



Vol. 4, No. 1

Spring 2012

## **Strengthen the Bond**

by Anton Maurer, Chair of SWIICL Advisory Board .....2

## **What's Going On?**

by Mark P. Smith, Director of SWIICL .....3

## **We Want to Be the Hub**

by Jordan W. Cowman, Editor of SWIICL Newsletter .....4

## **The Attorney-Client Privilege Across Borders**

by Editor Jordan W. Cowman.....5

## **A Strategic Plan for the Institute**

SWIICL Executive Committee ..... 6-7

# Strengthen the Bond

by Chairman Anton Maurer

I write the Chairman's Column for this newsletter with great pleasure. There are several good reasons for this:

First, I am very happy to welcome Jordan W. Cowman as the new Editor in Chief. This is a great step forward, and I look forward to many timely newsletters which should strengthen the bond among our members. Hopefully, the newsletter will encourage many of our Academy Alumni to join SWIICL as an alumnus/a member.



Anton Maurer

Second, SWIICL looks forward to the Academy's Latin America Reunion which will take place in Santiago de Chile on April 26 – 28, 2012. We will have a great program, and enough time to socialize and deepen professional relationships. I am proud to say that even members from outside Latin America will participate in this event. I want to thank especially Jorge Carey, Alex Maculus, Anibal Sabater, Marcelo Sanfeliú, Fernando Eduardo Serec, and Mark Smith for the organization of an outstanding program.

Third, we are looking forward to the [49th Academy of American and International Law](#) from May 20 – June 29, 2012. Again, we will have a great and outstanding faculty, and I hope that you will not miss the opportunity to send one or more of your excellent young lawyers to participate in this focused program. Again, we offer the opportunity for participants to graduate as a Fellow of the Academy.

Fourth, I want to thank Dick Thurston for an outstanding job as Chair of the 2012 Symposium [Managing Risks and Potential Liabilities in Uncertain Times – The Duties and Responsibilities of the International Lawyer](#). It will be held on June 19 and 20, 2012. I have seen the draft program and I know that it will be extremely timely and interesting.

Fifth, the Executive Committee worked hard in the last months to prepare a strategic plan for SWIICL. We filed a preliminary plan with the Executive Committee of the Board of Trustees of CAIL subject to the discussion and final approval of the Board of Trustees. Therefore, we will meet on June 18 for a substantive meeting of the Advisory Board. We want to have your participation and input. Please come and put your ideas forward. The Executive Committee hopes that your ideas will improve our preliminary strategic plan and that the plan will lead to your increased involvement with SWIICL. Therefore, please mark your calendar and try to join us for this important meeting.

Finally, I hope you will enjoy reading this newsletter. We all hope that you will contribute to our newsletter and that you will make it to an interesting exchange of ideas and information. Please tell us how we can make this newsletter relevant for you.

I look forward to meeting many of you in June.

Best,

**Anton Maurer**

CMS Hasche Sigle, Stuttgart  
Chair, SWIICL Advisory Board

# What's Going On?

## Director's Report by Mark Smith

With this issue, we are launching a new newsletter. It is intended to be a source of information for our members and for international lawyers around the world, a forum for the discussion of important issues, and a way for members, alumni and friends of SWIICL to stay in touch with one another. We hope you will read it with interest and that you will send us news and stories to use in future editions.

On the subject of news, there is much to report. First, I am pleased to welcome Jordan W. Cowman, a member of the Advisory Board and a partner at Greenberg Traurig in Dallas, as our new Editor. You will see Jordan's handiwork in this issue and in all future issues of the newsletter.

Jordan's appointment is one of the first actions taken as part of a newly-adopted [Strategic Plan](#) for the Institute. Several months ago, the Institute was asked by the Center's Board of Trustees to review current activities and develop a plan for the future. We started by asking our members to complete a survey last fall. We took the results and, with the help of the Institute's Executive Committee, created a three year strategic plan. For a copy of the plan, which focuses on program and membership development, please [click here](#). The plan will be the subject of an Advisory Board retreat this June.

For half a century, the hallmark of the Institute has been its programs, and 2012 is no exception. The 49th annual [Academy of American and International Law](#) will begin in May. We currently have 42 applicants from 17 countries and are ahead of the pace of the last three years. Following a curriculum review by the Advisory Board three years ago, we have modified the 6-week Academy agenda to focus more on lawyering skills like negotiation and legal drafting. The 2012 Academy again features both legal writing guru Bryan Garner, Editor in Chief of *Black's Law Dictionary*, and negotiation expert Eileen Babbitt, Professor at the Fletcher School of Law and Diplomacy and a teacher in the Harvard Negotiation program. For the current Academy brochure, a roster of former participants (they come from 121 countries!) and an application form, please [click here](#).

