

The Power of Empathy in the Classroom

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Remembering Professor Marc Poirier

I had the good fortune to be Marc's colleague, friend and next door office mate at Seton Hall Law School. One of my first encounters with him was on an early morning when, on my way down the hall to my office and presuming that no one else was in, I began singing. Just as I reached my office door, Marc's voice boomed out, "Why are you so happy?" Startled, without the time to carefully think about a response, I blurted out, "Gratitude. I'm thankful to be here." Marc beamed and said simply, "Good."

Marc and I talked often about the craft of teaching, a passion that we shared. He cared deeply about the science and art of effective teaching and active learning. He was committed always not to perfection but to growth, expansion and re-invention. In class, he experimented with role-playing, simulations and dramatic re-enactments. He rejoiced when it went well and reflected with humor and gentle humility when it could have gone better.

After his passing, I spoke with members of Marc's last class about his teaching and his legacy. Several common threads emerged. One student noted, "He believed in us even when we could not yet believe in ourselves." Another said, "During an in-class simulation, when I thought that I was a complete disaster, Professor Poirier was generous in his feedback. 'Look at how you forged ahead no matter your fear. You demonstrated courage and strength.'"

Marc understood that our students rise or fall to our level of expectation for them. He spoke favor over his students. He helped them to see not only where they were, but where they could be. His students rose to meet him on that higher ground, if for no other reason than because they could not bear to let him down.

The Talmud says that behind every blade of grass is a gentle voice whispering, "Grow, grow." Marc was that voice for his students.

I had the privilege of being with Marc on the last night of his life. He remained lucid and alert, no matter that his organs were failing. One of his doctors remarked that his alacrity to the end was a testament to the powerhouse

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of his intellect. As it became plainer that matters had taken a turn for the worse, I said to Marc, “We need you. You are a statesman, a leader, a visionary. Your students adore you. Your colleagues cherish you. You are a king.” Marc asked for a pen and the nearby pad of paper. On it he wrote, “How long do I get to be king?” In that simple yet profound question, Marc the teacher shared one last lesson.

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INTRODUCTION

There are these two young fish swimming along, and they happen to meet an older fish swimming the other way, who nods at them and says, 'Morning, boys, how's the water?' And the two young fish swim on for a bit, and then eventually one of them looks over at the other and goes, 'What's water?'

This is Water – David Foster Wallace¹

When we teach, this is water: the students seated before us. Yet, we seldom take the time and set the intention to see, really see, the people in our classes. Whether distracted by where we are headed next, what just occurred, whether a given question has taken us off track or how much more we need to cover, we rarely pause to see what needs to be seen. This Article asks that we cultivate the presence of mind to see and to acknowledge, in each and every class that we teach, what we are swimming in. This is water: the student always seated alone at the fringe of the classroom who never participates, another in the third row whose mom just had a stroke, yet another in the second row who is worried that he may be drinking too much and still another in the fourth row who is not sure whether she belongs in school because everyone else seems so much smarter than she thinks she is.² When we teach with empathy we are choosing to see all of our students, perhaps for the first time. From that perch, we can champion not only those who are doing well but also those who are struggling.

Without empathy, we are teaching content instead of students. With empathy, we are better able to discern when a student is lost and when another has just made a connection. We see when a class member is engaged or disengaged. We see where our students are and where they could be. Empathic teaching helps us to reach the whole class, including those at the margins and those who appear to be either left out or left behind. It requires that we call our students by name and ask that they put down their laptops and cell phones so that the power of human connectivity can do its work.

The connections forged by empathy are collaborative as we let students in on our pedagogical choices and respond to their cues. Teaching with empathy asks that we discern from our students how they learn best and then incorporate that information into our classroom methodologies. Most essentially, empathic teaching helps

¹ DAVID FOSTER WALLACE, THIS IS WATER: SOME THOUGHTS, DELIVERED ON A SIGNIFICANT OCCASION, ABOUT LIVING A COMPASSIONATE LIFE 1 (2009).

² These examples are based on actual student reminiscences shared with me over my three decades in law teaching.

to show our students an expanded conceptualization of both self and “other.” It can yield a more inclusive perception of “*my neighbor as me*” because empathy helps students to reconsider the “other” by understanding perspectives that differ from their own, thus recalculating “us/them” archetypes.

Perhaps the greatest power of empathy in the classroom is that it reminds our students that the burdens of their own struggles do not relieve them of the responsibility to see and to acknowledge others in theirs. Honing our students’ empathic acuties helps to shape their emerging sense of professional identity so that it includes the capacity to bear benevolent witness to the suffering of others. Enriched by an understanding of the narratives and personal impacts of problems, our students become better equipped to solve them.

A. *Empathy Defined: Why It Matters*

Empathy, or the ability to put oneself in another’s shoes, is the act of projecting oneself into an observed context.³ Mirror neurons are empathy’s enablers⁴ and they allow one to experientially understand concepts not just by doing, but also by watching another in the doing.⁵ Observing another in an experience helps the observer to contextualize a framework for assimilating the experience as if it was his own.⁶ Acting “*as if*” does the same, as Shakespeare famously noted when he wrote, “Assume a virtue, if you have it not . . . [f]or use almost can change the stamp of nature.”⁷

³ German psychologist Theodore Lipps used the term *empathie* (translated as empathy) to recount the experience of placing “oneself into the object of perception.” Timothy P. O’Neill, *Mirror Neurons, The New Neuroscience, and the Law: Some Preliminary Observations*, 39 SW. L. REV. 499, 503 (2010). See also Bridget Cooper, *Empathy, Interaction and Caring: Teachers’ Roles in a Constrained Environment*, PASTORAL CARE 14 (2004) (“Empathy is a quality shown by individuals which enables them to accept others for who they are, to feel and perceive situations from their perspective and to take a constructive and long-term attitude towards the advancement of their situation by searching for solutions to meet their needs.”).

⁴ See Paula A. Franzese, *Law Teaching for the Conceptual Age*, 44 SETON HALL L. REV. 967 (2014) (describing the process by which the observer’s neurons mirror the observed conduct as if it were being undertaken by the observer, who feels “and attributes to himself the same feelings and experiences as the person who is carrying out the action first-hand”) (citation omitted).

⁵ See generally V.S. RAMACHANDRAN, *THE TELL-TALE BRAIN: A NEUROSCIENTIST’S QUEST FOR WHAT MAKES US HUMAN* (2011) (discussing how mirror neurons are to psychology what DNA is to biology).

⁶ O’Neill, *supra* note 3, at 504.

⁷ WILLIAM SHAKESPEARE, *HAMLET PRINCE OF DENMARK* 108 (George Pierce Baker ed., 1913).

