thinking with positive encouragement to explore new ways of thinking."[217] They also recognized the value of a learning environment free from violence of any kind (physical, social, or emotional) and the necessity of setting ground rules

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[210]   Arao & Clemens, *supra* note 77, at 136–37.

[211]   *Id*. at 137.

[212]   According to the National Conference for Community and Justice, "[a]gent group" refers to a social group that is "positively valued, considered superior, independent, or 'normal' and has access to resources and power," and "target group" refers to a social group that is "negatively valued, considered to be inferior, abnormal, or dependent and given limited access to resources and social power." *Social Justice Definitions*, Nat'l Conf. for Cmty. & Just., https://www.ncc-jorg/resources/social-justice-definitions (last visited Oct. 2, 2021).

[213]   Arao & Clemens, *supra* note 77, at 137.

[214]   *Id*. at 138.

[215]   *Id.*

[216]   *Id.*

[217]   *Id*. at 139 (citations omitted).

(expectations for how group members will interact with each other when discussing diversity and social justice issues), a common tenet of safe spaces.[218] They questioned, however, "the degree to which safety is an appropriate or reasonable expectation for any honest dialogue about social justice."[219]

Arao and Clemens first addressed the barriers to creating a safe environment for agent group members.[220] Dialogues that force agent group members to come to grips with their unearned privilege, acknowledge the degree to which they may have participated in or colluded with oppressive acts, and face direct challenges to their worldview may leave them fearful, sorrowful, and angry or may result in resistance and denial.[221] Agent group members may try to manage these feelings by either blaming the dialogue itself or "explaining away others' experiences as springing not from oppression but from some other more benign source."[222] Thus, for these students, "the language of safety may actually encourage entrenchment in privilege . . . ."[223] Moreover, to the extent that White students may insist on "safety" as a condition of their participation in the dialogue, they are essentially attempting to "define for others—and especially people of color—how they wish to be confronted about issues of race and racism," thereby "contribut[ing] to the replication of dominance and subordination, rather than a dismantling thereof."[224]

As for the target group members, efforts to create safety are even more problematic because, according to Arao and Clemens, "[t]arget group members may . . . react with incredulity to the very notion of safety, for history and experience has demonstrated clearly to them that to name their oppression, and the perpetrators thereof, is a very unsafe activity, particularly if they are impassioned."[225] They may fear that if they honestly express the painful effects of oppression, they will be labeled as "hypersensitive or unduly

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[218]   *Id.*
[219]   *Id.*
[220]   *Id*.
[221]   *Id.*
[222]   *Id.* at 140.
[223]   *Id.*
[224]   *Id.*
[225]   *Id.* (citations omitted).

aggressive."[226] More broadly, though, "the pervasive nature of systemic and institutionalized oppression precludes the creation of safety in a dialogue situated, as it must be, within said system."[227]

Arao and Clemens ended their "deconstruction" of safe spaces by echoing Boostrom's prescient warning, written fifteen years earlier, that classrooms cannot become safe spaces in which teachers rule out conflict.[228] Rather, "'[w]e have to be *brave* . . . because along the way we are going to be 'vulnerable and exposed'; we are going to encounter images that are 'alienating and shocking'. We are going to be 'very unsafe.'"[229]

B.   *Salient Characteristics of Brave Spaces*

In their chapter, Arao and Clemens described how they went about making the "small but important linguistic shift" of describing the ideal spaces for group learning as brave spaces rather than safe spaces, "emphasiz[ing] the need for courage rather than the illusion of safety . . . ."[230] Interestingly, nowhere in the chapter did Arao and Clemens provide a "textbook definition" of the term "brave spaces"; instead, they explored the meaning of the term by describing how brave spaces turn many of the widely-accepted characteristics of safe spaces on their heads.[231]

First, while students in a safe space "agree to disagree," students in a brave space show "courage in the face of conflict" by continuing

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226   *Id.*

227   *Id.* at 140–41 (quoting Tim Wise, *No Such Place as Safe: The Trouble with White Anti-Racism*, TIMWISE.ORG (July 23, 2004), http://www.tim-wise.org/2004/07/no-such-place-as-safe-the-trouble-with-white-anti-racism/ ("[T]his country is never safe for people of color. Its schools are not safe; its streets are not safe; its places of employment are not safe; its health care system is not safe."). Put another way, in the words of Micky ScottBey Jones's poem, "There is no such thing as a 'safe space.'" JONES, *supra* note 194.

228   Arao & Clemens, *supra* note 77, at 141.

229   *Id.* (quoting BOOSTROM, *supra* note 107, at 407).

230   *Id.*

231   *Id.* at 141–49; *see also* LUCIA PAWLOWSKI, *Creating a Brave Space Classroom Through Writing,* in TEACHING RACE: HOW TO HELP STUDENTS UNMASK AND CHALLENGE RACISM 63, 66 (2018) (describing how "[b]rave space problematizes" the "platitudes" commonly associated with the safe space movement).

to engage in civil dialogue.[232] When a professor allows students to "agree to disagree," some students will "retreat from conflict in an attempt to avoid discomfort."[233] But when a professor encourages "ongoing explorations of conflict," richer learning occurs.[234] Arao and Clemens emphasized that while "[s]uch exploration may or may not lead to a change or convergence of opinions or one side winning the debate," neither of those results should be the objective of a dialogue about diversity and social justice.[235]

Second, while students in a safe space are urged not to "take things personally," students in a brave space are urged to "own [their] intentions and [their] impact" on others in the room.[236] There are two problems with professors telling students not to take things personally.[237] One problem is that not taking things personally is easier said than done.[238] Although human beings "have some choice in how we respond to and express our emotions, we do not have control over which ones we experience at any given time and to what degree."[239] The other problem is that telling students not to take things personally "shift[s] emotional responsibility for any emotional impact of what a participant says or shares to the emotionally affected people," who are then expected to "hide their feelings and process them internally."[240] But when a professor emphasizes

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[232]   Arao & Clemens, *supra* note 77, at 143–44 (citing H.S. Astin & A.W. Astin, A Social Change Model of Leadership Development Guidebook 59 (3d ed. 1996)).

[233]   *Id.* at 143.

[234]   *Id.*

[235]   *Id.* Again, there is a tension here between the desire for (and benefit of) honest, respectful exploration of divergent viewpoints and the potential for unaddressed attacks on the very humanity of students. For example, if a student in a race law class wants to "explore" the "benefits" of chattel slavery, or the wisdom of resettling indigenous people, is there a benefit to such an exploration? Should the professor allow the discussion to continue, or end it? Which would be "braver"—to allow the student to express himself or herself, thus requiring the harmed student to respond with civility, or to curtail the conversation because it is too offensive to be permitted to continue? These are difficult questions that professors will need to grapple with in their efforts to create brave classrooms.

[236]   *Id.* at 144–46 (emphasis omitted).

[237]   *Id*. at 145.

[238]   *Id.*

[239]   *Id.*

[240]   *Id.*

owning intentions and impacts, students learn that "the impact of our actions is not always congruent with our intentions and that positive or neutral intentions do not trump negative impact."[241]

Third, while students in a safe space are permitted to "challenge by choice"—that is, to "opt out of challenges that make [them] uncomfortable"[242]—students in a brave space are encouraged to "critically interrogate reasons why [they] want to opt out."[243] As Arao and Clemens noted, there are many reasons that students might choose not to challenge themselves by engaging in a difficult dialogue: they might "hold what they believe is an unpopular viewpoint," or they might be "fearful of how others will react to their thoughts," or they may "simply [be] tired and not able to formulate a thoughtful contribution that day."[244] They may be afraid to express viewpoints that differ from the viewpoints expressed by their professors.[245] And while it is ultimately up to each student to decide whether they will engage and "to what extent they will push the boundaries of their comfort zones,"[246] those who choose not to engage will benefit from examining the reasons for that choice.[247]

Fourth, while students in both safe spaces and brave spaces are rightly asked to "respect each other," students in a brave space are further encouraged to explore the different ways that respect for others may manifest itself.[248] A professor might ask students to discuss what respect looks like for them, to give examples of "how they might firmly challenge the views of someone else in a respectful manner," and to think of constructive ways to respond when they

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[241]   *Id.* at 145–46.

[242]   PAWLOWSKI, *supra* note 231, at 66.

[243]   *Id.* A professor might say, for example, "'We notice that only folks who have identified as lesbian or gay have said anything in this conversation; we'd like to invite anyone who identifies normatively with respect to sexual orientation to share their thoughts.'" Arao & Clemens, *supra* note 77, at 146.

