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## Negotiating Trauma & Teaching Law

Mallika Kaur  
*Sikh Family Center*

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## Negotiating Trauma & Teaching Law

MALLIKA KAUR\*

*“I find that it helps to take the time to say, OK, before we figure out a rule about negligence, look for a second and think about what happened here and how the families are feeling and why are they coming to you? And the students are surprised. Because law school doesn’t tend to foreground any of the emotional weight of the kinds of things that we’re talking about.”*

Naomi Roht-Arriaza<sup>1</sup>

Distinguished Professor of Law, UC Hastings

HOW DO YOU NEGOTIATE TRAUMA AND EMOTIONS IN YOUR CLASSROOM? Posing this open-ended question to law professors not only begets more questions, but also often elicits a reflexive retort: law professors dare not present themselves as mental health experts and law schools have mental health resources for students having difficulties. The difficulty of this approach is that in 2021, most law students are no longer willing to accept that their legal education must suppress emotions, including trauma.<sup>2</sup> For classrooms where professors may be less comfortable with emotional discussions, they may find themselves challenged and perhaps even feel obstructed from teaching their subject matter with the freedom and expertise it deserves. Are we simply dealing with an overly sensitive generation? Or are we being pushed to make overdue changes that will improve legal teaching, legal education, and eventually the profession? I would propose that identifying and trying a combination of simple strategies (some suggested below) that better acknowledge trauma (whether or not the professor chooses to use that term, and whether or not the class is a small seminar or large lecture) is to everyone’s advantage in today’s law school.

Acknowledging and discussing emotional reactions, much less opening the classroom to speaking about complex emotions and trauma, does not come naturally to all law professors. Yet, it comes more naturally to many law students who are now increasingly demanding these conversations in the classrooms. All law professors have to contend with this growing reality.

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\* Mallika Kaur is an attorney and author who focuses on human rights, with a specialization in gender and minority issues. She is the co-founder and Acting Executive Director of the Sikh Family Center, the only Sikh American organization focused on gender-based violence. Her new book, *Faith, Gender, and Activism in the Punjab Conflict: The Wheat Fields Still Whisper*, was published by Palgrave MacMillan. She received her Juris Doctorate from the University of California, Berkeley, School of Law, where she currently teaches, including the course she created, “Negotiating Trauma, Emotions, and the Practice of Law.” Thanks for their insights to many colleagues and former students, especially Jonathan Gross, Naomi Roht-Arriaza, Nancy Lemon, Angela Harris; and Anu Ramdin, Brigitte Nicoletti, Ariel Bailey, Melissa Barbee.

<sup>1</sup> Mallika Kaur, *An Interview with UC Hastings Professor Naomi Roht-Arriaza*, Daily Journal (24 July 2020), online: <[www.dailyjournal.com/articles/358755-an-interview-with-uc-hastings-professor-naomi-roht-arriaza](http://www.dailyjournal.com/articles/358755-an-interview-with-uc-hastings-professor-naomi-roht-arriaza)> [perma.cc/L2UN-RW7R]. Naomi Roht-Arriaza is an expert on transitional justice and human rights, and a Distinguished Professor of Law at the University of California, Hastings College of the Law. She is the author of several acclaimed articles and books, including *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Philadelphia: University of Pennsylvania Press, 2005).

<sup>2</sup> “Trauma” can be simply defined as a deeply distressing or disturbing experience (individual or collective), often accompanied with an actual or perceived loss of control.

Professor Naomi Roht-Arriaza's students are surprised because most often, questions about emotions are not raised voluntarily by law professors, even as we teach in a heavy, politically fraught, unpredictably polarized, and trauma-inducing climate that often seeps through into our classrooms. Or if these questions are raised, they are considered relevant only in experiential classes, clinic seminars, and externship debriefs: when students work with "real people." Yet, students who are real people reading cases about real people, cannot reserve their emotional reactions for only non-Bar classes or small seminars (like the one I teach at Berkeley Law on "Negotiating Trauma, Emotions, and the Practice of Law"). For example, Professor Roht-Arriaza's decades-long teaching experience has consistently included large Torts lecture classes.