Teaching with empathy unleashes empathy.⁸ Empathic pathways to learning are reciprocal, with teacher feeling into the experience of student and student feeling into the experience of teacher.⁹ There are both cognitive and emotional components to an empathic response¹⁰ or reaction “to the observed experiences of another.”¹¹ Empathy facilitates the inculcation in the classroom of both hard and soft skills¹² because it allows students to mimic experientially the teacher’s own range of those acuties. The former are traditionally the focal points of classroom exchange, but the latter provide context and meaning, allowing the technical or factual knowledge to come to life.¹³ A more deliberate cultivation of students’ soft skills or “high concept”¹⁴ abilities to detect patterns, devise cohesive narratives, navigate ethical uncertainties and appreciate the subtexts of exchange depends on empathy and its role in nurturing emotional intelligence. Heightened emotional intelligence leads to an increased ability to sense one’s own emotions in others, appropriately express emotions, more deftly manage conflict, better predict outcomes, and thereby become more

⁸ See Lennon Flowers, *Unleashing Empathy: How Teachers Transform Classrooms With Emotional Learning*, YES! MAG. (Apr. 4, 2014), <http://www.yesmagazine.org/issues/education-uprising/raise-your-hand-if-you-know-how-it-feels> (quoting Mary Gordon, the founder and president of Roots of Empathy, a “social and emotional learning” education program, as explaining, “You can’t teach empathy. You unleash it”).

⁹ Flowers, *supra* note 8 (“Addressing the host of unmet social and emotional needs that students carry into the classroom demands that teachers be able to look below the surface and understand what’s driving a particular set of behaviors.”). See generally Jessica Lahey, *Teaching Children Empathy*, N.Y. TIMES (Sept. 4, 2014, 10:34 AM) http://parenting.blogs.nytimes.com/2014/09/04/teaching-children-empathy/?_r=0 (“Empathy, like other emotional skills, requires repetition [sic] to become second nature.”). See also NORMA DEITCH FESHBACH & SEYMOUR FESHBACH, THE SOCIAL NEUROSCIENCE OF EMPATHY 85, 86 (2009) (the scope of empathy includes “social understanding, emotional competence, pro-social and moral behavior, compassion and caring, and regulation of aggression and other antisocial behaviors”).

¹⁰ Empathy exists on a spectrum, ranging from cognitive empathy or the more intellectualized ability to understand another’s perspective to emotional empathy or the more visceral capacity to transpose oneself into the feelings and actions of others. See Mark H. Davis, *Measuring Individual Differences in Empathy: Evidence for a Multidimensional Approach*, 44 J. PERSONALITY & SOC. PSYCHOL. 113, 113 (1983).

¹¹ *Id.* See also FESHBACH & FESHBACH, *supra* note 9 (describing the cognitive and affective aspects of empathy).

¹² Hard skills include technical and fact-based proficiencies. Soft skills include interpersonal and social aptitudes. See, e.g., Deborah Maranville, Mary A. Lynch, Susan L. Kay, Phyllis Goldfarb & Russell Engler, *Revision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517, 527 (2012) (describing goals of experiential learning to hone intellectual, social, and cultural competencies).

¹³ *Id.*

¹⁴ DANIEL PINK, A WHOLE NEW MIND: WHY RIGHT-BRAINERS WILL RULE THE FUTURE 48 (2005).

effective in class and at work.¹⁵

Nurturing students' empathic acuties helps them to become better learners. The academy emphasizes the certainly essential role of reason and logic, but tends to pay less attention to the equally important role that emotional aptitudes play in assuring both success and significance in school, at work and in life. Knowledge becomes fleeting, if not "inert without the ability to make situations real inside oneself, to understand their human meaning."¹⁶ Empathic learning deepens our students' abilities to cultivate a more nuanced, conceptual, and resonant understanding of a given subject. It facilitates the process of deriving meaning from context.

Emotional intelligence is a key component of effectiveness in the workplace.¹⁷ In a complex global economy, it enhances earning potential, productivity, and business savvy.¹⁸ The cornerstones of one's so-called emotional quotient ("EQ") are empathy,¹⁹ self-awareness,²⁰

¹⁵ *Id.*

¹⁶ See Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Lawyering*, 87 NEB. L. REV. 1, 19 (2008) (citing Martha C. Nussbaum, *Cultivating Humanity in Legal Education*, 70 U. CHI. L. REV. 265, 270 (2003)).

¹⁷ Daniel Goleman, *What Makes a Leader?*, Nov.-Dec. 1998 HARV. BUS. REV. 82 ("Without [emotional intelligence], a person can have the best training in the world, an incisive, analytical mind, and an endless supply of smart ideas, but he still won't make a great leader.").

¹⁸ Empathy has been cited as making "young people more productive in work environments that require cooperation" and in a complex global economy. *Id.* See also FESHBACH & FESHBACH, *supra* note 9, at 88.

¹⁹ In the educational arena, empathy involves thoughtful consideration of students' feelings in the process of making more intelligent decisions. See Goleman, *supra* note 17. By putting oneself in the student's place, the teacher is better able to effectively transmit even complex subject matter in ways that students comprehend. Daniel Goleman, *How to Be Emotionally Intelligent*, N.Y. TIMES (Apr. 7, 2015), http://www.nytimes.com/2015/04/12/education/edlife/how-to-be-emotionally-intelligent.html?_r=0. And by being empathetic, a teacher will frequently welcome student questions, just to ensure that she is accurately conveying the information. *Id.* Cognitive empathy, along with accurately "reading another person's feelings," makes for effective communication. *Id.* Listening skills are also imperative to empathy. *Id.* By being a careful listener, one pays full attention to another and takes the time to understand what another is saying, without "talking over them or hijacking the agenda." *Id.*

²⁰ Self-awareness means having an understanding of one's own emotions, motivations, strengths and limitations. See Goleman, *supra* note 17, at 96. Self-awareness does not make one either critical or hopeful—instead it helps one to be honest, authentic and accountable. *Id.* It also extends to a person's interpretation of his own goals and values: when one is self-aware, he can determine the underlying motivations for his actions, and can more fully flush out a justification for them. *Id.* Self-awareness can be "learned" through "accurate and open" speech regarding one's emotions and their impact on work product. *Id.*

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self-regulation,²¹ motivation,²² and social skills.²³ Empathic aptitudes allow one to more accurately read others, gauge the mood of the settings at hand, and better ordain and predict outcomes based on both the verbal and nonverbal cues that are shared.²⁴ Empathy is the great enabler, serving as the pathway to perceive and accurately express emotion, to better understand context enriched by emotion, and to use emotion to facilitate thought, self-correction, and growth.²⁵ It facilitates greater pro-social behavior as well as more positive peer and family relationships.²⁶

Empathy matters in the classroom.²⁷ It enhances understanding and retention by allowing students to feel as though they are a part of the stories of the topics that we teach.²⁸ Indeed, story is context enriched by emotion.²⁹ Empathic pathways are essential to the art of persuasion and at the heart of social reasoning skills.³⁰ Unleashing the power of empathy helps our students to become transformational leaders; leaders who are able to search beyond their own interests and

²¹ Self-regulation plays the vital role of controlling feelings and impulses and allows one to be reasonable. *Id.* at 84. Self-regulation has a “trickle-down approach”: when the teacher is calm and reasonable, students are likely to adopt these behaviors, too, so as to best fit in to the environment of “trust and fairness” that has already been cultivated in the classroom. *Id.* at 86. Being able to regulate one’s own emotions also enhances integrity and decreases impulsive behavior. *Id.*

²² Motivation, through the emotional intelligence lens, involves achievement: the desire to achieve for the sake of achievement. *See* Goleman, *supra* note 17. Signs of the desire to achieve include: passion for the work itself, energy to do things better, continual raising of the metaphorical “performance bar,” and the ability to remain optimistic. *Id.*

²³ Social skills can be described as “friendliness with a purpose.” *See id.* Those with a cornucopia of social skills understand that kindness, not mean-spiritedness, moves others in the direction one desires. *Id.* Social skills grant one a “knack for building rapport” and the comprehension that “nothing important gets done alone.” *Id.* This is valuable in providing for a rich and diverse network of resources that can be activated when needed. *Id.* In the classroom, teachers can use their social skills to “manage” the classroom, and allow the branches of networks to grow between themselves and their students, as well as between the students themselves.

