Saint Louis University Law Journal

Volume 52
Number 3 *Teaching Intellectual Property Law (Spring 2008)*

Article 4

2008

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Christine Haight Farley
American University Washington College of Law

Peter Jaszi
American University Washington College of Law

Victoria Phillips
American University Washington College of Law

Joshua Sarnoff
American University Washington College of Law

Ann Shalleck
American University Washington College of Law

CLINICAL LEGAL EDUCATION AND THE PUBLIC INTEREST IN INTELLECTUAL PROPERTY LAW

CHRISTINE HAIGHT FARLEY, PETER JASZI, VICTORIA PHILLIPS, JOSHUA SARNOFF & ANN SHALLECK*

INTRODUCTION

Clinical legal education provides a powerful methodology for students to learn about the relationships among intellectual property law theories, policies and practices; to encounter the experiences of persons who seek protection or who feel the legal regimes of intellectual property impinging on their ability to engage in educational, creative, innovative, and culturally significant work; and to develop as a lawyer. We describe in this Article our motivations for forming an intellectual property law clinic at the American University Washington College of Law, the goals that we seek to achieve, and the tripartite pedagogical structure that we adopted: (1) a seminar built around a year-long simulation that addresses multiple lawyering skills and legal practice settings, (2) a wide variety of live-client student representations performed under close faculty supervision, and (3) weekly case rounds discussions focusing on public interest issues experienced directly by the students in their representations. We provide an example of a particular student representation that illustrates some of the benefits of our clinical model for teaching students about the public interest and intellectual property law doctrines within the framework of teaching about lawyering. We conclude with our reflections on student experiences and the ability of our clinical program to teach intellectual property law and lawyering in concrete factual and policy contexts, helping students better understand the interaction of theory, doctrine, and practice in shaping the meaning and consequences of intellectual property regimes. Students come to understand law and lawyering and to see ways to shape their lives as lawyers, through analyzing and evaluating their responses to the interests of their clients, their actions in meeting the demands of a case, their

* Christine Haight Farley is the Associate Dean, Peter Jaszi and Ann Shalleck are Professors, and Victoria Phillips and Joshua Sarnoff are Practitioners-in-Residence at American University, Washington College of Law.

understanding of the relationships among doctrinal areas, and the connection of their activities to the public interest.

I. BACKGROUND OF THE INTELLECTUAL PROPERTY CLINIC

The convergence of two lines of institutional and personal experience in 1999 generated the concept for what would become the Glushko-Samuelson Intellectual Property Law Clinic (IP Clinic). Quizzical looks as to the existence of a public interest in IP and the power of clinical pedagogy propelled us to create an educational experience in which students could reflect on the meaning of the public interest within IP law and policy, while learning the complexities of being a lawyer. Over many years, faculty teaching conventional intellectual property law courses at American University, Washington College of Law (WCL) watched (with interest and no little jealousy) the development of the school's widely respected Clinical Program and its powerful teaching methodology—based on giving students primary responsibility for the cases of actual clients, in the highly structured pedagogical setting of a clinic taught by full-time faculty.[1] Also, the 1990s saw a distinct acceleration in the trend toward "high-protectionism" in copyright, patent, and trademark law,[2] and WCL IP faculty members became increasingly involved in opposing that trend in the courts, Congress, and international bodies. So it seemed like a natural extension of our existing activities to create a clinic in which students could learn about the relationships among IP theories, policies, and practices, in particular those that implicate the public interest; developments in the statutory, regulatory, and doctrinal frameworks effecting momentous changes in IP law; the practices of IP lawyers; and the experiences of those who seek IP protection or who feel the legal regimes of IP impinging on their ability to engage in educational, creative, innovative, and culturally significant work. Through the process of serving as the lawyers for clients who are affected by the changes in IP law and policy, students could experience the joys, terrors, ambiguities, and uncertainties of public interest advocacy. They could observe first-hand the tensions reflected in domestic and international approaches to protecting access to information and the products of creative endeavors.

But there were challenges—one being the resources required to provide a high-quality clinical offering and another being the difficulty of adapting the clinical model to a specialized area of substantive law and practice not previously addressed within clinical programs. IP law seemed distant from the

1. For more information about the WCL clinics in general, see http://www.wcl.american.edu/clinical/ (last visited Mar. 19, 2008).

