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A Report on the University of Denver's Institute for Human Rights

Keywords

Human Rights Law, Age, Detention

A Report on the University of Denver's Institute for Human Rights

VED P. NANDA* and MATTHEW LIPPMANN**

I. INTRODUCTION

During the summer of 1983, the University of Denver College of Law offered a five-week Institute for Human Rights, which was taught by Ved P. Nanda, Professor of Law and Director of the International Legal Studies Program at the University of Denver College of Law, and Matthew Lippman of the Political Science Department at the University of Denver. The following report is designed not only to describe the Institute but also to assist other law professors who plan to offer similar programs.

II. GOALS OF THE INSTITUTE

In planning for the Institute, the instructors had identified a primary goal of providing the enrolled students a real opportunity to sharpen their skills in the advocacy of international human rights. The instructors hoped that the students' understanding of the application of international law and its machinery would be greatly enhanced by participation in the program, taking international law out of the abstract and theoretical and into the practical. In fact, the students' ability to generate creative legal solutions to critical situations was tested and stimulated by the urgency of the problems with which they dealt.

Above all, it was felt that by their entry into the field of advocacy of international human rights, the students would be able to provide research assistance where it is sorely needed. Also, they would have a voice in the domestic and international fora in which international human rights instruments are interpreted, mechanisms refined, precedents and customs established, and conflicts decided.

In short, the Institute was viewed as analagous to early legal service programs in which law students were trained to litigate cases on behalf of the poor, and which led to expanded legal protections for disadvantaged groups within American society. Not surprisingly, the Institute attracted a group of committed and idealistic students, most of whom expressed a desire to continue their involvement in human rights litigation. For these individuals, the Institute provided an important starting point for profes-

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sional involvement with the advocacy of human rights.

III. GENERAL DESCRIPTION OF THE INSTITUTE

The Institute was structured primarily on the basis of a clinical program, with an advanced international human rights law course available as a supplement. Each course was worth three hours of credit on a quarter basis. The clinical course was limited to 10 students from the University of Denver College of Law¹ and three students from law schools outside Colorado²; in the substantive course, 17 students were enrolled. Four students at the Graduate School of International Studies at the University of Denver³ and a few undergraduate political science students in the honors program⁴ were also permitted to attend some classes and to lend assistance in conducting research primarily in foreign languages.

The students enrolled in the clinical course were all required to participate in one or more projects or cases solicited from the attorneys involved in those cases and from several nongovernmental organizations. The availability of faculty to supervise students—two full-time faculty members with the assistance of several colleagues at the College of Law and several attorneys in the community⁵ who are primarily engaged in the practice of international law or immigration law—determined the number of students who were permitted to enroll in the course. Students were required to work on projects entailing a written product and an oral presentation.

Two orientation sessions were held to enhance the students' appreciation of the challenges faced by human rights advocates. In many countries, advocacy on behalf of the victims of human rights violations might lead to reprisals for assisting these persons. Also, without specialized experience, lawyers in the domestic fields lack the skills, time, resources and financial support needed to litigate human rights cases.

Throughout both the clinical and substantive courses, the instructors emphasized the practical side of human rights law through its established machinery. Local attorneys working in such international law areas as immigration and political asylum spoke to the class and worked with the students on their projects. The substantive and theoretical quality of the

1. Law students attending the Institute from the University of Denver were: David Castro, Mark Clark, Robert Leichty, Mark Roberts, Marc Salzberg, Jocelyn Sedney, Mary Sinton, David Stephenson, Jan Suzukawa, and Laurence Tobey.

2. Law students from other schools were: James Cooksey, Gonzaga University School of Law; Jordon Sanger, Oklahoma City University School of Law; and Craig Zetley, University of Wisconsin School of Law.

3. Students from the Graduate School of International Studies were: Aziz Beziou, Yung Kee Kogh, Mouloud Meslem and Youcef Smail.

4. Undergraduate students included Jean Paul Prentice, Rachael Sibley and Amelia Sang Venetti.

5. The faculty included James Branch, William Beaney and Francis Jamison. The attorneys included Jonathon Cox, Shelley Dodge, Walter Gerash, Gerald Padmore, Anne Schmitt and Ken Stern.

students' work was evaluated in several discussion sessions with local attorneys, members of the press and nongovernmental organizations such as Amnesty International. This was a vehicle for active community participation in human rights advocacy.

