

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF GEORGIA

COLUMBUS DIVISION

USA

V

NO. 4:06-po-00038-GMF

VAL FILLENWARTH

Trial Memorandum in Support of Testimony and Evidence of Linkage and Similarity in Nature and Purpose between the School of the Americas and the Western Hemisphere Institute for Security Cooperation

Introduction

The atrocities of the School of the Americas (SOA) have not disappeared because the school has been renamed and re-chartered as the Western Hemisphere Institute for Security Cooperation (WHINSEC). The prior actions of the school's graduates are absolutely relevant to the evaluation of the current operation of the school.

Rule 401 of the Federal Rules of Evidence defines relevant evidence:

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Defendants submit that testimony and evidence about the human rights atrocities committed by the graduates of the School of the Americas (SOA) is clearly relevant evidence in this matter even though the school has changed its name and legal status to the Western Hemisphere Institute for Security Cooperation (WHINSEC).

Those who seek to erase the injustices of the SOA, now that the school has been re-named WHINSEC, often base their arguments on a sort of corporate charter change model of

responsibility. That argument goes something like this: because the charter of the old SOA has been dissolved and there is a newly chartered institution with new oversight and a new mission, then the new school has no legal connection to the old or any responsibility for the harms of the prior institution despite the their similarities in place, planning, or purpose.

This argument is unpersuasive in fact, in policy, and in law. Nor should it be used by this court to limit the testimony or evidence of defendants.

Because there is no reported decision yet interpreting this point, the court should look to other sources of the application of law to changed institutions for guidance.

As Amnesty International USA noted:

“Although the United States Army claims that it has closed the School of the Americas (SOA) and established the Western Hemisphere Institute for Security Cooperation (WHINSEC) as an entirely new institution that happens to be located in the same physical place, WHINSEC is essentially the same school as SOA, with the same primary mission - conveying military skills to members of Latin American armed forces.”¹

Undersigned counsel suggests this court look to any of the following, all of which support defendants’ view: the facts of the “new” WHINSEC school compared to the SOA; international law; the law of school closures under civil rights law; the factual analysis of Amnesty International USA; and the law of successor corporations. After a brief history of the SOA-WHISC, this memo will even more briefly address each of these areas.

History of the School of the Americas - Western Hemisphere Institute of Security Cooperation

On the grounds of Ft. Benning, in Columbus, Georgia lies an institution profoundly at odds with the democratic principles of this nation, the U.S. Army School of the Americas (SOA) renamed in 2001 the Western Hemisphere Institute for Security Cooperation (WHINSEC).²

¹ “Unmatched Power, Unmet Principles: The Human Rights Dimensions of US Training of Foreign Military and Police Forces,” 2002 Report of Amnesty International USA, 55 (internal citations omitted) full report available online at www.amnestyusa.org/stoptorture/msp.pdf Unmatched Power, Unmet Principles.

² For additional information about SOA-WHISC see: Mark Danner, *THE MASSACRE AT EL MOZOTE* (Vintage Books, 1993); Lesley Gill, *THE SCHOOL OF THE AMERICAS: Military Training and Political Violence in the Americas* (Duke University Press, 2004); James Hodge and Linda Cooper, *DISTURBING THE PEACE: The Story of Father Roy Bourgeois and the Movement to Close the School of the Americas* (Orbis Books, 2004); Timothy J. Kepner, “Torture 101: The Case Against the United States for Atrocities Committed by School of Americas Alumni,” 19 *Dickinson Journal of International Law* 475, 480-486 (2001); Jack Nelson-Pallmeyer, *SCHOOL OF ASSASSINS* (Orbis Books, 1997); Jack Nelson-Pallmeyer, *SCHOOL OF ASSASSINS:*

Originally established in Panama in 1946 and named the U. S. Army School of Americas in 1963, the school, under various names, has trained over 61,000 military forces from Latin America.³ Due to a conflict between U.S. and Panamanian officials regarding the operation and command of the school, the School of the Americas was moved to Fort Benning in 1984.⁴ Once in the U.S., the School of the Americas became part a statutory part of the operation of the U.S. Army.⁵

The over 60,000 military and police forces trained at the School of the Americas are from 22 Latin American countries.⁶

In any given year, the countries sending students to the school are generally the same countries receiving high levels of U.S. military assistance. During the 1980s, for example, when the U.S. was providing large amounts of foreign assistance to El Salvador's military, about one-

Guns, Greed, and Globalization (Orbis Books, 2001); UNMATCHED POWER UNMET PRINCIPLES: The Human Rights Dimensions of US Training of Foreign Military and Police Forces (Amnesty International 2002); Mike Wilson, THE WARRIOR PRIEST; The Story of Father Roy Bourgeois and the School of the Americas (John Gordon Burke Publisher, 2002).