We are also pleased to announce the June 19-20 [Symposium on Global Markets](#). This year's symposium is being chaired by Taiwan Semiconductor General Counsel Dick Thornton, and his co-chair is Dick Mosher, President of the Dallas Chapter of the Association of Corporate Counsel. Our topic this year – *Risk Management for the International Lawyer*. The world-class faculty includes such distinguished participants as Jose Luis Freire of Brazil, Franco Gianni of Italy, Anton Maurer of Germany and, from the U.S., ExxonMobil General Counsel Jack Balagia. The program is aimed at both in-house counsel and lawyers in private firms. For a schedule and registration form, please [click here](#).

Another hot topic addressed by the Institute is Corporate Compliance. In December, we hosted a very unusual "look behind the curtain" program in which Flowserve Corporation discussed its decision to self-report in an Export Control case. And later this month, we are co-sponsoring a program sponsored by the Dallas Association of Corporate Counsel featuring WorldCom whistleblower Cynthia Cooper. If you would like to come, [click here](#).

The Center for American and International law recognizes that its stature in the international community is directly the result of the involvement and participation of so many prominent international lawyers. We deeply appreciate your support, and we look forward to a partnership that lasts long into the future.

Gratefully,

**Mark P. Smith**

Director, Southwestern Institute for International and Comparative Law



**Mark Smith**

# We Want to Be the Hub

by Editor Jordan W. Cowman

As a long-term member of the Advisory Board and a shareholder at the international law firm of Greenberg Traurig, I am pleased to serve as the new Editor of the SWIICL Newsletter. Based in Texas, my practice is international in scope. I focus on global human capital and cross-border transactions, having handled legal matters touching over 50 countries. My client base primarily consists of US-based companies doing business around the world.



Jordan W. Cowman

The newsletter presents a great opportunity for the SWIICL family to keep in touch, keep up with legal developments, and to stay informed about what is happening with our organization.

Legal changes in our home jurisdictions can at times seem overwhelming. But in this day of globalization, money, people and information cross borders more frequently than ever before in our history. With changing laws and changing enforcement agendas of governments around the world, the job of a lawyer has become much more complicated. Those lawyers who believe they can restrict their practice to their local jurisdiction often are mistaken. Our clients' business often moves internationally. As a consequence, our practices become international in scope.

As our 225 members and more than 2,900 Academy alumni are practicing on a world stage, we need a newsletter that can help keep our lines of communication strong. Our impressive network of members covers 50 countries, from South Africa to South Korea, from the Democratic Republic of Congo to Denmark. We want our newsletter to be a hub of the exchange of useful and interesting information, ideas and updates.

The growth and vibrancy of this organization is a remarkable story of success. The SWIICL community has embraced a strong collaborative effort throughout its history, and we need your help in harnessing the energy of this wonderful group to make the newsletter a valuable part of our community. **The success of this newsletter requires our collective effort, and I am calling on the SWIICL family for assistance. We want to hear from you! Please send me your ideas, short articles, legal developments, and your personal updates, and together we will build on our past success.**

As an example of a short legal update, I include in this newsletter my article entitled [\*\*\*The Attorney-Client Privilege Across Borders\*\*\*](#), which is a summary of a larger body of work I completed recently. We welcome your comments on this article and the newsletter in general, and we especially welcome your submissions for future editions. We anticipate that the newsletter will be published quarterly, and we would like to have copy for the next issue by May 1. We want the newsletter to be useful to you, and welcome your suggestions.

As I humbly take the reigns of this newsletter, I want to say thank you to Anton Maurer, SWIICL's Chair. Anton has provided great leadership to SWIICL. In addition to serving as Chair of the Advisory Board, he has been a *de facto* editor of the newsletter. The Center and SWIICL are deeply in his debt.

Thank you for this opportunity to be of service.

**Jordan Cowman**  
Greenberg Traurig  
Editor, SWIICL Newsletter

# The Attorney-Client Privilege Across Borders

by Editor Jordan W. Cowman

The attorney-client privilege, or as the Legal Professional Privilege as it is often known outside the US, is under seige in European Union antitrust investigations.

When the EU antitrust authorities initiate an investigation into alleged anti-competitive activities, they may launch a “dawn raid,” where European Commission investigators descend upon a business in one of their member countries and seize documents to examine. Certainly, one might think, the general counsel's office is off-limits to these investigators. However, this is not the case. Instead, the general counsel's office can be the first stop for the antitrust enforcement agencies.



