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The Case for Closing the School of the Americas

*Bill Quigley*¹

I. INTRODUCTION

On the morning of November 16, 1989, Salvadoran soldiers made their way into the Pastoral Center at the Central American University in San Salvador. They ordered five Jesuit priests to go outside and lie face down on the ground, where they were subsequently shot and killed. A sixth priest, the housekeeper, and her 16 year-old daughter were then murdered inside the residence. The Jesuits had been labeled “subversives” by the Salvadoran government for speaking out against the socioeconomic structure of Salvadoran society.

Of the twenty-six soldiers subsequently implicated in the murders of the Jesuit priests and women in El Salvador, nineteen had received training at the School of the Americas. Three officers had received some human rights training while at the school. Additionally, one soldier had attended the Special Forces Officer Course at Ft. Bragg in late 1988 and early 1989.

The battalion to which these soldiers belonged was being trained by U.S. Army Special Forces in El Salvador in the days before and after the murders.²

Ensnared within Fort Benning, Columbus, Georgia, is an institution profoundly at odds with the democratic principles of this nation: the United States Army School of the Americas (“SOA”). In 2001, the SOA was renamed as the Western Hemisphere Institute for Security

1. Janet Mary Riley Professor of Law and Director of the Law Clinic; Loyola University, New Orleans School of Law. I dedicate this to the victims of the WHINSEC school and to all those in the School of Americas Watch movement who have worked so hard to close the school. I trust it will be closed. Also, I wish to thank Lisa Kane-Arnolds and Rob Farmer for their research help in the sections documenting crimes of WHINSEC graduates and the law of torture.

2. *Unmatched Power, Unmet Principles: The Human Rights Dimensions of US Training of Foreign Military and Police Forces*, 2002 REPORT OF AMNESTY INTERNATIONAL USA (Amnesty International USA), Fall 2002, at 4 (internal citations omitted), <http://www.amnestyusa.org/stoptorture/msp.pdf> [hereinafter 2002 AI USA REPORT].

Cooperation (“WHINSEC”).³

In 2002, Amnesty International USA (“Amnesty”) directly condemned WHINSEC and its documented history of human rights abuses.⁴ In its report, *Unmatched Power, Unmet Principles: The Human Rights Dimensions of US Training of Foreign Military and Police Forces*, Amnesty accused the school of perpetuating troubling human rights problems in the United States.⁵ Amnesty stated:

Throughout the decade of the 1990s, the record of one U.S. military training institution, in particular, attracted public scrutiny in the United States. The U.S. 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, kidnapping and execution.⁶

The report further described many of the human rights abuses committed by the school’s graduates –abuses which are detailed later in this article – and pointed out that no one has accepted responsibility, or been held accountable, for the alleged widespread illegal actions of the school and its graduates.⁷

Amnesty concluded their report with several strong recommendations to the U.S. government to remedy the human rights violations occurring at WHINSEC,⁸ including the following recommendations:

3. For additional information, readers may wish to refer to the following sources: 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 & LINDA COOPER, *DISTURBING THE PEACE: THE STORY OF FATHER ROY BOURGEOIS AND THE MOVEMENT TO CLOSE THE SCHOOL OF THE AMERICAS* (Orbis Books 2004) [hereinafter HODGE & COOPER, *DISTURBING THE PEACE*]; Timothy J. Kepner, *Torture 101: The Case Against the United States for Atrocities Committed by School of Americas Alumni*, 19 DICK. J. INT’L L. 475, 480-486 (2001); JACK NELSON-PALLMEYER, *SCHOOL OF ASSASSINS* (Orbis Books 1997) [hereinafter NELSON-PALLMEYER, *SCHOOL OF ASSASSINS*]; JACK NELSON-PALLMEYER, *SCHOOL OF ASSASSINS: GUNS, GREED, AND GLOBALIZATION* (Orbis Books 2001) [hereinafter NELSON-PALLMEYER, *GUNS & GREED*]; 2002 AI USA REPORT, *supra* note 2; MIKE WILSON, *THE WARRIOR PRIEST: THE STORY OF FATHER ROY BOURGEOIS AND THE SCHOOL OF THE AMERICAS* (John Gordon Burke Publisher 2002).

4. 2002 AI USA REPORT, *supra* note 2.

5. *Id.*

6. *Id.* at iii.

7. *See infra* Part III.B.

8. 2002 AI USA REPORT, *supra* note 2, at 55-56 (the six recommendations specific to WHINSEC). *See also, id.* at 52-56 (the full set of recommendations).

The U.S. 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 SOA-WHINSEC should be suspended.

The independent commission of inquiry should recommend appropriate reparations for any violations of human rights to which training at the SOA contributed, including criminal prosecutions, redress for victims and their families, and a public apology.⁹

This article outlines the history of WHINSEC. It then details the reasons, both factual and legal, why continued operation of this school is fundamentally at odds with United States law, international law, and basic demands of justice. Next it responds to arguments defending WHINSEC. It concludes by supporting the call of Amnesty for the suspension of WHINSEC and the establishment of an independent investigation to lift the veil of secrecy concealing the facts of both the SOA and WHINSEC and the resulting lessons for this nation and hemisphere.¹⁰

II. THE HISTORY OF WHINSEC

Originally established in Panama in 1946 to train Latin American military forces and subsequently named the U.S. Army School of Americas in 1963, the school has trained over 60,000 members of Central and South America militaries.¹¹ Because of 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 1984.¹² Once in the United States, the School of the Americas became a

9. 2002 AI USA REPORT, *supra* note 2, at 55-56.

10. The role of the U.S. towards Latin America is much larger and more damaging than just the WHINSEC connection. For those who seek to learn more about this relationship, read WILLIAM BLUM, *KILLING HOPE: U.S. MILITARY AND C.I.A. INTERVENTIONS SINCE WORLD WAR II* (Common Courage Press 2004); WALTER LAFEVER, *INEVITABLE REVOLUTIONS: THE UNITED STATES IN CENTRAL AMERICA* (W.W. Norton 1993); LARS SCHOULTZ, *BENEATH THE UNITED STATES: A HISTORY OF U.S. POLICY TOWARD LATIN AMERICA* (Harvard 1998).

11. *School of the Americas: U. S. Military Training for Latin American Countries*, Letter Report from General Accounting Office to U.S. Congress, GAO/NSIAD-96-178, Aug. 22, 1996, available at <http://www.fas.org/irp/gao/nsi96178.htm> [hereinafter 1996 GAO Report]. Over 61,000 soldiers were trained by the SOA. US Army website for WHINSEC Frequently Asked Questions, <https://www.benning.army.mil/whinsec/about.asp?id=37>.

12. The GAO describes the move in its chronology as follows:

statutory part of the operation of the U.S. Army.¹³

WHINSEC has trained military and police forces from twenty-two Latin American countries since the school's inception.¹⁴ In any given year the countries sending students to the school are generally the same countries receiving high levels of U.S. military assistance. For example, during the 1980s, when the U.S. was providing large amounts of foreign assistance to El Salvador's military, about one-third of the students at the SOA came from El Salvador and in the 1990s, half of the students came from just five countries: Colombia, El Salvador, Nicaragua, Peru, and Panama.¹⁵ In 2003, Colombia, Chile, and El Salvador had the most students at the school.¹⁶

The school has been criticized for decades as a training ground for military leaders from Central and South America, many of whom subsequently became notorious human rights abusers.¹⁷ For example, graduates of the SOA have been implicated in many of the worst human rights atrocities in the Western Hemisphere, including the assassination of Catholic bishops, labor leaders, women and children, priests, nuns,

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* note 11, at app. I:0.0.5. . . 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*, INT'L ENFORCEMENT L. REP., Feb. 2001. See also NELSON-PALLMEYER, GUNS & GREED, *supra* note 3, at 144.

13. See Act of December 4, 1987, Pub. L. No. 100-180, Tit. III, § 319 (A)(1), 101 Stat. 1077 (original legislation, which took effect October 1, 1987, calling it both the School of the Americas and the School for the Americas). See also 10 U.S.C. § 4415 (2000) repealed by Pub. L. No. 106-398, § 1 [Div. A, Tit. IX, § 911(B)], 114 Stat. 1654, 1654A-228 (2000):

- (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. Defense Authorization Amendments and Base Closure and Realignment Act, Pub. L. No. 100-526, Tit. I, § 106(C), 102 Stat. 2625 (1988). Congress appropriated \$1,000,000 for the construction of the U.S. Army School of the Americas at Fort Benning. Act of October 30, 1986, Pub. L. No. 99-591, 100 Stat. 3341 (1986).

14. 1996 GAO Report, §§ 1, 4.2, and 4.3.

15. 1996 GAO Report, *supra* note 11, § 4.3.

16. Latin American Group Educational Fund Report on WHINSEC, Oct. 28, 2003, <http://www.ciponline.org/facts/soa.htm>.

17. John Donnelly, *Army School Changes its Name and Rethinks its Mission: Training Ground to Latin Americans Still Draws Protests*, Dec. 13, 2000, reported:

The school has trained dozens of Latin America's most infamous criminals, including former Panamanian leader General Manuel Noriega and nineteen Salvadoran soldiers linked to the 1989 assassinations of six Jesuit priests.

and community workers and the massacres of entire communities.¹⁸ Numerous murders and human rights violations by SOA graduates have been documented in Bolivia, Chile, Colombia, El Salvador, Guatemala, Honduras, and Paraguay among others.¹⁹

These horrendous acts correspond to part of the school's curriculum: systematic use of torture and executions to neutralize dissidents. Amnesty 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 SOA for nearly ten years advocated execution, torture, and blackmail.²⁰ Likewise, U.S. Army intelligence manuals, also used at the SOA, were distributed to thousands of military officers from eleven South and Central American countries. These manuals include instructions on how to use "fear, payment of bounties for enemy dead, beatings, false imprisonment, executions and the use of truth serum."²¹

Who were the targets of this torture? Potential insurgents – identified by the manuals as: "religious workers, labor organizers, student groups and others in sympathy with the cause of the poor."²² The manuals also included instructions for "neutralizing," which the Pentagon admitted was a euphemism for execution of, "governmental officials, political leaders, and members of the infrastructure."²³

Clearly, the school and its graduates have violated United States law and international human rights law ranging from the Universal Declaration of Human Rights to the Convention Against Torture.²⁴ Despite these violations, not a single U.S. official has ever been held accountable for these abuses. Due to of the history of human rights abuses taught in the school's curriculum and practiced by its graduates, however, several legislative attempts have been made to limit activities at the school. For example, in 1999, the U.S. House of Representatives voted 230-197 for an amendment that would have cut the funds for training officers at WHINSEC in half (from \$4.5 to \$2 million); however, a Senate Conference Committee narrowly defeated the

18. Kepner, *supra* note 3, at 480-86. *See also* 2002 AI USA REPORT, *supra* note 2 (discussed below); NELSON-PALLMEYER, GUNS & GREED, *supra* note 3.