³ See "Frequently Asked Questions, WHINSEC, available online at: <https://www.infantry.army.mil/whinsec/about.asp?id=37>

⁴ The GAO describes the move in its chronology as follows:
"1984. The School relocated to its current location at Fort Benning, Georgia, due to a conflict between U.S. and Panamanian officials regarding the operation and command of the School. The Army reassigned operational control of the School from the U.S. Southern Command to the U.S. Army Training and Doctrine Command." See 1996 GAO report, *supra*.

Some describe the move as an outgrowth of disputes arising from the 1977 Panama Canal Treaties. Bruce Zagaris, "US Closes Hemispheric Military Academy with Plans to Reopen for Training of Law Enforcement Officials," *International Enforcement Law Reporter* (February 2001).

⁵ The original legislation, which took effect October 1, 1987, called it both the School of the Americas and the School for the Americas. See Public Law 100-180, Title III, Section 319 (a)(1), December 4, 1987, 101 Stat. 1077:

See 10 USC 4415, United States Army School of the Americas.

(a) The Secretary of the Army may operate the military education and training facility known as the United States Army School of the Americas.

(b) The School for the Americas shall be operated for the purpose of providing military education and training to military personnel of Central and South American countries and Caribbean countries.

This law was amended the next year to call it the School of the Americas consistently. Public Law 100-526, Title I, Section 106(c), October 24, 1988, 102 Stat. 2625.

Congress appropriated \$1,000,000 for the construction of the U.S. Army School of the Americas at Fort Benning. Public Law 99-591, October 30, 1986, 100 Stat 3341.

⁶ 1996 GAO Report, Sections 1, 4.2, and 4.3. The U.S. Army website for WHISC says that over 61,000 soldiers were trained by the School of the Americas. <http://www.benning.army.mil/whinsec/about.asp?id=37> (Last visited May 17, 2004).

third of the students at SOA came from El Salvador. More recently, half of the students come from just five countries: Colombia, El Salvador, Nicaragua, Peru, and Panama.⁷ In 2003, Colombia, Chile and El Salvador had the most students at the school.⁸

The School of Americas, now known as WHINSEC, has been condemned for decades as a training ground for military leaders from Central and South America, many of whom have gone on to become notorious human rights abusers.⁹ Graduates of the School of Americas have been implicated in many of the worst human rights atrocities in the Western Hemisphere, including the assassination of bishops, labor leaders, women and children, priests, nuns, community workers, and in the massacres of entire communities.¹⁰

U.S. Army Major Joseph Blair, an instructor at the School of the Americas and a recipient of five meritorious service medals and a Bronze Star, started speaking out against the SOA in 1993, when the U.S. Army and officials of the school denied knowing “anything about the atrocities and murders that the graduates were committing in Latin America.”

“When I was at the school, we routinely had Latin American students who were known human rights abusers, and it didn’t make any difference to us.”¹¹

There is now undisputed evidence that even torture was taught at the SOA, both in Panama and the U.S. One of the graduates of the SOA said:

⁷ 1996 GAO Report, section 4.3.

⁸ Latin American Group Educational Fund Report on WHISC, 10-28-03.
On the web at <http://www.ciponline.org/facts/soa.htm> (Last viewed May 19, 2004)

⁹ John Donnelly, “Army’s Tainted School of the Americas to Close, Reopen with New Name,” The Boston Globe, December 15, 2000, reported: “The school has trained dozens of Latin America’s most famous criminals, including former Panamanian leader General Manuel Noreiga and 19 Salvadoran soldiers linked to the assassinations of six Jesuit priests in November 1989. In 1996, the Pentagon released training manuals used in the 1980s that advocated torture, kidnapping and blackmail as a way of fighting insurgents.”

