

LEGAL EDUCATION AND TRIGGER WARNINGS: MORE HARM THAN GOOD?

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* Associate Clinical Professor, University of Arizona James E. Rogers College of Law. The views expressed herein are mine and do not reflect the views or opinions of Arizona Law. I want to thank Sylvia Lett, a close colleague, for her collaboration in thinking through (and then presenting on) the intersectionality of a hypothetical under the Fair Housing Act involving a homeless shelter, student cultural competency, and trigger warnings. I would also like to thank Molly Case not only for her citation assistance but for her valuable thoughts and input into this article. Before starting to teach fulltime, I practiced law for 23 years. I include that background as somewhat of a disclaimer and to reveal an implicit bias because it is difficult for me to divorce a legal education from the actual practice of law—I am always thinking about what is expected of students not only in law school but immediately afterwards.

INTRODUCTION

I have taught first-, second-, and third-year law students in different classes for 29 years. During the last several years, however, I have focused on teaching legal writing to first-year students. During my tenure as an instructor, no student has *ever* asked for a trigger warning or complained about the absence of a trigger warning. From time to time, however, and more so in recent years, students have expressed discomfort about class content. Whenever possible, I have worked with those students to find accommodations for their concerns.¹ In addition to teaching, I create hypothetical problems the first-year legal writing students work on throughout the year. Those problems, which are designed to teach students how to research, analyze issues, and draft a memo or brief, drive much of the curriculum.

This past spring, the problem involved an unhoused person suing a homeless shelter under the Fair Housing Act—the only issue was whether a homeless shelter was a “dwelling” under the Act. After the students had finished writing their briefs, one of my colleagues invited the director of a women’s homeless shelter to speak to the entire first-year class. The speaker was riveting, but some of the content was deeply troubling, touching on subjects such as the advanced age of some of the residents (one was 85), domestic violence issues, addiction issues, women who will feed their pets before they feed themselves, and so on. The difficulty of the subject matter raised the specter of whether we should have given trigger warnings before the presentation. That conversation led me to research the issues underlying trigger warnings, which

1. One example sometimes occurs in the spring semester when the students prepare a trial brief from the perspective of either the plaintiff or the defendant. Sometimes students object to representing one side of the case or the other on moral grounds. I will always accommodate these requests if students make them at the beginning of the semester because I want the focus to be on analysis and writing. I don’t want that process disrupted by strong personal feelings about one side or the other. I explain, however, that once students enter the field as practitioners, generally, particularly early in their careers, they will not be able to pick what side they represent.

culminated in a presentation my colleague and I delivered on trigger warnings (and cultural competency) at a national legal writing conference. The room was packed with legal writing professors from around the country (many of whom also teach doctrinal classes). The ensuing discussion about whether to give trigger warnings was robust, with strongly held and well-articulated views on each side.

Understandably, the professors' viewpoints, regardless of what side they were on, were based on their own personal experiences teaching and anecdotal evidence rather than empirical data. Meanwhile, psychologists are busy conducting empirical studies on trigger warnings, working to build a robust body of scientific literature on the topic.² *Both viewpoints*, however, are key in understanding the issue. This Article furthers the trigger warning debate by interweaving the work of both educators and scientists. Both disciplines can shed light on the efficacy of trigger warnings and how they might impact pedagogy, but the presently available literature is siloed.

Section I of this Article defines the term “trigger warning” and explains the difference between a content warning and a trigger warning. Section II addresses the key arguments educators (both at the college and graduate level) have made for and against trigger warnings. Section III then addresses the science behind trigger warnings; many recent studies focus on such issues as whether trigger warnings decrease student anxiety, whether the type of warning matters in terms of anxiety, whether students will avoid material if given a trigger warning, and similar inquiries. Finally, Section IV offers a proposal that serves as a compromise between the “no trigger warning” and “yes trigger warning” camps. A brief conclusion follows.

I. TRIGGER WARNINGS VS. CONTENT WARNINGS

Before delving into any viewpoints, we must define the terms “trigger warning” and “content warning.” Educators, scientists,

2. Obviously, this is a bit of a false dichotomy because some of the scientists studying trigger warnings are also educators, and some of the educators are also engaged in scientific work and empirical data gathering. However, this is less true for trigger warnings specifically.

and journalists often use these terms interchangeably but, as many university policies make clear, there are key differences.³ The University of Connecticut, while acknowledging the ambiguity surrounding the semantics of trigger vs. content warnings, gave these proposed definitions: A content warning is a “written or oral statement given before presenting certain material that discloses that the content . . . may be sensitive in nature,” while a trigger warning is a “written or oral statement given directly before presenting material commonly known to cause trauma, that discloses that the content covered might be triggering for trauma survivors, invite[s] students to emotionally prepare ahead of time, and give[s] students the option to step away and return when they are ready.”⁴ Similarly, the University of Michigan, while acknowledging that content warnings are sometimes called trigger warnings, defined content warnings as “notices that precede potentially sensitive content” and trigger warnings as a “specific variety of content warnings that attempt to forewarn audiences of content that may cause intense physiological and psychological symptoms for people with Post Traumatic Stress Disorder . . . [(PTSD)] and other anxiety disorders.”⁵

But most scientists addressing trigger warnings have lumped trigger and content warnings together, prompting one group of scientists to publish a paper calling attention to the absence of a clear classification system for different kinds of warnings.⁶ The

3. See, e.g., Jack Halberstam, *Trigger Happy: From Content Warning to Censorship*, 42 SIGNS: J. WOMEN CULTURE & SOC'Y 535, 536 (2017) (explaining that, unlike the content warning, the trigger warning is not confined to letting the audience know the content of what they are about to watch; it presumes that listeners will want to know exactly what is being discussed because students may wish to mentally prepare to engage with it or avoid it entirely).

4. *Trigger and Content Warning Guidance*, UNIV. OF CONN. [hereinafter UNIV. OF CONN], <https://provost.uconn.edu/trigger-warning> (last visited July 17, 2023).

5. *An Introduction to Content Warnings and Trigger Warnings*, UNIV. OF MICH., <https://sites.lsa.umich.edu/inclusive-teaching/wp-content/uploads/sites/853/2022/04/An-Introduction-to-Content-Warnings-and-Trigger-Warnings.pdf> (last visited Aug. 6, 2023).

6. See Ashleigh Charles et al., *Typology of Content Warnings and Trigger Warnings: Systematic Review*, PLOS ONE (May 4, 2022), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0266722>.

paper concludes that the two terms are used “interchangeably across the diverse academic disciplines which research [the use of trigger warnings].”⁷ Scientists are not alone—journalists have also treated the two concepts as one. Even the *New York Times* treated the two concepts as one when it combined them into a single definition: “Content warnings’ or ‘trigger warnings’ refer to verbal or written alerts that assigned material . . . may involve sensitive or upsetting themes or details that may cause a student to have an emotional response tied to a personal experience.”⁸

Based on the definitions above, it is most accurate to define a trigger warning as a *specific kind* of content warning. Nonetheless, because much of the research uses the terms interchangeably,⁹ this Article will do the same and use the term trigger warnings to include content warnings.¹⁰ But whether you call them trigger

7. *Id.* (explaining the confusion between the two terms).

8. Katherine Rosman, *Should College Come with Trigger Warnings? At Cornell, It's a 'Hard No.'*, NY TIMES (April 12, 2023), <https://nytimes.com/2023/04/12/nyregion/cornell-student-assembly-trigger-warnings.html>.

9. See Alison C. Cares et al., “*The Subject Matter Should Be an Adequate Trigger Warning*”: *How and Why Criminology and Criminal Justice Faculty Use (and Don't Use) Trigger Warnings*, 34 J. CRIM. JUST. EDUC. 598, 599 (2022), <https://www.tandfonline.com/doi/full/10.1080/10511253.2022.2133154?scroll=top&needAccess=true> [<https://doi.org/10.1080/10511253.2022.2133154>] (“[T]here is not consensus on a definition of trigger warnings.”); Guy A. Boysen, *Evidence-Based Answers to Questions About Trigger Warnings for Clinically-Based Distress: A Review for Teachers*, 3 SCHOLARSHIP TEACHING & LEARNING PSYCH. 163, 164 (2017), <https://psycnet.apa.org/doiLanding?doi=10.1037%2Fstl0000084> [<http://dx.doi.org/10.1037/stl0000084>] (“[N]o standard operational definition [of trigger warnings] exists.”).

10. For example, the University of Wisconsin’s University Health Services, in setting forth a policy on such warnings, combined the words trigger and content into a single reference, instructing educators to “[u]se content (‘trigger’) warnings.” *Use Content (“Trigger”) Warnings*, UNIV. OF WISC., [hereinafter UNIV. OF WISC.], <https://www.uhs.wisc.edu/healthy-academics/strategies/trauma-informed/trigger-warnings/> (last visited Aug. 6, 2023). Scientists studying trigger warnings have also defined the term so broadly that it could also cover content warnings. See, e.g., Mevagh Sanson et al., *Trigger Warnings Are Trivially Helpful at Reducing Negative Affect, Intrusive Thoughts, and Avoidance*, 7 CLINICAL PSYCH. SCI. 778, 778 (2019) (“Universities around the world are grappling with demands for trigger warnings—cautions to students about upcoming course content that may cause them distress.”). Likewise, an advocacy group called “Sisters in Crime” refers to content warnings on its website, explaining that content warnings used to be called trigger warnings. *Content Warnings*, SISTERS IN CRIME, <https://www.sistersincrime.org/page/contentwarnings> (last visited Aug. 6, 2023).

warnings, content warnings, or just warnings, the discussion below clearly shows that educators have sharply conflicting viewpoints on whether warnings of any type should be deployed in the classroom.