[244]   Arao & Clemens, *supra* note 77, at 147.

[245]   This, of course, begs the difficult question of whether professors should express their own viewpoints on social and political issues, especially controversial ones, during class. While Section III.A. of this Article discusses the importance of authenticity to a professor's effort to create a brave classroom, a full treatment of the broader issue of the propriety of professors sharing personal political and social views is beyond the scope of this Article.

[246]   Arao & Clemens, *supra* note 77, at 147.

[247]   *Id.*

[248]   *Id.* at 147–48.

themselves are firmly and respectfully challenged."[249] These discussions can "prevent students from automatically experiencing and interpreting challenges from others as acts of disrespect."[250]

Fifth, while students in both safe spaces and brave spaces are rightly told to avoid "personal attacks," students in a brave space are encouraged to actively think about the difference between a "personal attack on an individual and a challenge to that individual's idea or belief or statement that simply makes an individual feel uncomfortable."[251] Arao and Clemens pointed out that even respectful challenges can create discomfort that leads to a defensive reaction; reminding students that such challenges are different from personal attacks can help refocus attention "toward the roots of the defensive response—more often than not, a sense of threat to the privileges of one's agent group membership."[252]

In the years since Arao and Clemens published their thoughtful and thorough explanation of brave spaces,[253] many others have tried

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[249] *Id.*

[250] *Id.* at 148.

[251] *Id.*

[252] *Id.* at 149.

[253] Not all later discussions of brave spaces portray them as positive learning environments. One recent college graduate blogged this criticism:

> In practice, brave spaces are really just *spaces*. Being "respectful," asking for clarification if it is needed, and "striving to learn about experiences other than your own" are stressed in brave spaces. Brave spaces merely suggest manners when manners should be used by default.
>
> Ultimately, this is what makes brave spaces a ludicrous concept to the point of absurdity. Students should expect manners from the start and creating zones to reinstate and reinforce them is a disappointing concession in a progressively sterile intellectual environment. One would be forgiven for thinking that America's most elite and rigorous universities would be hotbeds for healthy debate and disagreement.
>
> Despite the fact that brave spaces are merely conversations with manners, academia seems intent on incorporating them as a "brave" alternative to safe spaces, which, after all, could never have been as safe as their creators intended. Brave spaces don't show much promise in changing the system, except to serve as a reminder that conversations might not always go smoothly.

to distill the five tenets of brave spaces into a simple definition of the term.[254] For example, the website Education Amplifier defines brave space as "an environment where students accept and celebrate difference, assume the best intentions of each other, and accept responsibility for affecting the emotional well-being of another person."[255] UC-Berkeley's Division of Equity and Inclusion defines the term this way:

> Brave Space: A community space where different points on a journey of learning and growing are acknowledged. Community members engage in critical dialogue through conscious questioning and active listening. While all are expected to make their best effort to be respectful, there is an understanding that sometimes members may say things that result in unintentional offense and hurt feelings for those around. A primary assumption of Brave Space is that everyone speaks with the positive intent of seeking greater knowledge and understanding.[256]

Educator Jeff Witt of the Association for Research Libraries defines the term as a "[s]pace for [c]ollective [l]earning . . . where

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The brave space should be stopped before it begins to become widespread. If my assumptions are correct, brave spaces will ultimately introduce a set of forced (and fake) manners that fall within the 'ground rules' laid out by a facilitator. If my assumptions are wrong, brave spaces will be nothing more than safe spaces by another name. In either case, it would be better to stop the shift before it starts and avoid these outcomes all together. Are we brave enough to do that?

Dominic Lynch, *Higher Education's Safe Space is Now a Ridiculous "Brave Space"*, REAL CLEAR EDUC. (May 8, 2015), https://www.realcleareducation.com/articles/2015/05/08/higher_educations_safe_space_is_now_a_ridiculous_brave_space_1195.html.

[254] *See, e.g., Hours, Location & Community Space*, BERKELEY, https://cejce.berkeley.edu/geneq/about-geneq/hours-location-community-space (last visited Oct. 2, 2021).

[255] *Q&A*, AMPLIFIER, https://amplifier.org/education/ (last visited Oct. 2, 2021). "Education Amplifier provides free artwork, lesson plans and teaching tools that help facilitate non-partisan conversations around social justice in K-12 classrooms." *Id*.

[256] *Hours, Location & Community Space*, *supra* note 254.

people of varied backgrounds, experiences, beliefs and perspectives can come together to explore and learn together without censure or harm."[257] Educators from Bryn Mawr and Haverford Colleges who collaborated in a program called Students as Learners and Teachers ("SaLT") defined brave spaces as "spaces in which they felt courageous enough to risk, explore, experiment, assert, learn, and change, knowing that they would be supported in those necessarily destabilizing and unpredictable processes."[258] And the University of Maryland's Teaching Support Program defines the term this way:

> [A] classroom environment that acknowledges the challenges that both students and faculty have when attempting to have discussion around difficult and/or sensitive topics such as race, power, privilege and the various forms of oppression for the purpose of learning. Brave Spaces are created when both students and faculty commit to actively engaging in the 6 Pillars of a Brave Space.[259]

Those six pillars are (1) vulnerability, (2) perspective taking, (3) leaning into fear, (4) critical thinking, (5) examining intentions, and (6) mindfulness.[260]

These definitions are generally consistent with the vision of brave spaces that Arao and Clemens shared, although they tend to greatly oversimplify the psychological and pedagogical underpinnings of the brave spaces movement.[261] They seem to suggest that creating a classroom that is a brave space is relatively straightforward; but educators know that this is not so, especially now, when Gen Z students are insisting that racial inequity and other social

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[257] Jeff Witt, *Safe Space to Brave Space,* Ass'n Rsch. Libraries, https://www.arl.org/wp-content/uploads/2019/11/OntheEdge-From-Safe-to-Brave-Nov2019.pdf (last visited Oct. 2, 2021).

[258] Alison Cook-Sather, *Creating Brave Spaces Within and Through Student Faculty Pedagogical Partnerships,* Teaching & Learning Together Higher Educ., Spring 2016, at 1.

[259] *6 Pillars of a Brave Space*, Univ. Md. Sch. Soc. Work: Teaching Support Program, https://www.teachingsupportprogram.com/the-6-pillars-of-a-brave-space (last visited Oct. 2, 2021).

[260] *Id.*

[261] *See id.*; *see also* Arao & Clemens, *supra* note 77, at 141–49.

justice issues be addressed in institutions of higher education.[262] And for law professors, the question is especially pointed: How can we create and maintain classrooms that are brave spaces in which our students can be effectively equipped to be agents for social change?

III.   STRATEGIES FOR CREATING BRAVE LAW SCHOOL CLASSROOMS

As I have studied the current literature about brave spaces, two powerful truths have emerged as recurring themes. First, creating brave classrooms for students requires professors themselves to be very brave. Second, creating brave classrooms requires professors to anticipate and plan intentionally for each difficult interaction that students might experience.

A.   *Professors Must Cultivate Their Own Bravery So They Can Model It for Their Students*

Unfortunately, studies show that professors are prone to respond to difficult interactions ineffectively.[263] These responses often include "failing to recognize the interactions, avoiding the conflict, and controlling the situation."[264] Even "in the most benign classroom discussion about a topic not explicitly about race, a racialized interaction can occur when the comments of a minority student are discredited and ridiculed by others."[265] Some professors may not notice these racialized interactions; others may notice the interactions but be unwilling to attribute them to race.[266]

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[262]   *See* Atkins, *#FortheCulture*, *supra* note 14, at 140.

[263]   Lain, *supra* note 15, at 788.

[264]   *Id.*; *see also* Penny A. Pasque et al., *Pedagogical Approaches to Student Racial Conflict in the Classroom*, 6 J. DIVERSITY HIGHER EDUC. 1, 5–6 (2013).

[265]   Lain, *supra* note 15, at 788.

[266]   *Id.* at 788–89. This unwillingness may stem in part from "the societal norm of colorblindness . . . [which] dictates that we should not see color and evaluate people only on their intrinsic nature. Colorblindness is a strategy to appear unbiased but results in the lack of attribution of race when it may be an underlying factor." *Id.* at 789 (citing Evan P. Apfelbaum et al., *Seeing Race and Seeming Racist? Evaluating Strategic Colorblindness in Social Interaction*, 95 J. PERSONALITY & SOC. PSYCH. 918, 918–19 (2008)).