2. *See, e.g.*, Pamela Samuelson, *Toward a "New Deal" for Copyright in the Information Age*, 100 MICH. L. REV. 1488, 1502 (2002) (discussing high protectionism during the Clinton era with regards to copyrighted work in digital form).

issues most familiar in clinical settings, where students have typically worked with laws and in practice areas having a direct impact on the lives of poor or otherwise disadvantaged people. The absence of a model was daunting. With the goals of considering lawyering within the context of IP law and practice and investigating the meaning of the public interest within all aspects of IP, we wanted to expose students to the widest possible range of matters. Without any models for our ambitious undertaking, we had to take the basic principles of clinical pedagogy and adapt them to our particular project.

A generous gift from Professor Pamela Samuelson (of Boalt Hall, University of California, Berkeley) and her husband, Robert Glushko (a computing entrepreneur with a dedication to public interest causes) helped the WCL administration to solve one aspect of the former problem—that of expense. To address the latter, WCL's existing clinical faculty, established IP faculty, and new IP clinic faculty, over the first years after the clinic's launch in the fall of 2001, created an extraordinary collaboration in which they wove together visions of law and legal change developed in different settings. A leading clinical teacher and theorist, Ann Shalleck, joined the teaching team for three years (an addition made possible by a grant from the Markle Foundation), while simultaneously directing her own Women and the Law Clinic. Director Peter Jaszi and Associate Director Christine Haight Farley, both leaders in and veterans of numerous IP battles, as well as scholars and teachers of copyright and trademark, made the new IP Clinic a critical component of the law school's IP curriculum. Two new Assistant Directors and Practitioners-in-Residence, Victoria Phillips (a communications and trademark lawyer) and Joshua Sarnoff (a patent and environmental lawyer), brought experience in creating institutional and legal change. Ann provided daily knowledge of and guidance on clinical theory and practice, and the other members of the WCL clinical faculty embraced the IP Clinic as an innovation in the overall Clinical Program, integrating it fully into the structure and operation of the program. Experienced in their own domains of classical IP teaching, Peter and Christine adopted the risky and time-consuming task of exploring an entirely new pedagogical framework for addressing issues of law and policy. And Vicki and Josh assumed the daunting task of learning to be clinical teachers as they developed a type of clinic that challenged some assumptions in clinic design.

From the beginning, the IP Clinic faculty internalized one of the central tenets of WCL clinical philosophy—that the main point of clinical instruction is *not* to teach students about particular bodies of doctrine, or even to impart particular skill sets, but to inculcate a self-conscious, reflective (and therefore critical and self-critical) approach to law and lawyering in all its applications and manifestations. Over time, this awareness has helped to focus us on the ways that practical, and sometimes mundane, lawyering tasks—everything from time-management to effective narration—provide an opportunity to

examine how law operates in the work of lawyers, the lives of clients, and the development of public policy. Setting IP within the context of lawyering activities, especially the dynamics between lawyers and clients, helps the students recognize and understand the multiple meanings and consequences of IP policy. Therefore, the clinical framework has not prevented us from making an institutional contribution to the formation of good IP policy. To the contrary, in an IP Clinic structured to foster reflective and critical understanding of how IP policy is realized in the day-to-day work of lawyers and experiences of clients, our students have not only represented clients in matters involving significant policy questions, but have also developed sophisticated insights into why IP policy matters. We hope and expect that some of our graduates will help lead a new generation of public interest-conscious IP practitioners and scholars.

This aspiration, in turn, has led the IP Clinic faculty to devote considerable class time, especially in the case rounds component of the clinic, to discussions of where the public interest in IP law and policy lies. Although we all have strong convictions on this point, we have tried to use this context to help students develop their own critical perspectives. Many students begin with the assumption that IP law is either value-free or perhaps that the values it embodies are somehow beyond debate. So we have concentrated on exposing competing views and urging students to shape their own positions and articulate and debate them respectfully and effectively. Through structured class discussions rooted in the students' own experiences with their clients and in their cases and projects, we guide students as they learn to deploy public interest rhetoric in their clients' service. We feel most successful as teachers not when students are articulate in reciting various theories of the public's interest in IP, but when we see them wrestling actively with these ideas—even if that means changing positions along the way.

