

“ IT'S IMPORTANT FOR GOVERNMENTS TO RECOGNIZE THAT INDIVIDUALS' LEGAL RIGHTS DO NOT EXIST IN A SOVEREIGN VACUUM... ” —ASSOCIATE STEPHEN PENNER

Shearman & Sterling's involvement with the International Criminal Tribunal of Rwanda (ICTR) began in the late 1990s. The Tribunal was established by the UN to prosecute those responsible for genocide and other serious violations of international humanitarian law committed in Rwanda and neighboring regions between January 1 and December 31, 1994.

Unlike most pro bono cases, which arise following a request from a client, agency, or organization, Shearman & Sterling actively pursued the opportunity to be involved in this significant international court proceeding. What began as a small research assignment with the ICTR grew into an externship program, in which a Shearman & Sterling associate participates in the Tribunal for one month. The firm has been sending associates to Arusha, Tanzania, where the court is located, nearly every month since the Fall of 2000. Approximately 70 Shearman & Sterling attorneys from nine different offices have participated in the externship since its inception.

Stephen Penner, an associate in the Asset Management group, returned from his externship in October 2008. Penner had previously gained experience working with the Rwandan legal framework and court systems during a Lawyers Without Borders project involving the property and inheritance rights of orphans, making him an ideal candidate for work with the Tribunal.

WORKING WITH THE PROSECUTOR'S OFFICE

When he arrived in Arusha, Penner was assigned to the office of the prosecutor and assisted a team of African attorneys in drafting the closing brief in the appeal of four Rwandan government cabinet members. The officials had previously been jointly tried and convicted of committing numerous acts of genocide by the Tribunal, and each had been sentenced to life in prison. Although the court proceedings follow international law, the sentencing follows Rwandan law, in which there is no death penalty. Penner reviewed hundreds of pages of harrowing factual evidence and gripping witness testimony to produce a succinct legal argument.

“The prosecution's central thesis – and the reason these ministers were jointly tried – was that they had



Stephen Penner (middle) with the Shearman & Sterling driver (left) and a Masai warrior guard (right) at the Shearman & Sterling house in Arusha, Tanzania

conspired to commit genocide,” explained Penner. “Proving the existence of a conspiracy is one of the most difficult tasks in criminal law. It requires that one examine the totality of the facts and make an argument that there is no possibility events could have aligned as they did had these individuals not meticulously planned their activities ahead of time.”

In building this argument, the prosecution had examined the officials' rise to power and their engagement in propaganda during the early 1990s. However, during the appeal process, a bench ruling stated that, because the mandate of the court concerned acts that took place in 1994, the prosecution was not allowed to introduce any evidence that took place prior to that date. “As a result of this ruling, we had to reconsider a lot of the facts on which we had previously based our argument,” Penner recalls.

PROTECTING HUMAN RIGHTS THROUGH INTERNATIONAL NORMS

Although the final judicial ruling on the appeal is not yet known, Penner feels the significance of Shearman & Sterling's involvement in the ICTR is much more far-reaching than any one case.

“I see the application of international law as a movement towards a more supranational system that can protect human rights through international norms rather than the idiosyncrasies of individual nation states,” says Penner. “It's important for governments to recognize that individuals' legal rights do not exist in a sovereign vacuum and that's why what's happening with the ICTR is so important. It's bringing the rule of law to a situation that had been the complete antithesis.”