ISLP Media Law Volunteers Defend Freedom Worldwide

First Amendment protections aren’t yet adopted across the globe. These lawyers are working to change that.

BY RICHARD WINFIELD

The prominent English barrister Geoffrey Robertson coined the term “secular missionaries” to describe the pro bono media lawyers of International Senior Lawyers Project [islp.org]; they, “who free of charge, take First Amendment freedoms to foreign lands.”

ISLP’s work during the past 19 years is worth noting not just because it’s making a difference, but also because you may have the skills to join the effort.

RIGHTING WRONGS IN RUSSIA

ISLP’s story begins in the Russian Far East when a group of Russian local public officials sent a letter to the presidential envoy in Moscow complaining that the management department of the Russian Supreme Court in the region was engaged in “irregularities” in the sale of timber.

A whiff of corruption was alleged in the officials’ letter. It seems that court employees were selling timber to Chinese buyers for cash. A local newspaper published the officials’ written complaint verbatim. The management department of the court promptly sued the newspaper for defamation. The trial court held that the newspaper failed to verify the information in the complaint, found for the management department, and assessed damages. Appellate courts upheld the trial court.

The newspaper and its founders filed an application with the European Court of Human Rights, often shortened to ECHR. ISLP’s pro bono media lawyers wrote and submitted an amicus curiae brief supporting the Russian journalists. The brief surveyed decisions from the highest courts of major democracies, all of which protected news reports of this kind.

In October 2009 in Romanenko v. Russia, citing and relying heavily on the ISLP brief, the ECHR found in favor of the newspaper’s applicants and directed the Russian government to pay it 3,260 Euros. Importantly, the court held that Article 10 of the European Convention on Human Rights protects a newspaper’s fair and accurate report of nonconfidential official documents.

Eight months later, the Russian Supreme Court adopted a resolution that declared for the first time that Russian media law protects the media’s fair and accurate reports of nonconfidential official documents. The ISLP brief was crucial in creating this newly won press freedom.

CRITICISM ISN’T A CRIME

In September 2019, six Palestinian bloggers had posted criticism of the government and were on trial for violating the Palestinian cybercrime law. ISLP gave their defense counsel an amicus curiae brief in Arabic supporting his clients. The trial judge relied on and cited ISLP’s brief and acquitted all six defendants; it also announced that it would keep ISLP’s brief for future reference.

Then there was the case of a leading Ukrainian journalist working in Crimea after Russia’s illegal annexation in 2014. He posted an anonymous essay opposing the annexation and calling for a boycott of Russia. Russian cybersleuths tracked him down, put him under house arrest, charged him with the crimes of extremism and separatism, and froze his assets.

ISLP and its partners in Kiev responded, quickly obtaining a few thousand Euros from a major grant from the European Union. An ISLP colleague in Kiev converted the currency into rubles and clandestinely smuggled the cash across the border to Crimea. She gave the journalist the cash to pay both for his Russian defense lawyer and groceries for him and his ailing wife.

ISLP then prepared an amicus brief for the Crimean court arguing that international norms protected the nonviolent expressions of a journalist’s opinion. Somewhat surprisingly, the Russian judge imposed only a suspended sentence.

ISLP’s Media Law Working Group lists about 30 media defense
lawyers out of the roughly 2,000 ISLP lawyer volunteers. In 2017, they devoted $920,000 in pro bono hours to defending freedom of expression abroad. Since 2000, all ISLP volunteers contributed more than $100 million in all pro bono legal services, including human rights, economic development, and rule of law matters.

**HOW YOU MIGHT FIT IN**

If you’re an experienced media lawyer, MLWG would welcome you as a volunteer. Indeed, if you have skills in economic development, rule of law, or human rights matters, they would be welcome.

Writing amici briefs in press freedom cases is an important undertaking whether in the ECHR in Strasbourg, France; the Inter-American Court of Human Rights in Costa Rica; or trial and appellate courts throughout the world. ISLP’s briefs have been read by judges in Iraq, Palestine, Angola, Honduras, Morocco, and Strasbourg and by the Inter-American Commission on Human Rights in Washington, D.C.

An analysis of 255 judgments in freedom of expression cases decided by the ECHR between 1994 and 2016 reveals that the media could have filed amici briefs in 57 cases but didn’t. In each case, the court rolled back freedom of expression. The ECHR made some bad media law in those 57 cases, and it directly affects journalists.

In the 19 cases during that same period in which the media in the Council of Europe did file amici briefs, however, the court found in favor of freedom of expression in 11. Applying that ratio to the 57 cases, it’s fair to speculate that, if the media had filed amici briefs, freedom of expression would have prevailed in about 33 cases.

ISLP’s media lawyers also act as trial observers in controversial prosecutions of journalists and their lawyers. Volunteers have observed and reported on trials in Tunis, Tunisia; Phnom Penh, Cambodia; Kuwait City, Kuwait; Ankara and Istanbul, Turkey; and Rabat and Casablanca, Morocco.

Its reports are un sparing in describing show trials: overreaching prosecutors, defense counsel subject to arrest, vague penal codes, biased judges, insults to the rule of law, and foreordained outcomes. The reports are sent to U.S. government officials and diplomats.

**WORKING ON THE GROUND**

Local counsel abroad who defend journalists face heavy odds. MLWG lawyers often assist them on behalf of a journalist in the dock. Not long ago, a British journalist working in the United Arab Emirates was charged with criminal defamation, and his passport was confiscated.

An Arabic-speaking MLWG expert with many years experience as an ISLP volunteer was practicing in the UAE. A member of ISLP’s board worked with the journalist’s local counsel for two years, providing expert pro bono assistance. Finally, they succeeded in convincing the judge to dismiss the charges. The journalist recovered his passport and returned to London.

Another line of our work requires ISLP to train and mentor media lawyers abroad on both substance and professional skills. We help them draft laws, for instance, providing effective access to governmental information for journalists, repealing criminal defamation laws, assuring protection of journalists’ confidential sources, and protecting journalists from harassing suits by public officials who object to critical coverage.

Over a three-year period, ISLP deployed 11 different media defense lawyers to mentor their counterparts and parliamentarians in Bahrain, Kuwait, Yemen, and Jordan on media law issues, notably access-to-information legislation.

In five week-long sessions over a two-year period, ISLP experts trained and mentored media lawyers from Russia, Ukraine, and other former Soviet-bloc countries. Funded by a sizable grant from the European Union, ISLP focused on the press freedom case law of the ECHR and practical skills in handling journalists’ applications to the court and filing amici curiae briefs in press freedom cases.

While we can’t draw a causal connection, an upsurge in applications and amici briefs from Ukraine followed our work there. In its evaluation of ISLP’s performance under its grant, the European Union awarded its volunteers the highest grade, A++, noting that ISLP “substantially exceeded expectations.”

If there ever was a need for competent and committed lawyers to come to the aid of journalists abroad, it is now. In this new Dark Ages of repression, independent journalists are prime targets, not only in such autocratic states as Russia and China but also in some democracies led by populists. ISLP’s work, started in 2000, has really just begun.

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