

850993

REPORT OF THE
LEGAL SERVICES COMMITTEE
OF THE
GOVERNOR'S TASK FORCE ON THE FEASIBILITY OF A
CENTER FOR VICTIMS OF TORTURE

SUMMARY AND INTRODUCTION

The Legal Services Committee was charged by the full Task Force with determining what legal services will be needed by clients of the proposed Center, how best to deliver those legal services, and possible uses for the facts about torture generated by a victims of torture center.

In searching for the answers to these questions, the Legal Services Committee has been able to draw on the experience of its initial members (Appendix 1), has received assistance from Nancy Kleeman of the State Bar Association Committee on Legal Assistance to the Disadvantaged and Liza Ring, a student at the University of Minnesota Law School, has heard from a member of the Immigration Bar in Minnesota, and had the continued assistance of Candee Goodman, Executive Director of the Legal Advice Clinics of Hennepin County. Goodman was in fact added to the committee membership at its first meeting.

Conclusions and Recommendations:

Needs will exist for legal services for clients of the Center and these needs will be at least equal to those of any person in society.

Special communications needs and concerns will exist in delivering legal services and special client education needs will arise from the language and cultural differences between the United States and the clients' home countries.

The legal services of the Center should give highest priority to meeting the needs which relate to the clients' vital human needs for food, shelter, and health care.

There is the possibility that a substantial amount of immigration law may be involved.

Existing delivery systems should be used for meeting these needs.

Service for the indigent can be provided by the Legal Advice Clinic of Hennepin County, the volunteer lawyer programs of Ramsey and Olmsted Counties, and through the State Bar.

The lawyer referral services can coordinate providing services to those able to pay.

Non-lawyers should be used to provide the orientation to the U.S. legal system and culture and to assist in the fact gathering and documentation needed for immigration cases.

Training will have to be provided non-lawyers working on immigration cases, and lawyers working with torture victims. Whether this should be a direct function of the Center or be done by another organization is unresolved.

While the Committee recommends that the Center not directly engage in analyzing and reporting data on torture by foreign governments, it should collect and retain data in a consistent manner. To the extent that it does not endanger the client or the client's family, nor violate the privacy of the client, nor threaten or endanger the Center, the Center should make this information available to all research, analysis, and reporting organizations.

A number of issues were raised in Committee meetings that are common to all aspects of the Center. We forwarded these to the Coordinating Committee:

Victims will face a number of language and cultural barriers to understanding. Interpreters with cultural understanding will be needed.

The Center will need a consistent policy on determining the ability to pay for services.

There should be one main contact between the Center and each family using the facilities of the Center--an ombudsman.

Many will contact the Center who will not qualify for its services. It will be desirable to refer these persons to appropriate service providers. There will therefore be a need for a referral system.

I. NEED FOR SERVICE AND PROBABLE TYPES OF SERVICE NEEDED

We believe needs will exist for legal services for clients of the Center. Many needs will be those similar to any person in society. Different needs will arise from language and cultural differences. Immigration issues will also arise.

We recommend that the focus of the Center's legal services be on meeting the needs for legal assistance which relate to the clients' vital human needs for food, shelter, and health care. Based on the knowledge of the committee members, we expect that, especially considering the potential for language and cultural barriers, clients will have difficulty with many day to day legal aspects of our society. This will require both a teaching role and a role of providing more typical legal services. The typical legal services will often involve interfacing with government agencies and departments--in short, administrative law and proceedings.

While initially most clients will probably be already living in the state, we expect clients to be drawn from other portions of the country. We do, however, expect most clients will be within the U.S. before applying to the Center for assistance. While this will limit the need for immigration law, we recognize the possibility that a substantial amount of immigration work may be involved. This may involve the status of the client under U.S. law and the status of family members. This could involve either assistance in getting the client into the U.S. or retaining his or her right to remain (Appendix 3). Much of this work will involve fact gathering and documentation of the arguments to be made.

Fact gathering and documentation for immigration cases can be very time consuming but is vital for favorable rulings. Victims understandably become upset and break down during the interview while recalling their experience. This in many cases requires continuing the interview later when the victim has regained composure. Questioning through an interpreter adds even more time.

