



The ISLP News

The Newsletter of the
International Senior Lawyers Project
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Dear Friends:

This issue of the ISLP News reports on my recent trip to Europe to explore the expansion of our volunteer base there. From its inception, an important part of ISLP's vision has been to bring together experienced lawyers from around the world to advance the rule of law, protect human rights and promote equitable economic development. We know that the world needs varying perspectives on these critical themes and that the experience of lawyers from different legal traditions and systems is desired in many developing countries. We also believe that bringing together lawyers from different democratic traditions can promote more thoughtful approaches to human rights and other issues in the volunteers' home countries. For all of these reasons, we hope in the coming year to significantly expand our recruitment of international volunteers.

The main topic of this issue, however, is ISLP's work to protect freedom of expression and information.

This focus gives me particular pleasure because it provides an opportunity to recognize the invaluable contribution of one of our founding Board members, Richard Winfield. Dick is a media law expert and former outside counsel to the Associated Press, who retired as a partner with Clifford Chance Rogers & Wells in 2002. He then embarked on a second career dedicated to promoting media law freedom worldwide. He organized ISLP's Media Law Working Group, presently consisting of more than 25 outstanding media lawyers in the U.S., Canada and the UK, and has been instrumental in establishing our partnership on media issues with the Open Society Justice Initiative. As a member of our Executive Committee and our Treasurer, Dick has been dedicated to ISLP in many ways. I and all of us at ISLP, Board and staff, would like to take this opportunity to thank Dick for his outstanding service to us and to the world community.

Sincerely,

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Executive Director

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Freedom of Expression: Interview with Dick Winfield



First, thanks to my ISLP colleagues for suggesting this interview.

1. Can you tell us a little about your work and involvement with ISLP?

For about 35 years, I was general counsel for the Associated Press while a partner at Rogers & Wells, which became Clifford Chance US LLP. In

that job I defended many hundreds of libel suits and other litigations involving reporters' privilege, access to courts, prior restraints, invasions of privacy, copyright, newsgathering torts--the gamut of a fascinating media law practice. In the early 1990's, I began volunteering for the Central European and Eurasian Law Initiative (CEELI) of the American Bar Association and helped coordinate its media law reform pro-

gram in the former Soviet bloc. Our *pro bono* projects working with lawyers, judges, journalists and parliamentarians gave me valuable lessons in the regulatory climate for the media in that region.

Seven years ago Tony Essaye, a Clifford Chance Rogers & Wells partner and long-time friend, and Bob Kapp, a partner at Hogan & Hartson, invited me to join them to start ISLP from scratch. What began as an idea in 2000 has produced a remarkable NGO of experienced lawyers who last year alone devoted nearly \$6 million worth of *pro bono* legal services abroad. Through ISLP, as well as continued work with CEELI, I have continued to both develop and volunteer for foreign assignments to help liberalize media laws, while teaching media law at Brooklyn, Columbia, Fordham and St. John's Law Schools.

2. What are some of the key projects of the Media Law Working Group?

One of our most successful projects, in my view, was our assistance to the Russian NGOs JURIX and the Moscow Media Law and Policy Institute. These were three libel cases brought against Russian journalists for articles they wrote about local politicians. In a significant decision, the European Court of Human Rights ruled that the cases went to the heart of free speech and were thus admissible. In its opinion, the Court cited arguments developed by ISLP lawyers. According to the Executive Director of JURIX:

" [ISLP] was the first [to] draw our attention to these extremely important Russian cases and issues. . . . Our work [on] these amicus briefs gave start to a new direction in JURIX's activities. Namely, we made freedom of expression our main area of concern for the current moment, and have already started our cooperation with journalists' societies and associations."

ISLP's technical assistance and training work has extended to Asia, Africa and the Middle East. In addition to writing *amici* briefs in cases before foreign courts, we have participated in workshops for media lawyers, academics and journalists in many developing countries, including Algeria, China, Jordan, Kuwait, Macedonia and Romania, among others. Our members have been asked by foreign journalists, governments and NGOs to provide assessments for bills

regulating the media. They have researched and written dozens of assessments of legislation covering such topics as broadcast regulation, state secrets, defamation, limitations on ownership of media outlets and freedom of information.

