


[Get The Atlantic on Facebook](#)

POLITICS ▼ BUSINESS ▼ TECH ▼ ENTERTAINMENT ▼ HEALTH ▼ EDUCATION ▼ SEXES ▼ NATIONAL ▼ GLOBAL ▼ VIDEO ▼ MAGAZINE ▼

JUST IN Republican Senators Aren't Sold on Jeb Bush

IN FOCUS | FEATURES | APPS | BOOKS | NEWSLETTERS | EVENTS | SUBSCRIBE



Our Favorite
Songs of 2014
By The Editors



The Cold-
Medicine Racket
By James Hamblin



Respecting Trigger
Warnings in Law
Schools
By Conor
Friedersdorf



Against 'Garbage'
By Robinson Meyer

Respecting Trigger Warnings at Law School

Future attorneys have an obligation to face violence and sexual assault in a different way than most.

CONOR FRIEDERSDORF | DEC 19 2014, 7:12 AM ET



Reuters/Adam Hunger

Attorneys belong to a profession that requires many to look squarely at the world's horrors. They prosecute serial killers. They defend accused rapists and child molesters. A lawyer leading a class-action suit might pore over depositions describing harrowing deaths from cancer or children burned up in cars during crashes. Sometimes that will happen even as the attorney's father is dying of cancer, or her kids are the same age as the ones killed in the rear seats above the faulty fuel tanks.

Even a corporate lawyer working for a white-shoe firm never knows what depravity they'll come across in a private email they're reading during document review. Lawyers must think, write and speak with clarity even when faced with such horrors. They must keep their heads while witnessing awful injustices, appearing before hostile judges, or enduring profane outbursts from other attorneys or clients, all while exhausted by a long week of headaches and heartburn. Hence the alarm a growing number of law school professors feel at the trend of students objecting to parts of the curriculum that they find too upsetting.

It isn't that these law faculty object to every request for special understanding. They're happy to postpone an exam for a student whose mother died, to excuse a

VIDEO



Where High Tech Meets the 1950s

Why did Green Bank, West Virginia, ban wireless signals? For science.

MORE IN



Orange Is the New Class

ALIA WONG



Will Malaysia's Bold Education Goals Help It Become a Developed Nation?

ALEXANDRA OSSOLA



Mythbusters: Teaching Through Wonder—and Failure

JESSICA LAHEY

In Focus



Winners of the 2014 National Geographic Photo Contest

JUST IN

former POW from a graphic lecture describing torture, or to spare a rape victim with PTSD from participation in a mock trial about a gang rape. What they're worried about isn't a slight uptick in special requests from students who've suffered unusual trauma, but the increasingly common tendency of students to pathologize normal feelings of outrage and offense. As Samantha Harris puts it, "We now use the vocabulary of post-traumatic stress disorder—trauma, triggers, etc.—to refer to virtually any bad feelings occasioned by controversial events or expression." And the ideology behind that language is starting to affect the curriculum.

Exams and Classroom Discussions

Law Professor Eugene Volokh recently [wrote](#) about a controversial exam question at UCLA, where he teaches. The question noted a protest in Ferguson, Missouri, where the stepfather of Michael Brown, the unarmed man killed by police, reacted to news that Officer Darren Wilson would not be charged in the killing. Overcome with anger, he shouted to a crowd of protestors, "Burn this bitch down!" Students were asked to write a memo analyzing how the First Amendment applies to such speech. Several complained. [Said one UCLA student](#): "These kinds of questions create a hostile learning environment for students of color, especially black students who are already disadvantaged by the institution." The professor who gave the test agreed to adjust grades of test-takers who did worse on that question than the rest of their 1st Amendment exam.

"One teacher I know was recently asked by a student not to use the word 'violate' in class—as in 'Does this conduct violate the law?'"

On the other side of the country, Harvard law professor Jeannie Suk has taken to the *New Yorker* to [express concern](#) over her perception that students are increasingly likely to object when classroom discussion turns to rape. "Individual students often ask teachers not to include the law of rape on exams for fear that the material would cause them to perform less well," she writes. "One teacher I know was recently asked by a student not to use the word 'violate' in class—as in 'Does this

conduct violate the law?'—because the word was triggering."