Still others may avoid or minimize racialized interactions, largely due to "anxiety about losing control and feeling uncomfortable."[267]

> When confronted with a racialized interaction, a professor who attempts to effectively teach through the moment runs the risk of appearing racist, realizing her own biases or prejudices, or confronting her own privilege . . . . These possibilities put the professor in an extremely vulnerable position; thus, the professor may feel avoidance is the better alternative. The problem with avoiding or minimizing for these reasons [is] that the comfort of the professor is being valued over the learning of the students . . . . In addition to avoidance, failing to provide students with a necessary learning experience also legitimizes the racialized interaction.[268]

Finally, some professors may use their authority to stop or correct racialized conversations.[269] For example, they may respond to a harmful comment by saying, "I will not tolerate the use of that term in my class" and then continuing with the discussion.[270] This kind of response may be born out of fear or a desire to protect students from psychological harm.[271] But law professors are charged with preparing students for the practice of law, where they will experience various racialized interactions with some regularity.[272] Thus, "a professor who helps guide students through these interactions will provide a better learning experience than cutting off the conversation."[273]

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[267] *Id.* at 790.

[268] *Id.* at 790–91 (citations omitted).

[269] *Id.* at 791.

[270] *See id.*; *see also* Pasque et al., *supra* note 264, at 8–9.

[271] Lain, *supra* note 15, at 791.

[272] *Id*. at 792.

[273] *Id.* Although much of the literature about brave spaces focuses on racialized interactions, there are myriad subjects that require bravery to address: poverty, climate change, voting rights, and vaccines are but a few examples. In today's polarized cultural climate, law school classrooms must be places not only of topical bravery but also of general bravery.

Instead of these three responses to racialized interactions, Professor Erin Lain suggests that professors should model a different set of three responses to make brave classrooms flourish: attunement, authenticity, and power-sharing.[274] Each of these responses requires courage and effort.[275]

Professor Lain defines *attunement* as "the professor's ability to understand the varying lived experiences of the students."[276] Attunement is facilitated in several ways.[277] First, the professor should seek awareness of students' different backgrounds so that the professor can "see beyond" outward characteristics like skin color, accent, or dress.[278] Second, the professor should continually develop their own cultural competency; both formal diversity training and personal study of how race and oppression intersect the professor's area of legal expertise can promote attunement.[279] Third, the professor should critically examine their teaching materials—texts, PowerPoints, lecture notes, and so on—to ensure that they are not limited to or dominated by the professor's own socio-cultural identity.[280]

Authenticity occurs when professors "verbally acknowledg[e] that they are cultural beings with biases and privileges."[281] Being authentic has many benefits.[282] First, professors who are transparent and position themselves as fellow thinkers and contributors to the classroom, rather than as authority figures, make it easier for students to authentically share their own experiences and perceptions.[283] Second, authenticity frees professors from having to pretend that they are superhuman.[284] Finally, authenticity "allows

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[274] *Id.*

[275] *See id.*

[276] *Id.* at 793; *see also* GALE YOUNG, *Dealing with Difficult Classroom Dialogue, in* TEACHING GENDER AND MULTICULTURAL AWARENESS: RESOURCES FOR THE PSYCHOLOGY CLASSROOM 347, 351–52 (Phyllis Bronstein & Katheryn Quina eds., 2003).

[276] Lain, *supra* note 15, at 793.

[277] *See id.* at 793–94.

[278] *Id.* (suggesting that professors would benefit from knowing "where [students] are from, what their goals are, and what is important to them").

[279] *Id.* at 794.

[280] *Id.*

[281] *Id.* at 795.

[282] *See id.* at 794–96.

[283] *Id.* at 794–95.

[284] *Id.* at 795.

professors to share when the conversation has entered an uncomfortable zone," instead of relying on students to point out racialized interactions.[285] Professor Lain acknowledges that modeling authenticity may feel unnatural and scary to law professors because it pushes against the "expert/novice" relationship typically maintained between professors and students by "allow[ing] students to see the professor as a human and open[ing] professors up to critique and ridicule."[286] But if professors allow adequate time for dialogue and present their own perspective as one of a plurality of perspectives, students will develop a growing respect for the complexity of racial issues and "will acknowledge that political or racial biases are inherent in everyone."[287]

Power-sharing occurs when the professor is "aware of the power structures within the classroom" and "use[s] her own power to evenly distribute class time to varying perspectives."[288] When a professor sees one student monopolizing time or dominating conversation, she should use her own position to shift power around to other students—to "bring out quiet voices and manage persistent voices"[289]—"so all students can take place in learning and make meaning out of the interaction."[290] If the professor does not actively redistribute power, some students may feel that they are not valued, which can impair their feeling of psychological safety.[291]

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[285] *Id.*

[286] *Id.* at 796. In the age of COVID-19, professors may be especially uncomfortable modeling authenticity by sharing their own perspectives because their classes are often being recorded. This creates the potential for professors' personal perspectives to be shared outside the classroom context, often over social media. *See, e.g.*, John Villasenor, *Why I Won't Let My Classes Be Recorded*, CHRON. HIGHER EDUC. (Jan. 10, 2020), https://www.chronicle.com/article/why-i-wont-let-my-classes-be-recorded/ (discussing the many concerns, from both the professor and the student perspectives, of recording classes).

[287] Lain, *supra* note 15, at 796.

[288] *Id.*

[289] *Id.* at 800.

[290] *Id.* at 797.

[291] *See id.*

In summary, the starting point in developing brave classrooms is the teacher's own self-examination.[292] As mindfulness expert Steve Hickman eloquently stated in a recent blog post:

> As our weary and outraged participants look to us as teachers to guide them and to find a way to soothe the pain in their hearts, we may be feeling the weight of the world upon our shoulders. What can we do in this encounter to create a brave space that can "turn down the volume of the outside world" and "amplify voices that fight to be heard elsewhere"? . . . We might begin by inquiring within about how we are meeting our own suffering over racial inequality, injustice, and privilege. And, when it comes to bringing people together and perhaps opening the door to sharing and dialogue, what struggle arises in us when we contemplate breaking the culture of "white silence" (if we are white) and speaking about race, racism, and systemic oppression? . . . Once I have touched and held my own suffering, I believe I can tenderly but bravely support others in doing the same. With the deepest of respect for the profound suffering that is held in the hearts of so many (a skill we as teachers already know well), we can walk slowly, invite courageous and heartfelt sharing that can easily pivot to pregnant healing silence, and above all else, be humble.[293]

This past academic year, as I looked into the eyes of my masked students, it seemed to me that I had never seen such weariness and pain. I often wondered how my twenty-six-year-old 1L self would have held up in the face of COVID-19, rampant political divisiveness, and constant scenes of racial injustice. I felt a sense of humility, accompanied by a nagging sense of inadequacy, as I sought to make my class meaningful for my students. I am afraid I was not very brave about sharing my own suffering—

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[292] Steve Hickman, *How Mindfulness Teachers Can Build Brave Space,* MINDFUL (July 8, 2020), https://www.mindful.org/how-mindfulness-teachers-can-build-brave-space/.

[293] *Id.*

about opening the door to sharing and to difficult dialogue. This
year, I am keeping the words *attunement*, *authenticity*, and *power-sharing* in the forefront of my mind—and on the front of my
course notebook—so that my classroom will be a braver space for
me and thus for my students.

B.   *Professors Must Continue to Promote Students' Feelings of
        Psychological Safety, Both in and out of the Classroom*

Optimal learning occurs only when students feel psychologi-
cally safe.[294] In the learning environment, "psychological safety is
'the sense that one's identity, perspectives, and contributions are
valuable, despite the experience or possibility of discomfort or harm
within a learning setting.'"[295] When it is lacking, students' cognitive
energy is monopolized by coping rather than learning.[296] One writer
has used the term "dignity safe" to describe an environment where
"members can participate without reasonable worry that they are
likely to be humiliated by others."[297] So, law professors must be
vigilant to notice and combat direct discrimination, stereotype
threats, microaggressions, and degrading or humiliating comments
in the classroom.[298]

Professors should have some responses ready for moments when
students make conscious and direct insults, slurs, or overtly offen-
sive comments ("microassaults"), or unconscious rude or insulting
comments ("microinsults").[299] After taking a moment to absorb the

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[294]   *See* Lain, *supra* note 15, at 800.