Because many aspects of IP practice present questions about the public interest, the teaching team works from the conviction that students should understand the diversity of situations that arise in the course of IP practice (and, by extension, in any field of legal specialization). The following approaches allow us to emphasize student learning and continuous reflection on the meaning of the public interest:

- We take on only those matters that come with a real client with real legal service needs, rejecting requests for research help with abstract questions, whatever the source;
- We strive for a mix of clients—from struggling individual artists and inventors to large non-profit organizations with long-term investments in the IP policy process—and a mix of matters that reflect the full range of IP lawyering practices, including rights acquisition, counseling, transactions, negotiation, litigation, legislative advocacy, etc.;

- We work to assure that students (who usually work in two-person teams, though sometimes in groups of four, six, or even more for large-scale projects) have a diversity of practice and subject matter experiences over the course of the year;
- We assign matters to students with their interests in mind, but we try to make sure that, at some point, the students receive work in areas they might not otherwise experience, for example, providing those with technical backgrounds the chance to engage in a copyright matter, and encouraging those with arts experience to confront a patent problem; and
- We squeeze the greatest possible learning out of experiences with clients and of the potential for collaboration, through weekly supervision meetings between student lawyers and their faculty supervisors, and through weekly case rounds discussions. In these discussions, student teams present developments in or issues raised by their matters as the beginning point for group evaluation, and the group works collectively to address the questions and dilemmas each team brings.

In addition, we rely on a capacious year-long simulation with weekly episodes in which students engage in or reflect on a different lawyering activity. The simulation, which has widened and deepened over the six years we have used it, forms the centerpiece for the teaching of advocacy practice and theory and, along with case rounds, takes up the bulk of our regularly scheduled class meetings. Involving a dispute over the commercial use of Native American names and symbols, the simulation exposes students to a full range of IP law issues and multicultural lawyering practices that they may not encounter in their actual case assignments. Year after year, students representing opposing parties become passionate about the public interest dimensions of their opposing case theories.

By the end of the year, IP Clinic students understand that all the matters that they and their colleagues have handled have public interest overtones, even where these are not initially obvious. They also see that many of the hardest problems encountered in IP practice (as in other areas of practice) involve sorting out situations in which creative and professional collaborations have gone awry. In turn, they become sensitive to the issues lawyers face in being effective collaborators—with partners, with clients, with decision-makers, and even with adversaries. In addition, students begin the process of constructing their professional identities as legal practitioners. They see how their practices as lawyers and their relationships with clients are intertwined with the values that they bring to and develop in their work. If promoting students' awareness of the public interest is one "bookend" of our teaching practice, the other is sensitizing them to the choices that they face in shaping their lives as effective lawyers who can find meaning in their work.

II. CLINIC STUDENT EXPERIENCE

One story of a recent Clinic representation exemplifies three key themes that have emerged in our six-year experiment. First, students learn indirectly about IP law, practice, and policy through the lawyering activities of planning, interviewing, fact gathering, counseling, drafting, preparation, and presentation and, most critically, through reflecting on their experience. Second, when students have responsibility for their work and engage in their collaborations, they incorporate that learning deeply. Third, students understand the law and the public interest, as well as the role of lawyers in affecting the direction of IP law and policy, more fully when they see issues through the goals, interests, and situations of real clients.

Given Peter Jaszi's previous work and collaboration with Pam Samuelson on advocacy related to the 1998 Digital Millennium Copyright Act (DMCA), it was almost inevitable that the Clinic would be called upon to participate in the Act's spin-off proceedings. The Clinic received this opportunity when asked to provide representation in DMCA rulemaking proceedings for clients seeking exemptions from prohibitions contained in the Act. The DMCA amended U.S. copyright law by adopting new Section 1201, which prohibits circumvention of technological measures on digital media (such as CSS® used on certain commercial DVDs) that control access to or copying of copyrighted content on that media.[3] This legislative prohibition also provides authority for the Librarian of Congress (based on rulemaking recommendations from the Registrar of the Copyright Office) to adopt three-year renewable exemptions to the access prohibition for particular "class[es] of copyrighted works," when users of such works "are, or are likely to be" "adversely affected" in their ability to make lawful non-infringing uses of these works.[4]

The first rulemaking proceeding, in 2000, adopted only two narrow exceptions to the DMCA prohibition on circumvention to obtain access to copyrighted works, one for compilations of lists of websites blocked by filtering software and the other for literary works blocked by malfunctioning access control mechanisms.[5] For the 2003 rulemaking, an institutional client asked the Clinic late in the process to seek exemptions for consumers listening to copy-protected music CDs on certain stereos and personal computers; viewing foreign DVD movies on U.S. players sold with region-code restrictions; skipping through commercials on some movie DVDs; and viewing movies that are in the public domain but are released on encrypted DVDs. The students encountered many problems, including a short time-frame and

3. *See* 17 U.S.C. § 1201(a)(1)(A) (2000).

