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Teaching Intellectual Property Law

Article

*877 TEACHING IP FROM AN ENTREPRENEURIAL COUNSELING AND TRANSACTIONAL PERSPECTIVE

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Abstract

The traditional law school appellate case method is not well-suited to teaching students either the substance and process of counseling entrepreneurial clients or helping such clients create IP strategies that effectively advance their business vision. This Article describes the author's creation of new courses and clinics to advance teaching IP in the emerging field of entrepreneurship and innovation law.

Introduction: The Inadequacies of the Appellate Case Method for Teaching Entrepreneurial Counseling and Transactional IP

The 2007 Carnegie Foundation report Educating Lawyers confirmed what many of us had already known: excessive reliance on the traditional Socratic-dialogue, appellate case method approach to legal education fails to: (1) introduce students to the nature of actual law practice; and (2) train students to think about their future clients' situations ethically and holistically. [FN1] These ***878** limitations of traditional legal education are even more problematic for students who will practice in non-litigation settings--such as counseling, transactional, and even alternative dispute resolution--because the skills related to arguing abstract points of law before appellate courts are largely inapplicable to the skills needed to understand and facilitate a client's overarching, non-dispute-based goals and aspirations. [FN2] Further underscoring the impact of these limitations of traditional legal education is the fact that the best estimates available suggest that half of all lawyers practice primarily in business or transactional practices. [FN3]

For the field of intellectual property (IP), this emerging sensibility presents a mixed bag, because of the mixed nature of what can be characterized as IP practice areas. I have taken to counseling students that there are three primary areas of specialization under the general rubric of IP practice: (1) prosecution/registration/filing; (2) litigation; and (3) transactional. The first can operate as a standalone specialty more usually for patent prosecutors because of the rigorous nature of the patent examination and issuance process with the U.S. Patent and Trademark Office (PTO), and less usually for copyright or trademark attorneys because the registration process with the Copyright Office and PTO, respectively, is less rigorous, to varying degrees, than patent prosecution. By contrast, IP litigation either across the IP areas, or within any particular one, can be a standalone prac-

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tice specialty area. A number of years ago, the prosecution/registration and litigation subcategories may have been seen as constituting a more or less exhaustive taxonomy of IP specialists. The counseling or licensing components could have been collapsed under one or both these traditional subcategories. [FN4] However, the rapid emergence of IP and technology transaction practice groups at law firms, as well as the dramatic increase in professional programs and materials directed towards IP licensing and technology transactional training, demonstrate the arrival of the IP licensing/transactional subcategory as a stand alone practice area.

***879** At the same time, actual practicing attorneys may embrace one or more of these subcategories. Doing all three well simultaneously may be less common because the transactional mindset and skills can be so different from those of the litigator. [FN5] Yet, regardless of whether in practice attorneys can combine all three subcategories, they remain different areas for purposes of teaching IP in the law school environment. Accordingly, to the same degree that IP survey courses attempt to cover all areas of IP at some basic level, those courses should also introduce students to the three subcategories of practice areas. Further, a rich law school IP curriculum should contain advanced specialty courses not only in all the areas of IP substantive law--patents, copyright, trademark [FN6]--but also in all three areas of practice types within the substantive areas. [FN7]

One additional critical perspective must be considered: that of the industry focused attorney who does not limit her practice to a traditional legal practice type (e.g., litigator, transactional) or substantive area (e.g., contracts, torts, employment law), but rather cuts across a number of these areas to act effectively as general counsel to individuals and businesses in a particular industry (e.g., biotechnology, construction, media). Educating and training students to prepare for this sort of role requires academic instructors and/or mentors who are equally industry focused and can help the student coordinate classes to learn at least the substantive law areas that will arise during her practice. While there have been advances in this issue based to some extent on academic hiring of professors with industry focuses, approaches to solving the problem are still relatively scattershot and often inadequately explained to students.