II. EDUCATORS CANNOT AGREE ON THE EFFICACY OF TRIGGER WARNINGS

Although the current trend seems to be that more institutions are moving away from trigger warnings, there are strongly held views on both sides. This Section first addresses some universities' trigger warning policies before discussing the arguments for and against trigger warnings.

*A. Universities Disagree on The Use of Trigger Warnings*¹¹

The use of trigger warnings is controversial.¹² Some

11. This Article discusses the viewpoints and policies of both undergraduate and graduate-level professors. There are, of course, major differences between the student populations and course content in college and law school. Law students are older and more mature, and law-school faculty are probably less likely to use trigger warnings than college faculty. See Cares et al., *supra* note 9, at 605 (pointing out that 50.2% of graduate-level faculty use trigger warnings, compared to 98.7% of undergraduate faculty); Sherry F. Colb, *Why I Do Not Give Trigger Warnings*, VERDICT (Aug. 29, 2018), <https://verdict.justia.com/2018/08/29/why-i-do-not-give-trigger-warnings> (pointing out that law students are adults who behave differently than traditional-age college students). There are, however, some similarities between undergrads and law students. First, many of the subjects discussed in the literature on trigger warnings for undergrads are similar to subjects taught in law school—both involve sensitive material, which could explain why the literature seems to combine both populations without further discussion. See Greg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind*, THE ATL. (Aug. 10 2015), <http://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/> (discussing college students, the authors, one a constitutional lawyer and the other a social psychologist, began their discussion of trigger warnings by discussing the views of Jeannie Suk, a Harvard law school professor); Halberstam, *supra* note 3, at 541 (referring to the classes where triggering material might come into play in college, such as social justice classes that deal with sexual violence, police brutality, and the horrors of slavery); Cares et al., *supra* note 9, at 607 (discussing criminology and criminal justice classes in colleges, which are similar in nature to subjects taught in law school); Kate Seear, *Do Law Clinics Need Trigger Warnings? Philosophical Pedagogical and Practical Concerns*, 29 LEGAL EDUC. REV. 1, 3 (2019) (addressing trigger warnings from the law school perspective and relying in part upon the work of Jack Halberstam, an undergraduate professor); Randall Kennedy & Eugene Volokh, *The New Taboo: Quoting Epithets in the Classroom and Beyond*, 49 CAP. U.L. REV. 1, 1–6 (2021) (discussing, from the law-school professor perspective, classroom speech deemed offensive and including speech professors have used in undergraduate classrooms as examples). In addition, while law school students are more mature in general, there are some that are only one year older than undergraduate students, and, as far as their mental health is concerned—which ties into their vulnerability—the evidence shows that law students suffer from mental health issues at greater rates than other graduate students or the general population. See Diana J. Simon, *Laughing Your Way to Academic Success: Can Laughter Impact Learning and Well-Being in the Law School Classroom and Are There Cross-Cultural Differences?*, CONN. L. REV. ONLINE 3 (May, 2021), <https://connecticutlawreview.law.uconn.edu/wp-content/uploads/sites/2747/2021/05/Laughing-Your-Way-to-Academic-Success-1.pdf> (“[A] body of literature suggests that mental health issues are more of an issue for law students than other graduate students or the general population.”). Accordingly, while this Article’s main focus is on what law professors have to say on the subject, the work of undergraduate professors in the field is also included.

universities have come close to mandating them, while others have flatly rejected their use, leading to a constantly changing landscape.¹³ For example, the University of Wisconsin has instructed professors that “it may be necessary to alert students to potentially activating (sometimes called ‘triggering’) content or resources before broaching sensitive topics.”¹⁴ Similarly, the University of Connecticut, while claiming no intent to impede academic freedom, refers to including a “statement of Content or Trigger Warning in the syllabi, coupled with a verbal announcement before the class” as “best practice.”¹⁵ Finally, the University of Michigan has drafted an eight-page guide explaining why warnings are important for inclusive classrooms and how to implement them.¹⁶ Although the guide acknowledges the debate

12. Olga Khazan, *The Real Problem with Trigger Warnings*, THE ATL. (March 28, 2019), <https://www.theatlantic.com/health/archive/2019/03/do-trigger-warnings-work/585871/> (“Syllabus development is not typically such a hot topic, but trigger warnings have become a flash point in the modern-day culture wars.”).

13. For example, in 2012 Oberlin mandated trigger warnings but quickly withdrew the mandate after a backlash from professors. Halberstam, *supra* note 3, at 535. A survey of all universities in the country on their policies regarding trigger warnings is beyond the scope of this Article. Also, it is unclear whether university-wide policies apply to law schools. It does appear that some universities explicitly say that some university-wide policies apply to all colleges, with graduate programs having their own academic policies as well. For example, Stanford University has university-wide policies and provides that “[i]ndividual schools and departments also may maintain additional policies. Such policies, however, do not override the[] university-wide policies.” *University-Wide Policy Documents*, STANFORD UNIV., <https://www.stanford.edu/about/administration/policies/> (last visited Nov. 12, 2023). It then has separate policies for its graduate programs, which provide as follows: “The GAP [Graduate Academic Policies and Procedures] provides background and rationale for Stanford’s academic policies related to graduate students; defines certain university-wide requirements; and offers implementation guidance to describe how the various functions within the university support graduate students’ academic progress.” *Graduate Academic Policies and Procedures*, STANFORD UNIV., <https://gap.stanford.edu/about> (last visited Nov. 12, 2023). The law school then has its own policies and procedures. STANFORD UNIV., STANFORD L. SCH., *Academic Policies, Procedures, and Opportunities*, <https://law.stanford.edu/office-of-student-affairs/academic-policies-procedures-and-opportunities/> [<https://web.archive.org/web/20230807124540/https://law.stanford.edu/office-of-student-affairs/academic-policies-procedures-and-opportunities/>] (access currently restricted).

14. UNIV. OF WISC., *supra* note 10.

15. UNIV. OF CONN., *supra* note 4.

16. See Univ. of Mich., *supra* note 5.

over warnings and sprinkles nonmandatory wording like “might” instead of “must” or “shall” throughout, a professor reading the policy might be hesitant to exclude warnings.¹⁷ One section of the guide explains that giving warnings does not coddle students, and that “shifting the norms of content presentation to include content warnings . . . is well worth the small effort it costs . . . to note potentially distressing material.”¹⁸

In contrast, other universities have made it clear they will not mandate trigger warnings. In March of 2023, the Student Assembly at Cornell University passed a unanimous resolution mandating warnings for traumatic content that might be discussed in class, including sexual assault, self-harm, and transphobic violence.¹⁹ The resolution also demanded that students opting out of exposure to triggering content not be penalized, so long as they completed alternative work to satisfy course requirements.²⁰ Less than a week later, the university president vetoed the resolution because implementing it “would infringe on [the university’s] core commitment to academic freedom and freedom of inquiry, and [the resolution’s requirements] [were] at odds with the goals of a Cornell education.”²¹ Likewise, the University of Chicago made clear in a letter to the Class of 2020 that it did not support trigger warnings because of its commitment to freedom of inquiry and expression.²²

17. *See id.*

18. *Id.*

19. *Resolution 31: Mandating Content Warnings for Traumatic Content in the Classroom*, CORNELL UNIV. STUDENT ASSEMBLY 2–3 (Mar. 23, 2023), https://assembly.cornell.edu/sites/default/files/resolution_31_-_content_warning_s.pdf (“Student Assembly implores all instructors to provide content warnings on the syllabus for any traumatic content that may be discussed, including but not limited to: sexual assault, domestic violence, self-harm, suicide, child abuse, racial hate crimes, transphobic violence, homophobic harassment, [and] xenophobia.”).

20. *Id.* at 3 (“[S]tudents who choose to opt-out of exposure to triggering content will not be penalized, contingent on their responsibility to make up any missed content.”).

21. Rodge Reschini, *Pollack Rejects Trigger Warnings*, CORNELL REV. (Apr. 3, 2023), <https://www.thecornellreview.org/breaking-pollack-rejects-trigger-warnings/> (alteration in original).

22. *Letter from John Ellison, Dean of Students, The College, Univ. of Chicago, to Class of 2020 Incoming Students*, UNIV. OF CHICAGO, https://news.uchicago.edu/sites/default/files/attachments/Dear_Class_of_2020_Students.pdf (last

B. The Case for Trigger Warnings

Many educators, including those at the college and law school levels, have weighed in on the issue of trigger warnings, and many of them have built a cogent and persuasive case in favor of using trigger warnings. This Section addresses the key arguments for using trigger warnings.