19. See examples later in this article and in NELSON-PALLMEYER, GUNS & GREED, *supra* note 3. For details of what appears to be the most murders in one incident, over 700, in which ten of the twelve officers in charge were graduates of the SOA, *see* DANNER, *supra* note 3.

20. 2002 AI USA REPORT, *supra* note 2, at 36-37.

21. Dana Priest, *US instructed Latins on Executions, Torture; Manuals used 1982-1991, Pentagon Reveals*, WASHINGTON POST, Sept. 21, 1996, at A01.

22. Gail Lumet Buckley, *Left, Right, Center*, AMERICA, May 9, 1998, at 5. *See also* Kepner, *supra* note 3, at 486-87.

23. Priest, *supra* note 21.

24. *See infra* Part III.D-E (sections on violations of US and international human rights law).

measure.²⁵

The issue of torture at WHINSEC also gained the attention from of the Secretary of the U.S. Army, Louis Caldera, who, apparently tired of trying to defend the SOA, stated in an 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.”²⁶

In 2000, the House voted once again to close the SOA, but the measure lost 214 to 204.²⁷ There was, however, a cosmetic renaming of the school from “The School of the Americas” to “The Western Hemisphere Institute for Security Cooperation” and a revision of its legal charter.²⁸ Thus, since 2001, the SOA has technically ceased to exist, being replaced by an ostensibly new institution, WHINSEC.²⁹ Yet, as detailed below, WHINSEC is not a new institution. There is only an artificial distinction between the SOA and WHINSEC. WHINSEC operates in the same building as the SOA, trains the same soldiers, and pursues the same goals. Though the U.S. government and the Army have tried mightily to suggest that the Congressional transformation of the SOA into WHINSEC means that the SOA and its problems have ceased, few people outside of Army apologists are persuaded.³⁰

As Amnesty International 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 space, WHINSEC is essentially the same school as SOA, with the same primary mission - conveying military skills to members of Latin American armed forces.³¹

This article will analyze the facts as applied to the laws governing WHINSEC and consider the situation as it is; one school with two

25. Mary McGrory, *Hallelujah Time for Human Rights*, WASHINGTON POST, Aug. 8, 1999, at B01.

26. James Hodge & Linda Cooper, *School of the Americas Reforms Merely Cosmetic, Critics Say*, NAT’L CATH. REP., June 2, 2000, at 3 [hereinafter Hodge & Cooper, *Reforms Merely Cosmetic*].

27. 2002 AI USA REPORT, *supra* note 2, at 37.

28. The legislation creating the Western Hemisphere Institute on Security Cooperation can be found at 10 U.S.C. § 2166 (2002); *see also* John Donnelly, *supra* note 17.

29. *See* 10 U.S.C. § 2166 (2002); John Donnelly, *supra* note 17.

30. John Donnelly, *supra* note 17.

31. 2002 AI USA REPORT, *supra* note 2, at 55.

names.

III. THE CASE FOR CLOSING THE SCHOOL OF THE AMERICAS – WHINSEC

There are five principal reasons for closing WHINSEC. First, the hemispheric harm that the graduates of WHINSEC have caused. Second, the teaching of torture at the school. Third, the absolute avoidance of accountability at the school. Fourth, the violation of international law. Fifth, the violation of United States law.

Each reason alone should suffice to close the school. Taken together, they demonstrate that there is no alternative but closure.

A. *Hemispheric Harm*

SOA graduates have played key roles in nearly every coup and major human rights violation in Latin America in the past fifty years. In fact, Latin American nations with the worst human rights records have consistently sent the most soldiers to the SOA. Martin Meehand, a Congressman from Massachusetts, has noted “[i]f the SOA held an alumni association meeting, it would bring together some of the most unsavory thugs in the hemisphere.”³²

Amnesty highlighted some, but by no means all, of the horrifying human rights abuses in their 2002 report: *Unmatched Power, Unmet Principles*.³³ This section will outline some of the more severe cases of human rights violations by graduates of SOA-WHINSEC by presenting a brief catalogue of the work of a few of the graduates in other parts of this hemisphere.³⁴

Before pointing out some of the worst abuses by graduates of the school, it is worth asking the question whether the school was, and is, training the wrong people for the wrong tasks. These are not questions directed at the U.S. Army; rather, these are questions for the citizens of this country. If the challenge for this hemisphere is the creation and maintenance of stable and vibrant democracies, it seems reasonable to

32. Kepner, *supra* note 3, at 476-77.

33. 2002 AI USA REPORT, *supra* note 2, at 35-36 (internal citations omitted).

34. Those who would like more on these issues should consult, in addition to the sources cited: School of Americas Watch, SOA Country Sheets, <http://www.soaw.org/new/article.php?id=343#Colombia> (giving an overview of the actions of SOA graduates by country); DANNER, *supra* note 3; GILL, *supra* note 3; HODGE & COOPER, DISTURBING THE PEACE, *supra* note 3; Kepner, *supra* note 3, at 480-86; NELSON-PALLMEYER, SCHOOL OF THE AMERICAS, *supra* note 3; NELSON-PALLMEYER, GUNS & GREED, *supra* note 3; 2002 AI USA REPORT, *supra* note 2.

ask why the U.S. feels that training foreign militaries is a good solution.³⁵ As Professor Gill points out, this is not a hypothetical question:

This is important because, according to numerous truth commission reports from the 1980s and 1990s, state security forces were responsible for the vast majority of massacres, murders, disappearances, and extrajudicial executions that characterized the twentieth-century Latin American “dirty wars,” when many countries suffered under the boot of military dictatorships . . . and that continue to plague Andean countries like Colombia Militaries retain an enormous amount of political and economic power, and civilian governments have only rarely held military perpetrators accountable for human rights crimes, past and present. When they do, it is usually only after years of struggle by human rights organizations and the relatives of the victims.³⁶

Even if training militaries is necessary, is it possible that SOA-WHINSEC has been and is training the wrong people? Recently, the nation with the most soldiers trained at WHINSEC has been Colombia - a nation described by Human Rights Watch as the worst offender against human rights in the hemisphere.³⁷ There have also been reports that known human rights abusers have resumed training at WHINSEC.³⁸ The training and funding of such persons violates the regulations governing WHINSEC and the Leahy law - a Congressional provision that prohibits U.S. funds to be used to assist militaries with histories of human rights violations.³⁹

35. Some suggest the real reason for WHINSEC is to establish close ties between military leaders in the U.S. and other countries. *See* CLYDE PRESTOWITZ, *ROQUE NATION: AMERICAN UNILATERALISM AND THE FAILURE OF GOOD INTENTIONS*, at 167 (Basic Books 2003).

36. GILL, *supra* note 3, at 11.

37. In 2004, Columbia supplied 39% of all WHINSEC students, more than double any other country, *see* <http://www.ciponline.org/facts/soa.htm>. Further, “Colombia leads the Western hemisphere in reported human rights and international humanitarian law violations.” Human Rights Watch, *Human Rights Overview for 2003, Colombia*, Jan. 2004, <http://hrw.org/english/docs/2004/01/21/colomb6978.htm>.

38. The report indicates that despite assurances from the “new” school that human rights abusers will not receive training there, individuals with known human rights violations from Bolivia, Colombia and El Salvador have received instruction since 2000. *See* School of Americas Watch, *New Research Findings Further Incriminate the Notorious SOA/WHINSEC*, May 6, 2004, <http://www.soaw.org/new/article.php?id=762>.

39. The “Leahy Law,” a human rights rider to recent appropriations legislation, is designed to prohibit U.S. military assistance to foreign military units that have “committed gross violations of human rights.” *See* Foreign Operations Appropriations Act, Pub. L. No. 106-429 § 563 (2001). The law is known by the name of its principal sponsor, Vermont Senator Patrick Leahy. The “Leahy Law” first appeared as part of the 1997 Foreign Operations Appropriations Act, Pub. L. No. 104-208 (1996), and was originally applicable only to the State Department’s International

1. A parade of horrors

Nearly 700 Argentinean students have graduated from the SOA since 1946.⁴⁰ Leopoldo Galtieri, a graduate of the School of the Americas, headed the military junta in Argentina during the time of the “dirty war” when thirty thousand people were killed or disappeared.⁴¹ General Roberto Viola, another SOA graduate, was convicted of murder, kidnapping, and torture during the war.⁴² In addition, at least two military dictators were trained at the SOA, one in 1949 and the other in 1971; both were convicted of human rights abuses, including murder, kidnapping, and torture. Colonel Mario Davico, an Argentinean trained at the SOA in 1949, was an advisor to the Honduran forces trained in Honduras during the 1980s. There, the Honduran armed forces were taught the “Argentinean Method” of extreme repression. This repression included arbitrary detention, torture, extrajudicial executions, and a variety of methods of disposing of the bodies of victims.⁴³

The list of human rights abuses perpetrated by more than 3800 Bolivian SOA graduates since 1946 is significant.⁴⁴ Captain Tito Montaña Belzú, trained at the SOA in 1970 in Small Unit Warfare. He

Narcotics Control (INC) program, under the heading of International Narcotics Control. Some consider the law to be the most important legal tool used to promote respect for human rights through U.S. security assistance programs. *See* Prohibitions on Security Assistance: The Center For International Policy, “Limitation on Assistance to Security Forces.” (The “Leahy Law”), <http://www.ciponline.org/facts/leahy.htm>.

