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SpearIt

Saint Louis University

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PRIORITIES OF PEDAGOGY: CLASSROOM JUSTICE IN THE LAW SCHOOL SETTING

SPEARIT[†]

PROLOGUE

Teachers' expectations cannot be divorced from their students' expectations in turn. In the worst case scenarios, teaching results in disappointment and leaves people on both sides of the podium feeling unfulfilled.¹ Students feel like they are left holding a Costco-sized-receipt-cum-diploma for a mediocre learning experience. In turn, this situation may reinforce attitudes of some teachers who approach teaching as the high cost of being a law professor: the chore that comes with the job.² Sometimes, however, a skillful teacher can transform the classroom into a sacred space. With skill and sincerity, a teacher can motivate students to learn for reasons other than merely making money, repaying loans, or passing the bar. In these moments, both teacher and students experience the classroom as a place of transcendence, where students' thoughts of job prospects and professors' obsessions with journal rankings meld into the mundane.

Rather than creating such electrifying moments, law schools are more renowned for producing student alienation.³ Law students suffer from isolation, perhaps more than in any other educational setting.

† Assistant Professor, Saint Louis University School of Law.

1. See WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 48-50 (2007).

2. Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School,"* 38 J. LEGAL ED. 61, 68 (1988) ("[T]ime with the soon-to-practice student is the price the professor pays to do his scholarship—liberal, radical, or conservative critiques of the direction of lawmaking.").

3. See ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* 29-36 (2007) (discussing empirical data and the negative impacts of law schools, including student alienation).

This sometimes leads to unfortunate consequences, including heavy alcohol consumption or introduction to the pervasive drug culture that includes both illegal and “clean” drugs as a means of “taking the edge off” while gaining the ever-sought-after competitive edge.⁴ Sometimes student alienation derives from the institutional norms of law school culture, including use of mandatory grading curves. Curves effectively put students in competition with one another, making a fellow student’s success zero-sum against one’s own, and there is little incentive to push one’s peers’ learning.⁵ Hence, curving de-emphasizes collaboration among students and is at odds with the practice experience of most attorneys, who must cooperate within and beyond their firm on a regular basis.⁶ Alienation is a product of such systems that measure students against each other, even though law schools could use criteria-referenced evaluations to measure students’ performance against the objectives of the course.⁷

Law professors also generate some of the estrangement by using all sorts of techniques to distance themselves from students. These include insisting on the title “professor” and “suiting up” on teaching days. More subtly, symptoms manifest in pedagogy through the use of cold calling, seating charts, and Socratic dialogue, among other signs of authority. But professors are not entirely to blame, since students themselves, well before they even enter law school, come to expect the “paper chase” ritual, and willingly submit to the rite of passage.

Unfortunately, some professors must employ these strategies due to unprofessional students. There is indeed a type of law student who lacks tact, sincerity, and professionalism, and sometimes these teaching tactics may be driven by the need to instill better practices for

4. *Id.* at 30 (noting that lawyers’ problems with drugs, alcohol, and other problems begin in law school).

5. *See id.* at 73 (“The competitive atmosphere and negative messages to students about their competence and self worth impede the development and the attributes of professional lawyers.”).

6. *Id.* at 119-21; ROGER C. CRAMTON ET AL., REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 4 (1979) (“Since lawyers today commonly work in teams or in organizations, law schools should encourage more cooperative law student work.”).

7. *See* STUCKEY ET AL., *supra* note 3, at 245-53; SULLIVAN ET AL., *supra* note 1, at 170-71.

professionalism in such students. This situation is particularly true for female and minority professors, as well as others who have to work harder for respect and credibility than the traditional law professor, who, by virtue of his whiteness and maleness, is cloaked with authority in the eyes of most students. Under the auspices of praxis these tactics have legitimate uses, but when they are wielded in the name of power, classroom justice becomes the lamb led to the slaughter.