Many of the issues described above go beyond the scope of this article and the theme of this special teaching issue of the Saint Louis University Law Journal; however, all of them present special issues for teaching IP. At the highest level of abstraction, the issues can be aggregated together as a challenge to explain to students three critical perspectives on how they should be thinking about their education and career in IP law. First, students must be made aware of the rough definitions and boundaries of the different substantive IP areas-- patents, copyrights, trademarks, and trade secrets. This is done easily enough in a good IP survey course. Second, students must be introduced to the nature of different types of practice within or across the substantive areas of IP-- prosecution/registration, litigation, and transactional. This can be done in IP survey courses or stand alone "silo" courses in the substantive areas, but ***880** it requires deviation from exclusive reliance on the traditional appellate case method. Further, it is quite helpful for the students if someone can explain to them, roughly, the different sorts of temperaments that suit these different practice types. [FN8] Third, and most challenging to the scope of an article about teaching IP, students must be introduced to the notion of industry focused practice. After all, many of our incoming IP and/or technology law focused students already have backgrounds in a particular art/ science/technology/ industry and loosely envision becoming lawyers in that "space." In my counseling discussions with many of these students, I often find that they were inchoately thinking of the company general counsel type role in their art or industry area. Or, they would like to represent artists, inventors, or entrepreneurs, without exactly knowing what they mean by "represent." My experience is that many of the latter students would like to engage in general representation of these individuals.

Some students, of course, are truly interested in litigating the issues in various IP, art, and technology related

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areas such as privacy or the public interest. For these students, the traditional appellate case method approach may work quite well. Thus, the remainder of this Article is not focused on these students, as they are arguably already adequately served. Rather, Part I of the Article describes the various teaching innovations I have created and deployed to help students focused on non-litigation practice types as well as those who want to represent individuals and organizations in certain arts, sciences, technologies, or industries. Because my main research interests lie in entrepreneurship and innovation law, the courses and clinics described below are biased towards that angle. Part II outlines a proposal I am currently fleshing out to create a new model for the second and third year curriculum centered on integrating doctrinal courses with appropriate clinics and externships.

I. A Trio of Interrelated, Tested Solutions Based on Teaching "Across" IP Plus Related Fields

I created my original courses in Biotechnology Law and Business Associations at the University of Pittsburgh School of Law almost entirely from the perspective of the corporate/transaction side attorney or general counsel for a start-up company. My theory was that the complexities of the legal areas required to counsel large, established corporations could be taught more manageably by tracking the origins, formation, and growth of small ***881** businesses, whether tech-oriented or otherwise. David Herring, then Dean of Pitt Law, also nudged me to think about offering a practicum or clinic type course that could help students learn the practical aspects of lawyering for entrepreneurs and start-up companies.

After my move to the University of Washington School of Law, I was able to bring to fruition a trio of curricular innovations to introduce students to the substance and practice of representing entrepreneurial and innovation-based organizations. The first is exemplified in the IP Core course I created with Dan Laster and Bob Gomulkiewicz in 2003, and have happily co-taught with Dan for four years now. In short, it is an IP survey "on steroids" crafted primarily for our incoming IP LL.M. students, whose widely varying backgrounds require a boot camp type course to provide a launch pad for the structured trajectory of the LL.M. program. The main theme of the course is to teach students to think holistically about a client's actual problems and innovations, outside of substantive IP categories, so that they can effectively counsel the client as to legal strategies to optimize the value of innovations that often defy pigeonholing into any one substantive area. The second innovation is comprised of a set of courses and lectures for both non-IP focused law students and graduate students from across campus. This initiative focuses on how to convey the important principles and practical strategy issues that general practice attorneys, business executives, and entrepreneurs/innovators need to know about the IP system. The third innovation is the Entrepreneurial Law Clinic (ELC), which I founded in 2005 to bring a counseling and transactional focused clinic opportunity to law and business students.

A. Cross-IP Courses for IP-Focused Law Students

There are two basic components to IP curriculums in U.S. law schools. The first is an IP survey course that is usually three to four credits and only seeks to impart the basic principles of the three major substantive areas--patents, copyrights, and trademarks--to law students (and perhaps some non-law graduate students, usually from the engineering or business schools). [FN9] The second are "siloed" courses that can operate as either a stand alone introduction and moderately advanced course in one substantive area, or as advanced courses building off an IP survey course as a prerequisite.

