

NOT TAKING “NO” FOR AN ANSWER



Michael Kieval, Eleanor Gonzalez, and Sean Arthurs

Research is a cornerstone of law. But what's an attorney to do when asked to find and summarize cases of a particular kind in a specific country, only to be told that the country does not publish its cases? That's the situation Washington, DC Litigation associate Michael Kieval faced when he began work on behalf of the UN Office on Drugs and Crime (UNODC).

In the summer of 2007, Shearman & Sterling was asked to assist the UNODC with a project in support of the United Nations Convention Against Transnational Organized Crime. The Convention includes three Protocols, one of which is the “Protocol to Suppress, Prevent and Punish the Trafficking of Persons, Especially Women and Children.” The protocol is the foremost international agreement criminalizing human trafficking. To help countries implement this protocol and to raise greater international awareness about the realities of human trafficking, the UNODC set out to create a database of documented court cases.

According to the UNODC's Martin Fowke, one of the biggest challenges in the fight against human trafficking is a deficit of information. “While human trafficking is universally acknowledged as a terrible practice, the real response globally has been uneven, at best,” notes Fowke. “One of the reasons for that is the common belief that human trafficking is something that happens elsewhere, where people with no connection to us victimize others. In trying to spur greater will and action, you need reputable information. What better source than court records, which all countries will accept as a standard.”

The initial request from the UNODC to Shearman & Sterling was for case information from Japan, Benin, and Guatemala. Kieval expressed his interest. “I had previously worked on a pro bono project that gave me great experience working with the Israeli courts, so I was very interested in the opportunity to learn more about another legal system,” he explains. “I speak some Spanish, so I offered to work on the Guatemalan piece.”

FINDING CASES THAT DON'T EXIST

Since Guatemala operates under a version of Spanish civil law, which does not rely heavily on published cases, Kieval and another DC Litigation associate, Sean Arthurs (at the time a summer associate), were initially told by Guatemalan authorities that there was “no such thing” as a published case in Guatemala, let alone one involving human trafficking. They were also told that court files are sealed by default and can only be accessed by someone with a special permit or a court order. Kieval says he was skeptical and through some additional digging found that, in fact, the Guatemala Supreme Court does publish some of its decisions.



WHILE HUMAN TRAFFICKING IS UNIVERSALLY ACKNOWLEDGED

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After working with the Centro Nacional de Análisis y Documentación Judicial (National Center for Judicial Analysis and Documentation), Kieval and Arthurs learned they could purchase the published case reports, but various barriers continued to arise. Despite persistent efforts, it seemed as if the pair had reached a dead end.

“That’s when the amazingly talented librarians in our Washington, DC office found a legal book-seller that had a representative in Guatemala, who managed to purchase the CD-ROM and printed volumes of case reports and send them to us,” Kieval explains. The team still faced a few technical obstacles, but now that the documents were in hand, work could begin.

Although they have not yet found many human trafficking cases in Guatemala, Kieval explains that while he was waiting for access to the information there, he found some human trafficking cases from Israel to begin populating the database. “As you review the details of these cases it just affirms the effort,” he says. “Even though this is just a small piece of a much larger program, I’m pleased to have the opportunity to contribute.”

LENDING LANGUAGE SKILLS

Kieval and others continue to work on locating and reviewing cases from Guatemala as well as other countries, and he says that associates who have even modest skills in any foreign language should consider becoming involved.

“When I began this work I spoke only basic Spanish,” he says. “Sean had much better Spanish, but if you have even limited language skills you can help. You will probably surprise yourself with how much you know; plus, it’s an excellent opportunity to learn more about other legal systems.”

The UNODC’s Fowke also encourages and invites others. “Our intent is to create something that is practical and useful to a wide range of people in their day-to-day efforts working against the trafficking of persons,” he says. “Step one is to collect the information. That’s why having a firm like Shearman & Sterling working with us – with the expertise and global resources it has – is so very valuable.” To better understand the issues facing those who are trafficked, Fowke invites people to visit the UNODC website (www.unodc.org).

In addition to Kieval and Arthurs, other Shearman & Sterling team members who have contributed to the UNODC project include: associates Eyal Dror, Adam Samarillo, and Rachel Schipper; business and administrative attorney Rachele Abrahami; legal assistants Tal Machnes and Sin-Lei Ng; research librarians Eleanor Gonzalez and Jill Sidford; and pro bono specialist Jorge Escobedo.