



CREATE CHANGE

PUBLIC INTEREST AT STANFORD LAW SCHOOL

<http://publicinterestlaw.stanford.edu>

Spring 2006

Cyberlaw Clinic Incorporates Policy in Litigation Addressing Cutting-Edge Technological Issues

Almost anything can be known about anyone these days. From talking on cell phones, communicating via e-mail, shopping on the internet, and adding our personal information to databases through the use of grocery or department store “club cards,” the world and the way we exchange information has greatly changed.

Not surprisingly, as a result of these technological advancements, identity theft, wire-tapping, computer hacking and anonymity issues have made the right to privacy a hot topic to the public, the courts and government leaders. These issues are among the various legal problems the Cyberlaw Clinic tackles through the work of Stanford Law School students and Executive Director, Jennifer Granick.

The Cyberlaw Clinic emerged in 2001 from under the umbrella of the Center for Internet & Society (CIS), a Stanford Law School program conceived by Professor Larry Lessig that is driven by protection of constitutional rights and copyright law. Although Granick oversees both of these interconnected programs, the Cyberlaw Clinic focuses directly on cases and issues chosen for their educational value to students.

The dual purpose of the Cyberlaw Clinic is to provide quality legal services to individuals and organizations pro bono, while offering students an opportunity to gain practical experience working on cutting-edge technology litigation that implicates high-profile public policy issues. As one of only a few law and technology litigation clinics in the country, the Cyberlaw Clinic allows students to theorize legal arguments, draft pleadings, briefs and discovery documents, present oral arguments in court, and meet with clients and opposing counsel.

In fact, one of Granick’s goals for the Cyberlaw Clinic is that students learn to draw upon their own creativity to argue issues in cases that have no precedent. She



PHOTO: JOE NETO

Jennifer Granick, center, speaks to her Cyberlaw clinic students Eric Keller (left), Lisa Schwartz, Bill Ridgway, and John Eden.

comments, “Students tend to be very creative and not constrained as are other practitioners—they’re innovative.”

Through their work in the clinic, students have a unique ability to impact public policy. Indeed, the Cyberlaw Clinic has enjoyed recent successes in high impact cases. In *OPG, et al. v. Diebold*, students successfully argued that Diebold violated a provision of the Digital Millennium Copyright Act (DMCA) by knowingly misrepresenting that the company’s copyrights had been infringed. This marked the first time a company had been held liable for violating section 512(f) of the DMCA, which makes it unlawful to use takedown threats when the copyright holder knows that infringement has not occurred. This landmark decision helped ensure that free speech rights would not be impermissibly chilled.

Cyberlaw students also worked on a CIS case which concluded in victory through an unusual turn of events. In *U.S. v. McDanel*,

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News Briefs

Save the date! Public Service Awards Celebration on Wed., April 19

The annual Public Service Awards celebration will be held April 19 at 5:30 p.m. in Crocker Garden. Alumni, faculty, and students are urged to attend to honor award winners and celebrate the end of another great year.

Tribute to Public Interest Icon Wald

On May 3, the Law School will pay tribute to Michael Wald, Jackson Eli Reynolds Professor of Law, who plans to retire at the end of this school year after nearly 40 years at SLS.

Wald, profiled in the Summer 2005 issue of *Create Change*, will be recognized by Judge Thelton Henderson of the U.S. District Court for the Northern District of California, Miguel Mendez, the Adelbert H. Sweet Professor of Law, and Maya Harris '92, Director of the Racial Justice Project at the ACLU of Northern California, among others. The event will start at 5 pm in Crocker Garden and a reception will follow.

Koski Named to First Endowed Clinical Professorship

William Koski, Director of the Youth and Education Law Clinic, has been appointed Eric and Nancy Wright Professor of Clinical Education. SLS and an anonymous donor created this chair to honor the work and dedication to public service that Eric '67 (AB '64) and Nancy Wright have demonstrated throughout their combined sixty-one years in public interest law.

Skills Workshops Offer Training

The Spring series of skills workshops began Thursday, March 9 with "Winning Your Case in the Court of Public Opinion," focused on media training.

This annual workshop series equips students with the practical training necessary to be effective advocates. Other workshops will focus on developing greater cultural competency, navigating the legislative process, and becoming a more powerful public speaker. ■

DIRECTOR'S NOTE

Be the change you wish to see in the world . . .