¹⁰ Timothy J. Kepner, “Torture 101: The Case Against the United States for Atrocities Committed by School of Americas Alumni,” 19 Dickinson Journal of International Law 475, 480-486 (2001) detailing
See also 2002 Amnesty International report on SOA discussed below; and Jack Nelson-Pallmeyer, SCHOOL OF ASSASSINS: Guns, Greed, and Globalization (Orbis 2001).

¹¹ Linda Cooper & James Hodge, “Former Instructor says SOA should close,” National Catholic Reporter, May 8, 1998.

The school was always a front for other special operations, covert operations. They would bring people from the streets into the base and the experts would train us on how to obtain information using torture. We were trained to torture human beings. They had a medical physician, a U.S. medical physician which I remember very well, who was dressed in green fatigues, who would teach the students...[about] the nerve endings of the body. He would show them where to torture, where and where not, where you wouldn't kill the individual.¹²

Amnesty International confirms that, after years of refusals to acknowledge that torture was being taught, the Pentagon finally admitted in 1996 that seven training manuals used at the School of the Americas for nearly ten years advocated execution, torture and blackmail.¹³

The U.S. Army intelligence manuals, which were used in courses at the School of the Americas, and were distributed to thousands of military officers from eleven South and Central American countries, included instructions on how to use “fear, payment of bounties for enemy dead, beatings, false imprisonment, executions and the use of truth serum.”¹⁴

The manuals also included instructions for neutralizing, which the Pentagon admitted was a euphemism for execution, “governmental officials, political leaders, and members of the infrastructure.”¹⁵

The manuals identified as insurgents “religious workers, labor organizers, student groups and others in sympathy with the poor.”¹⁶

This teaching was confirmed by SOA instructor U.S. Army Major Joseph Blair, who pointed out, when the U.S. government was trying to downplay the manuals:

¹² Jack Nelson-Pallmeyer, *SCHOOL OF ASSASSINS* 32 (Orbis 1997).

¹³ Unmatched Power, *Unmet Principles*, 2002 AI USA Report, pp 36-37.

¹⁴ Dana Priest, “US instructed Latins on Executions, Torture; Manuals used 1982-1991, Pentagon Reveals,” *Washington Post*, September 21, 1996.

¹⁵ Dana Priest, “US instructed Latins on Executions, Torture; Manuals used 1982-1991, Pentagon Reveals,” *Washington Post*, September 21, 1996.

¹⁶ Gail Lumet Buckley, “Left, Right, Center,” *AMERICA*, May 9, 1998. See also Kepner, *supra*, at 486-487.

I sat next to Major Victor Theiss who created and taught the entire course, which included seven torture manuals and 382 hours of instruction. He taught primarily using manuals which we used during the Vietnam war in our intelligence-gathering techniques. The techniques included murder, assassination, torture, extortion, false imprisonment.... Literally thousands of those manuals were passed out. The officers who ran the intelligence courses used lesson plans that included the worse material contained in the seven manuals. Now they say that there were only eighteen to twenty passages in those manuals in clear violation of U.S. law. In fact, those same passages were at the heart of the intelligence instruction.”¹⁷

Because of the history of human rights abuses in its teaching and by its graduates, several legislative attempts have been made to close the School of Americas. In 1999, the House of Representatives voted 230-197 for an amendment that would have eliminated funds for training officers at SOA.¹⁸

Torture was called up again in 1999, but this time by the Secretary of the U.S. Army Louis Caldera, who, clearly tired of trying to defend the SOA, stated, in a very unfortunate use of words:

“We’re not going to let the Army’s reputation to be dragged through the mud every year. I don’t want to go through another fiscal year with this torture.”¹⁹

In 2000, a vote to close the SOA lost in the House by 214 to 204.²⁰

As a result there has been a cosmetic renaming of the School of Americas as WHINSEC and a revised legal charter.²¹

¹⁷ Barbara Jentsch, “School of the Americas critic,” *The Progressive*, July 1, 1997.

¹⁸ Mary McGrory, “Hallelujah Time for Human Rights,” *Washington Post*, August 8, 1999.

¹⁹ James Hodge & Linda Cooper, “School of the Americas reforms merely cosmetic, critics say,” *National Catholic Reporter*, June 2, 2000.