The “Leahy Law” in the 2001 Foreign Operations Appropriations Act, Pub. L. No. 106-429, Tit. V § 563, 114 Stat. 1900 (2000), states:

None of the funds made available by this Act may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights, unless the Secretary determines and reports to the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice.

While the Foreign Operations law covers both training and assistance (such as weapons grants), the “Leahy Law” in the Department of Defense Appropriations Act, Pub. L. No. 106-259, Tit. VII § 8092, 114 Stat. 656 (2001), covers only training, and states:

None of the funds made available by this Act may be used to support any training program involving a unit of the security forces of a foreign country if the Secretary of Defense has received credible information from the Department of State that a member of such unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.

40. USARSA Graduates by Country, Jan. 1, 2000, <http://carlisle-www.army.mil/usamhi/usarsa/graduate/graduate.htm>.

41. NELSON-PALLMEYER, GUNS & GREED, *supra* note 3, at 3. *See also* H.R. REP. 106-732 § 1.5(G) (2000); 2002 AI USA REPORT, *supra* note 2, at 35-36, 44.

42. GILL, *supra* note 3, at 6.

43. Vicky Imerman, *Notorious Argentine School of the Americas Graduates*, <http://www.derechos.org/soa/arg-not.html>.

44. USARSA Graduates by Country, *supra* note 40.

was later convicted of murder and genocide in connection with a bloody 1980 coup. At least seven graduates have been implicated or convicted of some form of drug trafficking. More have been convicted of armed insurrection and murder, and a number have been convicted of mistreating prisoners. Still others have been convicted of issuing unconstitutional decrees that include ordering the dismissal of the Bolivian Supreme Court.⁴⁵ The dictator Hugo Bánzer Suárez was a graduate of the SOA.⁴⁶ Similarly, in 2002 Bolivian Captain Filiman Rodríguez studied at WHINSEC even though in 1999 a commission of the Bolivian Chamber of Deputies found him responsible for the kidnap and torture of Waldo Albarracín, then director of the Popular Assembly for Human Rights.⁴⁷

Over 330 Brazilians have graduated from the SOA since 1946.⁴⁸ Brazilian graduates of the SOA have been accused and convicted of torture, including the use of electric shock, suffocation, and injection of Pentothal. The Brazilian human rights group, Tortura Nunca Mais, accuses numerous graduates of being linked to the repressive forces that existed in Brazil in the 1960s and 1970s.⁴⁹

More than 3300 Chilean military and paramilitary troops and leaders have graduated from the SOA since 1946.⁵⁰ Although Augusto Pinochet did not graduate from the SOA, his repressive reign was honored there. A ceremonial sword that he had donated to the school, along with a note he had written, was hanging in the office of the Commandant in 1991. One of every seven of the commanding staff of the DINA, the Chilean intelligence agency responsible for many of the worst human rights atrocities during the Pinochet years, was a graduate of the SOA. The DINA officers who graduated from the SOA have been implicated and convicted in abuses including the torture and murder of a United Nations Official in 1979 and the running of Villa Grimaldi, a concentration camp

45. Vicky Imerman & Heather Dean, *Notorious Bolivian School of the Americas Graduates*, <http://www.derechos.org/soa/bol-not.html>.

46. GILL, *supra* note 3, at 78:

Bolivian General Hugo Banzer, who took power through a violent coup in 1971 and ruled until his downfall in 1978, was a SOA graduate. His penchant for brutality and his anti-democratic inclinations were probably not acquired when, as a young captain, he took a short course in 1956 to prepare him for duty as a driver. Banzer was, however, a long-time friend of the United States and so impressed the Army in his later career that it inducted him into the School's Hall of Fame in 1988.

47. Doug Ireland, *Teaching Torture in the USA*, HUMAN QUEST, Sept. 1, 2004, Vol 218, Issue no. 5, available at http://www.findarticles.com/p/articles/mi_qa3861/is_200409/ai_n9441138.

48. USARSA Graduates by Country, *supra* note 40.

49. Heather Dean, *Notorious Brazilian School of the Americas Graduates*, <http://www.derechos.org/soa/br-not.html>.

50. USARSA Graduates by Country, *supra* note 40.

that held more than 4500 prisoners. There are also innumerable accusations of summary executions, assassinations, torture, murder, kidnapping, and disappearances.⁵¹ Ten of thirty Chilean officers against whom a Spanish judge sought indictments for crimes of terror, torture, and disappearance were graduates of the SOA.⁵² Furthermore, most of the Chilean military leaders who overthrew the democratically elected government of Salvador Allende on September 11, 1973 had attended the SOA.⁵³

Since 1946, over 9500 graduates of the SOA have hailed from Colombia.⁵⁴ These Colombian graduates have been accused of forcing children to walk in front of the military to detonate landmines and spring ambushes (on one of these marches, two of three children were killed, the third was seriously wounded); murdering eleven campesinos (rural farmers), then dressing the corpses in guerrilla forces' clothing and later publicly dismissing the killings as a confrontation between the Army and the guerrillas; and causing disappearances, massacres, paramilitary death squad activity, assassinations, corruption, mistreatment of prisoners, and extrajudicial executions.⁵⁵ Human Rights Watch has documented clear links between the Colombian military and the paramilitary groups who are responsible for numerous human rights violations – including SOA graduates.⁵⁶ Other SOA graduates have been convicted of complicity in torturing and killing thirty peasants.⁵⁷ Of the 247 Colombian army officers cited in *El Terrorismo de Estado en Colombia*, a 1992 study of human rights abuses in Colombia, 123 are SOA graduates.⁵⁸ In June 2002, Colombian police arrested SOA graduate John Fredy Jiménez for the murder of Archbishop Isaiás Duarte in March of that year.⁵⁹

Costa Rica has graduated over 2400 graduates from the SOA since 1946.⁶⁰ One of these graduates is Minor Masís, the former leader of “Comando Cobra,” an anti-drug squad. Masís is now serving a 42 year

51. Vicky Imerman & Heather Dean, *Notorious Chilean School of the Americas Graduates*, <http://www.derechos.org/soa/chile-not.html>.

52. 2002 AI USA REPORT, *supra* note 2, at 35-36.

53. GILL, *supra* note 3, at 2.

54. USARSA Graduates by Country, *supra* note 40.

55. Vicky Imerman, *Notorious Colombian School of the Americas Graduates*, <http://derechos.org/soa/colom-not.html>. See also Kepner, *supra* note 3, at 482-83 (detailing Colombia human rights violations by SOA graduates).

56. Human Rights Watch, *The Ties That Bind: Colombia and Military Paramilitary Links*, Feb. 2000, <http://hrw.org/reports/2000/colombia/>.

57. George Monbiot, *Backyard Terrorism*, GUARDIAN OF LONDON, Oct. 30, 2001 at 17, available at <http://www.commondreams.org/views01/1030-02.htm>.

58. 2002 AI USA REPORT, *supra* note 2, at 35-36.

59. Ireland, *supra* note 47.

60. USARSA Graduates by Country, *supra* note 40.

prison sentence for rape and murder committed during a 1992 drug raid in the South Atlantic Talamanca Mountains.⁶¹

Since 1946 over 3300 Ecuadorian students graduated from the SOA.⁶² Some of these graduates are accused of an attempted coup during which at least 20 people were killed and many more injured. Likewise, General Guillermo Rodríguez, a SOA graduate, achieved dictatorial power by overthrowing an elected government. Other Ecuadorian graduates are charged with insubordination and mutiny.⁶³

El Salvador boasts over 6600 SOA graduates since 1946.⁶⁴ The human rights atrocities committed either personally or under their direction are numerous.⁶⁵ Besides the murder of Archbishop Óscar Romero and the aforementioned killings of Jesuit priests, their housekeeper and her daughter, graduates have planned and executed many massacres, rapes, and murders, including the multiple rape and murder of a French nurse.⁶⁶ Other accusations include torture and denial

61. School of Americas Watch, *Notorious Graduates from Costa Rica*, <http://www.soaw.org/new/article.php?id=236>.

62. USARSA Graduates by Country, *supra* note 40.

63. Vicky Imerman & Michael Katz-Lacabe, *Notorious Ecuadorean School of the Americas Graduates*, <http://derechos.org/soa/ecuad-not.html>.

64. USARSA Graduates by Country, *supra* note 40.

65. See Kepner, *supra* note 3, at 481-82 (overview of some of these violations by SOA graduates).

66. On March 24, 1980, Monsignor Óscar Romero was shot dead by a sniper as he celebrated mass in the Chapel of the Hospital de la Divina Providencia. During his funeral at the San Salvador Cathedral, a bomb exploded outside. The panic-stricken crowd of approximately 50,000 people, was machine-gunned, leaving between an estimated twenty-seven and forty people dead and more than 200 wounded. UN Truth Commission Report on El Salvador to the UN Security Council, Apr. 1, 1993, *available at* <http://www.derechos.org/nizkor/salvador/informes/truth.html>. Two of the three officers cited in the assassination of Archbishop Romero are graduates of the SOA, including the founder of the El Salvador death squads, Roberto D'Aubuisson. NELSON-PALLMEYER, GUNS & GREED, *supra* note 3, at 33.

On December 2, 1980, four U.S. church women were arrested by the El Salvador National Guard after they left the airport in El Salvador. The four women, Ita Ford, Maura Clarke, Dorothy Kazel and Jean Donovan, were raped and murdered by members of the National Guard. UN Truth Commission Report on El Salvador, *supra*. Three of the five officers cited in the murders of these churchwomen were graduates of the SOA. NELSON-PALLMEYER, GUNS & GREED, *supra* note 3, at 32.

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 training while attending the Salvadoran cadet course at the SOA - two officers in 1982 and one in 1988. *Overall 19 of the 26 soldiers linked to the murder had received 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. 2002 AI USA REPORT, *supra* note 2, at 35-36, 43.