JUSTICE BEYOND THE CASEBOOK

But what exactly is classroom justice? As a theoretical endeavor, classroom justice might best be viewed as a subspecies of critical pedagogy. Broadly, critical pedagogy is a movement of educators to devise more equitable methods of teaching, help students develop consciousness of freedom, and connect knowledge to power.

My very first encounter with this approach to teaching was Paulo Freire's *Pedagogy of the Oppressed*, which enriched my understanding of the student-teacher dialectic.⁸ Although I had already been a teaching assistant at Harvard and the University of California, the work forcefully reminded me that my identity as a teacher inextricably connects to the concept of "student." The identity of one depends on the other, and so the realization was like a "Death of Teacher" moment for me. Although the point is simple, it is also profound, since it iterates teaching's relationship to power. Freire's work got me to think about how oppressive the classroom can be, and more importantly, how teachers can liberate students from being silent partners in their education.

Beyond identifying the need for student liberation, Freire's work impressed me with the idea that teachers are trapped too. According to him, teachers who dominate and oppress their students are themselves not free—they are not free from the need to dominate, hence his notion of "revolutionary liberation" indicates that all must be liberated.⁹ Therefore, pedagogy of the oppressed is a pedagogy that

8. See PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (Myra Bergman Ramos trans., Continuum 30th Anniversary ed. 2000).

9. *Id.* at 132-33.

oppresses everyone. But the challenge for all law teachers remains: how to implement a liberatory approach in the law school setting?

In practice, classroom justice corresponds to teaching methods that strive for just outcomes.¹⁰ It is a critical approach that recognizes traditional law school teaching as intentionally oppressive and hierarchical. It is the baseline recognition that “justice” is not merely a concept to be gleaned from a casebook, but something to be cultivated and practiced in legal education. The classroom is free from unfairness, fear, and hazing,¹¹ where teachers make a conscious attempt to minimize the chasm between teacher and student and employ evidence-based models of teaching.

Classroom justice informs the learning ecology, classroom policies, and methods of evaluating students by striving to maximize learning outcomes. Classroom justice may be a matter of self-determinacy and letting students help design the syllabus, determine some of the content of the course, or decide how participation will work.¹² Classroom justice is consciousness of—and wariness of—how logistical decisions can contribute to or guard against pedagogy of the oppressed.

In principle, classroom justice could even be about how much respect is accorded to a syllabus—is it akin to a legal document or subject to the whim of the professors’ constant amendment? In my own experience, I resented classes in which the designated readings were sent in chunks throughout the semester, such that we never really saw the big picture until the end. I resented even more, classes in which the syllabus was constantly amended. Often, the amount of material the professor was able to cover in each session determined

10. This posture accords with the MacCrate Report’s four professional values, which include “promoting justice, fairness and morality.” See TASK FORCE ON LAW SCH. & THE PROFESSION: NARROWING THE GAP, AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM 140-41 (Robert MacCrate ed., 1992).

11. See STUCKEY ET AL., *supra* note 3, at 110-11 (describing the components of effective and healthy teaching and learning environments that “do no harm to students”).

12. See Gerald F. Hess, *Collaborative Course Design*, 47 WASHBURN L.J. 367 (2008) (“[R]ecent empirical research on legal education reveals that law schools can improve students’ motivation and performance by giving students significant input into their own education.”).

the class tempo. From my perspective, this style of class-management portrayed an inability to plan and execute a precise lesson; it seemed a serious defect that a professor could not gauge how much could be covered in a class period, especially since office hours are available to address students' needs in troublesome areas. Not being able to gauge coverage seemed particularly unfair as a student since this is exactly what professors expect on exams: a disciplined response in a set timeframe.

Even when loyalty to the syllabus must be compromised, professors can strive for just outcomes. For example, at some time or another, most professors must cancel and reschedule a class. For students, a make-up class can be a real hassle that tampers with an already loaded schedule. Even though a make-up class essentially asks students to make sacrifices, some professors hardly think twice about rescheduling. For students, however, this can be unfair, since invariably, some students will not be able to attend the make-up.

