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Teaching Doctrine for Justice Readiness

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TEACHING DOCTRINE FOR JUSTICE READINESS

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Law clinics are known as skills training grounds in legal education. But clinics do not always employ a "justice readiness" approach, teaching students how to use lawyering skills to confront injustice and counter it. Casework for clients presents many opportunities for justice readiness teaching but it cannot do the job alone. Justice readiness should be integrated into teaching doctrine within clinics to reinforce students' justice learning in their casework. This Essay introduces two pedagogical approaches cultivated within Georgetown's new Intellectual Property and Information Policy Clinic that do just that: Doctrine x Social Justice and Deep Dives. Doctrine x Social Justice uses cutting-edge social justice case studies that illustrate themes of injustice and creatively explore lawyers' bending the law toward justice to teach underlying doctrine in substantive areas of intellectual property law and information policy, setting students up to observe themes of (in)justice within the field. Deep Dives empower students to create their own Doctrine x Social Justice sessions by designing and leading seminar sessions that use current issues of law and policy to explore underlying doctrine. Together, these approaches provide a fresh way of teaching doctrine for justice readiness.

INTRODUCTION

Nearly a decade ago, Jane Aiken called on clinics to invest in "justice readiness" by creating opportunities for students to learn and apply legal skills that promote justice and make space for students to confront larger questions of systemic injustice.[1] She suggested that part of this process requires clinicians to counter the pedagogy of doctrinal coursework, which often teaches students "how to think like lawyers by adopting an emotionally remote, morally neutral approach to human problems and social issues, distancing themselves from the

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[1] Jane Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J.LL. & SOC. JUST. 231 (2012).

sentiments and suffering of others, avoiding emotional engagement with clients and their causes, and withholding moral judgment."[2] When clinical education is treated only as a place for teaching skills, rather than a site for promoting justice, students' misperceptions about the neutrality of the law can go unchallenged.[3]

To prepare the next generation of practitioners to be justice ready, clinics must be able to dismantle students' impressions about the law's neutrality and its supremacy.[4] Years ago, clinicians in American University's Intellectual Property (IP) Clinic observed that "[m]any students begin with the assumption that IP law is either value-free or perhaps that the values it embodies are somehow beyond debate."[5] Those assumptions may be common among IP clinical students, but they are certainly not unique to them. Clinics of all kinds must be tasked with challenging students' misguided perceptions about the nature of justice in the law.

Casework is a natural place to challenge these misperceptions as students encounter real-world justice issues through advising their clients. But casework alone often does not get the job done. Working on real clients' problems may raise issues of injustice, but not necessarily.[6] Some matters highlight injustice within one area of law while leaving companion areas untouched. In each instance, casework leaves a gap in students' justice readiness. While clinicians cannot ex-

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[2] *Id.* at 236-37. The proposal that clinics bear a responsibility for teaching social justice is not new. *See, e.g.*, Robert D. Dinerstein, *Clinical Scholarship and the Justice Mission*, 40 CLEV. ST. L. REV. 469 (1992); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461 (1998); Marcy L. Karin & Robin R. Runge, *Toward Integrated Law Clinics that Train Social Change Advocates*, 17 CLIN. L. REV. 563 (2011); Margaret Martin Barry, A. Rachel Camp, Margaret E. Johnson, Catherine F. Klein & Lisa V. Martin, *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 CLIN. L. REV. 401 (2012); Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J. L. & SOC. JUST. 331 (2012). However, while some clinics choose to operationalize critical legal theory as a means of teaching social justice, those clinics generally still focus on developing lawyering skills through casework rather than critiquing underlying doctrine. *See, e.g.*, Alina Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLIN. L. REV. 1 (2015); Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENVER L. REV. 399 (2019).

[3] *Id*. at 237.

[4] While this piece is focused on clinical education, doctrinal and legal practice faculty can also adapt the approaches described here to teach justice readiness in their own classes.

[5] Christine Haight Farley, Peter Jaszi, Victoria Phillips, Joshua Sarnoff & Ann Shalleck, *Clinical Legal Education and the Public Interest in Intellectual Property*, 52 ST. LOUIS L. J. 735 (2008).

[6] Some may argue that not all rights attainment matters present issues of injustice. For examples of other IP and technology clinic matters that may not necessarily implicate justice, see Cynthia Dahl & Victoria Phillips, *Innovation and Tradition: A Survey of Intellectual Property and Technology Legal Clinics*, 25 CLIN. L. REV. 95 (2018).

pose students to *every* form of injustice, they can take steps to fill that gap: clinicians can teach doctrine through a lens that centers social justice, ensuring that students understand multiple foundational areas of law while exposing them to the potential for (in)justice embedded within each one—and the legal system as a whole.[7]

Two pedagogical approaches, both used within Georgetown's Intellectual Property and Information Policy (iPIP)[8] Clinic seminar sessions, effectively complement students' casework to promote justice readiness: Doctrine x Social Justice, developed in in the iPIP Clinic, and Deep Dives, originated in New York University (NYU) Law's Technology Law and Policy Clinic. These sessions support students in achieving three goals: (1) understanding doctrine as a means of examining underlying injustices in law and policy; (2) identifying themes between how those injustices manifest across multiple areas of practice; and (3) internalizing how to use laws creatively to promote justice. These goals are a complementary extension of lawyering skills that operationalize justice readiness. Both approaches are adaptable to fit any clinic, particularly clinics that touch on multiple substantive areas of law and engage with cutting-edge legal issues.

This Essay begins by introducing the structure of the iPIP Clinic to situate its work within the broader clinical landscape. Part II introduces the Doctrine x Social Justice methodology, which teaches substantive doctrine through social justice case studies chosen to illustrate legal principles and justice challenges. In this section, I provide two case studies, based in copyright law and the Computer Fraud and Abuse Act. Part III explains Deep Dives, which are student-developed and student-led Doctrine x Social Justice sessions. This Essay concludes by arguing that these approaches can and should be adapted in other contexts to creatively teach justice readiness.[9]

I. Designing the iPIP Clinic with a Justice Orientation

Many IP and technology practices are not always perceived as having justice issues at stake—but they do. Relevant clinics touch on multiple areas of IP, as well as a variety of other laws broadly referred to as "information policy," including Communications Decency Act Section 230,[10] the Computer Fraud and Abuse Act, the Freedom of

[7] While many clinics teach doctrine in some capacity, clinical legal scholarship about doctrine pedagogy is less common. Stefan H. Kreiger, *Domain Knowledge and the Teaching of Creative Legal Problem Solving*, 11 Clin. L. Rev. 149 (2004).

[8] Pronounced eye-pip.

[9] *See* Jane Aiken, *Provocateurs for Justice*, 7 Clin. L. Rev. 287 (2001). Some teachers may already use related methodologies, such as centering social justice issues, to teach students about necessary doctrine.

[10] As Blake Reid has pointed out, "Section 230 of the Communications Decency Act"

Information Act, privacy, and right of publicity. Multiple topics also engage with the First Amendment. In practice, the breadth and depth of the field can reveal deep connections between these seemingly disparate areas of law and illustrate the (in)justices embedded in each one, as well as our broader legal system. This Part begins by describing the mission of the Georgetown Intellectual Property and Information Policy Clinic, which I founded in 2019. It proceeds to illustrate the matters we work on and the wide-ranging justice issues raised by our clients' needs. And it concludes by acknowledging structural elements of the clinic that may prevent casework from going far enough in preparing students to be justice ready.

The iPIP Clinic partially follows in the footsteps of nearly 80 other intellectual property and technology clinics[11] by "creat[ing] 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."[12] In practice, the iPIP Clinic engages students in advising individuals, nonprofit organizations, and other groups engaged with intellectual property and information policy issues from a social justice perspective.[13] There are many definitions of "social justice," but the iPIP Clinic focuses on matters that challenge oppression and/or promote liberation.[14] Each matter presents cutting-edge or novel questions, generally related to technology, while also operating as an effective teaching vehicle.