4. 17 U.S.C. § 1201(a)(1)(C).

5. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 65 Fed. Reg. 64,556, 64,562, 64,574 (Oct. 27, 2000) (adding 37 C.F.R. pt. 201.40).

difficulties in identifying and marshalling the facts needed for a persuasive presentation. The Librarian did not adopt any of the exemptions in question, and renewed only one exemption and adopted three others.[6]

The Librarian's rulings also made the task of obtaining an exemption more onerous by explicitly requiring evidence of a "substantial adverse effect" and by limiting the "classes of works" subject to a potential exemption to those defined by "attributes of the works themselves" (for example, particular kinds of software or audio-visual works) rather than by the nature of the would-be users or their desired uses.[7] The requirement of the "substantial adverse effect" created a burden seemingly higher than that stated in the statute.[8] The requirement that the exemption be limited to "the attributes of the works themselves" raised potentially insuperable barriers to gaining an exemption aimed at allowing particular kinds of "fair uses"—although DMCA exemptions were most urgently needed for precisely this purpose. This state of the law presented difficulties in case theory development that our clinic students needed to address and attempt to overcome in the next rulemaking proceeding.

By the time the 2006 rulemaking round arrived, many disenchanted public interest advocates had written off the rulemaking process as futile, and many of those who had earlier requested exemptions took a pass. However, Peter Decherney, a young Assistant Professor in the University of Pennsylvania's Cinema Studies Program, contacted the Clinic for advice and guidance regarding an exemption that would be important for his and fellow cinema studies professors' teaching activities.[9] Professor Decherney was joined in this quest by his colleagues, Michael Delli Carpini, Dean of the Annenberg School of Communication at the University of Pennsylvania, and Katherine Sender, then an Assistant Professor of Communication there.

The Clinic assigned a two-person student team to the matter. The students made quick use of their newly-minted interviewing skills honed in the Clinic

6. *See* Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 68 Fed. Reg. 62,011, 62,015–018 (Oct. 31, 2003) (codified at 37 C.F.R. pt. 201).

7. *See id.* at 62,012 (discussing attributes); Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 65 Fed. Reg. at 64,558–59 (discussing users and uses).

8. *See supra* note 4 and accompanying text.

9. In addition, Brewster Kahle of the Internet Archive was referred to the Clinic (by our sister clinic on the West Coast—the Samuelson Law, Technology & Public Policy Clinic at University of California, Berkley) to seek a renewal of its exemption for computer programs and video games in obsolete formats and to expand it to computer programs and video games requiring obsolete operating systems or hardware. The Clinic was successful in obtaining the renewal and expansion. *See* Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 71 Fed. Reg. 68,472, 68,480 (Nov. 27, 2006) (codified at 37 C.F.R. pt. 201.40).

seminar simulation exercise. From Professor Decherney they learned that to teach new generations of film critics, film historians, producers, directors, and others, media-studies professors must show their classes clips from existing films, and that for effective teaching such clips must be copied and compiled in advance of class (educational activities that, absent the DMCA, would be permissible under the Copyright Act's exemption for "face-to-face" teaching[10] and the fair use doctrine). They also learned that teaching cinema courses without displaying high quality reproductions of the originals drastically reduces the ability to analyze important aspects of film. Recognizing the importance of their client's interests from his passion about the implications of IP legal doctrines for his work, the students agreed to take on Professor Decherney as a client.

The students began the difficult tasks of developing a case theory to accomplish the client's goals, planning and conducting their fact investigation and network building activities, and drafting persuasive advocacy documents. They achieved the core insight that understanding and documenting the specific, daily harms experienced by their client was critical to their formulation of a case theory. It enabled them to generate evidence persuasive to a decision-maker (and consistent with the applicable legal standard) about the damage to the public interest caused by the DMCA restrictions. From interviews with Professor Decherney and his colleagues, the students found out that in order to show more than one clip from a high-quality digital DVD during a class without having prepared a "clip reel" in advance, a professor must shuffle discs and navigate to the desired portion of the work. Thus, professors faced an unpalatable set of options: losing valuable teaching time, forgoing the clips, creating unsatisfactory analog reproductions of high quality digital originals, or circumventing copy protection.