My perspective is that both the traditional survey and silo approaches create limitations for students' ability effectively to sequence courses, especially if they want to train across more than one area of IP. Further, my

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opinion is that many new ideas and innovations neither present themselves as, nor fit comfortably within, siloed areas of IP. For example, software can be covered by patent, copyright, and trade secret, as well as be packaged and branded under a valuable trademark. Thus, law students who want to represent ***882** inventors, idea people, entrepreneurs, and other innovators need good working knowledge of more than one area of IP. In the new digital and bioinformatics age, art, science, technology, and law have become even more intertwined and interactive than ever. Thus, the lawyer who wants to counsel today's artists, engineers, scientists, inventors, or entrepreneurs needs to be facile across all areas of IP, plus closely related areas such as publicity rights, privacy, and antitrust.

At UW, we also faced two other challenges as we began our IP LL.M. program in 2002-2003: (1) we wanted to provide a structured program that was not simply a second chance to take existing J.D. IP courses; and (2) every year we have a very diverse range of incoming students. One category of the latter consists of foreign practitioners who are already quite well versed in the IP systems of their own countries and want to master the U.S. system. The second category consists of experienced mid-career U.S. attorneys who would like to transition over entirely, or in substantial part, to an IP practice. The third category consists of recently minted J.D.'s who want to show a more focused mastery of IP, or who did not take many (or any) IP courses in their J.D. program and now want to position themselves for careers in IP.

Creating a program taking into account the foregoing was indeed challenging. Because this is not an article about IP LL.M. programs, I will not go into detail about all aspects of the program we created. [FN10] Rather, I will describe one foundational part of our solution, the IP Core course. At eight credits, this is a hefty course, even set in a quarter rather than semester system. It meets four days a week, for two hours each day. Technically, my co-instructor, Dan Laster, and I split the credits, which means that in theory it should only be a manageable four credit course load for each of us. However, a key part of the course is the interaction that Dan and I have in the classroom. While one of us is always the lead instructor for any given session, the other frequently attends the session too and critiques or expands upon points made by the lead instructor. With the wrong co-instructor, this could easily devolve into something akin to the old Point-Counterpoint skits on Saturday Night Live with Dan Akroyd and Jane Curtin. But Dan Laster and I are just similar enough--and just different enough--that it works well for us. More importantly, it models the kind of back and forth of both U.S.-style law classrooms and U.S.-style legal arguments for the foreign attorneys, as well as providing far more insight into the nature of current debates over any particular issue covered that day in class than either of us could convey alone.

Equally important to the structure and content of the class are our constant efforts to compare the different areas of IP to show how similar devices--e.g., ***883** fair use and research exemptions--can work quite differently in each area. We continually emphasize the different mixes of common law property, contract, and tort that underlie the different areas of IP. At the same time we constantly pull in other areas of both federal and state law--e.g., antitrust, contract, unfair competition, tort--to demonstrate that successful counseling and strategizing must take these areas into account. We use Merges, Menell, and Lemley's IP in the New Technological Age, because it has excellent chapters for these “fringe” areas as well as enough depth in each traditional IP area to go beyond what would normally be covered in a standard three to four credit IP survey course. [FN11] It also has nice primers for biotechnology and software in the annual casebook Supplement. [FN12] The casebook also works well for the idea submission cases that we start the course with. Our premise is that students must understand how to counsel creators and innovators from the origins of a potentially valuable idea, even before it has manifested itself as something protectable by the regular areas of IP.

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The deep motive force for IP Core is the development in students of an appreciation and understanding of the apparently endless wellspring of human creativity in all its forms. From that critical starting point, we then constantly use practical real or hypothetical scenarios to challenge the students to think creatively as to how to help the idea's creators (or, sometimes, other owners) develop sensible legal and business/commercial strategies to refine the idea into aesthetically and/or commercially useful artifacts or services that can be transmitted to the world. We use a number of interactive role playing exercises, drafting exercises, and graded exercises throughout the course that help inculcate in the students an ability to counsel innovators and entrepreneurs. IP Core has been in such high demand from our J.D. students that this year we are introducing a version primarily for them. It will replace the existing siloed introductory courses.

