

**THE WORK OF THE  
INTERNATIONAL HUMAN RIGHTS LAW CLINIC  
AT AMERICAN UNIVERSITY**

**Twelve Years of Operation**

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**I. OVERVIEW OF THE LAW SCHOOL'S WORK IN HUMAN RIGHTS.**

Work in international and human rights law is a defining characteristic of the Washington College of Law (WCL) at American University. WCL has a strong tradition of teaching and scholarship. In 1993, WCL received the prestigious annual award of the International Human Rights Law Group for its work in the field of international human rights law. The law school, through its International Legal Studies program, its Center for Human Rights and Humanitarian Law, its International Human Rights Law Clinic, and its new summer Human Rights Academy has become an international focal point for activity in the field of human rights law. Faculty of the law school offer a wealth of diverse experience in teaching, legal research and writing, litigation and other field advocacy to advance the development of the law of human rights, both at home and abroad.

**II. THE CLINICAL PROGRAMS OF THE WASHINGTON COLLEGE OF LAW.**

The clinical program of the Washington College of Law is nationally recognized for its high-quality work. The Clinics are focused in subject-matter areas, varying in size depending on the number of faculty teaching in each. Faculty teach in a seminar with the common designation for all

clinics as “The Lawyering Process,” and all faculty also supervise cases handled by students. The student-supervisor ratio never exceeds eight to one. In addition to International Human Rights Law, current Clinics of the law school are:

- \* Criminal Justice -- Prosecution and defense of criminal cases in the local courts of Maryland;
- \* Women and the Law -- Represents women in domestic violence cases, child neglect and support cases in the local courts of Washington, D.C.;
- \* Domestic Violence -- Bridges the work of the Criminal Justice and Women and the Law Clinics through work with domestic violence issues in the D.C. courts;
- \* Civil Practice -- Represents low-income clients in such areas as bankruptcy, consumer issues, family law, health, housing, public benefits, and special education.
- \* Community & Economic Development -- Provides transactional legal services for client groups engaged in neighborhood-based community development.
- \* Tax -- Representation of taxpayers with disputed claims under \$10,000 before the U.S. Tax Court and Internal Revenue Service;
- \* Glusko-Samuelson Intellectual Property Clinic – This is a new clinic in 2001-2002, created with an endowed grant. It works on public interest aspects of the fields of patents, copyrights and trademarks;
- \* D.C. Law Students in Court -- A cooperative Clinic with other D.C. area law schools in which students provide representation and counseling services in Landlord/Tenant Court and Small Claims Court in D.C.

The International Human Rights Law Clinic shares common pedagogical objectives with each of these Clinics. In all of the law school's Clinics, students take on representation of actual clients in cases or projects. Clinical work is not like that of externships in which students do research or prepare submissions for attorneys who do the in-court work themselves. Students appear in court with a faculty supervisor, and the scope of their representation is limited only by rules of student certification and/or local practice.

Students are given extensive responsibility for the exercise of professional judgment and tactics in the direction of the cases and projects of the Clinic, and supervision is non-directive to the greatest extent possible. One of the strongest objectives of the program is to allow the student to experience the responsibility of client representation to the greatest extent possible while providing frequent opportunities for discussion of the decision-making process and reflection in individual meetings with the supervisor.

### III. THE INTERNATIONAL HUMAN RIGHTS LAW CLINIC.

The International Human Rights Law Clinic was founded in 1990 with matching funds from the U.S. Department of Education and the Washington College of Law. It has grown from six students and one faculty supervisor in the 1990-91 academic year to a total of 30 students and four faculty in the entering class for the 2002-2003 academic year.

The overall objective of the Clinic continues to be the exposure of law students to opportunities for advocacy in the field of human rights through training in the skills, values and ethics of the practicing attorney under close faculty supervision. The clinic provides representation to real clients in litigation, transactions, and legislative contexts.

The Clinic is divided into two pedagogical components: case-work under the supervision of the four faculty teaching in the clinic, and a seminar, common to all Clinics, called The Lawyering Process. It is open to all second and third year students, with co-requisite courses of Evidence and any international law course, with a preference for international human rights law or Asylum and Refugee Law.

Students enroll in the Clinic for the entire academic year. A total of seven credit hours is awarded each semester: four hours for case-work and three hours for the seminar.

### IV. FACULTY AND CLINIC STAFF.

Prof. Richard Wilson has been Director of the Clinic since its founding in 1990. As Director, he supervises case assignment and monitoring of the students' work and designs and co-teaches the Lawyering Seminar which accompanies the case component of the course. Prof. Wilson taught previously at the Law School of the City University of New York, and served as director of the Defender Division at the National Legal Aid and Defender Association in Washington from 1980-85, after work as a public defender in Illinois for several years. Prof. Wilson's research, writing and speaking focuses on issues involving protection of human rights, the administration of justice, and clinical legal education in the developing world, particularly Central and Latin America. He has also written extensively on the right to counsel and access to justice for the poor.

Prof. Elliott Milstein is one of the founders of the Washington College of Law's clinical program. As the law school's Dean and Interim President of the University, he worked to ensure American University's strong commitment to international human rights law and advocacy. He founded the National Veterans Law Center and served as an attorney for the New Haven Legal Assistance Association. He is a past President of the American Association of Law Schools, the first clinician to hold that honor. Professor Milstein co-teaches and supervises students in the International Human Rights Law Clinic, and also teaches Lawyer Bargaining and Negotiation and Professional Responsibility. Past clinical work involved clinics devoted to Criminal Litigation, and Women and the Law.