At the conclusion of the five-week period, a moot court and a mock United Nations Security Council debate were conducted. These practical exercises required students to integrate their advocacy skills and the issues presented by the cases on which they had worked. The moot court sessions were videotaped and critiqued by the instructors for style and substance. Francis Jamison, Director of the Advocacy Skills Program at the College of Law, graciously supervised this segment of the program. What follows is a description and an appraisal of the clinical component of the Institute.

IV. CASES

Of course, the selection of cases and projects is of critical importance to a successful program of this kind. The instructors solicited several human rights law groups in the United States and Colorado attorneys to select appropriate projects for students. Considerable time and attention were devoted to screening cases, identifying specific issues on which students were to work, preparing and assembling the essential research material, and planning logistics so that the students' time and efforts would be used effectively. Three criteria determined the selection: one, that the case be current; two, that an intense five-week effort by a student, or by a number of students jointly working on the project, would suffice for research and writing purposes to result in the completion of the project; and finally, that the case or project would not only raise issues that were of sufficient actual concern, gravity and urgency, but would also permit students to enhance their appreciation of international law and international human rights law in a practical setting.

Nine projects were ultimately concluded during the 1983 session. The Governments whose conduct and actions were challenged were of a wide variety of political persuasions and the positions taken were based upon established principles of international law.

As the request of the National Lawyers Committee for Soviet Jewry a complaint was prepared pursuant to ECOSOC Resolution 1503 for filing with the United Nations Commission on Human Rights on behalf of Yosef Begun, a Jewish citizen of the Soviet Union and a mathematical engineer.⁶ Soviet authorities refused to permit Begun to emigrate to Israel, and he was facing twelve years' confinement for "anti-Soviet agitation and propaganda." The student argued that the failure of the Soviet

6. We are grateful to Ms. Bobbie Towbin for her assistance. Ms. Towbin is Coordinator, Commission on International Jewish Affairs of the Anti-Defamation League of B'nai B'rith, and was our initial contact with the National Lawyers Committee for Soviet Jewry. Craig Zeitlin prepared the petition.

government to permit Begun and other Jews from emigrating, along with its refusal to allow these and other persons to select their own trial attorneys, violated both Soviet and international law, and demonstrated a consistent pattern of gross and reliably attested violations of human rights.

Two briefs prepared on behalf of six Haitian and Salvadoran refugees argued against patent deportation.⁷ The students took the position, *inter alia*, that § 1253(h) of the Immigration and Nationality Act, which prohibits deportation of a refugee to a country where his "life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion," should be interpreted to comply with provisions of the U.N. *Handbook on Procedures and Criteria for Determining Refugee Status*. Under the *Handbook*, states would be prohibited from deporting "economic refugees," or those who have fled El Salvador or Haiti because of economic deprivation caused by government expropriation, or threatened expropriation, of their land and personal goods.

In addition, the students argued that the *Handbook* requires that a refugee show "good reason" to fear persecution if deported, and that this standard should be adopted by U.S. courts in place of the current, narrower burden of proof of "clear probability" of persecution. The students' briefs asserted that refugees from both Haiti and El Salvador fall within the *Handbook's* definition of persecution based on "membership in a particular social group" because of evidence showing that refugees from these countries have "good reason" to fear persecution if returned to their homelands.

A legal opinion was prepared for the South African Project of the Lawyers' Committee for Civil Rights Under Law for submission to South Africa's Rumpff Commission which was charged with evaluation of the advisability of South Africa's planned cession of the black homeland KaNgwane to Swaziland.⁸ Such a move would strip South African citizenship from the people of KaNgwane. The student argued that cession would violate the right to self-determination of KaNgwane's citizens and that, under international law, any such cession must first be ratified by the citizens of KaNgwane. The opinion concluded that denationalization on the basis of the race of the KaNgwane citizens violates the International Convention on the Elimination of All Forms of Racial Discrimination.

Another brief written for the South African project of the Lawyers' Committee for Civil Rights Under Law discussed the legal effect upon United States multinational corporations of Decree No. 1 for the Protec-

7. We are grateful to Ms. Shelley Dodge and Ms. Anne Schmitt for their advice and assistance. David Castro and Mary Sinton prepared the briefs.

8. We are grateful to Gay J. MacDougall, Director, Southern Africa Project for her advice and assistance. Marc Salzberg prepared the opinion.

tion of the Natural Resources of Namibia.⁹ The decree, adopted by the U.N. Council for Namibia in September 1974 and approved by the U.N. General Assembly in December 1974, vested complete control of Namibian natural resources in the U.N. Council for Namibia. It prohibits any corporate involvement in Namibian natural resources that is not authorized by the Council. Violators may be held liable for damages by the future government of an independent Namibia, and the U.N. Commissioner for Namibia may take steps to enforce the decree.