[295]   *Id.* at 786 (quoting Jasmine D. Williams et al., *"Can We Say the N-
Word?": Exploring Psychological Safety During Race Talk*, 13 RSCH. HUM. DEV.
15, 18 (2016)).

[296]   *Id.*

[297]   Eamonn Callan, *Education in Safe and Unsafe Spaces*, 24 PHIL. INQUIRY
EDUC. 64, 67 (2016).

[298]   *See id.* at 68.

[299]   *See* Strand, *supra* note 166, at 202 (defining microassaults as "conscious
'[e]xplicit racial derogations . . . meant to hurt the intended victim'") (citations
omitted). She defines microinsults as "unconscious '[c]ommunications that con-
vey rudeness and insensitivity and demean a person's racial heritage,'" such as
"assigning lesser intelligence based on race (or gender); treating someone as sec-
ond-class; characterizing group values or communication style as abnormal; and
assuming that someone is criminal, dangerous, or deviant." *Id.* (citations omitted).

comment and, if necessary, to regain composure,[300] professors should respond using language that "interrupts bias by calling out the behavior while calling in the person."[301] "Calling out" is appropriate "[w]hen we need to let someone know that their words or actions are unacceptable and will not be tolerated" or "[w]hen we need to interrupt in order to prevent further harm."[302] It will "likely feel hard and uncomfortable," but it allows professors "to hit the 'pause' button and break the momentum."[303] But "calling out" is most effective when it is followed up with some "calling in" language.[304] This language is often in question form, and it is focused on reflection, not reaction.[305] It is designed to promote understanding across differences and to help students "imagine different perspectives, possibilities, or outcomes."[306]

For example, if a student makes an overtly racist or gendered comment that offends other students and the professor, the professor might first offer a "calling out" statement: "I feel obligated as your professor to tell you that your comment wasn't okay."[307] Then the professor might add a "calling in" statement: "I'm curious. What was your intention when you said that?"[308] The combination of statements that "call out" and those that "call in" empowers both the targeted students, who are reassured that the professor is an ally, and

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[300]   Georgetown Univ., *Difficult Discussions*, Teaching Commons, https://commons.georgetown.edu/teaching/teach/discussions/ (suggesting that a teacher might turn to walk to the board and write something on it, to allow himself or herself a moment to regain composure). If the comment is too inflammatory, there is nothing wrong with postponing the discussion until the next session, thereby allowing everyone to gather themselves, as long as the teacher does return to the comment later rather than ignoring it. *Id.*

[301]   Ind. Univ. Bloomington, *Managing Difficult Classroom Discussions*, Ctr. for Innovative Teaching & Learning, https://citl.indiana.edu/teaching-resources/diversity-inclusion/managing-difficult-classroom-discussions/index.html (last visited Oct 2, 2021).

[302]   *Interrupting Bias: Calling Out vs. Calling In*, Seed the Way, http://www.seedtheway.com/uploads/8/8/0/0/8800499/calling_in_calling_out__3_.pdf (last visited Oct. 2, 2021).

[303]   *Id.*

[304]   *See generally id.*

[305]   *Id.*

[306]   *Id.*

[307]   *Id.*

[308]   *Id.* This resource contains an excellent list of possible "calling out" and "calling in" statements.

the speaker or actor doing the targeting, who is encouraged to reflect rather than to merely stop speaking.[309]

C.   *Professors Can Take Advantage of Resources and Training on How to Facilitate Difficult Conversations*

A thorough treatment of how to facilitate difficult conversations is beyond the scope of this Article. Fortunately, this is one aspect of creating brave classrooms that has received fairly robust treatment, even before recent events mandated that professors engage students in difficult conversations.[310] In 2006, Glenn Singleton and Curtis Linton published their influential book, *Courageous Conversations About Race: A Field Guide for Achieving Equity in Schools.*[311] In the foreword to the second edition, published in 2015, Professor Gloria Ladson-Billings highlighted the significance of the subject matter in *Courageous Conversations*:

> I believe that most educators do have the best inter-ests of students at heart. I believe that most educators want their students to be successful, both for their students' futures and for their own sense of accom-plishment and satisfaction. But, I also believe that most educators do not know enough about how race and culture impact everyone's lives—the students, their parents, the community, and the educators. Lacking that understanding typically leads to a series of missteps that result in a lack of trust and ability to work together. Having the courageous and yes, hard conversations is where we begin.[312]

Courageous Conversations emphasizes Four Agreements that must undergird productive conversations about race: (1) stay en-gaged, (2) experience discomfort, (3) speak your truth, and (4)

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[309]   *See generally id.*

[310]   *See, e.g.*, Arao & Clemens, *supra* note 77, at 141–42.

[311]   GLENN E. SINGLETON & CURTIS LINTON, COURAGEOUS CONVERSATIONS ABOUT RACE: A FIELD GUIDE FOR ACHIEVING EQUITY IN SCHOOLS (1st ed. 2006).

[312]   Gloria Ladson-Billings, *Foreword* to SINGLETON & LINTON, *supra* note 311, at xiii, xv.

expect and accept non-closure.[313] To abide by these principles, participants in a conversation must satisfy six "conditions":

> 1.   Establish a racial context that is personal, local, and immediate, using "I" statements such as "I feel, I believe," and staying focused on what is happening in the moment rather than on things that have happened in the past;
>
> 2.   Keep the spotlight on race, addressing issues of race explicitly and intentionally;
>
> 3.   Normalize the social construction of knowledge through engaging multiple perspectives;
>
> 4.   Keep everyone at the table by monitoring agreements about how the conversation will proceed, creating conditions favorable for the conversation, and establishing parameters for the conversation;
>
> 5.   Use a "working definition" of race (not ethnicity or nationality); and
>
> 6.   Examine the presence and role of Whiteness in racialized encounters and situations.[314]

Other resources designed to provide tools for leading difficult classroom conversations emphasize similar principles but may approach them from a different angle.[315] One common theme is the

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[313]   SINGLETON & LINTON, *supra* note 311, at 70.

[314]   *See id.* at 27–28. School systems and educational institutions have used the *Courageous Conversations* protocols to inform their own materials and programming for teachers, and many adaptations of the protocols are available on the internet. *See, e.g.*, *Inclusive Resource Guide* 2, 4, 8–9, UNIV. NEB.-LINCOLN, https://lgbtqa.unl.edu//Inclusive-Resource-Guide.pdf (last visited Oct. 2, 2021) (describing characteristics of inclusive environments and giving guidelines for creating brave spaces within the classroom).

[315]   *See, e.g.*, Mary-Frances Winters, *The Inner Work that Makes Cross-Racial Conversations Easier*, BERRETT-KOEHLER PUBLISHERS (Aug. 4, 2020), https://ideas.bkconnection.com/the-inner-work-that-makes-cross-racial-conversations-easier ("describ[ing] a 3-step process for practicing metacognition and explain[ing] how working on self-talk and self-concept can improve inclusive conversations").

importance of metacognition as educators prepare for these conversations.[316] Metacognition, which has been defined as "knowing about knowing" or "becoming aware of one's awareness,"[317] is "a level of thinking that involves active control over the process of thinking that is used in learning situations."[318] Metacognitive thinking involves three stages: planning, monitoring, and evaluating.[319] Educators who must facilitate a difficult conversation, whether about race or another subject, need to spend adequate time planning for the conversation.[320] This planning could include asking certain questions well in advance of the conversation: What are the possible sources of my students' personal views on this subject? Personal identity? Family influences? Spiritual, religious, or moral beliefs?[321] Simply being aware of the deeper origins of students' opinions can go a long way towards approaching difficult conversations.[322] This planning could also include developing clear goals and learning outcomes for the conversation that are communicated to students before it begins, so that during the conversation, if distractions arise, the educator can redirect the conversation to return to those goals and objectives.[323]

Students can also be prompted to engage in some metacognitive practice in advance of difficult conversations.[324] Pre-discussion assignments can help students articulate their own views, reflect on them, understand them, and "connect them to disciplinary content in the course."[325] As discussed more fully in Section III.G. below, writing exercises are an ideal tool for promoting metacognition.[326] One useful writing exercise is a collaborative one designed to help develop classroom norms that foster a brave learning environment.[327]

