

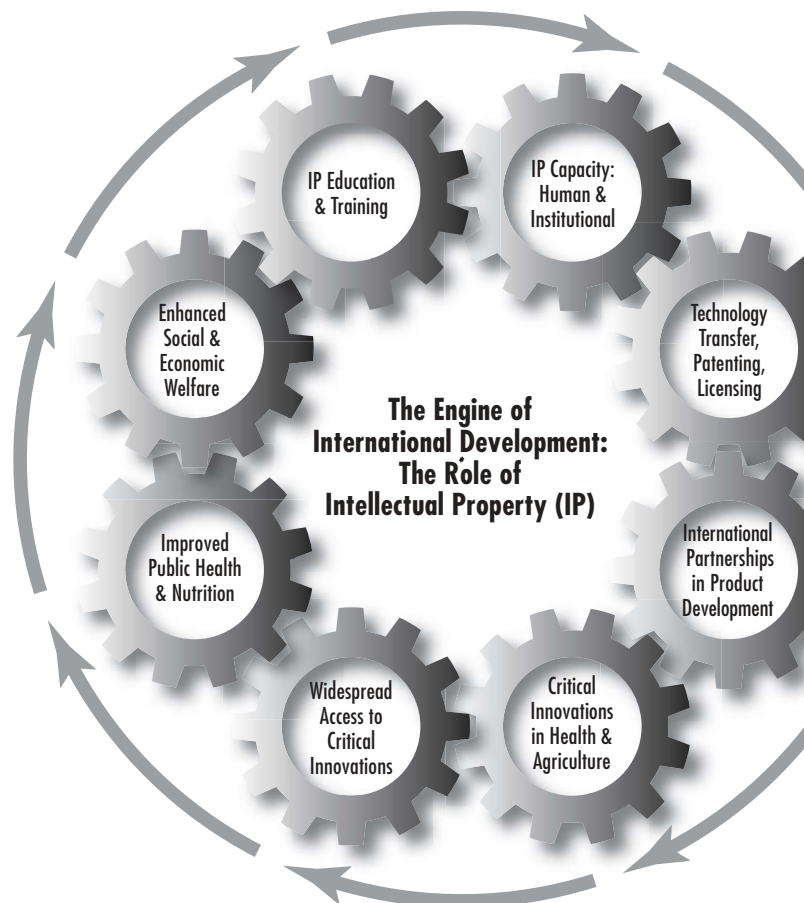
Since its founding, Franklin Pierce Law Center has promoted both practice and policy based intellectual property legal education in the public interest. Professor Ellen Musinsky has long maintained that intellectual property education at Pierce Law works in the global public interest, with broad-ranging humanitarian impact. By providing the knowledge, skills and tools to build a better world, she sees intellectual property capacity as a form of empowerment, advancing the public interest in a wide range of endeavors, including health care, agriculture, environmental protection, technology transfer and software and technology licensing.

Pierce Law has always advocated the value of global intellectual property, whether it is used in the public or private interest. It is the end users, Pierce Law graduates, who decide how to apply their finely honed skills in intellectual property law and management. As Professor Thomas G. Field Jr. astutely observes, “[As] I see it, whether PI is called public interest, social justice or even poverty law, it’s subject matter neutral. Non-profits, for example, have the same trademark and potential copyright issues as anyone. Moreover, they seem to appreciate that when patents are available they foster the aims of the enterprise.” Pierce Law provides a world-class intellectual property education to all of its students, irrespective of their chosen career paths.

# Intellectual Property in the Public Interest at Pierce Law: **Past, Present and Future**

BY PROFESSOR JON CAVICCHI JD '84/LLM '99

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## The Past

Pierce Law cofounders, Dr. Robert Rines and Robert M. Viles were committed to building a law school that trained lawyers of all types who would use the law to promote law and social justice in the public interest. Rines worked with Viles—a bankruptcy and consumer lawyer who initially did not understand how defending patents related to defending or representing the poor. Rines, however, enlightened Viles, elucidating how many inventors, having nothing but a good patentable idea, could be lifted from squalor and desolation into a brighter future. But for Rines this vision was global; educating professionals from developing nations in intellectual property would create a cascade of positive outcomes, providing intellectual property professionals with an enhanced ability to evaluate options and thereby make informed decisions.

In the 1970s and early 1980s, the intellectual property faculty including Rines, Robert Shaw, Homer Blair and Thomas G. Field Jr. used intellectual property to help many small inventors, first individually, followed by a number of intellectual property clinics that have helped many clients with good ideas.