The student brief contended that American corporations engaged in extracting natural resources in Namibia without the consent of the Council are in violation of this decree as well as customary international law; thus, stockholders have standing to sue the corporate directors in U.S. courts for breach of a fiduciary duty of care.

Another project undertaken for the Institute was an opinion written for the International Rights Law Group¹⁰ on a law proposed by the military rulers of Argentina in 1983 granting amnesty to individuals who, between May 24, 1973 and the passage of the amnesty law, were responsible for perpetrating murder, kidnapping, torture and disappearances among Argentines for alleged "terrorist or subversive activities or purposes." It was argued that Argentina's proposed law would excuse the violation of fundamental human rights from which no derogation is permitted under the American Convention on Human Rights. The students also asserted that many of these human rights violations constitute international crimes and are violation of customary international law, and that the enactment of the amnesty law would violate Argentina's international obligation to "extradite or prosecute" the perpetrators.

Another project for the International Human Rights Law Group was an analysis of standards used by the United States Department of State denying foreign assistance to a government on the grounds that it has engaged in a "consistent pattern of gross violations of internationally recognized human rights."¹¹ The analysis reviewed hearings conducted by the House Subcommittee on Human Rights and International Organizations in 1981 and 1982, and concluded that, although the Reagan Administration has generally ignored human rights standards for foreign assistance set forth by Congress, Congress has contributed to that policy by permitting assistance to countries which violate human rights where there is evidence of some improvement in conditions from time to time.

Another brief was written for a prominent Denver defense lawyer representing anti-nuclear demonstrators arrested in Fort Collins, Colo-

9. Jocelyn Sedney and David Stephenson prepared the brief with the assistance of Jean Paul Prentice.

10. We are grateful to Ms. Amy Young, Director, International Human Rights Lawyers' Group for her guidance and assistance. James Cooksey and Mark Clark prepared the report with the assistance of Amelia Sang Vinetti.

11. Laurence Tobey prepared the report.

rado, who had blocked a train supposedly carrying nuclear material.¹² The brief took the position that not only is the use of nuclear weapons prohibited under international law, but that arguably their manufacture, storage and transportation could be challenged as impermissible under the evolving international law norms. The brief invoked applicable international agreements, principles of customary international law, and U.N. resolutions and declarations in support of this position. The student argued that the demonstrators had sought to force compliance with the pertinent norms of international law.

An amicus brief was undertaken as a joint project with the Urban Morgan Institute for Human Rights at the University of Cincinnati College of Law for submission to the Inter-American Court of Human Rights.¹³ It was contended that Guatemala's extension of the death penalty for common crimes relating to political offenses was a violation of article 4(2) of the American Convention on Human Rights, which provides that "the obligation of such punishment shall not be extended to crimes to which it does not presently apply." At the time Guatemala ratified the Convention, article 4(2) did not apply to common political offenses; thus, Guatemala was in violation of the Convention.

V. APPRAISAL

The satisfactory completion of every project undertaken by the Institute was gratifying to the students as well as the instructors. Briefs prepared on behalf of the Haitian and Salvadoran refugees were used by Colorado attorneys in successfully challenging their deportation. The brief written on behalf of the anti-nuclear demonstrators was used by the defense attorney. Although the court did not pass on the international law issues raised in the brief, the case against the demonstrators was dismissed. The success of the 1503 petition is not to be measured by the Soviet response to such petitions, which essentially remain negative to all complaints regarding the violation of human rights of its citizens. It is essential, however, that the world public opinion on the issue be continually and forcefully expressed.

The KaNgwane representation was made by the Lawyers' Committee for Civil Rights Under Law, as suggested by the student, to the Rumpff Commission. The Committee also used the student brief on Decree No. 1 in its ongoing efforts on the Namibian question. The brief was subsequently published in *Africa Today*.¹⁴ With the return of Argentina to de-

12. The brief was written for Walter Gerash, Esq., to whom we owe a debt of gratitude. Robert Leichty prepared the brief.

13. We are grateful to Tom Buergenthal, Dean, Washington College of Law, American University, for bringing to our attention the project. Professor Bert Lockwood, Director of the Urban Morgan Institute for Human Rights at the University of Cincinnati College of Law was most generous with his advice and assistance in the preparation of the brief. Mark Roberts, Jordon Sanger and Jan Suzukawa were primarily responsible for the amicus brief.