1. Trigger Warnings Are a Critique of Outdated Law School Pedagogy and Empower Students as Equal Partners in Learning.

Some law school instructors argue that trigger warnings are a response to the changing nature of law school, with its high price tag and focus on profits.²³ Law school pedagogy, some argue, is an outdated system of learning that does not account for the changing demographics of law students.²⁴ Thus, students' wishes for trigger warnings should not be seen as grounded in weakness but in strength because, by demanding warnings, students are grappling with and critiquing the traditional law school pedagogy.²⁵ In other words, trigger warnings are a way for students to create a truly democratic space in the law school classroom where they can be equal partners in the learning process.²⁶ As one author put it, while there is much discussion of instructors' academic freedom, there should be equal consideration of the "academic freedoms of

visited Mar. 21, 2024) ("Once here you will discover that one of the University of Chicago's defining characteristics is our commitment to freedom of inquiry and expression. . . . Our commitment to academic freedom means that we do not support so-called 'trigger warnings.'").

23. See Kim D. Chanbonpin, *Crisis and Trigger Warnings: Reflections on Legal Education and the Social Value of the Law*, 90 CHICAGO-KENT L. REV. 615, 636–37 (2015).

24. *Id.*

25. See *id.* at 626–27.

26. *Id.* at 627, 632; see also Richard Jochelson et al., *Reconsidering Legal Pedagogy: Assessing Trigger Warnings, Evaluative Instruments, and Articling Integration in Canada's Modern Law School Curricula*, 44 MANITOBA L.J. 87, 102 (2021); Rachel H. Smith & Rosa Castello, *The Kids Are Alright*, 35 SECOND DRAFT 1, 3 (2022) ("[T]rigger warnings are a doorway to rethinking the relationship between students and professors and between learning and law school pedagogy.").

students.”²⁷

2. Law School Is Not a Sterile Environment—It Is an Emotional One.

Law school instructors also argue that a law school education confined to learning objectivity and dispassionate analysis is seriously flawed.²⁸ Some students, particularly women and underrepresented minorities, cannot separate their own experiences from the legal doctrines and cases they study in class so easily.²⁹ For example, students who have been victims of sexual assault may find it difficult to be neutral, dispassionate learners when learning about cases involving sexual assault or rape.³⁰ Beyond sexual violence, discussions of difficult topics abound in law school, encompassing “murder, racism, and persistent social and economic inequality.”³¹ One law professor, who studies inequality in the legal profession, even “fel[t] compelled to apologize [to students] . . . because the learning of the law—particularly for racial minorities—can be intellectually violent.”³² Thus, trigger warnings can be viewed as “act[s] of compassion . . . towards vulnerable populations”; using trigger warnings can be a strategy for creating a “safer and more just pedagogical environment.”³³ As such, trigger warnings can help students engage when otherwise they might not due to their past traumatic

27. See Ashleigh Maldonado, *The Intersection of Academic Freedom and Trigger Warnings*, 7 J. MULTICULTURAL AFFS. 1, 2 (2022), <https://scholarworks.sfasu.edu/jma/vol7/iss3/4>.

28. See Chanbonpin, *supra* note 23, at 628.

29. *Id.*; see also Seear, *supra* note 11, at 5 (explaining that a more open discussion about emotions and the law can help “break down the (gendered) binary logic of law as dispassionate, rational and ordered, and send a signal to lawyers—new and old alike—that experiencing and expressing emotion is okay”).

30. See Chanbonpin, *supra* note 23, at 628, 631 (noting that for “survivors of rape and other forms of violence, these classroom discussions are not merely academic”).

31. *Id.* at 632.

32. Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can Be Intellectually Violent*, A.B.A.J. (Oct. 15, 2020), https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent.

33. Seear, *supra* note 11, at 3–4.

experiences.³⁴ They can serve as a buffer, particularly for marginalized students, so that students can be prepared for (or avoid) harmful content.³⁵

In fact, law schools—and the lawyers and judges that graduate from them—do far more than just call “balls and strikes,” divorced from bias and subjectivity.³⁶ ABA accreditation standards are increasingly recognizing that students’ beliefs and values beyond black-letter law must be part of the curriculum.³⁷ For example, in its interpretive note for Standard 302, the ABA says that professional skills to be developed by law schools may include “cultural competency, and self-evaluation.”³⁸ Similarly, Standard 304(a)(4) requires experiential courses to provide opportunities for student “self-evaluation.”³⁹ “Metacognitive thinking, an intellectual strategy for mastering complex material,” focuses on many activities that involve the self, such as “self-reflection[] and self-correction.”⁴⁰ Standard 303(b)(3) also requires law schools to provide substantial opportunities for “the development of a professional identity.”⁴¹ The interpretation of that standard includes “an intentional exploration of the values, guiding principles, and well-being practices considered foundational to

34. See Jochelson, *supra* note 26, at 97.

35. See Maldonado, *supra* note 27, at 6; Chanbonpin, *supra* note 23, at 637; Kate Manne, *Why I Use Trigger Warnings*, THE N.Y. TIMES (Sept. 19, 2015), <https://www.nytimes.com/2015/09/20/opinion/sunday/why-i-use-trigger-warnings.html> (“[T]rigger warnings . . . allow those who are sensitive to these subjects to prepare themselves for reading about them, and better manage their reactions.”).

36. L. Danielle Tully, *The Cultural (Re)turn: The Case for Teaching Culturally Responsive Lawyering*, 16 STAN. J. CIV. RTS. & CIV. LIBERTIES 201, 206 (2020).

37. See generally AM. BAR ASS’N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, 2022–2023 (2022) [hereinafter ABA STANDARDS], https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/22-23-standard-ch3.pdf (requiring law school curriculums to include topics such as professional identity development, cross-cultural competency, and public service).

38. *Id.* at 18.

39. *Id.* at 20.

40. Jaime Alison Lee, *From Socrates to Selfies: Legal Education and the Metacognitive Revolution*, 12 DREXEL L. REV. 227, 229 (2020).

41. ABA STANDARDS, *supra* note 37, at 18.

successful legal practice.”⁴² To develop a professional identity, law schools need to teach skills that foster self-awareness, empathy, ethical sensitivity, and other relational skills.⁴³ Finally, Standard 303(c) requires law schools to provide education to law students on “bias, cross-cultural competency, and racism” and provides that lawyers are obligated to create a justice system that provides equal access and “eliminates bias, discrimination, and racism in the law.”⁴⁴ In an article addressing the importance of teaching cross-cultural competency, one law school professor made the point that “law and stories come from somewhere and your perception of both is subjective.”⁴⁵ Therefore, students must “heighten [their] self-awareness[], [and] [c]onsider how [their] identit[ies] and experiences” have impacted their choices when engaging with course content in law school.⁴⁶

3. Trigger Warnings Are Not That Different from Other Items Professors Must Include in Their Syllabi.

Although one of the key anti-trigger warning arguments is the threat warnings pose to academic freedom, trigger warning proponents argue that requiring professors to place certain information in a syllabus is nothing new: professors are frequently told what information must go in a syllabus.⁴⁷ For example, the University of Arizona “highly encourage[s]” instructors to include certain information in their syllabi, such as a statement that the “course affirms people of all gender expressions and gender identities” and other information about preferred names and pronouns.⁴⁸ For its part, Penn State Law School prescribes what

42. *Id.* at 19.

43. See Eliza Vorenberg et al., *Teaching the Newly Essential Knowledge, Skills, and Values in a Changing World*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 253, 260 (Deborah Maranville et al., eds., 2015).

44. See ABA STANDARDS, *supra* note 37, at 18–20.

45. Tully, *supra* note 36, at 253.

46. *Id.*

47. See Chanbonpin, *supra* note 23, at 625.

48. See *Syllabus Policies*, UNIV. OF ARIZ., <https://catalog.arizona.edu/syllabus-policies> (requiring all course syllabi to include university syllabus policies, including a “Preferred Name and Pronoun” policy) (last visited Mar. 22, 2024).

professors should include in their syllabi to comport with “best practices.”⁴⁹ Included among the requirements is a counseling and psychological services statement and a statement advising students of how to report educational equity concerns.⁵⁰ Thus, the pro-warning camp seems implicitly to argue that placing a trigger warning in a syllabus is easy enough, particularly when balanced against a student’s anxiety and need to feel safe in the classroom.

4. Trigger Warnings May Not Wholly Prevent Students from Being Anxious, but They Can Be Part of an Overall Package To Help Students Manage Anxiety.

Further, in response to the argument that trigger warnings cannot magically create perfectly happy students, if a student is still suffering from anxiety, then professors can always refer them to mental health counseling for further support.⁵¹ In fact, in one study conducted at the University of Manitoba, the dean of that law school found that more than seventy-five percent of the students surveyed agreed that “students should be provided with information about counselling after learning potentially triggering information in a class.”⁵² Thus, professors who are pro-warning are not arguing it is a panacea, merely that trigger warnings represent another arrow in their quiver that can help enhance learning.⁵³

5. Trigger Warnings Can Create a More Culturally Sensitive, Inclusive, and Antiracist Classroom.

Finally, educators have argued that trigger warnings can create a more inclusive and antiracist classroom.⁵⁴ For example, in one legal writing class that used a Title VII hostile work environment hypothetical for a project, the professors generally used “code words” instead of outright sexist and racist comments,

49. *Sample Syllabus*, PENN STATE L., <https://pennstatelaw.psu.edu/sample-syllabus> (last visited Mar. 22, 2024).