By collaborating not just with their client but with similarly situated media studies professors (many identified by the client), the students generated compelling facts and presented effective testimony that exposed the harms caused by the DMCA prohibition on circumvention that were sufficient to justify an exemption. Through amassing different but related stories about the work of various media studies teachers, the students created an account of the harm to many aspects of teaching that enabled them to meet the burden of showing a "substantial adverse effect."

The students realized that, as part of their case theory, they needed to develop an approach that would allow for the potential use of all the diverse films that Professor Decherney and other professors might want to show. Mindful of the "class of works" precedent from the earlier rulemaking (apparently precluding definitions of classes of works by the status of the user

10. *See* 17 U.S.C. § 110(1) (2000).

or the nature of the intended use, and requiring reference to the "attributes of the works themselves"), they learned from their client that he obtained all the films he used in class from his department's DVD collection. In their written submission to the Copyright Office, the students therefore proposed an exemption that satisfied the precedent by defining covered works according to their own attributes ("[a]udiovisual works included in the educational library of a college or university's film or media studies department," to quote the final rule), but also invoked characteristics of intended uses ("for the purpose of making compilations for . . . educational use in the classroom") and qualifying users ("by media studies or film professors").[11] By proposing the fact that a film had been selected for a library collection as an "attribute of the work," the students built upon the actual experience of the client to formulate a creative solution to the potential limitations on "classes of works" that the Librarian had created. Thus, they effectively accommodated the client's interest without challenging the precedent frontally.

The students also counseled their client on the importance of oral advocacy in hearings held by the Copyright Office and prepared him in mock hearings to demonstrate visually the superiority of digital clips. Ultimately, they won the exemption.[12] In obtaining it, the students created a new precedent that others can build upon in the next round of rulemaking. In the process, the students learned that by understanding the world of a particular client and thinking strategically about how to meet his needs, they may also advance a larger vision of the public interest.[13]

Through this process of client-centered interaction and advocacy, the students not only obtained a result that improved Professor Decherney's and other media studies professors' ability to teach, but also learned how realizing

11. *See* 37 C.F.R. 201.40(b)(1) (2007).

12. *See* Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 71 Fed. Reg. at 68,480. The students also requested a second exemption for a class consisting of "Derivative and collective works which contain audiovisual works that are in the public domain and that are protected by technological measures that prevent their educational use." Comments of Peter Decherney, Assistant Professor at the University of Pennsylvania's Cinema Studies Program et al. Before the Copyright Office, Library of Congress, In the Matter of Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, at 1 (2006) (No. RM 2005-11), *available at* http://www.copyright.gov/1201/2006/comments/decherney_upenn.pdf (last visited Jan. 7, 2008). This second requested exemption was not granted.

13. Reps. Boucher (D., Va.), Doolittle (R., Cal.), and Lofgren (D., Cal.) have recently introduced a bill to strengthen the rights of consumers and users of copyrighted works, by providing permanent exemption status to the classes of works identified in the most recent exemption rulemaking and by instituting several fair use-based exceptions that build off of that rulemaking—including an exception for making compilations from the collections of libraries or archives for all classroom educational uses. *See* Freedom and Innovation Revitalizing U.S. Entrepreneurship Act, H.R. 1201, 110th Cong. § 3 (1st Sess. 2007).

the public interest in copyright involves more than the abstract balancing of financial incentives for creativity against legal or financial restrictions on access. Rather, the public interest took on an actual shape in the context of the lives of scholars and students who both create and need access to works to teach and learn. Further, the students could see the public interest extending beyond the interests of the particular teachers and students. Professor Decherney's desire to create effective and engaging educational materials demonstrated the importance to society of protecting educational practices that foster greater knowledge and understanding.

The students successfully overcame the statutory restriction in the DMCA in one situation that was exemplary of many others throughout secondary and higher education. They contributed to a broader process of exposing the damage created by the statute. In this process, they showed that advocacy could penetrate the seeming impenetrable protectionist facade of the DMCA. By demonstrating specifically the harm to valuable educational activities that can flow from a protectionist scheme, they made it easier for others wanting to use material restricted by the DMCA to identify particular ways that the public interest needs protection. Their efforts could encourage others to join in the project of chipping away at the prohibitions created by the DMCA on the fair use of works for important educational, cultural, artistic, and creative purposes.