B. Courses and Programs for Non-IP-Focused Law and Other Graduate Students

Because we already had a robust set of offerings for IP focused J.D. students when I arrived at UW Law in 2003, it occurred to me that we ought to tailor the existing IP Survey, which I was designated to teach, to meet the needs of law students who were not considering a career in IP law, but who intended to work in fields where glancing knowledge of IP would be an asset (e.g., business law). Later, I took my thoughts about this division of the student population to the next level when I reduced IP Survey to two credits ***884** after my first year or two of teaching it. The logic was driven by conversations with target non-IP focused students who had difficulties adding another three or four credit course into their schedules. Admittedly it was a challenge paring down the course from a high of four credits to only two. But it also occurred as I was increasingly being asked to speak across campus (and beyond) to give a sort of “IP 101” in a single hour lecture format. I decided that it was critical to be able to range from delivering the utmost basics of all areas of IP for the lay person in a single hour, at one extreme, to delivering a sustained, intense cross-IP course for the practice-oriented such as IP Core. IP Survey would then represent an intermediate point on this spectrum. Based on interest across campus, I also opened up IP Survey to non-law graduate students.

I developed a particularly close relationship with UW Business School's Executive Education [FN13] and Center for Innovation and Entrepreneurship (CIE) [FN14] programs. Specific to the teaching focus of this Article, I have created cross-IP content mini-courses for the Executive MBA, Entrepreneurship Bootcamp, and Corporate Directors College programs. These teaching exercises have been extremely valuable to help me understand how to teach IP from a business and strategic perspective. This understanding has helped me further push law students to understand the business and strategic dimensions of IP management--a skill that will enable them to relate far better to the mindset of their future clients.

This counseling and strategic planning perspective is perhaps best exemplified by my longstanding course, Biotechnology Law. [FN15] Currently, there appear to be three major variations of what can be called “biotechnology law” courses. First is an advanced patent course in bio-chem patent practice and cases. Second is a bioethics course that focuses on ethical and moral issues raised by advances in biotechnology. Third, and I believe far less common, is a course that covers the various areas of law that biotechnology companies face as they attempt to commercialize their products and services. My course is firmly in the third, rapidly emerging category. As a further twist, it follows either a hypothetical or actual biotech innovation through its origins in a government funded university or non-profit lab through its development by a venture backed start-up company that either brings a product or service to market directly, or in affiliation with an established Big Pharma (or agribusiness) company.

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***885** This lifecycle approach meshes perfectly with my desire to have students first and foremost understand the counseling and strategic aspects of not just IP, but also other areas of law that I teach, such as business law. I require the students to role play in counseling the founders, management, different kinds of investors, employees, and strategic partners or corporate acquirers along the way: Does the planned or actual IP portfolio map onto the company's products or services for offensive IP strategy purposes? Does it give (reasonable) freedom to operate for defensive purposes? Can the company afford to pursue patent protection for all viable inventions? If not, what gets selected for protection? Are there times when trade secrets may be the best strategy for a certain invention, even if it is also patentable? What is the value of the IP portfolio? For purposes of licensing? For purposes of a sale of the company? For purposes of an initial public offering?

I also incorporate drafting exercises in the course, although a number of these are not specifically about IP (e.g., incorporation forms). Some IP-related exercises are: analysis of patent claims and proposed or actual products that may infringe them; non-disclosure agreement forms and their uses (and limitations); negotiation and drafting of license and/or tech transfer agreements; and the invention assignment, confidentiality, non-compete, and non-solicit clauses of employment agreements. My drafting exercises nearly always have some form of role playing or negotiation linked to them.

IP generally occupies one-third of the course. Depending on the strength of the students' bio-sciences backgrounds I vary the depth to which I explore the biotech patent cases and the technologies at issue. However, IP also runs throughout the course as we discuss employment relationships, technology transfer, FDA approval processes and the Orange Book system, valuation of IP for transactions and deals, branding efforts, documents memorializing proprietary information, and, where appropriate, use and/or ownership of bioinformatics systems.