The massacre of El Mozote, in December of 1981, took the lives of over 750 civilians, including 382 children under the age of 18. See DANNER, *supra* note 3 (list of the victims and their ages, as compiled by the Human Rights Office of the Archbishop of El Salvador can be found on pages 280-304). The massacre was carried out by members of the Atlacatl Battalion of the Salvadoran Army. UN Truth Commission Report on El Salvador, *supra*.

of medical aid to prisoners and organizing El Salvador's death squad network. Colonel Francisco Elena Fuentes trained and supervised the death squad brigade that was dubbed "the worst in terms of human rights" by the U.S. Ambassador William Walker. Colonel José Mario Godínez Castillo is accused of 1051 summary executions, 318 tortures, and 610 illegal detentions, according to the Non-Governmental Human Rights Commission in El Salvador (CISPES), as well as kidnapping for profits.⁶⁷ In all, the UN Truth Commission Report on El Salvador listed the names of more than sixty Salvadoran officers most responsible for the worst atrocities.⁶⁸ More than two-thirds of those officers are alumni of the SOA.⁶⁹ One of the worst graduates of the School, General José Guillermo García, was found guilty of the torture of three Salvadorans and ordered to pay fifty-five million dollars in damages in federal district court in Florida.⁷⁰ In 2003, Salvadoran Colonel Francisco del Cid Díaz was a student at WHINSEC, despite the fact that 20 years earlier he commanded a unit that shot 16 residents from the Las Hojas cooperative of the Asociación Nacional de Indígenas and threw their bodies into a river.⁷¹

Guatemalan graduates since 1946 number more than 1500.⁷² Human Rights Watch estimates that as many as 200,000 people were killed during a thirty-six year war that ended in 1996 – the vast majority having been killed by government forces.⁷³ One SOA grad, General Romeo Lucas García, was the dictator of Guatemala between 1978 and 1982, a period that included 5000 political murders and up to 25,000 additional civilian deaths.⁷⁴ Another SOA grad, Colonel Julio Roberto Alpírez

The UN Truth Commission noted that:

[T]wo hundred forty-five cartridge cases recovered from the El Mozote site were studied. Of these, one hundred eighty-four had discernible headstamps, identifying the ammunition as having been manufactured for the United States Government at Lake City, Missouri. Thirty-four cartridges were sufficiently well preserved to analyze for individual as well as class characteristics. All of the projectiles except one appear to have been fired from United States-manufactured M-16 rifles.

UN Truth Commission Report on El Salvador, *supra*. Ten of the twelve officers deemed responsible for the massacre at El Mozote were graduates of the SOA. . . NELSON-PALLMEYER, GUNS & GREED, *supra* note 3, at 32.

67. Vicky Imerman, *Notorious Salvadoran School of the Americas Graduates*, <http://derechos.org/soa/elsal-not.html>.

68. UN Truth Commission Report on El Salvador, *supra* note 66.

69. NELSON-PALLMEYER, GUNS & GREED, *supra* note 3, at 27.

70. Center for Justice and Accountability Website, El Salvador: Carlos Eugenio Vides Casanova and Jose Guillermo Garcia, <http://www.cja.org/cases/romagoza.shtml>.

71. Ireland, *supra* note 47. "In 1992, the OAS Inter-American Commission on Human Rights recommended prosecution of Col. Cid Diaz Díaz for murders." *Id.*

72. USARSA Graduates by Country, *supra* note 40.

73. Human Rights Watch, *Guatemala*, World Report 2005, at 213-17.

74. Kepner, *supra* note 3, at 483.

tortured and executed Efrain Bánaca Velásquez, husband of U.S. attorney Jennifer Harbury, all while on the CIA payroll.⁷⁵ Subsequently, while *still* being paid by the CIA, Alpírez ordered the murder of U.S. citizen Michael Devine.⁷⁶ Other offenses include assassinations, corruption, disavowing the Geneva Convention, and attempted coups.⁷⁷ General Héctor Gramajo, a SOA graduate, was found personally responsible for “acts of gruesome violence inflicted by military personnel under his direct command” by a federal court in Massachusetts in 1995 and ordered to pay \$42 million in damages.⁷⁸ More than 300 Mayan victims have filed suit against SOA graduate General Efraín Ríos Montt for genocidal actions taken to wipe out their villages.⁷⁹ SOA graduates also 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-2.⁸⁰ According to the Boston Globe, SOA graduate “Colonel Byron Lima Estrada was convicted in connection with the 1998 bludgeoning death of Roman Catholic Bishop Juan Gerardi Conedera, who was killed two days after the truth commission he headed released its report blaming the army for 97 percent of the war crimes.”⁸¹

While the U.S. Army counts only forty-nine SOA graduates from Haiti, their collective impact has been devastating.⁸² For example, graduate Colonel Gambetta Hyppolite ordered his soldiers to fire on an electoral bureau in 1987.⁸³ Also, graduate Colonel Franck Romain opened fire on a church where he shot and killed twelve parishioners and wounded at least seventy-seven others. He then set the church on fire and later publicly justified the massacre as legitimate.⁸⁴

75. *Christopher v. Harbury*, 536 U.S. 403, at 403 (2002), *reversed and remanded*, 153 L.Ed. 413 (2002).

76. Meglan Hagler & Francisco Rivera, *Bamaca Velasquez v. Guatemala, An Expansion of the Inter-American System’s Jurisprudence on Reparations*, 3 HUM. RTS. BRIEF 2 (2002), available at <http://www.wcl.american.edu/hrbrief/09/3bamaca.cfm>.

77. Vicky Imerman, *Notorious Guatemalan School of the Americas Graduates*, at <http://derechos.org/soa/guat-not.html>.

78. *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995). See also DIANNA ORTIZ, *THE BLINDFOLD’S EYES: MY JOURNEY FROM TORTURE TO TRUTH* (Orbis Books 2002).

79. T. Christian Miller, *The Americas*, NEWSDAY, June 9, 2001.

80. 2002 AI USA REPORT, *supra* note 2, at 35-36, 43.

81. Marion Lloyd, *Guatemala Sees Fears of Terror Revive*, BOSTON GLOBE, June 16, 2002, at A4.

82. USARSA Graduates by Country, *supra* note 40.

83. 2002 AI USA REPORT, *supra* note 2, at 35-36.

84. Heather Dean, *Notorious Haitian School of the Americas Graduates*, <http://derechos.org/soa/ha-not.html>.

Over 3700 Hondurans have graduated from the SOA since 1946.⁸⁵ SOA graduate Aquilino Sorto González was accused of torturing twelve children ages ten to seventeen. The children were punched, beaten, and hung by handcuffs.⁸⁶ Some of the more revolting abuses by Honduran graduates include, rape, murder, threats, drug trafficking, torture, massacres, links to death squads, plotting to take over the armed forces, assuming power as military dictators, and fleeing from justice.⁸⁷ One graduate, Juan López Grijalba, is accused of heading up a special military unit responsible for the disappearances of over 150 people.⁸⁸ Honduran Generals Luis Alonso Discua, Gustavo Álvarez Martínez, and Bali Castillo, all SOA graduates, founded and commanded the deadly and infamous Battalion 3-16 – an army death squad.⁸⁹

Battalion 3-16 employed a modus operandi that resembled the tactics of the Argentinian death squads. Small groups followed victims for days or even weeks before agents driving vehicles with stolen license plates kidnapped them and took them to clandestine jails, where the disappeared were tortured, interrogated, and usually executed.⁹⁰

Mexico has nearly 1500 graduates of the SOA.⁹¹ Most of the human rights violations committed by SOA graduates have occurred in the Mexican states of Chiapas, Guerrero, and Oaxaca. Mexican graduates specialize in “low-intensity conflicts” and at least thirteen of the top military officials involved in the continuing conflict are SOA graduates. They have been accused and convicted of drug-trafficking, murder, massacres, intimidation of human rights activists and torture. The massacres included the shooting of victims, execution style, in a public market with their hands tied behind their backs.⁹² Recent news indicates that SOA graduates subsequently leave the ranks of the Mexican military and sign up to protect drug gangs.⁹³

85. USARSA Graduates by Country, *supra* note 40.

86. Vicky Imerman & Heather Dean, *Notorious Honduran School of the Americas Graduates*, at <http://derechos.org/soa/hond-not.html>

87. *Id.*

88. A federal civil lawsuit has been filed in the U.S. against López Grijalba by the Center for Justice and Accountability, on behalf of six former Honduran citizens who were victimized by these actions. Center for Justice and Accountability Website, <http://www.cja.org/cases/grijalba.shtml>.

89. GILL, *supra* note 3, at 6, 85-89.

90. GILL, *supra* note 3, at 86.

91. USARSA Graduates by Country, *supra* note 40.

92. Heather Dean, *Notorious Mexican School of the Americas Graduates*, <http://derechos.org/soa/mx-not.html>.

93. An October 22, 2003 article in The Brownsville Herald (TX) reported that the notorious Gulf Drug Cartel has hired 31 ex-Mexican soldiers to be part of its hired assassin force, “The Zetas.”

Nicaraguan SOA graduates tally more than 4300 since 1946.⁹⁴ This graduate group includes members of the Somoza National Guard which terrorized Nicaraguan peasants in the 1970s.⁹⁵

Panama has graduated over 3600 students from the SOA since 1946.⁹⁶ The most infamous of which is Manuel Noriega, Panama's former dictator who was arrested and forcibly extradited by U.S. military forces on drug trafficking charges in 1989.⁹⁷ Other graduates of the SOA have included the military dictator, General Omar Torrijos, members of attempted coups, drug traffickers and racketeers.⁹⁸

Over 1000 students who have graduated from the SOA since 1946 came from Paraguay.⁹⁹ One graduate, General Roberto Knopfmacher, is charged with authoring the assassination of peasant leaders and the forcible removal of peasant families from their homes and land. Other graduates are charged with corruption, illegal searches and seizures, harassment, and illegal detentions. Of particular note is Ruby Díaz, a former SOA instructor. Díaz is charged with commanding over 300 troops who illegally searched and seized the property of peasants.¹⁰⁰

Peru has sent more than 4400 students to the SOA since 1946.¹⁰¹ These include the following: General Ismael Araujo, accused of being involved with a prison massacre in which 120 people were killed, most of whom had already surrendered; Lieutenant Colonel Carlos Delgado Medina, charged with planning an operation that killed over sixty-nine civilians in Accomarca; General Juan Velasco Alvarado, who overthrew a civilly elected government to take dictatorial power; and other graduates who are accused of massacring university students, drug

According to the Mexican secretary of defense, at least 1/3 of these deserters were trained at the SOA as part of the elite Special Air Mobile Force Group. Their highly specialized and dangerous weapons, training, and intelligence capabilities are now being used to increase the availability of the drugs and terrorize the region. The Mexican attorney general's office implicates them in dozens of shootouts, kidnappings and executions of police officers.