²⁴ Marc A. Brackett et al., *Emotional Intelligence and Its Relation to Everyday Behavior*, 36 PERSONALITY & INDIVIDUAL DIFFERENCES 1387, 1388–89 (2004).

²⁵ *Id.*

²⁶ *See generally* Brackett, *supra* note 24 (describing how empathy enhances quality of relationships).

²⁷ *See, e.g.*, FESHBACH & FESHBACH, *supra* note 9, at 85–97 (stating that empathy enhances academic achievement and workplace advancement).

²⁸ *See* John L. Barkai & Virginia O. Fine, *Empathy Training for Lawyers and Law Students*, 13 SW. U. L. REV. 505, 505–29 (1983).

²⁹ *See* PINK, *supra* note 14, at 103.

³⁰ Barbara Mandel & Shilpa Pherwani, *Relationship Between Emotional Intelligence and Transformational Leadership Style: A Gender Comparison*, 17 J. BUS. & PSYCHOL. 387, 389 (2003).

toward interests that can benefit the group in its entirety.³¹

Empathy is accessed as a tool for conceptual learning whenever the class has the opportunity to respond to the choices made by the actors involved in the matter at hand, and thus considers the immediate and broader consequences of those choices. Exercises such as “*what would you do?*” put students into the shoes of the various players to learn from their successes and failures and to develop a visceral feel for the material. Enhanced proximity to the subject matter is cultivated as students come to appreciate its relevance—*this is why it matters*—and significance—*this is what it means*.

Emotional cues are particularly effective pathways to critical thinking for millennials, who tend to be deeply interested in deriving meaning from context³² and are able to “treat real and imaginary worlds as one.”³³ Further, cultivating our students’ empathic pathways to learning—that is, reminding them often to put themselves in the other’s shoes—helps to temper the more self-referred tendencies (*why should this matter to me?*) by thinking about and feeling for “the other,” and why it might matter to him or her.³⁴ Empathy allows for reciprocity of experience and relevance, which in turn helps the observer to develop a rubric for processing and then solving the given problem as if it was the observer’s own.³⁵ The neural mechanisms at work enhance

³¹ Mandel & Pherwani, *supra* note 30, at 390.

³² See generally WILLIAM STRAUSS & NEIL HOWE, GENERATIONS: THE HISTORY OF AMERICA’S FUTURE, 1584–2069 (1991).

³³ See JOHN PALFREY & URS GASSER, BORN DIGITAL: UNDERSTANDING THE FIRST GENERATION OF DIGITAL NATIVES X (2009).

³⁴ See H.J. Garrett & K. Greenwalt, *Confronting the Other: Understanding Empathy*, 13 CURRENT ISSUES EDUC. 4 (2010). The Yale Center for Emotional Intelligence’s RULER program teaches students to recognize, understand, label, express, and regulate emotions. *How RULER Becomes an Integral and Enduring Part of Your School or District*, YALE CTR. EMOTIONAL INTELLIGENCE, <http://ei.yale.edu/ruler/ruler-overview/> (last visited Feb. 27, 2017). Split into three phases integrated over the course of three years, the program first attempts to “anchor” emotional intelligence by fostering a healthy emotional climate essential to personal growth. *Id.* Next, RULER ensures that emotional intelligence is “woven into the content of every class and throughout each student’s school day.” *Id.* In the final phase, RULER trains educators to pass along the messages of empathic teaching to other instructors at their own institutions. *Id.* The techniques of this program reduce negative factors such as “hyperactivity, depression, anger, and aggression” and improve students’ attitudes toward school and inter-personal relationships, allow for higher-order instructional strategies, and create a more effective academic experience.

³⁵ “There is broad agreement on three primary components: (a) an affective response to another person, which often, but not always, entails sharing that person’s emotional state; (b) a cognitive capacity to take the perspective of the other person; and (c) some regulatory mechanisms that keep track of the origins of self and other-feelings.” Jean Decety & Philip L. Jackson, *The Functional Architecture of Human Empathy*, 3 BEHAV. & COGNITIVE NEUROSCIENCE REVS. 71, 73 (2004). See generally Lynne N.

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learning by accessing both linear and intuitive acuties through the process of empathic participation.³⁶

Empathic teaching helps our students forge their emerging sense of future professional identity. Our students cannot be what they cannot see.³⁷ Throughout the curriculum, teachers can cultivate empathy to help students see and then better internalize models of effective and ethical behavior so that they might then *be* effective and ethical participants in a globalized, increasingly interconnected economy. The successful construction of both social and professional identity depends in significant measure on the abilities to empathize, discern nuance, and appreciate the subtleties that summon or reject meaningful exchange.³⁸ Empathy allows for narrative imagining, which enables one, as problem-solver, to arrive at a fuller view of the matter at hand, how its participants are apt to be feeling, and then how best to arrive at viable solutions.³⁹

Accessing empathic learning pathways gives our classes a foundation from which to glean not only the outcome and precedential value of a given matter but also what it means for its stakeholders and society. That aptitude equips our students to more accurately forecast the changing needs of the constituencies that they are apt to serve. Few of those stakeholders will rely on our students to be mere information-providers. To remain relevant, our classes must be able to apply a repertoire of skills that include, but also transcend, their designated field. Those skills include strategizing, predicting outcomes, mediating relationships, and making the right judgment calls. By honing students' abilities to gauge the intricacies of interpersonal exchange, empathic teaching helps them not only to draft good memos, but also to better discern the range of signals that are critical to success within any organization, whether a firm, company, non-profit or government office.

Empathic teaching helps learners arrive at a cohesive experience of the material by engaging with contextually deductive aptitudes

Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574, 1579 (1987) (“[U]nderstanding the experience or situation of another, both affectively and cognitively, often achieved by imagining oneself to be in the position of the other[.]”).

³⁶ See MARCO IACOBONI, *MIRRORING PEOPLE: THE NEW SCIENCE OF HOW WE CONNECT WITH OTHERS* (2008).

³⁷ Marion Wright Edelman, *Child Watch Column: It's Hard to Be What You Can't See*, CHILD. DEF. FUND, (Aug. 15, 2015), <http://www.childrensdefense.org/newsroom/child-watch-columns/child-watch-documents/ItsHardtoBeWhatYouCantSee.html>.

³⁸ Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Lawyering*, 87 NEB. L. REV. 1, 16–23 (2008).

³⁹ *Id.* at 17.

enriched by cognitive and emotion-based acuties. It encourages students to develop narratives about the subject matter that are framed by the given material's historical, cultural and socio-economic contexts. More integrative proficiencies develop as students expand their perspectives to think about and anticipate points of view different from their own.

