



RISKING THEIR LIVES — FOR JUSTICE

4 Stories of
Courage at
the Center for
Constitutional
Democracy

by Elisabeth Andrews photography by Tyagan Miller

From their headquarters in an old house on East 3rd Street, two Indiana University law professors are helping international leaders and revolutionaries build democracy and promote human rights around the world.

No one expected quick results from David Williams' first meeting with the group of refugees, least of all Williams. A Harvard-trained professor of constitutional law, he was well aware of the obstacles facing the men who had made their way to Bloomington from their temporary homes across the country and around the world.

The men were rebel soldiers who had fled Burma (also known as Myanmar) after losing loved ones, and in some cases limbs, in the relentless civil war between the country's military dictatorship and several ethnic-minority armies. For years, rebel soldiers had been fighting and dying to protect their families and villages, but they came to Williams for a longer-term solution. They wanted his help drafting a constitution.

Prior to that day in 2003, David and his wife, Susan Williams, then in their early 40s, had been the ordinary sort of scholars who reveled in ideas and principles. The couple had joined IU School of Law-Bloomington (now the Maurer School of Law) a decade earlier after earning tenure at Cornell University following clerkships with (now-Supreme Court Justice) Ruth Bader Ginsburg, who was then on the District of Columbia Court of Appeals. Both had subsequently received endowed chairs at IU — David became the John S. Hastings Professor of Law in 2001, and Susan the Walter W. Foskett Professor in 2002.

All these academic accomplishments, however, belonged to a world of philosophies and models and concepts. The 12 members of the Burmese Chin Forum, standing at attention in the law school conference room, needed real help.

"The Burmese democracy movement arrived on my doorstep," David recalls. "I had been advising a student on his dissertation, Andrew

Lian, who had been captured by the Indian army after fleeing across the border, but escaped and got to Bloomington with a scholarship from the U.S. State Department. He asked if I would meet with some other expatriates. They knew they needed something that could come after the fighting ended that would secure the people's rights."

In the course of the daylong meeting, which centered on reviewing the provisional constitution the dissidents had written, "We just kind of fell in love with each other," David says. "They were so earnestly engaged. All this time I'd been thinking about constitutions theoretically, but here was a chance for that knowledge to make a difference in the world."

Putting his life on the line

When David committed to the cause, he committed wholeheartedly. He not only advised the Chin Forum, which represented one of seven major ethnic groups in Burma, but also began sneaking into the country in order to meet with other rebel ethnic leaders in the hope of fostering a unified front against the dictatorship. As a consequence of these activities, the name David Williams was put on the government's kill list. Lian chaperoned David on these trips, sleeping with his arms curled around an AK-47 assault rifle.

"I needed to meet directly with the generals heading up the ethnic resistance armies in order to earn their trust," David explains. "I had to do it, because no one else could do it."

He explains that advising the generals required knowledge of constitutional design, a dense web of contacts in Burma, and the physical stamina to get through the jungle at a faster pace than the state military. "The payoff is worth it because the generals are going to listen to me," he says. "They know I'm trying to get them a good deal, and even more importantly, once I say, 'This is a good deal,' they will stop fighting."

Susan, meanwhile, found herself leading talks and trainings for Burmese women who were anxious to participate in the reform efforts. Her involvement began on a trip to neighboring Thailand where, she says, she had planned to be "along for the ride" during David's meetings with various ethnic representatives.

"There were a bunch of women on the constitutional drafting committees who said they really wanted to hear about ways of getting women into politics and talking about women's rights," she says. "David told them, 'There's actually somebody here who can do that,' because gender equality is one of my areas of expertise. So with no preparation, I went in and winged it."

The couple's efforts gained traction, particularly in bringing minority groups together in support of a decentralized, democratic government.

David and Susan Williams.

Center for Constitutional Democracy is born

In 2005, with the backing of IU and the law school, Susan and David created the Center for Constitutional Democracy (CCD), housed at 624 E. 3rd St., to formally support their work in Burma.

As word of their work spread, they soon began hearing from reformers and dissidents in other countries, including Liberia, Libya, South Sudan, Cuba, and Vietnam. These partnerships led to projects ranging from workshops for Libyan lawyers and judges to drafting policy proposals to circulate throughout Cuba.

“People ask, ‘How did you pick the countries you work with?’” says Susan. “But we didn’t pick them. They picked us.”