In essence, Biotechnology Law is exactly the kind of industry practice focused capstone course I believe is called for in the Carnegie Foundation's Educating Lawyers. [FN16] It calls on the students to integrate a number of substantive law areas (not just IP, but also for example, business law, tax, employment law, and food and drug regulatory law) while focusing on how those areas work with regard to that industry (e.g., the particular quirks of bio-chem patent law). It also then requires the students to consider how they would apply these areas of law to counsel a client who is trying to operate in this industry. When I use actual biotech companies as the course case study, I invite in attorneys who have worked with the company (in-house or external) to talk about specific legal issues the company faced. Thus, this course ***886** represents almost a kind of practicum or simulated clinic to prepare the students to work with real clients in the industry space.

C. The Entrepreneurial Law Clinic

Nothing beats working with actual clients for experience of course, and so in 2005 I founded the Entrepreneurial Law Clinic (ELC) [FN17] at UW. The mission of the ELC is threefold: (1) to promote economic development in Washington State by assisting entrepreneurs who face significant economic barriers to success through preventative legal services that minimize risk and reduce operating costs; (2) to provide real-life education to UW students in transactional and IP law, counseling and business; and (3) to provide meaningful pro bono opportunities for transactional and IP lawyers. Obviously, some parts of the ELC are beyond the scope of an article on teaching IP law. At the same time, the overall schema of the ELC follows the central theme of my style of IP teaching which emphasizes the role of IP as a business asset.

Each year, the ELC enrolls law and MBA students to work together in teams. Each team must have a law student from each of three different substantive law areas: corporate and securities law, IP, and tax law. The

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teams are supervised by volunteer attorneys and faculty who specialize in the various substantive areas. Teams perform and deliver a kind of due diligence that focuses on what might loosely be considered a business school type SWOT analysis, [FN18] but which is focused as much on legal issues as business issues, for the client's eyes only. Upon mutual agreement of the ELC, client, and relevant student team, the ELC will further perform relatively minor transactional or registration-type of legal services such as employment agreements, company formation documents and filing, trademark or copyright registrations, lease or other contract review, etc. A more complete list is available on the ELC website. [FN19] Most relevant to this Article, however, the ELC does not prosecute patent applications for clients. At most, we will help clients think through and draft provisional patent applications in the case where rights might otherwise be lost. But the goal is then to get the client into regular representation by an experienced patent attorney in the appropriate technology/art field.

***887** While there is much more that could be said about the ELC model, I am currently drafting a report for the International IP Institute (IIPI) [FN20] on the ELC's potential for scalability and replication overseas. [FN21] Thus, I will leave the primary discussion of ELC to that report. The most salient points about the ELC for this Article are the following. First, the ELC fills a much needed gap in clinical opportunities at UW Law School in that it is the only transactional and counseling focused clinic, and it is the only clinic that allows IP students to work directly with clients in business settings. [FN22] Second, the ELC gives IP students an excellent opportunity to apply directly the substantive IP knowledge they are learning in the classroom to actual clients who often really just need a primer on IP to figure out where to go next with their entrepreneurial vision. At the same time, the IP students must engage in this counseling with an understanding of the client's whole vision, and in coordination with the counseling being provided by the business law, tax, and MBA students. Thus, the IP student is forced to think beyond the narrow confines of IP law in counseling the client on IP strategies. This directly applies to the Carnegie Foundation's call for more direct practical training of law students in the form of capstone integrated courses and clinics. [FN23] Third, the use of practitioners from the local bar both generates a much needed opportunity for relevant pro bono work for IP attorneys [FN24] and creates a natural vehicle for mentoring by, and networking with, relevant practitioners for our IP students. [FN25]

***888** II. A Proposal for Further Integration and Development of Classroom Plus Clinical Components

Over the last year, I realized that I had reached the limits of the kind of practical perspective and training that can be given in a substantive doctrinal class. To go further would risk shortchanging the students on the equally important theory and policy issues. At the same time, with the ELC and a host of IP and tech oriented externship opportunities finally fully on line, I realized that it was time to let each component do its part. However, I still worried about how students would effectively coordinate the components. Then a student of mine, Peggy Hawkins, approached me one day after Biotechnology Law to tell me that the combination of that class and an externship at UW TechTransfer in the same quarter was working out incredibly well. She analogized it to undergraduate science courses that tether together classroom and lab components. The light bulb went on for a new vision of how to tie everything together.