Intellectual property education in the public interest by Pierce Law has spanned the globe. On the national level, the Academy of Applied Science, a private nonprofit, tax-exempt organization chartered by Rines for the purpose of promoting creativity, invention and scientific achievement, has been recognized as an educational resource center offering enrichment programs for students and professional development for teachers and educational administrators. Field has educated thousands with his highly acclaimed booklets on the fundamentals of intellectual property that now appear in updated versions on the Pierce Law website. Field authored the lead article in a publication, entitled *Focus on Intellectual Property*, released by the U.S. Department of State Bureau of International Information Program in 2006. In addition, Rines regularly and freely invited influential decision-makers from developing nations' governments, industry and nongovernmental institutions to attend classes and programs on the types, structure and role of intellectual property. Both Rines and Blair also assisted developing nations by participating at other institu-

tions, and Blair trained representatives from developing countries at the United Nations.

In 1986, Pierce Law initiated the Master of Intellectual Property program, the first of its kind in the United States to train intellectual property professionals, administrators, lawyers, engineers and entrepreneurs from developing nations who intend to specialize in the study and practice of global intellectual property and licensing. This interdisciplinary program was designed to provide substantive knowledge and practical skills through coursework and externships, building practical intellectual property capacity for use in developing nations. The program has trained patent, trademark and copyright professionals from throughout the world, fostering technology transfer, innovation and increased economic development.

## The Present

The tradition of linking intellectual property to public interest continues today in many new and exciting ways. Pierce Law recently participated in activities with Public Interest Intellectual Property Advisors (PIIPA). Michael Gollin, PIIPA founder and chair, has noted that, despite the ongoing policy and academic discussions about the complex global role of intellectual property, little has been done to address the practical needs of developing countries and public interest organizations for access to intellectual property expertise on a case-by-case basis. In developing countries, there is an exponentially growing need for properly trained intellectual property professionals. This is where Pierce Law fills a critical need. As the role of intellectual property in global development increases, so too has Pierce Law's commitment to provide educational opportunities for professionals from around the world, thereby building intellectual property capacity toward a brighter future.

### **Professor William O. Hennessey '86 Pioneer Scholar, Visionary Leader**

Professor William Hennessey '86, a visionary leader in building intellectual property educational programs for professionals from developing countries, has a unique perspective on the interaction between intellectual property and public interest. "My view has been that IP and PI have always been connected.

Tom [Field] and I for many years counseled individual walk-in inventors about their options. Many times, these inventors were driven by the idea that they could improve life for ordinary people. They weren't just in it for the money." Hennessey's vision, however, is much broader, truly global in perspective. "A second theme is the empowerment of local communities ... particularly in developing countries. Innovative people exist in all societies. They need a voice, because the usual situation is that the 'powers that be' favor the status quo. This is particularly true for wealthy elites in static societies who don't want new ideas taking away their meal tickets. So how do you light a fire under policy-makers to encourage them to support innovation and the new kid on the block? Intellectual property protection takes it as a given that creative, inventive, entrepreneurial people have rights to their creations, inventions and entrepreneurial endeavors."

Since arriving at Pierce Law in the 1980s, Hennessey has been involved in every aspect of intellectual property in the public interest. His areas of expertise are remarkably broad and deep, including intellectual property, international law and world trade. Hennessey has a remarkably sophisticated understanding of complex, interdisciplinary fields ... where law, policy, technology and international development intersect. In addition to being a scholar of Chinese language and literature, Hennessey has participated in the clinics that assisted small inventors, was instrumental in the founding of the Master of Intellectual Property program and established the China Intellectual Property Summer Institute (CHIPSI) in Beijing. He has also participated in major initiatives with organizations, such as the World Intellectual Property Organization (WIPO), that foster intellectual property in the public interest for sustainable development, global access to health and medicine, as well as issues relating to traditional/indigenous knowledge. Professor Hennessey's visionary leadership continues to be an inspiration to generations of Pierce Law students.

### **Intellectual Property Clinics**

The Intellectual Property and Transaction Clinic under the direction of Ashlyn Lembree, assistant clinical professor, is a live-client clinic where students conduct interviews, research and draft documents and advise clients in a variety of intellectual property and transactional matters. The Clinic regularly accepts referrals from the New Hampshire Chapter of Lawyers for the Arts. Clients include authors, artists, musicians and publishers, with issues pertaining to copyright and trademark registration and protection, licensing, small business transactions, as well as assistance forming and managing non-profit corporations. It serves a critical public interest role for New Hampshire.

Long intrigued by the possibility of involving more students, Field, encouraged by colleagues and members of our Advisory Committee on Intellectual Property, proposed creation of an Intellectual Property Amicus Clinic. Earlier, in 1997, Field, with the able assistance of Gary Bridge '99, wrote

an amicus brief supporting the U.S. Patent and Trademark Office (USPTO) before the Federal Circuit in the landmark *Zurko* case. Since then he has filed or joined other professors in submitting amicus briefs in several U.S. Courts of Appeal and the U.S. Supreme Court.

