UCLA LAW REVIEW DISCOURSE

Reflections on Law Teaching

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ABSTRACT

Each year, the UCLA School of Law presents the Rutter Award for Excellence in Teaching to an outstanding law professor. On March 17, 2014, this honor was given to Professor Jennifer L. Mnookin. *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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I am truly moved and honored to be here today and to be receiving the Rutter award. In fact, when I woke up this morning around 6:30 a.m., as I thought about the fact that the ceremony would be happening this afternoon, it felt downright earthshaking. Quite literally, it felt like the world was shaking all around me (and, weirdly, it really was).[1]

More seriously, as I look at the list of past winners of the Rutter Award for Distinguished Teaching, I am, frankly, humbled. I'm tempted even to pinch myself to make sure this is really happening—and I assure you that's only in very small part because it is St. Patrick's Day and I forgot to wear green. There are so many terrific teachers on this list, and I'm not altogether sure that I belong among them. I'm extraordinarily grateful to the Rutter committee for deciding that I do.

I want to give particular thanks to Dean Rachel Moran for her generous introduction. My sincere thanks also go to our alumni Paul Rutter, for his tremendous, ongoing involvement in the law school. And of course I'm so grateful to Paul's father, the late William Rutter, for creating and supporting this generous award, and more generally for supporting strong teaching both here at UCLA and at law schools throughout California.

In addition, I want to give heartfelt thanks to my family. I'm especially delighted that my parents, who happen to be in the Bay Area this month—instead of in Boston, where they usually live—could be here today. A number of those of you in this room know that I'm a second-generation law professor, and that makes it particularly meaningful to me that my father can be here this afternoon for this event.[2]

As I grew up, I saw, at second hand, much of what was wonderful about life as a law professor through his example. I'm so very grateful for all I've learned from him through the years, for his consistent intellectual support, and perhaps most of all, for his belief that I was worth listening to, even when I was a child. Many years ago, in my father's early days of teaching, back at Boalt, he was working on a family law casebook, and he'd occasionally solicit my views on children's rights. When I wanted to get my ears pierced, or to get a raise in my allowance, my parents' decision often depended on just how well I could defend my position. Though I admit I didn't entirely or uni-

1. At 6:25 a.m., on March 17, 2014, the date of the Rutter Award Ceremony, a 4.4 magnitude earthquake hit Los Angeles, with its epicenter just a few miles away from Westwood. *See* Ari Bloomekatz, Rong-Gong Lin II & Matt Stevens, *Is 4.4 Jolt an End to Los Angeles' 'Earthquake Drought'?*, L.A. TIMES, Mar. 17, 2014, http://articles.latimes.com/2014/mar/17/news/earthquake-47-quake-strikes-near-westwood-california-yxdnr8.

2. My father is Robert Mnookin, the Samuel Williston Professor of Law at Harvard Law School. With a last name like mine (and his), doesn't it go without saying that we must be related?

formly appreciate the ways that the Socratic method played out at our dining room table even back when I was in elementary school, I do appreciate it a lot more now—though I perhaps try not to instill it quite as frequently on my own children!

Fewer of you may know that my mother was also a teacher—she taught high school English for several years before I was born. Though her life went in different directions after becoming a parent, she was and remains a born teacher, and I've been a great beneficiary of that—both thanks to her skills and her disposition—for my whole life. She's also one heck of a press agent. When I forwarded the announcement of this award to my parents, my mother proceeded to forward it to at least one hundred of her nearest and dearest—and believe me, that's just her A-list.