The iPIP Clinic identifies clients whose projects reflect its dedication to social justice while providing ample opportunities for students to apply their doctrinal knowledge and develop key lawyering skills like interviewing, fact investigation, legal research and writing, client communication, professional judgment, strategic decision-making, and creative problem-solving.[15] Past casework matters within the Clinic reveal the breadth of IP and information policy issues and include counseling artist Abigail Glaum-Lathbury on her online "'appropria-

is a persistent misnomer. Blake E. Reid, *Section 230 of . . . What?*, (Sept. 4, 2020), http://blakereid.org/section-230-of-what/. Nevertheless, I use it here for clarity, as that remains the most common way to refer to the law.

11 Cynthia L. Dahl & Victoria Phillips, *Innovation and Tradition: A Survey of Intellectual Property and Technology Legal Clinics*, 25 CLIN. L. REV. 95, 150-53 (2018).

12 Christine Haight Farley, Peter Jaszi, Victoria Phillips, Joshua Sarnoff & Ann Shalleck, *Clinical Legal Education and the Public Interest in Intellectual Property*, 52 ST. LOUIS L. J. 735 (2008).

13 *Intellectual Property and Information Policy Clinic*, GEO. L. (last accessed Oct. 30, 2021), https://www.law.georgetown.edu/experiential-learning/clinics/intellectual-property-and-information-policy-clinic/.

14 The iPIP Clinic's framework for social justice is adapted from bell hooks' definition of feminism. BELL HOOKS, FEMINISM IS FOR EVERYBODY, viii (2000).

15 *See* Robert MacCrate, *Introduction: Teaching Lawyering Skills*, 75 NEB. L. REV. 643, 647, n.2 (1996) (identifying key lawyering skills).

tion' art critiquing the luxury fasion industry",[16] collaborating with the Electronic Frontier Foundation to draft an Initial Comment to the Copyright Office defending the right to repair and modify devices in the triennial Digital Millennium Copyright Act Section 1201 rulemaking proceedings,[17] and drafting a policy paper supporting the libraries' ability to lend a digital copy in lieu of its physical original in a 1:1 ratio, a practice called "controlled digital lending," for Library Futures.[18] These matters reveal injustices in IP and information policy, among them the complexity of navigating intellectual property laws that often carry outsized civil and criminal penalties.[19] Matters also reveal the potential for creatively embracing the boundaries of these laws to promote justice, whether that's critiquing luxury fashion designers that wield IP laws as modern sumptuary codes that govern who can wear what,[20] empowering consumers to repair or modify devices they already own[21] or extending access to knowledge beyond the bounds of physical libraries to serve all patrons.[22] These matters are not hypothetical—each one represents the real needs of real clients that are of immediate importance, with all the messiness that can entail. Like many clinical matters, these matters also reveal the unfairness that navigating the law can necessitate hundreds of hours of student work to provide meaningful guidance to client questions, an option out of reach for many artists, nonprofits, and other organizations.

But these matters barely scratch the surface of injustices inflicted

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[16] GENUINE UNAUTHORIZED CLOTHING CLONE INSTITUTE, http://genuineunauthorized.com (last accessed Oct. 30, 2021) Lux Alptraum, What Is Luxury Without the Logos?, N.Y. Times (May 24, 2022), https://www.nytimes.com/2022/05/24/style/abigail-glaum-lathbury-clothing-logos.html.

[17] Electronic Frontier Foundation, *Comments of the Electronic Frontier Foundation on Proposed Class 12: Computer Programs—Repair*, http://www.eff.org/document/dmca-1201-2021-comments-electronic-frontier-foundation-proposed-class-12-computer-programs (last accessed Oct 30, 2021).

[18] Library Futures Foundation, *Controlled Digital Lending: Unlocking the Library's Full Potential*, http://www.libraryfutures.net/policy-document-2021 (last accessed Oct. 30, 2021).

[19] *See, e.g.*, 17 U.S.C. § 504 (copyright owners entitled to $150,000 in damages per instance of willful infringement).

[20] Abigail Glaum-Lathbury, GENUINE UNAUTHORIZED CLOTHING CLONE INSTITUTE, http://genuineunauthorized.com (last accessed Oct. 30, 2021); Barton Beebe, *Intellectual Property Law and the Sumptuary Code*, 123 HARV. L. REV. 809 (2010) (explaining how IP laws can function as modern sumptuary codes).

[21] Electronic Frontier Foundation, *Comments of the Electronic Frontier Foundation on Proposed Class 12: Computer Programs—Repair*, http://www.eff.org/document/dmca-1201-2021-comments-electronic-frontier-foundation-proposed-class-12-computer-programs (last accessed Oct 30, 2021).

[22] Library Futures Foundation, *Controlled Digital Lending: Unlocking the Library's Full Potential*, http://www.libraryfutures.net/policy-document-2021 (last accessed Oct. 30, 2021).

by intellectual property and information policy. On the intellectual property side, copyright law prevents some victims of nonconsensual intimate imagery from a means of legal recourse.[23] Trademark law permits the corporate appropriation of American Indian Nations' names, like Cherokee and Navajo, alongside the adoption of racial slurs.[24] Patent law enables corporations to weaponize their monopoly by keeping competing generics off the market, with the effect of skyrocketing drug prices.[25] And trade secret law allows corporations to shield algorithms that "assess" the risks posed by people accused of crimes (and other algorithms in the criminal legal system) from scrutiny.[26]

On the information policy side, privacy receives an incomplete patchwork of federal protection, leaving open surveillance opportunities to intimate partners, employers and corporations, and even Silicon Valley multi-millionaires.[27] The right of publicity permits displaying intimate photographs of other people, without those people's consent, in the name of art.[28] Amendments to Section 230 of the Com-

[23] Amanda Levendowski, *Using Copyright to Combat Revenge Porn*, 3 N.Y.U. J. INTELL. PROP. & ENT. L. 422 (2014) (only victims whose images are selfies can avail themselves of copyright law).

[24] *Matal v. Tam*, 582 U.S. __ (2017) (striking down the longstanding U.S. Patent and Trademark Office bar on disparaging trademarks).

[25] "Hearing on The Patient Perspective: The Devastating Impacts of Skyrocketing Drug Prices on American Families Before the H. Comm. On Oversight and Reform," 116th Cong. (July 26, 2019) (patient testimonial about AbbVie's leveraging patents for anticompetitive behavior over its blockbuster drug, Humira).

[26] Julia Angwin, Jeff Larson, Surya Mattu & Lauren Kirchner, *Machine Bias*, PROPUBLICA (May 23, 2016), http://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing (identifying vast racial disparities in risk assessment algorithm); *State v. Loomis*, 881 N.W.2d 749 (Wis. 2016), *cert. denied*, 137 S. Ct. 2290 (2017) (denying criminal defendant the right to audit that same risk algorithmic risk assessment due to trade secret laws). *See generally* Rebecca Wexler, *Life, Liberty, and Trade Secrets: Intellectual Property in the Criminal Justice System*, 70 STAN. L. REV. 1343 (2018).

[27] Karen Levy & Bruce Schneier, *Privacy Threats in Intimate Relationships*, 1 J. OF CYBERSECURITY 13 (2020) (technology-enabled invasions of privacy by intimate partners); Ifeoma Ajunwa, Kate Crawford & Jason Schultz, *Limitless Worker Surveillance*, 105 CAL. L. REV. 735 (2017) (technology-enabled invasions of privacy by employers); Kashmir Hill, *The Secretive Company That Might End Privacy As We Know It*, N.Y. TIMES (Jan. 18, 2018), http://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html (technology-enabled invasions of privacy by corporations); Nellie Bowles, *Why Is a Tech Executive Installing Security Cameras Around San Francisco,* N.Y. TIMES (July 10, 2020), http://www.nytimes.com/2020/07/10/business/camera-surveillance-san-francisco.html (technology-enabled invasions of privacy by private actors).