Elizabeth Bruch worked both as an international human rights lawyer and in general civil

practice prior to becoming a Practitioner-in-Residence with the Clinic in the summer of 2001. She has practiced with law firms in New York and Minnesota, and with Legal Services in Alaska. She worked at Minnesota Advocates for Human Rights, a U.S.-based human rights NGO, on a range of projects, including preparing recommendations to prevent human rights abuses in Kosovo, assisting with documenting war crimes in Bosnia and Herzegovina, researching domestic violence as a human rights violation in Romania and Albania, investigating accountability for violations of women's human rights in Haiti, and attending the 1995 World Conference on Women in Beijing, China. She also spent two years in Sarajevo, Bosnia and Herzegovina, working as Executive Officer of the Human Rights Chamber for Bosnia and Herzegovina, a human rights court created pursuant to the Dayton Peace Agreement. She previously taught international law and human rights to university and graduate students in Bucharest, Romania, and Bratislava, Slovakia. She also taught legal method and writing at Arizona State University College of Law.

Melissa Crow joined the faculty as a Practitioner-in-Residence in the Clinic in the summer of 2001. She spent the previous five years practicing law with the Washington, DC office of Foley, Hoag & Eliot, where she represented foreign governments and state-owned enterprises in international litigation and arbitration matters and assisted the firm's corporate clients in drafting codes of conduct. Before entering private practice, Professor Crow served in Kigali, Rwanda in the Office of the Prosecutor for the International Criminal Tribunal for Rwanda. From 1994 to 1995, she was the Sophie Silberberg Fellow at Human Rights Watch/Africa in Washington, DC. She has also worked for international human rights organizations in Lagos, Nigeria (Constitutional Rights Project) and Jerusalem, Israel (B'Tselem). Professor Crow's scholarly interests include the role of non-governmental human rights organizations in conflict prevention and the use of the Alien Tort Claims Act to promote corporate accountability. She is the co-author of a Guide to Human Rights Litigation in Nigeria.

Regan Alberda is the Administrative Assistant to the International Human Rights and Community Economic Development Clinics. Regan graduates from the law school this year after five years of devoted service and will join a private law firm upon graduation.

Among its faculty, the Washington College of Law counts a number of other teachers and scholars who have made significant contributions to development of the fields of international and comparative law. Among them are Dean Claudio Grossman, Dean Andrew Pike, and Professors Robert Goldman, Herman Schwartz, Daniel Bradlow, Diane Orentlicher, Nicholas Kittrie, Padideh Ala'i, Kenneth Anderson, Jerome Levinson, Mark Hager, Letitia Volpp, Peter Jaszi, James Salzman, Perry Wallace, Claudia Martin, Diego Rodriguez, Penelope Pether, Teemu Ruskola, Paul Williams and Michael Tigar. Lawyers with the Center for International Environmental Law created a set of international environmental law core courses at the law school. Those from the Center who regularly teach at the law school include Durwood Zaelke, David Hunter, Brennan Van Dyke, and David Downs.

In addition to these and other full-time members of the faculty, the law school regularly offers additional courses in the area of human rights, taught by noted authorities in the field. These have included Professors Bruno Ristau, Hon. Lory Rosenberg, Carlos Ayala, Donna Sullivan,

Domingo Acevedo, Bruce Zagaris, Larry Garber, David Padilla, Charles Moyer, Steven Schneebaum, Robert Borosage, Scott Busby, Romina Picolotti, Dana Clark, Bo Cooper, Viviana Krsticevic, Michael Maggio, Margaret Popkin, Cynthia Price Cohen, James Zirkle and Leo Zwaak.

The law school now offers an additional opportunity in human rights advocacy training through the summer Human Rights Academy, an intensive three-week course of study offered in June in English, Spanish and Portuguese. This summer, we expect more than 200 students in the Academy, which will offer a clinical-style simulation course called Human Rights Practice: Skills, Ethics and Values in Advocacy. The web site for the Academy is <http://www.wcl.american.edu/humright/hracademy/english/about.htm>.

#### V. ADMISSION TO THE CLINIC.

Admission to the Clinic occurs in the spring of the academic year preceding actual enrollment. The application process involves a lottery for ranking of the applications, with preference being given to those students for whom this is a last opportunity to enroll in clinic. Last year the ratio of Clinic applications to admissions was about 2 to 1.

#### VI. SUMMER PREPARATION, ORIENTATION AND THE CLINIC MANUAL.

Work in Clinic starts immediately after acceptance during the summer previous to enrollment. Students typically begin the summer with some novels and/or non-fiction that depict life in those parts of the world from which their clients are likely to come. These works provide a sense of cultural and class difference which is critical to development of effective lawyering skills in client interviewing and counseling.

During past summers, for example, students have been assigned to read one or more of the following: Manlio Argueta, One Day of Life (peasant life during the civil war in El Salvador); Lawrence Thornton, Imagining Argentina (life during and immediately after the "dirty war" in Argentina); Lawrence Weschler, A Miracle, A Universe (non-fiction account of the treatment of former military regimes in Brazil and Uruguay); Alicia Partnoy, The Little Schoolhouse (detention and torture during the dirty war in Argentina). In recent years, because we conduct a year-long simulation involving a woman from Rwanda, we have asked students to read Philip Gourevitch's compelling book on the genocide there: We wish to inform you that tomorrow we will be killed with our families: Stories from Rwanda.

We also ask students to read significant portions of two books on practice in human rights and asylum cases. The books are Guide to International Human Rights Practice, 3<sup>rd</sup> ed., edited by Hurst Hannum, and AILA's Asylum Primer, 2<sup>nd</sup> ed., written by Regina Germain and published by the American Immigration Lawyers Association in Washington, DC. Both books are focused on providing practitioners with the information they need to provide effective advocacy for their clients. Once class starts, we spend remarkably little time on doctrinal development, preferring instead to focus on the lawyer-client relationship as the locus of our pedagogy in the clinic.