In summary, we recommend that the Center insure that all the legal needs of the clients be met.

II. MEANS OF DELIVERING LEGAL SERVICES

The recommendation of this Committee is that the existing volunteer lawyers programs in Minnesota be used to provide legal services to those clients of the Center that are not able to pay. For those clients able to pay, we recommend the use of the existing lawyer referral services in Minnesota. These existing delivery systems are sufficient and will be capable of meeting the needs. Specifically, it appears Hennepin County Legal Advice Clinic, and the volunteer lawyer programs in Ramsey County and Olmsted County, are willing and able to meet the needs of indigents. Additionally, the Committee on Legal Assistance to the Disadvantaged (LAD) of the Minnesota State Bar may be of assistance. (Specific contacts in these organizations are listed in Appendix 2).

Training will likely be required for volunteer lawyers. In the specific case of immigration law, while there are few lawyers practicing in Minnesota in that specialty, existing immigration lawyers are expected to volunteer. In addition, the Legal Advice Clinic of Hennepin County is willing to sponsor training sessions in response to demonstrated needs. (Hennepin County LAC has already received inquiries from lawyers wishing to volunteer time for clients of the Center.). Serving immigration law needs could be more difficult if the demand significantly exceeds our expectations.

We see other service providers and assistance being available: Law students, the Minnesota Justice Foundation, and non-lawyers, including lay volunteers. In these three cases training programs will also be needed. The U. of M. Law School faculty may be willing to authorize and supervise classes, clinics, and independent study projects to meet some of these needs.

Non-lawyers offer interesting possibilities. In fact gathering and documentation for immigration proceedings, and in helping victims understand the legal system of the U.S., lay persons (perhaps volunteers from various human rights organizations, churches, and synagogues) can be very effective if they are provided the proper training. In both cases, it would be much better to use persons familiar with the language and culture of the victim rather than persons familiar with the intricacies of the law. Here new programs for attracting and training non-lawyers will be needed. Whether this should be run by the Center or by another organization is as yet unresolved.

III. REPORTING ON TORTURE

The Center will be a unique opportunity within the U.S. to do research, gather facts, and document all aspects of torture by foreign governments. However, since the Center's primary responsibility is to provide treatment and services to victims of torture, we recommend that it should not directly engage in these other activities. Engaging in analyzing and reporting data on torture by foreign governments could jeopardize support for the Center. However, the Center should cooperate with other organizations in this regard.

We suggest the Center carefully gather and retain data in consistent form. This data should be available to all research, analysis, and reporting organizations to the extent it does not endanger the client, nor violate the privacy of the client, nor threaten or endanger the Center. Specific criteria in this regard will have to be developed.

In the case of reporting on successful methods for providing for the needs of victims of torture, we believe that the Center has both the right and duty to sponsor and support this type of research whenever possible.

IV. COMMON ISSUES SENT TO COORDINATION COMMITTEE

Issues perceived as being common to all aspects of the Center have been tendered to the Coordinating Committee. They are:

1. Clients will have unique language and cultural barriers to understanding. This affects their functioning in the legal system as well as receiving health care. Interpreters with cross cultural experience will be needed. This function will probably be best handled by non-lawyers with knowledge in the culture of the victim. Perhaps over time, previous clients can serve the Center in this capacity.
2. There will be varying ability to pay. Some clients will have an ability to pay, partially or fully, for services provided. Others will not. This will be true for health as well as legal services. In

the case of legal services for those able to pay, the private system, probably functioning through existing lawyer referral services, may provide privately practicing lawyers rather than lawyers with legal advice clinics or volunteer lawyers. The Center will need a comprehensive policy regarding ability to pay.

3. The Legal Committee discussed some possible names for the center. These included the "(Dr.) Filartiga Center" or "(Dr.) Filartiga Center for Victims of Torture." Both would recognize a champion of international human rights that has had some contact with the international human rights organizations in Minnesota.