Funded by the Maurer School, the IU Bloomington campus, and private donations, the center took on an expanding range of constitutional reform projects at no cost to the governments or the opposition leaders requesting their guidance. “We never accept money,” says David, explaining that doing so could make it difficult to deliver the unbiased analyses that are often unwelcome news.

This tangible work across widely varying settings made the two professors pioneers in a new field of study known as “constitutional design.” Rather than comparing existing constitutions, or even building documents based on a set of “best practices,” constitutional design starts from the understanding that different nations require different types of government. Some settings might call for a presidential system, while others are more suited to a parliament, David says.

“You have to have the right constitution for the circumstances,” he explains. “One of the things we know about presidential systems is that there’s a tendency for the president to become very powerful. This risk of superpresidentialism is especially high in strongly gendered cultures where the men run everything.”

As two of only about a dozen worldwide scholars specializing in constitutional design, the Williamses decided to build the first and only Ph.D. program in the field, creating a formalized opportunity for international reformers to gain the knowledge relevant to their nations’ needs. The program recently graduated its first two doctoral students — one from Vietnam and one from Moldova — and presently has eight



David (sixth from left) and Susan Williams (third from right) are pictured with their children, Ben (second from left, behind the child) and Sarah (second from right); Aaron Bonar, a Ph.D. Fellow at the Center for Constitutional Democracy (far right); Jallah Barbu (fifth from right), the chairman of the Law Reform Commission of Liberia; Barbu’s wife, Dolo-Barbu (sixth from right); and the Barbus’ family in Monrovia in December 2013. Courtesy photo

students enrolled, half of whom have been exiled from their home countries because of their political activities.

The CCD has also grown to incorporate more legal and interdisciplinary scholars as associate directors and affiliated faculty, including Feisal al-Istrabadi, Iraq’s former ambassador to the United Nations and a professor of practice in both the Maurer School and IU’s School of Global and International Studies; Judge David Hamilton, who serves on the U.S. Court of Appeals for the Seventh Circuit; and Timothy Waters, a Maurer professor who specializes in ethnic conflict, human rights, and international law.

The center also hosts 16 J.D. affiliates — law students who volunteer 10 hours per week on research and writing projects. Competition for these unpaid, noncredit

positions is fierce; Susan says they only accept about one in four applicants, who “increasingly come to Maurer for the center.”

Real progress in Burma

Perhaps the most meaningful development, however, is taking place not in Bloomington but in Rangoon, the former capital and largest city in Burma. Twelve years after David’s first meeting with the Chin Forum, the Burmese military leadership has agreed to negotiate with the various rebel forces as a single coalition, and has conceded, at least in theory, to the need for a constitution that supports a federalized system of local rather than central authority.

Andrew Lian, along with many other rebel leaders, was invited to return to Burma to work with the government toward reform. He is currently serving as a legal

advisor to the Myanmar Peace Center, the official body overseeing ceasefire negotiations.

As this issue of *Bloom* went to press, David and Susan were preparing for their second flight to Rangoon — no escorts or assault rifles needed — to help the minority leaders prepare for the constitutional negotiations.

“When we first flew there in 2012, the whole time we were looking over our shoulders,” says Susan. “The military intelligence was following us, but they left us alone.”

The CCD has also become a primary advisor to the United States government on both Burmese and Liberian reform and democracy. Working with the U.S. Department of State, the U.S. Senate Committee on Foreign Relations, and the U.S. ambassadors to Burma and Liberia, the center has advised the federal government on its policy toward both countries, including the lifting of sanctions on Burma.

“None of these stories are over,” says Susan. “You can’t know what will happen next, and things can always go off the rails. But when we ask ourselves if we have done something to help move constitutional democracy forward, especially in Burma and Liberia, we do feel we have had success.”



(above) Susan Williams, second from left, makes a point during a meeting of the Law Reform Commission of Liberia in Monrovia in March 2014. Her husband and colleague, David Williams, is seated to her left. The Commission’s goal is to draft a set of proposed amendments to the Liberian constitution. Courtesy photo



(left) The Center for Constitutional Democracy is located on East 3rd Street. Photo by Lynae Sowinski

Abdulaziz al-Hussan,
Visiting Scholar

Lawyer in Exile Plans Pragmatic Reform For Saudi Kingdom

A single tweet determined Abdulaziz al-Hussan's future. The 32-year-old Saudi Arabian lawyer had gone to visit his imprisoned clients Mohammad Fahad al-Qahtani, an Indiana University-educated economics professor, and Abdullah al-Hamid, a professor of Arabic literature and poetry, two of the founders of the Saudi Civil and Political Rights Association. Both activists had been jailed for advocating for fair and public trials, freedom of assembly and of speech, and advances in women's rights.