Students begin their work in Clinic in a three-day orientation which occurs either the week before fall classes begin or the first weekend of classes. Clinic orientation has three major goals:

1. Through their first exposure to experiential learning via a simple simulation exercise, students will become acquainted with some of the major lawyering themes that will be emphasized throughout the academic year: e.g. interviewing, case theory and fact handling;
2. Students acquire training in the procedures of the law firm within the law school in which they will do their work during the year. They are provided with an office manual which contains an explanation of the course structure and objectives, office procedures, contact persons in the international human rights community, and useful resources;
3. Students conduct a half-day mock hearing in which all play the role of lawyer for either a person seeking asylum or the Immigration Service, and some play the role of witness for either the petitioner or the Service. The exercise both empowers students to try things many have never tried before in law school and begins to raise the questions of role, strategy and values that will dominate their learning agenda in clinic for the year.

## VII. THE LAWYERING SEMINAR, CASE SUPERVISION AND CLINIC ROUNDS.

Human rights advocacy cannot, as with other Clinic experiences, be limited to an exposure to preparation for litigation. As the Clinic has evolved, it has focused on in the first semester on the fundamental tasks common to all problem solving for clients: interviewing, case theory, fact investigation, counseling, finding experts and negotiation. These skills are useful whether the context is litigation or any other mechanism for dispute resolution, and the skills set is also useful in other contexts such as legislative advocacy, investigative missions or public education campaigns.

Students are assigned readings from basic texts on lawyering, as well as supplemental readings on the procedures of the bodies before which they will appear. Examples of standard texts on lawyering used in the course are the following:

- Binder, Bergman and Price, Lawyers as Counselors; or Bastress and Harbaugh, Counseling and Negotiating: Skills for Effective Representation;
- Mauet, Fundamentals of Trial Techniques, 3d ed.; or Bergman, Trial Advocacy in a Nutshell, 3<sup>rd</sup> ed.
- In fall, 2002, we will adopt David Chavkin's excellent new clinical textbook, Clinical Legal Education: A Textbook for Law School Clinical Programs, which should be out before the fall.

Students meet in seminar for two hours each week. In addition to the readings, students often prepare simulated presentations for class, either on video tape or for performance to their colleagues. These presentations are followed by both individual and group feedback and discussion. The seminar meets throughout the academic year, with a new curriculum each semester. In addition,

immediately after class students gather in smaller groups of 8-12 for another hour of "clinical rounds", in which a student-directed presentation on some aspect of client representation will be offered, followed by discussion with their Clinic colleagues about proposed solutions.

Cases are assigned to student teams of two during the first week of classes in the fall, and typical student team caseloads are 3-5 active cases with some requiring immediate action. Students meet their clients immediately and may go to court or make formal presentations within their first month in Clinic. Student teams meet every other week for a fixed time (usually an hour or hour and a half) with the Clinic supervisor to discuss their cases. These meetings are a minimal requirement, and students with cases in preparation for a hearing or trial often spend significantly more time with their faculty supervisors.

## VIII. SOME CHALLENGES IN THE CLINIC, AND HOW WE RESOLVED THEM

The creation of a new clinic in the human rights field has created many challenges for us as teachers, some of which seem to be shared with clinical teaching everywhere and some of which seem unique to this particular clinical context. Professor Wilson has written about the creation of the Clinic. Richard J. Wilson, *Clinical Legal Education for Human Rights Advocates*, in HUMAN RIGHTS EDUCATION FOR THE TWENTY-FIRST CENTURY 261 (George Andreopolis and Richard Pierre Claude, eds. 1997). The chapter is also available on line at [http://www.pili.org/library/cle/div4-wilson\\_chptr16.htm](http://www.pili.org/library/cle/div4-wilson_chptr16.htm). A more general paper on the creation on clinics in developing and transitional countries, titled "Clinical Legal Education as a Means to Improve Access to Justice in Developing and Newly Democratic Countries," is available from the same web site, at [http://www.pili.org/library/cle/clinical\\_legal\\_education\\_as\\_a\\_means\\_to\\_improve\\_access\\_to\\_justice.htm](http://www.pili.org/library/cle/clinical_legal_education_as_a_means_to_improve_access_to_justice.htm). There is also a section of a co-edited human rights text on practice-related issues: INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE: CASES, TREATIES AND MATERIALS 1328-1351 (Francisco Forrest Martin et al. eds., Kluwer Law International, 1997). The following are some of the issues we have identified and problematized during our work together in the clinic.

1. Are we a law firm or are we an NGO? After many requests for participation of the clinic as an amicus curiae in its own name, we finally decided we would not provide amicus help unless we represent a client. That is, the clinic does not have a program or agenda on the issues to push in the field of human rights, but instead provides advocacy services to clients who need a resolution to a legal problem.
2. Is our first goal teaching or service to the human rights community? Given our philosophy, the answer to this one should be easy. We put the emphasis on pedagogy, with an attempt to provide students with a learning environment that is unique to both legal education and law practice. The clinical experience may well be the only time in their careers that they will consciously dissect each decision they make in the attorney-client relationship, particularly in preparation for an event (trial, pleading or other written submission) and afterwards in reflecting on the process. Our goal is not necessarily efficient representation of clients, but highly effective representation has been a consistent byproduct of our work.