—Gandhi

One of the remarkable aspects of public service is its variety and diversity. In this edition of *Create Change*, the array of Stanford Law School's community endeavors is breathtaking. Ranging from the protection of free speech on the internet to helping survivors of the hurricanes in the Gulf to looking at law enforcement reform issues in Ghana, our public interest students continue to display creativity and compassion in their provision of legal services to under-represented groups.

Similarly, Stanford's alumni are well represented in a breadth of public interest lawyering and public service. We are pleased to highlight just a few of the accomplishments of Mark Chavez '79, whose private public interest firm has assisted thousands of consumers through its groundbreaking litigation, and who continues to be a friend and support to public interest at the law school. Alumni Christopher Ho '87 (Senior staff attorney at Legal Aid Society – Employment Law Center), Catherine Ruckelshaus '89 (Litigation Director, National Employment Law Project), and Lisalyn Jacobs '90 (Vice President for Government Relations, Legal Momentum) shared their expertise at our spring public interest symposium, "The New Frontier on Workers' Rights," described by Nathaniel Garrett '06 on pages 4 -5.

I hope that you are moved to tell us about your own public service and pro bono experiences, or to take on some new efforts, after you have read about the extraordinary work of your public interest community at Stanford.

Best,
Diane T. Chin

CALL FOR NOMINATIONS FOR 2006 PUBLIC INTEREST LAWYER OF THE YEAR

Is there an alumnus/a that you would like to see honored for his/her accomplishments as a public interest lawyer? Please send a brief nomination statement to me at dchin@law.stanford.edu by 12:30 pm on April 14.

ABOUT CREATE CHANGE

This newsletter is designed and produced by Public Interest Program staff. Unless specifically noted, all articles are written by staff.

The Public Interest Program staff consists of two full-time and two part-time staff. **Diane T. Chin** directs the program, **Anna Wang** serves as the associate director, **Judy Gielniak** is the legal assistant, and **Sari Bourne** (BA '07) is the program assistant.

To receive the newsletter by e-mail, please write to majordomo@lists.stanford.edu with

the command "subscribe create_change" in the body. If you have any problems subscribing to the list, please write to public.interest@law.stanford.edu.

Create Change is published quarterly via e-mail and past issues are available on our website at <http://publicinterestlaw.stanford.edu>. Articles, letters, and photos are welcome. Please send them to: *Create Change*, c/o Public Interest Program, Stanford Law School, Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305-8610.

ALUMNI SPOTLIGHT:

Mark A. Chavez '79 Protects Consumer Rights

The cyclist zooming up to the summit of Mount Tamalpais in Marin County has traveled this path many times before. Yet Mark A. Chavez '79 relishes the experience all the same and makes sure to set aside time in his busy schedule to enjoy his favorite ride on a regular basis.

Chavez is one of the founding partners of Chavez and Gertler, a nationally known private public interest firm that represents plaintiffs in class actions. The firm has been responsible for some of the largest recoveries ever achieved in consumer cases in California, including the recent \$76 million settlement in the Transouth cases.

Started in 1994, Chavez and Gertler has deliberately remained small with only seven attorneys. Yet there are two other Stanford Law School alumni: partner Kim Card '89 (B.A. '86), who has been with the firm since 1999, and partner Kathryn "Chris" Palamountain '95, who has worked there for six years.

Chavez did not set out to become a consumer rights advocate and, in fact, never planned to go to law school. "I majored in international relations, minored in Latin American history, and thought I would end up being a diplomat or professor."

Yet Chavez ended up in law school due to an odd set of circumstances. He recalls, "I was working in a lumber mill in Oregon after college, where I gained exposure to the legal system as a result of learning how workers' compensation worked for people who were injured. A woman in the mill lost two and a half fingers one night, and I found out that she was entitled to only \$2500. Each finger was worth only \$1000 under workers' compensation law. This was something that piqued my interest in legal issues."

After starting at Stanford Law School, Chavez was very involved in the public interest community. He co-founded the Stanford Environmental Law Annual (now the Environmental Law Journal) and was involved with the Environmental Law Society. In addition, he also helped establish the Stanford Public Interest Law Foundation (SPILF), a group that he remains active with today by serving on its Board of Directors for the past six years.