50. *Id.*

51. See Chanbonpin, *supra* note 23, at 632.

52. Jochelson, *supra* note 26, at 111.

53. See Chanbonpin, *supra* note 23, at 631–32.

54. See Smith & Castello, *supra* note 26, at 8.

but they did include one slur: “bitchy.”⁵⁵ They found that many students were uncomfortable using this word.⁵⁶ Further, because they knew students could get upset reading the caselaw, which involved sexist and racist comments, they warned the students about the language they would encounter and stated they would never expect students to repeat the offensive language in class.⁵⁷ To the students, repeating this language perpetuated a sexist and racist perspective.⁵⁸ Favoring trigger warnings, the professors concluded that instructors should “make legal writing classrooms, which often exist in intimidating and exclusive white spaces, more inclusive and antiracist.”⁵⁹

Indeed, seeking to create an antiracist classroom environment is a laudable goal.⁶⁰ Black law students are simply not as comfortable as white law students in the classroom. A 2020 survey conducted by the Law School Survey of Student Engagement concluded that “law students of color, especially Black women, and other law students from underrepresented groups continue to feel that their law schools do not value their presence or work hard enough to foster environments conducive to a wide range of students.”⁶¹ The survey collected responses from 13,000 law students at 68 law schools.⁶² “Almost a quarter (23%) of Black law students nationwide say their schools do ‘very little’ to create a supportive environment for race/ethnicity, compared to just 6.8% of white students.”⁶³

The goal of creating a more inclusive classroom is referenced explicitly in university policies regarding trigger warnings. For

55. *Id.* at 5.

56. *See id.* at 6.

57. *Id.* at 7.

58. *Id.* at 8.

59. *See id.*

60. There have been no studies proving that trigger warnings do achieve this goal. And educators that are against trigger warnings would no doubt agree this is a desirable goal but would probably argue that there are other ways to create an antiracist classroom besides using trigger warnings.

61. *2020 Diversity & Exclusion*, L. SCH. SURV. OF STUDENT ENGAGEMENT 4 (2020), <https://lssse.indiana.edu/wp-content/uploads/2020/09/Diversity-and-Exclusion-Final-9.29.20.pdf>.

62. *Id.* at 6.

63. *Id.* at 7.

example, in its introduction to content and trigger warnings, the University of Michigan offers several related reasons to use trigger warnings: they “contribute to inclusive pedagogy,” make the classroom more accessible, and, rather than “babying” students, recognize that students with mental health disabilities matter.⁶⁴ Similarly, the University of Connecticut ties trigger warnings into inclusivity, stating that using content or trigger warnings in a syllabus “supports a safe, inclusive, engaged learning environment.”⁶⁵

While the arguments in favor of trigger warnings are robust, the opposing arguments against using trigger warnings are similarly thoughtful. The next Section explores the arguments against using trigger warnings.

C. The Case Against Trigger Warnings

Of course, not all educators support using trigger warnings. Many of those who oppose trigger warnings have contributed their own persuasive arguments to the vigorous and ongoing debate. This Section addresses the key arguments against using trigger warnings.

1. Trigger Warnings Infringe on Academic Freedom.

Probably the number one argument against trigger warnings is that requiring professors to use them infringes on their academic freedom. In 2014, the American Association of University Professors drafted a report on trigger warnings.⁶⁶ The authors characterized the demand that instructors provide trigger warnings in advance of assigned material as a “threat to academic freedom.”⁶⁷ The report states that trigger warnings are “infantilizing and anti-intellectual,”⁶⁸ they single out certain topics for attention, may result in professors eliminating material

64. UNIV. OF MICH., *supra* note 5.

65. UNIV. OF CONN., *supra* note 4.

66. *On Trigger Warnings*, AM. ASS’N OF UNIV. PROFESSORS, https://www.aaup.org/file/2014-Trigger_Warnings.pdf (last visited Aug. 6, 2023) (framing trigger warnings as a “current threat to academic freedom”).

67. *Id.*

68. *Id.*

in their classes altogether, and may have a special impact on non-tenured and contingent faculty who will feel even more pressure to use warnings or be fired.⁶⁹ In essence, the report concludes that using trigger warnings would interfere in a professor's freedom to choose what and how to teach.⁷⁰

A year later, the National Coalition Against Censorship conducted a national survey of college and university educators on trigger warnings and received responses from over 800 members.⁷¹ According to the (admittedly non-scientific) results, although professors expressed concern and respect for students' needs, 62% believed trigger warnings would have a negative impact on academic freedom.⁷² Nearly half of the respondents were concerned that trigger warnings would impact classroom dynamics and a significant number of respondents were concerned warnings could lead to students avoiding class materials or even refusing to attend class.⁷³

Concerns about academic freedom also appeared in the University of Chicago's statement to the incoming class of 2020, where the university explained that one of its "defining characteristics" was its "commitment to freedom of inquiry and

69. *Id.* ("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.")

70. *Id.* ("Trigger warnings . . . threaten the academic freedom of teachers and students whose classrooms should be open to difficult discussions, whatever form they take.")

71. *What's All This About Trigger Warnings?*, NAT'L COAL. AGAINST CENSORSHIP 2 (Dec. 2015) [hereinafter *NCAC Trigger Warning Study*], <https://ncac.org/wp-content/uploads/2019/07/Trigger-Warning-Report-2019.pdf>. The National Coalition Against Censorship has been in existence for 50 years, and its mission is to be a "first responder" to protect academic freedom. *About Us*, NAT'L COAL. AGAINST CENSORSHIP, <https://ncac.org/about-us> (last visited Mar. 22, 2024). It was "formed by a group of activists affiliated with the ACLU." *Id.* Interestingly, several members of its board of directors are lawyers or professors of law. *Board of Directors & Council of Advisors*, NAT'L COAL. AGAINST CENSORSHIP, <https://ncac.org/about-us/board-council-of-advisors> (last visited Aug. 6, 2023).

72. *See NCAC Trigger Warning Study*, *supra* note 71, at 2, 3.

73. *See id.* at 7. About 17% of the respondents, however, believed that "trigger warnings . . . could have a positive effect on education and classroom dynamics." *Id.* at 8.

expression,” meaning that it did not support trigger warnings but instead fostered the free exchange of ideas.⁷⁴ Cornell’s president also referred recently to concerns about “academic freedom and freedom of inquiry” when she vetoed the student-approved resolution demanding trigger warnings.⁷⁵

The concern about academic freedom is not just theoretical. For example, Cornell law professor Sherry Colb (without using the term academic freedom explicitly) argued that one reason trigger warnings should not be required is that some of her colleagues were choosing to eliminate rape law from criminal law classes rather than deal with the political controversy surrounding the subject.⁷⁶ She argued that leaving rape out could signal to students that “sexual assault is not a very important, common, or serious crime.”⁷⁷ She further argued that “[a]n education necessarily means encountering ideas and theories that do not sit well with what one already believes. That is indeed a feature and not a bug of the learning process.”⁷⁸

Professor Jeannie Suk Gersen, who teaches constitutional law, criminal law, family law, and sexual assault and harassment at Harvard, made a similar case about teaching rape law.⁷⁹ She compared a student who is, as she described it, afraid of hearing about this area of law to “a medical student who is training to be a surgeon but who fears that he’ll become distressed if he sees or handles blood.”⁸⁰ Specifically, Professor Gersen highlighted that students are asking either for trigger warnings or to miss classes that focus on sexual violence, and because of student complaints and discomfort, new criminal law instructors are eliminating the

74. *Letter from John Ellison*, *supra* note 22.

75. Rosman, *supra* note 8.

76. Colb, *supra* note 11.

77. *Id.*

78. *Id.*

79. See Jeannie Suk Gersen, *The Trouble With Teaching Rape Law*, THE NEW YORKER (Dec. 15, 2014), <https://www.newyorker.com/news/news-desk/trouble-teaching-rape-law>; see also Seear, *supra* note 11, at 17 (“[T]here is . . . evidence that academics are adapting their teaching practices to avoid potentially triggering content altogether. . . . [such as a] social work professor from the University of California, Berkeley [who] . . . drop[ped] a lecture on abortion . . . based on concerns that it could be upsetting.”).

80. Gersen, *supra* note 79.

topic altogether, a result that is “a tremendous loss—above all to victims of sexual assault.”⁸¹ In fact, one law professor argued that eliminating topics such as rape or abortion for fear of upsetting students could mean the pool of professionals equipped to represent such victims shrinks.⁸²

Thus, the freedom to teach difficult subjects without interference is a key argument against trigger warnings.

2. Law School Is a Place for Dispassionate and Objective Analysis—So Students Can Be Prepared for the Practice of Law.

Another argument against trigger warnings is that providing them or eliminating content rather than providing them is, in some respects, antithetical to a law school education. One of the main goals of law school is to get each law student to “think[] like a lawyer.”⁸³ “[T]he Socratic method is a way of teaching that . . . encourage[es] students to question their own . . . beliefs [:] [doing so can] lead[] to discomfort[] and even to anger,” but those reactions are considered a necessary step “on the way to understanding.”⁸⁴ The Socratic method also requires students to think on the spot, answer questions precisely, and take intellectual risks. It sometimes sparks debate. And it frequently forces students to engage in critical self-reflection. Trigger warnings may undermine these benefits by signaling to students

81. *See id.*

82. *See* Seear, *supra* note 11, at 18.