[28] Emily Ratajkowski, *Buying Myself Back: When Does a Model Own her Own Image?*, THE CUT (Sept. 15, 2020), http://www.thecut.com/article/emily-ratajkowski-owning-my-image-essay.html (model's lingerie-clad and nude images displayed in gallery and published in books without her consent); Raffi Khatchadourian, *Stakeout*, THE NEW YORKER (May 20, 2013), http://www.newyorker.com/magazine/2013/05/27/stakeout (artist's photography of people in their highrise homes not a violation of right of publicity).

munications Decency Act increased on-the-ground harm to sex workers, who often use technology to protect themselves.[29] Freedom of Information laws are subject to serious limitations when it comes to investigating government surveillance and algorithms.[30] And the Computer Fraud and Abuse Act, intended to target hacking, could create criminal liability for researchers and journalists investigating equity issues.[31] Each example is drawn from the Clinic's iPIP x Social Justice sessions,[32] and discussions include why these injustices might exist for "good" doctrinal reasons. All provide ample opportunities for learning the law, reflecting on its injustices, and ultimately, exploring creative ways to pursue justice within a flawed system.

The potential subject matter is vast, and the structure of law school clinics can prevent casework from going far enough in preparing students to be justice ready. Size, student class year, and foregoing prerequisites are among the clinic features that effect students' substantive exposure to IP and information policy doctrine. Like many clinics, the iPIP Clinic is moderately sized. Early semesters had fewer than eight students working in teams of two or three to ensure that students received significant supervisory attention while gaining substantive experience. It also meant that students' casework couldn't expose students to all four areas of IP, let alone all five areas of information policy.

The Clinic also accepts both 2Ls and 3Ls and intentionally forgoes any prerequisites. Eliminating prerequisites serves to counter the harmful stereotype that IP practice requires technical expertise, which disproportionately discourages women and people of color.[33] It

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[29] Danielle Blunt & Ariel Wolf, *Erased: The Impact of FOSTA-SESTA and the Removal of Backpage*, HACKING/HUSTLING (study by sex workers examining harm to sex workers after enactment of FOSTA/SESTA amendments removing the Section 230 safe harbor for Internet service providers "promot[ing] or facilitat[ing] prostitution"); REPLY ALL #119: NO MORE SAFE HARBOR (interviews with sex workers about lived experiences post-FOSTA/SESTA, as well as an economist quantifying the increased abuse and murder of sex workers).

[30] *See generally* Hannah Bloch-Wehba, *Access to Algorithms*, 88 FORDHAM L. REV. 1265 (2020) (outlining FOIA disclosure exemptions that can protect government-used algorithms from public disclosure).

[31] *Sandvig v. Barr*, No. 1:16-cv-01368 (D.D.C. Mar. 27, 2020) (after much litigation, holding that researchers' creation of fake profiles to investigate whether employment websites engage in race and/or gender discrimination was not a violation of the Computer Fraud and Abuse Act); *Van Buren v. United States*, Brief of Amicus Curiae The Markup, No. 19-783 (U.S. July 10, 2020) (arguing that journalists' "scraping," or bulk copying, of websites was not a violation of the Computer Fraud and Abuse Act).

[32] Full introductions and readings for each iPIP x Social Justice session are freely available at http://www.levendowski.net/ipip-x-social-justice.

[33] This is particularly true for patents, which require a technical degree to join the Patent Bar to prosecute patents—but not to counsel or litigate. (Many students don't know that.) As Saurabh Vishnubhakat demonstrated, gendered effects of the U.S. Patent and

also means that supervisors cannot assume students' doctrinal exposure to any area of IP or information policy beyond their casework, and certainly not all of them.

Working within these structural limitations, my experiences reinforced that iPIP Clinic students still needed exposure to the full spectrum of IP and information policy issues. Students routinely report that their IP and information policy classes rarely grappled with injustice or the impact of those issues on practice. I benefitted in private practice and clinical teaching from practicing across IP and information policy, and it shaped my ability to think critically about how these laws connect and complicate one another in ways that my doctrinal legal education did not. Following in the footsteps of other clinical teachers, I also wanted to integrate the ways IP and information policy intersect with race, gender, sexuality, disability, class, and much more.[34]

Drawing on clinical pedagogy's emphasis on goal-driven and backward design, as well as social justice,[35] the iPIP Clinic adopted two approaches to teaching doctrine in a clinic seminar: Doctrine x Social Justice and Deep Dives. Doctrine x Social Justice sessions introduce students to core areas of IP and information policy by teaching social justice case studies that implicate core doctrines. And Deep Dives empower students to develop and teach their own Doctrine x Social Justice units on cutting-edge issues of law and policy.[36] Together, these approaches provide a new way to engage students in important conversations about (in)justice.

Trademark Office rules are stark: an estimated 69.39% of registered practitioners are men, only 18.12% are women, and 12.5% are of unknown gender. *Gender Diversity in the Patent Bar*, 14 J. MARSHALL REV. INTELL. PROP. L. 67 (2014). The racial effects are even more dire, with the estimated number of racial minorities registered with the Patent Bar hovering around 6.5%. Elaine Spector & LaTia Brand, *Diversity in Patent Law: A Data Analysis of Diversity in Patent Practice by Technology Background and Region*, 13 LANDSLIDE 1 (2020). For women of color, that number is closer to 1.7%. *Id*. Copyright, trademark, and trade secret work require no technical expertise at all.

[34] Scholars are increasingly doing urgent work in this area (and we teach a good portion of it in the iPIP Clinic). *See, e.g.*, trademark, revenge porn, Kendra, patents.

[35] Wallace J. Mlyneic, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLIN. L. REV. 505 (2012). I had the pleasure of taking Georgetown's Clinical Pedagogy course for new fellows the year before starting the iPIP Clinic, which greatly informed my thinking on its design. *See* Wallace J. Mlyniec, *Developing a Teacher Training Program for New Clinical Teachers*, 19 CLIN. L. REV. 327 (2012).

[36] Additional seminar sessions cover skills and ethics using familiar clinical pedagogies like case rounds, role plays, reflections, presenters, and workshops of students' casework matters. A less familiar class teaches students how to edit Wikipedia, which I hope to explore in future scholarship. Many clinicians have observed that stimulation through variety is key to adult learning. Fran Quigley, *Seizing the Disorienting Moment*, 2 CLIN. L. REV. 37, 72 (1995).

II. Justice Readiness Through Doctrine x Social Justice

Doctrine x Social Justice sessions highlight the themes shared among disparate areas of a clinic's practice, including commonalities of doctrine, underlying aspects of injustice, and creative opportunities for promoting justice. These sessions originate with topics that raise clear social justice issues while implicating doctrine, rather than the other way around, so that students can grapple with the legal paradigms that enable (and escape) those complications. Sessions also expose students to justice issues embedded in these interrelated doctrines and explore issues they may have tackled in doctrinal coursework in a fresh way.[37] This Part starts by outlining how and why to select readings for Doctrine x Social Justice sessions. It illustrates the complementary lawyering skills strengthened by the sessions. It continues to discuss how to facilitate Doctrine x Social Justice conversations. And it concludes by providing a practical primer for other clinics seeking to incorporate Doctrine x Social Justice into their seminars using the copyright and Computer Fraud and Abuse Act (CFAA) Doctrine x Social Justice sessions to illustrate what these sessions can look like in practice.

Doctrine x Social Justice sessions include 5-7 freely and publicly available online readings, which reduces costs to students, as well as models how to effectively source legal information without relying on paywalls or subscription databases that fuel the surveillance and deportation of undocumented immigrants, an issue we discuss in the Clinic.[38] Readings are also chosen to be diverse: students engage with statutes and case law alongside less traditional fare, such as complaints and answers, amicus briefs, agency filings, law review articles,[39] media articles, op-eds, and podcasts. This diversity exposes students to different types of legal reading and hones the accompanying skillsets; it also keeps the material engaging.