We've also recently sent a media law expert through ISLP to work with the Media Foundation of West Africa for a two-month mission funded by the Open Society Justice Initiative.

3. Can you explain some key differences in European and US approaches to free speech?

The First Amendment provides powerful protections for the American media. *New York Times. v. Sullivan* and its progeny greatly reduced the chilling effects of libel suits. The Pentagon Papers case imposes almost insuperable legal burdens on the government when it seeks to stop the presses. Nor may the government dictate what newspapers must publish. When the media publishes legally obtained information that is accurate and of public concern, the First Amendment protects the media against liability. The First Amendment generally prevents government from proscribing expression because it disapproves of the ideas expressed. Thus, we might say that there is an American *ecosystem* of remarkably free expression.

The European Court of Human Rights, which has jurisdiction over 47 member states, is also developing a robust freedom of expression jurisprudence, but it is considerably less libertarian than that of the United States. The Court has issued numerous judgments providing protection for the media in civil libel actions brought by public officials. However, while often critical of criminal defamation and insult law prosecutions against the media, the Court has not yet categorically repudiated these laws as repugnant to a democratic society. Nor has it yet treated prior restraint with the kind of constitutional disdain expressed by the U.S. Supreme Court. The European Court has tolerated convictions under national hate speech laws, having found that protection of free expression, if the latter is sufficiently offensive, must yield to historical and political imperatives.

4. What do you consider as key worldwide issues that ISLP should focus its media law work on in the near future?

Our goal is to help create legal enabling environments for a free and independent media. There is no dearth of challenges. Among the most important:

1. Countering efforts led by China and other repressive regimes to impose content controls on the Internet and other new media.
2. Eliminating or curtailing the scope of criminal defamation and insult laws.
3. Opposing state ownership and control of media outlets.
4. Enacting and implementing freedom of information laws that are comprehensive and effective.
5. Protecting journalists from physical harm by bringing legal actions against abusive governments and forcing prosecutors to aggressively pursue perpetrators of harm. I sadly note that as this newsletter goes to press, there is a report of the murder of a journalist in Kyrgyzstan, an ominous sign of the decline of press freedom in Central Asia.

CIVICUS' Early Warning System

The full realization of the right to freedom of expression and association requires a healthy and diverse civil society. Yet many countries in the world enact laws that repress civil society and constrict the space in which citizens can join together and speak out. CIVICUS, based in Johannesburg, South Africa, is leading the global fight against those repressive laws -- with a little help from ISLP. Recognizing the need to complement its use of political advocacy with a legal approach, CIVICUS requested assistance from ISLP for two important projects. The *Civic Space Barometer* aims to give users a measure of the health of civil society space and to identify areas in need of urgent intervention, while the *Early Warning System* will tap into CIVICUS' networks to broadcast threats to civil society and mobilize effective responses. Joe Hahn, a retired partner of the firm Bernstein Shur in Portland, Maine, spent four months in Johannesburg this spring helping CIVICUS get these two initiatives off the ground. He also analyzed proposed laws from a range of countries for potential threats to civil society. Now returned, Joe continues to provide advice from his home in Maine.

Attempt to Silence Russian Journalist Through Forced Hospitalization



In June 2007, Russian journalist Larisa Arap wrote an article in which she was critical of the care provided to children in a state-run psychiatric institution in Murmansk. Not

long after its publication, Arap found herself involuntarily detained in that same psychiatric hospital after visiting a local clinic to obtain a routine health certificate necessary for renewing her driver's license. Ms. Arap endured several weeks of confinement and involuntary "treatment" for mental illness that she claims was conjured up as a result of her article. After 47 days, she was finally released. The international NGO Mental Disability Advocacy Center (MDAC),

agreed to represent her in bringing her case to the Russian courts.

"I was detained against my will. I was injected with drugs without my consent, I was tied to a bed for a day, and I was threatened and beaten up by staff. I hope the appeal court will see this situation objectively."