School of Americas Watch, SOA/WHINSEC Grads in the News, <http://www.soaw.org/new/article.php?id=205>.

94. USARSA Graduates by Country, *supra* note 40.

95. As Richard Millet wrote in 1976 in his book *GUARDIANS OF THE DYNASTY*, "General Somoza likes to boast that a higher percentage of his officers and men have been trained abroad, by the United States, than those of any other Latin American army. Most of this training has been in the School of the Americas." School of Americas Watch, Somoza's National Guard and the SOA, <http://www.soaw.org/new/article.php?id=325> (last visited Apr. 12, 2005).

96. USARSA Graduates by Country, *supra* note 40.

97. 2002 AI USA REPORT, *supra* note 2, at 35-36.

98. Vicky Imerman, *Notorious Panamanian School of the Americas Graduates*, <http://derechos.org/soa/panam-not.html>.

99. USARSA Graduates by Country, *supra* note 40.

100. Heather Dean, *Notorious Paraguayan School of the Americas Graduates*, <http://derechos.org/soa/py-not.html>.

101. USARSA Graduates by Country, *supra* note 40.

trafficking, summary executions, leading death squads, and torturing students and professors.¹⁰² The three highest ranking Peruvian officers convicted in 1994 of murdering nine university students and a professor were SOA graduates.¹⁰³ SOA graduate, General Nicolás Hermoza Ríos, is currently incarcerated in Peru because he pled guilty to taking more than \$14 million in illegal arms deals.¹⁰⁴

Uruguay has graduated just over 1000 students from the SOA since 1946.¹⁰⁵ Graduates are charged with torture, kidnapping and transportation of victims.¹⁰⁶

In 2004, Venezuela announced it would send no more troops to the WHINSEC.¹⁰⁷ But prior to that time, over 3000 Venezuelan students graduated from the SOA.¹⁰⁸ SOA graduate, General Ramón Dávila Guillén was indicted in November of 1996 for shipping one ton of cocaine into Miami. The General claims the shipment was authorized by the CIA. In 1993, the CIA called the shipment “a regrettable incident” and dismissed the CIA agent involved.¹⁰⁹ “In April 2002, two SOA graduates, Army Commander in Chief Efraín Vásquez and General Ramírez Poveda, helped lead a failed coup in Venezuela. Otto Reich, a Bush-administration appointee who sat on the school’s Board of Visitors, met with the generals in the months preceding the coup.”¹¹⁰

B. Teaching Torture

An international outcry at the revelation of the practice of torture at Abu Ghraib prison by the U.S. military was matched by proclamations that such actions are unacceptable under any circumstances.¹¹¹ President George W. Bush said the practices were “abhorrent” and do “not

102. Vicky Imerman & Heather Dean, *Notorious Peruvian School of the Americas Graduates*, <http://derechos.org/soa/peru-not.html>.

103. Kepner, *supra* note 3, at 485.

104. Anthony Faiola, *Many Allies in Peru Apparently Were Corrupt*, SEATTLE TIMES, May 20, 2001, at A19.

105. USARSA Graduates by Country, *supra* note 40.

106. Heather Dean, *Notorious Uruguayan School of the Americas Graduates*, <http://derechos.org/soa/uy-not.html>.

107. *The Unreported Year 2004*, NEW INTERNATIONALIST, Jan. 1, 2005. See also *Venezuela Fires the School of the Americas*, CATH. NEW TIMES, June 6, 2004; James Hodge & Linda Cooper, *SOA Watch scores Scores victory Victory in Venezuela*, NAT’L CATH. REP., Apr. 9, 2004, at 12.

108. USARSA Graduates by Country, *supra* note 40.

109. Heather Dean, *Notorious Venezuelan School of the Americas Graduates*, <http://derechos.org/soa/ve-not.html>.

110. Ireland, *supra* note 47.

111. See Human Rights Watch, *The Road to Abu Ghraib*, June 2004, <http://www.hrw.org/reports/2004/usa0604/> (detailing abuses at Abu Ghraib).

represent America.”¹¹² The United States Senate passed a resolution, 92-0, calling the actions “despicable,” condemning the actions “in the strongest possible terms,” apologizing for the acts of torture, and calling for a complete investigation.¹¹³ Yet it is well documented that for years the SOA taught militaries the systematic use of torture and executions to neutralize dissidents, and in later years, even prepared written manuals to instruct soldiers how to torture. This section will review the School’s teaching of torture.

After years of denials, the Pentagon admitted in 1996 that seven U.S. Army intelligence training manuals “advocat[ing] executions, torture, blackmail, and other forms of coercion” were used for years in courses at the SOA.¹¹⁴ The *Washington Post* summed up the information as follows:

Used in courses at the U.S. Army’s School of the Americas, the manual says that to recruit and control informants, counterintelligence agents could use “fear, payment of bounties for enemy dead, beatings, false imprisonment, executions and the use of truth serum,” according to a secret Defense Department summary of the manuals compiled during a 1992 investigation of the instructional material¹¹⁵

The *Washington Post* article refers to a memo dated March 10, 1992, stamped “secret,” to Secretary of Defense Richard Cheney, which details an investigation by Werner E. Michel, Assistant to the U.S. Secretary, into “Improper Material in Spanish-Language Intelligence Training Manuals.”¹¹⁶ The memo is now available for public review on the

112. *Abu Ghraib Abuse ‘Abhorrent,’ Bush Tells Arab TV*, Department of Defense Documents, May 5, 2004.

113. S. Res. 356, 108th Cong. (2004) (passed 92-0). That resolution contained the following language:

The Senate . . . condemns in the strongest possible terms the despicable acts at Abu Ghraib prison and joins with the President in expressing apology for the humiliation suffered by the prisoners in Iraq and their families; . . . urges the Government of the United States to take appropriate measures to ensure that such acts do not occur in the future; . . . believes that it is in the interests of the United States and of the people of the United States that the appropriate committees of the Senate, exercising the oversight responsibilities of such committees, and the President, through the appropriate departments or agencies of the executive branch, conduct a full investigation of the abuses alleged to have occurred at Abu Ghraib; and . . . urges that all individuals responsible for such despicable acts be held accountable.

114. Priest, *supra* note 21, at A01.

115. *Id.*

116. Memo from Werner E. Michel, Assistant to the Secretary of Defense, to Richard Cheney, Secretary of Defense 1 (Mar. 10, 1992) (on file with author), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122/920310%20Improper%20Material%20in%20Spanish-Language%20Intelligence%20Training%20Manuals.pdf> (hereinafter “Torture Memo”) (memo

website of the National Security Archive of George Washington University.¹¹⁷ Copies of some of the actual manuals are also available on the web.¹¹⁸

The Department of Defense acknowledged that,

five of the seven manuals contained language and statements in violation of legal, regulatory or policy prohibitions. These manuals are: Handling of Sources, Revolutionary War and Communist Ideology, Terrorism and the Urban Guerilla, Interrogation, and Combat Intelligence. To illustrate, the manual Handling of Sources, in depicting the recruitment and control of HUMINT [human] sources, refers to motivation by fear, payment of bounties for enemy dead, beatings, false imprisonment, executions and the use of truth serum.

The torture manuals, while reprehensible, are only part of the story. The torture manuals were compiled from materials already in use as lesson plans for years at the SOA.¹¹⁹ In the aforementioned memo to Secretary Cheney, the Department of Defense states that the manuals were compiled from lesson plans used at the SOA since 1982.¹²⁰ Those lesson plans were based on materials used in the Vietnam War in “the 1960s from the Army’s Foreign Intelligence Assistance Programs, entitled ‘Project X.’”¹²¹ Thus, existence of the actual manuals appears to evidence only a later stage of the teaching of torture by the school. Regardless, as many as a thousand manuals were used to train students from the militaries of Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Peru, and Venezuela

declassified in 1996 only after nine attachments were removed).

117. See National Security Archive, *Prisoner Abuse: Patterns from the Past, Electronic Briefing Book Number 122*, available at www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122/.

118. See School of Americas Watch, *SOA Manuals Index*, <http://www.soaw.org/new/article.php?id=98>.

119. *Id.* at 1.

120. *Id.* at 2. “. In 1987, Army military intelligence (MI) officers in Panama had compiled the manuals from lesson plans used an MI course at USASOA since 1982.” *Id.*

121. *Id.* at 1. The National Security Archive of George Washington University describes “Project X” as “a military effort to create training guides drawn from counterinsurgency experience in Vietnam.” See National Security Archive, *supra* note 123.

According to a 1999 article in HUMANIST by Bob Harris:

Project X [was] a 1965 army program to train military, police, and paramilitary forces throughout Southeast Asia and Latin America. Project X was a direct precursor to Operation Phoenix in Vietnam and Operation Condor in South America—notorious programs that resulted in the deaths of tens of thousands of civilians. Project X was halted under the Carter administration, but its essentials were reinstated in 1982 under President Ronald Reagan.