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[316]   *Id.*
[317]   *Id.*
[318]   *Id.*
[319]   *Id.*
[320]   *Id.*
[321]   *See* Ind. Univ. Bloomington, *supra* note 301.
[322]   *See id.*
[323]   *See id.*
[324]   *See id.*
[325]   *Id.*
[326]   *See id.*; *see also infra* Section III.G.
[327]   *See, e.g.*, PAWLOWSKI, *supra* note 231, at 66–68 (describing her approach to this collaborative norm-setting exercise); *see also* Arao & Clemens, *supra* note

Arao and Clemens refer to this as "the establishment of ground rules," and they advise professors to begin this reframing on the first day of the class rather than waiting until right before a difficult topic is coming up.[328] Collaborating with students in this reframing process seems very much in sync with Professor Lain's emphasis on "power-sharing" as a key component of brave classrooms; it allows students to share with the professor the responsibility of creating an environment that permits productive conversations about difficult topics while making it less likely that students will experience microassaults and microinsults.[329]

For example, two teachers in the University of Colorado's Department of Theater and Dance have developed an open-source "Brave Space Activity," based on Arao and Clemens's work, that can be used for both in-person and remote teaching.[330] The exercise is designed to take fifty to seventy-five minutes and requires only a shared Google Doc (or other online learning platform) and either a projector or monitor (for in-person classes), or a groupwork tool such as Padlet (for remote classes).[331] They assign students to read Arao and Clemens's chapter on brave spaces and another reading that "critiques the use of the terms 'safe' and 'brave.'"[332] The exercise begins with a twenty-minute "Warm-Up Exercise" in which students are asked to explore with a partner what respect means to them, using a series of prompts.[333] Students then enter their responses in the shared document or chat box and discuss them.[334] Students then engage in a "Main Activity" for the next fifteen

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77, at 142–43 ("a collectivist approach, whereby all participants have the opportunity to shape the group norms and expectations, is more consistent with the overall goal of social justice education than one in which the facilitators dictate the terms of learning").

[328]   *See* Arao & Clemens, *supra* note 77, at 142.

[329]   *See* Lain, *supra* note 15, at 796–97.

[330]   Nii Armah Sowah & Beth Osnes, *Lesson Plan for Brave Space Activity: Supporting Productive Dialogue and Cultivating Brave Spaces in our Classrooms*, UNIV. COLO. BOULDER (July 20, 2020), https://colorado.edu/assett/node/1753/attachment.

[331]   *Id.* (explaining that 10–50 students is the optimal group size for their activity but maintaining that the activity can be creatively adapted to larger groups).

[332]   *Id.*

[333]   *Id.*

[334]   *Id.*

minutes.[335] Divided into five groups, students are tasked with exploring one of the common "safe spaces" rules, discussed in Section III.A. above, and developing a class guideline that is more consistent with "brave spaces."[336] Students are encouraged to "self-regulate while working together as a group so that all voices are heard"—to make space for other voices.[337] At the end of this segment, each group enters their new guideline into the Google Doc, and the class discuss them and suggest edits.[338] When the agreed upon changes are made, the guidelines become a final (but living) document that the teacher can post on the class website or learning platform.[339] Finally, students spend fifteen minutes "debriefing" the process of creating the guidelines and identifying the kinds of situations in which the guidelines would be useful.[340]

I believe most law school professors are well-meaning persons who want to do everything within their power to effectively facilitate difficult conversations. However, professors need the help of their law school administrations (and their larger university administrations, if applicable) to maximize their effectiveness. Cross-cultural training for law faculty, staff, and administrators should be a regular, systematic part of their professional development, as it has been for years in other post-graduate disciplines, including

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[335] *Id.*

[336] *Id.*; *see also supra* Section III.A.

[337] Sowah & Osnes, *supra* note 330.

[338] *Id.*

[339] *Id.*

[340] *Id.*

medicine,[341] social work,[342] and business.[343] Experts in diversity, equity, and inclusion work should provide this training. It is heartening to see that many law schools now have associate or assistant deans or directors of diversity and inclusion, some very recently hired, who can be resources for all constituents within their law schools as professors seek to create the brave classrooms their students want and demand.[344]

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[341]   *See, e.g.*, Ass'n Am. Med. Colls., Cultural Competence Education 1–2 (2005), https://www.aamc.org/media/20856/download. The AAMC's comprehensive guidance on cultural competence education describes its ultimate goal as follows:

> The intent of a cultural competence curriculum is to enhance the patient-physician interaction and assure that students have the knowledge, skills, and attitudes that allow them to work effectively with patients and their families, as well as with other members of the medical community. Cultural competence is complicated: Health-care professionals must be educated to avoid stereotyping, but to also be aware of normative cultural values that can affect informed consent and can have serious consequences.

Id. at 2.

[342]   *See* Nat'l Ass'n Soc. Workers, Standards and Indicators for Cultural Competence in Social Work Practice 4–5 (2015), https://www.socialworkers.org/LinkClick.aspx?fileticket=7dVckZAYUmk% 3D&portalid=0#:~:text=Interpretation-,Cultural%20competence%20requires% 20social%20workers%20to%20examine%20their%20own%20cultural,values% 2C%20stereotypes%2C%20and%20biases.&text=This%20awareness%20of% 20personal%20values,and%20influences%20relationships%20with%20clients (articulating ten standards of cross-cultural competence, including self-awareness, cross-cultural knowledge, cross-cultural skills, and leadership to advance cultural competence).

[343]   *Business Education Forum*, Nat'l Bus. Educ. Ass'n (Oct. 2019), https:// library.nbea.org/1arb9ku/ (containing essays describing the National Business Education Association's past, present, and future efforts to teach business students cultural competencies).

[344]   *See, e.g.*, Mary Wood, *Mark Jefferson Named Inaugural Assistant Dean for Diversity, Equity, and Belonging*, Univ. Va. Sch. L. (Mar. 8, 2021), https:// www.law.virginia.edu/news/202103/mark-jefferson-named-inaugural-assistant-dean-diversity-equity-and-belonging; *Diversity, Equity, and Inclusion Director Named*, B.C. Sch. L. Mag. (Nov. 20, 2020), https://lawmagazine.bc.edu/2020/ 11/diversity-equity-and-inclusion-director-named/; *Miami Law Announces New Faculty Hires and Appointment of Associate Dean for Diversity, Equity, and Community*, Univ. Mia. Sch. L. (Aug. 3, 2020), https://www.law.miami.edu/news/

D.   *Professors Can Make Small but Meaningful Adjustments to How They Use the Socratic Method and How They Handle Student Participation*

As discussed in Part I above, the law school classroom has historically operated as a competitive, anxiety-producing environment—an "antagonistic space."[345] Widespread use of the Socratic method has tended to situate power largely (or solely) in the hands of the professor and to entrench social hierarchies.[346] However, with some careful adaptations, "the Socratic method can be a powerful leveler."[347]

One effective adaptation is to deemphasize cold calling, a practice which may suggest to students that the professor mainly intends to "test students on whether they did the reading or how well they remember its details."[348] Most law professors would agree that this is not the main goal of their teaching; rather, their goal is to promote critical thinking and active reasoning in their students.[349] Nevertheless, as discussed above, the longstanding practice of cold-calling can impede this goal for many students, especially when the class discussion focuses on subjects that are associated with the possibility of emotional injury.[350] Thus, while cold-calling does allow professors to ensure that all students have the opportunity to participate in class, it is not the optimal tool for creating brave classrooms.[351] Gersen writes that while she does not dispense with cold calling altogether, she tries to call on a large number of students every class

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2020/august/miami-law-announces-new-faculty-hires-and-appointment-associate-dean-diversity.

[345]   *See supra* Section I.C.2.

[346]   *See* Strand, *supra* note 166, at 176–77, 181.

[347]   Gersen, *The Socratic Method in the Age of Trauma*, *supra* note 168, at 2342.

[348]   *Id.* In fact, the original aim of the Socratic method was the opposite; Christopher Columbus Langdell, his protegee James Barr Ames, and others who launched the Socratic revolution aimed "to place the focus on students as learners and thinkers at the center of the classroom, rather than on the professor as fount of knowledge informing students of the law" and to lead students to think and form their own judgments about the precedents they were reading. *Id.* at 2324.

[349]   *See id.* at 2326, 2342–43.

[350]   *See supra* Section I.C.2.