3. What are the adverse effects of handling a high-profile case? The clinic has grappled with this issue most prominently in the Kasinga case, involving the issue of female genital mutilation, and the Pinochet case, during which our students flew to London to assist the Crown Prosecutor in preparing to argue against a claim of immunity interposed by Chile's Senator for Life. We have found that high-profile cases come with an enormous price of intense media focus that saps the limited resources of the clinic and involves a level of sophistication in response that may be difficult to handle for some students. Would we do it again? Probably.
4. The "big case" or "little case" dilemma. Many clinics struggle with this one, but we have found this to be a particularly powerful issue over the years. Examples of big cases would include one in which we are now involved on behalf of two indigenous tribes in Panama seeking reparations in the Inter-American human rights system based on their forced relocation at the time the government built a large hydroelectric dam in the Bayano region of the country, near the Darien jungle. In addition to lost land, the tribes are alleging other major human rights violations against them as a people. The tribes are not large but each has its own interests, and we work with a number of local counsel. The logistics of the case are extremely complex, particularly when we go to hearings at the Commission. The clients are far away and accessible only through counsel, who are busy lawyers working on other public interest issues locally. A small case example is any of our many asylum clients, local and available for meeting with students with a relatively simple legal framework.
5. Group clients versus individual clients. This is an aspect of big case representation but may also occur in other contexts. We have represented groups seeking to file amicus briefs and have also represented groups in litigation. Obvious questions arise as to who speaks for the group, how communication will occur, how conflicts in goals not shared by some members of the group will be resolved, etc. Group representation has now been the subject of some scholarship by clinical and other academic scholars.
6. Fast-paced litigation versus relatively slow-paced cases. The best examples of this issue occur when we consider filing in federal courts in the United States. This has occurred with both habeas corpus filings and potential claims under the Alien Tort Claims Act or the Torture Victim Protection Act. The fact that we have no such cases in our history is some indication of our reluctance to get involved in such matters. The doctrinal and procedural rules and speed of disposition are at an entirely different level of sophistication.
7. Participation in cases with local co-counsel. We have worked with co-counsel in both domestic and international litigation. In our cases in which the facts arise overseas, it is a rule of thumb that we will not proceed without local counsel. This provides both a ready means of communication and the possibility of expanding our training to local NGOs or other lawyer groups who may not be as versed as we are in these matters. By the same token, local counsels' knowledge of domestic law, trust by clients and sense of local legal culture can be invaluable to us. The major problem lies in the orthodoxy of our assignment of the cases to students. Students often defer to more experienced lawyers when they are in discussion as to choices, and co-counsel often expect a more experienced view of things than students may bring to the table.

Treating students as peers, and students' claims to peer status, are ongoing issues.

8. The nature of the tribunal and the potential for student involvement. This issue often works to our advantage. Many international mechanisms are designed to be flexible and informal, and representation of a victim before them is often easier than the complex rules of student certification to practice in domestic state or federal courts. In fact, international tribunal rules may assume non-lawyer representation to be the rule rather than the exception. By the same token, the informality of the venue often results in a weak structure of hearing complaints, with one submission in writing being the rule in many, after which a result may be years away.
9. Poverty of the client and the related issue of who pays expenses. We have applied a rough rule of thumb suggesting that our clients should conform to the same grounds as other pro bono programs. That is, we should not take a client who can otherwise afford the cost of counsel. However, sometimes we have bent that rule in the name of interest in the case, or we may discover the client has assets after representation has begun. The latter problem is a typical one for many public interest lawyers. Taking a client who has the money to hire counsel, however, may create distortions in expectations by the client and some resentment or anxiety by the students as to what services can be provided. This issue is exacerbated when clients (or students) seek reimbursement or payment for even the most simple filing fees; e.g., \$75 to renew an employment authorization with the Immigration Service, or even cab fare to the clinic to meet with student attorneys. We handle these questions as context requires, but we do not generally pay for those expenses that can be borne reasonably by the client.
10. Scope of representation and the retainer agreement. We like a “phased” retainer which will commit the student team to only one step in a process. We do not add many frills but may add something about costs, per the preceding paragraph. We have only lately become more sensitive to the legal, ethical and pedagogical opportunities presented by the drafting and adoption of retainer agreements, even in pro bono cases.
11. The positive and negative aspects of students with language skills. Some of our students speak foreign languages fluently and can interpret in meetings or translate documents with some facility. We have discovered a series of problems with foreign language ability. First, even if the student is bilingual, they are often unacquainted with legal vocabulary and concepts, even if the foreign language is their native tongue, because they have no legal training in that language. Second, and more importantly, the interpretation function distorts the workload of a team and may create conflicts or resentments by the student carrying the load in interpreting. In one recent case at the Asylum Office, for example, one member of the team agreed to interpret while the other acted as counsel, and the “interpreter” member felt some resentment after the event.
12. Converting asylum cases into human rights claims. Ever since the beginning of this clinic, it has seemed to us to make eminent sense to explore with clients the possibility of pursuing human rights complaints that arise from the facts of their asylum claims. A typical example would be a client who is tortured in the home country who provides credible and corroborated evidence of that fact after arriving here. However, such human rights derivative cases are overwhelmingly

the exception, not the rule. In one academic year, we had the students make presentations at the beginning of the second semester about how to raise human rights issues from their asylum cases, and their classroom presentations were powerful and compelling – and no student team ever filed a case based on the presentation. We continue to speculate as to why.

13. Participation of LL.M. students in clinical practice. This law school has a large LL.M. program in International Legal Studies, with nearly 200 foreign lawyers in residence each year. In the early days of this clinic we reserved a place for one LL.M. each semester and then found that scheme unworkable. First, the one-year LL.M. term made it difficult to attract students who want actual field experience outside of the school. Second, many foreign students are not acquainted or comfortable with the clinical method. Third, language and local legal culture made some matches difficult to integrate the students in the litigation model we use. In short, we have not included LL.M.s in our program after these initial attempts.
14. What do we do about court-awarded attorney fees and expenses? Some litigation involves the potential of attorney's fees at its conclusion. We did win attorneys fees and expenses in the *Suarez-Rosero* litigation at the Inter-American Court. The award was about \$6,000, based on a billing at rates under the Criminal Justice Act (about \$60/hour) for the faculty time only. The government of Ecuador paid the fee promptly. We put the money into a clinic discretionary fund for litigation or indigent client expenses in future cases.