Jordan W. Cowman

The attorney-client privilege in the US undoubtedly has been eroded, especially with respect to the privilege claimed between clients and in-house counsel. In jurisdictions outside the USA, however, privilege between in-house counsel and their clients is even much less certain.

In [\*Akzo Nobel Chemicals Ltd. and Akros Chemicals Ltd. v. European Commission\*](#), the European Court of Justice ruled on in-house counsel privilege in antitrust cases. The *Akzo* court determined that communications between in-house counsel and their clients regarding EU competition matters are not privileged. In investigating Akzo for alleged anti-competitive dealings in violation of EU law, the European Commission authorities seized certain documents which included emails between Akzo's in-house antitrust lawyer and an Akzo executive. In the USA, such emails, which apparently involved legal advice between the in-house competition counsel and his client, likely would be privileged. However, the *Akzo* court held that under EU law, in antitrust cases legal professional privilege does not apply to communications between in-house lawyers and their clients.

EU law concerning legal professional privilege and in-house lawyers is, in many cases, quite different from the privilege laws of its 27 member countries. Each country, whether a EU member or not, has its own rules concerning privilege. The stark inconsistencies in privilege laws around the world can be a lurking danger for those lawyers who are not mindful of these differences. For example, where the same evidence is privileged under US laws but not privileged under the laws of the jurisdiction where such evidence resides, is it discoverable in litigation pending in the USA? Following the *Akzo* ruling, clever lawyers are testing that theory with discovery requests seeking such non-privileged information.

Lawyers have a duty to protect the confidential and privileged information of their clients. Any lawyers handling cross-border work for a client should familiarize themselves with relevant privilege laws, or risk waiving privilege as their client's confidential communications are passed across borders. Following proper protocols and procedures can go a long way toward maximizing the reach of privilege.

Adopted January  
11, 2012 by the  
Executive  
Committee, subject  
to review by the  
Advisory Board

The Southwestern Institute for  
International and Comparative Law  
**Strategic Plan 2012-2014**

<b>Mission/Values</b>	<p>Mission: <b>To create a forum to educate - and to promote networking among - lawyers and business leaders by providing world-class programs on topics that examine existing and emerging trends in or affecting international business.</b></p> <p>Values:</p> <ul style="list-style-type: none"> <li><b>Preparation of lawyers to best serve the needs and interests of their clients</b></li> <li><b>Global reach focusing on an international audience that includes lawyers at all levels of experience</b></li> <li><b>Exceptional content, concentrating on best practices</b></li> <li><b>Facilitation of global networks and relationships, and the exchange of knowledge</b></li> <li><b>Reinforcement of lawyers' commitment to the rule of law and to public and corporate social responsibility</b></li> </ul>		
<b>Goals</b>	<p>Provide excellent educational and networking opportunities, increasing SWICL event participation by 20% annually and membership by 10% annually</p>	<p>Expand Organizational Leadership to strengthen involvement in and commitment to the Institute - Increase involvement by 50%</p>	<p>Secure the long-term strength of the Institute by ensuring that income matches expenses and overhead costs by fiscal 2014</p>

1. Pick program topics, sites and times based on target audience needs and program costs.
  - Concentrate on institutional strengths, including the Institute’s worldwide presence and reputation and the breadth/quality of its alumni and Advisory Board.
  - Establish strategic partnerships and collaborations to ensure quality programs with large audiences at the best possible locations.
  - Apply a cost/benefit analysis when selecting and conducting programs.
2. Develop, implement and measure a Marketing Plan, with a focus on branding, timing and pricing.
3. Establish and implement an internal and external Communications Plan, including use of newsletters and electronic communications.
4. Understand and meet needs of existing and prospective members, and focus on a younger and more diverse demographic.
5. Develop ways to retain/renew/expand the involvement of former participants.
6. Leverage technology to more effectively reach our audiences.

1. Establish by-laws.
2. Create Board Committees and establish clear expectations; create well-defined leadership opportunities to promote ties to the Institute; create opportunities to perform meaningful work for the Institute; use committees to leverage the expertise of members and to build on existing relationships.
3. Utilize Academy alumni as a central resource and incorporate alumni more directly into the work of the Institute.
4. Fully utilize CAIL resources and outsource work where needed. Determine optimal staffing numbers and expertise.

1. Set and measure clear financial goals and expectations for all Institute programs and projects.
2. Establish priorities for membership growth and development. Target, in particular, corporations, law firms, and in-house counsel.
3. Establish optimal pricing levels for memberships and programs.
4. Take advantage of new/alternative funding sources such as grants and partnerships.
5. Reduce costs where possible and ensure efficient operations.
6. Explore new technologies, including internet-based education.