I'm also very pleased my children could be here too, though I don't think I should hold my breath hoping that we're going to see a third generation of law professors in the Mnookin/Dienstag clan. My daughter, Sophia, has made it crystal clear that from her perspective, law is pretty much the textbook definition of boring. But we'll see if she sticks to that point of view. She is a marvelous writer, both as a creative writer and analytically, and I realized the other day that her ninth-grade school essays were rather intuitively making use of a structure that looks an awful lot like IRAC.[3]

As for my son, Isaac, now a fifth grader, he came to one of my torts classes a couple of years ago and declared it "a lot less boring than I expected." He still remembers learning about boats tied to docks in storms and the allocation of damages, and any of you should feel free to quiz him on either the facts or the holding in *Vincent v. Lake Erie*[4] at the reception later this afternoon. After that visit to my torts class, I was pretty excited to discover that law professor actually made his list of possible future careers, though in full disclosure, it was—and as far as I know, remains—well behind scientist, mathematician, and professional athlete.

I'm also grateful to my husband, Joshua, himself a wonderful teacher who has been at it several years longer than I have, and who has always been patient when, at the end of a long day, I want to describe something that worked well in class, or something that didn't.

Thanks too, to my colleagues, for inspiring me, and for your frequent generosity in sharing your thoughts about teaching, for celebrating those "aha" moments and commiserating when something in the classroom fell flat.

3. IRAC, of course, stands for Issue, Rule, Application, and Conclusion.
4. 124 N.W. 221 (Minn. 1910).

UCLA is a community of dedicated teachers, and for all those times we've chatted about the pros and cons of our various on-call methods, or where we've commented on each other's final exams, or when we've talked about course design: Thanks. Thanks too, to the administrators here at UCLA, an exceptionally talented group who not only keep this institution running remarkably smoothly but who are terrific human beings who make this an exceptionally collegial work environment.

And thanks too, most especially, to the students, for always keeping it interesting, for keeping me on my toes, and because, at the end of the day, you are the point, the reason we are up at the front of the room—because it's our chance to do our small bit to shape your sense of yourself as lawyers and as learners, our opportunity to push you to understand the material a little more deeply and a little differently than when you walked into our classroom. Thanks for providing the chance to teach you, and equally, the opportunity to learn from you.

I'm going to spend the next few minutes sharing just a few lessons I've learned about teaching over the years. The first is about knowing the answers—or, as the case may be, about not always knowing them. In my first year of teaching Evidence, back when I was at UVA—too many years ago now for me to want to be precise about dates—I was sometimes literally just a week or two ahead of my students. I vividly remember that heart-pounding, anxious feeling when a student posed a question to which I didn't know the answer. Here's one example etched into my memory from that very first year: "Do the Rules of Evidence apply in sentencing hearings in federal court?" a student asked. Now, that's a pretty straightforward question. And, I'll tell you right now, there's a pretty straightforward answer: Nope. For the most part, they don't apply.

But back then, as a rookie law teacher who had been on the stay-in-school-forever plan and who had gone into teaching pretty much straight from my PhD program, I honestly wasn't sure. So I faced that terrifying moment of indecision as a brand new teacher: What to do? The options appeared before me like a nightmare version of a multiple-choice question:

(a) admit ignorance;

(b) hem and haw;

(c) argue from first principles or analogy about whether the Rules of Evidence ought to apply at sentencing;

(d) turn the question around and see what the student could come up with.

So what did I do? I went for (d)—of course!—with a little bit of (c) and (b) thrown in for good measure. Basically, I was bound and determined to do anything but (a), admit my ignorance. So, in good Socratic fashion and with all the authority I could muster, I looked at the student and asked, "Well, do you think they *should* apply at sentencing?"

The student probably felt like answering "I have no idea, Professor, that's why I asked," but fortunately, she instead engaged thoughtfully as we briefly explored arguments for why we might want to keep inadmissible evidence out of sentencing hearings, and counterarguments for why it might make more sense for the evidence rules not to apply at this stage of the trial process. Luckily for me, this question was asked about three minutes before class was over, so after some fairly brief back-and-forth engagement, I was saved by the metaphoric bell. That gave me a chance to go back to my office and look up the answer and to find that Rule 1101 of the Federal Rules of Evidence states clearly that the evidence rules do not, in fact, apply to sentencing.[5] I shared my newfound knowledge with the class the next day—but without for an instant admitting that I hadn't known this the whole time.