Responding quickly to a request from MDAC, ISLP was able to enlist the research and writing assistance of partner Jim Messenger of global law firm Weil, Gotshal & Manges on key issues related to psychiatric detention. ISLP will continue to closely monitor the investigation into Ms. Arap's case.

Media Law Volunteer in the Field: Accra, Ghana



Dan Byron brings decades of experience defending the right to free speech to the shores of West Africa. Dan, a media lawyer from Indianapolis, is volunteering for two months with the Media Foundation for West Africa. The goal: to improve media freedom in the region by pursuing litigation to end governments' impunity for violence against journalists and media organizations, and to challenge repressive laws aimed at silencing free expression. The Foundation, based in Accra, Ghana, has already established a network of dedicated lawyers in countries throughout West Africa. Prof. Kwame Karikari, the Foundation's Executive Director, asked ISLP to provide a seasoned media litigator and strategist to help coordinate the efforts of the network while mentoring and training a permanent staff member to lead the Foundation's legal activities.



ISLP volunteer Dan Byron with MFWA staff.

Among the key cases Dan will be working on are the murder of journalists in Burkina Faso, the Gambia, and Sierra Leone; the illegal closure of radio stations in the Gambia; the Government of Nigeria's frequent use of sedition prosecutions to intimidate journalists; and the imprisonment and torture in the Gambia of a

journalist for 'publishing false information.' In addition, several pieces of legislation in different countries have been slated for challenges.



Dan is a full-time partner at Bingham McHale LLP in Indianapolis and has taken a leave of absence to undertake this assignment. He has been general counsel to the Indiana Broadcasters' Association since 2002, and is also a member of the Media Law Resource Center in New York – serving on the Center's National Pre-Publication Review Committee and its National Trial Committee. He also served as First Assistant U.S. Attorney for the Southern District of Indiana 1968-1969. ISLP is most grateful to Dan and to his firm for providing such generous and important support to foster freedom of the press in Africa.

“For Dan Byron to serve as an ISLP volunteer on this media law reform project represents an ideal match of an experienced and eminently qualified American media law expert with a compelling human rights need in West Africa. This expertise, moreover, is matched by the commitment to pro bono service displayed by Dan and his law firm.”

~Richard R. Winfield, Co-founder, ISLP

ISLP's Vision: A Global Network of Volunteers

From its inception, ISLP has aspired to be international not only in its projects, but also in its volunteer base -- seeking to build a worldwide network of experienced lawyers to promote human rights, the rule of law and equitable economic development. Until recently, our limited resources have made it difficult to realize this vision. We have worked with non-U.S. lawyers in global firms on some matters and have established collaborations with the London-based International Lawyers Project and Advocates for International Development. We have also had some terrific Canadian volunteers, including François Coté and Jim Dube, a partner with Blake Cassels & Graydon LLP.

But there remains a need for volunteers from different legal traditions who speak languages other than English. In the past year, three developments converged to convince us that now is the time to focus on recruiting volunteers from continental Europe. First, we had an increasing number of requests for assistance from NGOs in Francophone Africa. Second, we grew from a staff of two to a staff of five. And third, European lawyers are, as never before, embracing the concept of *pro bono*.

From October 15-19 Jean Berman traveled to Europe to meet with lawyers in Paris and to attend the first European Pro Bono Conference, organized by the Budapest-based Public Interest Law Institute (PILI). In Paris, she met with lawyers from the Paris Bar, the Union Internationale des Avocats, the French Avocats sans Frontieres, and more than a dozen global law firms that have organized a Pro Bono Roundtable.

She came away with two, perhaps contradictory, impressions: first, there is great support among a younger generation of French lawyers for the notion that the legal profession must give back to the community and that the State can no longer be relied on to assure access to good legal services; second, it is not clear whether there is widespread support for *pro bono* among older lawyers. Nonetheless, all the groups expressed enthusiasm for ISLP's mission and she looks forward to future collaborations and the growth of ISLP in France.