[351]   *See* Gersen, *The Socratic Method in the Age of Trauma*, *supra* note 168, at 2344–45.

and to call on each student many times in a semester.[352] These prac-
tices "significantly reduce[] the stakes of each individual cold-call.
Mistakes and stumbles are less magnified. It becomes routine for
students to hear their own voices and voices of classmates. Estab-
lishing this pattern of participation makes for greater equalization
and collaboration among students."[353]

Asking for students to volunteer in class discussions may allevi-
ate part of the trauma some students experience when they are cold-
called, but it has its own drawbacks.[354] Taking volunteers can often
"produce[] an uneven distribution of participation, skewed male and
[W]hite, and away from women and minorities . . . ."[355] In fact, in
higher education circles, including law schools, some students and
professors alike have begun to call for doing away with including
class participation as a grading criterion, in part for this very rea-
son.[356]

One way professors can adapt the Socratic method to facilitate
brave classrooms is to provide students with the questions for the
next class in advance so that students have time to think about the
questions and formulate responses to them privately before being

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[352]   *Id.* at 2344.

[353]   *Id.*

[354]   *See id.* at 2344–45; Alanna Gillis, *Reconceptualizing Participation Grad-
ing as Skill Building*, 47 TEACHING SOCIO. 10, 10–11 (2019) (analyzing the ad-
vantages and disadvantages of two common forms of participation grading).

[355]   Gersen, *The Socratic Method in the Age of Trauma*, *supra* note 168, at
2344; *see also* Gillis, *supra* note 354, at 10–11 (noting that despite the fact that
grading participation is even more inherently subjective than other forms of as-
sessment, and despite the unconscious or conscious bias that permeates student
assessment, many professors continue to grade participation, often based on their
own memory or recall); Latonia Haney Keith, *Visible Invisibility: Feedback Bias
in the Legal Profession*, 23 J. GENDER, RACE & JUST. 315, 356–57 (2020) (noting
that "[e]valuation of participation is inherently subjective and is the perfect realm
for biases to manifest" in law school and summarizing the many studies showing
that in American law schools, participating in class discussion is "alienating, in-
timidating, and stressful" for women and minority students); Sari Bashi & Mar-
yana Iskander, *Why Legal Education is Failing Women*, 18 YALE J. L. &
FEMINISM 389, 405–09 (2006) (describing the results of their study showing that
men "outparticipated" women in law school classes by a statistically significant
margin and offering several reasons for the disparity).

[356]   *See*, James M. Lang, *Should We Stop Grading Class Participation?*,
CHRON. HIGHER EDUC. (Apr. 9, 2021), https://www.chronicle.com/article/should-
we-stop-grading-class-participation?cid2=gen_login_refresh&cid=gen_sign_in.

asked to respond publicly in class.[357] Professors can also ask students to journal about their reactions to the readings and their responses to the questions before coming to class.[358]

Another way professors can create brave classrooms without abandoning the Socratic method is to mix Socratic questioning with other modes of teaching that require students to collaborate with each other.[359] Gersen explains how she accomplishes this:

> I have assigned students to have discussions in small groups . . . before having the larger class discussions. I have done more simulations of oral arguments, legislative hearings, negotiation exercises, client meetings, and other kinds of both formal and informal legal discussions. I have reserved some time in class for students to write in their journals about a problem or question before opening the discussion with the class. I have asked them to do "active listening" exercises in which students pair up, and the first student talks while the second listens, and then the second must accurately reflect back what the first said without expressing agreement or disagreement. I have even written a play and performed it in class.[360]

She also occasionally divides up the class and assigns the students different sides to argue:

> [This] often leads students to acknowledge internal conflicts within each of their own beliefs, goals, and commitments as individuals. Diversity is not an assumption of each student as a representative of his or her group, but rather a recognition of the intellectual diversity within each student. Exposing that diversity enables students to recognize the ambivalence,

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[357] *See* PAWLOWSKI, *supra* note 231, at 76 ("[w]riting offers a private anteroom to ponder these personal discoveries before students jump into a more public forum, such as oral discussion").

[358] For a more detailed discussion of how professors can use writing as a tool for creating brave classrooms, see *infra* Section III.G.

[359] *See* Gersen, *The Socratic Method in the Age of Trauma*, *supra* note 168, at 2346.

[360] *Id.*

complexity, imperfection, and incompleteness of
their own and others' arguments . . . . Arguments are
not identities or vice versa.[361]

Experimenting with adaptations of the Socratic method may be
uncomfortable for law professors who have relied on it heavily for
a long time. But the adaptations need not be sweeping, and they need
not happen all at once. In my own development as a teacher, I have
found that trial and error is an indispensable tool for growth and that
small, incremental adjustments to my teaching methods have
yielded the best results, especially when I have been transparent
with my students about the pedagogical reasons for the adjustments.

E.   *Professors Can Provide Advance Notice of Sensitive
                              Content*

As discussed earlier in this Article, students who believe that the
classroom should be a safe space are increasingly demanding trigger
warnings about course content that may be offensive or stressful to
them; some students demand to be able to opt out of classes where
such content will be discussed.[362] Allowing opt-outs would certainly
seem to undermine the creation of a brave classroom, absent extraor-
dinary circumstances, because the absence of some students' voices
might hinder other students' growth and development. Whether
providing trigger warnings would do the same is a closer call; cer-
tainly there should be a way to balance students' desire to be alerted
to all discomforting topics that might arise in class with professors'
obligation to teach about the many potentially difficult legal topics
that will arise in students' eventual representation of clients.

Professors who seek to create brave classrooms—including law
professors—can achieve balance by providing "content notifica-
tions"[363] before assigning and discussing topics that may be partic-
ularly sensitive. Content notifications differ from traditional trigger

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[361]   *Id.* at 2343.

[362]   *See supra* Section I.C.2.

[363]   This phrase removes the word "trigger," which is problematic for many
reasons, including the fundamental truth that clinically, "a trigger can be literally
anything, depending on the person and his or her traumatic experience(s) . . . .
[N]o person can anticipate what someone's triggers may be, nor may they, in turn,
effectively warn people about all potentially triggering material." Laguardia et al.,
supra note 160, at 899.

warnings in that they do not generally allow students to skip material or opt out of class and do not require professors to provide alternate material.[364] Rather, content notifications are a type of "informed consent"—they "highlight[] for students that they should prepare for the material so that they can address it."[365] Put another way, they are tools of *inclusion*, not *exclusion*.[366]

To be most effective, a content notification should be provided at the earliest possible time—most likely as part of the professor's syllabus, which students would presumably receive before the first meeting of the course.[367] The content notification should also outline any concessions that might be made and should direct students toward any resources that are available to assist them in addressing the content.[368]

Because they are designed to facilitate rather than stifle class discussion of difficult topics, content notifications pose little threat to professors' academic freedom to teach such topics—one of the primary objections to trigger warnings, as noted earlier.[369] Thus, professors should be prompted and encouraged to include content notifications.[370] Moreover, professors should be trained about best practices for these notifications; this training might include (1) providing samples of content notifications in electronic format that could be easily copied into syllabi, and (2) providing contact information for available student support services that professors could pass on to students, perhaps as a link on their course management systems.[371] For material that is commonly recognized as likely to trigger trauma victims, the content notifications could even be standardized; for example, the professors who teach criminal law could

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[364]   *Id.*

[365]   *Id.*

[366]   *See* Alison Kafer, *Un/Safe Disclosure: Scenes of Disability and Trauma*, 10 J. Literary & Cultural Disability Stud. 1, 2 (2016).

[367]   Laguardia et al., *supra* note 160, at 890.

[368]   *Id.* at 899.

[369]   *See supra* Section I.C.2.

[370]   This is not to say that professors should be required to do so or penalized for not doing so. *See* Laguardia et al., *supra* note 160, at 900 (" [such penalties] would be a dangerous practice and would likely infringe on academic freedom and professors' speech").

[371]   *Id.* at 901.

collaborate on a content notification alerting students that the course includes readings and discussion about the law of sexual assault.[372]

Thoughtful content notifications can be a powerful way for professors to model the kind of authenticity that encourages honest discussion of difficult topics. For example, one of my colleagues, Jonathan Cardi, included the following global content notification in the syllabus for his "Race, Social Science, and the Law" course in Spring 2021:

> As the events of recent years—and particularly this past summer—have shown us, the subject of race is often a difficult one to discuss. In signing up for this course, you have shown an interest in doing so, and I applaud you for it! For our discussions to work, respect for difference has to be at the heart of our interactions. We want to be able to discuss all ideas for their merit, without quick judgment or offense. Equally important, we need to remember the lasting harm that words and actions can have. I will be an active moderator and also devil's advocate, in an attempt to set a safe and respectful, but also deeply probing tone for the course.[373]

This content notification has a warmth and transparency that fosters a positive environment in which he and his students can engage in the courageous conversations that occur daily in his classroom.