²⁰ *Unmatched Power, Unmet Principles*. 2002 AI USA Report 37

²¹ The legislation creating the Western Hemisphere Institute on Security Cooperation can be found at 10 USC 2166.

John Donnelly, “Army’s Tainted School of the Americas to Close, Reopen with New Name,” *The Boston Globe*, December 15, 2000.

Since 2001, the School of the Americas has technically ceased to be and the school would like to be known as a new institution, the Western Hemisphere Institute for Security Cooperation.²²

WHINSEC now operates in the same building as the SOA, training the same soldiers, with the same goal.

Though the U.S. government has tried mightily to suggest that the Congressional transformation of the School of Americas into WHINSEC means the SOA has been closed, few outside the Army apologists are persuaded.²³

In Fall 2002, Amnesty International USA condemned the School of Americas/WHINSEC and its human rights abuses and featured the school as a prominent example of troubling human rights problems in the USA in its report, “Unmatched Power, Unmet Principles: The Human Rights Dimensions of US Training of Foreign Military and Police Forces.”²⁴

“Throughout the decade of the 1990s, the record of one US military training institution, in particular, attracted public scrutiny in the United States. The US Army’s School of the Americas offered training and education to Latin American soldiers, some of whom went on to commit human rights violations, including the 1989 murder in El Salvador of six Jesuit priests, their housekeeper and her daughter. Then, in 1996, it came to light that, in the 1980s and early 1990s, the School of the Americas had used manuals that advocated practices such as torture, extortion, kidnaping and execution.”²⁵

Amnesty International USA highlighted some, but by no means all, of the most horrifying human rights abuses in their 2002 report:

²² The legislation creating the Western Hemisphere Institute on Security Cooperation can be found at 10 USC 2166.

John Donnelly, “Army’s Tainted School of the Americas to Close, Reopen with New Name,” The Boston Globe, December 15, 2000.

²³ John Donnelly, “Army’s Tainted School of the Americas to Close, Reopen with New Name,” The Boston Globe, December 15, 2000.

²⁴ Unmatched Power, Unmet Principles: The Human Rights Dimensions of US Training of Foreign Military and Police Forces. Amnesty International USA, Fall 2002. www.amnestyusa.org/stoptorture/msp.pdf

²⁵ “Unmatched Power, Unmet Principles,” 2002 AI USA Report at iii.

“US Army Special Forces were training members of the Atlacatl battalion in El Salvador in the days before and after members of the battalion killed a woman, her daughter and six Jesuit priests in November 1989. Three of the four Atlacatl officers implicated had received some human rights training while attending the Salvadoran cadet course at the School of the Americas - two officers in 1982 and one in 1988. Overall, 19 of the 26 soldiers linked to the murder had taken some training at the SOA. One of them had also attended the Special Forces Officer Course at Ft. Bragg during late 1988 and early 1989.

Following the 1989 murders, a dozen protestors led by the Reverend Roy Bourgeois launched a vigil at the gates of the School of the Americas in Ft. Benning Georgia pressing for its closure. In the years since then, what started as a vigil has grown into an effective reform movement, the SOA Watch Campaign. SOA Watch has helped publicize numerous revelations about school alumni, who include:

- * two of the three officers cited by the Guatemalan archbishops’ office as suspected directors of the killing of anthropologist Myrna Mack in 1992, as well as three high-ranking leaders of the Guatemalan military intelligence unit D-2, including one implicated in the 1997 bludgeoning death of Bishop Juan Gerardi;

- * two of the three killers of Salvadoran Archbishop Oscar Romero; ten of twelve officers responsible for the deaths of 900 civilians in the Salvadoran village of El Mozote; Salvadoran death squad leader Robert D’Aubisson; three of the five officers involved in the 1980 rape and murder of four US church women in El Salvador;

- * Manuel Noriega, Panama’s former dictator, who was arrested and forcibly extradited by US military forces on drug trafficking charges in 1989;

- * Haitian Colonel Gambetta Hyppolite, who ordered his soldiers to fire on an electoral bureau in 1987;

- * 123 of the 247 Colombian army officers cited in “El Terrorismo de Estado en Colombia,” a 1992 study of human rights abuses in Colombia;

- * ten of thirty Chilean officers against whom a Spanish judge sought indictments for crimes of terror, torture and disappearance; and

* Leopold Galtieri, former military dictator and a leader of the “dirty war” in Argentina.”²⁶

Numerous other murders and human rights violations have been documented by SOA graduates in Bolivia, Chile, Colombia, El Salvador, Guatemala, Honduras, and Paraguay among others.²⁷

Amnesty concluded their report with several strong recommendations to the US government to remedy the human rights violations occurring at SOA/WHINSEC.²⁸ Included are:

* The US government should take immediate steps to establish an independent commission to investigate the past activities of the SOA and its graduates, particularly the use of these [torture] manuals in SOA training and the impact of such training.