The sheer amount of work that these student lawyers and their clients invested to enable one small group of teachers to teach effectively also indirectly exposed the extensive harm done by the statute. Under the DMCA's exemption rulemaking, advocating successfully for the many teachers, archivists, historians, artists, and others barred from making otherwise fair uses of copyrighted works would be a massive undertaking. The students saw through their experience how the statute's purpose of expanding protection for copyrighted works generates extensive difficulties for real-world practices that they understand as important. And they came to appreciate both the promise and the limitations of effective public interest lawyering.

III. REFLECTIONS ON CLINIC STUDENT EXPERIENCE

We see how the recursive experience of learning IP law and policy in the IP Clinic can accommodate students who come with varying backgrounds in and exposures to IP concepts, doctrines, and policies. We have constructed the Clinic to present IP law and lawyering in multiple contexts and through related, yet diverse, teaching methods.

Through the year-long simulation, students learn the complex activities that constitute lawyering—such as interviewing; counseling; collaborative work; fact and case theory development; and regulatory, judicial, and legislative persuasive advocacy techniques—as well as the ways that theoretical and policy issues in IP emerge in the performance of the tasks of lawyering. Because students encounter particular lawyering tasks at

unpredictable times of the year, topics addressed in the seminar do not always map precisely onto case developments. In the client representations described here, the students' simulation and case work fit easily together. The students began their efforts for Professor Decherney after having learned in our simulation how to conduct interviewing and counseling, to analyze the efficacy of various methods of fact gathering, and to develop a case theory that guides persuasive advocacy. Thus, the students reinforced their classroom understanding of effective advocacy by putting it to immediate practice and could test their understanding of what works well (and why) against real experiences. At other times, case-related experience precedes the more systematic and theoretical classroom presentation, but in those situations the students find their classroom-based learning more compelling as they realize how their own experience fits into a larger scheme.

In case rounds, too, students expand the learning that comes from their representation of particular clients. The student teams seeking to obtain DMCA exemptions had to explain their work to other students in the Clinic who had different kinds of matters, involving other IP issues, requiring the use of different arrays of lawyering skills for different activities, and raising other issues implicating the public interest. In the case rounds setting, students can see the overlap and divergence in lawyering activities, in the relationships with clients, in the issues of substantive law, in IP themes, and in policy questions. Teams other than the one representing Professor Decherney dealt throughout the year with fair use questions outside of the framework of the DMCA. For example, several teams represented documentary filmmakers who were uncertain whether fair use protected their use of copyrighted content in their films, either when they were selecting material to incorporate or when they encountered hurdles in obtaining permission to use that material. In case rounds discussion, students struggled with where the public interest lies, how different doctrinal structures affect the ways fair use questions arise, how to talk to clients about the uncertainty in evaluating what uses are fair, and how to make fair use arguments effectively to different audiences. In addition, they broadened their experience of attending to the public interest as IP lawyers as they discussed the range of matters within the group. Thus, together with other students, they could begin to construct their professional identities as lawyers and, in particular, identify and explore the multiple ways of confronting the public interest in the practice of IP law. Through these coordinated and complementary clinic settings, students develop a nuanced understanding of IP law, practice and theory, as well as their place within it.

In these different components of the clinic, students repeatedly see the connections among doctrinal formulations of issues, the fluidity with which facts emerge and take shape, the significance of their clients' needs and desires, and the operation in the world of policies animating the law. As they explore the meanings of the public interest throughout the components of the

Clinic, students see how their lawyering activities can further that interest and, in the process, refine their understanding of the possible meanings it can have. Thus, through each of their cases, students examine the interaction of theory, doctrine, facts, the goals of the client, and the activities of the lawyer. While the students learned about the meaning of the public interest in representing Professor Decherney, they also coped with grasping the details of the DMCA's prohibitions and exceptions, the specific methods of academic film analysis, the ways Professor Decherney and other cinema studies professors teach, and their own process of realizing their capacities as lawyers, all of which came together.

Throughout this process, students master diverse IP legal doctrines. While the Clinic's goal is not to teach these doctrines, students learn how to learn—researching, analyzing, and working with doctrinal questions—within the particular contours of a case. Thus, they encounter the intricate and dynamic interaction of doctrinal formulations with the development of factual understanding; they experience the complex and indeterminate process of applying law to facts; and they practice shaping the facts to invoke or construct the law.