Bob Harris, *Guatemala: Clinton’s Latest Damn-near Apology*, HUMANIST, May 1, 1999, at 44.

at the SOA.¹²²

Who were the targets of this torture? Potential insurgents – identified by the manuals as “religious workers, labor organizers, student groups, and others in sympathy with the cause of the poor.”¹²³ 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.”¹²⁴

U.S. Army Major Joseph Blair, an instructor at the SOA and a recipient of five meritorious service medals and a Bronze Star, started speaking out against the school in 1993 when the U.S. Army and school officials still denied knowing anything about the atrocities and murders committed by graduates in Latin America. He stated, “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.”¹²⁵

Major Blair pointed out the following when the U.S. government was trying to downplay the manuals:

I sat next to Major Victor Thiess 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 worst materials 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.¹²⁶

According to one of the graduates of the SOA,

[t]he school was always a front for other special operations, covert operations. They would bring people from the streets [of Panama City] into the base and the experts would train us on how to obtain

122. Torture Memo, *supra* note 122, at 2. “We found that as many as a thousand copies of these manuals may have been distributed in the USSOUTHCOM area from 1987 to 1989 and at USASOA from 1989 to 1991.” *Id.*

123. Buckley, *supra* note 22. *See also* Kepner, *supra* note 3, at 486-87.

124. Priest, *supra* note 21.

125. James Hodge & Linda Cooper, *Former Instructor Says SOA Should Close*, NAT’L CATH. REP., May 8, 1998, at 7 [hereinafter “Hodge & Cooper, *Instructor Says SOA Should Close*”].

126. Barbara Jentsch, *School of the Americas Critic – Retired U.S. Army Major Joseph A. Blair*, THE PROGRESSIVE, July 1, 1997, 14..

information through 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.¹²⁷

It is fair to conclude that it is proven beyond a reasonable doubt that the SOA systematically taught torture for years and years to thousands and thousands of students.

C. Avoiding Accountability

We will investigate and prosecute all acts of torture and undertake to prevent other cruel and unusual punishment in all territory under our jurisdiction.

-U.S. President George W. Bush¹²⁸

I want to assure people in the Arab world that the President is determined to get to the bottom of it, to know who is responsible, and to make sure that whoever is responsible is punished for it and held accountable.

-U.S. National Security Advisor Condoleezza Rice¹²⁹

Officials reacted to the torture of prisoners in Iraq at Abu Ghraib by determining that there would be an investigation and that those responsible would be held accountable, and in fact there have been Army investigations, military prosecutions, criminal charges and convictions, and Congressional investigations in connection with the recent Abu Ghraib torture scandal.

Given the plausibility of more dramatic, albeit less widely publicized, records of human rights atrocities committed in this hemisphere by graduates of the SOA and the evidence that torture was taught to thousands at the school, it seems reasonable to ask: where is the investigation; where is the accountability?

There has been no accountability for the teaching of torture at the

127. NELSON-PALLMEYER, *SCHOOL OF ASSASSINS*, *supra* note 3, at 31 (1997) (quoting *INSIDE THE SCHOOL OF ASSASSINS* (Richter Productions 1997)).

128. *Bush Says Americans Committed to Upholding Geneva Convention, Decries Torture*, AGENCE FRANCE PRESSE, June 26, 2004.

129. United Press International, *Rice Talks to Al Arabiya about Abu Ghraib*, WASH. TIMES, May 4, 2004, available at <http://washingtontimes.com/upi-breaking/20040504-054156-9312r.htm>.

SOA. There has been no full public investigation into the school. There has been no apology. There have been no reparations for the victims. No one has been censured, no one has been sanctioned, no one has been demoted, no one has been fired, no one has been prosecuted.¹³⁰

The 1992 Department of Defense memo documenting the teaching of torture and the publication of torture manuals at the SOA concluded, “It is *incredible* that the use of the lesson plans since 1982, and the manuals since 1987, evaded the established system of doctrinal controls. Nevertheless, we could find no evidence that this was a deliberate and orchestrated attempt to violate Department of Defense or Army policies.”¹³¹

Yes, it is *incredible*. But the Department of Defense chose to believe this report holding no one responsible. No public investigation was held. No prosecutions were initiated. No apologies given.

As Amnesty International stated:

[T]he failure of the US Army to hold anyone accountable for the preparation, dissemination and use of training manuals advocating torture and other human rights violations . . . sends a signal to other militaries that impunity for violations [of the international laws on human rights, humanitarian law and civil military relations] is acceptable. It may also communicate that violations are only a problem when they receive public attention.¹³²

D. Violation of International Law

International treaty-based agreements are considered the primary source for international law regarding torture. Torture was outlawed by the 1948 Universal Declaration of Human Rights, the 1949 Geneva Conventions, the International Covenant on Civil and Political Rights, and the Convention Against Torture—specific legal instruments ratified by members of the international community that include explicit prohibitions against torture.¹³³

130. There have been in-house studies and overview reports on the school, but never a full-ranging investigation. *See for example*, the 1996 GAO report on the School of the Americas, in which the authors of the report admit, “We did not independently verify the accuracy of the data provided to us.” UNITED STATES GENERAL ACCOUNTING OFFICE, SCHOOL OF THE AMERICAS: U.S. MILITARY TRAINING FOR LATIN AMERICAN COUNTRIES 16 (1996), *available at* <http://www.fas.org/asmp/resources/govern/gao96178.pdf>.

131. Torture Memo, *supra* note 122, at 3 (emphasis added).

132. 2002 AI USA REPORT, *supra* note 2, at 30.

133. *See* Katharine Shirey, *The Duty to Compensate Victims of Torture Under Customary International Law*, 14 INT’L LEGAL PERSP. 30 (2004); Winston P. Nagan & Lucie Atkins, *The International Law of Torture: From Universal Proscription to Effective Application and*

Torture is explicitly prohibited by Article 5 of the Universal Declaration of Human Rights: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹³⁴ The prohibitions on torture are based on “inherent dignity and of the equal and inalienable rights of all members of the human family,” as described in the preamble to the Universal Declaration of Human Rights, and adopted by the General Assembly of the United Nations in 1948.¹³⁵

Since the adoption of the Universal Declaration of Human Rights, the ban on torture and other ill-treatment has been incorporated into other international human rights treaties mentioned above. Foremost among these treaty-based agreements are the four Geneva Conventions of 1949. Ratified by the United States in 1955, the Geneva Conventions address the treatment of prisoners of war and the protection of civilian persons in time of war.¹³⁶ Specifically, the Third Geneva Convention provides protection for prisoners of war by prohibiting any form of physical or mental torture as a means for securing information. According to Article 17, “No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.”¹³⁷

Furthermore, Article 87 of the Third Geneva Convention prohibits “[c]ollective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.”¹³⁸

Likewise, in the Fourth Geneva Convention similar protections are granted to civilians under military control who are called “protected persons” under Article 32:

The High Contracting Parties specifically agree that each of them is

Enforcement, 14 HARV. HUM. RTS. J. 87, 95-102 (2001).

134. Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948), available at <http://www.un.org/Overview/rights.html>.

135. *Id.* at Preamble.

136. Theodor Meron, *The Geneva Conventions as Customary Law*, 81 AM. J. INT'L L. 348 (1987).

137. Geneva Convention Relative to the Treatment of Prisoners of War art. 17, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135, available at <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68> (accessible from <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions> by following the link titled “3rd Convention – Prisoners of War”).

138. Geneva Convention Relative to the Treatment of Prisoners of War, *supra* note 143 at art. 87.

prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

Similarly, the International Covenant on Civil and Political Rights (“ICCPR”), which also prohibits torture, was ratified by the United States in 1992.¹³⁹ According to ICCPR’s Article 7, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁴⁰

Torture is also explicitly prohibited in the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention against Torture”), ratified by the United States in 1994.¹⁴¹ The Convention against Torture builds on the ICCPR by mandating that states institute controls in the form of effective legislative, administrative, and judicial measures to prevent acts of torture in any territory under its jurisdiction.¹⁴² Article One of the Convention against Torture defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on

139. John Quigley, *Criminal Law and Human Rights: Implications of the United States Ratification of the International Covenant on Civil and Political Rights*, 6 HARV. HUM. RTS. J. 59, 59 (1993); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), at 52, U.N. Doc A/RES/2200 (Dec. 16, 1966), available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm [hereinafter ICCPR].

140. ICCPR, *supra* note 146, at art. 7.

141. Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc A/RES/39/46 (Dec. 10, 1984), available at http://www.unhchr.ch/html/menu3/b/h_cat39.htm [hereinafter Convention against Torture].

For some of the history of the ratification by the United States, see Dawn J. Miller, *Holding States to their Conventional Obligations: The United Nations Convention Against Torture and the Need for a Broad Interpretation of State*, 17 GEO. IMMIGR. L.J. 299 (2003).

The United States’ ratification was conditioned on reservations to the Convention against Torture. S. EXEC. REP. NO. 101-30, 101st Cong. (1990). See also Nagan & Atkins, *supra* note 139, at 108-110.

The United States seeks to further define elements of the term torture as well as any responsibilities potentially incurred under article 16. United States Declarations and Reservations on Convention against Torture.

The United States defines mental pain and suffering as referring only to prolonged mental harm caused by (1) the intentional infliction or threatened infliction of severe physical pain or suffering (2) the use or threat of mind altering substances; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to the above mistreatments. With regards to Article 16, the U.S. considers itself bound only insofar as the term cruel, inhuman or degrading treatment or punishment coincides with the meaning set forth by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution. United States Declarations and Reservations on Convention against Torture.

142. Convention against Torture, *supra* note 149, at art. 2.

a person.”¹⁴³ The Convention directs each state party to prevent acts of cruel, inhuman or degrading treatment or punishment that does not constitute torture as defined in Article One.¹⁴⁴ The Convention also provides that state parties shall ensure that education and information regarding the prohibition against torture are included in the training of all persons who may be involved in the custody, interrogation, or treatment of individuals subjected to any form of arrest, detention or imprisonment.¹⁴⁵

It seems apparent that the teaching of torture by the SOA violates numerous international laws and treaties.

E. Violation of United States Law

As noted above, the training or funding of militaries with records of human rights abuses violates the “Leahy Law,” a Congressional human rights provision linked to all foreign assistance.¹⁴⁶ It would seem that a fair application of this law alone appears sufficient to prohibit teaching students from many of the aforementioned Latin American countries at the SOA-WHINSEC. However, not only has the school trained foreign military members with records of human rights abuses, but it also has a documented history of helping train foreign military members in how to accomplish human rights abuses.¹⁴⁷

Torture by the U.S. military is also prohibited under United States federal criminal law, the Uniform Code of Military Justice, and the U.S. Army Field Manual. For example, one federal statute defines torture as an “act committed by a person acting under the color of law that specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.”¹⁴⁸ Furthermore, anyone who aids, abets, or counsels another to commit a crime is a principal to that crime.¹⁴⁹

No member of the United States military is allowed to engage in torture. Under Article 93 of the Uniform Code of Military Justice, military personnel who mistreat prisoners are subject to court marshal: “Any person subject to this chapter who is guilty of cruelty toward, or

143. *Id.* at art. 1.

