

## 2013 William Rutter Award Acceptance Speech

Patrick D. Goodman



### ABSTRACT

Each year, the UCLA School of Law presents the Rutter Award for Excellence in Teaching to an outstanding law professor. On March 13, 2013, this honor was given to Professor Patrick D. Goodman. *UCLA Law Review Discourse* is proud to continue its tradition of publishing a modified version of the ceremony speech delivered by the award recipient.

### AUTHOR

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Thank you very much. Thanks first and foremost to Paul Rutter for doing so much to encourage and recognize excellence in legal education. I am also fortunate enough to have heard Mr. William Rutter speak on several occasions. I remember his great conviction, shared today by his son Paul Rutter, that quality legal instruction was of paramount importance if we are to build a strong legal community. He is both appreciated and missed.

Thanks also to Dean Moran and to all the other members of the Rutter Award Selection Committee. When I look at the list of prior UCLA Rutter Award winners, the thought that occurs to me is: What am I doing up here? That may be the reaction of some of you as well. Well, thanks to the committee for believing me worthy of this incredible honor.

Many thanks to Pavel Wonsowicz, a brilliant teacher and collaborator, and winner of this award just last year. I am honored to be on your team. Thanks also to Jerry Lopez, located right across the hall from me. No matter how busy he is, Jerry is always somehow available as a sounding board, a source of encouragement and ideas, and a great mentor. Thanks also to David Babbe. A special thank you to my amazing and supportive assistant Kasse Reyes who helps keep everything humming along, and thank you to Dean of Students Elizabeth Cheadle and Assistant Dean Sean Pine, Pei Pei Tan, and the entire Records Office staff.

I am of course indebted to, more than anyone at UCLA, my current and former students, some of whom are here today. Thanks for coming. We work hard together every day, and we have fun together almost every day, and we grow together, and I am always so happy to hear of your successes. My students are the reason I am lucky enough to say: This is the greatest job in the world. And I think I say it almost every day. Not every day—let's not get carried away. But suffice it to say that you all make me so very happy every day I come to work with you. I remember a day last semester in Wills & Trusts, in the middle of some class in the middle of the semester, when we all tend to drag a little bit, where I saw this piece of paper going from person to person, and I remember getting a bit annoyed, and thinking, "Could they really be passing notes? Do people still do that? So cute!" Standing here today, I'm really glad I did not grab the paper and tear it up or something dramatic, because Ryon Nixon and Sharon Hing informed me just a few weeks ago that that paper was, in fact, a student petition asking that I get the Rutter Award. So that would have been awkward.

Most of all, thanks to my family. I was born in Westwood, not too far from here. My high school is close by and graduation was at Pauley Pavilion. I attended UCLA both as an undergraduate and for my master's degree, and now

my parents Michael and Claudine are back to see me at UCLA again for another very special day. Thanks Mom and Dad. Finally, thanks also to my beautiful, fantastic, accomplished, wonderful wife Samantha, and to my two boys Benjamin and Max, who all managed to get here today.

I think the expectation might be that when someone is recognized with an award for their teaching, and then that person is going to read prepared remarks about teaching, the speech is going to be awesome. But as my students no doubt could tell you, I can be a very awkward public speaker. I think teaching is really the antithesis, the complete opposite, of performing, and, quite frankly in my case, it shows. So preparing a speech is a totally different skill from what I think I am being recognized for. But I will do my best.

For me, effective teaching involves five somewhat unrelated skills: (1) Planning, intensively, a path of learning. (2) Listening as hard as you can to where students are and how they are experiencing the material. (3) Connecting with those different groups of students at those various places. (4) Moving with them to the next small step on the learning path through a sequence of applied learning and critical discussion. (5) All with genuine empathy. Over and over and over and over and over.

And, for me, I've found the best way to move with students along that learning path involves practice and feedback. With eighty students in a class, I can't always give the feedback as much as I'd like, though I like to meet with every student at least once to do some work together, so the students are given the tools to assess their own performance at every step in the process. It's not magical—it's hard work. We read a case. We discuss the rule. We apply it to facts. Many, many, many times, through practice multiple-choice problems, multiple-choice midterm examinations, practice-writing problems, and class discussions. Only then, with a strong grasp of basic concepts, do we go beneath the surface of the rule to the purported reason for the rule, and that is when things start to get fun—reading the cases, challenging them, contending with them, arguing for and against the rule or whether the stated reasons and actual reasons for the rule are the same. That's when things are working.