There is no one type of class or subject matter for which professors must consider the various emotional interplays. Yet, even "trigger warnings"<sup>3</sup> (triggering plenty of debates in academia)<sup>4</sup> or "content notices" are generally reserved for classes such as the one session devoted to discussing sex crimes in Criminal Law.

This is little help to the student who was the victim of a carjacking. Or the student who has had multiple miscarriages. Or the student whose family members are political prisoners. Or the student whose grandparents were ejected from their own homes during an armed conflict. Or the student who is surviving intimate partner violence at home. Or the student whose parent has survived torture abroad and is now reading *Hamdan v Rumsfeld*<sup>5</sup> at home in the US. Or the student who has been a victim of workplace sexual harassment and hears classmates chuckle at *Clinton v Jones*.<sup>6</sup> Or the student whose California family lost everything in the Paradise fires, only to be evacuated again in the 2020 wildfires, while classrooms turned Zoom-only during a global pandemic. Or the student, as I had last year, whose father lost his business and livelihood to partners who had more savvy contract lawyers.

Further, especially because of the law's complicated relationship to race, ethnicity, and other diversity, as well as the overwhelming normative and conformist experience of legal practice, many students—particularly racialized students, Indigenous students, and other students who (visually or invisibly) fall outside normative expectations—remain, with reason, in an especially vigilant emotional state in all classrooms.

Finally, we may compartmentalize well, but a law professor's own hypervigilance (especially in 2021, amidst multiple challenges, demands, distractions, losses) cannot be ignored. Law professors are never immune from personal emotional reactions.<sup>7</sup> Our own responses make us more or less comfortable with certain topics, certain hypotheticals, and even certain students.

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<sup>3</sup> Written or verbal warnings to alert students that forthcoming course material may be upsetting or offensive.

<sup>4</sup> See e.g., Francesca Laguardia, Venezia Michalsen & Holly Rider-Milkovich "Trigger Warnings: From Panic to Data," (2017) 66:4 J Legal Educ 882.

<sup>5</sup> See *Hamdan v Rumsfeld* 548 US 557 (2006). The United States Supreme Court ruled that military commissions set up by the Bush administration to try "enemy combatants," violated the detained suspects' rights under US Code of Military Justice, as well as the Geneva Conventions. The Petitioner had been subjected to various methods of physical and psychological abuse; custodial torture that was categorized by the Bush administration as "enhanced interrogation techniques." Since 2002, the Petitioner had been imprisoned in Guantánamo Bay by the US military.

<sup>6</sup> *Clinton v Jones* 520 US 681 (1997) is a landmark US Supreme Court case holding that the sitting President does not have temporary immunity from tort (civil damages) litigation arising out of unofficial conduct committed prior to presidency. The conduct here was sexual harassment of Jones by then Governor of Arkansas, Bill Clinton.

<sup>7</sup> See e.g., "I still struggle with perfectionism and not feeling good enough or smart enough. It's one reason I retired young. Another is the lack of institutional culture change. In 2020, there is still only one Black woman on the tenure track faculty at the law school where I started teaching over thirty years ago! I've seen senior women become bitter and brittle, fighting the same old fights year after year. I decided I didn't need to be one of them." Mallika Kaur, *An Interview with Angela P Harris of UC Davis School of Law*, Daily Journal (18 September 2020), online:

Lawyers teaching classrooms—just as lawyers in courtrooms or boardrooms or policy rooms—would benefit from acknowledging and speaking about the reality that in this profession, we are constantly “negotiating” (process of achieving our goals) the often unspoken and unseen emotional interplays of several players. There are many, often competing, interests: of students as individuals, of students as the collective, of the professor, and of the professor’s institution. The yardsticks and criteria (course syllabi and objectives) may be at odds with the timelines of trauma-reactions and healing. The options may seem limited (again, “I am a law professor, how can I be expected to deal with all this?”). And we may give up even before consciously negotiating the traumas (“In brutal 2020-21, I’m satisfied if I miraculously complete all the modules listed on my syllabus”). I assert we may be giving up too soon! Like with other negotiations, we could apply a zero-sum approach to the emotional interplays in legal teaching or choose to instead engage the complexity to generate better, perhaps deeper, and eventually more valuable learning and lawyering.