144. *Id.* at art. 16.

145. *Id.* at art. 16.

146. *See generally* “Leahy Law,” *supra* note 39.

147. *See supra* WHINSEC text and accompanying notes 111-128.

148. 18 U.S.C. § 2340 (2004).

149. 18 U.S.C. § 2(a) (2005).

oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.”¹⁵⁰

Likewise, the War Crimes Act of 1996 makes it a criminal offense for U.S. military personnel and U.S. nationals to commit war crimes as defined by the Geneva Conventions.¹⁵¹ This Act also includes Article 3 to the Geneva Conventions, which prohibits “violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture.”¹⁵²

The U.S. Army Field Manual prohibits the use of force or torture by soldiers during interrogations: “The use of force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind is prohibited by law and is neither authorized nor condoned by the US Government.”¹⁵³ Thus, torture or the teaching of torture is prohibited by U.S. law.

Accordingly, the clear prohibition of torture combined with the prohibition of providing funds to known human rights violators demonstrate that past and current practices of WHINSEC are illegal.

IV. RESPONSES TO ARGUMENTS IN DEFENSE OF WHINSEC

The U.S. government and the Army make several arguments supporting WHINSEC’s continued existence.¹⁵⁴ These arguments are summarized around four main points: first, WHINSEC is an entirely new institution that is unlike the SOA; second, the SOA is closed and WHINSEC is an entirely new and therefore unblemished institution which should not be held responsible for problems of the prior school; third, the problems of the school’s graduates are not unlike the problems of the graduates of any school— problems for which it is unfair to blame the school; fourth, teaching human rights at WHINSEC is an integral part of the school’s instruction.

150. 10 U.S.C. § 893 (2005), available at http://www.military-network.com/main_ucmj/SUBCHAPTERX.html#893.93, 10 U.S.C. §§ 801-950 (2005) available at http://www.military-network.com/main_ucmj/main_ucmj.htm.

151. 18 U.S.C. § 2441 (2005).

152. Geneva Convention Relative to the Treatment of Prisoners of War, *supra* note 143, at art. 3.

153. U.S. Army Field Manual 34-52, Chapter One: Interrogation and the Interrogator: Principles of Interrogation, Subsection Prohibition Against the Use of Force, available at <http://www.globalsecurity.org/intell/library/policy/army/fm/fm34-52/chapter1.htm>.

154. See WHINSEC Website, <https://www.infantry.army.mil/whinsec/index.asp>

A. *Response to Defense Argument One: WHINSEC is an entirely new institution unlike the SOA.*

Although the U.S. government and Army now state that WHINSEC is an entirely new institution, this is contrary to prior claims and, more importantly, the facts.

The school's supporters have 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 SOA, U.S. Senator Paul Coverdell from Georgia, informed the media that the changes between WHINSEC and the SOA were "basically cosmetic" and "[t]he School of the Americas will still be able to continue its purpose."¹⁵⁵ 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."¹⁵⁶ Major Thomas Collins, spokesman for the 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."¹⁵⁷

In addition, the facts indicate that even cosmetically the SOA and WHINSEC are not much different from each other. Both the SOA and WHINSEC are funded and run by the U.S. Army, instruct similar students, utilize the same instruction, and are housed in the exact same building.¹⁵⁸ For example, the SOA was operated by the Secretary of the Army.¹⁵⁹ Similarly, WHINSEC, by statute, is operated by the Secretary of Defense and by a Secretary of a military department as designated by Secretary of Defense.¹⁶⁰ Currently, the Secretary of Defense has appointed the Secretary of the Army to run WHINSEC.¹⁶¹

The schools also have similar purposes. The SOA was a statutorily-created entity, operated "for the purpose of providing military education and training to military personnel of Central and South American and

155. Monbiot, *supra* note 57.

156. *Id.*

157. Donnelly, *supra* note 17, at 10.

158. See WHINSEC building, <https://www.infantry.army.mil/whinsec/about.asp?id=31>; School of Americas building, <http://carlisle-www.army.mil/usamhi/usarsa/main.htm>.

159. 10 U.S.C. § 4415 (2000), *repealed by* Pub. L. No. 106-398, § 1 [Div. A, Tit. IX, § 911(b)], 114 Stat. 1654, 1654A-228 (2000).

160. 10 U.S.C. §§ 2166(a)-(b) (2002).

161. WHINSEC Website, *supra* note 162.

Caribbean countries.”¹⁶² The purpose of WHINSEC “is to provide professional education and training to eligible personnel of nations of the Western Hemisphere.”¹⁶³ The law explicitly defines eligible personnel to include military personnel, law enforcement personnel, and civilian personnel.¹⁶⁴

Ironically, both schools publicly pledged themselves to be defenders of human rights. For over twenty years, the SOA required four hours of instruction in human rights.¹⁶⁵ WHINSEC requires eight 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.”¹⁶⁶

Thus, although the SOA and WHINSEC have different enabling statutory sources, as the U.S. Army spokesman admitted, and as an analysis of their similarities makes clear, WHINSEC is essentially a continuation of the SOA.

B. Response to Defense Argument Two: 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.

As noted above, the SOA has officially ceased operations and WHINSEC is a new legal entity. Terminating one problematic entity and resurrecting it as another has long been used as a tactic to try to avoid political, corporate, and international responsibility. However, in contexts not far removed from the name change of SOA to WHINSEC, such charades are thwarted by several bodies of law that provide for continuing responsibility and accountability.

For example, this name change bears poignant parallels to the “transparent artifice” employed by southern officials in their attempts to avoid the mandates of desegregation. In the years following *Brown v. Board of Education*,¹⁶⁷ southern legislatures passed more than 450 laws designed to circumvent and delay desegregation.¹⁶⁸ A case in point is the state of Louisiana. Its legislature changed the laws governing public education numerous times thereby permitting local authorities to close

162. 10 U.S.C. § 4415, *supra* note 168.

163. 10 U.S.C. § 2166(b) (2002).

164. 10 U.S.C. § 2166(c) (2002).

165. Hodge & Cooper, *Instructor Says SOA Should Close*, *supra* note 131.

166. 10 U.S.C. § 2166(d) (2002).

167. *Brown v. Board of Ed. of Topeka, Shawnee County, Kan.*, 347 U.S. 483 (1954).

168. Judith A. Hagley, *Massive Resistance - The Rhetoric and the Reality*, 27 N.M. L. REV. 167, 195 (1997) (citing DAVID R. GOLDFIELD, *BLACK, WHITE, AND SOUTHERN: RACE RELATIONS AND SOUTHERN CULTURE 1940 TO THE PRESENT* 79-80 (1990)).

one school and open another in order to avoid the demands of segregation. In response, a panel of three judges found that closing schools and transferring the facilities to another entity was a “transparent artifice” designed to avoid the consequences of law.¹⁶⁹ Despite the Louisiana court ruling, other states continued similar practices. Eventually, the U.S. Supreme Court in *Griffin v. County School Board of Prince Edward County* held it was unconstitutional for Virginia, when faced with desegregation, to close the public schools and fund alternative segregated schools.¹⁷⁰ Thus, courts aptly identified maneuvers that were indeed transparent artifices and required the states and school districts to accept responsibility for implementing the law.

Likewise, 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 successor corporations. The courts do so by looking past a corporate entity under the doctrine of respondeat superior and through the practice of piercing the corporate veil. For example, when 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.¹⁷¹

Finally, in addition to the guidance given by domestic law as to the responsibility of successor institutions for their predecessors, it is noteworthy that international law imposes responsibility for violations of human rights on successor governments, even when a successor government had no control over the prior government or were even victimized by prior governments.¹⁷² Consider the following summary of this 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

169. 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. 197 F. Supp. 649 (E.D. La. 1961). See also *Bush v. Orleans Parish School Board*, 188 F. Supp. 916 (E.D. La. 1960).

170. 377 U.S. 218 (1964).

171. *Melrose Distillers Inc. v. U.S.*, 359 U.S. 271 (1959). See also *Sculptchair, Inc. v. Century Arts, Ltd.*, 94 F.3d 623 (11th Cir. 1996); *U.S. v. Alamo Bank*, 880 F.2d 828, 830 (5th Cir. 1989); *Bud Antle, Inc. v. Eastern Foods, Inc.*, 758 F.2d 1451 (11th Cir. 1985); *U.S. v. Polizzi*, 500 F.2d 856, 908 (9th Cir. 1974).

172. 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).

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 [sic] under international law.¹⁷³

Thus, by analogizing the principle of respondeat superior underlying the examples of political, corporate, and international law given above, the reconstitution of the SOA in another legal form is no defense to responsibility by the new school for the prior school's actions.

C. Defense Argument Three: Problems of graduates of the School of the Americas are not unlike the problems of graduates of any school, problems for which it is unfair to blame the school.

According to the U.S. Army's WHINSEC website,

Just as any college or university cannot guarantee that some of their students will not someday commit crimes, neither can we. We provide our students with the training to help them better understand their role in serving a democratic society. They learn what it means to "protect and serve." They learn the moral and ethical reasons for doing what is right and just in their duties, and they learn the practical benefit—the support of their people.¹⁷⁴

This is the traditional "bad apple" argument employed whenever evidence indicates there is an institutional or systemic problem. Instead of focusing on the root cause, this argument attempts to blunt criticism of more fundamental problems by asserting that only a few individuals have gone astray. This argument fails in this instance because, instead of a few

173. Mark Valasso, *Truth and Reconciliation Commissions*, 33 U. MIAMI INTER-AM. L. REV. 153, 161 n.36 (2002). See also Peter A. Schey et al., *Addressing Human Rights Abuses: Truth Commissions and the Value of 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); Orentlicher, *supra* note 181; Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 CAL. L. REV. 449 (1990).