But it doesn't always work. When this process is successful, it is only after a lot of hard, hard work, for the teacher, and hard, hard work for the student. If I am able to point to any success as a teacher, it depends entirely on the caliber of student who goes to UCLA. The kind of student who, when actively invited to get involved in the learning process, is willing to work their tail off. I've seen it. While I have definite room for improvement as an instructor, I do take pride in the fact that my students are always aware of what they are doing and why

they are doing it, where they've been and where they're going, how they're doing *before* the big final and where they need improvement.

But it's difficult. And reacting to student learning in order to maximize future learning has its consequences. For one, what you say in class and where you end up in class is not always predictable. Or, as one student charitably put it in an evaluation: "It amuses me that Professor Goodman stammers, does not seem to know what he is going to say next, and is frequently at a loss for words."

So today, I am thrilled to receive this award, and proud to be part of an amazing school like the UCLA School of Law. What we actually do with our students during these three years of law school—what we actually teach while they invest heavily in their own education—is I believe more important than it has ever been. And one of the things that makes this school so successful is this shared awareness by our faculty. This school has always challenged itself to excel and innovate and change, and to challenge the larger legal educational community to do the same.

There's a sense in the legal education community that our 140-year-old tradition of legal education is growing stale. With the notable exception of the Clinical Education movement (started in large part right here nearly fifty years ago), we still pretty much do what we've been doing for a long time now, except we're nicer about it and ask less Socratic questions than we used to. And people at this law school and in law schools across the country have responded to what is starting to be called a crisis in legal education with conferences, reports, and countless academic studies about what we might be teaching at law school and how we might teach it in order for our students to thrive.

Recently, we have had the Carnegie Report and the Best Practices for Legal Education report, as well as a recent Association of American Law Schools conference, all devoted to the topic of what our curriculum looks like, and what it could look like. This increasing interest in legal education reform is a great thing.

But if I can make one small suggestion about the direction of that legal education reform.

As Jerry Lopez has pointed out to me, a big problem we have is a problem of memory. That is, most of what is being said about legal education reform has already been said, in some cases many decades ago. And then forgotten. And then said again. And then forgotten again. The problem is not so much in the field of idea generation; indeed, that's where we are good. The problem is in providing otherwise very busy professors who must also publish and show professional development the time and the resources to experiment and implement innovation in the classroom, sometimes succeeding and sometimes failing.

Putting forth innovative ideas and hypotheses is one thing. But actually being innovative in the classroom is time consuming, risky, and frequently comes with little or no professional reward. Again, I repeat my thanks to Mr. Rutter and the UCLA School of Law, for doing so much to encourage and recognize excellence in this very area. And in the rare instance when an instructor bucks the odds, and does actually implement innovation, and reaches some level of success, there's that memory problem again. It frequently fades away because it stays with just that person. It may be reported, but it is rarely duplicated or improved.

We are very good at knowing what others are writing about within a given legal subject, and using or responding to that scholarship to make new points. But I think we are not very good yet at reporting on how we teach law, consuming reports on how we teach law, and responding to those reports to make new points. The high caliber and robust dialogue we have in the academy about the law is missing when we discuss the practice of how to teach law. It's there, but it's not the same. Instead, despite our best intentions and lots of conferences and reports, we nonetheless frequently revert to the norm as a starting point with most new teachers we hire—the lecture hall, the case book and the teacher's manual. Talk about having to reinvent the wheel. We are making and discarding lots of very good wheels. Effective legal education reform is happening with some regularity—we are just having a really hard time knowing when it is happening, and keeping track of those specific materials and techniques.

For example, the Best Practices report asserts that we should consider using a problem method of instruction alongside or even instead of the case method for second and third year students, after a first year of case method. That sounds intriguing—but where can I *buy that* textbook? Actually there is one for Remedies. One. And it has not been updated in two decades, despite major changes in the law. And it's kind of small. Our efforts have not been directed towards creating user ready work product that facilitates innovation in how we teach, and making it a profitable career advancer for instructors to develop that work product.

I teach using the case method. And I'm letting my students down in some important ways. Let's consider the larger instructional goals we are trying to accomplish with three years of law school. Everyone has their own idea, but I've got six instructional goals in mind.

First, research: Our students should be able to learn the research skills necessary to find primary sources of law and secondary sources of scholarship. Second, reading: Our students should be able to process and synthesize primary

sources of law and secondary sources of scholarship. Third, thinking critically: Our students should be able to think critically and independently about the law. Fourth, marshalling evidence: Our students should be able to contend with facts effectively, through investigative processes and effective presentation. Fifth, arguing: Our students should be able to argue, orally and verbally, as litigants, negotiators, counselors, and scholars. And sixth, service: Our students should struggle to understand the sometimes conflicting roles of the lawyer as client counselor and the unique role of the lawyer within the larger society.