Suk has run into trouble in part because her pedagogy requires students to think about rape and sexual assault from perspectives other than prevailing campus orthodoxy. She focuses on cases "that fall near the rapidly shifting line separating criminal conduct from legal sex," often involving people who know one another and situations where "the meaning of each party's actions, signals, and desires may have been ambiguous to the other, or misapprehended by one or both sides. We ask questions like: How should consent or non-consent be communicated? Should it matter whether the accused realized that the complainant felt coerced? What information about the accused and the complainant is relevant to whether or not they should be believed? How does social inequality inform how we evaluate whether a particular incident was a crime?" Students are sometimes assigned to argue a side with which they don't agree.

Observing that a previous generation of feminists fought to get instruction on rape law added to law school curriculums, Suk lamented that some students would now prefer that it be dropped, and argued that their attitudes threaten the ability to teach it properly. "Teachers are starting to give up on the subject," she wrote. "About a dozen new teachers of criminal law at multiple institutions have told me that they are not including rape law in their courses, arguing that it's not worth the risk of complaints of discomfort by students. Even seasoned teachers

Republican Senators Aren't Sold on Jeb Bush

MOLLY O'TOOLE

'People Can Be Afraid of Anything'

KATE HOROWITZ

How to Restore a Rothko: With Light

NARAYAN KHANDEKAR

of criminal law, at law schools across the country, have confided that they are seriously considering dropping rape law and other topics related to sex and gender violence. Both men and women teachers seem frightened of discussion, because they are afraid of injuring others or being injured themselves. What has made everyone so newly nervous about discussing sexual-assault law in the classroom?"

The Mastery of Emotions

Professor Volokh defended his colleague's Ferguson exam question, arguing that a key skill learned in law school is analyzing fraught subjects even when deeply invested in them. If you want to work for the NAACP or the NRA, "you will do your clients no favors by being so zealous in your opinions that you fail to grasp the best arguments on the other side," he explained. "And that is also true when the matter is still raw in your mind." Often, lawyers must make arguments about traumatic events that affect them "much more directly than the Ferguson incident involved UCLA students," he continued. For example, an innocent client may be sentenced to prison as a result of a verdict that her lawyer believes to be racist, or an appellate judge may unjustly reject an argument that a lawyer labored for years to develop. "As a lawyer, you need to master your emotions enough to deal with such situations," he wrote. "As a student, you have to learn how to do that."

Some critics of UCLA's exam question have argued that it put an unequal burden on black students, who alone had to navigate this hard lesson about emotional mastery. As a commenter at *The Washington Post* put it, "Why should a psychologically weak-minded white male get a higher grade than a psychologically weak-minded black male? If you are going to talk about situations that would agitate black males, you ought to also talk about situations that would agitate white males and Asian males. If you are going to talk about situations that would agitate females, you should talk about situations that would agitate males."

I'm uncomfortable assuming that all black students would feel a certain way about a Ferguson exam question, or that no white students would be as emotionally invested in the protests. And one can imagine an activist of any race who felt deeply invested in the Ferguson protests, independently studied protest law, and thereby excelled at a question asking for a 1st Amendment analysis of protest speech. Still, generally speaking, a law school's lectures and exams shouldn't disproportionately test the emotional mettle of a single group, subjecting them to a curriculum that is more difficult even as their peers are robbed of any chance to improve their ability to think about cases that upset them.

As Volokh goes on to note, however, it is common for many people to have deeply emotional reactions to lots of subjects law schools commonly cover to prepare students:

Questions about bans on revenge porn can be upsetting to people (mostly women) who have been victimized or who can easily see themselves as victimized by revenge porn. Questions about rape shield laws and the Confrontation Clause can be upsetting to rape victims, and to people who have been incorrectly accused of rape, as well as to people who can easily envision themselves as either. Questions about restrictions on Koran-burning or the Mohammed cartoons can be upsetting to Muslims. Questions about abortion rights, or anti-abortion picketing, can be upsetting to those who view abortion as the modern Holocaust, or to people who have had abortions, or to people whose prospective children have been aborted by ex-

lovers who didn't share the person's desire to let the child be born.