## IX. CLINIC SUCCESSES AND ONGOING CASEWORK

### A. Refugee Protection.

The Clinic has been extremely successful overall in our asylum cases. Clinic students handle asylum cases for individuals in all parts of the world. A sampling of countries include: Afghanistan, Chad, Congo, East Turkestan (Xinjiang Province, People's Republic of China), El Salvador, Ethiopia, Guatemala, Haiti, India, Iraq, Liberia, Malawi, Nigeria, People's Republic of China, Rwanda, Sierra Leone, Somalia, Sri Lanka, Sudan, and Togo. **While the general percentage of grants of political asylum in the United States stands at roughly 30%, the Clinic's overall record in refugee protection is just over 90%.** The following summaries highlight just a few of the Clinic's successes in this area:

1. Asylum from Female Genital Mutilation. One of the Clinic's most prominent successes is the case of Fauzyia Kassindja, a Togolese woman who was granted asylum after fleeing her country where she would have been forced to undergo female genital mutilation. The Board of Appeals' decision set an important precedent in asylum law, recognizing the threat of FGM as a form of future persecution. Fauzyia went on to co-author a book called Do They Hear You When You Cry?, which documents both her asylum claim and the related litigation regarding the conditions of her confinement in INS detention facilities.

2. Asylum from Domestic Violence. The Clinic won asylum for two women fleeing domestic violence in their native countries. These cases represent a significant development in asylum law, expanding the enumerated grounds to protect victims of non-governmental actors.
3. The Clinic won political asylum for a prominent Congolese lawyer whose family came under threat during the change of government in Congo because of their association with him.
4. The Clinic won political asylum for a prominent Chadian human rights activist and her young relative, both survivors of government torture. When the U.S. Embassy in Chad revealed the activist's name to the Chadian Ministry of Justice in an attempt to investigate her claim, her human rights organization was forced to close down and the remaining members fled the country.
5. The Clinic won asylum for a Sierra Leonean woman of Eastern European descent who was forced to separate from her African husband during the country's ongoing civil war because of the danger her race posed to him. Ultimately, after suffering numerous race-based attacks, she was forced to flee the country.
6. The clinic won 2 cases involving Christians who fled religious persecution, one from Indonesia and another from Burma. The Indonesian case involved a Sunday School teacher whose church was twice fire-bombed and whose house was pelted with rocks by anti-Christian extremists. The Burmese client was a pastor who was jailed after the military objected to the publication of a church newsletter.
7. We were successful in representing a pro-democracy Chinese activist who edits and publishes a newsletter that is emailed each day to more than 1 million people in China. Because others within China who were involved with the same publication had been imprisoned, we were able to prove that he was targeted for similar treatment were he to be returned and that therefore political asylum in the U.S. was warranted.
8. The Clinic won asylum for a Nigerian national with a family member detained as a political prisoner. In addition, student attorneys researched remedies for the detainee and filed a petition with the United Nations' Working Group on Arbitrary Detention. As the Working Group prepared to take action in response to the petition, there was a change in the government of Nigeria and the detainee was freed. This case demonstrates the close interaction between asylum law and human rights law.
9. The Clinic won political asylum for a native of the Democratic Republic of Congo who feared persecution on account of his/her Tutsi associations.
10. Clinic students helped two Sierra Leonean women who had supported the Kabbah regime. Both won asylum.

11. Clinic students won asylum for two ethnic Uighurs from East Turkestan (Xinjiang Province) in the People's Republic of China. The Uighur people are an ethnic Muslim minority in China targeted for persecution and discrimination.
12. The Clinic obtained withholding of removal for a member of the minority Midgan clan in Somalia.
13. The Clinic won asylum for a Chinese woman who had endured a forced abortion at the hands of the Chinese authorities and fled China to avoid forced sterilization under China's "one family, one child" policy.
14. The Clinic won asylum for a medical student who was the son of a prominent opposition activist in Niger. While investigating his father's disappearance, he was detained and tortured by security forces on two occasions. His mother was also detained, and his sister was raped. His mother, who helped him flee to the U.S., was later taken by security forces, and now she and his father are both missing. Because of severe post-traumatic stress disorder and depression, he filed for asylum after the one-year deadline had passed. However, the students were able to overcome this procedural hurdle, and he was granted asylum.
15. The Clinic won asylum for an independent journalist and opposition activist from Togo. He was detained by gendarmes several times over the course of the mid- to late 1990s, with the level of violence and abuse escalating each time. Finally, in 2001, he and his wife were assaulted in their home by armed military officers. They went into hiding but received further threats. When he received a summons from the gendarmerie at his office, he finally fled Togo.
16. Beginning in 1999, the Clinic represented a detained Sri Lankan man whose only claim was the risk of torture if he was returned there. Clinic students began a thorough investigation to determine how their client could avail himself of the protections of the Convention Against Torture, because at the time we began our representation, the government did not consider the Convention Against Torture enforceable in domestic proceedings. After four years of legal battles, a student team obtained his release from custody and transfer of his case to Canada, where he was able to reunite with family members.

B. International Litigation.

The Clinic files petitions in a number of venues, but the forum in which it most frequently appears is the Inter-American Commission on Human Rights, a seven-person body elected from among the member states of the Organization of American States. Unless otherwise indicated below, all cases with action in "the Commission" refer to the Inter-American Commission on Human Rights.