When al-Hussan arrived at the prison in Riyadh, the capital of Saudi Arabia, in the spring of 2013, he was told his clients did not want to be seen because they were handcuffed and shackled in their cells. As al-Hussan left the compound, he posted this news on his Twitter feed — and less than 24 hours later was summoned for interrogation by the Ministry of Interior.

"Immediately, the governor of Riyadh issued a statement that 'Attorney al-Hussan is trying to provide inaccurate information about the government,'" he says. "I was interrogated for two hours. Others had tweeted the same information about the prisoners, but I was targeted personally because of my history with human rights cases."

Al-Hussan knew the drill: He would soon be placed on a travel ban, and depending on which court tried his case, he would receive a sentence of 5 to 15 years in prison.

"You have to choose between exile and prison, and I thought I would be more useful in exile," he says.



'You have to choose between exile and prison, and I thought I would be more useful in exile.'

He quickly contacted David Williams at the Center for Constitutional Democracy (CCD), with whom he had earlier been in touch about a possible post as a visiting scholar, and arranged to come to Bloomington immediately.

The delicacy of dealing with a monarchy

In the two years since, al-Hussan has broadened his approach from arguing specific human rights cases to constructing a model for Saudi Arabian constitutional design that would be effective in ensuring transparency and accountability, yet palatable to the reigning monarchy.

"You have to understand the tremendous opposition in Saudi to anything resembling democracy," he says. "Most of the Islamic world has no problem with that word — democracy means government of the people; the people are empowered. But in Saudi, democracy suggests that people can govern themselves according to any law they like, meaning they will not be respecting the law of Islam."

Riffing on Columbia University Professor Wael Hallaq's well-known book *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*, which argues that modern statehood is incompatible with Islam, al-Hussan describes his Saudi Arabian model as "the possible

kingdom." Among its features are a bicameral legislature with one house composed of elected members and another of the king's appointments, a royally appointed prime minister, and a court of Sharia scholars who could overturn constitutional provisions by unanimous agreement.

"I am trying to be pragmatic," he explains. "There has been no willingness from the monarchy to have one step toward reform. Glory is everything to them. They don't like the idea of being equal to the people. This model would introduce transparency and accountability without asking them to give up power."

The monarchy itself is not the only element resistant to change in Saudi Arabia. A major obstacle to reform is the sizable minority of people who are doing just fine under the current system, al-Hussan says.

"Nobody wants to give up their business interests," he asserts. "The businessmen, the intellectuals, the lawyers, they're not willing to take up the cause of reform. No one is going to advocate for my case publicly. The attitude is, 'You're the one who got out of the game. The game is to obey.'"

The same principle holds true on an international scale, he says.

"If there were no oil in Saudi Arabia, the United States would be advocating for human rights in Riyadh every day."



*I thought my colleagues were interested in discussing these ideas, but it turns out I was **very naïve** about their ideology.'*

Zulfia Abawe, Ph.D. Student

Advocate for Gender Equality, Human Rights, And Democracy

The job seemed like the perfect next step for Zulfia Abawe. After working for four years in Afghanistan's private sector — first for Ariana Afghan Airlines and then for Afghanistan International Bank — she had completed two international internships focused on women's rights. She had also earned a master's degree in public policy from the University of Erfurt in Germany and a Master of Laws (L.L.M.) in interna-

tional human rights law from Cardiff University in Wales. Along the way, she attended several leadership conferences and gave numerous presentations about the role of women in Afghanistan.

To the 25-year-old Abawe, the position as National Governance Specialist with Afghanistan's First Vice Presidency Office seemed like the ideal opportunity to use what she had learned abroad. Heading to the

only woman, but everyone seemed very diplomatic, very educated. I thought, 'We are all scholars here.'

Sitting peaceably around conference tables with men in business suits, Abawe took the opportunity to share some of the ideas she had researched, such as bringing the practice of Islamic Sharia law into alignment with the various international human rights treaties Afghanistan had signed.