14. Stephenson, Sedney & Prentice, *Enforcing Decree No. 1 in the Domestic Court of*

mocracy, the outcome sought by the project on the proposed Argentine amnesty decree was accomplished. The other project undertaken for the International Human Rights Law Group, an analysis of the human rights standards used by the Department in its country reports, was followed by a further study the next year in the human rights class at the College of Law, where a student replicated the earlier results. Finally, the Inter-American Court of Human Rights accepted the amicus brief on the question pertaining to the Guatemalan death penalty.

Several points in the structure of the course emerged by the end of the Institute as needing improvement. The major complaints of students, instructors and attorneys alike, focused on the compression of the Institute into only five weeks' time. Because of the depth of the work required, most students were compelled to put in long evening and weekend hours of intensive work. Moreover, two students were forced to change their projects in the second week of class because of the lack of sufficient research material or too-extensive scope of intended studies. The abandoned cases were a study on human rights violations in Brazil and a complaint against the International Labor Organization.

Two cases available to the program were rejected by the instructors: a New Mexico land rights case, for lack of ripeness, and a complaint concerning the treatment of Harijans in India, for non-exhaustion of remedies. From these experiences, valuable lessons were learned relating to the need for the instructors to be thoroughly acquainted with the cases offered for such a program prior to the beginning of the Institute so that only those will be undertaken to which the program can do justice in the time allowed.

Another difficulty felt by both the students and the instructors arose because there were only two full-time instructors to supervise the nine research and writing projects. Most of all the projects required not only our close supervision, but also our contributions of substantive assistance. Assigning more than one student to a project increased rather than lightened our workload since we became involved in integrating and coordinating the students' work. We concluded that in the ideal structure for such a program, an instructor should have to oversee no more than three students' work.

Perhaps the greatest problem was faced by those students who had inadequate background in international law and international human rights law. In particular, they required substantial special assistance and had enormous initial hurdles to cross before they could start working on their projects in earnest. It was for their benefit that the substantive international human rights law course was taught. Although it must be said to the great credit of the students that they were all able to complete their projects quite satisfactorily, those who lacked training and experience in the use of the principles of international law and its resources

carried an extra burden. The need is apparent for law schools to include instruction of international legal research materials in their first-year research and writing programs.

Two positive factors of the Institute were the accessibility of research material and the high level of participation by many faculty and local practitioners.¹⁵ In addition to the essential international and comparative law materials, U.S. government documents, and United Nations materials being available to the students, they also had ready access to human rights materials, including the official documents of the European Commission and the European Court of Human Rights and the American Commission of Human Rights and the Inter-American Court of Human Rights. Official documents which were not available at the University of Denver libraries were provided by the Denver Public Library which is a U.S. government depository library and a depository library of the U.N. materials since the establishment of the United Nations, the Organization of American States, the Washington Office on Latin America, and several other human rights groups in New York, Washington, D.C., San Francisco and Miami.¹⁶

The Institute also benefited greatly from the attention and concern of several faculty members at the College of Law and several distinguished members of the local bar. These persons brought to the program their special expertise in advocacy skills, procedure and international law. Any law school endeavoring to carry out a similar program would be strongly encouraged to take advantage of this kind of invaluable resource.

The instructors were pleased with the outcome. The Institute was a successful affair. Student evaluations of the Institute were uniformly positive. To ensure the greatest possible contribution of such future Institutes at the University of Denver or other law schools, we offer a few suggestions. First, it is essential to prepare in advance written materials and to conduct orientation sessions for the participating faculty and students. Second, sources of funding should be located to enable highly qualified students and faculty from all parts of the country to participate regardless of their capacity to pay expenses of the course and housing. Third, only students with adequate background in international law, international human rights law, and some prior exposure to advocacy skills should be enrolled in such an institute. Fourth, a minimum of 8 to 10 weeks' period is necessary for an institute of this kind to function properly. Ample time is critical, for the stakes are high when students are assisting with actual litigation in progress or working on urgent projects demanding thorough research, rigorous analysis and thoughtful deliberation.

15. We are especially grateful to Mrs. Nancy Nones, Administrator, International Legal Studies Program at the College of Law, who very ably and skillfully coordinated the various segments of the Institute.

16. Ms. Sue Weinstein, associate librarian at the University of Denver College of Law, and Mr. Robert Shaklee at the Denver Public Library were especially gracious and helpful.