Chavez explains, "The founder of SPILF was Karen Chapman [79]. She got together a group of students willing to contribute part of their summer earnings and pledge to contribute earnings once they got out into the real world. What attracted me to it was the idea that all students who are going out and earning a substantial living as a result of their time at Stanford could give something back to the community in general. So even if they didn't choose a public interest career, they could help others pursue such a career."

After law school, Chavez joined the Civil Division of the U.S. Department of Justice through the Attorney General's Honors program, and spent three years there. Then he went to work for the then largest firm in San Francisco, which is now known as Pillsbury Winthrop

Shaw Whitman LLP. Chavez worked there for five years doing complex civil litigation before leaving for a small plaintiff's firm in the East Bay, Farrow, Bramson, Chavez and Baskin. At Farrow Bramson, Chavez spent six years focused on consumer class action cases, including one of the most memorable cases of his career thus far: a case against Ford Motor Credit Company that was the first large-scale "force-placed" insurance case. That case settled for \$58 million.

Force-placed insurance normally arises when a car loan contract has a clause that the borrower must maintain insurance or else the lender is entitled to place insurance and charge the borrower for it.

Chavez discovered in the 1980s that large finance companies bought packages of insurance coverages that the borrowers were not obligated to pay for and then passed all of the charges for these coverages on to the borrowers. He then filed what became the first of dozens of class action lawsuits around the country challenging this practice.

"We essentially changed an entire industry through this litigation. We attacked an established industry-wide practice in a series of lawsuits in states across the country. I spent a number of years litigating cases in places like Florida, Missouri, New Jersey, Idaho and California. Ultimately, this resulted in stopping a practice that had led to thousands of consumers being charged amounts they were not legally obligated to pay for. As a result of that litigation, we recovered hundreds of millions of dollars for consumers and changed the way a significant sector of American business was operating."

Chavez started his own firm because he saw an opportunity to "essentially be my own boss and do the kind of work I wanted to do. It was an appropriate time in my life to take the risk and I was fortunate in that I had enough contacts and enough of a reputation to develop a practice and sustain it."

When asked to offer some insight to law students, Chavez comments, "One thing I would suggest to anybody leaving law school is that they should look at their first job as just that and not being their last job. On a regular basis, they

should really critically examine what they're doing and what they want to do over the long term."

He continues, "Ending up in the place that I did in life really took some risk. If you want to end up in a position where you're doing something you're really thrilled about and find challenging, you may have to take an unconventional path and take some risk. You make certain economic sacrifices that you wouldn't be making in a big law firm, yet it's ultimately extremely rewarding to do litigation that you care about, that helps other people, and that has a positive impact on society, as opposed to shuffling money around between corporations." ■



PHOTO COURTESY OF MARK CHAVEZ

"If you want to end up in a position where you're doing something you're really thrilled about and find challenging, you may have to take an unconventional path and take some risk."



Larry Kramer, Dean and Richard E. Lang Professor of Law, in conversation with Anna Burger, Chair of the Change to Win Federation, who gave the keynote speech at the symposium.



Erica Blachman '07 and Olivia Para '07 were among the many students who attended the symposium.



Tracie Washington, a New Orleans sole practitioner representing Hurricane Katrina survivors, speaks about workers' rights and lessons learned after the hurricanes. Behind her are Maurice Emsellem of the National Employment Law Project and Visiting Professor of Law Juliet Brodie, who moderated the panel.



Larry Paradis, Executive Director of Disability Rights Advocates, (left) and Christopher Daley, Director of the Transgender Law Project, discussed the ongoing battle against employment discrimination.

Symposium Promotes Workers' Rights

By Nathaniel Garrett '06

On March 4, the Public Interest Program hosted its spring symposium, "The New Frontier in Workers' Rights." Students, professors, practitioners, and organizers gathered to share perspectives and strategies to protect and advance workers' rights.

There were five panels addressing topics as various as "The Legal and Political Future of the US Labor Movement," "Immigrant Workers' Rights," and "Local and State Models for Protecting Workers."

Professors and attorneys encouraged students to think about ways that advocates can use local and state protections in a time of federal hostility to workers' right, and how to protect the rights of immigrant workers, who are often concerned with asserting their rights if working without documentation for fear of repercussions.

As its keynote speaker, Anna Burger, Chair of the Change to Win Federation, offered unique insight into her new organization's plans. Change to Win made headlines last year when it was born out of the dissatisfaction of America's seven largest unions—including SEIU, the Teamsters, and Unite HERE—which split from the AFL-CIO to form a new coalition dedicated to focusing more resources on bringing unorganized workers into the dwindling labor movement.