Readings are arranged to create narratives that open with an overview of the doctrine, called a TLDR,[40] followed by readings that stack together to upset students' expectations about the doctrine and

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[37] To my knowledge, no other IP- or technology-related course teaches IP and information policy this way.

[38] Sarah Lamdan, *When Westlaw Fuels Ice Surveillance: Ethics in the Era of Big Data Policing*, 102 N.Y.U. Rev. L. & Soc. Change (2019); Sarah Lamdan & Yasmin Sokkar Harker, *LexisNexis's Role in ICE Surveillance and Librarian Ethics*, Law Librarian Blog (Dec. 11, 2017), http://web.archive.org/web/20200102033927/https://llb2.com/2017/12/11/ice/. Each case, for example, is sourced from a different free resource to expose students to the many non-subscription source of case law.

[39] I often highlight junior or mid-career scholars whose career trajectories feel closer to students' experiences, many of whom joined as guest speakers remotely during the pandemic.

[40] Short for "too long, didn't read."

its implications for justice. The goal is to create an arc that presents students with "disorienting moments," a clinical hallmark more familiar in the casework context.[41] Readings are also chosen strategically to reflect litigants, scholars, journalists, podcasters, and stakeholders from diverse range of genders, races, sexualities, classes, and perspectives. Structurally, readings introduce students to underlying doctrine while illustrating the power of good legal writing (and occasionally the dangers of mediocre legal writing),[42] the relative strengths of different advocacy approaches, and the importance of contextualizing the identities of sources and stakeholders.

The iPIP Clinic seminar uses readings to reinforce key lawyering skills developed in casework, including legal research and writing, professional judgment, strategic decision-making, and even creative problem-solving, as well as professional identity formation. Discussions also pose questions that help inform students' casework and future work: What makes a good legal narrative?[43] Does that look different when a client's story is told through a complaint, a podcast or an op-ed? How do our understandings of issues change when we move beyond statutes and cases? Students also assume the role of lawyers when discussions turn to identifying causes of action and determining whether litigation is a client's most satisfying option for achieving justice.

iPIP x Social Justice syllabus descriptions seek to prepare students for the kinds of social justice issues they should be ready to discuss. Each description concludes, "Come prepared to discuss how the law affects [women, people of color, indigenous people, immigrants, queer people, socioeconomically disadvantaged people, disabled people], and other historically subjugated people and raises justice issues."[44] For students who are still developing cultural competencies, a

41 Fran Quigley, *Seizing the Disorienting Moment*, 2 CLIN. L. REV. 37, 51 (1995).

42 The Clinic doesn't set out to assign poor examples of legal writing. But in the iPIP x Social Justice: Copyright unit, students read a powerful complaint followed by a so-so response. In the iPIP x Social Justice: CFAA unit, students read a complaint from the government and analyze why its tactics, which many students find overstated, ring hollow.

43 *See, e.g.*, Carolyn Grose & Margaret E. Johnson, *Braiding the Strands of Narrative and Critical Reflection with Critical Theory and Lawyering Practice*, 26 CLIN. L. REV. 203 (2019) (exploring narrative theory and its impact on clinical pedagogy and lawyering).

44 The "subjugated people" language was adopted to mirror Georgetown's new institutional learning mandate that students graduate with the "[a]bility to think critically about the law's claim to neutrality and its differential effects on subordinated groups, including those identified by race, gender, indigeneity, and class" so that the iPIP Clinic seminar would satisfy the requirement. William Treanor, *Message from the Dean: Update on Georgetown Law's Commitment to DEI*, GEORGETOWN LAW, (Oct. 7, 2021), https://www.law.georgetown.edu/about/georgetown-law-leadership/office-of-the-dean/message-from-the-dean-update-on-georgetown-laws-commitment-to-dei/

crucial lawyering skillset,[45] advance notice of what to expect can provide additional opportunities for reflection and preparation.

Conversations about social justice also benefit from engaging students where they're at, so students feel empowered to share their views about complex topics. For that reason, Doctrine x Social Justice sessions begin with a "round robin" during which each student shares an aspect of a reading that surprised, excited, alarmed or otherwise interested them. This approach ensures that each student has a predictable opportunity to speak, as well as focuses my attention on the readings students found most intriguing so I can facilitate a dynamic discussion. Then I present my learning goals for the conversation before we discuss the readings, in order, with each one developing a fuller substantive picture of the doctrine at issue and revealing the (in)justices embedded in that area of law. I conclude by asking students to reflect on whether the goals have been achieved.

Doctrine x Social Justice conversations don't just dwell on injustices in specific areas of a clinic's practice. Often, conversations expand to broader themes of systemic injustice, such as how different types of consent influence legal actions, the role capitalism plays in corporate decision-making, the theory of carceral feminism, and the biases within the criminal legal system. These issues may seem unnatural fits in an IP and information policy clinic, but both arise organically out of Doctrine x Social Justice sessions.

Two iPIP x Social Justice sessions, one on copyright (an IP issue) and the other on the Computer Fraud and Abuse Act (an information policy topic), illustrate the power of Doctrine x Social Justice and achieve the three learning goals set out for the students in the Introduction. Called iPIP x Social Justice sessions in the iPIP Clinic, the discussion of each example introduces the relevant doctrine and social justice lens of the session, provides an overview of the sessions' substance, integrates the readings comprising the session, explores the issues of (in)justice raised by the session, and concludes by connecting the themes of the session to other Doctrine x Social Justice sessions and casework.

Since many casework matters implicate copyright, iPIP x Social Justice: Copyright is one of the earliest iPIP x Social Justice sessions. It uses the nonconsensual sharing of nude or sexually explicit

[45] Sue Bryant & Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering*, McGeorge School of L. Global Ctr. for Bus. & Dev. Annual Symposium 2 (2011); Laila L. Hlass & Lindsey M. Harris, *Critical Interviewing*, 3 Utah L. Rev. 683, 684 (2021) (to extrapolate from the interviewing context, cross-cultural lawyering "means using an intersectional lens to collaborate with clients, communities, interviewing partners, and interpreters, with an eye toward interrogating privilege differentials in these relationships and accounting for existing historical and structural biases.").

images—nonconsensual intimate imagery—to teach students about core concepts of copyright law: authorship, subject matter of copyright, exclusive rights, infringement, fair use, registration, and the Digital Millennium Copyright Act (DMCA), as well as the injustices embedded in copyright law and the opportunities for creative lawyering to use copyright for social justice. Students read a mix of statutes,[46] law review articles,[47] op-eds,[48] complaints,[49] answers,[50] and media articles[51] that tee up a complicated conversation about authorship, ownership, and the limitations of law to solve social problems heightened by technology. The session is sometimes the first time students have read primary litigation documents, such as answers and complaints, which provides a new perspective on the relevant legal issues.

Nonconsensual intimate imagery also provides a powerful way to discuss issues of gender, sexuality, and copyright doctrine. The sharing of sexually explicit photographs or videos without the consent of the pictured individual has devastating effects on its victims, from job loss to long lasting mental health issues.[52] But, an estimated 80% of nonconsensual intimate images are selfies.[53] This means that victims are also the authors of their photos or videos, both of which are copyrightable subject matter.[54] As copyright owners, victims are entitled to the exclusive rights of reproduction, display, and distribution of their photos and videos.[55]

Violation of those rights, whether by a stranger, friend or ex-partner, constitutes copyright infringement. Based on how most noncon-

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[46] 17 U.S.C.§§ 106, 107, 512(a)-(c).

[47] Amanda Levendowski, *Using Copyright to Combat Revenge Porn*, 3 N.Y.U. J. INTELL. PROP. & ENT. L. 422 (2014); Jeanne C. Fromer, *Should the Law Care Why Intellectual Property Rights Have Been Asserted?*, 32 HOU. L. REV. 549 (2015).

