

MARKETA TRIMBLE BECOMES THE  
INAUGURAL SAMUEL S. LIONEL  
PROFESSOR OF INTELLECTUAL  
PROPERTY LAW<sup>†</sup>

Marketa Trimble\*

Dear Mr. Lionel, Mrs. Lionel, Honored Guests, Faculty, Colleagues, Boyd Students, Family, and Friends:

It is a great honor to address you today as the first Samuel S. Lionel Professor of Intellectual Property Law.

When I was asked to speak to you today on this occasion, I enthusiastically agreed. I am delighted that UNLV, Boyd, and I personally have this opportunity to express our gratitude to Mr. Lionel for the establishment of this chair with a focus on intellectual property law. That this chair exists highlights the emphasis that Boyd places on this dynamic area of law.

It is no small privilege for an institution, and particularly an institution as young as Boyd is, to have the encouragement and friendship of a great supporter, preeminent lawyer, and a true leader in the legal profession.

When I learned that I would be the recipient of a chair bearing Mr. Lionel's name, I did not realize how quickly I would have the privilege of telling my colleagues about Mr. Lionel.

This past fall I traveled to Europe, where I attended a meeting of a committee of the International Law Association, on which I serve. This particular Committee works on problems at the intersection of intellectual property law and conflict of laws—problems that arise in transnational litigation when companies and other parties enforce copyrights, patents, trademarks, and other types of intellectual property rights across international borders.

The Committee has about thirty members, who are from more than twenty different countries. We, the members of the Committee, know each other well

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<sup>†</sup> The speech below was delivered on the occasion of the Investiture Ceremony at which Professor Marketa Trimble became the Samuel S. Lionel Professor of Intellectual Property Law at the William S. Boyd School of Law, University of Nevada, Las Vegas, on February 4, 2016.

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not only from our work on the Committee but also from our other research projects and policy initiatives.

When I arrived at the meeting, a number of my colleagues on the Committee asked me about my new title and about Mr. Lionel.

Mr. Lionel's distinguished military career during the Second World War resonated particularly with my European colleagues. Most of us on the Committee belong to the first post-World War II generation, and share a gratitude and high regard for the Americans who served in the War and helped liberate Europe from the horrors of Nazism. Some of my colleagues know that my family was deeply affected by the War, and that without the people who served their country abroad, like Mr. Lionel, I would very likely not be here today.

I also spoke with my colleagues about Mr. Lionel's career: his teaching at West Point, his renown as a litigator and business attorney in Nevada, his establishing his own law firm, his founding of Project REAL, and the amazing vitality with which he continues to practice law and contribute to the legal profession today. And I could see the admiration of my foreign academic colleagues when I told them about Mr. Lionel's continuing support of UNLV and the Boyd School of Law.

Some of my Committee colleagues from outside the United States were intrigued by my new title because the concept of a named professorship was unfamiliar to them. With no tradition of donations for professorships in their own countries, they did not understand how this type of support for a professorship would work. They expressed concerns about sustainable state support for higher education and about maintaining academic freedom.

These conversations made me realize how fortunate we are in the United States to have a tradition of contributions for academic chairs by private individuals who understand the value of education, research, teaching, and service to the community at large. This support continues and preserves a valuable tradition in the United States: respect for academic freedom, a privilege that is still unknown—or not respected—in many countries in the world.

Explaining to my non-U.S. colleagues how a named professorship works is representative of what we comparative legal scholars do all the time. We translate and interpret elements of legal systems. We explain what the elements are, such as the work-for-hire doctrine in copyright law or the doctrine of equivalents in patent law. We explain how the elements operate within the larger legal system, and what policies and forces have shaped and continue to shape the elements.

Lawyers who are involved in transnational work—be it litigation or transactional work—will study comparative law. Given the increasing globalization we encounter on a daily basis, it would seem that the study of transnational litigation and comparative law would be firmly established in law school curricula. And yet surprisingly, this is not the case.