83. *E.g.*, *Educational Goals & Learning Outcomes*, UNIV. OF NOTRE DAME: THE L. SCH., <https://law.nd.edu/about/educational-goals-and-learning-outcomes/> (last visited Mar. 22, 2024); Chanbonpin, *supra* note 23, at 627.

84. Lukianoff & Haidt, *supra* note 11. As the University of Chicago Law School describes it:

[T]he Socratic Method is a tool and a good one at that used to engage a large group of students in a discussion, while using probing questions to get at the heart of the subject matter. The Socratic Method is not used at UChicago to intimidate, nor to ‘break down’ new law students, but instead for the very reason Socrates developed it: to develop critical thinking skills in students and enable them to approach the law as intellectuals.

The Socratic Method, UNIV. OF CHI.: THE L. SCH., <https://www.law.uchicago.edu/socratic-method> (last Mar. 22, 2024).

that such debates either should be limited or prohibited.⁸⁵ “This is antithetical to both . . . pedagogy [in legal education] and the intellectual curiosity that [law school] should . . . be encouraging.”⁸⁶ An overriding learning goal is teaching students “to engage in sophisticated legal research and analysis, including analogical reasoning, critical thinking, problem solving, and policy analysis.”⁸⁷ Stripping or limiting classroom content because it might be offensive could undermine these goals. Giving trigger warnings or omitting offensive words or epithets because they will trigger student sensitivities is not going to prepare students for the realities of practicing law.⁸⁸ Let’s face it: no lawyer, no judge, and no client is going to give a trigger warning before discussing potentially triggering content.

Therefore, the argument goes, “Rather than “trying to protect students from words and ideas they will inevitably encounter . . . [we] should equip [them] to thrive in a world full of words and ideas they cannot control.”⁸⁹

3. Trigger Warnings Treat Students as “Snowflakes.”

There is also a recurrent theme in the anti-trigger warning camp that using trigger warnings reflects an unwarranted assumption that students are weak, fragile, and in need of protection.⁹⁰ Jack Halberstam, an expert in queer and transgender theory and a professor of English at Columbia University, emphasized that trigger warnings treat students as “fragile

85. Seear, *supra* note 11, at 16.

86. *Id.*

87. See *Institutional Learning Outcomes*, UNIV. OF ARIZ.: JAMES E. ROGERS COLL. OF L., <https://law.arizona.edu/institutional-learning-outcomes> (last visited Mar. 22, 2024).

88. Kennedy & Volokh, *supra* note 11, at 33 (“[L]aw schools should deal with the facts of life . . . [and should] reject a rule that words that are routinely mentioned in courtrooms, opinions, and briefs are taboo in legal academic settings.”); see also Smith & Castello, *supra* note 26, at 7 (referring to the concern law professors have raised that trigger warnings will not prepare students for the rigors of the legal profession).

89. Lukianoff & Haidt, *supra* note 11.

90. See, e.g., *id.*; Halberstam, *supra* note 3, at 539; Myron Jackson, *Unmasking the Fragility of Trigger Warnings, Safe Spaces, and Code-Switching on Campus*, 71 EDUC. THEORY 247, 247 (2021).

organism[s] with no intellectual immune system and a minefield of a psyche that may explode into pieces at any moment.”⁹¹ He’s not alone in this view. Greg Lukianoff, a constitutional lawyer, and Jonathan Haidt, a social psychologist, argue that trigger warnings presume that students are extraordinarily fragile.⁹² Similarly, Myron Jackson, a professor of philosophy, suggests that trigger warnings promote fragility and passivity when democracy requires resilient, active, and engaged citizens.⁹³ He points to uncomfortable class discussions about race as an example and suggests that “learning environments have to promote an openness that instigates questions about the [e]ffects of anger, annoyance, and fear.”⁹⁴ As a professor of history at Carleton College explained, a trigger warning “infantilizes” students when instead institutions should be preparing students to be adults.⁹⁵ In other words, “[l]ife happens to you . . . wh[en] you are walking, wh[en] you are in the supermarket The most challenging moments in life rarely come with warning.”⁹⁶

Some educators go even further and suggest that rather than giving students power in the classroom, trigger warnings result in students “vulnerable to paternalistic modes of protection.”⁹⁷ According to this argument, the students who ask for trigger warnings today could be more vulnerable to surrendering their

91. Halberstam, *supra* note 3, at 539. In criticizing trigger warnings, Halberstam makes a clear distinction between content warnings and trigger warnings. Unlike a content warning, he states, the trigger warning “believes in a student or viewer who is unstable and damaged and could at any moment collapse into crisis.” *Id.* at 537. He also argues that if students had demanded content warnings instead of trigger warnings, “few faculty would have resisted.” *Id.* at 538.

92. Lukianoff & Haidt, *supra* note 11.

93. See Jackson, *supra* note 90, at 249.

94. *Id.* at 255. Accordingly, unlike Smith and Castello—two legal writing professors who argue that trigger warnings can create a more antiracist classroom—Professor Jackson implies that giving them will create a more racist classroom because, in general, white students can avoid talking about race while Black students cannot avoid these uncomfortable conversations, meaning that suppressing them through trigger warnings will prevent the kind of cultural “straight talk” that instructors should tap into to promote racial literacy. See Smith & Castello, *supra* note 26, at 8; Jackson, *supra* note 90, at 254–55.

95. Rosman, *supra* note 8.

96. *Id.*

97. Halberstam, *supra* note 3, at 541.

civil liberties when the government offers to keep them safe in the future.⁹⁸ Further, when professors choose to give warnings, they maintain the sole power over what types of materials will offend students or will not, which involves value judgments around how students should be expected to feel.⁹⁹ In other words, the professors alone are left to decide what might be upsetting or traumatizing. Contrary to the argument that trigger warnings place power in the hands of students, they in fact leave the decisions about when and whether to issue trigger warnings solely to the professor's discretion. Further, another negative consequence is that a student who does not experience any sense of discomfort after a professor gives a trigger warning might decide to avoid that area of the law because the student did not feel the right amount of empathy.¹⁰⁰

4. Trigger Warnings May Be Harmful and Counter-Intuitive for Students with PTSD and Incite Unnecessary Fear in Students Without PTSD.

Educators also argue that trigger warnings do not work for students whether or not they have PTSD.¹⁰¹ For those students who have PTSD, trigger warnings do not work for two reasons. First, failing to provide trigger warnings does not leave students with PTSD vulnerable to experiencing trauma at any moment. As one social psychologist put it, “[i]t’s hard to imagine how novels illustrating classism and privilege could provoke or reactivate the kind of terror that is typically implicated in PTSD.”¹⁰² Law professor Sherry Colb explained that it is incorrect to assume someone with PTSD will feel retraumatized when they read or hear a lecture about someone returning from war and argued that it does a disservice to those with PTSD to assume otherwise.¹⁰³ Similarly, psychologists at Harvard noted in a study on trigger warnings that trigger warnings may give someone the impression

98. *Id.* at 541–42.

99. Seear, *supra* note 11, at 12.

100. *Id.* at 16.

101. Lukianoff & Haidt, *supra* note 11.

102. *Id.*

103. Colb, *supra* note 11.

that survivors are “emotionally incapacitated” when, in fact, “most trauma survivors are resilient and show few symptoms of PTSD after an initial period of adjustment.”¹⁰⁴ Thus, if professors are incorporating trigger warnings for those with PTSD because the material will retraumatize those individuals, that view is not only incorrect but erroneously stereotypes those with PTSD.

Second, while trigger warnings might give students with PTSD an opportunity to avoid certain material, avoidance is not necessarily helpful from a therapeutic standpoint for someone diagnosed with PTSD.¹⁰⁵ In fact, cognitive behavioral therapy, which was designed to help people with PTSD, exposes patients to the source of their trauma or the emotions associated with the trauma to help reduce negative traumatic associations.¹⁰⁶ This exposure is, of course, done in a controlled setting; the goal is for the patient to regain a sense of control and self-confidence, rather than using escapism and avoidance behaviors.¹⁰⁷ Even though the classroom is not a therapeutic setting, the point is that assuming people with PTSD are better off avoiding difficult situations in general is inconsistent with professional methods of treating PTSD.

As for those students who do not have PTSD, trigger warnings have the potential to make students feel more anxious, not less.¹⁰⁸ As psychiatrist Sarah Roff wrote in *The Chronicle of Higher Education*: “One of my biggest concerns about trigger warnings is that they will apply . . . to all students, creating an atmosphere in which they are encouraged to believe there is something

104. Benjamin W. Bellet et al., *Trigger Warning: Empirical Evidence Ahead*, 61 J. BEHAV. THERAPY & EXPERIMENTAL PSYCHIATRY 134, 135 (2018), <https://www.sciencedirect.com/science/article/abs/pii/S0005791618301137?via%3Dihub> [<https://doi.org/10.1016/j.jbtep.2018.07.002>].