Rather than leaving students to pick and sort through clinics, externships, and courses as they try to prepare themselves for a certain practice area like IP, we could coordinate these opportunities for the students. In the standard model, clinics and externships operate as their own entities with no direct connection with substantive doctrinal courses. The clinics, in particular, even have their own classroom component so that a student with essentially no background in the area of law practiced by the clinic--say, landlord-tenant law--can get up to speed quickly on the substantive law and then apply it to real life situations. Clinics that operate in more extensive

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substantive law areas, such as ones concerned with representing clients in death penalty appeals or environmental law disputes, may require prerequisites in the relevant doctrinal courses. The most diligent students in those fields will usually take advantage of the full panoply of courses, clinics, and externships in that field. But, even these students may face difficult scheduling challenges that prevent them from enrolling in clinics or externships. Further, while there may be doctrinal course prerequisites for some clinics, I am unaware of any clinic or externship prerequisites for doctrinal courses. Thus, my proposal is to tie together the doctrinal courses with the practical experience of clinics and externships by requiring participation in a relevant clinic or externship as the "lab" component of certain foundational or advanced courses in specific substantive law fields such as business law or IP. [FN26]

***889** Essentially, the selected doctrinal courses would drive enrollment in the clinics and externships. The mandatory nature of the combination would mean that schools and instructors would have to make sure that clinic and externship spaces are available for all students enrolled in the selected doctrinal courses. This could present some challenges, especially for traditional clinics that are limited in the number of matters that can be taken on (and hence limited in the number of students who can enroll) because all cases are ultimately overseen by the single director of the clinic. Further, unpredictable work flow arising in clinics that handle litigation can make the direct relevance of the clinic to the doctrinal course that proceeds in a more linear fashion uncertain. The same issues can easily arise for externships used as the lab component for the doctrinal course.

All of this may mean that an increased development of counseling, transactional, and even regulatory or administrative procedure clinics is needed. Of course, the transactions and regulatory/administrative procedures cannot be large and complex, such as major corporate financings or patent prosecution, else the work flow may be every bit as unpredictable as that occurring in litigation based clinics. With that as a caveat, it is easy to see that much more could be done with the counseling, transactional, and/or regulatory/administrative based clinic, similar to what I have done with the ELC. This is especially true for substantive and practice areas that have a large component of counseling, transactional, or regulatory/administrative filing or compliance work.

My proposal also effectively requires doctrinal teachers to become more willing to engage with practice issues and concerns. The model will not work very well if the doctrinal teachers largely ignore the lab component or are unwilling to discuss the legal issues behind a real situation unfolding in the related clinic or externship setting. Even where doctrinal teachers are willing to engage in this way, there could be attorney-client confidentiality issues, especially for off campus externships. Both of these are real concerns. I cannot say that they can be adequately addressed in all, or even many, cases. I can say that I have dealt with both kinds of issues for both the ELC and most of the externships available to our IP students.

***890** Conclusion: A New Era in Teaching IP Through the Emerging Field of Entrepreneurship and Innovation Law

Because of space constraints, the foregoing is more of a sketch rather than a detailed description or argument for any or all of the components discussed above. Sufficient to the purpose of collecting a variety of perspectives on teaching IP, however, this Article can serve as a useful summary for my approach amidst the many fine approaches documented in the other articles in this teaching issue of the Saint Louis University Law Journal. My contribution to the field of teaching IP, and beyond, is to bring in an entrepreneurial counseling and transactional focus that will help the substantial number of law students who will engage in those types of practices. More broadly than teaching IP, I hope to help usher in the new field of entrepreneurship and innovation

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law to the law school curriculum. Ideally, this new addition will be multi-disciplinary, not simply among substantive areas of law, but rather also across campus, including business and management schools, engineering schools, medical schools, and even many of the departments within colleges of arts and sciences. I have already made substantial progress on the multi-disciplinary fronts at UW. Even as this vision is expansive, however, it is essential that we remember that we are lawyers first and foremost, and that our job is to help entrepreneurs and innovators realize their visions, rather than advance our own agendas and displace our client's goals: in other words we should strive to prepare lawyers to serve entrepreneurs and innovators rather than to be entrepreneurs or innovators (other than in the nature of their law practice).