* Pending the publication of the findings of the above-mentioned independent commission of inquiry, training at the WHINSEC-SOA should be suspended.

* The independent commission of inquiry should recommend appropriate reparations for any violations of human rights to which training at SOA contributed, including criminal prosecutions, redress for victims and their families, and a public apology.²⁹

Actual Relationship and Similarities Between SOA and WHINSEC

²⁶ “Unmatched Power, Unmet Principles,” 2002 Amnesty International USA report, pp 35-36 (internal citations to authority omitted).

²⁷ See examples in Jack Nelson-Pallmeyer, *SCHOOL OF ASSASINS: Guns, Greed, and Globalization* (Orbis 2001). For details of what appears to be the most murders in one incident, over 700, in which 10 of the 12 officers in charge were graduates of the School of the Americas, see Mark Danner, *THE MASSACRE AT EL MOZOTE* (Vintage 1993).

In 1993 Guatemalan Colonel Julio Roberto Alpirez, a graduate of the School of Americas, ordered the assassination of Efraim Bamaca Velasquez, who had been tortured for more than a year. Meglan Hagler, Francisco Rivera, “Bamaca Velasquez v Guatemala,” *An Expansion of the Inter-American System’s Jurisprudence on Reparations*,” 3 Human Rights Brief 2 (2002).

²⁸ Unmatched Power, Unmet Principles, 2002 AI USA report, full set of recommendations are set out at pp 52-56, the six ones specific to SOA/WHISC are set out at pp 55-56.

²⁹ “Unmatched Power, Unmet Principles,” 2002 Amnesty International USA Report at v and pp 55-56.

The school's supporters repeatedly acknowledged the similarity between the two schools. At the time that the new school was being created, one of the strongest legislative supporters of the School of the Americas, U.S. Senator Paul Coverdell from Georgia, told the media that the changes between WHINSEC and the SOA were "basically cosmetic" and "The School of the Americas will still be able to continue its purpose."³⁰

The school's Colonel Mark Morgan informed the Department of Defense just before the vote in Congress: "Some of your bosses have told us that they can't support anything with the name 'School of the Americas' on it. Our proposal addresses this concern. It changes the name."³¹ Major Thomas Collins, spokesman for U.S. Army, said on December 12, 2000 that "The new school is going to continue the same vital functions the School of the Americas did. We see a great need to continue the same military-to-military, country-to-country contact."³²

As even the U.S. Army admitted, the SOA and WHINSEC are not even cosmetically all that much different from each other. They are both run by the Army, funded by the Army, for mainly the same students, with mainly the same instruction.

That is why members of Congress regularly co-sponsor a bill to close WHINSEC.

U.S. Representative Lois Capps, (22nd District California) summarized the factual similarities between SOA and WHISC on October 10, 2002:

"On January 13, 2001 the U.S. Army officially "closed" the School of the Americas (SOA) and at the same time re-opened a near-identical Department of Defense facility at the same location the Western Hemisphere Institute for Security Cooperation (WHINSEC). Virtually the same courses are being taught, the number of hours devoted to human rights training has not changed, the staff has not been altered or retrained in any way, and no commission was established to review and re-think the curriculum or methods.

³⁰ Richard Hyatt, "Coverdell Says SOA Changes Will Be Minor," Columbus Ledger-Enquirer, February 16, 2000.

³¹ George Monbiot, "Backyard Terrorism," London Guardian, October 30, 2001.

³² John Donnelly, "Army's Tainted School of the Americas to Close, Reopen with New Name," The Boston Globe, December 15, 2000,

For the past several years, I have repeatedly voted to close the SOA, that is why I am troubled by these new developments. First, none of the fundamental issues raised around the need to close the SOA have been addressed in the renamed WHINSEC. Second, the failure of the U.S. Army to deal seriously with the record of the SOA raises questions about the quality and emphasis in the vast array of other training programs. Finally, the human rights abuses and problems with the civil-military relations are not, unfortunately, a thing of the past in Latin America.