105. This is not only true with respect to patients with PTSD. Cognitive behavioral therapy is used to treat a broad range of disorders, such as anxiety, depression, and addiction. Lukianoff & Haidt, *supra* note 11.

106. *Cognitive Behavioral Therapy (CBT)*, AM. PSYCH. ASS’N, <https://www.apa.org/ptsd-guideline/treatments/cognitive-behavioral-therapy> (last updated July 31, 2017) (defining CBT and describing several of its most common practices, including “[e]xposure to the trauma narrative . . . to help the patient reduce avoidance and maladaptive associations with the trauma”).

107. *Id.*

108. Lukianoff & Haidt, *supra* note 11.

dangerous or damaging about discussing difficult [subjects].”¹⁰⁹ In other words, it might cause students without PTSD to ruminate over the material and agonize whether to miss class to feel less anxious.¹¹⁰

Anti-trigger warning educators have analogized the negative impact of trigger warnings on student anxiety to the negative impact of trigger warnings on patients who are given warnings about medication.¹¹¹ Doctors have found that when patients are told they are going to experience negative side effects from medication, they are more likely to develop those side effects, even when given a placebo.¹¹² As an example, when patients were given a muscle relaxant, “those who were told it was a stimulant reported greater muscle tension than those who were told it was a relaxant.”¹¹³ Similarly, “after being told that a mild electric current that induces headache would be passed through their heads,” “[m]ore than two thirds of healthy volunteers experienced a headache” even though “no electricity had been administered.”¹¹⁴

Therefore, for individuals both with and without PTSD, trigger warnings may make things worse, not better.

III. THE SCIENTISTS WEIGH IN

As discussed above, the view from educators on the topic of trigger warnings has great value because they are in the trenches with students.¹¹⁵ Psychologists, however, who are experts in human behavior, have also assumed an important role in

109. Sarah Roff, *Treatment Not Trigger Warnings*, THE CHRON. OF HIGHER EDUC. (May 23, 2014), <https://www.chronicle.com/blogs/conversation/treatment-not-trigger-warnings>.

110. See Colb, *supra* note 11 (“[M]ost people who experience trauma do not develop long-term PTSD.”).

111. Colb, *supra* note 11.

112. Madeline J. Bruce et al., *Students’ Psychophysiological Reactivity to Trigger Warnings*, 42 CURRENT PSYCH. 5470, 5471 (2023), <https://link.springer.com/article/10.1007/s12144-021-01895-1> [<https://doi.org/10.1007/s12144-021-01895-1>].

113. Arthur J. Barsky et al., *Nonspecific Medication Side Effects and the Nocebo Phenomenon*, 287 J. AM. MED. ASS’N 622, 624 (2002).

114. *Id.*

115. See discussion *supra* Section II.

assessing the pedagogical value of trigger warnings.¹¹⁶ In fact, some scientists have posited that not only is the psychology of trigger warnings important, but it should also “lead the way.”¹¹⁷ This makes sense. If you were going to put trigger warnings on trial, and you wanted to prove that they were either harmful or helpful to the students, what better evidence than empirical data and expert testimony from psychologists? Even if educators believe that empirical data conducted in a lab cannot successfully reproduce what transpires in the classroom, empirical findings should at least be in the mix as part of the vigorous debate surrounding trigger warnings.¹¹⁸

A. Studies Indicate Trigger Warnings Do Not Lessen Student Anxiety.

First, if instructors are giving trigger warnings because they think warnings will lessen student anxiety, recent studies show that trigger warnings are “functionally inert,” and, in some instances, will slightly increase anxiety.¹¹⁹ In 2018, a Harvard psychology professor specializing in the psychopathology of anxiety and related disorders, along with two Ph.D. students, wanted to study whether peoples’ anxiety would be lessened more

116. See Boysen, *supra* note 9, at 165.

117. *Id.*

118. See *id.* at 163 (“[B]oth sides have formed their arguments almost exclusively on anecdotes and rhetoric.”). Interestingly, while some legal educators have alluded to the scientific findings in setting forth their opinions on trigger warnings, other legal educators have not considered those findings in the calculus. Compare Jeannie Suk Gersen, *What if Trigger Warnings Don’t Work?*, THE NEW YORKER (Sept. 28, 2021), <https://www.newyorker.com/news/our-columnists/what-if-trigger-warnings-dont-work> (discussing “around a dozen psychological studies” and noting that the findings “differ from conventional wisdom” because “they find that trigger warnings do not . . . lessen negative reactions” and “the opposite may be true”), with Smith & Castello, *supra* note 26 (in arguing for trigger warnings, the authors did not mention the scientific studies on trigger warnings).

119. Payton J. Jones et al., *Helping or Harming? The Effect of Trigger Warnings on Individuals with Trauma Histories*, 8 CLINICAL PSYCH. SCI. 905, 905–06 (2020), <https://journals.sagepub.com/doi/epub/10.1177/2167702620921341> [<https://doi.org/10.1177/2167702620921341>]. Lessening student anxiety is a legitimate goal because, in general, studies show that if students can avoid extreme levels of anxiety, students can increase their performance in class. See Boysen, *supra* note 9, at 170; Simon, *supra* note 11, at 6–8.

with or without warnings about distressing material.¹²⁰ For this study—one of the first empirical studies on trigger warnings—the scientists used 270 participants with a mean age of 37.¹²¹ The scientists only recruited people with no history of trauma (“non-traumatized individuals”), 80% of whom believed that trigger warnings should be used.¹²² They also asked the participants to indicate whether they believed exposure to offensive words could cause harm.¹²³ To simulate an academic setting, they used “passages from world literature” that might be studied in a “high school or college” classroom.¹²⁴ The most distressing passage, for example, was a murder scene from *Crime and Punishment*.¹²⁵ Participants were randomly assigned to a “No Warning” or “Trigger Warning” condition.¹²⁶ The trigger warning said, “TRIGGER WARNING: The passage you are about to read contains disturbing content and may trigger an anxiety response, especially in those who have a history of trauma.”¹²⁷ The subjects then read the passages and evaluated their responses on measures such as sadness, happiness, anxiety, or anger.¹²⁸ While the scientists found the trigger warnings did not have an impact on anxiety in general, they described a “self-fulfilling prophecy”: individuals who believed words could cause harm experienced increased anxiety after receiving a trigger warning but individuals who did not believe words could cause harm did not experience an increase.¹²⁹ The scientists concluded that “trigger warnings may present nuanced threats to selective domains of psychological resilience.”¹³⁰

120. See Bellet, *supra* note 104, at 134.

121. *Id.* at 136, 137. Although the scientists stated that the age of the participants was a weakness of the study because they were not college students, for the purposes of law school students, who are older, this study is more on point than it would be if only college students participated.

122. *Id.* at 137–38.

123. *Id.* at 135–36.

124. *Id.* at 136.

125. *Id.*

126. *Id.* at 137.

127. *Id.*

128. *Id.*

129. *Id.* at 139–40.

130. *Id.* at 140.

Two years later, some of these same scientists replicated the experiment, this time with participants who were all college students.¹³¹ They used 462 students who were all non-traumatized individuals.¹³² As with the first study, the scientists measured emotional reaction to passages from world literature (the same passages used in the first study).¹³³ The majority of these participants also favored the use of trigger warnings.¹³⁴ The second study could not replicate the first study's finding of increased anxiety in people who believed words could cause harm.¹³⁵ However, the scientists nonetheless explained that what they did not find was just as important as what they did find: "in neither our original nor current experiment did trigger warnings work as intended. That is, they failed to reduce anxiety to distressing content. Rather, both studies strongly imply that trigger warnings reliably cause small increases in anxiety in college students without a history of trauma."¹³⁶

Subsequently, a different group of scientists concluded that trigger warnings can create a "nocebo effect"—a detrimental effect produced by negative expectations, assessed based on psychophysiological responses such as heart and respiration rate after participants were given warnings.¹³⁷ In that study, 106 college students participated, 85% of whom reported a potential history of trauma.¹³⁸ Participants were told to look at a clip from

131. Benjamin W. Bellet et al., *Trigger Warnings and Resilience in College Students: A Preregistered Replication and Extension*, J. EXPERIMENTAL PSYCH.: APPLIED 1 (2020), <https://gwern.net/doc/psychology/2020-bellet.pdf> [<https://doi.org/10.1037/xap0000270>].

132. *See id.* at 3.

133. *See id.* at 2.

134. *Id.* at 5.

135. In a later study these scientists conducted with individuals who were diagnosed with PTSD, they posited that the results were not replicated because of a small sample size, because the participants were crowd-sourced and older, or because the original results might have been a false positive. The failure to replicate this result, however, did not alter their overall conclusion—trigger warnings are unhelpful for trauma survivors, college students, non-traumatized individuals, and mixed groups of participants. *See generally* Jones, *supra* note 119.