[FNa1]. © 2007 Sean M. O'Connor, Associate Professor and Founding Director, Entrepreneurial Law Clinic, University of Washington School of Law; Associate Director, Center for Advanced Studies and Research on IP (CASRIP); Visiting Professor and Kauffman Foundation Fellow in Law & Entrepreneurship, University of California Berkeley School of Law (Boalt Hall). The writing of this Article was funded in part by the Ewing Marion Kauffman Foundation. The contents of this work are solely the responsibility of the Author. The Author thanks the following individuals for their support and valuable insights in the development of the curriculum referenced herein: Dan Laster, Robert Gomulkiewicz, Toshiko Takenaka, W.H. (Joe) Knight, Alan Kirtley, Debbie Maranville, Scott Schumacher, Suresh Kotha, Larry Schnell, Connie Bourassa-Shaw, David Herring, Gabrielle Campbell, Katie Meyer, Jennifer Burgess-Capoccia, Larry Rozsnyai, Ewa Davison, Greg Ellis, Jane Heller, Peggy Hawkins, Yiman (Melissa) Zhang, Jennifer Johnson, Betsy Duckett, Ted Ebersole, members of the Society for Small Business Development at UW Law School, and students in my classes at Pitt Law and UW Law who encouraged me to experiment with teaching the substance and methods described herein. This Article is dedicated to the memory of Pitt Law student John Carney who helped make my first year of teaching meet my idealized expectations.

[FN1]. William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law 6-7 (The Carnegie Foundation for the Advancement of Teaching 2007).

[FN2]. Lisa Penland, The Hypothetical Lawyer: Warrior, Wiseman, or Hybrid?, 6 Appalachian J. L. 73, 73-76 (2006).

[FN3]. James L. Baillie, Fulfilling the Promise of Business Law Pro Bono, 28 Wm. Mitchell L. Rev. 1543, 1544 (2001-2002); Penland, supra note 2, at 74-76 (summarizing reported evidence for the proposition that approximately half of all attorneys practice primarily in the transactional context).

[FN4]. This view would catalog litigation counseling and settlement licenses under the litigation subcategory and title procurement (e.g., patent prosecution) counseling and other licensing activities under the prosecution/registration subcategory. Many of the current Supreme Court justices seem to still primarily view IP licenses as dispute settlement devices rather than business deals arising out of a commercial transactions environment. See Sean M. O'Connor, Using Stock and Stock Options to Minimize Patent Royalty Payment Risks after MedImmune v. Genentech, 3 N.Y.U. J. L. & Bus. 381, 431-33 (2007).

[FN5]. See, e.g., Penland, supra note 2.

[FN6]. And, ideally, trade secrets and related areas such as competition law, etc.

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[FN7]. Admittedly a stand alone course in copyright registration may not be worth a full semester, but clearly one for patent prosecution would easily fill a two or three credit semester course.

[FN8]. Such explanations risk oversimplifications or stereotypes (patent prosecutors are solitary types who like working in the "back room," litigators are animated extroverts who like to get into a good argument, transactional types are dealmakers), but nonetheless can at least nudge the students to think about their own temperaments and the actual nature of different kinds of practice, rather than limiting career planning to the choice of substantive law areas.

[FN9]. Some of these courses include trade secrets as well.

[FN10]. More information can be found at University of Washington School of Law, Intellectual Property Law and Policy Graduate Program, http:// www.law.washington.edu/IPLaw (last visited Jan. 15, 2008).

[FN11]. See Robert P. Merges et al., Intellectual Property in the New Technological Age (4th ed. 2006).