Another colleague, Professor Renee Allen, recently added a powerful content notification to the syllabus for her seminar, "Music & the Movement: Race, Rhythm, and Social Justice":

> **<u>Words, Images, and POV</u>**
> In this class you may encounter words—including racial epithets—or images that invoke a range of feelings and emotions. While there is pedagogical value in reading and viewing these words and images, I see no pedagogical value in repeating them. As such, I will not repeat or repost such words and

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[372]   *See id.* at 900.

[373]   Jonathan Cardi, Syllabus for Race, Social Science, and the Law at Wake Forest University School of Law (Spring 2021) (on file with author).

images during our class meetings. I ask that you do
the same. Conversations about race can be challeng-
ing and uncomfortable. I acknowledge the risks and
challenges that may lie ahead. I hope you will join
me in ensuring our learning environment is
a *brave* space.[374]

Similarly, Professor Rima Sirota of Georgetown Law provided
a content notification to her Spring 2021 students before they started
researching for a Fourth Amendment brief-writing assignment—but
instead of including it in her syllabus, Professor Sirota decided to
create a video because she "wanted to communicate the message in
a more personal way, especially during an all online semester."[375]

F.   *Professors Can Consciously Amplify the Voices of Marginalized Students*

As Gen Z students increasingly populate our schools, the benefit
of amplifying their diverse voices is becoming ever more apparent.
The strategy of direct amplification—repeating the ideas of margin-
alized persons and giving them credit for voicing those ideas[376]—is
one way law professors can encourage bravery within the classroom.
One common kind of amplification occurs when the professor re-
peats a student's idea to the class and praises the idea:[377] "Did eve-
ryone hear what Stephan said? He thinks the outcome of this case
might have been influenced by the fact that all three judges on the
panel were older White males. That is a very common dynamic we
see in civil rights-era cases." When the professor responds to a

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[374]   Renee Allen, Syllabus for Music and the Movement: Race, Rhythm, & So-
cial Justice at St. John's University School of Law (Spring 2021) (on file with
author).

[375]   Email and video attachment from Rima Sirota, Professor at Georgetown
Univ. L. Ctr. (Aug. 16, 2021, 5:10 PM) (on file with author).

[376]   Tiffany D. Atkins, *Amplifying Diverse Voices: Strategies for Promoting
Inclusion in the Law School Classroom*, 31 SECOND DRAFT 10, 11 (2018) [here-
inafter Atkins, *Amplifying Diverse Voices*]. According to Professor Atkins, "[t]he
term *amplification* was made popular by Washington Post writer Juliet Eilperin
in a September 2016 article describing how women in the Obama administration
struggled to gain a voice among their male counterparts." *Id.* Their solution,
Eilperin wrote, was to repeat each other's ideas and suggestions to the room and
specifically "giving credit to the woman who had voiced it." *Id.*

[377]   *Id.* at 12.

student's comment in this way, the student is likely to feel braver about speaking up again in future discussions.[378]

But perhaps the greater benefit of amplification in the context of creating a brave classroom is realized when the amplification comes not from the professor, but from other students.[379]

> [Amplification] can happen from peer to peer, where a minority student repeats or "amplifies" the ideas of a fellow minority student to the larger group, giving credit back to the student for the idea and ensuring that it resonates with the entire class. It can also happen across groups, where a majority student amplifies the ideas of a minority student.[380]

In both of these situations, the student who is doing the amplifying is modeling bravery; in fact, it may take more courage for a majority student to amplify the ideas of a minority student, especially if those ideas differ from his own, than for a minority student to amplify another minority student.

To be effective amplifiers, both professors and students must be active listeners.[381] And active listening requires time—time to process the comments students offer and formulate thoughtful responses that build positively on those comments.[382] Allowing moments of silence for this processing and formulating to occur can be difficult; professors understandably want to keep class discussions moving, and a prolonged moment of silence can seem disruptive to the rhythm of the class.[383] But the literature of effective classroom pedagogy supports the use of "think time" or "wait time"—periods of "disturbance-free silence"—so that teachers and students alike can process information and respond accordingly.[384] If professors

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[378]   *See id.*

[379]   *See id.* at 11.

[380]   *Id.*

[381]   *See id.* at 12.

[382]   *See* Robert J. Stahl, *Using "Think-Time" and "Wait-Time" Skillfully in the Classroom*, Eric Dig. (May 1994), http://files.eric.ed.gov/fulltext/ED370885.pdf.

[383]   *See* Namkje Koudenburg et al., *Disrupting the Flow: How Brief Silences in Group Conversations Affect Social Needs*, 47 J. Experimental Soc. Psych. 512, 512–14 (2011).

[384]   *See, e.g.*, Bret Rappaport, *"Talk Less": Eloquent Silence in the Rhetoric of Lawyering*, 67 J. Legal Educ. 286, 296 (2017) (citing Stahl, *supra* note 382);

have the courage to cultivate moments of quiet reflection in their law school classrooms, students will be more likely to respond to each other thoughtfully and supportively with the kind of amplifying comments that encourage bravery.

G.   *Professors Can Regularly Incorporate Reflective Writing Exercises Before, During, and After Class to Promote Students' Self-Awareness and Ability to Participate Meaningfully*

As a longtime legal writing professor, I have heard it said too many times to count that "[w]riting is thinking on paper."[385] Law professors across the curriculum are increasingly recognizing the benefits of incorporating writing exercises into their courses; these exercises benefit the professors by facilitating formative assessment, and they benefit students by helping them develop metacognitive skills and improve their critical thinking.[386]

Writing can also be a powerful tool in creating a brave classroom. In her recent article, *Creating a Brave Space Classroom Through Writing,* Professor Lucia Pawlowski argues that "any brave space classroom requires an extensive writing curriculum."[387] Pawlowski posits that writing fosters three traits that are integral to addressing racism: "self-discovery, privacy, and accountability."[388] Thus, professors can "write their way into brave pedagogy," and

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Mary Budd Rowe, *Wait Time: Slowing Down May Be a Way of Speeding Up!*, 37 J. TCHR. EDUC. 43, 44–45 (1986) (describing the many benefits of a mere three-second "wait time" after a question and after a response, including fostering a more robust exchange of ideas and nurturing new ideas). Recently, the importance of silence during difficult conversations has been recognized in the workplace setting as well as in the classroom. *See Creating Brave Conversations About Diversity and Inclusion at Work*, FIVE TO NINE (May 1, 2019), https://medium.com/@info_37650/creating-brave-conversations-about-diversity-and-inclusion-at-work-3a13180bb89d (noting that when conversational gaps occur in diversity and inclusion workshops, leaders should not rush to fill the silence).

[385]   WILLIAM ZINSSER, ON WRITING WELL: AN INFORMAL GUIDE TO WRITING NONFICTION, 156 (5th ed., 1994).

[386]   *See* Graham, *supra* note 8, at 75–80 (discussing strategies for encouraging writing across the law school curriculum as a means of developing the critical writing skills of Gen Z law students).

[387]   PAWLOWSKI, *supra* note 231, at 63.

[388]   *Id.*

students can write their way to becoming more responsible readers and listeners.[389]

In her article, Pawlowski elaborates on how she incorporates writing exercises into her collegiate English courses to promote bravery through self-discovery, privacy, and accountability.[390] First, she addresses the self-discovery aspect of bravery.[391] To be able to learn about systemic racism and other social justice issues, students must discover their own positionality in relationship to those issues; they must reflect on their own identities.[392] Because "[w]riting is a process not just of transcription (recording what we already know) but of discovery (figuring out what there is to know)—especially *self*-discovery," it is at the heart of Pawlowski's lessons on racial identity development.[393] Pawlowski first asks students to read material about racial identity development, then she asks them to write an anonymous blog post on the class learning management system responding to this prompt: "Think of an incident/belief/action of yours that demonstrates you being in one particular stage of your racial identity development. Describe the example, then tell us what it is about that example that makes you think it fits into that particular stage."[394] Further, Pawlowski requires the same vulnerability of herself that she asks of her students; before they write their blog posts, she reads to them from her "own racial identity development journal"—something she finds "painful" but believes is necessary to model the openness she seeks from her students.[395] In fact, she makes it a habit to do all the writing exercises she assigns to her students and to share her responses.[396]

Second, Pawlowski expands on the importance of student privacy to developing students' "collective commitment to antiracist

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[389] *Id.*

[390] *Id.* at 63–64. As Pawlowski recognizes, these exercises can be adapted for use across educational contexts. *Id.* at 64.