Of course, being invited to speak at University *X* or Conference *Y* is part of the business of being an academic, but the disruptions it causes students must be recognized—and recompensed. A thoughtful professor might plan for something other than a make-up, like having an attorney or alumnus guest-lecturer, asking a colleague to cover the lesson, or if necessary, cancel—and offer to reschedule the class during a time that might favor the students. Potential candidates for a make-up are the class before their legal research and writing assignment is due, the class before the reading period, or any other time that would advantage their study. In this way, students' schedules are respected as much as students must respect the professor's. Moreover, technology can be leveraged in ways that minimize the burden on students when classes must be canceled.¹³ Professors can deliver a podcast, tape a lecture, email a PowerPoint presentation, or start a discussion thread that can be monitored remotely or at a later time.

As the above indicates, law schools still largely abide by a teacher-oriented pedagogy. A teacher-centered pedagogy impedes

13. See generally Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Students*, 43 SANTA CLARA L. REV. 1 (2002).

student success since its main flaw is that “it focuses on how teachers teach without taking into account how students learn.”¹⁴ It may not come as a surprise, then, that law schools, elite loci of learning, require no formal training in teaching whatsoever. In fact, teaching experience may be welcome, but any formal requirements of training are conspicuous by their absence.¹⁵ Still, it is worth pausing here a moment to ponder the point—*the profession of law teaching requires no training in law teaching.*

Perhaps in Freire’s utopia things would look different: there would be training mandates for all instructors and law schools would require education on education as the professorial standard. In other words, legal education would keep in step with known educational theory. Under the burden of educational theory, professors would know that students process information in a variety of cognitive modalities to obtain, process, store, and retrieve information.¹⁶ Some students are auditory, others depend on visual cues for learning, and still others are best served by as much hands-on, experiential learning as possible.¹⁷ Knowing this “can help students become better self-learners by helping them to plan their learning to maximize their abilities and interests.”¹⁸

14. *Id.* at 18.

15. See STUCKEY ET AL., *supra* note 3, at 106 (“Although the core mission of most law schools is to educate students, virtually no legal educators have educational training or experience when they are hired, and few law schools provide more than cursory assistance to help new faculty develop their teaching skills.”).

16. *Id.* at 90 (advocating that professors teach to “a wide variety of learning styles”); Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 4 (1996).

17. See, e.g., Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213, 216 (1998) (“Researchers have suggested that instruction delivered without concern for individual learning-styles is improper.”); Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347 (2001). *But see* Robin A. Boyle & James B. Levy, *The Blind Leading the Blind: What if They’re Not All Visual or Tactile Learners?* (St. John’s Univ. Sch. of Law, Legal Studies Research Paper No. 08-0129, 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1121352 (warning against making assumptions that the majority of students “are visual and/or tactile learners because they have grown up using computers”).

18. Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law*

In this world, teachers would also stay vigilant of falling into the trap of reproducing one's preferred method of learning. The problem with this one-dimensional approach affects the class significantly, since some students do not get a chance to engage with the material on their own learning turf, so to speak. Rather, the students who naturally resonate with the professor's teaching style enjoy the advantage of learning in a way that makes sense, while peers must make do.¹⁹ As an illustration, my Civil Procedure professor never used any teaching aid beyond the casebook and his voice. He never used any electronic devices, models, charts, transparencies, or even the chalk. The class was 100% verbal discourse in mumbled monotone. I cannot remember a worse educational experience, yet there were some students who loved the class, whom, I suspect, also did well on the final exam. I did not.

Even if utopia is a ways off, professors can work to increase their effectiveness now. One way is by abandoning the across-the-board method of teaching and instead employing a greater variety of teaching methods, materials, and assessments of students.²⁰ Practically-speaking, this might include enhancing the class repertoire with audio or visual course materials, field trips to relevant sites, or even sharing the teaching space with guest lecturers or student presentations.²¹ Professors should strive to tether lessons to the practice of law so that students stay grounded practically, as well as

Students and Performance, 26 CUMB. L. REV. 63, 102 (1995).

19. See Lasso, *supra* note 13, at 24 (describing that due to the variety of students' learning styles, "professors should tailor the delivery of legal education to how most of their students learn best rather than on how their best students learn the most").