B. *Empathy Tempers "the Epidemic of Facelessness"*⁴⁰

As teachers, we access empathic pathways to learning when we cultivate human connections. Human connections depend on eye contact, postural signaling, and other verbal and nonverbal cues to cultivate students' "immediacy" or proximity to the teacher's conversancy with the material,⁴¹ thereby helping them to make that proficiency their own. Proximity requires that students step away from their screens and instead, equipped with notebook and pen, surrender the role of dispassionate or distracted transcriber to assume the responsibilities of engaged participant.⁴² It asks that educators rely less on PowerPoint or other visual distractors and focus more on direct interaction.⁴³ Our students need to see us, and each other, and we need to see them, for reciprocally meaningful exchange to take place.⁴⁴

Empathic teaching tempers the epidemic of facelessness⁴⁵ that is a product of the digital space and the tendency that it fosters—particularly on the part of millennials as "digital natives"⁴⁶—to shun or tune-out both message and *messenger* of differing or opposing

⁴⁰ See Stephen Marche, *The Epidemic of Facelessness*, N.Y. TIMES (Feb. 14, 2015), <http://www.nytimes.com/2015/02/15/opinion/sunday/the-epidemic-of-facelessness.html> ("Everyone in the digital space is, at one point or another, exposed to online monstrosity, one of the consequences of the uniquely contemporary condition of facelessness. . . . [T]he faceless communication social media creates, the linked distances between people, both provokes and mitigates the inherent capacity for monstrosity.").

⁴¹ See Paul L. Witt et al., *A Meta-Analytical Review of the Relationship Between Teacher Immediacy and Student Learning*, 71 COMM. MONOGRAPHS 184, 184–85 (2004).

⁴² See Dan Rockmore, *The Case for Banning Laptops in the Classroom*, THE NEW YORKER (June 6, 2014), <http://www.newyorker.com/tech/elements/the-case-for-banning-laptops-in-the-classroom>.

⁴³ See Mary Jo Madda, *Why Your Students Forgot Everything on Your PowerPoint Slides*, EDSURGE NEWS (Jan. 19, 2015), <https://www.edsurge.com/news/2015-01-19-why-your-students-forgot-everything-on-your-powerpoint-slides>.

⁴⁴ See Cooper, *supra* note 3, at 12. When empathic teachers connect emotionally with their students, by being caring, interactive, and responsive, they generate a reciprocal response from the student. *Id.* at 13–14.

⁴⁵ See Marche, *supra* note 40.

⁴⁶ See JOHN PALFREY & URS GASSER, *BORN DIGITAL: UNDERSTANDING THE FIRST GENERATION OF DIGITAL NATIVES* (2008).

viewpoints.⁴⁷ It is an antidote to the often dehumanizing effects of online exchange, helping to transform the inquiry from “*what* are you doing?” to “*how* are you doing?” Empathy helps to form mutual respect, compromise, and the willingness to learn something even from those with whom we disagree.⁴⁸ It helps to dissuade our students from *calling out* others,⁴⁹ and instead encourages them to *call in* others.

The ability to develop a meaningful rapport with all sorts of people, to respond effectively to another’s verbal and nonverbal cues, and to understand another’s predicament, depends on empathy.⁵⁰ Empathy, once accessed, allows one to more effectively exercise a wider repertoire of skills on another’s behalf.⁵¹ It helps one to become a more effective “translator,” able to convincingly tell a client’s story, and a more astute strategist, able to anticipate opposing perspectives and better gauge likely outcomes.⁵²

Most essentially, when we nurture our students’ empathic acuties, we inspire the call to service. We encourage our classes to awaken to the sea of need right in their midst as we cultivate the recognition that generosity is “self-interest properly understood.”⁵³ The ability to feel into the experiences of others allows our students to understand that what they do for others they do for themselves. Conversely, what they do *to* others they do *to* themselves. Empathy helps our students to see that the surest way out of their own pain is to help others to find a way

⁴⁷ See Greg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind*, THE ATLANTIC, Sept. 2015 (“Social media makes it extraordinarily easy to join crusades, express solidarity and outrage, and shun traitors.”); Bret Easton Ellis, *Generation Wuss*, VANITY FAIR (Sept. 26, 2014), <http://www.vanityfair.fr/culture/livre/articles/generation-wuss-by-bret-easton-ellis/15837> (decrying millennials’ narcissism, inabilities to place matters into context, and tendencies to over-react).

⁴⁸ See Lahey, *supra* note 9.

⁴⁹ See Schlosser, *I’m a Liberal Professor, and My Liberal Students Terrify Me*, VOX (June 3, 2015), <http://www.vox.com/2015/6/3/8706323/college-professor-afraid> (college professor noting how online discourse devolves into absolutism, pettiness and nihilism and that, “[t]hings have changed since I started teaching. The vibe is different. I wish there were a less blunt way to put this, but my students sometimes scare me—particularly the liberal ones”).

⁵⁰ See Gerdy, *supra* note 16, at 18 (citing Robert Dinerstein et al., *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLINICAL L. REV. 755, 758 (2004)).

⁵¹ See *id.* at 22 (“[L]earning to empathize requires the lawyer to engage her ability to empathize with and care for her client in addition to her ability to analyze, strategize, and advocate. Developing empathy requires the lawyer to set aside her analytical tendencies and simply learn to feel.”).

⁵² See *id.* at 18–19.

⁵³ ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 500–03 (Harvey C. Mansfield & Delba Winthrop trans., eds., 2000) (1835) (chapter entitled “How the Americans Combat Individualism by the Doctrine of Self-Interest Well Understood”).

out of theirs.

When the teacher is brave enough to step away from PowerPoint and other barriers to student proximity, and instead cultivate real face time in the classroom, she helps her students to do the same. That in turn allows our classes to become better able to navigate contexts that will depend on their rousing others from the lures of detachment. Facelessness is the portent of indifference. Engagement and meaning depend on proximity.

Empathy is an antidote to the complacency that affirmation bias⁵⁴ promotes. It encourages our students to learn about opinions and worldviews different from their own. It tempers the urge to label and render snap judgments, helping our classes to understand the wisdom of the observation that “once you label me you negate me.”

When we activate and guide our students’ empathic pathways to learning, we foster the recognition that the burdens of their own struggles do not relieve them of the responsibility to acknowledge others in theirs. With cognitive and emotional empathy, our students learn that everyone has a story to tell and something to teach them. Everyone’s heart has broken places. Empathy invites students to expand their self-referred conceptualizations to include consideration of how given actions and circumstances might and do affect others. That expanded awareness, in turn, revivifies the imperative to make real the promise of dignity not just for some, but for all.

C. *Putting Empathic Pathways to Work in the Classroom*

An array of pedagogical devices can help to trigger empathic pathways to learning. Those include story-telling, actual or simulated client interaction, role-playing to reenact situations, the inclusion of multi-disciplinary referents, play, and exercises. For example, exercises such as “*you be the teacher*” (or client, supervisor, adversary, CEO, competitor—the possibilities for allowing students to put themselves in another’s shoes are vast), “*tell me what you just heard*” (an opportunity to hone active listening skills and to reveal how sometimes what one thinks he has communicated is not what the listener actually heard), and “*what are you sensing right now?*” (a chance for class members to “read the room” and tune-in to the intuitions and visceral responses that a given context elicits and then to test, learn from and use those) help students to sharpen a range of cognitive and emotional perceptions essential to effective communication strategies.