[391] *Id.* at 71.

[392] *See id.* at 72.

[393] *Id.* at 71–72. Pawlowski recommends that assigning writing exercises designed to help students with racial identity development should not be merely the first step in this work but should be a recursive practice throughout a course. *Id.*

[394] *Id.*

[395] *Id.* at 73–74. Pawlowski identifies as a "white, cis, straight professor working at a predominantly white university." *Id.* at 63.

[396] *Id.* at 74.

action."[397] Over the years, Pawlowski realized that her students needed privacy to be more honest about their racial identities, so she began asking them to write to themselves alone or to her privately, not to the whole class.[398]

> [A] brave space classroom requires moments of privacy. Moreover, even those moments of privacy require brave space, as writers make painful discoveries about themselves and the world. Discovering racial oppression and one's position relative to that reality is invariably extremely unsettling for students. Writing exercises offer students a way to manage those disruptive discoveries without suffering the public shaming that they anticipate would accompany their journey if the writing was shown to the rest of the class.[399]

One privacy tool Pawlowski uses regularly is the "End-of-Class Reflection."[400] At the beginning of each class, she hands out a sheet of paper (aptly called the "End-of-Class Reflection"), which students complete throughout the class.[401] The Reflection asks students whether they participated in class and if not, why not.[402] It also asks open-ended questions: "What struck you the most about today's class? In other words, what are you taking away from today?"[403] Students submit the form only to her, and she sometimes sends follow-up emails to students addressing questions and concerns.[404] She also looks for common responses—"a so-called elephant in the room that a student names, or a few students dissenting with the voices that prevailed in the class discussion"—and when she finds them, she writes a synthesis, sometimes quoting directly with

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[397]   *Id.*

[398]   *Id.* at 75.

[399]   *Id.* at 75–76 ("Writing offers a private anteroom to ponder these personal discoveries before students jump into a more public forum, such as oral discussion.").

[400]   *Id.* at 76.

[401]   *Id.* at 76–77.

[402]   *Id.* at 77.

[403]   *Id.*

[404]   *Id.*

students' identifiers redacted, which she projects in class to allow for group discussion.[405]

Pawlowski also makes frequent use of anonymous polling at the beginning of a course unit or discussion to "get a snapshot of the experiences students bring to a particular unit."[406] In her article she provides an example of a poll she uses for a unit on gender and sexuality, via the Poll Everywhere program.[407] The poll "affords a panoramic view of students' exposure to homophobic slurs and demonstrates to students the real extent of the problem. In a sense, it justifies that particular curricular unit."[408] She also uses TodaysMeet, a free tool that does not require a subscription, that publicly displays student writing published from the students' laptops or phones.[409] Students can type in short (140-character maximum) questions about the material in the unit or respond to something another student has written.[410] She maintains anonymity by asking students to use numbers as nicknames when they enter the TodaysMeet room she has created for that day.[411] She sometimes uses Coggle, a digital mind-mapping tool.[412] She poses a question at the center of the map, and students enter their own responses and comment on each other's responses.[413]

Third, Pawlowski discusses the importance of encouraging student accountability, noting that "self-identified writing is essential to any brave space. At some point each member of the space must demonstrate accountability to each other and to the assigned text."[414] Pawlowski sees it as crucial that students have a correct

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[405]   *Id.* at 77–78. This exercise could easily be adapted for virtual teaching; for example, students could maintain private journals created with Google Doc; only the student and professor would have access to the individual journals. *Id.*

[406]   *Id.* at 79.

[407]   *Id.*

[408]   *Id.*; *see also* Atkins, *Amplifying Diverse Voices*, *supra* note 376, at 13 (explaining how she uses polling software to amplify the voices of students who might not feel comfortable speaking up in class for various reasons).

[409]   PAWLOWSKI, *supra* note 231, at 79. TodaysMeet has since shut down. TodaysMeet (@TodaysMeet), TWITTER (June 2, 2018, 10:29 AM), https://twitter.com/TodaysMeet/status/1002920226529431555.

[410]   PAWLOWSKI, *supra* note 231, at 79–80.

[411]   *Id.* at 80.

[412]   *Id.* at 81.

[413]   *Id.*

[414]   *Id.*

understanding of what the group says and of the facts of the text (both reading comprehension tasks).[415] To promote and measure accountability, Pawlowski has students create a "make-up-your-own-take-home-quiz or some form of digital, public, self-identified text annotation on assigned readings."[416] Pawlowski considers these exercises appropriate for self-identified (non-private) writing "because reading comprehension questions and answers require less vulnerability than asking and answering critical questions of a text."[417]

Law professors who wish to develop a brave space writing curriculum can determine when and how to use these and other tools by engaging in backwards course design.[418] Pawlowski recommends answering the following three questions in this particular order:

> 1. Which course concepts will require bravery to learn?
>
> 2. What major assignments will get students to be brave in learning these concepts?
>
> 3. Which minor assignments and daily activities will scaffold toward these major assignments?[419]

The above exercises promote bravery by helping students explore and develop their identities.[420] But writing can also be a valuable tool in moments when the classroom suddenly becomes unsafe because a student makes a microassault or microinsult.[421] The

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[415]   *Id.* at 81, 83.

[416]   *Id.* at 83. For the quizzes, each student writes one of his or her quiz questions on the board at the start of class and signs it. The students then go around the room, each answering another student's question. *Id.* "If the student on the spot cannot answer the question, we put the question to the entire class. If no one can answer the question, we put the question to its author and try to discern where in the text the answer can be found." *Id.* For the text annotations, Pawlowski sometimes uses Hypothesis, "an add-on to your web browser that puts a 'screen' over part of a digital text" so readers can "write responses to a web text and to each other." *Id.* at 83–84.

[417]   *Id.* at 83.

[418]   *Id.* at 84.

[419]   *Id.*

[420]   *See id.* at 71–72, 78.

[421]   *See, e.g.*, John D. Vogelsang & Sophia McGee, *Handbook for Facilitating Difficult Conversations in the Classroom* 6 (July 29, 2015), https://

professor can allow a few minutes for private reflection, asking students to write what they are feeling and thinking about what just happened.[422] While it is not necessary for students to share what they write, if a few students are willing to do so, this sharing can help the professor formulate a response, both to the individual who made the comment and to the class as a whole.[423]

<div align="center">CONCLUSION</div>

In the twenty-three years in which I have had the privilege to teach legal writing, there have been very few truly difficult conversations in my classroom. Before I began my work on this Article, I assumed that was because (1) at my law school we have wonderful, kind, collegial students who genuinely care for one another and would not express hurtful views (at least in the classroom setting); and (2) legal writing is not a course that demands frequent in-depth discussion of difficult issues (at least not as I approach it). But in working through my research and reading in preparation for writing this Article, I have realized that both of these assumptions are problematic; they reveal that I have not been consciously working to create a brave classroom.

I still think my students are well-meaning and kind to each other, but now I understand that over these years, there have probably been many microaggressions and expressions of privilege and bias to which I simply have not been attuned. I now wonder if my belief that my classroom was a place of psychological safety was shared by all of my students, and I am committed to speaking and listening more carefully—to engaging in the "calling out" and "calling in" that will make my classroom a safe space.

And I still think that, because my legal writing course focuses on the process of creating effective written legal communication,

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www.qc.cuny.edu/academics/centers/democratic/documents/handbook%20for%20facilitating%20difficult%20conversations2.pdf (recommending reflection time); Ind. Univ. Bloomington, *supra* note 301 (recognizing that "[s]ometimes a short writing break is useful in diffusing tension and refocusing the conversation").

[422] Vogelsang & McGee, *supra* note 421, at 6; Ind. Univ. Bloomington, *supra* note 301.

[423] *See id.*

with the subject matter of the assignments being a secondary consideration, my students are less likely to "dive deep" into sensitive issues of race, gender, sexual identity, poverty, and social justice. But now I realize that even the ordinary assignment—a burglary problem, a grandparent custody problem, an employment discrimination problem, or a peer harassment problem—can be taught in a way that invites authentic conversations and makes my classroom a brave space.

Professor Strand's words keep ringing in my mind as I double down on this important work: "We are *all* on the journey."[424]

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[424]   Strand, *supra* note 166, at 176.