The new Pierce Law Intellectual Property Amicus Clinic, under the direction of Field, was created in 2006 to provide students with hands-on training in analytical and persuasive writing as well as immersion in the practical, legal and policy foundations of a the United States intellectual property system. The Clinic also gives Pierce Law a public voice in supporting a strong intellectual property system. Students work with the instructors in preparing friend-of-the-court briefs in matters before the U. S. Supreme Court, various U. S. Courts of Appeals and state supreme courts. Students may also assist in drafting commentary on proposed legislative or administrative action affecting intellectual property law.

Most recently, Richard Castellano '06 and Taylor Evans '07 helped prepare an amicus brief for the *eBay* case. Such activities have also encompassed legislative and administrative proceedings. Alicia Novi '07 and Kate Winstanley '07 recently helped prepare a USPTO rulemaking petition.

### **Social Justice Institute**

Pierce Law's Social Justice Institute (SJI), under the direction of Professor Megan De Vorse, advances the cause of social justice through legal training and project development. Advocating for social justice and providing access to justice for all, while working in financially and personally rewarding law practices and organizations, are the guiding principles of the SJI. The goals of the Institute are to train lawyers to provide affordable, high-quality legal services accessible to all, to advocate for social justice and to creatively explore and develop successful, innovative practice models for delivery of legal services in our constantly changing society.

De Vorse views Pierce Law education and support to developing nations as a means of reaching out for the betterment of all, the very essence of what it means to be a lawyer. De Vorse raises awareness of such opportunities, helping intellectual property students to expand their visions to include public interest endeavors.

### **Professor Albert "Buzz" Scherr and the American Civil Liberties Union**

Intellectual property and civil rights—how many people would make this connection? The American Civil Liberties Union (ACLU) has dealt with a number of intellectual property issues over the years. Recently, Professor Albert "Buzz" Scherr agreed to serve as chair of the Patents and Civil Liberties Committee of the national ACLU when the Supreme Court *LabCorp v. Metabolite* case caught the attention of ACLU staff attorneys.

The Court's deliberations should specifically include First Amendment aspects of the case. *LabCorp's* infringement

conviction was based on its publication of articles telling doctors how to interpret the results (half of Metabolite's patented method) of a blood test LabCorp did for them (the other half of Metabolite's patented method). However, since regulating publishing via the Patent Act triggers the First Amendment, it should be addressed by the Court, as the issues presented are situated in the gray zone between patent rights and First Amendment freedom of speech rights.

Such gray zones of law (at the interface of two legal doctrines), often the most complex and challenging subject areas, are precisely where pioneering Pierce Law professors, such as Scherr, so willingly tread and so thoughtfully make significant legal and scholarly contributions.

### **Controversial Debate—Open Source and Accessibility of Technology**

As access to and reliance on Internet resources increases worldwide, concerns about fair and equal access to these resources are also increasing. Current concerns include building a global public domain of open source materials, copyright law and privacy. The focus of these efforts has naturally followed the growth pattern of the Internet, with the primary historical focus being on the United States, Europe and parts

lawyers who create legal policies for a European Union-based project that aims to build a free software Internet portal providing educational and learning materials.

Wong also works with an informal group that was created at the inaugural Internet Governance Forum in 2006. A “dynamic coalition” working toward free expression and greater access to knowledge on the Internet, its members include academics, representatives from leading corporations, such as Google and Sun Microsystems, as well as various NGOs/advocacy groups.

### **Emerging Initiatives**

As mentioned earlier, in 1986 Pierce Law established the first international, interdisciplinary program in intellectual property rights education in the United States, with specific focus on educating intellectual property rights professionals from developing nations on how intellectual property rights systems work. Over the past two decades, government officials, tech-transfer professionals, research institute administrators and lawyers from over 95 countries have attended these programs, supported by many public and private institutions, including WIPO, the U.S. Agency for International Development (AID) and the Fulbright Program.

“Intellectual property capacity fosters invention and drives innovation, raising standards of living and promoting international economic development.” — Dr. Stanley Kowalski '05

of Asia. Attempts to analogize Internet issues to locally relevant statutes or norms can lead to complicated and unpredictable legal scenarios where the law of the Internet is still nascent, or when international treaties or laws of foreign nations regarding open source materials, access, privacy and censorship are involved.

Recently, the Student Intellectual Property Law Association (SIPLA) convened a symposium to study the constitutional balance of protecting the content rights of special interests groups and the mandate to enhance the public domain. A controversial topic, the tension is not new. Pierce Law has not yet taken a position on the public policy of open source issues.