At Boyd, we are fortunate to have a faculty that appreciates the need for an internationalization of legal education. Whether it be international trade law,

health law, human rights law, gaming law, or other areas of law, Boyd professors research and teach about the transnational aspects of their areas of expertise.

In intellectual property law, my colleague, Professor Mary LaFrance, who initially designed the intellectual property law curriculum at Boyd, is a prominent intellectual property and entertainment law expert who writes about these two areas of law from a comparative perspective.

But regardless of our views at Boyd, comparative law faces a number of challenges in legal education today. Comparative law, by definition, requires the study of foreign law. But it is debated whether foreign law has a place in U.S. courts, and by extension, in U.S. law schools.

I always tell my students that it is important to learn about the ways in which other countries and other societies approach legal problems—even if only to confirm that we are doing it the best way we can at home. If we should explore foreign law only to learn that what we cherish about our own legal system is correct, the exercise is worthwhile. Of course, this study requires that foreign law be taught not in isolation, but in a comparative context.

My background tends to make me partial to comparative law. I have had the tremendous benefit of a legal education in two different legal systems, which is a luxury that most never enjoy; I was able to enjoy this education only because of the support of my wonderful family, my amazing parents, my wonderful parents-in-law, and also my husband and my sister, who are both here today.

At Stanford Law School, I studied with wonderful professors like Professor Paul Goldstein, Professor Mark Lemley, and Professors Deborah Hensler and Amalia Kessler, who are also both here today. They are both experts in transnational litigation and comparative law, and are outstanding mentors to international lawyers like me.

When I practiced law, my work was deeply rooted in comparative law because I dealt with issues of legal harmonization and cross-border judicial cooperation. It is precisely because I worked on legal harmonization and experienced it from the perspective of a country that had its laws dictated by other countries that I fully understand the concerns about uncritical transplantation of foreign law. However, studying foreign law does not necessarily mean uncritically adopting foreign law, and this study is imperative for a modern lawyer—if it is done in a comparative context.

The study of comparative law in legal education is as important in intellectual property law as it is in any other area of law. Whether computer programs or gene sequences should be patentable are not questions that are unique to the United States. Whether the doctrine of exhaustion of copyright should apply to digital copies is a question that most countries in the world struggle with.

Another challenge for comparative law in legal education is that it is one of the subjects that typically doesn't fit into the experiential or practical learning category—a category that receives a great deal of emphasis in discussions about reforms of legal education not only in the United States, but also in Europe and in other parts of the world.

I do not want to discount the need to focus on practical education in law schools. My first law school followed the traditional Austro-German legal education model and contained almost no practical components. I took classes with some wonderful professors but never saw a judge or a courtroom until after graduation. Even back then I thought that this was not an ideal approach, and after some years in the profession I definitely think there is a better way to prepare students for the practice of law.

The question is one of balance. Some members of the bar want to see practice-ready graduates, while others understand that no one can truly be practice ready when they leave law school. Law schools try, and here at Boyd we try very hard, to make sure that our graduates are practice ready as much as possible. We have fantastic clinics. We have a nationally recognized program in legal writing and research. We have a nationally recognized program in alternative dispute resolution. Thanks to the unwavering support of the bench, we can offer valuable externship opportunities with judges. We connect students with valuable internship opportunities. And we even introduce experiential components in our doctrinal classes.

But it will never be enough. Nothing can replace the experience that comes with a daily law practice: dealing with clients, dealing with colleagues in the bar and on the bench, and facing the long-term consequences of one's own professional actions. This is where mentorship by experienced attorneys and judges is irreplaceable. The profession needs wise and experienced mentors. Outstanding members of the profession are an integral component of legal education—a component that cannot be replaced. It is the interaction between academia and practice that completes the process of legal education and advances the profession.

