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WCL Students Preparing for Second Year at European Moot Court Competition

by Angela Collier

For the second consecutive year, the Washington College of Law (WCL) will field a team at the European Human Rights Moot Court Competition, *Concours Rene Cassin*. The team, composed of J.D. students Rupal Kothari and Opal McFarlane, and LL.M. alumni coaches Claudia Martín and Françoise Roth, will travel to Strasbourg, France, April 18–22. WCL students, Sergio J. Ramirez and Fernando González-Martín, both of whom participated in the event last year, are also helping the team prepare for this year's competition.

When the competition was first organized in 1984 by the Council of Europe, the Strasbourg International Institute of Human Rights, and the Robert Schuman School of Law, participation was limited to European teams. In 1993, however, the event was opened to non-European teams, and last year, WCL was the first and only U.S. law school to participate. This year, a team from La Universidad de los Andes in Bogota, Colombia will also participate.

The *Concours* is based on a fictitious case in which one state alleges that another has violated the European Convention for the Protection of Human Rights and Fundamental Freedoms. The teams represent either the applicant or the defending state, and prepare briefs and argue the case before a mock tribunal based upon the case law of the European Court and Commission of Human Rights.

Kothari and McFarlane began preparing for the competition in October 1994. McFarlane explained that she decided to participate because "the competition is very unique, requiring the participants to write and argue in French. Although the fact pattern is fictional, the competition increases international awareness of human rights and their importance." Kothari further explains that "I wanted to broaden my horizons in human rights law. Learning the European system is challenging and enjoyable." Roth, an alumni of Strasbourg Law School, is

participating because "I not only know the experience that the competition gives to students, but, most importantly, I realize that it is a good avenue to give a European facet to the human rights curriculum offered by WCL."

Professor Claudio Grossman, Co-Director of the Center for Human Rights and Humanitarian Law and Dean of Graduate Studies at WCL, states that moot court competitions allow "students to take responsibility for their own education." He adds that "the *Concours* competition is the only human rights competition in the world, which creates tremendous opportunities for our students. As a human rights lawyer, I have seen how students develop and gain experience through this type of program. I am very proud of the students from our school who have overcome many obstacles to participate in this foreign competition. Because this is WCL's second year competing, we are on the verge of creating a tradition." ☺

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of individual responsibility for criminality. It is difficult to build a society based on the rule of law unless it is understood that everyone is responsible for his or her own acts and that everyone, whether ordinary citizen or government official, is subject to punishment for violating the law.

By providing for individual rather than collective amnesties, and by insisting that these amnesties be accompanied by full disclosure, South Africa's proposal directly addresses some of the worst evils of amnesty laws. Most of the torturers and murderers will be spared a trial and imprisonment, but only if they acknowledge their individual responsibility.

The South African approach represents an innovative attempt both to honor a bargain that permitted a peaceful transfer of power, and to promote the interests of truth and justice, by requiring the perpetrators to publicly acknowledge their crimes as a precondition to receiving a pardon.

In Haiti, as in South Africa, there is a practical reason to favor such an approach. By covering up all the crimes of the Haitian military, and of police and *attaches*, a blanket amnesty would make it difficult to weed out those who should be

barred from serving in a any reconstituted force.

According to WCL Professor, Robert K. Goldman, this suggested approach doesn't answer all the objections to amnesty. It does, however, conciliate the purpose of a peaceful framework for democratic consolidation without converting the victims to second class citizens, since those responsible will be socially stigmatized by proper publicity for their crimes.

Amnesty in Haiti

Prior to Aristide's return, the Haitian army had sought a general amnesty as a precondition for their stepping down from power. No specific agreement was ever worked out and army leaders and the Haitian government are currently arguing over whether an amnesty covers all of the military or only those leaders who fled into exile.

In December 1994, President Aristide established a seven-member commission to investigate crimes committed in Haiti during his exile. This commission is partly modeled on efforts to document similar crimes of authoritarian regimes in El Salvador, Brazil, and Chile. It, however, has no authority to indict or prosecute individuals, but only to investigate

violations of human rights and humanitarian law and present its findings to the government.

By ordering an investigation into the killings and torture of thousands of Haitians during the last three years, the government of President Aristide has opened up one of the most sensitive issues it will ever face. Since his U.S.-orchestrated return, Aristide has made it a point of preaching reconciliation. Nonetheless, many Haitians fear that if the commission reveals names of perpetrators, the public may take the list as an incitement to seek revenge. But as noted in a draft document on the commission's mandate, "reconciliation cannot become a reality unless at least the truth is known about all the crimes committed between September 30, 1991 and October 15, 1994." ☺

Claudio Santorum, an Argentinean attorney, recently completed his LL.M. degree at WCL. He is a former Fellow for the Center for Human Rights and Humanitarian Law.

Antonio Maldonado, a Peruvian attorney, will finish his LL.M. degree at WCL in May. He is presently interning at the International Human Rights Law Group.