20. See generally COMM'N ON WOMEN IN THE PROFESSION, AM. BAR ASS'N, DON'T JUST HEAR IT THROUGH THE GRAPEVINE: STUDYING GENDER QUESTIONS AT YOUR LAW SCHOOL 19 (1998) (suggesting to law schools that "first-year curriculum would be improved by the use of a greater variety of teaching methods in light of the diversity of learning styles in student body"); Gerald F. Hess, *Value of Variety: An Organizing Principle to Enhance Teaching and Learning*, 3 ELON U. L. REV. 65 (2011), available at http://www.elon.edu/docs/e-web/law/law_review/Issues/Elon_Law_Review_V3_No1_Hess.pdf.

21. See generally MADELEINE SCHACHTER, THE LAW PROFESSOR'S HANDBOOK: A PRACTICAL GUIDE TO TEACHING LAW (2003).

take proactive measures to teach students metacognitive techniques to analyze their own thinking and learning.²²

Moreover, professors should constantly reevaluate the fairness and accuracy of student assessment. For example, a solitary exam given at the end of a semester that counts for 100% of the final grade is at odds with a justice-oriented pedagogy. A solitary evaluation is at odds with good teaching in general, since studies note that such “one-shot” exams are unreliable and unfair.²³ A better approach would involve assessment of students throughout the course. Additionally, rather than one type of assessment, teachers should engage a greater variety that provides those who perform better in writing and speaking with similar opportunities to shine as those who are good test-takers. Assessments might include drafting exercises, case-file problems, mock trials, debates, or oral examinations.²⁴

PROGRESSIVE TEACHING: LATCRIT & SALT

Beyond Freire’s inspiration, my ideas about classroom justice were greatly influenced when I became a 2004 LatCrit Student Scholar. As a part of the scholarship prize, I got to attend that year’s Latino Critical Legal Scholarship (LatCrit) conference at Villanova Law School. Little did I know that this conference would problematize my teaching and spark an interest in law teaching. At the conference, I attended the Faculty Development Workshop co-sponsored by the Society of American Law Teachers (SALT), where I first began discovering my own priorities of pedagogy. At that gathering, I met a number of folks who would be important for my entry into the academy: Angela Harris, Frank Valdes, Camille Nelson,

22. Anthony S. Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 WIDENER L. REV. 33, 36 (2006) (“[L]aw professors need to model appropriate metacognitive skills and learning across the law school curriculum in order to foster the transfer of cognitive legal skills to new situations and problems.”).

23. STUCKEY ET AL., *supra* note 3, at 236-39; SULLIVAN ET AL., *supra* note 1, at 164-67; *see also* Boyle & Dunn, *supra* note 17, at 219 (criticizing that courses with a single exam rest on “the incorrect assumption that the needs of all students are the same” and result in inequality since “students cannot equally demonstrate what they have learned by taking a single examination”).

24. *See generally* Friedland, *supra* note 16; Schwartz, *supra* note 17.

Adele Morrison, Tayyab Mahmud, Frank Rudy Cooper, Catherine E. Smith, Solangel Maldonado, Tucker Culbertson, and others who offered support from the start. At the time, I was still two years removed from even going to law school, yet the workshop challenged my understanding of “excellence in teaching.” The gatherings also put me in contact with like-minded folks including Professor Marc-Tizok Gonzalez, who at the time was a law student. We both attended the workshop as Student Scholars, and subsequently broke into the academy in successive years.

At that time, although I was a Ph.D. student, I had completed the Certificate of College and University Teaching (CCUT), offered by the Interdisciplinary Studies Department at the University of California, Santa Barbara, where I was busy honing an educational approach to undergraduates. To give an idea of how I understood my own teaching style, I submitted the following statement as a part of my CCUT portfolio, written the year before I attended the LatCrit conference:

STATEMENT OF TEACHING: Experience has taught me that successful teachers have qualities that generally fall into two broad types: Some are personable and charismatic, and can use their personality to inspire and motivate students to learn. These I label the ‘prophets’ of teaching. The others are those who have pedagogical knowledge or insight into theories and practices of education. These I deem the ‘priests.’ The former rely on innate ability to communicate and create knowledge, the latter on employing lettered strategies and techniques. Yet these two modes are not mutually exclusive; they can be actively fused together to achieve optimal learning conditions for students.