## I. THE PEDAGOGICAL CHALLENGE IS NOT INSIGNIFICANT

“Better than a ‘trigger warning’ is to train professors on how to respond to and address trauma in the classroom.”

H, third-year law student, UC Berkeley, 2019

While trauma-aware and indeed trauma-centred<sup>8</sup> teaching may be the need and call of the day, it adds layers of additional considerations. Trauma-centred teaching recognizes that:

- Many students have a history of trauma, which impacts how they engage in law school.
- Law school itself causes new distress for many students or might even be a site for new trauma.
- Professors are not immune from personal traumas, whether primary or secondary (vicarious).

All the above realities are in constant interplay. While we try to teach.

Traditionally, unlike many other graduate schools, we in law schools have not taught or thought about this enough.<sup>9</sup> Like our colleagues in the larger legal profession, we too may have

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[www.dailyjournal.com/articles/359624-an-interview-with-angela-p-harris-of-uc-davis-school-of-law](http://www.dailyjournal.com/articles/359624-an-interview-with-angela-p-harris-of-uc-davis-school-of-law)  
[perma.cc/PZ7L-8Z5B].

<sup>8</sup> I employ this term for the remainder of the article. It encourages moving considerations of trauma and emotions from the margins to a more central space in our pedagogy.

<sup>9</sup> There are several notable exceptions and a steadily increasing amount of discussion and literature on trauma-centred legal pedagogy—however, still, most of these focus on specific practice areas understood as undeniably high-touch and trauma-heavy (*e.g.*, immigration, criminal defence, domestic violence) and/or focus on clinical and experiential education. See, for *e.g.*, Christine E Doucet, “Law Student, Heal Thyself: The Role and Responsibility of Clinical Education Programs in Promoting Self-Care,” (2014) 23 *JL & Soc Pol’y* 136; Brittany Stringfellow Otey, “Buffering Burnout: Preparing the Online Generation for the Occupational Hazards of the Legal Profession,” (2014) 23 *S Cal Interdisc JL* 143; Ronald Tyler, “The First Thing We Do, Let’s Heal All the Law Students: Incorporating Self-Care into a Criminal Defense Clinic,” (2016) 21 *Berkeley J Crim L* 1; Krystia Reed, Brian H Bornstein, Andrew B Jeon & Lindsey E Wylie, “Problem Signs in Law School: Fostering Attorney Well-Being Early in Professional Training,” (2016) *Int J Law Psychiatry* 148; Sarah Katz & Deeya Haldar, “The Pedagogy of Trauma-Informed Lawyering,” (2016) 22 *Clin L Rev* 359; Joan S Meier, “Teaching Lawyering With Heart in the George Washington University Law

embodied the fighting response of the adversarial system, including fighting help. Strategies used by teachers and practitioners in other fields may not have yet been given a fair enough chance in our classrooms.

Furthermore, even once we are ready to try, there is no one way to address trauma while we teach. Like trauma itself, reactions to discussions (even disclaimers) about trauma can be unpredictable, unexpected, unclear, delayed, deep-rooted, and even long-lasting. We have to tailor our responses, knowing there is no perfect all-encompassing strategy. We must develop expertise in having useful exchanges while not having an expert opinion, even when pressed by our students. Law students have often decided that the profession does not reward uncertainty, vulnerability, or humility. Many may thus be skeptical of the legal prowess of their professor (particularly if junior, female, and/or a person of colour) who raises the question of emotions and admits they do not have the answer.

Law students' heightened emotions seep into classroom discussions, but they may not explicitly ask direct questions about emotions—even in classrooms where the professor battles the scarcity of time and opens time for questions. Law students manage rigorous coursework often without the coping mechanisms they had developed in their earlier lives: think, less time for hobbies, fewer phone calls with non-law school friends, constrained communications with family when clinic or externship supervisors have recently emphasized necessary confidentiality requirements. Law students are thus often too stressed (or tired or bogged down with “imposter syndrome” or hassled by the competitive environment) to stop and initiate these discussions unprompted.