Questions about the Hobby Lobby case can be upsetting to people who are appalled at the very prospect that the government would suppress their religious freedom rights, and force them to be complicit in what they see as mass murder. Questions about gay rights or anti-gay-rights speech can be upsetting to gays and lesbians or to people whose deeply felt religious beliefs are constantly derided as bigoted and tantamount to racist. The list could easily go on.

In addition, the subjective emotional reaction students have to exam questions often have little to do with how the issue affects people of their identity in the real world. An old acquaintance of mine, a staunch conservative from a Jewish background, relished in absolutist defenses of the 1st Amendment, and could talk in soaring abstractions about the inviolable right of Nazis to march through Skokie, but mention the Senate confirmation of Clarence Thomas and his blood would be boiling as he denounced liberals in language that would've made Andrew Breitbart blush. As best I can tell, emotionalism is evenly distributed among people of different racial and gender identities. There are good reasons for activist groups at law schools to be particularly attuned to the treatment of minorities and women. But talk of "triggering" those groups can stray uncomfortably close to racist and sexist assumptions that they're less rational or more easily upset.

That isn't so.

The Respectful Preparation of Law Students

How are upset students best served regardless of their identities? The answer is not to remove fraught subjects from exams, Volokh argues, for a few different reasons. "If professors studiously avoid any such questions on their exams, that itself will make the exams weaker at evaluating students' knowledge and skills," he writes, adding, "Any policy of accepting demands to remove or avoid some such questions will lead to demands to remove or avoid still more." In other words, if encountering any number of fraught subjects is considered a normal part of the law school experience, most students will accept it. But if a subject is avoided to cater to the sensitivities of some people, then other people will start to feel bothered that *their* sensitivities aren't deemed sufficiently important to consider. Suddenly, how much one feels respected by one's law school starts to be attached to how assiduously the school avoids subjects about which one feels most strongly.

Soon everyone is taking umbrage. As Volokh puts it, avoiding fraught subjects on exams "may lead people to be *more* upset when they see such questions, because they have been taught that they are entitled not to be confronted with such questions." That is, I'd guess, part of the answer to Professor Suk's question, "What has made everyone so newly nervous about discussing sexual-assault law in the classroom?" Some number of law students has been sexually assaulted and endures extreme emotional distress or PTSD when the subject is raised. They're owed compassion and reasonable accommodation. At the same time, there's an increasingly common notion in academia that dispassionate analysis of whole subjects is disrespectful, insensitive and "triggering" for whole classes of people.

The normalization of that conceit causes students to take offense when some subjects are raised, or when they're handled without extreme, near-perfect sensitivity. This is not because the discussions are inherently "triggering" or hurtful, but because having been deemed suspect, a professor who raises them is

MOST POPULAR

- 1 North Korea Is Not Funny
- 2 The Cold Medicine Racket
- 3 Respecting Trigger Warnings at Law School
- 4 Love Actually Is the Least Romantic Film of All Time
- 5 What 200 Calories of Every Christmas Food Looks Like
- 6 Our Favorite Songs of 2014
- 7 Serial Episode 12: What We Don't Know
- 8 The Zen Predator of the Upper East Side
- 9 Winners of the 2014 National Geographic Photo Contest
- 10 The Cuba Deal: Why Now?

perceived as showing disregard for some subset of students. This perception exists even when the instructor in question is doing their best to prepare students for a grueling profession without trigger warnings or extensions for emotionally distressed lawyers.

If I were a law professor, I'd be inclined to grant an extension for a final exam if a student approached and credibly argued, "Look, this protest against police brutality/papal address on abortion in America/Occupy Wall Street sit-in/anti-war protest/torture-victim rally/march for gun rights is a once-in-a-generation moment in a cause I care about deeply, and I feel civically and morally obligated to attend. I know a judge wouldn't grant me an extension for this, but I'm a student. Can I take the exam a week late so that I can participate in this activism?"

Hey, why not?