4. With the clients' previous experiences with bureaucracy, this committee recommends that one ombudsman be assigned to each family and be responsible for coordinating all services needed for that family. This person would be responsible for contacting the various experts needed, finding lay workers as needed, and either acting as, or finding appropriate interpreters. In short, this primary contact would spare the client and his or her family from having to deal with an unknown bureaucracy. In the specific case of legal services, the ombudsman would make the contacts with the appropriate service provider. Since this person would function in both the medical and legal areas, a final recommendation is left up to the Coordinating Committee and the full Task Force.

5. The Center may not be staffed to meet all the needs of its clients. It may need to establish a network of qualified and interested individuals to provide some services. The network should include lay and professional service providers and should make use of existing referral systems where possible. Initially, this will only need to cover Minnesota. If the reputation of the Center grows, a means of locating qualified assistance in other regions of the U.S. will probably become necessary. These people will probably need training.

6. Many persons will contact the Center who will not be qualified for its services. It will be desirable to refer these persons to the appropriate service providers. There will therefore be a need for a referral system.

Appendix I
MEMBERSHIP OF
LEGAL SERVICES COMMITTEE

Chief Justice Douglas Amdahl
Minnesota Supreme Court

Mr. Tom Berg
Former U.S. Attorney
Partner, Popham, Haik, Schnobrich,
Kaufman and Doty, LTD

Mr. David Doty, President
Minnesota Bar Association
Partner, Popham, Haik, Schnobrich
Kaufman and Doty, LTD

Ms. Candee Goodman
Executive Director
Hennepin County Bar Association
Legal Advice Clinics

Judge Alberto Miera
Ramsey County District Court

Mr. Robert Sands (Chair)
Partner, Fredrikson and Byron
Member, MN Lawyers International
Human Rights Committee

Appendix 2
Legal Assistance Organizations

Hennepin County:

Hennepin County Bar Association Legal Advice Clinics
430 Marquette Avenue #401
Minneapolis, MN 55401
Candee Goodman, Executive Director
(612) 339-9139

Ramsey County:

Centro Legal
179 East Robie Street
St. Paul, MN
291-0110

Ramsey County Volunteer Lawyer Program
300 Minnesota Building
St. Paul, MN 55101
Angie McCaffrey
(612) 222-5863

Olmsted County:

Legal Assistance of Olmsted County
903 West Center Street
Rochester, MN 55901
(507) 287-2035

Southern Minnesota (Including Ramsey County)

Southern Minnesota Regional Legal Services
300 Minnesota Building
St. Paul, MN 55101
(612) 228-9823
(also has regional offices)

General:

Minnesota State Bar Association
430 Marquette Avenue
Minneapolis, MN 55401
Nancy Kleeman
(612) 333-1183

Appendix 3
SUMMARY OF IMMIGRATION LAW

Immigration

In regard to immigration, while we expect most clients to be legal residents of the United States, some will probably seek protection under The Refugee Act of 1980 (8 U.S.C. Sec. 1101-1254). Section 208 of the Act applies to aliens seeking asylum who are in the United States or at a port of entry but not under an order of deportation. An alien may be granted asylum if found to be a refugee under the definition provided in the Act. A spouse or children of an alien who is granted asylum under this provision, if not otherwise eligible for asylum, may be granted asylum if accompanying or following the alien.

Similarly, victims would probably seek to avoid deportation under Section 243(h) of the Refugee Act. It allows aliens under an order of deportation to apply to an immigration judge for "withholding of deportation" for political reasons.

Persons seeking protection under either of these provisions face certain difficulties which will require legal assistance. An individual must prove that he fits within the statutory definition of "refugee". The Act defines a refugee as a person unable to return to his homeland because of a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion". In INS v. Stevic, the U.S. Supreme Court held that an alien must establish a "clear probability of persecution" to qualify for withholding of deportation under Section 243(h).

This standard could be a difficult one to meet, even for a victim of torture. In addition, U.S. asylum procedures have been criticized as discriminating against people from non-communist countries that are U.S. allies. Statistics show that from October 1982 through September 1983, only 83 of 9,594 asylum applications submitted by Salvadoran refugees were accepted by the INS. During that same period, President Reagan set the refugee admission ceiling for the Soviet Union and Eastern Europe at 15,000, while allotting a maximum of 2,000 places for the Caribbean and all of Latin America. Therefore, victims from countries that are U.S. allies will have an especially difficult time obtaining protection under the Refugee Act of 1980.