⁵⁴ The tendency to think one has conclusively proven the merits of a decision by listing the reasons it is right, while ignoring the reasons it might not be.

Story-telling, whether by recounting the stories of the subject matter we teach, having the teacher or student share a story relevant to the material, or watching a clip from a movie or documentary, enriches context by infusing it with emotion. In one of my classes, when we study the legal meaning of a license in land use law, we begin with the doctrinal definition of the entitlement (a license is a freely revocable mere privilege to enter another's land for some limited purpose), turn to the relevant case law to examine when a license might become irrevocable, and then discuss how tickets create freely revocable licenses. Still, that very linear and logical foundation does not give students the *experience* of what it might mean and feel like to have a license revoked. Without that, it becomes more difficult to attach meaning and therefore relevance to the material so that the learning sticks.

To create in my students an experience with the subject matter, I tell the story of how, more than twenty years earlier while seated in the audience of a Broadway musical, I watched aghast as the couple seated in front of me were told to accept a rain check to that evening's performance so that the theater could accommodate a certain celebrity's last-minute desire to see the show. I tell the story replete with the range of emotions that I felt as the scene unfolded. The ticket-holders did indeed have to surrender their seats, raising a host of questions. Was management allowed to do what it did? (Yes, because tickets create freely revocable licenses.) But what claims would the displaced ticket-holders have? (They would have a claim for breach of contract that should include their direct as well as incidental and consequential losses but as a Property matter they did not have the right to remain in the theater to see the show.) Did the celebrity ever arrive? (No. The conjecture at the time was that she abruptly took-off to avoid the likely unfavorable press.)

The telling of that story helps to anchor the doctrinal predicates of license law by creating an experience of those foundations. Students' empathic receptors (their mirror neurons) are activated not only by firsthand experience, but also by listening to another's firsthand experience, thereby appealing to more auditory learners⁵⁵ while simultaneously allowing the whole class to feel into the story as if they were there. That experience in turn increases the likelihood that students will remember it and the points that it demonstrates.

Actual or simulated role-play heightens class engagement and sharpens students' problem-solving acuties. The experience of the

⁵⁵ See *infra* notes 68–72 and accompanying text.

subject matter when students perceive real stakes—or are asked to act as if the stakes are real—makes the class savvier and more earnest in their approach.⁵⁶ In this regard, I collaborate with faculty who serve in our clinical programs to share—with clients' permission—actual problems that need solving. Other times I work with students to present role-plays of some predicament relevant to the assigned materials.

Empathic pathways are activated when students re-enact or reimagine cases. For example, to enhance the capacity of the antiquated *Pierson v. Post*⁵⁷ (the venerable Property case on the rule of capture) to resonate with the class, I ask a team of students to place that case into the more contemporary context of the popular television show *The Amazing Race*. On other occasions I ask students to put cases into more journalistic settings, where for example one class member is assigned the role of reporter, another the role of producer, and others the roles of various litigants and litigators to elicit and recount what happened in the given dispute and their reactions to its resolution for an imagined CBS *60 Minutes* segment. That exercise allows students to become the people behind the story, and the range of emotions typically displayed is vast and genuine, as the opportunity is presented for the “*as if*” to feel real.

The inclusion of multi-disciplinary referents and reading materials helps students to weave a narrative about the larger socioeconomic and political settings implicated by the material studied. For example, when the class turns to eminent domain I present excerpts of a documentary that chronicles “the battle for Brooklyn”⁵⁸ as New York City used its taking powers to displace working class families to make way for Brooklyn’s Barclay’s Center and the continued “revitalization” of the borough. Play, through the use of in-class games such as *Jeopardy* (which readily lends itself to substantive review) and *Family Feud* (which fosters teamwork), and challenges aimed at helping students solve the puzzle of a given problem or contextual dilemma, brings an immediacy to the need to know the relevant material.⁵⁹

⁵⁶ See generally Franzese, *supra* note 4.

⁵⁷ *Pierson v. Post*, 3 Cai. R. 175 (N.Y. Sup. Ct. 1805).

⁵⁸ BATTLE FOR BROOKLYN (RUMUR. Inc. 2011).

⁵⁹ See generally Rita Kumar & Robin Lightner, *Games as an Interactive Classroom Technique: Perceptions of Corporate Trainers, College Instructors and Students*, 19 INT’L J. TEACHING & LEARNING HIGHER EDUC. 53, 53 (2007), <http://www.isetl.org/ijthe/pdf/IJTLHE157.pdf> (“Using activities and games in class encourages active learning, as well as collaboration, and interactivity. Participation in an activity requires the use of content by the learner; thus ensuring students are working with the ideas that are

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Exercises such as “*you be the teacher*” help students to put themselves into the professor’s shoes to do what they perceive their teacher to be doing when she prepares for and teaches class. Students are thereby charged with thinking about how best to render difficult material both accessible and understandable, how to put the assigned materials into a larger context, and how to help the class to discern why the topic at hand matters. Students who perform this exercise tend to embrace a posture of confidence and expertise that significantly exceeds the norm. This is in part attributable to their heightened degree of preparedness, and also to the enhanced acumen that is accessed as a result of the empathic experience of *being* the teacher.

D. *Teaching with Empathy: the Three Questions for the Teacher*

1. What am I leading with as I enter the classroom?

Just before each semester begins, I set aside time to think about my first principles and what I stand for as an educator. I consider what it is that I hope to achieve in the classes that I will be teaching, how best to reach the whole class, and how I would want to be remembered when the semester ends. I call to mind the imperative to teach and also to *show* my students a way of comportment that is disciplined, professional, compassionate, and virtuous. I endeavor to align my pedagogical choices and habits with those essential aims.

My pedagogical approach is anchored in three first principles. First, teaching is a sacred trust. As teachers, each of us has an enduring place in our students’ intellectual, ethical, and professional development. I care deeply about the shape of that imprint. I communicate to my students that they matter by, for example, addressing each respectfully and by name, carefully preparing for class, actively listening to their questions, comments and concerns, following-up when I promise to, learning from them how they learn best in order to incorporate that information into my teaching, responding to their verbal and nonverbal cues, celebrating their milestones, and using my network of resources to help to facilitate their career goals. I cultivate transparency by deconstructing with my classes some of my teaching techniques, sharing my motivations and eliciting their feedback.

Second, I believe deeply in the promise of social justice. In class and in the practice I seek to vindicate the premise that “love [is] the

being taught, and applying them.”) (internal citation omitted).

motive and justice [is] the instrument.”⁶⁰ I endeavor to nurture in my students high standards of professionalism and to inculcate the call to service. I ask my classes to remain mindful of the humanity and the humanness of our work, and to remember that every case, client, colleague, protagonist, and antagonist has a story to tell and something to teach them. In turn, I remain mindful that my students’ perceptions of our profession, and of themselves as its fledgling members, will be formed in considerable measure by watching me and listening to my cues and feedback.