Please be assured, I remain committed to closing this facility. The failure of the U.S. Army to deal seriously with the record of the WHINSEC/SOA leaves me no choice.”³³

WHINSEC and SOA are housed in the exact same building and have similar operational control, funding, purpose, students, and instruction. There is no dispute that SOA and WHINSEC are housed in the same building on the same grounds of the same U.S. Army Fort.

The Army ran and funded the SOA and the Army runs and funds WHINSEC. The SOA by statute was operated by the Secretary of the Army. Section 319(a)(1)(a). The WHINSEC by statute is operated by the Secretary of Defense and by whatever Secretary of a military department as the Secretary of Defense appoints. 10 USC 2166 (a) and (b). The Secretary of Defense has appointed the Secretary of the Army to run WHINSEC and the Army contributes its funds to the operation.³⁴

The schools have similar purposes. The SOA by statute was operated “for the purpose of providing military education and training to military personnel of Central and South American countries and Caribbean countries.” Section 319 (a)(1)(b). The purpose of WHINSEC “is to provide professional education and training to eligible personnel of nations of the Western Hemisphere...” 10 USC 2166(b). The law goes on to state explicitly that eligible personnel are military personnel, law enforcement personnel, and civilian personnel. 10 USC 2166 (c)..

And both schools publicly pledged themselves to be defenders of human rights. The operation of the SOA for over 20 years required 4 hours of instruction in human rights.³⁵

³³ October 10, 2002 letter from U.S. Representative Lois Capps.

³⁴ See web site for WHISC <http://www.benning.army.mil/whinsec/faq.htm>

³⁵ According to U.S. Army Major (ret) Joseph Blair, an instructor at the SOA. Linda Cooper, “Former Instructor says SOA should close,” NCR, May 8, 1998.

WHINSEC requires 8 hours of instruction in “human rights, the rule of law, due process, civilian control of the military, and the role of the military in a democratic society.” 10 USC (d).

Though they have different sources in the U.S. statutes, the WHINSEC, as the U.S. Army spokesman admitted, is a continuation of SOA.

As noted above, Amnesty International USA has extensively analyzed the relationship between the SOA and WHINSEC and has found they are “essentially the same school.”

“Although the United States Army claims that it has closed the School of the Americas (SOA) and established the Western Hemisphere Institute for Security Cooperation (WHINSEC) as an entirely new institution that happens to be located in the same physical place, WHINSEC is essentially the same school as SOA, with the same primary mission - conveying military skills to members of Latin American armed forces.”³⁶

Liability of Successor Corporations for Crimes of Prior Dissolved Corporations

The United States Supreme Court and many lower federal and state courts have long recognized that there are many circumstances when civil and criminal responsibility can be imposed on totally new successor corporations for the crimes or actions of prior corporations.

For example, where two corporations were indicted for crimes but then dissolved and became divisions of a new corporation under the same ultimate ownership, the Court found there was no reason to allow the new corporate organization to escape criminal or civil liability for the actions of its predecessors. *Melrose Distillers Inc. v US*, 79 US S Ct 763 (1959). See similar reasoning and similar results in *Sculptchair, Inc. v Century Arts, Ltd.* 94 F.3d 623 (11th Cir.1996), *US v Alamo Bank*, 880 F2d 828, 830 (5th Cir 1989), *Bud Antle, Inc. v Eastern Foods, Inc.* 758 F.2d 1451 (11th Cir 1985), and *US v Polizzi*, 500 F2d 856, 908 (9th Cir 1974).

There are many, many other circumstances under which criminal proceedings can be brought against successor corporations, even years after the dissolution of the corporate

³⁶ “Unmatched Power, Unmet Principles: The Human Rights Dimensions of US Training of Foreign Military and Police Forces,” 2002 Report of Amnesty International USA, 55 (internal citations omitted) full report available online at www.amnestyusa.org/stoptorture/msp.pdf Unmatched Power, Unmet Principles.

perpetrator. See discussion in H. Lowell Brown, *Successor Corporate Criminal Liability: The Emerging Federal Common Law*, 49 *Arkansas L. Rev.* 469, 472 (1996).