Other Rights

Torture victims may desire legal representation in order to pursue certain rights. For example, a refugee may seek to enforce this right to property that is located in another country (see Tran Qui Than v. Blumenthal, 469 F.Supp. 1202 (N.D.Cal.1979)). Since even undocumented aliens have been held to have a broad range of rights and privileges under U.S. law, the list of possible actions involving

rights of torture victims is almost endless. For human rights purposes, one of the most significant types of cases that could be brought would be a case involving enforcement of international human rights standards in U.S. federal courts. The best example of this is Filartiga v. Pena-Irala, 630 F2d 876(2d Cir. 1980). In that case, a federal court found that under the Alien Tort Statute, U.S. district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. The court held that the defendant had violated the law of nations by torturing Joelito Filartiga to death, and awarded Joelito's father and sister damages for their injury resulting from his death.

Fact Finding

Fact finding would be a valuable aid in providing legal services to torture victims. It could be used to provide necessary evidence in various immigration proceedings. It could also be used to prove violation of inter-national human rights standards.

Toronto provides a good example of fact finding techniques which may be useful in immigration cases. Interviewers ask the victims the following questions:

- The time, place and date of each arrest.
- A description of the arresting officers (whether military, intelligence, police, etc.)
- The duration of imprisonment, with dates.
- A description of the transport to prison.
- All episodes of physical abuse or torture from the arrest to the release, with their dates and duration, including the form used (i.e. beating, electricity, cigarette burns, submersion in water or suspension by hands or feet), the area of the body abused and the symptoms produced, with their duration and intensity).
- The prison conditions.
- Whether there were adverse psychological conditions, including solitary confinement, the amount and nature of food, lighting, furnishings, heating and sanitary conditions and the medical care available.

A subsequent physical examination is conducted to substantiate the victim's statements.

The interviews are usually very time consuming. Questioning often has to be conducted through an interpreter, which takes more time. Victims understandably become upset and break down during the

interview when recalling and reciting their experiences. Interviews frequently must be postponed until a later time when the victim has regained composure. Lawyers could conduct the interviews, but without proper training they may lack the delicate and sympathetic approach necessary in discussing torture experiences with victims. In Toronto, lawyers frequently ask physicians to conduct the interviews simply because they possess the interviewing skills the lawyers lack. Lawyers may decide to become skilled in these interviewing techniques themselves. Or, given the time consuming nature of the interviews, a more desirable alternative may be to have laypersons trained so that they may conduct the interviews for the lawyers. The Toronto center has found that application of this specific interviewing method yields more information from the victims and results in less questioning of the refugee at the subsequent immigration hearing.

Appendix 4

Bibliography of Literature on Legal Services for Torture Victims

- AI, Report on Allegations of Ill-Treatment of Prisoners at Archambault Institution, Quebec, Canada (1983).
- Anker, D., Due Process and the Asylum Applicant, 5 Immigration Journal 14, Autumn 1982.
- Anker, D., Exercising Discretion in Asylum Cases, 6 Immigration Journal, 11 April-June 1983.
- Ashby, A., Health Suits Test Legal Service Aid for Non-Citizens, 95 Los Angeles Daily Journal 1, October 11, 1982.
- Blum, B. and G. Lobaco, The Rights of the Undocumented, 4 California Lawyer 43-48, October 1984.
- Ballew, J., Aliens, Federal Courts and the Law of Nations, (Filartiga v. Pena-Irala), 11 Georgia Journal of International and Comparative Law 365, Summer 1981.
- Basch, K., Federal Responsibilities for Resettling Refugees, 24 Washington University Journal of Urban and Contemporary Law 151, 1983.
- Blum, J.M. and R.G. Steinhardt, Federal Jurisdiction Over International Human Rights Claims: The Alien Tort Claims Act After Filartiga v. Pena-Irala, 22 Harvard International Law Journal 53, Winter 1981.
- Brill, K.D., The Endless Debate: Refugee Law and Policy and the 1980 Refugee Act, 32 Cleveland State Law Review 117, Winter 1983-84.
- Brooks, D.M., Illegal Aliens Are Inhabitants Within the Meaning of 18 U.S.C. 242 (case note) United States v. Otherson, 6 Suffolk Transnational Law Review 117, Spring 1982.
- Burke, W.S., Compassion Versus Self-Interest: Who Should be Given Asylum in the United States?, 8 Fletcher Forum 311, Summer 1984.
- Cathcart, L.M., P. Berger and B. Knazan, Medical Examination of Torture Victims Applying for Refugee Status, 121 Canadian Medical Association Journal 179, July 21, 1979.
- Claude, R.P., The Case of Joelito Filartiga and the Clinic of Hope, 5 Human Rights Quarterly 275, 1983.
- Copeland-Lopez, F., Discrimination Against Resident Aliens: Diminishing Expectations of Equal Protection (case note) Vargas v. Strake, et al., 15 Lawyer of the Americas 521, Winter 1984.
- Cox, T.N., Well-Founded Fear of Being Persecuted: The Sources and Application of a Criterion of Refugee Status, 10 Brooklyn Journal of International Law 333, Summer 1984.