174. WHINSEC Website, *supra* note 162, at <https://www.infantry.army.mil/whinsec/about.asp?id=31>.

isolated problems, SOA graduates have been implicated in many major human rights problems in countries throughout this hemisphere for the past half century. Additionally, recent academic graduate research based on a statistical analysis of nearly 12,000 SOA graduates from six countries (Argentina, Brazil, Guatemala, El Salvador, Panama, and Peru) over a 40 year period, found that

soldiers who took two or more courses [at the SOA] were almost four times more likely to have committed human rights violations than soldiers who took one course. . . . [T]here is no statistical evidence that students who attended the SOA in the 1990s were less likely to engage in human rights violations than those who graduated in the 1960s.¹⁷⁵

D. Defense Argument Four: Teaching human rights at WHINSEC is an integral part of the curriculum.

Although the Army suggests teaching human rights is an integral part of its instruction, that argument should be evaluated carefully considering three critical points. First, explicit human rights violations involving torture and executions were taught for years to thousands of people from over ten countries at the SOA. Second, given the human rights violations of some military personnel in Iraq, the ability of the Army to adequately teach its own soldiers about human rights is questionable, much less its ability to instill respect for human rights in foreign militaries with a variety of cultural backgrounds. Third, a review of the tactics used by top ranking U.S. Army officials in treating civilians conducting constitutionally protected protests at the site of the SOA raises questions about their individual commitment to human rights.

There are wide-ranging accusations and apparently some documented violations of human rights laws by U.S. military personnel in Iraq.¹⁷⁶ The chief investigator into the abuses at the Abu Ghraib prison, Army Major General Antonio Taguba, told Congress that “the soldiers received ‘no training whatsoever’ in proper prisoner screening and interrogation either before their deployment to Iraq or during their duty at the prison.”¹⁷⁷ If the military does not invest the effort in training

175. See Kate McCoy, *New Findings Analyze Violations by SOA Graduates*, NEWSNOTES, May/June 2004, at 10 (published by Maryknoll Office for Global Concerns). See also School of Americas Watch, May 6, 2004 Report, *supra* note 38.

176. Human Rights Watch, *Human Rights Groups Write to President Bush about Iraqi Prisoners: Directors Urge Immediate Action to End Abuse of Detainees in Iraq and Elsewhere*, May 7, 2004, available at <http://hrw.org/english/docs/2004/05/10/usint8566.htm>.

177. Army Maj. Gen. Antonio Taguba testified yesterday before the Senate Armed

its own personnel as to human rights, its ability and commitment to train foreign militaries in this regard is questionable.

Finally, consider how the Army itself treats U.S. citizens. On Saturday, November 22, 2003, nearly ten thousand people gathered at one of the closed gates to Fort Benning to hold the annual School of Americas Watch's legally-permitted protest against the atrocities committed by graduates of the SOA and WHINSEC. The protest consisted of folk singing, praying, and speeches by people, including survivors of massacres directed by SOA graduates.¹⁷⁸ The Army responded to the protest by setting up four large loudspeakers approximately fifty yards away from the protest stage and conducting "a sonic barrage" of the protest with patriotic and military music.¹⁷⁹ Two commanding Army officers held a press conference on that day with the local mayor, a former U.S. Army lawyer, who said he found it "repulsive for a group to hold a demonstration outside Fort Benning at a time when people have died in the war in Iraq."¹⁸⁰ The base general, Benjamin Freakley, told reporters that the music blasting was to "lift the morale of our troops" and opined that the protestors should be required to put money in escrow before being allowed to get a permit to protest.¹⁸¹

One might question the commitment to human rights of a military that attempts to drown out constitutionally-protected and legally-

Services Committee that the soldiers received "no training whatsoever" in proper prisoner screening and interrogation either before their deployment to Iraq or during their duty at the prison. In his report, filed in March, he found that commanders failed even to post provisions of the Geneva Conventions at prisons.

The Geneva Conventions protect all enemy prisoners of war and civilian internees from inhumane treatment such as violence, intimidation, insults and public curiosity.

Such legal human-rights training remains absent from the official list of "critical" tasks to be covered in a new crash course in prisoner screening and interrogation that the U.S. Army is developing for reservists and National Guard members.

"They don't think GENCON (Geneva Conventions) is a critical task, despite it being absolutely critical in doing our job," a senior military intelligence official said.

Paul Sperry, *Army Training Memo Reveals Neglect for Human Rights Law*, WORLD NET DAILY, May 12, 2004, http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=38460.

178. Elliott Minor, *Thousands Gather for Annual Protest Protests Mount at Fort Benning*, OAKLAND TRIB., Nov. 24, 2003 1, available at http://www.findarticles.com/p/articles/mi_qn4176/is_20031124/ai_n14566332/print.

179. *Big Crowd at Military School Protest Gets Earful of Patriotic Music from Army*, ASSOCIATED PRESS, Nov. 22, 2003, available at <http://www.soaw.org/new/newswiredetail.php?id=356>; S. Thorne Harper, *Sour Note: Music blaring from Fort Benning bothers protestors near post*, COLUMBUS LEDGER-INQUIRER, Nov. 23, 2003, at A1, available at http://www.soaw.org/new/newswire_detail.php?id=343; *Army Hits Protestors With A Musical Blast*, L.A. TIMES, November 23, 2003, at A26; *Protestors at military school hit with patriotic music*, ASSOCIATED PRESS, Nov. 23, 2003, available at <http://www.cnn.com/2003/US/South/11/23/school.protest.ap/> (last visited May 19, 2004).

180. Minor, *supra* note 181.

181. Richard Hyatt, *Coverdell Says SOA Changes Will Be Minor*, COLUMBUS LEDGER-INQUIRER, Feb. 16, 2000, at B2.

permitted voices of dissent with hour after hour of sonic barrage. One might question the commitment to human rights of military leaders who find it “repulsive” for people to exercise their First Amendment rights to demonstrate for peace in a time of war. One may question what those military actions communicate to the students at WHINSEC about the commitment of the military to teaching and practicing human rights.

V. SUSPEND AND INVESTIGATE

Although each truth commission has its own unique mandate, they are generally constituted to establish a historical record of abuse and to investigate the causes and consequences of these abuses using a variety of methodologies, including holding public hearings, conducting fact-finding missions, and taking statements from victims, witnesses, and even perpetrators. Truth commissions have been praised for capturing values beyond criminal liability essential to long-term stability and prevention of further abuses.¹⁸²

Amnesty has recommended that operations at the school be suspended and investigated.¹⁸³ If the investigations warrant such action, then criminal prosecutions should follow, along with redress for victims and their families, and a public apology.¹⁸⁴

WHINSEC, in addition to being a serious problem in and of itself, is also a symptom of an even deeper problem – an inability to recognize the people in this hemisphere, but outside this country, as deserving the basic human dignity U.S. citizens demand for themselves. As with the disclosures about Abu Ghraib, most U.S. citizens would be appalled if they actually knew what their tax dollars were used for at the SOA-WHINSEC: training in torture, executions, violations of national and international law, and training of militaries accustomed to returning to their countries and mistreating their own citizens.¹⁸⁵ Yet, because there has been so little accountability, too few people know what has occurred

182. Elizabeth M. Evenson, *Truth and Justice in Sierra Leone: Coordination Between Commission and Court*, 104 COLUM. L. REV. 730, 731 (2004).

183. 2002 AI USA REPORT, *supra* note 2, at 55-56 (the six recommendations specific to WHINSEC). *See also, id.* at 52-56 (the full set of recommendations).

184. *Id.*

185. The WHINSEC is an instrument of an “any means necessary” foreign policy. . . . During the Cold War, “any means necessary” meant repressing workers, peasants, progressive religious, students, and anyone else who challenged unjust economic systems or who called for structural changes to address the basic needs of poor majorities. Repression was carried out in the name of freedom and democracy and the fight against communism. It was a necessary part of an epic struggle against an evil empire.

NELSON-PALLMEYER, GUNS & GREED, *supra* note 3, at 15.

at the school and why.

A full and independent investigation is an effective vehicle to both document and publicize the school's problems by allowing the voices of all people to describe the many effects of the school and to analyze the many mistakes that have been made. A thorough, independent, unencumbered, fact-finding investigation into the school's problems and its impact can lead to individual justice, but also to addressing the deeper issues of national and international justice.

Merely renaming the school is not enough. WHINSEC, as a defacto continuation of the SOA must be closed so that we do not further enable and encourage terrorism and human rights abuse by foreign militaries. By closing WHINSEC, our country will send a signal that we do not conscience human rights abuse here or abroad. We, as a nation, must learn from our mistakes.¹⁸⁶

VI. CONCLUSION

Those who make peaceful revolution impossible will make violent revolution inevitable.

-President John F. Kennedy.¹⁸⁷

The SOA-WHINSEC is to U.S. international human rights policy as the death penalty is to the criminal justice system. Outdated and inhumane, it is an international embarrassment. It is past time to close it. The best next step is to follow the suggestions of Amnesty to suspend all operations at WHINSEC and fully and independently investigate the past and present operations of the school. Where wrongdoing is found, criminal prosecutions are appropriate. Where appropriate, reparations to the victims of the school should be paid. Certainly an apology is long overdue. Only in this way can the cause of justice for all, in the U.S. and in this hemisphere, really advance.

186. Karl Jaspers teaches that there are at least four types of guilt: criminal guilt, political guilt, moral guilt, and metaphysical guilt. Criminal guilt applies to those who directly commit murder, torture and human rights violations. Political guilt is the social responsibility of the citizens in whose name wrongful acts were committed. Criminal and political guilt are the domain of the state - moral or individual complicity for war crimes and metaphysical guilt of all human beings in solidarity are not. KARL JASPERS, THE QUESTION OF GERMAN GUILT 25-26 (E.B. Ashton trans., Fordham Univ. Press 2000) (1947).

187. John F. Kennedy, Address to Latin American diplomats at the White House, Mar. 12, 1962, available at http://en.wikiquote.org/wiki/John_F._Kennedy.