Third, our students rise (or fall) to our level of expectation for them. I give each of my students the benefit of every doubt and believe that each contains seeds of excellence waiting to be cultivated. I know that intelligence is multi-dimensional and that compassionate honesty is more effective and humane than brutal honesty. I have found that carrots work better than sticks, and that praise incentivizes. Each of my students is better than they know and I am better because of them.

The day before my first class of the semester, I jot down on an index card the attributes that I value most and hope to exalt both in and out of the classroom. I tape the card to my desk, where I can see it every day. My card for this semester states:

I believe in the promise of each of my students. We share a sacred trust. As their teacher, I know that my words can either hurt or heal, deflate or inspire. I will use what I say and do to be generous in my estimations. I will leave no kind word unsaid. I will share a vision of the law that is honorable and principled, and I will teach that justice can be love made visible. I will infuse technique with compassion so that my students come to understand that one should not be practiced without the other. Today I will see what needs to be seen.

I read that card just before I head to each class. It helps me to commit every day to do what I can with my aptitudes and proficiencies to champion my students and to avow the promise of our craft. On the way from my office to my classroom I summon up the reverence that I have for the law and the capacity of its practitioners to be givers of hope. I want my students, as lawyers-to-be, to appreciate the power that their emerging expertise will soon afford them to wrest people from cynicism and despair. I would like them to see that the relentless

⁶⁰ Patrick Granfield, *An Interview with Reinhold Niebuhr*, COMMONWEAL (Dec. 16, 1966), <https://www.commonwealmagazine.org/interview-reinhold-niebuhr> (statement by Protestant theologian, ethicist, and political commentator, Reinhold Niebuhr).

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commitment to the good of others will make their own lives good. As a lawyer, I have had the privilege to watch as hope has sprung from the most desolate places. My life has never been the same. I want my students to know that soon, they too will get to be witnesses to the birth of hope.

Once at the classroom door I pause, and before entering the room I summon gratitude for the privilege to teach and for the sacrifices of all who came before me to make this moment possible. I then ask that I be used to do whatever good needs to be done and to say whatever needs to be said. I ask for the guidance to see what needs to be seen. I remember that there is no day but this day and no moment but this moment. I invoke the words “The trouble with you is, you think you have time.”⁶¹

A teacher is both thermostat and thermometer for every room she enters. Now at the podium, before calling the class to order, I pause to take the room’s temperature.⁶² I consider whether it needs to be raised (when I sense a collective fatigue or weariness), or lowered (when I sense tension, fear or anxiety). At various points during class, as the climate invariably shifts, I acknowledge what I am perceiving and enlist my students to help me to corroborate or rebut what I am sensing. I try to remediate when needed. For example, sometimes, during a particularly challenging or dry portion of the material, it becomes clear that eyes are glazing over and attention spans waning. At that moment I will pause, recognize, and empathize with that reaction, and then do something to reawaken the group. Sometimes that reawakening depends on my shifting gears a bit by using a practice-based anecdote to show why this dry patch matters. Other times I will tell the class that it is time for a three-minute mental reboot, and I will use that time to share a story or interesting headline relevant to the subject matter. Sometimes the best antidote to collective restlessness or fatigue is to give the class a five-minute break to get up from their seats, move about, and quickly refresh.

Throughout class, I work to cultivate connection. I make eye contact, walk around the room, observe class members’ various cues, and use students’ names frequently. I remind my students that I can

⁶¹ Jack Kornfield, *Buddha’s Little Instruction Book*, QOUTESBERRY: TUMBLR QUOTES BLOG, <http://quotesberry.com/post/87685671162/the-trouble-is-you-think-you-have-time> (last visited Mar. 3, 2017).

⁶² Kimberly Hunter, *A Rationale for Empathy in the Classroom*, EMPATHY IN EDUC., http://empathyed.org/index.php?option=com_content&view=category&id=37&Itemid=63 (last visited Jan. 13, 2017) (“Students bring their lives into the classroom; they do not leave their problems and feelings at the door[.]”).

see them—all of them—and I endeavor often to scan the room. Students (and particularly those in the back rows) sometimes have the false impression that they are invisible. That impression is compounded by the presence of a laptop screen that too easily can block the teacher's view.⁶³ When I did permit students to use laptops in the classroom, I would try to mitigate that blocking effect by even more assiduously moving about the room and by asking at several points throughout each class that students put down their screens to simply listen, engage in a simulation, or tell me the essential takeaways from the last twenty minutes of discussion.

I no longer permit the use of laptops in class, primarily because cultivating connection through face-to-face contact is such an important gateway to empathic teaching and learning.⁶⁴ Laptops can distract their users (as well as those seated nearby) and obstruct the pathways that empathic acuties depend on.⁶⁵ What is more, in studies conducted at several universities, students without laptops did better on exams.⁶⁶ Other studies reveal that students who handwrite rather than type their notes into a laptop fare better academically, presumably as a result of the active filtering, ordering, and processing essential to effective long-hand note-taking.⁶⁷

⁶³ See *infra* notes 64–67 and accompanying text.

⁶⁴ See Dan Rockmore, *The Case for Banning Laptops in the Classroom*, THE NEW YORKER (June 6, 2014), <http://www.newyorker.com/tech/elements/the-case-for-banning-laptops-in-the-classroom> (stating how typing during class turns students into “transcription zombies” and impedes integrative learning); Faria Sana, Tina Weston & Nicholas J. Cepeda, *Laptop Multitasking Hinders Classroom Learning for Both Users and Nearby Peers*, 62 COMPUTS. & EDUC. 24 (2013) (finding detrimental effects of laptop multitasking in class); Stuart Green, *I'm Banning Laptops From My Classroom*, WALL ST. J., July 10, 2016 (law professor recounting how, while observing colleagues' classes, he saw from his seat in back row students using their laptops to email, text, post on social media, shop online, stream sporting events, etc.); Carrie B. Fried, *In-Class Laptop Use and its Effects on Student Learning*, 50 COMPUTERS & EDUC. 906 (2008) (discussing the classroom environment and levels of student engagement hindered by laptop use).

⁶⁵ Carl Straumsheim, *Leave It in the Bag*, INSIDE HIGHER ED. (May 13, 2016), <https://www.insidehighered.com/news/2016/05/13/allowing-devices-classroom-hurts-academic-performance-study-finds> (reporting on study finding that students perform better academically when laptops and tablets are banned from classroom); Paul Thagard, *Banning Laptops in Classrooms*, PSYCHOL. TODAY (July 9, 2010), <https://www.psychologytoday.com/blog/hot-thought/201007/banning-laptops-in-classrooms> (reporting on similar findings in studies at Cornell University and Stanford University, and noting that learning in a classroom “should be a social process in which the student interacts with the instructor and other students”).

⁶⁶ See generally Thagard, *supra* note 65.

⁶⁷ See James Doubek, *Attention Students: Put Your Laptops Away*, NPR (Apr. 17, 2016), <http://www.npr.org/2016/04/17/474525392/attention-students-put-your-laptops-away> (reporting on findings of studies at Princeton University and at University of California, Los Angeles, that generative note-taking (long-hand writing) allows

2. Putting myself in my students' shoes (empathy's cornerstone), with the eyes of a beginner, what would it take for me to understand this material and, from that platform, how can I prepare for class and then present the subject matter to access multiple pathways to learning?