## 1. Augusto Pinochet and American Victims of the Dirty Wars

For several years, the Clinic has worked closely with Spanish activists and lawyers in a lawsuit against General Pinochet and other military officials for atrocities committed during the Dirty War years in Chile (1973-1990) and Argentina (1976-1983). The Clinic's involvement in this case has ranged from performing extensive research on international law, human rights and humanitarian law, to assisting the families of American victims in joining the lawsuit. Arguments and authority prepared by the Clinic were incorporated into legal pleadings in the Spanish courts, and some were adopted by Investigating Magistrate Baltizar Garzon, who still heads the investigation into both cases.

When General Pinochet was arrested in London, two Clinic students went with Professor Michael Tigar to assist the Crown Prosecutor, who argued against head-of-state immunity for Pinochet, in making arguments leading to the possible extradition of the former dictator to Spain. The students spent an intensive and rewarding week in London, during which they researched the applicable law and helped draft arguments, both under considerable time pressure. Finally, students in the Clinic provided a model for what became a formal request by Judge Garzon to the U.S. government under a Spain-U.S. Mutual Legal Assistance Treaty (MLAT), which facilitates the transfer of evidence in criminal proceedings between the signatory parties. In January of 1999, the U.S. promised to provide relevant documents to the Spanish judge, including previously classified information.

Professor Wilson has written about the Spanish proceedings and the clinic's involvement in the cases on several occasions: Richard J. Wilson, *Prosecuting Pinochet: International Crimes in Spanish Domestic Law*, 21 Human Rights Quarterly 927 (1999); Richard J. Wilson, *The Spanish Proceedings*, in *THE PINOCHET PAPERS* 23 (Reed Brody and Michael Ratner eds. 2000); Richard J. Wilson, *Prosecuting Pinochet in Spain*, Human Rights Brief (Spring 1999).

## 2. The Death Penalty as a Violation of International Human Rights Law.

In the early 1990s, the Clinic filed emergency petitions with the Inter-American Commission on Human Rights on behalf of death-row inmates in the United States, one in Utah and two others in Texas. The prisoners, who faced immediate execution, petitioned the Commission to seek stays of the domestic proceedings pending review by the Commission. These three cases were the first of many others now pending at the Commission challenging U.S. practice in the application of the death penalty.

In *William Andrews v. United States*, the case was taken to the Inter-American Commission on Human Rights days before the scheduled execution in Utah of William Andrews in July of 1992. While the petition did not save Mr. Andrews' life — he was executed on schedule — the decision by the Commission, rendered in February of 1998, established important principles about the treatment of evidence of racial bias in a criminal trial, among other

important precedents. The evidence showed that the jury was likely to have been influenced by improper evidence of racial prejudice. Mr. Andrews, an African-American man, was on trial in Salt Lake City for a mass murder committed by a co-defendant, also African-American, after Andrews had left the scene. During the trial, a jury member produced a napkin on which were written the words, "Hang the Nigger's [sic]." Despite objections and calls for a mistrial, the trial judge simply admonished the jury to "ignore communications from foolish people," and Mr. Andrews was convicted and sentenced to death. Eighteen years later, on the eve of his execution, the substantive issue of racial bias in the jury deliberations had yet to be addressed by the US courts. The Commission found violations of Articles I (right to life), II (right to equality before the law) and XXVI (right to due process of law) in the American Declaration on the Rights and Duties of Man, a document which the Commission had previously held to be binding on the United States. Citing to authority from the European human rights system, the Commission applied an objective test for judicial and jury impartiality, one of "reasonableness and the appearance of impartiality." Once the defendant has introduced a suspicion of jury bias, the Commission found, the burden shifts to the government to investigate and demonstrate that impartiality was maintained. The *Andrews* facts show a failure by the United States to carry its burden. The Commission also found a violation of the Declaration's Article XXVI protection against "cruel, infamous or unusual" punishment, in that the 18 years Andrews awaited execution constituted, under the circumstances, proof of the "death-row phenomenon" under *Soering v. United Kingdom*, 11 E.H.R.R. 439 (1989). Over the six years that the case was pending before the Commission, several student teams wrote interventions to the Commission and argued the case orally against the US government.

Another case involving international human rights and the death penalty was that of a U.S. soldier who was convicted of the murder of his wife and two children, all German citizens, off-base in Germany. Germany has abolished the death penalty. The Clinic's *amicus* arguments, presented orally before the U.S. Court of Military Appeals for the Armed Service by a Clinic student, suggested that Germany's surrender of the soldier under the NATO Status of Forces Agreement may have been improperly prejudiced by U.S. law applied to our armed forces abroad. The Clinic also invoked an emerging international customary norm against the application of the death penalty to anyone who commits a capital crime in territory of an abolitionist country (Germany), regardless of treaty provisions which may allow surrender of that person to a retentionist country (United States). The Court recently overturned the defendant's conviction on grounds of ineffective assistance of trial counsel. *United States v. Murphy*, 50 M. J. 4 (1998).

Professor Wilson has also written extensively on the Clinic's role in this kind of litigation before the Commission: Richard Wilson, *Race, Criminal Justice and the Death Penalty*, 15 WHITTIER L. REV. 395, 403 (1994); Richard J. Wilson, *Using International Human Rights Law and Machinery in Defending Borderless Crime Cases*, 20 Fordham International Law Journal 501 (1997); *Defending a Criminal Case with International Human Rights Law*, The Champion (Magazine of the National Association of Criminal Defense Lawyers), May 2000; Richard J. Wilson, *The United States Position on the Death Penalty in the Inter-American*

*Human Rights System*, 42 Santa Clara Law Review (forthcoming 2002).