But now, as a more experienced teacher—and as someone with a lot more "penumbral" knowledge in the fields I teach than I had back then, I've learned to embrace (a), the "admit ignorance" answer. The truth is, I find that I even often delight in it. Okay, I grant that it happens a good deal less often than it did back in that first year, since I have, fortunately, learned and absorbed a good deal more about my fields of study and engagement over the intervening years. But it absolutely still does occur, and more than one might expect.

These days, when I get an interesting question that I don't know the answer to, my instinct is to look at the student with approval and say, "Great question. And I really don't know." I might then go for approach (d), that is, turn the question around and ask the student for her or his view, or (c) think, together with the students, about what we might infer about the likely answer using what I and they do know. But unlike back in my first year, I'm now not only willing but rather eager forthrightly to admit to my students the limits of my own knowledge. Sometimes, just as I did when I was a beginner, I'll go after class to seek out additional information to help address the question, but

5. *See* FED. R. EVID. 1101(d) ("These rules–except for those on privilege–do not apply to the following: . . . (3) miscellaneous proceedings such as: . . . sentencing[.]"). Since we law professors tend to like nuance, perhaps I should add that there is, to be sure, a due-process based requirement that information presented at sentencing meet some minimum indicia of reliability, so there are, at least theoretically, some limits on what evidence can be presented in a sentencing hearing. But the Rules of Evidence quite clearly do not govern.

equally often, I'll invite the student to do so him or herself, and to let me know what she or he finds out. Those student-led further inquiries have led to some terrifically interesting conversations, both inside and outside of the classroom.

I believe that being willing to admit my own ignorance has valuable pedagogical benefits. It's one example of doing something that I wholeheartedly affirm: taking our students seriously as thinkers, and believing in them not simply as capable future lawyers, but as potentially *exceptional* future lawyers. To acknowledge that students ask valuable questions to which we do not know the answer is one small way of illustrating that just because we are the professors and they the students, and just because we do, presumably, know more than they do about the topics at hand, they may nonetheless genuinely have truly interesting, original, or surprising things to say. It may be somewhat clichéd, but it's also true: more often than they perhaps realize, that they can teach us as well.

Admitting the limits of my knowledge tells my students that what happens in our classroom may be a performance, in part, but it's certainly not all performance. The classroom conversation, at least the version that I aspire to, is not the scripted unfolding of an already-written play. Rather, it's a specific, very particularized engagement in which the students' voices, and their distinctive, individual ways of relating to the material, genuinely matter, and partly shape our conversation. That's how I felt, even back when I was a child, when my father would engage with me semi-Socratically at the dining room table. While it was sometimes infuriating, it was also empowering. It made me feel that I had contributions worth making, opinions worth sharing, and questions worth asking. I aim to leave my students with that same set of feelings.

This relates to a second point. As a teacher, I want to do two things at once that are sometimes in a certain tension with each other. On the one hand, I want to take students seriously as thinkers and as intellectual contributors, and as a result, I'd like to push them slightly beyond their comfort zone. But I also, simultaneously, want to be empathetic to their anxieties as students. For first years especially, to whom I sometimes teach Torts, the stress levels of the first semester of law school can on occasion be through the roof. But even for my upper class students in Evidence, the niceties of the distinction between hearsay and nonhearsay and the crazy and only semijustifiable complexities of the character evidence rules can leave students feeling twisted like a pretzel and insecure about whether they have truly understood the key concepts. My goal as a teacher is therefore to engage in what I think of as intellectual "layering."

I'll explain what I mean by layering with a food metaphor, since I'm a relatively unabashed foodie. (When we first moved to Los Angeles almost nine years ago, my husband and I would run into colleagues on the weekends,

and they'd try not to laugh at us as we breathlessly extolled our recent culinary adventures, from delicious Oaxacan mole, to complex Ethiopian Doro Wott, or melt in your mouth omakase sushi—none of which had been available in Charlottesville, Virginia.[6] But I digress . . . .)