Burger acknowledged a steady decline in union membership—from 32% of the workforce in 1956, to just 12.5% to

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ALL PHOTOS BY STU BRININ PHOTOGRAPHY.

Granick Leads Cyberlaw Clinic to New Heights

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Bret McDanel announced to customers of his employer, Tornado Development, that the employer's web mail program was faulty and posed a security risk for customers. He directed the customers to information on how to repair the vulnerabilities. Shortly thereafter, McDanel was criminally prosecuted for impairing the security of Tornado Development's system and for causing damage to the company. He was convicted and sentenced to a six-month prison term.

However, Cyberlaw Clinic students worked to overturn his conviction and filed an opening brief with the Ninth Circuit Court of Appeals on McDanel's behalf arguing that the reporting of security flaws does not impair a system and stating that the First Amendment protects such speech. In an unexpected move, the government confessed error in light of the arguments raised in the brief and requested that the case against McDanel be dismissed.

Accordingly, the Ninth Circuit Court of Appeals reversed the lower court's conviction and remanded the matter.

Without question, the Cyberlaw Clinic has raised awareness through its many successes. However, Granick also points out that it isn't just the cases with huge victories that leave their mark. "Litigation itself doesn't have a big impact on the law, but the publicizing of cases and issues in general has an important impact on policy makers and people's awareness of the issues."

Of course, the Cyberlaw Clinic's social policy and litigation successes are not possible without the dedicated hard work of Stanford Law School students and the guidance provided by Granick.

Indeed, Granick's commitment to free speech and technology issues began shortly after graduating from the University of California, Hastings College of the Law. She initially worked for the San Francisco Public Defender's office, before developing a white collar computer crime specialty as an associate in various criminal defense firms. Eventually, Granick ventured into solo practice,

where she continued to represent individuals in computer crime actions, while also developing a strong computer civil liberties practice. It was this interest that led her to Stanford Law School in 2001 for a new career in education.

In addition to instructing and supervising the Cyberlaw Clinic, Granick also continues to consult on computer crime cases and she speaks and writes on a wide range of internet law issues, including computer crime and security, national security, constitutional rights and electronic surveillance. She serves on the Board of Directors of the Honeynet Project, a service collecting data on computer intrusions for the purposes of developing defensive tools and practices, as well as the Hacker Foundation, an organization which promotes the creative use of technological resources.

As a result of her hard work, Granick has been recognized nationally in her area of expertise and was chosen by Information Security magazine in 2003 as one of the 20 "Women of Vision" in the computer security field.

While she considers teaching and interacting with students to be the most rewarding aspect of her work, she is just as enthusiastic about the intellectual challenges presented in this field.

Granick remarks, "It's really great to be part of a world of people also working on these issues and trying to come up with what they want the world to be by applying the past to the brave new future."

What will the future bring with respect to privacy rights issues in our age of mass media? According to Granick, "There is a policy answer, but the answer is going to be nuanced and is going to be formed with the knowledge that things are different now."

Certainly, through the creative talents of Stanford Law School students and under the dedicated supervision of Jennifer Granick, the Cyberlaw Clinic will continue to expand the knowledge base forming the answers to this complicated and prevalent question. ■

"It's really great to be part of a world of people also working on these issues and trying to come up with what they want the world to be by applying the past to the brave new future."

Burger Shares Ambitious Plans to Revitalize U.S. Labor Movement



PHOTO: STU BRINN PHOTOGRAPHY

Anna Burger, Chair of the Change to Win Federation

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day—and warned the audience that due to declining wages and benefits and the rise of globalization, "working families are in crisis."

On the individual level, Burger argued that workers like "those who clean Stanford dorms, and pick our crops" were increasingly not being respected properly for the work they do—not because their actual work is changing, but because the deregulation of the labor market means that those kinds of workers have less of a voice and less workplace autonomy. In this drastically different world, Burger asserted that the Change to Win Federation plans to reverse current trends by dedicating significant resources to the recruiting of unorganized workers.

Because of the effects of globalization, Burger suggested that this new organizing focus must adapt to a changing workplace with "new tactics, new strategies, and a new direction." She added, "We can no longer [organize] building by building, city by city." Change to Win is putting its mantra into practice, focusing efforts now on Unite's campaign to organize hotel workers in 30 cities simultaneously to improve living conditions in all 30 markets at once.