[48] Amanda Levendowski, *Our Best Weapon Against Revenge Porn: Copyright Law?* THE ATLANTIC (Feb. 4, 2014), http://www.theatlantic.com/technology/archive/2014/02/our-best-weapon-against-revenge-porn-copyright-law/283564/; Samantha Cole, *AI-Assisted Fake Porn Is Here and We're All Fucked*, VICE (Dec. 11, 2017), http://www.vice.com/en/article/gydydm/gal-gadot-fake-ai-porn.

[49] *Jane Doe v. David K. Elam II*, Complaint, 2:14-cv-09788 (C. D. Cal. Feb. 12, 2015).

[50] *Jane Doe v. David K. Elam II*, Answer, 2:14-cv-09788 (C. D. Cal. May 22, 2015). The default judgment in the case is also offered as an optional reading.

[51] Christine Hauser, *$6.4 Million Judgment in Revenge Porn Case is Among Largest Ever*, N.Y. TIMES (Apr. 11, 2018), http://www.nytimes.com/2018/04/11/us/revenge-porn-california.html.

[52] Danielle Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345, 351-52 (2014).

[53] CYBER CIVIL RIGHTS INITIATIVE, http://www.cybercivilrights.org/revenge-porn-laws/ (last accessed Jan. 10, 2022).

[54] Amanda Levendowski, *Using Copyright to Combat Revenge Porn*, 3 N.Y.U. J. INTELL. PROP. & ENT. L. 422 (2014); 17 U.S.C. § 102(a)(5)-(6).

[55] 17 U.S.C. § 106(1), (3), (5).

sensual intimate imagery is shared, the doctrine of fair use—which excuses some copying without consent from the copyright owner—is unlikely to apply.[56] Registering one's copyright in an intimate image can be expensive and embarrassing, but it is required to initiate a lawsuit.[57] Alternatively, Section 512 of the Digital Millennium Copyright Act allows copyright owners to send takedown notices to certain websites that host user-generated content, such as nonconsensual intimate imagery, to request its removal.[58] And sending a takedown requires neither a registration nor a lawyer.[59]

Parsing our way through each of the above concepts provides an introduction to common copyright issues students are likely to encounter in practice, which bolsters students' development of transferable skills, a key component of transformative learning theory that underlies clinical pedagogy.[60] Students leave iPIP x Social Justice: Copyright capable of analyzing the four fair use factors, registering a copyright at the Copyright Office, and sending a takedown notice using the DMCA. But students are presented with a valuable opportunity to discuss the inequities embedded in copyright law through the lens of nonconsensual intimate imagery, as well as explore a creative solution that harnesses a powerful law to serve marginalized victims.

In discussion, students often ask questions informed by their roles as student attorneys, digging into the practicalities of doctrine and client representation, and drawing light on justice issues. Students question why victims whose images are selfies are the only ones with means of recourse, leaving the subjects of sexually explicit images taken by others to be openly exploited. Endowing only authors with copyrights makes it easy to identify copyright owners, but it leaves many victims, as well as other subjects, like models, open to harm.[61] While fair use likely doesn't apply to nonconsensual intimate imagery,

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[56] 17 U.S.C. § 107; *Harper & Row v. Nation Enter.*, 471 U.S. 539 (1985) (rejecting fair use of portions of unpublished manuscript, observing that Congress "intended the unpublished nature of the work to figure prominently in fair use analysis").

[57] 17 U.S.C. § 411(a); *Fourth Estate Public Benefit Corp. v. Wall-Street.com*, 586 U.S. ___ (2019) (holding that "registration" within the meaning of §411(a) occurs only after the Copyright Office registers a copyright).

[58] 17 U.S.C. § 512.

[59] *Id.* In Fall 2021, the iPIP Clinic created a guide to this methodology for domestic violence direct service providers and their clients. Denver Ellison & Ananya Gill Sinha, *Taking Down Nonconsensual Pornography: A Guide* (Dec. 2021).

[60] Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355, 407 (2008).

[61] *See, e.g.*, Emily Ratajkowski, *Buying Myself Back: When Does a Model Own Her Own Image*, THE CUT (Sept. 15, 2020), http://www.thecut.com/article/emily-ratajkowski-owning-my-image-essay.html (describing her inability to halt production of an art book featuring her nude images because they were photographed by someone else while also being threatened with litigation for reposting a paparazzo photo of herself on Instagram).

the legal calculus may be different for deepfakes, which are no less damaging.[62] Why is there that inconsistency between these differing forms of harmful weaponization of victims' images? To instigate litigation, victims must pay the Copyright Office $45 per photo or video for the indignity of sharing their intimate images as a part of registration; there is no discretion to waive the fee.[63] Why isn't the Copyright Office entitled to waive registration fees for deserving applicants? Or should there always be friction to registration? Statutory damages are $150,000 per copyrighted work, but those damages are only available in instances where infringement occurs after registration—and successful litigation. Who can afford such a lawsuit? For victims of nonconsensual intimate imagery, $150,000 is nowhere near enough compensation. Yet, to a hypothetical nonprofit newsroom sharing a copyrighted image in good faith, such a judgment could be devastating. How should we think about statutory damages? Crucially, a favorable judgment doesn't necessarily remove the images. When can a civil judgment ever be truly satisfying? We also discuss how this theory of combatting nonconsensual intimate imagery with copyright was popularized: a law student note.[64] The theory has proven effective, so why did it take so long for the solution to be embraced?

By engaging in a dialogue, we investigate what justice might look like for victims of nonconsensual intimate imagery. Students jump to alternate proposals that address the harm of nonconsensual intimate imagery, including criminal laws,[65] which have been enacted in 48 states, Washington D.C., and one territory.[66] Criminal laws eliminate the costs of registration and litigation. But criminal laws have drawbacks. Unlike many other clinics, IP and technology students are rarely familiar with the concept of "carceral feminism," sociologist scholar Elizabeth Bernstein's phrase for "the commitment of abolitionist feminist activists to a law and order agenda . . . a drift from the welfare state to the carceral state as the enforcement apparatus for

62 17 U.S.C. § 107; Samantha Cole, *AI-Assisted Fake Porn Is Here and We're All Fucked*, VICE (Dec. 11, 2017), http://www.vice.com/en/article/gydydm/gal-gadot-fake-ai-porn (describing the mechanics and harms of deepfakes).

63 U.S. COPYRIGHT OFFICE FEES, http://www.copyright.gov/about/fees.html (last accessed Nov. 2, 2021).

64 Amanda Levendowski, *Using Copyright to Combat Revenge Porn*, 3 N.Y.U. J. INTELL. PROP. & ENT. L. 422 (2014). *Compare* Derek E. Bambauer, *Exposed*, 98 MINN. L. REV. 2025, 2047 (2014) ("At present, copyright law will rarely come to the aid of someone featured in intimate media distributed without consent.").

65 Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345 (2014).

66 CYBER CIVIL RIGHTS INITIATIVE, http://www.cybercivilrights.org/revenge-porn-laws/ (last accessed Nov. 2, 2021).

feminist goals."[67] The theory of carceral feminism offers students a vocabulary to question whether the criminal legal system, with its inherent inequities, can provide meaningful vindication for victims of gendered violence.[68]

Students also learn how to connect copyright to other IP and information policy doctrines. A key discussion revolves around whether it's a good idea to use copyright law to address privacy harms.[69] The theme of consent—when the law demands it, from whom, and under what circumstances—links iPIP x Social Justice: Copyright with multiple other sessions, including trademarks, privacy, right of publicity, patents, trade secrets, and the CFAA Repeated conversations about consent in IP and information policy reveal that sometimes one doesn't need it legally, but they might want it ethically.