As a law teacher, a significant part of what I want to do in my classroom is to provide a solid foundation in the basics. I think of this part of the classroom meal as the protein, the main course. As I'm helping students grapple with this material, I may, intentionally, make them do some of the cooking themselves, but I have no interest in hiding the ball. I try to make sure that, at the end of each session or topic, the key points are clear. To ensure that my students understand clearly what we've done and what I see as the core concepts of each class, I've taken, in recent years, to beginning the next class with a summary of the key points, a straightforward and quick review of the key takeaway points as I understand them.

But I see that main course as a starting point, not a stopping point. On top of that protein, I'd like to provide some sauce, and next to it a side dish. Maybe there needs to be a garnish too, and a little extra flavor for added umami. But I also recognize that not all my students will, in every single class session, be in a place where they are ready, intellectually, to digest the subtle garnish. Some may not be ready on a particular day to eat the sauce at all. And that's okay. I think I'm generally more successful at this in my Evidence course than I am in Torts, but, in both classes, I try to distinguish the different parts of the intellectual meal for my students. I let my students know, in essence, that if they are eating the protein and the side dish and understanding those portions of the meal, then they are doing fine. If they aren't with me even to that point, then they absolutely need to come talk to me. But I want them to understand that they need not worry too much if they sometimes find they are leaving the garnish on the plate.

The goal is to provide enough complexity and texture to challenge everyone present, while doing so in a way that does not confuse, frustrate, or alienate those who might not be quite ready for the garnishes. Of course, which students are ready for the most challenging material is not itself consistent—it varies with the topic, with the day, and with the course. As a rookie teacher, I think I sometimes ricocheted between offering a completely straightforward steak and French fries, and serving up some complex creation of molecular gastronomy

6. Our difficult decision to leave UVA for UCLA had many dimensions of course, but Pulitzer prize winning restaurant critic's Jonathan Gold's book-length compilation of restaurant reviews was not irrelevant. *See generally* JONATHAN GOLD, COUNTER INTELLIGENCE (2000). But I feel compelled to add that Charlottesville in fact has extremely good food for a town its size.

that, were it actually food rather than law, would be well beyond my solid-but-not-spectacular cooking skills. I am now much more interested—and at least partly successful, I hope—at offering multiple layers of flavor in almost every class session. I also believe that I have become clearer and more explicit about what counts as the "must understand" part, and what counts as garnish. I feel strongly that if we only give our students the protein unadorned, we are not pushing them to reach their limits or encouraging them to be as ambitious as they can be. But, simultaneously, if we spend all our time on the garnishes, we aren't recognizing their legitimate need for substantial basic nutrition too.

I want to mention, briefly, a third way my teaching has changed over time. I am much more willing now to try—and indeed, I am a substantial fan of—pedagogic experiments. I care about this personally, in my own classes, and I also care about this institutionally for the law school as a whole. Over the last few years, I've tried several experiments in my teaching, and I am also proud to have played a role in encouraging some broader institutional experimentation as well.