Burger is confident that their new model will show positive results, but she also implored Stanford students to consider dedicating their work to protecting workers' rights: "Every day lawyers make a difference," she said. "We need creative thinking because we have a new environment and new work rules, and we need you to help us think about ways to overcome that." ■

SLS Students Contribute Legal Skills, Serve Locally, Globally During Winter Break

While many students spent the winter break relaxing with family and friends, several set aside time to volunteer their legal skills helping hurricane survivors, protecting the environment, and assisting community advocates in Ghana.

Providing Legal Services in the Gulf Coast

Four students joined efforts to address the legal needs of the hurricane survivors in the Gulf Coast area. With financial support from the Law School, Molly Breyfogle '06, Kristin Burford '08, Mariko Hirose '08, and Ariel Schwartz '07 gained a firsthand look at the devastation facing residents in the Gulf Coast areas hit hardest by the hurricanes. Breyfogle and Schwartz were in Gulfport, Mississippi while Burford and Hirose were in New Orleans.

Among the various tasks they undertook, the students helped with intake at free post-Katrina legal aid workshops, updated factsheets on housing assistance, summarized emergency rules regarding insurance, and reached out to low-income housing residents to identify any potential post-Katrina violations.

These four students were placed with local community advocacy organizations by the Student Hurricane Network (SHN), a student-run organization which linked 240 students from 57 law schools with winter break pro bono opportunities throughout the hurricane-affected areas of the Gulf Coast.

With the support of the law school, over twenty Stanford law students have confirmed plans to spend their Spring Break in New Orleans, Louisiana; Gulfport, Mississippi; and Austin, Texas.

Protecting the Environment

Craig Segall '07 spent December in Chicago but was still able to help the Stanford Environmental Law Clinic research and write a Supreme Court amicus brief for former EPA administrators defending the Clean Water Act from a recent challenge.

In January, he returned to California and spent two weeks with the Natural Resources Defense Council in San Francisco. He comments, "I helped develop state global warming policy and enjoyed surprisingly frequent free cake."

Promoting Community Advocacy

Ten students traveled to Ghana for three weeks in January as part of the International Community Law Clinic. Taught by Lecturer and Clinic Director Peter Reid and Clinical Supervising Attorney Danielle Jones, the clinic students prepared by studying international human rights, international community organizing, and cross-cultural lawyering during the fall semester. Two students, Tehila Sagy LLM '05, JSD '07 and Colin Sampson '06, served as teaching assistants and also went to Ghana.

Brandi Davis '06, Spencer Jones '07, Cindy Liou '07, and Aidan McGlaze '07 worked with the Center for Public Interest Law interviewing prisoners in Ghana jails. Michelle Chang '07, Afam Onyema '07, Olivia Para '07, and Halton Peters '07 worked with the Legal Resources Centre doing community organizing and capacity building work with eight community groups. ■



PHOTO COURTESY OF SPENCER JONES '07

Clockwise from left, Cindy Liou '07; Aidan McGlaze '07; Brandi Davis '06; Danielle Jones; Mr. Ampratun, Director of Ghanaian Policy Services; Pearl Owusu Asante, a Ghanaian law student; Peter Reid; Tehila Sagy LLM '05, JSD '07; and Spencer Jones '07.

This photo shows some of the damage in New Orleans that still remains months after the hurricanes.



PHOTO: MARIKO HIROSE '08

In His Own Words: Making An Impact in Ghana

BY AFAM ONYEMA '07

The best part of the experience was being on the ground and in the communities. There aren't many times in law school when we get the opportunity to use the analytical problem-solving skills we hone in class to actually improve society in a concrete way. I felt that, in some small yet significant way, we were able to accomplish just that in Ghana.

We sat down with community leaders and worked with them to forge workable, practical, rights-based solutions to their most vexing problems, problems that, as the child of Africans, I was particularly interested in tackling.

Standing together with such warm, dedicated, intelligent individuals, working with them and for them in throwing a hammer against a mountain of difficulties and obstacles—these were the joys of the trip for me.

I am so grateful that Stanford Law School and its clinical program gave me the opportunity to be on the ground and in the communities. It was vitally important to let Ghana know, to let Africa know, that there are students at Stanford Law School willing to take up "hammers" to help them, and that Stanford Law School can and will successfully extend its reach across oceans and into neglected corners of our world. ■