"I remember talking about how modern scholars had demonstrated that the Quran could be interpreted to support the rights of women," she says. "I thought my colleagues were interested in discussing these ideas, but it turns out I was very naïve about their ideology."

Disillusioned but determined

Less than three months into her post, Abawe began receiving death threats. It became clear that ensuring her safety would mean not only leaving her job but also her family and her country.

Abawe fled Afghanistan in December 2013, disillusioned and angry. She claimed asylum in the United Kingdom and in August 2014 made her way to Bloomington as a Ph.D. student with the Center for Constitutional Democracy (CCD). More than a year after leaving Afghanistan, she still appears stunned by what happened.

"My mom was right. She was so right," she says, incredulously. "I didn't expect it because I had worked in Afghanistan before then. In the bank, at the airline, everything was very open and liberal. Everything was merit-based. You were judged for your talent and how you took care of your job and tasks. But the government was totally different. Substantively, they are very much behind."

At the CCD, Abawe says she's able to put the experience into perspective. "One good thing about this program is that it's made me learn so much about other conflicts and other countries," she says. "I'm able to do comparative analyses, and I don't feel alone. My classmates are from different places — the

United States, Pakistan, Croatia — and we all have our own projects, but we can discuss common topics."

Building on her L.L.M. thesis, which examines the legal barriers to protecting human rights in Afghanistan, Abawe has chosen the topic of legal pluralism for her dissertation. Specifically, she is researching how to harmonize Afghanistan's three coexisting legal systems: the customary laws enforced by tribal elders, the Quran-based Sharia law that institutionally governs the country, and the international law to which Afghanistan has officially subscribed.

She is particularly interested in the potential of dialogic democracy for facilitating small-scale legislative reform. "I'm learning from Professor Susan Williams about this process of dialogues with small communities, so that instead of enforcing legal systems on them, they are given the tools to solve problems in ways that accommodate entrenched customs," she says.

Abawe has no plans to return to Afghanistan in the near future. "First, because of my travel document," she says, "I cannot go to Afghanistan, and second, I do not want to go to Afghanistan. I've had enough of that." She takes comfort in her observation that the younger generation has a much more open attitude toward gender equality and change in general than their parents and grandparents who are currently in charge.

"There is no hope for the older generations to be educated," Abawe says. "But for younger people, through education, they can be empowered. I can tell the difference because I have experienced that evolving feature in myself. From everywhere I have been and what I am learning now, I'm opening my mind to see things in different dimensions. I can see myself in the future becoming a professor and having my own research that can help make these changes possible over time."

Jallah Barbu, Senior Fellow

Surviving Terror And Chaos To Be Advisor To a President

Jallah Barbu was 16 when he first saw soldiers in the streets. He had a sickening sense of wrongness, even though all around him there was jubilation. It was 1980 in the West African nation of Liberia, and a military coup had assassinated President William Tolbert Jr., breaking into the executive mansion by night and reportedly disemboweling the president.

The soldiers, like Barbu, were from indigenous tribes, whereas the president and his predecessors were Americo-Liberians, descendants of freed American slaves. Founded in 1847 with the aid of the U.S. government, Liberia was devised as a solution to the perceived problem of free blacks, as many American politicians who opposed slavery, including Abraham Lincoln, nevertheless believed blacks could not thrive in America.

Modeling Liberia's constitution on that of the U.S., the Liberian settlers were similarly dismissive of the presence of indigenous peoples. The Republic of Liberia adopted English as its official language and established the seat of government in the city of Monrovia, named for former U.S. President James Monroe, an ardent supporter of the early settlement effort. Although the Americo-Liberians remained a small minority of the population, they held political and economic control from the country's founding until the 1980 coup.

"When President Tolbert was killed, there was so much rejoicing," recalls Barbu. "The People's Redemption Council who took power were all indigenous Liberians. For the first time, the majority had power. But I saw all of these soldiers moving up and down the streets, and I felt something was really wrong."



Courtesy photo

Years of chaos and cruelty

It didn't take long for Barbu to conclude that the takeover had not improved conditions. Led by military sergeant Samuel Doe, the government began its rule by publicly executing 13 members of the former president's cabinet and suspending the constitution. In the ensuing years, Doe imprisoned or executed those he regarded as challenging his authority, hunting down an ever-lengthening list of suspected traitors.

As a high school and then college student during this period, Barbu considered himself an activist, speaking out against Doe's regime.