I will describe one recent teaching experiment that I thought generally worked well, within my Expert and Scientific Evidence class, a new course I developed in Spring 2012. Half of the course was a fairly traditional doctrinal introduction to expert and scientific evidence. We read and discussed key cases, along with legal scholarship, and we explored together why we have such a complicated time making sensible and thoughtful use of expert knowledge within our adversarial legal system. The course also provided a fairly substantial introduction to a variety of specific areas of scientific evidence, including latent fingerprint evidence, DNA profiling, medical causation evidence, psychiatric evidence, and the evidence of economists and engineers, among others. Our readings and discussions were interspersed with guest speakers, both lawyers with relevant specialties and some experienced experts. All of this was interesting—at least I hope it was—but it was not especially innovative. But in this class, the students also spent about four or five weeks doing a quite elaborate simulation involving real experts. I teamed up with Dr. Stephen Read in the geriatric psychiatry department here at the UCLA Medical School. We together built a detailed simulation based on an actual case in which he had been an expert witness, a case involving the testamentary capacity of an elderly man who decided to leave his substantial estate to his long-term caregiver instead of his relatives. Then, the post-residency geriatric psychiatry fellows here at UCLA served as the actual experts for the law students. The students interviewed these experts, and wrote up interview memos, while the experts themselves each evaluated the materials we provided, and wrote up reports on their views of the decedent's testamentary capacity. The students then prepared for

and engaged in either a direct or cross-examination of an expert, before both opposing counsel and a judge (played by either me or my colleague Professor Al Moore).

In developing this simulation, I had extraordinary help from my wonderful colleague Al Moore—to be honest, I don't think I could have put together this elaborate exercise at all effectively or successfully without his assistance. He brought his tremendous experience in clinical teaching to bear to help me understand better what was manageable and doable in the number of class sessions we had, and how we could design the project to make it an effective skills-development experience for the students. Purely out of his good-hearted generosity he also guest taught two skills-focused classes to the students, in addition to helping me with the judging, so that he and I could run mock direct and cross-examination in two courtrooms simultaneously.

Then, after the simulation process was over, at the end of the semester, we circled back to the big questions about experts and their uses in court. It was clear both to me and to the students—several of whom are in this room today—that the added experience of working with an actual expert enriched these conversations significantly. I found this hybrid teaching experience—partly clinical and skills based, but partly doctrinal and theoretical—to be both rich and generative, and so did nearly all of the students.

This course did not fit into the traditional boxes for our course categories—it was not primarily a skills class, but it absolutely had quite significant and meaningful skills components. And these skill components were enriched, I think, by their thorough integration with the rest of the substance of the class. From what I heard from them directly, and also indirectly from my collaborator, the fellows in geriatric psychiatry also found it to be an enormously worthwhile experience. In fact, my collaborator in psychiatry has given presentations on our experiment in his professional organization's annual conference, and we're hoping to repeat the teaching experience again, either next year or sometime soon.

As I mentioned, my interest in some degree of teaching experimentation is not just personal but also institutional. I'm proud that I brought the Perspectives on Law and Lawyering seminars here to UCLA, back when I was Vice-Dean. They weren't my idea—to be honest, I largely stole the format from something that Virginia Law School already did, but we have put our own UCLA imprint on them, and I am pleased at how well received they have been by both faculty and students. I was also significantly involved in the curriculum reforms that we will be starting to put into effect next year, though that was a substantial

project in which many of us played a role, and which was first and foremost spearheaded by Devon Carbado who chaired the task force.

But the key point is general, not specific: I feel strongly that both as individual teachers and as an institution, we should be willing to try new things. We should take some risks, experiment, and innovate. Sometimes these experiments will only partly succeed, and sometimes they may entirely fail. Believe me, I've tried out some classroom experiments that I would rather describe over a beer than here in front of the podium—but I do not regret having tried them. My strong view is that thoughtful experimentation, both as individual teachers in the classroom and more generally, provides risks worth taking. Even when they do not succeed as well as we might have hoped, these forms of innovation keep us from becoming stale, or our relationship to the material rote. And when they succeed, they bring both new modes of learning and a potentially electric energy to our—and our students'—experiences.

To talk about experiments, innovation, and curricular reform, invites us to ask still-larger questions about what we think the purpose of teaching really is. What are our goals as law professors? What are the most important aspects to what we do, and what do we hope to impart to our students before they leave us? You will, I am confident, be pleased to know that I am not going to make this talk twice as long as it has already been by sharing my thoughts on these important topics. But I will say this: There is one goal that is being bandied about now with some frequency that I think we, as teachers, should resist. That's the idea that one of our chief functions is to make our students, as we often hear it put, "practice ready on day one."