Late in the semester, iPIP x Social Justice: CFAA takes a different approach by using an interactive exercise to delve into justice issues. The session situates six civil and criminal litigations on a matrix to teach students the about the core challenges of the CFAA: statutory interpretation and the limitations of the criminal legal system. The y-axis is labeled "CFAA violation" and the x-axis is labeled "morally reprehensible," and the class works together to position litigants along it. Students read a mix of statutes,[70] legal opinions,[71] indictments,[72] press releases,[73] podcasts,[74] complaints,[75] and amicus briefs.[76]

This exercise prepares students for a reflective conversation about the expansion of the only federal law inspired by *WarGames,* a

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[67] Elizabeth Bernstein, *The Sexual Politics of the "New Abolitionism*," 18 (3) DIFFERENCES, 128 (2007).

[68] The majority of nonconsensual intimate imagery victims are women, followed by queer men. Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345 (2014); Ari Waldman, *Law, Privacy, and Online Dating: "Revenge Porn" in Gay Online Communities*, 44 LAW & SOCIAL INQUIRY 4 (2019).

[69] *Compare* Jeanne C. Fromer, *Should the Law Care Why Intellectual Property Rights Have Been Asserted?*, 32 HOU. L. REV. 549 (2015) (rarely) *with* Cathay Smith, 35 HARV. J. L. & TECH. (forthcoming 2021) (occasionally) *with* Amanda Levendowski, *Resisting Face Surveillance with Copyright Law*, 4 N.C. L. REV. (forthcoming 2022) (infrequently).

[70] 18 U.S.C. § 1030.

[71] *United States v. Drew*, 259 F.R.D. 449 (C.D. Cal. 2009); *United States v. Valle*, 807 F.3d 508 (2d Cir. 2015); *Sandvig v. Barr*, No. 1:16-cv-01368 (D.D.C. Mar. 27, 2020).

[72] *United States v. Moore*, Indictment, No. 2:13-CR-00917 (C.D. Cal. 2013); *United States v. Swartz*, Indictment (D. Mass. July 14, 2011).

[73] DEP'T OF JUSTICE, *Operator of 'Revenge Porn' Website Sentenced to 2 ½ Years in Federal Prison in Email Hacking Scheme to Obtain Nude Photos* (Dec. 2, 2015), http://www.justice.gov/usao-cdca/pr/operator-revenge-porn-website-sentenced-2-years-federal-prison-email-hacking-scheme.

[74] Reply All, # *43: The Law That Sticks*, GIMLET, (Oct. 25, 2015), http://gimletmedia.com/shows/reply-all/rnhoxb.

[75] *Sandvig v. Lynch*, Complaint, No. 1:16-cv-01368 (D.D.C. June 26, 2016).

[76] *Van Buren v. United States*, Brief of Amicus Curiae The Markup, No. 19-783 (U.S. July 10, 2020).

movie starring Matthew Broderick from 1983.[77] In *WarGames*, Broderick plays a teen hacker who accidentally infiltrates a North American Aerospace Defense (NORAD) supercomputer and causes chaos.[78] More than a few members of Congress endorsed the view that the film was a "realistic representation of the automatic dialing and access capabilities of the personal computer" and responded by enacting the CFAA.[79]

In its broadest and most contentious provision, the CFAA penalizes, "intentionally access[ing] a computer without authorization or exceed[ing] authorization, and thereby obtain[ing] information from any protected computer."[80] Because a protected computer includes any computer "used in or affecting interstate or foreign commerce or communication," the CFAA effectively applies to any device connected to the Internet.[81] In its early years, prosecutors used the CFAA to target various forms of hacking.[82] But invocation of the CFAA as a straightforward hacking law did not last.[83] In the 37 years since the CFAA's enactment, a contentious split developed between circuits that restrict the CFAA to hacking and interpret its provisions narrowly[84] and those that significantly expanded its scope.[85] In those lat-

[77] However, Broderick's film *Project X* led to the invocation of animal abuse laws. Deborah Caulfield, *New Charges of Animal Abuse in 'Project X:' D.A. Office Asked to File Criminal Complaints*, L.A. TIMES (Nov. 2, 1987), http://www.latimes.com/archives/la-xpm-1987-11-02-ca-12056-story.html.

[78] WARGAMES (United Artists 1983). The film was nominated for three Academy Awards. "Nominees and Winners," OSCARS, *56th Academy Awards* (Apr. 9, 1984), http://www.oscars.org/oscars/ceremonies/1984.

[79] H.R. Rep. No. 98-894, at 6 (1984).

[80] 18 U.S.C. § 1030(a)(2)(C). Technically, the law was enacted as the Comprehensive Crime Control Act and expanded into the CFAA two years later. Orin Kerr, *Vagueness Challenges to the Computer Fraud and Abuse Act*, 94 MINN .L. REV.1561,1563 (2010).

[81] 18 U.S.C. § 1030(e)(2); *and see, e.g.*, *United States v. Drew*, 259 F.R.D. 449, 457 (C.D. Cal. 2009) (noting that the final elements of 18 U.S.C. § 1030(a)(2)(C) "will always be met when an individual using a computer contacts or communicates with an Internet website").

[82] *See, e.g.*, *United States v. Morris*, 928 F.2d 504 (2d Cir. 1991) (prosecuting creator and deployer of the eponymous Morris worm).

[83] *See, e.g.*, *United States v. Drew*, 259 F.R. D. 449 (C.D. Cal. 2009) (invoking the CFAA to prosecute cyberbullying).

[84] *WEC Caroline Energy Sols. LLC v. Miller*, 6687 F.3d 199, 207 (4th Cir. 2012); *United States v. Nosal*, 676 F.3d 854, 852-63 (9th Cir. 2012); *United States v. Valle*, 807 F.3d 508, 528 (2d Cir. 2015). For an in-depth account of the so-called "narrow interpretation," see Jonathan Mayer, *The "Narrow" Interpretation of the Computer Fraud and Abuse Act: A User Guide for Applying United States v. Nosal*, 84 GEO. WASH. L. REV. 1655 (2016).

[85] *EF Cultural Travel BV v. Explorica, Inc.*, 274 F.3d 577, 583-84 (1st Cir. 2001); *Int'l Airport Ctrs. L.L.C. v. Citrin*, 440 F.3d 418, 420-21 (7th Cir. 2006); *United States v. John*, 597 F.3d 263, 272 (5th Cir. 2010); *Brown Jordan Int'l, Inc. v. Carmicle*, 846 F.3d 1167, 1174-75 (11th Cir. 2017). The expansive circuits seem well aware that their position is contested. *EarthCam, Inc. v. OxBlue Corp*. No. 15-11893, at *9 n.2 (11th Cir. July 27, 2017) ("We decided *Rodriguez* [628 F.3d 1258] in 2010 without the benefit of a national discourse

ter jurisdictions, common uses of the Internet—such as lying in social media profiles,[86] sharing passwords for streaming services,[87] and even scraping websites[88]—may amount to CFAA violations.

iPIP x Social Justice: CFAA takes an interactive approach to teaching statutory interpretation and peeking behind the power of criminal laws. Case by case, the class votes on where to position parties' behavior objectively and relationally on the matrix. Is a mother pretending to be a teen boy and cyberbullying her daughter's friend into taking her own life a crime or terrible judgment?[89] What about a police officer using a police database to stalk women he fantasizes about cannibalizing—is he a criminal or a creep?[90] Or downloading hundreds of thousands of paywalled articles from a university database—is that a crime or a rallying cry?[91] We continue through examples as students realize that extending the CFAA to certain reprehensible behaviors requires a broad interpretation of the law, which I turn may include behavior they may condone or even applaud.[92] We interrogate what it means that a broad interpretation of the CFAA that reaches some reprehensible behaviors would criminalize the adjacent work of journalists and researchers who scrape websites to investigate technological, societal, and even legal inequities.[93] We also interrogate whether the criminal law can ever be a tool for justice.