Parallels Under Civil Rights and Constitutional Law and Desegregation

Defenders of the school argue that the School of the Americas is already closed and WHINSEC is an entirely new and therefore unblemished institution which cannot be held responsible for problems of the prior school.

Part of this argument is accurate, part is not. As noted above, it is true that the School of the Americas has officially ceased and WHINSEC is a new legal entity. However, going out of business as one problematic entity and starting over as another has long been used as a tactic to try to avoid political, corporate, and international responsibility and there are several bodies of law that provide for continuing responsibility and accountability.

For example, the argument that the School of the Americas has been closed and replaced by a new and totally different school with no responsibilities for its predecessor has historical parallels to the “transparent artifice” employed by southern officials to try to avoid the consequences of desegregation.

In the years following *Brown v Board of Education*,³⁷ southern legislatures passed more than 450 laws designed to circumvent and delay desegregation.³⁸ This occurred in many states.

In Louisiana, after the legislature changed the laws governing public education numerous times, allowing local authorities to close one school and open another to avoid the consequences of the law, a three judge court found that closing schools and transferring the facilities to another entity was a “transparent artifice” designed to avoid the consequences of law.³⁹ Closing schools, changing authority for supervision and control and responsibility for schools were tried over and over by states.

³⁷ 347 US 483 (1954).

³⁸ Judith A. Hagley, *Massive Resistance - The Rhetoric and the Reality*, 27 *New Mexico L Rev* 167, 195 (1997).

³⁹ In *Hall v St. Helena Parish School Board*, a three judge court found that closing schools and transferring the facilities to another entity was a “transparent artifice” designed to avoid the consequences of law, one of a number of evasive schemes of the Louisiana legislature. *Hall v St. Helena Parish School Board*, 197 F Supp 649 (D.C.E.D. La 1961). See also *Bush v Orleans Parish School Board*, 188 F. Supp. 916 (D.C. La. 1960).

The U.S. Supreme Court in *Griffin v County School Board of Prince Edward County* (1964) found it was unconstitutional for Virginia, when faced with desegregation, to close the public schools and fund alternative segregated schools.⁴⁰

In Arkansas, once desegregation was ordered, the legislature enacted 14 different pieces of legislation authorizing evasion of the orders by, among other devices, closing the schools.⁴¹ The courts ultimately saw through these transparent artifices and made the institutions accept responsibility.

International Law Recognizes Liability of Successor Governments

Finally, in addition to domestic law giving guidance on the responsibility of successor institutions for the crimes of predecessors, it is noteworthy that international law imposes responsibility for violations of human rights on successor governments, even when they had no control over the prior government or were even victimized by prior governments.⁴² Consider the following summary of the responsibility under international law:

“Under international law, the successor government is responsible for the acts of the prior regime, even though it in fact had no control over them and was often the victim of the prior regime. The law does not provide for situations where, for example, the military is not under the actual control of the government. Additionally, international recognition that states have a duty to investigate, prosecute, and provide some form of redress for the victims of certain human rights violations such as widespread and systematic summary executions, disappearances, and torture has increased dramatically in the last decade. These crimes fall under a subset of crimes that must be prosecuted as they have been determined to fall outside the scope of political crime amnestiable [spelling in original] under international law.”⁴³

⁴⁰ *Griffin v County School Board of Prince Edward County*, 377 US 218 (1964).

⁴¹ Judith A. Hagley, *Massive Resistance - The Rhetoric and the Reality*, 27 *New Mexico L Rev* 167, 208 (1997). For other examples, see Molly O’Brien, “Discriminatory Effects: Desegregation Litigation in Higher Education in Georgia,” 8 *William and Mary Bill of Rights Journal* 1, fn 130 (1999).

⁴² Diane F. Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” 100 *Yale L.J.* 2537, 2546 n.32 (1991).

⁴³ Mark Valasso, *Truth and Reconciliation Commissions*, 33 *U Miami Interamerican L Rev* 153, fn 36 (2002). See also: Peter A. Schey et al., *Addressing Human Rights Abuses: Truth Commissions and the Value of*

International law is certainly a source of normative law that this and all courts should look to when making determinations in such issues. As the ABA Committee Report on Judicial Education on International Law stated:

“The applicability of international legal norms in specific cases may be, and frequently is, limited by the considerations of jurisdiction, equity and due process that bear upon all proceedings before U.S. courts. A decent respect for the opinions of mankind, however, as well as for our own judicial traditions, demands that such considerations not be invoked merely to disguise an unwillingness to accord international legal norms their rightful place in our legal systems.”