But if a student told me, "I'm too emotionally upset about police brutality/abortion/Wall Street malfeasance/the war/torture/the new gun law to take this exam now, or to answer an exam question on this subject," my response would be, *Look, forget about when you're going to take this exam—you and I need a plan to help you to develop the ability to excel at analysis, written expression, and oral argument even when you're as upset or outraged or emotionally drained as you've ever felt, because that is a skill-set this profession demands, and attaining it is going to empower you to succeed after graduation.* Outside of unusual events, like being raped or having a close family member die, merely saying, "You're upset? Take the time you need" is not empowering. If a "trauma" isn't something that a judge or a partner at a law firm or a typical legal client would see as a valid excuse, aspiring lawyers must learn to overcome it.

What's ultimately at issue here is a disagreement about how to best serve students and what it means to show them respect.

What's ultimately at issue here is a disagreement, among different factions at law schools, about how to best serve students and what it means to show them respect. Some student activists would have us believe that the way to show students respect is to include a trigger warning for anyone that might find a subject uncomfortable or disconcerting, to postpone exams at any time of emotional tumult, and to presume a general fragility in the student body to avoid hurting anyone. It isn't that these

activists are always wrong, or that they don't have any valuable insights, or that law schools should never be more sensitive to student needs. But they implicitly equate respect and best practices with maximum sensitivity.

Why?

Professors who are seeing the real world consequences of such activism are in essence countering that faculty have a different notion of how best to serve and respect their students. As they see it, they best respect aspiring lawyers by opening their offices to individuals with special needs or requests, but otherwise presuming that every student is capable of rigorously analyzing any subject, or at least keen on being challenged to do so, knowing that it's a vital skill to acquire. These professors are properly averse to presuming that all female students or black students or religious Christians are too sensitive for certain subjects. And they don't appreciate it when what they regard as respecting the individuality and educational needs of their students is portrayed by activists as callously mistreating them.

They don't equate proper treatment or best practices with maximal sensitivity.

Indeed, they suspect that the offended reactions they've seen more frequently in recent years are largely driven by the way law students are acculturated. If students are told, for example, that learning about rape is so upsetting that every student should weigh whether to skip certain lectures and protest certain exam questions, *of course* teachers persisting in the uncomfortable material will be perceived as having callously failed to incorporate the insights of social justice into the curriculum.

These faculty want activists to help students with legitimate special needs to convey them. But they also believe students generally would be less sensitive about fraught discussions and exam questions if everyone understood and acknowledged that professors are obligated to help all their students to excel as thinkers, writers, and speakers, *especially on subjects that cause them to feel upset*—and that many bygone victims of violent crimes find that the hard experience of dispassionately analyzing the law ultimately leaves them feeling empowered.

The theory that student upset is caused by campus norms as much as anything inherent to traditional pedagogy is bolstered by anecdotes from professors at law schools where students react very differently than what Suk describes at Harvard. Take [Corey Rayburn Yung](#), an Associate Professor at the University of Kansas School of Law:

I don't want to entirely discount Suk's assessment of modern criminal law teaching, but my experience has been radically different. Since I started teaching in the Fall of 2007, I have taught twelve sections of Criminal Law and seven semesters of a Sex Crimes elective I have designed. I have probably taught 750 1L students in Criminal Law and about 150 in Sex Crimes.

In Criminal Law, I have never had a single complaint from a rape victim or person otherwise affected by sexual violence. In fact, I have received numerous anonymous reviews, emails, and comments in person from students thanking me for teaching about rape. This has been true at Kansas, in Chicago at John Marshall, and during my semester visiting at Iowa. After class discussions, students have often come to my office to share their personal experiences with sexual violence. Sometimes, they tell me stories that have just happened in the past couple of months. I am certain that if I didn't teach rape in the classroom, those students wouldn't feel comfortable coming to talk to me in private. A major theme of my classroom discussions of rape is that the dysfunction of America's sex crime laws is due our failure to discuss the subject. And while I do my best to create a healthy learning environment, we do not shy away from the tough legal and social dimensions of sexual violence.

In my experience, it has been a net positive learning and personal experience for victims I have spoken with to have rape as part of the 1L Criminal Law curriculum... much like when I had a student in a class who had experienced unfathomable trauma with a family murder. A few years previous to being in my 1L Criminal Law class, this student's mother had killed his father. She was found guilty and sentenced to lengthy period of incarceration. He came and talked to me about it after we started our section on homicide, became my best RA, and I still keep in touch with him. I can't speak with certainty as to Harvard students, but my experience has been that 1L Criminal Law has helped traumatized students deal with the violence and difficulty in their past.