Finally, some of us worry we might be creating a classroom environment that encourages excuses, tardiness, disruption, and is further removed from the core reason the students attend law school: to become lawyers in the real world.

## **II. BUT THIS PEDAGOGICAL CHALLENGE IS NOT INSURMOUNTABLE**

I propose that instead of being an “add-on,” once trauma-centredness is integrated into our interactions, it can in fact, save time, emotional effort, as well as provide a needed safety valve for professors teaching and living in difficult times. It leaves room for us to stumble and re-pivot, all as part of the commitment to build a less rigid classroom.

First, in my experience, professors are not the only ones who recognize that there is a course to teach and that law professors are not mental health experts; students pay for a legal education and are not expecting psychological expertise. What they are expecting is a more holistic and responsive education. The argument that we are not mental health experts is then somewhat specious. We are seldom asked to suggest prescriptions for trauma recovery. What we are asked for more often are prescriptions for being good advocates while maintaining good health. Law professors' perfected answer of “it depends” applies generally here too, but it must be elaborated more consciously, compassionately, and carefully, cognizant of different baselines and different histories of trauma.

Second, self-assessment required by trauma-centred teaching protects professors from the sudden shock and embarrassment of having a student pointing out our own blinders; it also saves

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School Domestic Violence Project,” (2016) 22:12 *Violence Against Women* 1484; Lindsay M Harris & Hillary Mellinger, “Asylum Attorney Burnout and Secondary Trauma,” (2021) 56:4 *Wake Forest L Rev* 116.

us the time of finding sudden “fixes” for unanticipated challenges. Our personal biases and prejudices inform everything, even the kinds of trauma we are generally more likely to acknowledge in a law school classroom (say, sexual violence), and what traumas we overlook (say, growing up in an unsafe home; an invisible disability; language and access challenges as an immigrant child; houselessness; or community traumas, such as high rates of incarceration). Professors knowing and owning this is enough for most students who seek ethical transparency from their mentors.

Third, a trauma-centred approach means pre-planning a range of ways in which we may respond—as well as considering where and how we personally would draw the line (when a student curses? when a student storms out of class?). This lends us greater emotional confidence in our reactions for when we have to make difficult, even unpopular, on-the-spot decisions.

Finally, trauma-centredness is being increasingly valued, even demanded, in the legal profession, replete with poor statistics about health and well-being.<sup>10</sup> Once we stop siloing emotions (“some students may find this subject matter too difficult”) and remove shame around primary and secondary trauma, we can more easily emphasize for our students that trauma must not be, in the context of all our professional responsibilities, employed as a blanket “excuse.” We can encourage students to better name it, plan for it, and, if necessary, ask for aid to accommodate it.

### III. TRY ON: A PROCESS NOT PRESCRIPTION

I believe it helps to remember as a cardinal rule that being prescriptive about how to handle trauma—that arises, say, from reading a case; hearing a class comment; meeting a clinic client—is not possible or advisable. So, the best we can do is try a combination of strategies that centre trauma, instead of ignoring it at the risk of compounding it. Whenever I have fallen hard in the quest to be trauma-centred (and March-April 2020, as the pandemic began, was particularly challenging), I return to trying the below again. It helps to have a list written down now.

**A lot is caught rather than taught.** Since everything from the professor’s end of the classroom is amplified (a recognition I explicitly share with my students during our very first class), more than what a professor says about trauma-centredness, how they respond to questions, difference, conflict, and/or “disruptive” behaviour, matters to students. So, in developing a more trauma-responsive and trauma-centred approach, consider the suggestions below. Note that while small seminars and large lecture classes have different cultures and pedagogies, the suggestions below mostly require increased intentionality and planning, and not more classroom time.

- **Acknowledge Your Biases:** You may teach the “objective person standard,” but take opportunities to display you fully understand human nature as more complex. Sprinkling phrases like “given my lived experiences” or “I can only speak to what I’ve seen, and am open to hearing otherwise, of course,” signal to students that you are open to assessing your own privileges and biases.