3. Precedents in the Inter-American Court of Human Rights

The Clinic won a favorable Inter-American Court of Human Rights decision in the case of *Suarez Rosero v. Ecuador*. The case is important for three reasons: the case represents the first contentious case against Ecuador before the Court, it was the first such case in which the victim appeared to give testimony in Court, and for the first time ever the Court awarded fees to the victim's counsel. Mr. Suarez Rosero had been arrested during a major drug interdiction operation and held incommunicado, without being charged, and remained incarcerated for four years before being tried. The case addressed issues of criminal procedure such as preventive detention and the right to a fair trial. The Clinic was awarded fees and costs in the amount of \$6,000.00. Students represented the petitioners at the Inter-American Commission and wrote the briefs at the Court.

In a second case at the Inter-American Court, *Benavides v. Ecuador*, the Clinic successfully represented the family of Nelly Benavides, a teacher who was disappeared by military officials, in obtaining the largest friendly settlement in the Court's history, one million dollars, which was immediately paid by the government of Ecuador.

In 1991, the Clinic filed a collective complaint against the government of El Salvador on behalf of COMADRE, an organization of families of the disappeared during the long civil war in that country. The complaint documents a decade-long series of actions against the organization by government agents and their operatives. Clinic students argued the case before the Inter-American Commission in the spring of 1992, the first such appearance in the Commission's history. The government of El Salvador did not appear and was thus subject to a default judgment. In 1996, in Report No. 13/96, the Commission found in favor of the petitioners on all violations alleged and recommended that the government undertake a speedy, impartial and exhaustive investigation of all the reported violations, as well as provide the victims with necessary monetary compensation for the violations.

4. Successor Government Liability Precedent from the Inter-American Commission

The Clinic, working as co-counsel with the International Human Rights Law Group, won a favorable and published decision from the Commission in a case involving the illegal termination of several judges in Panama during the regime of General Manuel Noriega. The new Panamanian government argued unsuccessfully that it was not responsible for the wrongdoing during the Noriega era. Portions of the student work became part of a presentation made by the Commission to the OAS General Assembly regarding Panama's failure to protect judicial independence.

5. Political Prisoner Released

The Clinic filed a petition on behalf of well-known Cuban human rights activist, Dr. Samuel

Martinez Lara. Dr. Martinez spent many years in prison in Cuba and was well-known for his outspoken criticism of the Castro government. Some months after the filing of the petition, Dr. Martinez was released and joined his family in the United States.

#### 6. Attack on Extradition Doctrine of Non-Inquiry

An innovative case completed by the Clinic involved a challenge to the extradition of a native of New Zealand from the United States to face trial in France for drug offenses similar to that for which he had been heavily sentenced for in California. While serving his sentence in the U.S., French authorities tried the prisoner on drug charges *in absentia* in France. Also, French authorities represented to the U.S. that he would be given a "new trial" after his extradition to France. U.S. authorities also promised that the trial in France would "comport with notions of due process in the United States." The Clinic represented the prisoner in his appeal before the U.S. Court of Appeals for the Fifth Circuit in New Orleans, arguing that the new trial in France could not meet international human rights standards to which both the U.S. and France adhered by treaty. The Clinic also urged the court to reject the long-standing doctrine of non-inquiry, which provides that the sending country will not look beyond the extradition treaty to the actual criminal justice practices of the receiving country. Pending appeal, U.S. authorities moved the prisoner to France, and over strong objections from the Clinic, the court dismissed the appeal as moot. Professor Wilson wrote about this topic more broadly: Richard J. Wilson, *Toward the Enforcement of Universal Human Rights Through Abrogation of the Rule of Non-Inquiry in Extradition*, 3 ILSA Journal of International and Comparative Law 751 (1997).

### X. ON-GOING ACTIVITES OF THE CLINIC

#### International Litigation

##### 1. Protection of Indigenous Peoples from Forced Displacement

In 2000, the Clinic filed as co-counsel in a case before the Commission involving claims with roots in the issues of self-determination, claims for land, and the close relationship between native peoples and the environment. The case involves two tribal groups, the Kuna and the Emberá, who seek control over traditional tribal lands from which they were displaced during the construction of the Bayano Dam in eastern Panamá. These tribes have been relocated to less fertile and productive areas along the Pan-American Highway, where farmers from other parts of the country have persistently invaded and occupied tribal lands, clear-cut the forests for timber and access to grazing pasture, and then moved further down the highway or into the jungle to repeat the process after selling the land to incoming settlers. In two hearings that took place at the Commission in 2001 and 2002, students appeared and argued. The government has offered friendly settlement of the claim, and discussions are ongoing in Washington and Panama. Professor Wilson wrote about a similar case at the Commission: Richard J. Wilson, *Environmental, Economic, Social and Cultural Rights of the Indigenous Peoples of Chiapas, México*, in HUMAN RIGHTS OF INDIGENOUS PEOPLES

(Cynthia Price Cohen, ed. 1998).

## 2. The Right to Full Political Participation for the District of Columbia

The Clinic filed a case with the Commission against the United States government for denying the right of citizens in the District of Columbia full participation in the democratic life of the nation. D.C. is not a state and has no voting representation in the U.S. House or Senate. Moreover, Congressional oversight in the actions of the District permits nullification of local decision-making on fiscal and substantive political decisions, which authority Congress has actively exercised in recent years. Oral arguments have been heard twice, and a proposed resolution of the case has been communicated confidentially to the government. The Commission will decide whether to publish the report at one of its upcoming sessions.