- DeNegris, L.G., Expanding the Application of the Equal Protection Clause to Illegal Aliens (case note) Plyler v. Doe, 10 Ohio Northern University Law Review 563, Summer 1983.
- Dodge, K.S., Immigration: Eligibility for Withholding of Deportation; the Alien's Burden Under the 1980 Refugee Act (case note) Stevic v. Sava, 49 Brooklyn Law Review 1193, Summer 1983.
- Durham, W.L.II, An Action Brought by an Alien Against a Foreign Sovereign Under the Foreign Sovereign Immunities Act "Arises Under" Federal Law (case note) Verlinden B.V. v. Central Bank of Nigeria, 24 Virginia Journal of International Law 201, Fall 1983.
- Durst, I., The Rights of Undocumented Aliens: Balancing Equal Protection and Federalism, 28 New York Law School Law Review 431, 1983.
- Edwards, C.L., Political Asylum and Withholding of Deportation: Defining the Appropriate Standard of Proof Under the Refugee Act of 1980, 21 San Diego Law Review 171, December 1983.
- Elgass, J.A., Federal Funding of United States Refugee Resettlement Before and After the Refugee Act of 1980, Michigan Yearbook of International Legal Studies 179, 1982.
- Garvey, J., Repression of the Political Emigre--The Underground to International Law, 90 Yale Law Journal 78, November 1980.
- Gilbert, G.S., Right of Asylum: A Change of Direction, 32 International and Comparative Law Quarterly 633, July 1983.
- Girdner, B., Argentine Refugee Asks U.S. Court to Allow Torture Suit: Invokes Human Rights (Sideman v. Argentina), 96 Los Angeles Daily Journal 1, January 21, 1983.
- Goldman, R.K. and S.M. Martin, International Legal Standards Relating to the Rights of Aliens and Refugees and United States Immigration Law, 5 Human Rights Quarterly 302, 1983.
- Gordon, C., The Rights of Aliens: An Expanding Role for Trial Lawyers, 10 Trial 54, December 1983.
- Griffith, E., Deportation and the Refugee, Michigan Yearbook of International Legal Studies 125, 1982.
- Gross, D., The Right of Asylum Under United States Law, 80 Columbia Law Review 1125, June 1980.
- Grossman, J.B., Illegal Immigrants and Domestic Employment, 37 Industrial and Labor Relations Review 240, January 1984.
- Helton, A.C., Persecution on Account of Membership in a Social Group as a Basis for Refugee Status, 15 Columbia Human Rights Law Review 39, Fall 1983.