Comparative law is a subject that often falls victim to an emphasis on experiential learning. I do not like to present the two as being in competition with each other—I wish that students could pursue a wide variety of both doctrinal and experiential classes, or that we could teach comparative law as an experiential class. But with limited time and resources, and with the current concerns about producing practice-ready graduates, comparative law does suffer.

The study of comparative law is extremely important for our future lawyers. Comparative law teaches them to appreciate differences, recognize reasons and rationales for differences, and identify the common denominators that help lawyers everywhere to find a common language. These skills transcend the study of law and serve lawyers well even if their practice is focused primarily on domestic law.

Comparative law also achieves another important goal. Professor Eugen Ehrlich, an Austro-Hungarian scholar, remarked more than one hundred years ago—in 1913—in his well-known book entitled “Fundamental Principles of the Sociology of Law,”<sup>1</sup> that when we study our own law we tend to focus on the

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<sup>1</sup> EUGEN EHRLICH, *FUNDAMENTAL PRINCIPLES OF THE SOCIOLOGY OF LAW* (Transaction Publishers 1936).

law in statutes and court decisions. It is typically only when we look across borders and begin to study foreign legal systems that we suddenly realize how different the law is in action from what it is on the books. And this realization sheds new light on our own legal system—it gives us a new perspective that serves all of us well, whether we be lawyers, judges, or policy makers.

The key challenge for any educator is the identification of the essential elements of a basic education. We must constantly ask ourselves: What subjects fall within the irreplaceable category of subjects that teach students to think like a lawyer? And what subjects may be replaced by general legal research instruction that teaches students to research those subjects if the need arises?

The answers to these questions should be considered in light of what we believe a law school's role should be. Perhaps we might all agree that the classes in the category "how to think like a lawyer" should stay. But then we have to agree on the qualities that a lawyer should possess and the functions in a society that a lawyer should serve. Boyd's graduates, in my opinion, should be excellent lawyers, leaders in society, exemplary mentors, model citizens, responsible politicians, and thoughtful policy makers. For all of these roles, I believe that comparative law is one of the cornerstones of a legal education in the twenty-first century.

While comparative legal scholarship in intellectual property law has traditionally been on the margins of interest of U.S. scholars, it is common in other parts of the world. At Boyd, Mary LaFrance and I are building a tradition in the comparative law of intellectual property that recognizes its importance for the practice of intellectual property law and its importance for the broader educational goals of the Law School.

To anyone who questions this direction as the direction in which intellectual property law is headed today, I recommend Justice Stephen Breyer's latest book "The Court and the World."<sup>1</sup> On the very first page of the Introduction, Justice Breyer mentions two cases to illustrate the increasing internationalization of the U.S. Supreme Court's docket. The first of the two cases is the 2013 *Kirtsaeng* decision by the U.S. Supreme Court concerning international exhaustion of copyright.<sup>2</sup> This case is an excellent example of how cross-border issues in intellectual property law shape the modern practice of intellectual property law in the United States and also in other parts of the world.

Mr. Lionel's gift of The Samuel Lionel Intellectual Property Chair to Boyd recognizes not only Boyd's expertise in and focus on intellectual property law, but also affirms the importance of transnational and comparative legal scholarship in intellectual property law.

I would like to thank Dean Dan Hamilton for his initiative and energy with which he has supported the establishment of this chair. My hope is that this chair

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<sup>2</sup> STEPHEN BREYER, *THE COURT AND THE WORLD: AMERICAN LAW AND THE NEW GLOBAL REALITIES* 3 (Alfred A. Knopf 2015).

<sup>3</sup> *Kirtsaeng v. John Wiley & Sons, Inc.*, 133 S.Ct. 1351 (2013).

will solidify Boyd's position on the map of U.S. law schools that lead the country in intellectual property law expertise and also highlight Boyd's commitment to intellectual property law nationally and internationally.

Thank you, Mr. Lionel, for your generous support for this chair and the message that your support represents.