Professor Mary Wong has been most involved in this area of law. Her classes on copyright and emerging technologies demonstrate her interest in copyright issues in the public interest. She is a member of several organizations that address these issues, including the Freedom Task Force, an initiative of the Free Software Foundation Europe, an international group of lawyers providing ad-hoc advice and updates on legal issues affecting free software; and the Scientific Education and Learning in Freedom (SELF) Legal Experts Group, a group of

Recently, Pierce Law participated in projects organized by two organizations created by the Rockefeller Foundation in response to the changing environment on intellectual property in health and agriculture: the Public Intellectual Property Resource for Agriculture (PIPRA), an organization that seeks to facilitate access to intellectual property in order to foster the development and distribution of improved crops, for use in developing countries; and the Centre for the Management of Intellectual Property in Health Research and Development (MIHR) which seeks to promote access to health technologies in order to improve the well-being of poor people across the globe, via improved management of innovation and intellectual property in research and development.

Both PIPRA and MIHR share the common goal of facilitating best practices in the management of public sector intellectual property. These organizations view intellectual property as a tool for fostering innovation that should neither be unduly feared nor blindly embraced, but rather managed to maximize the benefits of innovation for all of society, especially for the poor.

With PIPRA, Pierce Law has provided assistance in evaluation of patent landscapes associated with agricultural

biotechnological applications having specific potential for distribution and use in developing countries. These studies have been conducted as part of an upper-level Intellectual Property Research Tools course taught by Professor Jon Cavicchi, with a patent literature survey produced by the students serving as both a graded report and also an informational document delivered to PIPRA. In a second phase of this project, led by Michelle Temple '01 of DEKA Research, students assemble the results of the patent survey, conduct additional analysis and then explore freedom to operate considerations.

In 2006, several members of the greater Pierce Law community participated in a meeting organized by MIHR, "Intellectual Property Management Strategies to Facilitate Early Access and Global Health Benefits: Case Studies in Pandemic Influenza and Malaria," held at WIPO in Geneva, Switzerland. The objective was to explore and discuss intellectual property and licensing issues that impact the distribution of vaccines to developing countries, a topic of heightened worldwide importance given the looming threat of a global influenza pandemic.

Pierce Law also made significant contributions to the recently published *IP Management in Health and Agricultural Innovation: A Handbook of Best Practices*. The *Handbook* is a joint PIPRA/MIHR project, prepared for policy makers, leaders of public sector research establishments, technology transfer professionals, licensing executives, scientists, the legal profession and the philanthropic community. A resource that is as comprehensive as possible on current intellectual property management issues and approaches, the *Handbook* offers information and strategies for utilizing the power of intellectual property while remaining aware of how it relates to the public domain. Pierce Law contributing authors include: Professor Karl Jorda, *Licensing know-how and trade secrets*; Visiting Professor of Law Karen Hersey, *Building professional networks: National and international experiences of AUTM*; and Dr. Stanley Kowalski '05, *Freedom to operate: The preparations*.

For more information on the Handbook, please visit: [www.ipHandbook.org](http://www.ipHandbook.org).

## The Future

Intellectual property in the public interest is increasingly a global concern. Among law schools, Pierce Law is uniquely positioned to make significant contributions to this rapidly emerging field. The potential ramifications of such efforts are considerable, as intellectual property capacity fosters invention and drives innovation, raising standards of living and promoting international economic development. The end result is an engine, wherein the "gears" of education, invention, innovation and progress form an interconnected whole, with each "gear" driving the next. (See figure on page 2.)

In particular, building intellectual property capacity in developing countries, via educational and outreach programs, can advance social justice by facilitating equitable access to essential innovations in pharmaceuticals, vaccines and agricultural biotechnologies. This will then promote the global public interest by improving basic health and nutrition, especially

among the poor of developing countries, disproportionately represented by women and children. Stable societies will only be built and sustained, grow and prosper, when such fundamental needs are adequately provided.

Otherwise, disease, hunger and poverty will continue to fuel the engines of despair, instability and war.

A solid foundation of integrity, leadership and vision has made Pierce Law unique among law schools. In a spirit of innovation and entrepreneurship, Pierce Law transforms challenges into opportunities, and, in so doing, empowers colleagues from around the world to proactively work toward finding creative solutions to the intellectual property, technology transfer and legal impediments restricting access to products needed for improving public health and nutrition.

Pierce Law thereby simultaneously promotes the international rule of law, social justice and the greater global public interest.

Pierce Law, now transitioning into the new century, stands at a crossroads, strategically positioned to participate in global intellectual property initiatives that can significantly contribute to advancing social justice and thereby serving the greater public interest. Of course, this involves many challenges; yet these can also be viewed as unique opportunities. As Pierce Law tentatively explores how best to implement its principled mission, and cautiously considers its options, perhaps it is worth recalling how it all began, over 30 years ago, as a conversation between two dedicated, visionary, innovative men.