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on the CFAA. Since then, several of our sister circuits have roundly criticized decisions like *Rodriguez* because, in their view, simply defining 'authorized access' according to the terms of use of a software or program risks criminalizing everyday behavior. . . . Neither the text, nor the purpose, nor the legislative history of the CFAA, those courts maintain, requires such a draconian outcome. We are, of course, bound by *Rodriguez*, but note its lack of acceptance.").

[86] *Cyber Security: Protecting America's New Frontier: Hearing Before the House of Representatives Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security* (2011) ("In the Justice Department's view, the CFAA criminalizes conduct as innocuous as using a fake name on Facebook or lying about your weight in an online dating profile. The situation is intolerable.") (Testimony of Orin Kerr), http://volokh.com/wp/wp-content/uploads/2011/11/Testimony-of-Orin-S-Kerr.pdf.

[87] Staff Editor, *Is Using a Shared Netflix Password a Federal Crime?*, J. INTELL. PROP. & ENTERTAINMENT L. BLOG (Apr. 23, 2018), http://blog.jipel.law.nyu.edu/2018/04/is-using-a-shared-netflix-password-a-federal-crime/.

[88] Scraping is a technical process for batch copying data from a website. For a gorgeously thorough chronological catalog of every CFAA scraping case through 2018, see Andrew Sellars, *Twenty Years of Web Scraping and the Computer Fraud and Abuse Act*, 24 B.U. J. SCI. & TECH. L. 372, 378-79 (2018).

[89] *United States v. Drew*, 259 F.R.D. 449 (C.D. Cal. 2009).

[90] *United States v. Valle*, 807 F.3d 508 (2d Cir. 2015)

[91] *United States v. Swartz*, Indictment, No. 1:11-CR-10260 (D. Mass. July 14, 2011).

[92] One counterexample is a researcher's successful declaratory judgment action finding that his investigation of whether websites discriminate by race and gender is not a CFAA violation, which classes unfailingly find not reprehensible. *Sandvig v. Barr*, No. 1:16-cv-01368 (D.D.C. Mar. 27, 2020).

[93] *Supra* note 54.

As students work through the facts from real cases, they also understand that whether an act violates the CFAA often has little relationship to the reprehensibility of the act and that the remedy of imprisonment rarely addresses the underlying harm. This realization opens up a discussion of the limitations of the criminal legal system. Buoyed by lively debates about where to position our alleged CFAA violators, students strive to find consensus among themselves about whether the criminal legal system can ever promote justice.

The theme of skepticism about the criminal legal system carries through to other iPIP x Social Justice sessions, including copyright, privacy, and trade secrets, which explores how corporations invoke trade secrecy to obfuscate the technologies that put disproportionate numbers of Black and brown men in prison,[94] as well as the biased risk assessment algorithms that keep them there.[95] The recurring theme of how the law treats consent in different IP and information policy contexts connects the CFAA with multiple other sessions. And the CFAA session also overlaps substantively with copyright doctrine, which often presents a shared cause of action for web scraping.[96]

Copyright law and the Computer Fraud and Abuse Act seem like disparate areas of law, and not only because one is as old as America and the other was inspired by a B-list 80s movie. Often taught in different courses, teaching both subjects side by side allows students to draw conclusions about these areas of law, situate them among other iPIP x Social Justice sessions, and—after identifying injustices in the law—acknowledge opportunities for furthering justice, either directly as advocates or indirectly as accomplices.[97] Sessions explore responses to doctrinal injustice in the forms of convincing corporations to drop appropriated terms and slurs as branding,[98] organizing and advocating against amending the law that created the Internet as we know it,[99] creating absurdist art from an illicit professional football game,[100]

[94] Rebecca Wexler, *Life, Liberty, and Trade Secrets: Intellectual Property in the Criminal Justice System*, 70 STAN. L. REV. 1343 (2018).

[95] Julia Angwin, Jeff Larson, Surya Mattu & Lauren Kirchner, *Machine Bias*, PROPUBLICA (May 23, 2016), http://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing.

[96] *hiQ v. LinkedIn*, No. 17-16783 (9th Cir. Sept. 9, 2019), cert. granted, judgment vacated, 141 S. Ct. 2752, 210 L. Ed. 2d 902 (2021).

[97] While these two doctrinal areas may both be taught in cyberlaw or Internet law courses, the focus on justice may be less centered in those courses.

[98] Angela R. Riley & Sonia K. Katyal, *Aunt Jemima Is Gone. Can We Finally End All Racist Branding?*, N.Y. TIMES (June 19, 2020), http://www.nytimes.com/2020/06/19/opinion/aunt-jemima-racist-branding.html.

[99] Danielle Blunt & Ariel Wolf, *Erased: The Impact of FOSTA-SESTA and the Removal of Backpage*, 14 ANTI-TRAFFICKING REV (2020).; Kendra Albert et al., *FOSTA in Legal Context*, 52 COLUM. HUM. RTS. L. REV. 1084 (2021).

[100] Jon Boies, *Breaking Madden: Ryan Tannehill is banished to Tannehell*, SBNATION

countering restricted access to life-saving medicines under patent policy,[101] and working within the limitations of government disclosures to sound the alarm about surveillance technologies.[102] Lawyers and activists, and students may identify as both, can play a role in each justice-oriented intervention. Intersectional social justice issues of race, gender, sexuality, disability, and class regularly appear in iPIP x Social Justice sessions, united by themes of consent, capitalism, and carcerality—in other words, power—that echo throughout the course. These issues, rather than doctrine itself, provide the starting point for Doctrine x Social Justice. The joys of these sessions lie in how sessions change from year to year, always illuminating, complicating, and reinforcing one another in surprising ways.

To review the key aspects of Doctrine x Social Justice, instructors curate a series of 5-7 materials reflecting a range of sources from a variety of authors or interviewers. Materials are presented in a way that creates a narrative around the doctrinal topic. And instructors help guide their students through the materials by highlighting disorienting moments and leaving space to grapple with tension, challenge, and oppression created by the law. Clinical pedagogy around naming goals and backward design can also provide useful structure,[103] but any instructor—clinical, legal practice or doctrinal—can adapt the Doctrine x Social Justice approach to introduce students to legal doctrines through a social justice lens. Legal practice faculty can use the approach to introduce topics for student's legal memoranda or appel-

(2015), http://www.sbnation.com/2015/10/15/9464453/breaking-madden-ryan-tannehill-tannehell; *Davis v. Elec. Arts*, 775 F.3d 1172 (9th Cir. 2014) (holding that EA's Madden series violated players' right of publicity).

101 Rebecca S. Eisenberg, *Public Research and Private Development: Patents and Technology Transfer in Government-Sponsored Research*, 82 VA. L. REV. 1663 (1996); *The Role of the Bayh-Dole Act in Fostering Technology Transfer and Implications for Innovation*, PHRMA (Feb. 19 2020), http://phrma.org/resource-center/Topics/STEM/Role-of-Bayh-Doyle-In-Fostering-Innovation; *UFCW Local 1500 Welfare Fund v. AbbVie Inc.*, No. 20-2402 (N.D. Ill. 2020) (invoking antitrust law to challenge AbbVie's deployment of patent thickets to preserve high prices of drug Humira).

102 Caroline Haskins, *Amazon Requires Police to Shill Surveillance Cameras in Secret Agreement*, VICE (July 25, 2019), http://www.vice.com/en/article/mb88za/amazon-requires-police-to-shill-surveillance-cameras-in-secret-agreement; Sam Biddle, *ICE's New York Office Uses a Rigged Algorithm to Keep Virtually All Arrestees in Detention. The ACLU Says It's Unconstitutional*, THE INTERCEPT (Mar. 2, 2020), http://theintercept.com/2020/03/02/ice-algorithm-bias-detention-aclu-lawsuit/; Caroline Haskins, *Scars, Tattoos, and License Plates: This Is What Palantir and the LAPD Know About You*, BUZZFEED (Sept. 29, 2020), http://www.buzzfeednews.com/article/carolinehaskins1/training-documents-palantir-lapd. The MFIA Clinic at Yale specializes in representing journalists and other litigants in FOIA lawsuits. *Media Freedom and Information Access Clinic*, YALE LAW (2022), https://law.yale.edu/mfia.