Members of the international community also clearly see the link between SOA and WHINSEC and the murders and human rights atrocities committed by graduates. For example, in a July 2002 article in *World Policy Review* reported that George Monbiot, a British commentator, charged that "for the past 55 years the U.S. government has been running a terrorist training camp, whose victims massively outnumber the people killed by the attack on New York, the embassy bombings and the other atrocities laid, rightly or wrongly, at al-Qaida's door." This "terrorist training camp" was the Western Hemisphere Institute for Security Cooperation (WHINSEC). Formerly known as the School for the Americas, WHINSEC, Monbiot reported, had been renamed at the behest of anxious congressmen in January 2001 in a bid to wipe its tarnished name clean. He alleged that "more than 60,000 Latin American soldiers and policemen" had graduated from this institution since 1946. Among these graduates were many of Latin America's "most notorious torturers, mass murderers, dictators and state terrorists." Nor was this "ancient history." Recent graduates, he charged, were running paramilitary groups in Colombia and had commissioned "kidnaping, disappearances, murders and massacres." With bitter irony, Monbiot concluded his piece by saying that "given that the evidence linking [WHINSEC] to continuing atrocities in Latin America is rather stronger than

Amnesty, 19 Whittier L. Rev. 325, 331 (1997); Douglas Cassel, *Lessons from the Americas: Guidelines for International Response to Amnesties for Atrocities*, 59 *Law & Contemp. Probs.* 197, 229 (1996); Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 *Yale L J* 2537 (1991); Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 *Cal. L. Rev.* 449 (1990).

the evidence linking the al-Qaida training camps to the attack on New York," European governments should apply "full diplomatic pressure" and seek 11 the extradition of the school's commanders... on charges of complicity in crimes against humanity."⁴⁴

Conclusion

"The new school is going to continue the same vital functions the School of the Americas did. We see a great need to continue the same military-to-military, country-to-country contact."

Major Thomas Collins, spokesman for U.S. Army, December 12, 2000⁴⁵

"Just as you cannot ask Holocaust survivors to forget Hitler, you can't simply ask those who seek peace, social justice and accountability from the conquistador armies to forget the past and judge the SOA history book by its new cover."

Joseph A. Blair, US Army Major (ret), instructor at the SOA, January 24, 2001⁴⁶

"When I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck. -- Richard C. Cushing

The facts of the SOA-WHINSEC show it is similar in place, funding, students, curriculum, operation and supervision. Domestic and international law will not allow the savage crimes of the former to be made invisible for the latter by cosmetic change.

When the SOA-WHINSEC is closed, and it certainly will be, it will be because it is a continuation under a different name of the School of the Americas.

Defendants who are charged with non-violent trespass onto Fort Benning, with the avowed purpose of closing the School of the Americas-WHINSEC have every right under the

⁴⁴ Mark Gilbert, "Superman versus Lex Luther: British anti-Americanism since September 11," World Policy Journal, July 1, 2002.

⁴⁵ John Donnelly, "Army's Tainted School of the Americas to Close, Reopen with New Name," The Boston Globe, December 15, 2000,

⁴⁶ "School has only changed names," Columbus Ledger-Enquirer, January 24, 2001.

Rules of Evidence to explain why. It is understandable that the defenders of SOA-WHINSEC do not like to hear about the murders, tortures and human rights atrocities of the schools, but testimony about them is relevant.

s/ William P. Quigley, Pro Hac Vice January 13, 2007
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Certificate of Service

I hereby certify that I electronically filed this pleading with the Clerk of Court using the CM/ECF system, so that copies will be electronically served on counsel of record Melvin E. Hyde and Stuart D. Alcorn January 13, 2007. s/ William P. Quigley, Pro Hac Vice, Attorney for Defendant, c/o Loyola University New Orleans College of Law, Box 902, 7214 St. Charles Avenue, New Orleans, LA 70118. 504.861.5591 (office), 504.710.3074 (cell)
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