Now, where I'm at? Using the case method, I'm not doing a terribly good job. It doesn't really matter what subject it is. I think I'm hitting the second and third skills reasonably well. I think most of our case method classes hit that second and third skill reasonably well. When there is time, I work on the fourth skill a tiny bit and the fifth skill a bit more, but there's never much time. I feel horrible about the amount of time I spend on that sixth skill, which is pretty much not at all. And as far as research skills? Never happens.

I should be able to do more for my students than this, whatever I am teaching. And I know "that's what the clinics are for," but students do not and cannot take loads and loads of clinical courses and skills-based courses to pick up the slack. It's not that we don't have classes that address these other skills. In particular, at UCLA, we do have several. Indeed, we offer one amazing class in particular, by far the best of its kind in the country, where all of these skills are taught, and I was fortunate enough to teach within its unified curriculum for eight years—Lawyering Skills. There is no better skills class offered in the country, and the seven instructors who teach it—Julie Cramer, Skye Donald, Tom Holm, Sarah Korobkin, Jason Light, Kerry Lyon Grossman, and Jyoti Nanda—work harder at providing our students with the complete panoply of skills they need to succeed than I do, and perhaps harder than any other teachers in the school. Their work is invaluable. But for the students it's just one class.

I wish that when I am teaching my large lecture courses, I could be more efficient and effective at delivering training regarding the larger set of skills our law school graduates need so the students get more repetition and training across the six skills. It's how we get better bar exam performance, better lawyers, better scholars, better leaders. Going forward, I know that's what I want to change. And I know many of my colleagues feel the same way, and have developed papers for students to write, projects, learning exercises, and other materials. I am currently attempting to develop such a set of materials for Remedies, and Sam Bray has been helping, but we both agree it's very rough going.

My sense at this point is that a granular, skills-based approach to a doctrinal course might be a good way to go. Why not just teach cases? Simply put, I'm leaving some students behind, unnecessarily. When a student is asked to read the typical case as presented in many casebooks, the student is being asked to do a lot of things at once. Sometimes, that's a good thing. But I believe that, more often than we may care to recognize, frequently it is not. Students assigned a case are being asked to simultaneously learn a rule, consider the reason for its existence, practice how it might be applied to a set of facts, and critically analyze its success and its collateral consequences. All at the same time. Contrary to what is asserted in Carnegie and Best Practices, I don't think students master this all-at-once approach in their first year. Some do. But I believe most of those students already had that skill when they came in. Many don't have that skill or struggle mightily with it.

But there is no dignity in this struggle. It is unnecessary. While there is nothing better than a case for illustrating arguments that apply the law to a set of facts and inviting critical discussion regarding the efficacy of the rule—we might get greater efficiency and greater success among a larger group of students by disentangling the learning tasks. Basic learning theory. Isolate the learning tasks at the outset. Let's ask students for higher order critical analysis of a case only *after* a student has mastered certain preliminary tasks. Like learning the basic rule or conflict between different sets of rules. And then applying those basic rules to a set of very basic hypotheticals, to check for fundamental understanding. Let's even task the students with researching and finding that rule for themselves. And after we achieve mastery of the rule through research and application to practice problems, now let's read some cases, ready to appreciate what a court has done, or snicker knowingly at what it failed to consider. After in-depth case analysis, let's not stop with just cases, merely because Dean Langdell used only cases, so long ago. Let's make it even more challenging. Maybe let's have students read the briefs written for a case without reading the opinion, and argue the case themselves. Let's have other students judge those arguments and write opinions. Then let's read the actual case and have at the judge who wrote it, because we had to wrestle with the same problem ourselves. Then let's move on to the next unit in the class and start the process over again. This process has the added benefit of probably being a lot of fun, and I like fun.

There is no better way for a student to really learn the ins and outs of a legal doctrine than to experience it as a lawyer would, or a scholar tasked with producing scholarship would. I am looking for ways to do that. And I hope that when I do, others can use those materials, or reject those materials as

ludicrous and embarrassing, like many new ideas are, or improve upon them, or respond to them by taking things in a different direction. I want to have that methodological conversation based on actual classroom experience rather than hypothesis. Let's hope we can keep working on adjusting the incentives to make it professionally and financially profitable for instructors to join in. It's the students who will benefit, more than anyone else. For me, that is the direction I hope my teaching career can take from here.

In the meantime, I am so proud, and honored, and humbled to be recognized with the Rutter Award. My deepest gratitude to Paul Rutter and Dean Moran and the UCLA School of Law. I love my job. I love my students. I love the law. I love my family. I love the Dodgers, but it's only March. I love the struggle ahead, because when I think about the students I work with I am optimistic about where things are heading. Thank you for this day, which I will always remember. Going forward, I will try to live up to the standard of excellence I know this award stands for. Thank you very much.