My teaching philosophy centers on developing the relationship between my natural talents as a teacher and my study of the learning process. At its core, my approach is based on a dynamic interplay of these two factors, the result of which is an ever-evolving instructor who only gets better at teaching. For me, excellence in teaching is an ongoing process.

In this scheme, the students are like a congregation with an assortment of needs: Some require inspiration and motivation while others need reviews, outlines, and study sheets. Some just need reassurance. My goal is to present material by focusing on various learning styles and sensory modalities. For example, the ‘priest’ in

me tries to foster structured thinking and critical reflection, while my prophetic side always aims to create an ambience where students feel relaxed and comfortable with the class ecology, confident that their contributions will be dignified and appreciated.

As a teacher I strive to equip students with a firm grasp of the course material based on various cognitive levels. I gauge student understanding by rigorous questioning rather than providing answers myself, mining students for their own knowledge. Put simply, in this forum of intellectual exchange students become a pedagogical tool, who, in the process, learn that powerful thinking is not just about answers, but questions too. I share the teaching space with students and encourage them to be active rather than passive participants. This non-narrative style of delivery challenges students to grapple with the material personally and to articulate their ideas successfully. Simultaneously, this method rescues students from being “silent partners” in the classroom—a syndrome that is all too widespread in colleges and universities.

My ultimate teaching goal for undergraduates is their mastery of three critical skills: thinking, speaking, and writing. These abilities are the building blocks for future success—no matter what the endeavor. I believe that teaching students *how* to approach a topic is far more important than the knowledge of any one topic in particular. Critical attention and ability have enduring employment in one’s life and pervade all aspects of existence, but especially life beyond the comfort of the classroom.²⁵

Although this was my prevailing teaching philosophy at the time, the SALT workshop pushed me to consider how my approach might fare in the law school setting and challenged me to consider my own assumptions about teaching. This was all very important to me because I had plans to attend law school; moreover, as a teacher I was already well aware of law school’s ritualistic dynamics. From my graduate student perspective, law school seemed like a cold world of hot-seating and constant threat of embarrassment—all of which seemed to rally against what I had learned in CCUT training.

In fact, the more I considered these issues and searched for justifications, I found little good reason, indeed—no empirical

25. SpearIt, Certificate of College and University Teaching Portfolio (Sept. 2003) (unpublished student portfolio, Interdisciplinary Studies Program at University of California, Santa Barbara) (on file with author).

evidence to suggest that creating an artificially tense learning environment is beneficial to learning. Rather, high-risk learning environments result in all sorts of negative repercussions for students.²⁶ Of course, many professors would contest this characterization by asserting that they are training students for their jobs as advocates, to “think on the spot” or “think like a lawyer.” Despite how logical these sound, it is not evident how induced tensions equate to training for the courtroom. Obviously, there is a marked difference between the classroom setting and standing before a judge in court, between trying to impress the teacher to save face with peers versus trying to persuade the court for your client. Treating a doctrinal class as training grounds for court advocacy is a distortion at best, and at worst, another way of alienating students.

Other teachers, however, might defend such tactics as a form of “Socratic dialogue.” However, simply because many professors label their approach “Socratic” does not make it so, for a cursory review of actual Socratic dialogue shows something quite different from what typically happens in law school.²⁷ Indeed professors have managed effectively to sever the “dialogue” from the approach, as there is little if any dialogue in the law school setting.²⁸ Rather, there is rigorous

26. There is a rich literature on anxieties about law school, including biography. *See, e.g.*, DAVID BROOKS, *THE SOCIAL ANIMAL: THE HIDDEN SOURCES OF LOVE, CHARACTER, AND ACHIEVEMENT* (2011) (discussing the importance of reassurance in cognitive development); ANDREW J. MCCLURG, *1L OF A RIDE* 27-38 (2009) (discussing fear factors for law students); SCOTT TUROW, *ONE L* (1977) (detailing Turow’s first year of law school at Harvard).