- Helton, A.C., Political Asylum Under the 1980 Refugee Act: An Unfulfilled Promise, 17 University of Michigan Journal of Law Reform 243, Winter 1984.
- Hiltz, A.K., Exclusion of Aliens From Federal Civil Service Upheld (case note) Mow Sun Wong v. Campbell, 6 Suffolk Transnational Law Journal 133, Spring 1982.
- Jacobson, W.A., Process Due Resident Aliens Upon Entering the U.S. (case note) Landon v. Plasencia, 24 Harvard International Law Journal 198, Summer 1983.
- Johnson, C.D. Jr., Filartiga v. Pena-Irala: A Contribution to the Development of Customary International Law by a Domestic Court, 11 Georgia Journal of International and Comparative Law 335, Summer 1981.
- Jones, C., Human Rights: Rights of Relatives of Victims (Uruguay), 25 Harvard International Law Journal 470, Spring 1984.
- Kurzban, I.J., A Critical Analysis of Refugee Law, 36 University of Miami Law Review 865, September 1982.
- Lamar, S.J., Those Who Stand at the Door: Assessing Immigration Claims Based on Fear of Persecution, 18 New England Law Review 395, Spring 1983.
- Levi, D.F., The Equal Treatment of Aliens: Preemption or Equal Protection?, 31 Stanford Law Review 1069, July 1979.
- Levy, D.M., Detention on the Asylum Contest, 44 University of Pittsburg Law Review 297, Winter 1983.
- Malloy, M.P., The Impact of U.S. Control of Foreign Assets on Refugees and Expatriates, Michigan Yearbook of International Legal Studies 399, 1982.
- Martin, D.A., The Refugee Act of 1980: Its Past and Future, Michigan Yearbook of International Legal Studies 91, 1982.
- Martin, S.M., Non-Refoulement of Refugees: United States Compliance With International Organizations (McMullen v. INS), 23 Harvard International Law Journal 357, Winter 1983.
- Miller, D.D. and D.A. English, Significant Developments in the Immigration Laws of the United States 1981-82, 20 San Diego Law Review 191, December 1982.
- North, D.S. and P.L. Martin, Immigration and Employment: A Need for Policy Coordination, 103 Monthly Labor Review 47, October 1980.
- Paik, S.B., The Legal Needs of Immigrant Groups--A Case Study: Korean Immigrants, 5 Chicano Law Review 55, Winter 1982.

- Peyer, S.C., Aliens in Deportation Proceedings Have Liberty or Property Right Seek Political Asylum Which is Protected by Due Process (case note) Haitian Refugee Center v. Smith, 16 Vanderbilt Journal of Transnational Law 485, Spring 1983.
- Podgers, J., Seattle Bar Gives Legal Help to Cuban Refugees, 6 Bar Leader 8, May-June 1981.
- Richards, J.E., Public Employment Rights of Aliens, 34 Baylor Law Review 371, Summer 1982.
- Rohlik, J., Filartiga v. Pena-Irala: International Justice in a Modern American Court?, 11 Georgia Journal of International and Comparative Law 325, Summer 1981.
- Sadoway, G., The Rescue of a Refugee: A CLASPers Personal Account, 53 Obiter Dicta 6, January 26, 1981.
- Schneebaum, S., Legal Rights of Refugees: Two Case Studies and Some Proposals for a Strategy, Michigan Yearbook of International Legal Studies 373, 1982.
- Steinberg, K., The Standard of Proof in Asylum Cases, 5 Immigration Journal 10, Autumn 1982.
- Stone, N.J., Equal Protection for Illegal Aliens and Education for Undocumented Children (case note) Plyler v. Doe, 24 South Texas Law Journal 350, Winter 1983.
- Tigar, M.E., The Foreign Sovereign Immunities Act and the Pursued Refugee: Lessons from Letelier v. Chile, Michigan Yearbook of International Legal Studies 421, 1982.
- Vincent-Daviss, D., Human Rights Laws: A Research Guide to the Literature--Part II: International Protection of Refugee and Humanitarian Law, 14 New York University Journal of International Law and Politics 487, Winter 1982.
- Weissbrodt, D. and J. McCarthy, Fact-Finding by International Nongovernmental Human Rights Organizations, 22 Virginia Journal of International Law 1, Fall 1981.
- Wildes, L., The Dilemma of the Refugee: His Standard for Relief, 4 Cardozo Law Review 353, Spring 1983.
- Wilner, G.M., Filartiga v. Pena-Irala: Comments on Sources of Human Rights Law and Means of Redress for Violations of Human Rights, 11 Georgia Journal of International and Comparative Law 317, Summer 1981.
- Zucker, N.L., Refugee Resettlement in the United States: The Role of Voluntary Agencies, Michigan Yearbook of International Legal Studies 155, 1982.