"Young people are quite different in their approach to life," he says. "Even though we knew the military was very powerful, we resisted. There were times I was very afraid, but I felt I had to speak."

What Barbu credits Doe with doing correctly was seeking out University of Liberia Political Science Professor Amos

Sawyer to draft a new constitution — although Doe eventually came to perceive Sawyer as a threat and had him arrested.

(Sawyer would later serve not only as president of the interim government after Doe's death in 1990, but also as co-director of Indiana University's Workshop in Political Theory and Policy Analysis alongside Vincent and Elinor Ostrom.)

In an election almost no one regarded as legitimate, Samuel Doe became president in 1985. Four years later, a guerrilla fighter named Charles Taylor launched an armed campaign to take control of the country. Barbu, who by this time was an accountant at Monrovia's Citibank, was home for a holiday — "in the bush," he says — when he heard the news.

"At first I thought it would all be over in a few days, but the fighting swept through the country," he recalls. "Everything went amok, and I was stuck behind the lines in Taylor

territory and couldn't get back to the capital."

During this period, which lasted more than two years and saw Doe's assassination by a separate rebel group, Barbu's chief concern was avoiding conscription into Taylor's army.

"There was a great temptation," he admits. "Did I not have schoolmates who had joined the faction? Certainly I did. They would say, 'You are here, you are educated, you can contribute to this process.' But I did not believe that Liberia could be put on the right track through violence."

Saying no to friends with guns and a cause was a risky proposition, so Barbu hid out at his father's farm until 1992. By this time, Sawyer was serving as president of the Interim Government of National Unity and Barbu decided to make his way back to Monrovia, walking much of the distance and sleeping by the roadside.

President Sirleaf will tell you, "Not once has Counselor Barbu told me what I want to hear."

A new career beckons

Once in the city, he was able to resume his accounting career, but a chance encounter with the legal system set him on a new path. He had been summoned to testify regarding a client but was out of the office on the two occasions the court officer came by. Eluding a summons was grounds for arrest, and Barbu faced a prison sentence for what amounted to unfortunate scheduling.

"The judge tried to order my incarceration, but the lawyer said, 'Your Honor, let's let him explain,'" he recalls. "I was amazed. This lawyer didn't know me from anyone, and yet he saw reason to speak with the judge and change everything. I said to myself, 'Lawyers can rescue people. They can ensure that rights be maintained. I think I should be a lawyer.'"

Foregoing a successful accounting career, Barbu became a civil and criminal lawyer, eventually serving as the secretary general of the Liberian National Bar Association. Meanwhile, Taylor, after a six-year presidency, had fled the country, accused of war crimes.

Liberia's current president, Ellen Johnson Sirleaf, was elected in 2005, becoming the first democratically elected woman president in Africa and promising to limit the power of the presidency and restore Liberia's infrastructure. Representatives from the IU School of Law-Bloomington and the Center for Constitutional Democracy (CCD) visited the country that same year, committing to foster partnerships with both the University of Liberia and the newly elected government. As part of that effort, Barbu was invited to come to IU for a postgraduate law program.

In the two years that followed, he worked with CCD Director David Williams to

complete, at the request of the Supreme Court of Liberia, a comprehensive study of the meaning of the Liberian constitution as revealed through its judicial decisions. Barbu returned to Liberia to teach at the University of Liberia's Louis Arthur Grimes School of Law while also completing a dissertation, with Williams as his advisor. His dissertation focuses on the roots of excessive executive power in Liberia.

Those efforts positioned him to lead the country's Law Reform Commission, which ensures ongoing review and revision of the country's body of legislation, and to become one of President Sirleaf's chief advisors.

"President Sirleaf will tell you, 'Not once has Counselor Barbu told me what I want to hear,'" he says. "She knows I will express my beliefs and will not allow my arm to be twisted. I think the president respects me a lot, and I respect her very much as well."

Barbu recently returned to Bloomington as a senior fellow at the CCD in order to conduct an analysis of the country's attempts to engage the public in the process of constitutional reform. As he prepares to head back to Liberia to share his findings with the president and the legislature, he is optimistic about the country's future and its current process of decentralization.

"The president herself is very supportive of this process of limiting the central government," he says. "We have unprecendented freedom of speech and expression. We are moving in a positive direction. This is the best opportunity for reform that we have had so far." ✖