103 *See generally* DEBORAH EPSTEIN, JANE AIKEN & WALLACE J. MLYNIEC, THE CLINIC SEMINAR (1ST Ed. 2014).

late briefs, which generally involve unsettled areas of law that often have implications for social justice. Doctrinal faculty can structure units using the Doctrine x Social Justice model or conclude units with one-off Doctrine x Social Justice sessions that revisit aspects of the unit from social justice perspectives. The hope is that a full spectrum of legal instructors will adopt Doctrine x Social Justice sessions and adapt it to suit their students' needs.

III. Justice Readiness Through Deep Dives

While iPIP x Social Justice provides a useful foundation for teaching doctrine and injustice, those sessions can only touch on a limited number of doctrinal issues. But Deep Dives can provide a targeted expansion on areas of doctrinal interest by letting students identify their own iPIP x Social Justice topics to curate readings and lead discussion over a two-hour seminar session. Since Deep Dives were first developed by Professor Lee Rowland, the model has undergone several transformations to become an invaluable way for students to practice lawyering skills, engage with legal issues of (in)justice, and prepare themselves to become justice ready.

Deep Dives are a relatively new student-driven innovation founded by Lee Rowland in 2015, now used in clinics at NYU Law, Berkeley Law, and several at Georgetown Law.[104] The approach built on sessions from the prior semester in which students led conversations about the law.[105] The following year, Rowland took over the TLP Clinic temporarily and developed Deep Dives, which grew from three concerns.[106] First, Rowland was frustrated that the Clinic did not teach substantive law when there were so many overlapping issues that went untaught and unconnected, both to casework and practice.[107] Deep Dives provided a unique opportunity for students to teach and learn doctrine in areas of importance and interest. Second, she wanted to empower students to engage in storytelling with human stakes, which she felt was so often absent from doctrinal casebooks and conversations.[108] Deep Dives drew from Rowland's observations,

104 Interview with Megan Graham, Supervising Attorney, Samuelson Law, Tech. & Pub. Pol'y Clinic (Nov. 22, 2021).

105 Interview with Lee Rowland, Policy Director, N. Y. C. L. Union (Nov. 17, 2021). I was one of those students. I'd worked with Rowland as a student in NYU's Technology Law and Policy (TLP) Clinic. As a student, I co-led a class session with her about nonconsensual intimate imagery.

106 *Id.*

107 *Id.*

108 *Id.* This trend has changed over the past decade, with casebooks incorporating supplements that provide backstories of litigants that humanize their legal struggles and faculty folding these conversations into their teaching. *See, e.g.* Constitutional Law Stories. (Michael C. Dorf, ed., 2004) (illuminating iconic constitutional law cases through

and deeply held belief, that the ability to analyze doctrine is grounded in narrative and understanding the effects of power.[109] She witnessed that putting control of that analysis in the students' hands helped legal concepts "sing" in a way that turned students into evangelists for engaging with the law.[110] Finally, Rowland believed in democratizing the classroom conversation, particularly when dealing with challenging concepts, perceptions of which are heavily dependent on students' lived experiences.[111] Through Deep Dives, she hoped she could help students find their voice by using it with colleagues—and discover that their colleagues wanted to be part of that conversation, too.

When TLP Clinic Director Jason Schultz returned in 2016, we worked together with our colleague Brett Max Kaufman to tweak and continue the approach.[112] With some further adjustments, I finalized the Deep Dive methodology used in the iPIP Clinic, which uses iPIP x Social Justice sessions as substantive models and features additional instructor feedback.

Students continue to work together in small, cross-staffed teams, similarly to the iPIP x Social Justice matters. First, teams identify 2-3 topics, which generally concern cutting-edge or unsettled legal issues entangled with social justice ones. Second, supervisors ask strategic questions about the Deep Dive conversation that students hope to have with their colleagues. Next, supervisors work with students to winnow the topics down to one that is likely to be the most pedagogically compelling while also marrying existing Doctrine x Social Justice and other Deep Dive sessions. Students then identify 2-4 goals for the discussion and curate 5-10 freely and publicly available readings. Supervisors help finesse these materials into a more manageable 5-7 readings, striving for the same variety of materials and diversity of sources seen in Doctrine x Social Justice sessions. Source selection reinforces transferrable lawyering skills, including legal research and writing, strategic decision-making, and creative problem-solving. It's also the point at which supervisors have the most value, as we often know of leading scholarly articles or less iconic cases that students may not be able to find on limited notice while balancing the demands of casework.[113] It reinforces that being a good attorney can involve knowing when to ask for guidance. These additional suggestions are made from a place of discovery rather than judgment—the goal is to

personalized narratives).

109 *Id.*

110 *Id.*

111 *Id.*

112 *Id.*

113 *Id*.

foreground thoughtful readings rather than imply the students failed by not finding every compelling or relevant piece of literature.

Supervisors coordinate these discussions over email and through a half-hour long conversation with the team. Meeting with teams to prepare Deep Dives opens opportunities to discuss research methodology and how to stay abreast of developments in the law without the time-sensitivity that often comes with casework. After meeting with supervisors to discuss potential goals and themes of the session, students hone specific questions with their teammates, then take turns facilitating their version of a Doctrine x Social Justice session. Because Deep Dives center social justice issues, students gain much-needed experience openly, respectfully, and thoughtfully leading conversations about gender, race, sexuality, disability, class, and other relevant topics.[114] Topics tackled by iPIP students have included whether patent waivers can promote life-saving access to COVID-19 vaccines in developing countries (probably not), the importance of privacy to sexuality (very), the role of copyright in the appropriation of race in music (sizeable), whether 3D printing can decolonize the modern museum (no), ways to combat disinformation and misinformation (tricky), protection of genetic privacy from law enforcement (varies), and the relationship between trademarks and the labor of college athletes (complicated).

Deep Dives also present an opportunity for students to experiment with a skillset rarely taught elsewhere in law school: teaching. Even though some students will return as teaching fellows or faculty—and others will teach CLEs or workshops at their workplaces—learning how to structure a reflective conversation around thoughtful readings is not part of the law school curriculum.[115] Deep Dives provide insight into the teaching process and let students experience the delights and challenges of teaching. (It also reveals that professors' jobs are harder than they look, a recurring comment from students.) Learning complex legal issues, curating readings, and facilitating discussions are also transferrable skills beyond teaching.[116] Lawyers often need to get their colleagues, supervisors, and even clients up to speed quickly, which includes selecting useful, manageable, and engaging materials. But Deep Dives also empower students to fill gaps

[114] Deep Dives are not deploying these skills to represent a client, but facilitating these conversations well contributes to the transferrable skill of cross-cultural lawyering, an important skill taught in many clinics. *See generally* Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997); Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33 (2001).

[115] *Id.*

[116] *Id.*

in professors' pedagogy. Doctrine x Social Justice sessions reflect what teachers think students should think is important for justice readiness—Deep Dives reflect what *students* think students should think is important for justice readiness.

Conclusion

Students departing clinics should not only leave with an array of lawyering skills, but the capacity and desire to use those legal skills to confront injustice and promote justice. Law clinics can and should play a significant role in increasing student's justice readiness. When casework is structurally limited or too variable to present predictable opportunities for students to develop and exercise justice skills, teaching doctrine can be a powerful means of supplementing casework to teach justice readiness. By adopting and adapting pedagogical approaches like Doctrine x Social Justice and Deep Dives, clinics can and should expand their capacity to produce the next generation of provocateurs for justice.[117]

[117] Jane H. Aiken. *Provocateurs for Justice*, 7 Clin. L. Rev. 287 (2001).