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<sup>10</sup> See *e.g.* Patrick Krill, Ryan Johnson & Linda Albert, “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys,” (2016) 10:1 J Addiction Medicine 46; Destiny Peery, Paulette Brown & Eileen Letts, “Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color,” (Chicago: American Bar Association, 2020).

- **Acknowledge Law School Involves Difficult Feelings:** Law school is difficult for many, even if it may not have been for you. Offer ways in which you recognize this may not feel like an empowering experience right now, even as they are empowering themselves with higher education and useful training for the future.
- **Recognize the Importance of Community:** Take opportunities—mentioning group office hours; or student review sessions; or student interest groups—to remind students of the possibility and desirability of building community (not just competition) with others.
- **Share what a Healthy Life, Work-Life, Looks Like for You:** Weave this in overtly. Don't leave students guessing if you are superhuman. Mentioning something that you consider helpful and/or harmful to your health and sustainability (perhaps even to your personal trauma-recovery or emotional well-being) can contribute significantly to students thinking of you and themselves as full humans.
- **Respond to Their Shares with Sensitivity, Even When Uncertain:** When a student shares something emotional and/or personal, an unrushed, “Thank you so much for sharing that with us” is often a safe response. With neurons firing, consider how the student may read too much or too little into your response (for example, the possibility that a response of “That sounds difficult,” might be just heard as “difficult”).
- **Listen Unlike a “Lawyer”—At Least Sometimes:** Consider mixing it up to demonstrate how you can listen without constantly preparing to respond. Avoid stealth advocacy! (“Ok, but ...” or “I’m sorry, but ...”) Perhaps even point out that compassionate listening helps in real-life lawyering: to build rapport; to build a case by obtaining more information for causes of action; to better ensure a client doesn't go into emotional distress in court.
- **Employ Feeling Words:** Classroom comments that often employ vague umbrella terms like “overwhelming” or “emotional” mask discrete feelings: sad, mad, glad, scared. Saying out loud these basic feelings can signal a greater acceptance of regular (avoid “normal”) human reactions.
- **Take Any Opportunities to Allow Student Decision-Making and Returning Control:** Identify any occasion where you can allow for students to make some choices (*e.g.*, format or timing of an assignment or class activity), thus taking a break from the power hierarchies in the classrooms that worsen the experience for survivors of certain traumas (personal or systemic).

### *Avoid...*

- **Avoid Assumptions about Traumatic Experiences:** All students are not concerned about the one same kind of trauma. All students affected by a certain kind of

trauma (*e.g.*, cancer diagnoses or domestic violence) do not have the same reactions: it may be part of one student's identity, and it may be part of what another student came to law school to forget. If a student raises a question around a certain trauma, do not assume they have experienced that trauma. Do not assume they have not.

- **Avoid Assumptions about Resilience Strategies:** All students do not have access to the same resources (for example, even “just go for a nice hike with friends” or “start your mornings with a quiet reading hour” are not applicable to all living situations).
- **Avoid Speaking in Absolutes:** For example, avoid “We all know the joy of ...” “All lawyers know ...” “None of us knows what it feels like to ...”
- **Avoid Catch-all Phrases:** For example, avoid “culture” as suggesting something different or foreign. Or “resilience” as something intrinsic that overcomes everything—especially in the light of institutional and systemic issues that cause many traumas in the first place.
- **Avoid “Trigger Warnings” as an End-All:** The intention behind a trigger or content warning matters. Are you providing the warning for efficiency or to truly expand the scope of class discussion? How can you best signal that you encourage a space where difficult topics are discussed, instead of seeming to excuse or exclude students who may ask or say something difficult? Some kind of forewarning about the sensitivity of a topic is usually appreciated. But that's just the first step.

Finally, **Give Yourself Credit!** Discussing trauma is relatively new for the legal profession. It is especially new for law schools. It is an ongoing process on which we all have to constantly iterate.

The struggles of meaningfully engaging trauma are as old as the legal profession. So far, we have largely idealized lawyers who seem to make these struggles seamlessly invisible. Our students may be pushing us to create classrooms and a world where making struggles more visible is the norm, for the benefit of all.