27. *See* Steven Allen Childress, *The Baby and the Bathwater: Salvaging a Positive Socratic Method*, 7 OKLA. CITY U. L. REV. 333, 334 n.1 (1982) (stating that methods designated as “Socratic” bear little “resemblance toward true Socratic dialogue, given modern class size, educational goals, and materials”); Lasso, *supra* note 13, at 14 n.54 (“Most law school discussions are not true Socratic dialogues. Most classroom exchanges between professor and student are either simple recitations or simple question and answer periods where the teacher does all the asking and the student does most of the answering based on previous readings.”); Menkel-Meadow, *supra* note 2, at 67 (“[T]he law school form of Socratic dialogue occurs in so large a group that little reciprocity, genuine communication, or exploration is possible.”).

28. *But see* STUCKEY ET AL., *supra* note 3, at 112 (“When properly used, [the Socratic method] is a good tool for developing some skills and understanding in law

quizzing by the teacher of students, conducted by a professor who, in many cases, has pondered the issues and cases for decades. Such a lopsided format and balance of knowledge affords little opportunity for students to debate in any meaningful sense.

Also lopsided is the balance of power, which is a core component of the method: Socratic dialogue depends on the parties having *opposing* viewpoints. Yet the law school model does not really consist of people with genuine legal viewpoints. Rather, it consists of a professor who knows an area of the law and students who are trying to learn the professor's view—students are not trying to assert their own legal view inasmuch as work toward the professor's treatment of the law. From this perspective, the claim of "Socratic" rings hollow, since law schools are not places where freethinkers gather to debate freely. Far from trying to outgun their teacher with witty retort, students are there to garner the best grades possible. Real Socratic dialogue is free of such conflicts of interest.

KEEPING MOMENTUM

LatCrit and SALT intervened in my teaching and produced a lasting impact. At the very least, the members of these organizations have supported my teaching and scholarly efforts for years. It may not be surprising then, that in my first year of teaching law, it was with great excitement that I attended the LatCrit conference. I was afforded the opportunity to discuss the LatCrit Student Scholar program and how it contributed to my arrival in the legal academy. It was a homecoming of sorts, since LatCrit and SALT were the first to get me thinking about law teaching, which eventually helped steer the course of my career.

It may be equally unsurprising that in my first year of law teaching I also started a working relationship with SALT. It began with an invitation to present on a panel at the National Black Law Students Association conference. The conference was a pipeline program for up-and-coming minority lawyers to consider the possibility of entering law school teaching. Later, I was asked to pen a

students. If used inartfully, it can harm students."); Childress, *supra* note 27, at 335 (describing that the core of Socratic dialogue is worth saving given that "teacher abuse and covert indoctrination" are removed whenever possible).

piece for the SALT blog. What I thought was a one-time fling instead blossomed into a full-blown love affair. As a regular contributor to the blog, I have expanded my teaching repertoire, since shorter informal pieces allow me to build bridges between communities and the legal academy.

My work in these organizations, like this Essay, has stressed among educators that teaching is a matter of justice, and that law professors can proactively adopt ways to rescue students from teaching typified by authoritarian and pseudo-Socratic machinations. The concept “classroom justice” aims to offer a more principled basis for law teaching, for both new and experienced teachers alike, which can lead to better practices in the law school classroom. Fortunately, I was lucky enough to encounter some organizations that are challenging the traditional model of fear and loathing.²⁹ I am a product of their efforts and I strive to pay it forward to future generations of law professors.

29. See Lasso, *supra* note 13, at 43 (describing how learning is affected by emotional factors and that “[g]ood teaching requires an environment of trust that encourages students to pay attention, think, and participate in class discussion”). “In other words, a positive classroom environment promotes learning.” *Id.*