Students learn in different ways,⁶⁸ and learning is enhanced by the teacher's use of mixed modalities.⁶⁹ Those who are more visual in their learning aptitudes prefer the written word as well as pictures, diagrams, handouts, charts, and films.⁷⁰ Visual learners are able to readily follow written instructions and appreciate the teacher's use of checklists to review and to summarize.⁷¹ They are particularly well-suited to empathic learning and readily engage by watching another perform the given task or simply by following along as the teacher writes on the board.⁷² A student who is a visual learner will use language such as, "I don't see the point," or, "I see that," or "I haven't taken a look at that yet."⁷³ The use of contextual cues, role-play, multi-disciplinary referents, and games appeal to visual learners.⁷⁴

Auditory learners prefer the spoken word, and process information best when presented with opportunities to listen and to

students to effectively summarize and concept map while non-generative note-taking (typing into a laptop) merely involves verbatim copying); Cindi May, *A Learning Secret: Don't Take Notes with a Laptop*, SCI. AM. (June 3, 2014), <https://www.scientificamerican.com/article/a-learning-secret-don-t-take-notes-with-a-laptop/> ("[S]tudents who used longhand remembered more and had a deeper understanding of the material.").

⁶⁸ See *Tips for Educators on Accommodating Different Learning Styles*, U. MASS. DARTMOUTH, <http://www.umassd.edu/dss/resources/facultystaff/howtoteachandaccommodate/howtoaccommodatedifferentlearningstyles/> (last visited Jan. 8, 2017) [hereinafter *Tips for Educators*]; PERSPECTIVES ON THINKING, LEARNING AND COGNITIVE STYLES (Robert Sternberg & Li-Fang Zhang eds., 2001).

⁶⁹ Frank Coffield, David Moselley, Elaine Hall & Kathryn Ecclestone, *Learning Styles and Pedagogy in Post-16 Learning: A Systematic and Critical Review*, LEARNING SKILLS & RES. CTR. (2004), <http://skills.nl/lerenlerennu/bronnen/Learning%20styles%20by%20Coffield%20e.a..pdf>.

⁷⁰ Richard E. Mayer & Laura J. Massa, *Three Facets of Visual and Verbal Learners: Cognitive Ability, Cognitive Style, and Learning Preference*, 95 J. EDUC. PSYCHOL. 833 (2003).

⁷¹ Richard M. Felder & Barbara A. Soloman, *Summary of the Different Learning Styles*, <https://www.washcoll.edu/live/files/5352-student-learning-style-handoutpdf> (last visited Mar. 3, 2017).

⁷² Pauline Kneale, John Bradbeer & Mick Healey, *Learning Styles, Disciplines and Enhancing Learning in Higher Education*, in LEARNING STYLES AND LEARNING: A KEY TO MEETING THE ACCOUNTABILITY DEMANDS IN EDUCATION (Ronald R. Sims & Serbrenia J. Sims eds., 2006).

⁷³ *Tips for Educators*, *supra* note 68.

⁷⁴ *Id.*

speak.⁷⁵ They anchor material by orally summarizing whatever has just been taught, asking questions out loud, discussing given hypotheticals or topics in small groups, and listening to audiotapes to review.⁷⁶ Auditory learners will use expressions such as, “*I hear you*” (to communicate comprehension of a given point), “*Don’t tell me that*” (to communicate surprise at a given circumstance or outcome) or, “*Let’s talk it through*” (to engage and process). Auditory learners remember slogans, rhymes, and songs, all of which can be used to great effect in class.⁷⁷ Exercises such as “*you be the teacher*” and “*tell me what you just heard*” are particularly resonant for auditory learners.⁷⁸

Kinesthetic or tactile learners process information best when given opportunities to “get a feel for it,” whether by doing, simulating, engaging in role-play, or participating in practical hands-on experiences. Kinesthetic learners appreciate opportunities to move around the classroom (whether through re-enactments of cases, by changing seats during class to engage in small group exchange, or moving about to complete an exercise).⁷⁹ They process material best when given the chance to experience it (through clinical education and, in doctrinal courses for example, doing a sample title search or drafting a contract).⁸⁰ Kinesthetic learners tend to skip the instructions before delving into the task (an inclination that should be tempered) and use phrases such as, “*I feel that*” (to indicate comprehension), “*I have to try that out*” (when given a suggestion) or, “*Let me try it this way*” (just before answering a question or explaining a point).⁸¹

The best way to know how our students learn best is to ask them. I divide my large classes into smaller groups and I meet with those groups outside of the regularly scheduled class times for what I call *Snack Chat*. During those meetings I begin by asking three questions: *What is your story? What are you passionate about? How do you learn most effectively?* The answers to the first and second inquiries help me to know my students’ interests, motivations, and frames of reference. The answers to the third question help me to devise more inclusive pedagogical strategies.

At various points throughout the semester I enlist former students from a diverse array of backgrounds to return to the classes that I teach

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See generally Franzese, *supra* note 4.

⁷⁸ *Id.*

⁷⁹ See *Tips for Educators*, *supra* note 68.

⁸⁰ *Id.*

⁸¹ *Id.*

to serve as pedagogical consultants. In that role, they observe and then provide me with feedback. From their vantage points, they share their reactions to the presentation and their perceptions of the range and dynamics of class participation. That added perspective has been helpful in alerting me to any blind spots in my approach, potential gaps in student understanding, and areas worthy of follow-up.

3. By the end of class/the week/the semester, what do I want my students to have learned, what have they actually learned, and how can I facilitate and help them to effectively process and retain that learning?

We do our students a great kindness when we enhance their opportunities throughout the semester to master the essential learning incrementally, and not just for the exam but for the long-term. Building regular assessments into the in-class experience and explaining why is an empathic response to student stress, uncertainty, and the desire to do well. It promotes mastery of the material and reminds our students that they are learning not just for an exam, but for the practice. Moreover, it helps us to know what our students are actually learning, an essential predicate to the task of correction for both teacher and student.

When a grade is the product of a student's short-term, concentrated effort, most of what is learned is quickly forgotten.⁸² Information is seldom retained by studying only once in "finals mode."⁸³ When a student crams for an exam, the brain does not receive the signal that the material is significant enough to warrant that it be stored for the long-term.⁸⁴ That message is communicated instead by the use, for example, of frequent low-stakes or no-stakes quizzing⁸⁵

⁸² See BENEDICT CAREY, *HOW WE LEARN: THE SURPRISING TRUTH ABOUT WHEN, WHERE AND WHY IT HAPPENS* (2014).

⁸³ *Id.*; see also DAVID A. SOUSA, *HOW THE BRAIN LEARNS* (4th ed. 2011).

⁸⁴ See R. Douglas Fields, *Making Memories Stick*, 292 *SCI. AM.* 74 (2005), <http://www.nature.com/scientificamerican/journal/v292/n2/full/scientificamerican0205-74.html>. See generally William R. Klemm, *To Cram or Not to Cram? That Is the Question*, *PSYCHOL. TODAY* (Jan. 14, 2012), <https://www.psychologytoday.com/blog/memory-medic/201201/cram-or-not-cram-is-the-question> ("[R]esearch has made it abundantly clear that spacing the learning over many shorter sessions is much more effective than trying to do it all in one big session.").

