

William O. Hennessey JD '86: *Professor of Law*

Bridging Culture and Knowledge: Innovation and Intellectual Property

"At Pierce Law, we try to bring together people who can extend our vision to the far rim of the globe and of the future. We become better lawyers, and even more importantly, more effective citizens in the global village."

– Professor William O. Hennessey JD '86

Q: Please tell us about your upcoming article, to be published in the *Houston Law Journal*, "Thirty Years (and More) of Intellectual Property Protection in China." What is the focus?

WOH: Houston Professor Craig Joyce teaches copyright law in our IPSI program each year. Last summer, Craig asked me if I would be willing to give the annual Baker Botts Distinguished Lecture in IP Law for the year 2009. I had never written about IP in China to speak of, so the topic was of interest to me. The story goes back to 1979 when I was teaching Chinese language and literature at Oberlin College and worked as an interpreter for the first Chinese science delegation to visit the U.S. after diplomatic relations were established. I decided to write about the transition of China from a very traditional society that lingered on all the way up through the Great Proletarian Cultural Revolution and ended with the death of Mao in 1976, to the modern, more open society we see today. It reminded me of the story about Napoleon Bonaparte in 1816, when he surveyed a map and pointed to China, saying, "China is a sickly, sleeping giant. But when she awakes the world will tremble." He was right.

Q: Briefly, how have China's IP laws and policies and enforcement of those laws and policies evolved?

WOH: That's also a part of the story. Pierce Law founder Bob Rines was very prescient in recognizing China's rise, and education of IP professionals in the U.S. and particularly Pierce Law, has been an important (if not the most important) part of the story of how China has joined the international IP community. As we saw in a recent World Trade Organization (WTO) case, China's laws are very well established, but enforcement is improving more slowly, because China is the size of the U.S. and has four times the U.S. population. Enforcement in the U.S. is bad enough. In China, it's like thinking you can successfully direct traffic for all the fish in the Pacific Ocean.



Q: Your newest textbooks center on international intellectual property law and policy, and particularly comparative IP law and policy. Which countries, acts and treaties are addressed?

WOH: Well, the casebooks are geared to American law students, although they have been used in a couple of European schools as well. So they are not treatises in any sense of the word. The most important pedagogical point I think is to emphasize the role that international law plays in domestic legislatures and law courts. American students do not readily absorb the concept that international law places requirements on the American government and its courts to honor its international obligations. So when the U.S. Congress enacted the Fairness in Music Licensing Act in 1996 and the WTO said the statute violated the TRIPS Agreement, what happened? The other emphasis is on the role of international organizations in the creation of international IP treaties, so the WTO and the World Intellectual Property Organization (WIPO) are important to an understanding of how the international IP system works, and how change comes about.

Q: What is your role as a member of the Advisory Board of the WIPO Worldwide Academy?

WOH: The Advisory Board meets occasionally to review the important work of the Academy, which is now ten years old. As I mentioned before, education is critical to the creation of an IP profession and respect for the concept of intellectual property. It's a lot like our own Advisory Council for IP here at Pierce Law. The word "board" is appropriate, because it's a "sounding board."

Q: Does the U.S. still set the pace for the rest of the world when it comes to IP law and policy practice?

WOH: The U.S. plays a pivotal role in all international IP law and policy discussions. The world is changing rapidly, and change comes slow to the U.S. One example is patent reform, which is not forthcoming yet. But since the U.S. is the most important technology and brand market, the preeminence of the U.S. in international IP law and policy negotiations is unlikely to be seriously challenged in the near future.

Q: In your 2006 article, "What's New? Innovating the Teaching of Intellectual Property Law," published in the *Journal of Intellectual Property Rights*, you address some important "how-tos" for fostering innovation. Last year, in Ghana, you presented at the Second Global Summit on HIV/AIDS, Traditional Medicine & Indigenous Knowledge on lessons for those countries or regions interested in a culture of innovation. For those countries or regions interested in — or on the cusp of — entering the competitive side of IP, what comes first, innovation or policy to protect it?

WOH: Innovation occurs in every society on a daily basis with or without IP protection. But, as Abraham Lincoln, who himself had patents, famously stated, patents "add the fuel of interest to the fire of genius." So IP protection is not just about recognizing individual rights; it's also about attracting investment and promoting economic development. My talks in Ghana are "how-tos" in the sense that we are promoting a tools-based approach to economic development. Many developing countries in Latin America, Africa, and Asia have come to realize this. I was there to promote the *IP Handbook of Best Practices* made possible with funding from the Rockefeller Foundation and the Kauffman Foundation and distributed free of charge to low- and middle-income countries. Our own professors, Stanley Kowalski, Jon Cavicchi, and Karen Hersey, were key figures in the creation of that book. Anybody in the world can download it at www.iphandbook.org.

Q: Can you please tell us about some of the things you have done with the United States Agency for International Development (USAID)? What has USAID brought to foreign nations with regard to IP and/or innovation practices?

WOH: The Agency attempts to promote U.S. interests abroad by helping people help themselves. For all its critics, it shows the world the good side of how America works. It's called "soft power." Why spend money on bombing America's adversaries when you can effectively spend a lot less of it to demonstrate to people in poorer nations that America works for them as well as us? My own negligible role has been to participate in USAID-funded projects with the USPTO in developing countries such as Togo, Sri Lanka, and Bangladesh. I learn as much from those trips — or more — than I can ever learn from books about how creative and innovative their peoples are. Developed countries like the United States don't have a monopoly on creative thinking.

Q: What other challenges exist for international IP law and policy practitioners?

WOH: The perennial problem of overcoming domestic protectionism and balancing the relationship between the knowledge "haves" and the knowledge "have-nots." This is not a new challenge. The U.S. refused to protect copyrights of British authors for over a century, because the U.S. Congress wanted Americans to have cheap access to British works. Go to my hometown, Pawtucket, Rhode Island. There you can see the first textile mill in the United States, built in 1790 using technology stolen from James Arkwright in England. Now that the U.S. is an "IP powerhouse," it wants to make sure American authors and inventors are protected abroad. What goes around comes around.

Q: How does your work worldwide help to build connections for our students and alumni?

WOH: The best part of my job is watching the success of our graduates in private practice, national and international organizations, innovative companies, and the non-profit sector. IP is about "knowledge-based assets." Our international network of graduates is key to finding about where the future is taking us.

Hennessey directs the Pierce Law–Tsinghua School of Law Intellectual Property Summer Institute in Beijing, China and was recently appointed by the United States Chamber of Commerce and the United States Embassy in Beijing, to a new intellectual property initiative in China, the Intellectual Property Working Group. The Group is designed to strengthen ongoing collaboration with intellectual property authorities. He is co-author of International Intellectual Property Law and Policy *and principal co-author of* International and Comparative Patent Law.