136. Bellet, *supra* note 131, at 5.

137. Bruce et al., *supra* note 112, at 5470–71.

138. *Id.* at 5472.

the movie *Harry Potter and the Goblet of Fire*, which depicted the torture and murder of a spider.¹³⁹ Participants were given either a trigger warning, a simple PG-13 warning, or no warning before watching the clip.¹⁴⁰ Those who received the trigger warning were told: “The next page has the link to a movie clip. Researchers have been asked to give a trigger warning for the clip.”¹⁴¹ The scientists found that students who received a trigger warning experienced a statistically significant, although small, increase in heart rate and a large increase in respiration rate.¹⁴² Thus, “[t]he trigger warning . . . condition created more arousal than the PG-13 and [no warning] conditions, even when controlling for posttraumatic stress levels and attitudes toward trigger warnings.”¹⁴³ The scientists concluded that “trigger warnings appear to create a nocebo-like effect,” and that “if science continues to examine various contexts where trigger warnings are found to have negligible benefits in addition to anxiogenic effects, there is a reluctance to recommend their use.”¹⁴⁴

*B. Research Shows Trigger Warnings Slightly Increase
Anxiety for Trauma Survivors and Students with PTSD.*

Second, trigger warnings will likely increase rather than lessen anxiety in students with PTSD.¹⁴⁵ Preliminarily, while a large percentage of college students (no studies have measured law students specifically) have experienced traumatic events, “fewer than 10% of people, including college students, who experience . . . trauma go on to develop PTSD” as defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM).¹⁴⁶ This is because “experiences must be relatively extreme to meet

139. *Id.* at 5473.

140. *Id.*

141. *Id.*

142. *Id.* at 5473–74.

143. *Id.* at 5475–76.

144. *Id.* at 5477.

145. *See* Jones, *supra* note 119, at 906.

146. *See* Boysen, *supra* note 9, at 167. Further, “[P]eople . . . with PTSD [could] have subtle cognitive deficits that could affect academic performance regardless of the presence of trigger warnings.” *Id.* at 170.

the diagnostic criteria for PTSD.”¹⁴⁷ In a 2020 study, 451 participants, all of whom were trauma survivors, read literature passages preceded by a trigger warning or no trigger warning.¹⁴⁸ The scientists found no evidence that trigger warnings were helpful for trauma survivors or individuals with PTSD; in fact, for those participants who met a clinical cutoff based on the severity of their PTSD symptoms, trigger warnings slightly increased anxiety.¹⁴⁹ They also “found evidence that trigger warnings increase the narrative centrality of trauma among survivors, which is countertherapeutic.”¹⁵⁰ In sum, the scientists emphasized that their findings regarding “[t]rigger warnings should serve as an important caution to both clinical and nonclinical professionals who use interventions aimed to improve well-being among trauma survivors. . . . Using unvetted interventions is irresponsible to victims of trauma.”¹⁵¹

Similarly, even where scientists have found that trigger warnings neither helped nor harmed students, some have recommended against using them.¹⁵² In a large study consisting of 1,394 people, the subjects randomly saw or did not see a trigger

147. *Id.* at 167. Further, beyond PTSD, there is range of “disorder[s] associated with distress triggered by environmental stimuli,” such as panic disorder, obsessive-compulsive disorder, and others. *Id.* at 169. This is relevant because, depending on the disorder, something that happens in the class that is triggering can be hard for a professor to anticipate. For example, a student “with obsessive-compulsive disorder can become distressed by obsessive thoughts prompted by . . . [un]clean [things] or [an] inability to engage in a . . . compulsive response [such as hand washing] after touching unclean things.” *Id.* at 169. A trigger warning would not alleviate that kind of distress.

148. Jones, *supra* note 119, at 905.

149. *Id.* at 914–15.

150. *Id.* at 915.

151. *Id.*

152. See Sanson et al., *supra* note 10, at 790; Matthew Kimble et al., *Students Responses to Differing Trigger Warnings: A Replication and Extension*, J. AM. HEALTH 1, 3–4 (July 26, 2022), [hereinafter *Students’ Responses*] <https://www.tandfonline.com/doi/full/10.1080/07448481.2022.2098038> [<https://doi.org/10.1080/07448481.2022.2098038>]; Matthew Kimble et al., *Student Reactions to Traumatic Material in Literature: Implications for Trigger Warnings*, PLOS ONE 16 (Mar. 25, 2021) [hereinafter *Student Reactions*], <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0247579> [<https://doi.org/10.1371/journal.pone.0247579>].

warning for different material, including a story and a film clip.¹⁵³ After subjects read or watched the materials, they reported their symptoms of distress.¹⁵⁴ One of the symptoms studied was intrusive thoughts—whether participants suffered an intrusive thought, such as a bad memory—based on whether they received a trigger warning or not.¹⁵⁵ In that part of the study, the “warning and no warning subjects reported [a] similar number[] of intrusi[ve] [thoughts],” prompting the scientists to conclude that “although most people experienced intrusive thoughts related to the material they saw, a trigger warning beforehand only slightly decreased the frequency of these intrusions.”¹⁵⁶ They also ran a study on the participants’ ability to comprehend the materials and found no difference in understanding between the warning and no warning participants.¹⁵⁷ Thus, they concluded the trigger warnings were only “trivially helpful.”¹⁵⁸ Notwithstanding this finding, they counseled against using trigger warnings because “the chronic effects of trigger warnings may be different from their acute effects” and might “tacitly encourag[e] students to turn to avoidance, thereby depriving them of opportunities to learn healthier ways to manage potential distress.”¹⁵⁹

If a professor uses a trigger warning, though, one study suggests the precise type of warning used (e.g., “positive, negative, or neutral”) does not impact student distress one way or the other.¹⁶⁰ In this study, 123 college-student participants were assigned to receive either a neutral or triggering passage from Toni Morrison’s *The Bluest Eye*.¹⁶¹ “[T]he triggering passage included descriptions of both physical and sexual assault.”¹⁶² “The 91 participants who received the . . . triggering passage . . . received [either] a neutral trigger warning, a positive trigger

153. Sanson et al., *supra* note 10, at 780.

154. *Id.* at 782–83.

155. *Id.* at 784–85.

156. *Id.* at 785, 787.

157. *Id.* at 781, 790.

158. *Id.* at 791.

159. *Id.*

160. *Students’ Responses*, *supra* note 152, at 3.

161. *Id.* at 2.

162. *Id.*

warning, or a negative trigger warning.”¹⁶³ The neutral warning stated that “the following passage would contain scenes of emotional abuse, sexual assault of a minor, and physical assault and that ‘some individuals become upset when reading this material, however, most individuals have little difficulty.’”¹⁶⁴ The positive warning stated that

The Bluest Eye is an American classic and is frequently assigned in college and university classes. Many have argued that engaging with the discomfort and challenges that this book presents is a significant part of a liberal education. . . . [However,] most individuals have no difficulty with the passages and find the work compelling.¹⁶⁵

The negative trigger warning stated: “[Y]ou may become emotionally upset,’ ‘these reactions may last a while,’ [and] ‘Literature can be very intense’ with ‘emotionally vivid, unforgettable, and disturbing images.’”¹⁶⁶ The scientists found that, while “the triggering passage was upsetting relative to the control passage,” the nature of the trigger warning did not have an impact on the students’ responses to the potentially triggering passage.¹⁶⁷ The scientists concluded that if instructors are inclined to give trigger warnings, “the nature of the warning makes little difference.”¹⁶⁸

C. Limitations on the Empirical Analysis of Trigger Warnings.

Although the above studies suggest that, on balance, trigger warnings should not be used in the classroom, there are important limitations in considering the implications of trigger warnings for law students specifically. First, as these scientists have noted, there was no time lag in these studies between the time participants saw the trigger warning and viewed or read the

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* at 4, 3.

168. *Id.* at 3.

potentially distressing material.¹⁶⁹ This is different from a classroom setting, where the trigger warning might appear in the syllabus at the beginning of the semester and never again. Second, the type of material used in these studies is arguably different from content covered in a law school classroom. For example, watching a clip from a Harry Potter movie or reading a passage from *Crime and Punishment*, no matter how distressing, is nowhere near as distressing as reading real facts in a case that involves subjects like rape, sexual assault, molestation, or domestic violence. Third, many of the studies involved participants in college, not law school; whether college students' attitudes towards trigger warnings or the idea that words can cause harm are consistent with law students' is unknown.¹⁷⁰ Fourth, most of the studies involved self-reported responses, which scientists admit is a limitation.¹⁷¹

D. Concerns About Avoidance Appear Unfounded.

A separate aspect of the scientific literature examines whether trigger warnings cause student avoidance, which was a point of concern raised by many educators. The concern appears to be unfounded, as the science suggests most students will choose to review the material even if given a trigger warning.¹⁷² As one group of scientists recently stated, "there seems to be no evidence

169. See Jones, *supra* note 119, at 915 ("It is unclear whether our findings (especially concerning evidence of potential harms) would apply to extended classroom discussions or other situations of greater temporal duration."); Bruce et al., *supra* note 112, at 5476–77 (noting that the phrase trigger warning appeared immediately before a media clip but trigger warnings could be provided instead on a syllabus for material presented much later in the semester).

170. In addition, some scientists have referred to small sample sizes. *E.g.*, Bellet, *supra* note 103, at 137.

171. *E.g.*, Bellet, *supra* note 131, at 5 ("A limitation of both the original and replication studies is the exclusive use of self-report in the measurement of anxiety."); see also Sanson, *supra* note 10, at 791 ("[W]e used only self-report measures rather than taking physiological measures of hyperarousal symptoms.").