With Professor Decherney, the students saw how the rules within the DMCA interfered with otherwise permissible educational activities of their clients. They worked simultaneously on developing their knowledge of the practices of their client and the worlds in which he and other professors operated, and on learning how the various provisions of the DMCA interacted to affect their client's work. Students' efforts to understand the interaction of doctrine with the worlds their clients inhabit, as well as the goals that their clients seek, impart a grounded understanding of both the workings of a statutory scheme and the policy questions presented in the operation of each section of a statute.

The opportunities in clinical settings for repetition in performing lawyering skills, for learning legal doctrines in multiple concrete factual and policy contexts, and most importantly for reflection on their experiences working with the doctrines as embedded in particular controversies, better enable students to conceptualize doctrine; to feel the ambiguities and ellipses within it; to interpret and manipulate that doctrine; and to see the interplay of doctrine, policy, and practice. In their lawyering activities, students see how lawyers can accomplish specific goals for their clients, and then, through reflection on that experience in their supervision with faculty members, identify what they learned in the process of doing.

In the Decherney matter, as the students struggled with the meaning of a rulemaking exemption authority limited to a "class of works," they gained insight into the full scope of the DMCA's statutory prohibitions and exemptions, and the space available within the doctrinal structure to permit their client's work to proceed free from restriction. They fashioned a technical

solution to their client's problem, narrated a compelling story about the law and their client that embraced and justified the technical solution, and appealed to values reflected in other areas of IP law that supported their theory. Beyond the individual case, the case rounds dialogue invited analysis of the relationships among different doctrinal areas within IP law, often revealing how theoretical and policy concerns manifest themselves within and across distinct doctrinal categories and settings.

In contrast to most doctrinal classes, this experience with actual clients and their problems and reflection on that experience are central to the pedagogical process. As they analyze and evaluate their responses to the interests of their clients, their actions in meeting the demands of the case, their understanding of the relationships among doctrinal areas, and the connection of their activities to the public interest, students come to understand law and lawyering and to see ways to shape their lives as lawyers. From working with Professor Decherney and advocating in the DMCA rulemaking proceeding, the students could develop and share their own sense of how they as lawyers could approach work for the public interest and see the choices available to them in defining their futures.

CONCLUSION

Clinical legal education has the potential to help students learn not only about their own strengths and weaknesses as lawyers, but also about those of the doctrines and institutions with which lawyers and their clients interact. Over the course of a six-year experiment, the Glushko-Samuelson Intellectual Property Law Clinic at American University, Washington College of Law has demonstrated that this kind of self-understanding and system knowledge can be successfully imparted in a live-client clinic dealing with a wide range of IP matters. And it has shown something else as well. Over its thirty-year history, clinical legal education has excelled at helping law students to understand better the great social concerns of the day. In the development of this IP law clinic, we sought to bring the concerns about public interest within IP sharply into focus within the daily work of representing clients. From their clinic experience in their cases, in the seminar and in case rounds, students emerge ready to analyze and act when critical issues they have embraced appear in their lives as lawyers, within or beyond traditional IP practice.

They also learn how the different ways of seeing and framing the public interest within IP law intersect with and enrich other ways to conceptualize and address the public interest. For example, the legal regulation of information flows is emerging as a central—and highly complex—human rights issue. The Universal Declaration of Human Rights recites that "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and

to share in scientific advancement and its benefits."[14] It also states that "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."[15] These two principles—one articulating the importance of access to information, and the other setting forth a rationale for its restriction—are in some tension. The tension within these grand statements has meaning to our students from their work within the Clinic, even if they know little about this critical document of International Human Rights Law. Representing clients on both sides of this divide, they have experienced this tension in their own practice. They have also seen how policy debates within IP law are part of broader societal contests over the legal structuring of cultural life. They have been pushed to identify and challenge their own values, and to understand and appreciate the values of others.

Many students who participate in the Clinic report that it is a transformational experience. Certainly it has been one for their instructors.

14. Universal Declaration of Human Rights, G.A. Res. 217A, art. 27, U.N. GAOR, 3d Sess., 183d plen. mtg., U.N. Doc A/810 (Dec. 10, 1948).

15. *Id.*