⁸⁵ See Henry L. Roediger III, *How Tests Make Us Smarter*, *N.Y. TIMES* (July 18, 2014), <https://www.nytimes.com/2014/07/20/opinion/sunday/how-tests-make-us-smarter.html> ("Students in classes with a regimen of regular low- or no-stakes quizzing carry their learning forward through the term, like compounded interest, and they come to embrace the regimen, even if they are skeptical at first.").

and the practice of distributed learning or “spacing.”⁸⁶

Frequent quizzes, even five or ten minutes in duration, where students are asked to apply what was learned during the previous classes, help to signal to the brain that the material matters and needs to be remembered.⁸⁷ Significantly, that signaling occurs even when there are no stakes attached to the quizzes.⁸⁸ Moreover, regular or intermittent testing serves as an effective diagnostic tool, helping students to ascertain what they have mastered and what they have yet to master, and helping the teacher to know and then correct errors in students’ learning and perceptions of the material.

Distributed learning, also referred to as “spacing,” is at work when the teacher presents opportunities throughout the semester for learning assessment and review.⁸⁹ Spacing allows the learning to stick.⁹⁰ It facilitates retention and builds mental fitness in the same way that exercising for ten minutes every day is more effective than exercising for seventy minutes only once a week.⁹¹

In addition to incorporating no-stakes quizzes, I practice distributed learning by employing various review techniques to facilitate student learning and also to gauge whether the class is on-track. Those methods include what I refer to as “row calls,” “the weekly

⁸⁶ See generally Klemm, *supra* note 84.

⁸⁷ See Roediger III, *supra* note 85 (“The fact of improved retention after a quiz – called the testing effect or the retrieval practice effect – makes the learning stronger and embeds it more securely in memory.”).

⁸⁸ *Id.* (“[T]ests serve students best when they’re integrated into the regular business of learning and the stakes are not make-or-break . . .”).

⁸⁹ See, e.g., John J. Shaughnessy, *Long-Term Retention and the Spacing Effect in Free-Recall and Frequency Judgments*, 90 AM. J. PSYCHOL. 587 (1977).

⁹⁰ See, e.g., Austin Martin, *Repetitive Spaced Out Learning: Making Learning Stick*, MINDFLASH (June 7, 2016), <https://www.mindflash.com/blog/repetitive-spaced-learning-making-learning-stick/> (“Two keys to making the spaced out method work are to repeat the same information in different contexts and to provide immediate and corrective feedback, as needed.”). Repetition allows the student to “experience and practice the content indifferent ways.” *Id.* Additionally, feedback allows the student to “close[] the learning loop and let[] the learner know whether he or she is in the right track.” *Id.* Repetition of the same the concept might mean either simple re-introduction of the same concept exactly as it was presented earlier or introducing it in a slightly different way. See Imogen Casebourne, *Spaced Learning: An Approach to Minimize the Forgetting Curve*, ASS’N TALENT DEV. (Jan. 27, 2015), <https://www.td.org/Publications/Blogs/Science-of-Learning-Blog/2015/01/Spaced-Learning-an-Approach-to-Minimize-the-Forgetting-Curve>.

⁹¹ *Id.* For spacing as applied to physical exercise, see Gretchen Reynolds, *The Rise of the Minimalist Workout*, N.Y. TIMES (June 24, 2013, 12:44 PM), http://well.blogs.nytimes.com/2013/06/24/the-rise-of-the-minimalist-workout/?_r=0 (citing research showing that a “few minutes of any strenuous exercise is sufficient to improve various measures of health and fitness”).

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wrap-up,” “*tell me what you heard today*” (an auditory prompt), “*tell me what you saw today*” (a visual cue), and “*tell me what you figured out today*” (kinesthetic). For “row call,” I select a row in the classroom and then proceed down that row asking each student seated therein to answer a review question that pertains either to what we covered in a previous class or earlier in that same day’s class. More regularly and just before each class concludes, I ask one student to summarize what was learned that day. I take quick notes on what that answer reveals and those become a springboard for the start of the next class.

Teaching with empathy helps the teacher to see and then to acknowledge the struggles that accompany the learning process. It assists with the task of providing meaningful responses to various student stressors. The specter of final exams is one of those major stressors. When grades are posted, another set of stressors emerges. Too often, students tend to perceive their grades as the final word on their abilities and opportunities. It is important that we address and correct that perception, first because it is not true, and second because it ignores the opportunities that our students will have to be self-corrective as well as to attain distinction in any number of the many contexts that their academic careers will provide.

Putting ourselves in our students’ place, but wiser by virtue of time and experience, we can address the classroom climate of deflated morale that often accompanies exam time and the posting of grades. I begin that task by offering my classes some perspective, reminding them that the race is long, and that to finish the race is to win the race. I encourage them to remain appreciative and grateful for the strides that they are making and to know that every step, however small, puts them that much closer to realizing their dreams. Their success and significance will be assured as much by their attitudes as by their aptitudes. Over time, the smartest is the one who works the hardest. I jot down on the board, in big letters, YOU ARE NOT YOUR GRADES.

I encourage my students to keep their heads held high, to be kind to themselves and others, and to hold tight to their dignity and integrity. I remind them of the sacrifices and hardships suffered by those who came before them so that they might have this opportunity to learn. I paraphrase James Baldwin’s words, “*Your crown has been bought and paid for. All you must do is place it on your head.*”⁹²

I ask my students to treat their grades as information. They are a

⁹² See Robert Ferro, *Wearing James Baldwin’s Crown*, N.Y. TIMES (Jan. 10, 1988), <http://www.nytimes.com/1988/01/10/books/l-wearing-james-baldwin-s-crown-156188.html> (“In Toni Morrison’s tribute to James Baldwin (Dec. 20) she quotes him: ‘Our crown has already been bought and paid for. All we have to do is wear it.’”).

means of feedback that can help them to diagnose and remediate deficiencies as well as appreciate strengths in their strategies and approach. I remind them of their agency. If their grades are not what they should be, I encourage them to take the offensive, seeking out people and resources to help them improve their exam skills. Those could include consulting with each of their professors, using a tutor, conferring with upper-level students who have done well, taking practice exams, and eliciting feedback on those practice runs. What is more, they have the power to dilute the significance of grades by demonstrating their excellence in other contexts. I exalt the call to service, noting that the surest way out of their own struggles is to help others out of theirs.

CONCLUSION

A teacher is vested with the power and privilege to shape students' perceptions of themselves and the learning process. We are entrusted with the task of preparing our classes to navigate an increasingly complex world. Empathy is essential to those tasks. Our students deserve to be seen through the lens of a benevolent witness, and to learn how to apply that lens to others. We are that witness when we choose to see our students as they are and *as they could be*. When we risk vulnerability *to feel into* their struggles and triumphs, we cultivate connection, trust, and proximity. From that connection, we can teach and also show our students that it is indeed possible to be wise and compassionate, effective and principled, accomplished and kind.