The European Pro Bono Conference in Budapest was a resounding success, with 140 registrants, including 90 lawyers and 40 NGO representatives from 19 countries. The conference gave the Anglo-American and European *pro bono* leadership of global law firms a chance to meet and talk about why *pro bono* matters, what firms do, and how their programs can be effectively organized. At the same time, NGOs from Europe learned why and how law firms undertake *pro bono* work, and what it can mean for them. The conference gave Jean an opportunity to introduce ISLP to both firm and NGO representatives, as well as to meet with Gene Sullivan, an ISLP volunteer currently in Moscow assisting PILI's efforts to launch an organized *pro bono* program in Russia.



ISLP Executive Director Jean Berman speaks at the first European Pro Bono Conference in Budapest, Hungary.

This is an exciting moment for lawyers who believe that their profession can contribute significantly to addressing global issues of poverty, injustice, environmental degradation and other pressing problems. A large new cadre of volunteers is being mobilized, and ISLP is pleased and excited to be part of this effort.



Jean Berman, ISLP volunteer Gene Sullivan, and Ed Rekosh and Atanas Politov of PILI.

Focus on Law Firms: Ethiopian Coffee Initiative

The next time you're waiting to order a half-caf Venti Mochacino in Starbucks, take a moment to check out their "Sidamo" packaged coffee in the Black Apron Exclusives line. You will find an exotic coffee that "features a fleeting, floral aroma with a bright yet soft finish." Something you will not find, however, is any claim that "Sidamo" is a brand that belongs to Starbucks. Thanks in great part to ISLP volunteers Bob Winter, Roberta Horton and Anna Manville of the Washington, DC office and Simon Bennett in the London office of Arnold & Porter LLP, the trademarks for Ethiopia's best-known coffee products, Sidamo, Yirgacheffe and Harrar are being registered by the Ethiopian government in markets around the world.



Working with the NGO Light Years IP, the Arnold & Porter team helped the Ethiopia Intellectual Property Office (EIPO) negotiate a license agreement with the corporate coffee powerhouse. The license agreement is part of an innovative EIPO program that is designed to confirm Ethiopia's ownership of the trademarks for these highly prized Ethiopian coffees for the benefit of the over 600,000 small growers who produce it.

The Ethiopian government believes that branded coffee products will command higher wholesale prices - which will enable their coffee farmers to make significantly more from the sale of their beans. In a country where some 80% of its citizens live on less than \$2 a day, this can directly translate to greater resources for food, healthcare, and education.

Nearly three years ago, Ethiopia's coffee sector launched a plan to seek trademark registrations for its specialty coffee brands in the US, Canada and other countries. They also began negotiating agreements with coffee roasters acknowledging the right of Ethiopia to control these brands. However, the road grew a bit rocky when it came to light that major coffee retailer Starbucks already had submitted an application to trademark "Shirkina Sun-Dried Sidamo" in the US, blocking the Ethiopian application for the Sidamo mark. A request by Light Years IP to ISLP for legal assistance drew the Arnold & Porter team into the case.

A year and many rounds of negotiating later, the way was finally cleared. Starbucks dropped its claim in return for a royalty-free distribution and license agreement. They have already begun to promote the Ethiopian fine coffees.

The ability to own and protect intellectual property requires resources that the world's poorest countries often lack. Arnold & Porter's *pro bono* expert advice and action was key to Ethiopia's successful protection of its valuable IP. Says Winter:

"This project has provided a wonderful opportunity to undertake stimulating legal work where the results can make a real difference to a country in a challenging part of the world. That the program developed by EIPO and Light Years IP is one that enables Ethiopia to take advantage of legal and economic tools that are commonplace in the developed world for the benefit of some very poor people is icing on the cake."

Public Defenders Wanted

ISLP is looking for public defenders able to volunteer for 2-3 months in various regions of the world where countries are establishing the Public Defender Office model. Register today at www.islp.org or call Andra Moss at (212) 895-1038.

► Save the Date

Join ISLP in early January for a fundraising screening in New York City of "Taxi to the Dark Side", winner of the 2007 "Best Documentary" award at the TriBeCa Film Festival, directed by Alex Gibney and produced by ISLP board member Don Glascoff.