172. *E.g.*, *Student Reactions*, *supra* note 152, at 16 ("Students, including those with relevant traumas and PTSD, do not largely avoid potentially triggering passages."); Bruce et al., *supra* note 112, at 5476 (examining the relationship between trigger warnings and behavioral avoidance and observing that "[n]o participant skipped the movie clip when given the option").

that students will use warnings to avoid classroom responsibilities en masse.”¹⁷³

Along with measuring how students respond to trigger warnings, a group of professors in sociology and criminal justice have used surveys to determine why instructors give (or do not give) them. One of these surveys analyzed subjects like those tackled in law school, such as victimology, criminal law and the courts, violence against women, and criminology.¹⁷⁴ The professors in question asked members of the two largest U.S. academic membership organizations in criminal justice and criminology to complete a survey; the final sample size was 791 participants.¹⁷⁵ “A majority of the participants identified as politically liberal,” and “59.3%[] were in a tenured or tenure earning position.”¹⁷⁶ The survey did not use a guiding definition of “trigger warning,” so participants had to use their own understanding of the term.¹⁷⁷ Of those surveyed, almost 62% reported using trigger warnings in their courses.¹⁷⁸ Of those, 74.7% “allow[ed] students to leave class if triggered,” and 30% “allow[ed] for alternative assignments.”¹⁷⁹ “[F]aculty [were] less likely to use trigger warnings in graduate . . . courses.”¹⁸⁰ When asked why they used trigger warnings, 70.8% of respondents said the warnings “allow[ed] students to prepare for [the] upcoming material”; 66.6% indicated the material’s content warranted a trigger warning; and 27.1% used them “to protect against student complaints.”¹⁸¹ For faculty who did not use trigger warnings, 44.9% did not do so because they felt “students need[ed] to be exposed to the material to work effectively in the field”; 40.9% said “the content d[id] not warrant” trigger warnings; and 13.8% stated that trigger warnings “would discourage class discussion.”¹⁸² The survey also provided an “open response”

173. *Students’ Responses*, *supra* note 152, at 4.

174. Cares et al., *supra* note 9, at 606.

175. *Id.* at 601.

176. *Id.* at 603.

177. *Id.*

178. *Id.* at 604.

179. *Id.* at 605.

180. *Id.*

181. *Id.* at 606.

182. *Id.* at 607.

category; the most common response within that category was that students should inherently recognize that certain content is distressing based on the course title, the course syllabus, or the topics addressed.¹⁸³ Interestingly, “Female faculty were more likely than male faculty to . . . use[] trigger warnings to allow students to prepare for upcoming material”; meanwhile, “Older faculty and faculty who were . . . tenure[d] . . . were more likely not to use trigger warnings because they felt students need[ed] to be exposed to the material to work effectively in the field.”¹⁸⁴ Finally, “As faculty became less liberal and more conservative, they were more likely . . . not [to] use[] trigger warnings.”¹⁸⁵ Only 7.3% of respondents reported eliminating “previously used material, and even fewer, . . . [4.8%], decided against incorporating new material.”¹⁸⁶

Therefore, while the science in this area is still relatively new, the results so far suggest that warnings do not lessen anxiety and, in some situations, may worsen students’ anxiety. This result seems exacerbated for people with PTSD. The research also shows, however, that the type of warning given does not impact students and that students do not seem to avoid material after being given a warning.

IV. RECOMMENDATIONS: A COMPROMISE

Based on the views of both educators and scientists, there are very compelling arguments against using trigger warnings in the classroom. First, law students who are warned about potentially disturbing content during the first semester of law school will not receive any similar warning a mere nine months later when they begin their summer jobs. Second, as many educators have noted, harmful content is everywhere, and students should be encouraged to be resilient and to face, rather than avoid, the challenges of confronting such content. Third, even when trigger warnings are not used, instructors’ decisions to omit potentially harmful content from classes do students a disservice; content that

183. *Id.*

184. *Id.* at 607–08.

185. *Id.* at 608.

186. *Id.* at 611.

is often deemed harmful nonetheless concerns real subjects in the law that members of our profession need to handle.¹⁸⁷ There are other ways to serve anxious students besides using a warning or omitting course material; these options include counseling services, academic support services, and the use of mentors and advisors. And finally, in my experience, if professors can create a welcoming and trusting class atmosphere, most (but admittedly not all) students will let professors know when they are struggling with the content because of a past trauma, and professors can then accommodate those needs in the classroom or refer the student to helpful resources. In other words, there are many ways to alleviate student distress that do not include trigger warnings.

Although trigger warnings are not the sole way to alleviate student distress, instructors should, on balance, provide some kind of warning, but only at the beginning of the semester, without using the word “trigger,” and without otherwise signaling anticipation that students will suffer distress.¹⁸⁸ There are several reasons for this conclusion. First, we should respect and heed the scientific findings that using trigger warnings might cause some negative impact. Many of the studies, however, used actual trigger warnings, as opposed to content warnings, and the warning was given immediately before participants saw the triggering material. This is different from a less specific and more neutral warning at the beginning of the semester regarding content that will come up during the semester.

Second, the content relied upon in these studies is not as potentially distressing as some of the material studied in law

187. Law professors have shared anecdotal evidence that this has happened. In contrast, an online poll of professors at all levels concluded that, while this consequence does happen, it is rare. See *NCAC Trigger Warning Study*, *supra* note 71, at 3–4.

188. For example, at a community center within Brandeis University, the phrase “trigger warning” is included on a list of violent and oppressive language that should not be used because it “has connections to guns for many people.” Daniel Villareal, *Brandeis Lists ‘Trigger Warning’ Among Violent Words Due to ‘Connection to Guns,’* NEWSWEEK, <https://www.newsweek.com/brandeis-lists-trigger-warning-among-violent-words-due-connection-guns-1603988> (last updated Jun. 25, 2021, 4:47 PM EDT). The list was published by the University’s Prevention, Advocacy & Resource Center, “a place that assists . . . community members who[] [have] been impacted by violence.” *Id.*

school. Passages in fiction or clips of movies, while disturbing, may provoke less distress than reading about cases involving real victims and real perpetrators.¹⁸⁹ Third, a subtle warning about course content at the beginning of the semester is unlikely to result in the negative impacts educators are concerned about. Even in classes that provide actual trigger warnings and give students the option to avoid reading the material, most students do not take advantage of that opportunity. Fourth, while professors have expressed legitimate concerns relating to academic freedom, adding a small paragraph on the syllabus that serves as a content warning is no more burdensome than adding one of the many other items that universities mandate. Finally, especially where a class is mandatory and students will have to interact with the potentially offensive material throughout an entire semester—for example, legal writing—some kind of instruction in advance is warranted. Law students suffer from mental health issues at higher rates than other graduate students or the general public,¹⁹⁰ and there is no reason to add to that burden.

Here's an example of a warning that could be used for a legal writing class:

Welcome to your Legal Research, Analysis, and Writing Class! We want to inform you that the course content will expose you to various legal concepts and factual scenarios. Although the hypothetical problems we will assign you during the semester are fictional, they simulate actual legal issues. Some of the materials that we distribute and that you will read may touch on subjects that some might find controversial. Many people find

189. Scientists, however, might disagree with this assumption considering they routinely use films to study trauma, and the Diagnostic and Statistical Manual of Mental Disorders includes exposure to aversive details of trauma through electronic media, television, and film when viewed in the line of work. See, e.g., Ella L. James et al., *The Trauma Film Paradigm as an Experimental Psychopathology Model of Psychological Trauma: Intrusive Memories and Beyond*, 47 CLINICAL PSYCH. REV. 106, 118–20 (2016); Sanson, *supra* note 10, at 782 (explaining that films were used to study trigger warnings because “the use of similar films in trauma research is well established”).

190. See Simon, *supra* note 11, at 1 (“[A] body of literature suggests that mental health issues are more of an issue for law students than other graduate students or the general population.”).

the law itself controversial, and engaging with these issues offers a tremendous opportunity for learning and having meaningful discussions with your peers and your professors. Please approach the course material with an open mind and be willing to engage critically and respectfully with the content, keeping in mind that learning the practice of law can be challenging in many ways. Please feel free to discuss any challenges you are having with the material with your professor so that we can ensure a productive and satisfying learning experience for everyone.

Of course, there are many variations on wording that professors can use depending on the content of the course, and this is just one option.

CONCLUSION

In conclusion, the trigger warnings debate is not over, but it seems like the pendulum has swung in the direction of not including them. Professors must make the choice, but in making it, they should consider the available scientific research. Although scientists are understandably more focused on assessing college students, it would be helpful if they conducted studies focused on law students as well. Most law schools have two or three sections of the same class—a perfect opportunity for comparative research. Using one class as a “no warning” control group, the other classes could receive different types of trigger warnings. The resulting data could offer insights not just into student anxiety, but student attendance and student performance overall, and on the final exam as well. Until then, however, we need to prepare students to enter the profession of law as best we can. Part of our job should be offering students an unimpeded path into the profession. In other words, students who feel safe and calm have a better chance of keeping their minds open to learning. A subtle warning can help, and to date there is no hard evidence that it would hurt.