## 3. Complaint to the African Commission on Human Rights

In late April 2002 the Clinic filed a communication against the Republic of Guinea with the African Commission on Human and Peoples' Rights, which is based in Banjul, The Gambia. This case seeks to hold the Republic of Guinea accountable for human rights violations -- including arbitrary arrests and detention, beatings, torture, rape and extortion of property -- perpetrated against Sierra Leonean refugees pursuant to a decree by Guinean President Lansana Conte on September 9, 2000.

The evidentiary support for the communication consists of more than thirty detailed affidavits prepared by Clinic students based on interviews with Sierra Leonean refugees in Freetown, Sierra Leone during a week-long fact-finding mission. Prior to the mission, which was undertaken in conjunction with the Institute for Human Rights and Development in Africa ("Institute"), Clinic students prepared a comprehensive memorandum setting forth a proposed fact-finding methodology. The Institute has since adopted the Clinic's methodology as a model for future fact-finding missions.

## Legislative and Administrative Advocacy

In fall 2001 the Clinic advised the Framework Convention Alliance (FCA), a coalition of non-governmental organizations involved in negotiations on the Framework Convention on Tobacco Control (FCTC), on appropriate enforcement mechanisms for the treaty. Clinic students conducted extensive research and drafted detailed recommendations and proposed language regarding reporting obligations, monitoring requirements and dispute settlement procedures under the FCTC. In November 2001 the students traveled to Geneva to brief the FCA during the third round of FCTC negotiations.

The FCTC will be the first legally-binding agreement to be negotiated by the 191 Member States of the World Health Organization. When adopted, the FCTC will represent the world's first legally-binding agreement on tobacco control. The target date for adoption of the FCTC is May 2003.

## Domestic Litigation.

### 1. FOIA Litigation in Federal District Court.

The Clinic is involved in three such cases. First, the Clinic represented an asylum seeker, who was in a leadership position in an Islamic opposition party in Algeria, in two FOIA cases related to “secret evidence” used in his asylum proceedings. Although the Board of Immigration Appeals awarded him asylum because there was no support for INS claims that he persecuted others, was a security threat to the United States, or was associated with terrorist activities, the INS has certified his case to the Attorney General, where it is currently pending review. The Clinic represents our client in FOIA matters against both the INS and the FBI seeking documents to refute the claims by INS that he was a persecutor, security threat or associated with terrorist activities. In the INS case, the Clinic has obtained the release of over 3000 documents in whole or in part from the INS and other agencies who had documents in INS files, such as the CIA, FBI and Interpol; less than 100 pages remain in dispute. Cross-motions for summary judgment are pending before the court. In the FBI case, the progress of the case was slowed by the events of September 11. The FBI has been ordered to produce documents or additional information justifying the withholding of those documents by September 2002.

The Clinic also represents a U.S. citizen imprisoned in Ecuador who now seeks documents from the FBI through FOIA. Our client is a businessman in Florida who was approached by the FBI and DEA and informed that a business associate of his was involved in drug trafficking. The man had cooperated with the FBI and DEA, however, the DEA informed the Ecuadoran government that he was involved in a drug and money laundering cartel. He later traveled to Ecuador on business and was arrested and charged with money laundering. More than two years after his arrest, he was tried, convicted and sentenced to eight years imprisonment. On appeal, the Ecuadoran Supreme Court affirmed the conviction, stating that the trial had been conducted under the supervision of the DEA.

He submitted the FOIA request in an attempt to understand the events that led to his arrest and imprisonment in Ecuador. He maintains that there was never any legitimate reason for his imprisonment, and he has long suspected that one or more U.S. law enforcement agencies may have prompted Ecuadorian law enforcement to arrest him. A summary judgment motion is pending before the court. In the third, we are beginning a process of litigation against the relevant government agencies for information about the activities in Paraguay of Operation Condor, the coordinated operation of state security offices during the dirty wars in the Southern Cone of South America in the 1970s and 80s. Our client is a Paraguayan professor living in the U.S.

### 2. Trafficking of Domestic Workers.

A team of Clinic students are in negotiations with a family working at one of the large

international financial institutions in Washington regarding their systematic and cruel exploitation of a domestic worker who was forced to live in their basement for 11 months and paid significantly less than the law requires for her services. Our client finally had the courage to leave the home, but not without resultant immigration consequences which are also part of the student team's focus. Settlement negotiations with the family are ongoing.

### 3. Cases in International Organizations with Organizational Immunity

The Clinic was involved in the cases of five women who worked at an international financial organization and who claimed that they had been discriminated against on the basis of their sex, age and race during their careers. The Clinic took the cases as a potential test case for federal court challenging institutional immunity through a "human rights exception." However, internal administrative remedies soon became the team's focus. As co-counsel, the Clinic students were involved in researching issues on international human rights standards regarding due process and discrimination. In one of the five cases, the Clinic represented the woman in her internal grievance proceeding, which was resolved by agreement of the parties.

## XI. WHERE OUR STUDENTS ARE EMPLOYED.

Students who participated in the Clinic often take full-time jobs in the human rights or immigration fields, and many work with private firms or in government. A sampling of the jobs taken by students include clerkships or permanent employment at the Asylum Office, the General Counsel's Office of the Immigration and Naturalization Service, the Board of Immigration Appeals, the Executive Office of Immigration Review, and the U.S. Trade Court. Other students have taken employment with immigration firms in the area, as well as with other human rights related entities such as Hogar Hispano, in Virginia; Catholic Charities in Arlington, Virginia; Proyecto Libertad in Harlingen, Texas; World Citizen in Washington, D.C.; the U.N. High Commissioner for Refugees in Indonesia; a private refugee advocacy group in Hong Kong; a private firm specializing in immigration law in London; and as Asia representative for the International Human Rights Law Group.