And, in doing so, many have found greater purpose and direction in their law studies. Some have harnessed that purpose to dedicate their legal

careers to addressing the social ill that had previously plagued their lives. If Suk's concern is with the victims of sexual violence, I hope she doesn't give up teaching about it.

Me too. Will Wilkinson [makes the broader point](#) that "it will be a shame, and a deep loss, if our educational culture becomes so painfully sensitive, so leery of any subject that might make anyone feel anxious and uncomfortable, that it becomes impossible to intelligently examine the dark side of the human experience in the classroom. We don't need the pitiless anti-PC provocation to which some conservatives seem to prone, but we do need a firm, mature insistence that the serious, detailed collective exploration of violence, sex, war, pain, and death is simply too important to defer because of any one person's troubled autobiography."

Professor Yung ends his post by noting that his experiences may not be representative. He solicits feedback from readers. I'd like to do the same, especially given that lawyers and law students are often among my best correspondents. Where do you stand in the debate about best practices at law schools? Are there important aspects of the controversy that I've gotten wrong or failed to highlight? Did grappling with uncomfortable subjects in law school play any role in your career? Do you have any related thoughts that my questions haven't elicited? Emails to conor@theatlantic.com are encouraged and appreciated.

 [Jump to Comments](#)



CONOR FRIEDERSDORF is a staff writer at *The Atlantic*, where he focuses on politics and national affairs. He lives in Venice, California, and is the founding editor of [The Best of Journalism](#), a newsletter devoted to exceptional nonfiction.

[ALL POSTS](#) | [RSS](#) | [EMAIL](#) |

VIDEO

[MORE VIDEO](#) ►



How to Cook Spaghetti Squash (and Why)

Cooking for yourself is one of the surest ways to eat well. Bestselling author Mark Bittman teaches James Hamblin the recipe that everyone is Googling.

[More](#)

[MORE ARTICLES](#) ►



M.F.A.s: An Increasingly Popular, Increasingly Bad Financial Decision

JOIN THE DISCUSSION

After you comment, click Post. If you’re not already logged in you will be asked to log in or register.

blog comments powered by Disqus

ATLANTIC MEDIA

How to Restore a Rothko: With Light

Why a Black *Annie* Is So Significant

I'm the Jerk Who Was Disappointed by the Final Episode of *Colbert*

More from The Wire

Here's Where All Those Cheap Santa Hats and Plastic Snowmen Come From

A Sydney Artist's Playful Street Signs Interrupt the Mundane

Where Can Singaporeans Relax? At the Comedy Club

More from CityLab

Will American companies spoil Europe's party in Cuba?

Papal assist aside, economics are the reason Cuba ditched Venezuela for America

Lego for grown-ups: monochrome set is targeted at architects

More from Quartz

U.S. Officially Blames North Korea for Sony Hack

In the Search for Affordable Childcare, Location is Everything

GOP Governors Eyeing the White House Have Plenty to Lose at Home

More from National Journal

GOP Senators Are Lukewarm on Jeb Bush as Commander in Chief

The D Brief: Is "Iraq first" the right way?; An about face for the Army; Avril Haines gets the nod; The wars cost \$1.6 trillion; Does Elf on a Shelf create a spy culture?; And a bit more.

Is Obama's 'Iraq First' Strategy Working Against ISIS?

More from Defense One

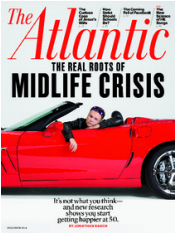
E-NEWSLETTERS

- Today's Top Stories
- This Week
- This Month
- New at In Focus
- CityLab

INFORMATION

- FAQ
- Subscribe Help
- Masthead
- Store
- Emporium
- Jobs
- Privacy
- Site Map
- Terms and Conditions
- Advertise
- Advertising Guidelines
- Press
- Contact Us
- Special Reports
- Atlantic Scene
- Books
- Events
- Atlantic Media

SUBSCRIBE



Get 10 issues a year and save 65% off the cover price

Fraud alert regarding *The Atlantic*

STATE

ZIP

Next ►