I confess I don't entirely know what it means for students to leave law school "practice ready on day one." Our students will be practicing in so many different ways, and in so many distinct areas, that what they need, in terms of grounded, concrete, practical knowledge, cannot possibly be reduced to a checklist. There surely are not one-size-fits-all solutions, notwithstanding some of the unfortunate proposals gaining traction these days, like the potential—and in my view distressingly excessive—fifteen credits of experiential education requirement put forward by the California Bar.[7] Perhaps every law student should indeed have some exposure to experiential or skills-based training while in law school, but to say that every lawyer is better off with a full semester of such training fails to ask the "compared-to-what?" question.

7. For information about the proposals of the California Bar's task force, including this proposal for a minimum number of experiential education credits, see *Phase II Implemenation*, TASK FORCE ON ADMISSIONS REGULATION REFORM, ST. BAR OF CAL., http://www.calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx (last visited Aug. 3, 2014).

For some students fifteen credits of skills training may be a quite appropriate and valuable use of their time. But, for others, it may mean many missed opportunities to pursue other options that would have been more personally and professionally valuable. It should be the students, the law schools, and the marketplace that decide whether, for example, an externship is or is not more valuable for the future transactional lawyer than a variety of upper-level courses in corporate finance and other subjects that may have significant practical payoff without being explicitly defined as experiential; or whether the future would-be appellate litigator is better served by a skills class followed by a live-client clinic or, instead, selections from the many upper level doctrinal offerings.

There are, to be sure, major challenges facing law schools right now, but this should, in my view, be a moment for curricular *deregulation*, not intensified gatekeeping by the bar of what law schools do. I say this not because I believe that law schools should continue in their teaching as if it is business as usual, but rather as a corollary to what I said before: We should be encouraging experimentation and innovation, not stymying it, nor limiting it by channeling it in only in one predetermined direction.

But my objection to the current and unfortunate focus on being so-called practice ready at graduation goes deeper than this concern about the diversity of specific needs or the mistake of trying to create one-size-fits-all solutions for our students. Of course we want our students to have as many opportunities as possible on day one of their life as a lawyer. Of course we want them to be skilled, knowledgeable, confident, and employable. And of course we should care about the real experiences they will likely have in life in practice, and we should care deeply about providing them with the skills, perspectives, and training that they will need to succeed.

But it seems to me that our most important goals should focus not so much on making our students practice ready on day one, but rather on providing a foundation to make them the best possible lawyers, professionals, and leaders in year five of their future careers, and even year twenty-five. We are, and should be, training students not simply for a first job, but for a long, and hopefully satisfying and rewarding, career. Our goal as teachers should be to play whatever part we can in helping to create ambitious, talented lawyers with the human capital to thrive in a changing world. We need to help to shape and create young lawyers who have the intellectual resources, training, and stamina to dive deep and to learn to specialize in valuable ways, but who, simultaneously, also have the intellectual breadth and perspective to reinvent themselves if they need to, in a rapidly changing professional world and a sometimes-unstable employment environment.

Now how exactly do we do *that* as teachers? Well, as I said earlier, I have become, over the years, increasingly comfortable with not having all the answers. So I'm going to conclude my talk by taking recourse once again to option (a) on that multiple-choice test, and admitting my ignorance. I surely don't think I have all the answers, but I do think these questions about how to prepare our students for their professional futures are very much worth asking. I'm so grateful to be at an institution where so many of my remarkable colleagues care about engaging with and trying to answer questions of precisely this sort, an institution that values and celebrates good teaching, an institution open to innovation and experimentation, and an institution that aims to nourish its faculty and its students as both ambitious thinkers and as human beings. I feel extremely fortunate to be part of this very special place, and to be standing before you this afternoon. My deepest thanks to all of you for being here as well.