Introducing ISLP's Newest Board Members



Katherine B. Forrest is a partner in the litigation department of Cravath, Swaine & Moore LLP, where she has represented a variety of companies in high profile and complex commercial litigation. Katherine also speaks and writes on intellectual property, antitrust and competition law.

ISLP appealed to me because of its unique model of using very experienced lawyers to staff extraordinarily interesting and meaningful international projects. I was attracted to the diversity of the projects with the uniformity of quality that ISLP brought to them. Also, ISLP brings something entirely different and much needed to projects: a deep level of experience from their volunteers.



James Sandman is a senior partner in Arnold & Porter's product liability practice advising clients on risk and crisis management and avoidance. He also has experience in a wide range of litigation, including product liability, antitrust, and employment matters.

During my recent term as President of the District of Columbia Bar and in my new role as Arnold & Porter's Senior Pro Bono Partner, I have been working to promote the involvement of senior lawyers in a wide range of pro bono projects. I think the talents of senior lawyers are an underutilized resource in meeting pro bono needs. I know of no organization that has been more creative and effective than ISLP in engaging senior lawyers in significant pro bono work, and I was thrilled to be asked to join the board.



David Lindsey is a partner at Clifford Chance in New York. His practice specializes in international commercial arbitration, commercial litigation, and reinsurance, with a focus on international commercial contracts and power/energy construction projects.

I was aware of ISLP's good work in Eastern Europe and Africa, and have always had great respect for Dick Winfield and Tony Essaye, two of ISLP's founders. ISLP uniquely provides a platform for senior lawyers to make tangible improvements in societies that have not had the benefits of a legal structure supporting individual personal and economic rights. I was honored to be asked to join the ISLP board.

Pro Bono Assistance Helps Raise Awareness of Darfur Genocide

When board member Bob Kapp met Gretchen Wallace, the founder of the nonprofit Global Grassroots, he recommended she call ISLP about their legal needs related to a documentary film project on the genocide in Darfur. Moved by Gretchen's impassioned description of the project, Jean Berman contacted friend Jerry Levine, a partner in the New York entertainment law firm Loeb & Loeb, who in turn called Seth Gelblum, partner and chair of the firm's theatre practice group. Mr. Gelblum, a nationally-recognized entertainment attorney, took on Global Grassroots as a *pro bono* client, representing it in its co-production agreement, with the goal of getting the film out to the public as quickly as possible in light of the tragedies unfolding in Sudan.

The result: "The Devil Came on Horseback", an award-winning film that exposes the genocide in Darfur as seen through the eyes of former U.S. Marine Captain Brian Steidle, who served as a neutral observer there from 2004-2005. *The New York Times* calls the film "an up-close, acutely painful call to action." It is directed by Annie Sundberg and Ricki Stern, produced by Ms. Wallace (Mr. Steidle's sister) and supported by volunteers like Mr. Gelblum, who "was pleased to help Gretchen and Brian bring this story to the public; my work does not often give me the chance to deal directly with such urgent matters, and we were grateful for the opportunity."



Filmmaker
Brian Steidle in
Darfur.

"Brutal, urgent, devastating...an up-close, acutely painful call to action." ~ The New York Times

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Please Support ISLP

ISLP depends largely on the support of the legal community and other individuals who understand the importance of the rule of law and sound legal institutions in addressing poverty, repression, corruption, and despair. Please include ISLP in your yearly giving plans so we can sustain our work and provide more opportunities for you to serve the world community. Please be as generous as possible and send your donations to:

Jean Berman, International Senior Lawyers Project,
31 W. 52nd St., New York, NY 10019

Thank You!

Mission

The International Senior Lawyers Project provides volunteer legal services by skilled and experienced attorneys to advance democracy and the rule of law, protect human rights and promote equitable economic development worldwide. Through the *pro bono* work of retired and active practitioners, ISLP helps governments and citizens develop and implement legal reforms, assists programs that advance the social and economic well-being of people in developing countries, and builds the capacity of local organizations and professionals to meet the needs of their communities.