[FN12]. Robert P. Merges et al., Intellectual Property in the New Technological Age: 2006 Statutory Supplement app. A at 493-508, app B at 509-36 (2006).

[FN13]. See University of Washington Michael G. Foster School of Business, Executive Education, http://bschool.washington.edu/execed/index.shtml (last visited Jan. 15, 2008).

[FN14]. See University of Washington Michael G. Foster School of Business, Center for Innovation & Entrepreneurship, http://bschool.washington.edu/cie/ (last visited Jan. 15, 2008).

[FN15]. I remain indebted to Professors Hank Greely and John Barton for supplying me with materials and guidance from their biotechnology law course at Stanford Law School when I created my first version of Biotechnology Law at Pitt Law School in 2001.

[FN16]. Sullivan, supra note 1, at 12-13.

[FN17]. See Clay Holtzman, UW Law Students Assist Small-Business Owners, Puget Sound Bus. J. (Aug. 17-23, 2007), available at http:// seattle.bizjournals.com/seattle/stories/2007/08/20/focus4.html; University of Washington School of Law, Clinical Law Program: Entrepreneurial Law Clinic, http://www.law.washington.edu/Clinics/Entrepreneurial.html. ELC represents the culmination of extensive planning, preparation, and discussions with stakeholders, spanning back to my time at Pitt Law School, and including a successful test pilot run at UW in 2005. Our first full year of operation was during the 2006-2007 academic year.

[FN18]. Strengths, Weaknesses, Opportunities, and Threats.

[FN19]. See University of Washington School of Law, Clinical Law Program: Entrepreneurial Law Clinic, http:// www.law.washington.edu/Clinics/Entrepreneurial.html.

[FN20]. See International Intellectual Property Institute, http:// www.iipi.org/ (last visited Jan. 15, 2008).

[FN21]. Sean M. O'Connor, How to Build IP-Focused Entrepreneurial Law and Business Clinics to Assist Regional Economic Development Around the Globe (International Intellectual Property Institute, Washington,

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D.C., forthcoming 2008).

[FN22]. UW Law School also has the excellent Technology Law & Public Policy Clinic, directed by Professor William Covington, but that clinic is focused on law, policy, and rule making from a public interest perspective. See University of Washington School of Law, Clinical Law Program: Technology Law & Public Policy Clinic, http://www.law.washington.edu/clinics/techlaw.html (last visited Jan. 15, 2008).

[FN23]. Sullivan, supra note 1, at 88, 191-92.

[FN24]. The ELC ensures that all work by supervising attorneys meets the criteria for pro bono services by the ABA and the Washington State Bar Association.

[FN25]. It is critical to work closely with all relevant stakeholders when planning and implementing a clinic such as the ELC. For example, if the clinic will deliver much more than the initial consultation type services that the ELC focuses on, the local practicing bar may feel that the clinic is in unfair or improper competition with them. On the other hand, the initial “IP 101” type discussion that many early stage entrepreneurs need is not worth even the billable time of a junior associate and, in fact, is frequently written down as “client development” instead. At the same time, many of these early stage ventures go nowhere and so even as a client development strategy, these counseling sessions are an inefficient use of the firms' attorneys. By directing such early stage entrepreneurs to the ELC instead, law firms can allow most of this “IP 101” counseling to be done by students, for whom the exercise is still quite fresh and exciting. Attorneys from the firms can help guide students through the particulars of these “IP 101” counseling sessions while receiving pro bono credit for doing so. Accordingly, a mutually advantageous situation has been created and most of the major law firms in Seattle are active partners with the ELC.

[FN26]. Seattle University School of Law initiated a somewhat similar program in the 1990s, but without requiring the lab or clinic component. Instead, one credit “lab” components were created by the clinical faculty and offered to students in the relevant substantive courses. See John B. Mitchell et al., And Then Suddenly Seattle University Was on its Way to a Parallel, Integrative Curriculum, 2 Clinical L. Rev. 1 (1995). However, there was not as much of a drive from the substantive course/professor side as there would be in my model (the lab would be a required part of the substantive course). Without significant buy-in and involvement of the doctrinal professor, it is hard to see how well integrated the lab component could be.
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