



Going Global:

1L's Tackle Transnational Law BY GREG LANGLOIS

IT'S 2009. TWO "REPUBLIC OF WESTPHALIA" TERRORIST SUSPECTS HAVE FLED THE COUNTRY — ONE to France, the other to Russia — and the United States wants them back to try them on capital murder charges in the deaths of U.S. government employees. Although normally both France and Russia would seek assurances that U.S. prosecutors would not seek the death penalty before extraditing criminal suspects, the leaders of both countries have agreed to extradite in this case without assurances. But there's a catch.

Both France and Russia are parties to the International Convention on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms, each of which protects anyone within their territories (including the two suspects) and provides access to a tribunal to resolve allegations of violations under them. The ICCPR and European Convention raise a number of issues that may thwart the countries' desire to extradite:

Do both conventions' "right to life" provisions and related tribunal decisions mean that a state cannot extradite someone who, if convicted, might be executed? Under the ICCPR, what is the significance that France has abolished the death penalty and Russia, at most, is a "de facto" abolitionist state? Under the European Convention's Optional Protocol No. 6, is the death penalty impermissible because it is "peacetime," or is the "war on terror" a "war," during which executions are allowed? Does it matter that France has signed (but not ratified) Optional Protocol No. 13, which bars the death penalty at any time?

Even the most experienced lawyers would have a difficult time grappling with these issues. What about first-year law students with only one semester under their belts? Georgetown 1Ls got the chance this past January as the Law Center launched its "Week One: Law in a Global Context" program, an intensive, week-long class focused on a transnational law problem (including the extradition problem above) as part of the mandatory first-year

curriculum. The one-credit, pass-fail class, which takes place during the first week of the second semester, represents a schoolwide effort to show 1Ls early on how legal problems can cross international boundaries and to give students a chance to become advocates and decision-makers.

CROSSING BORDERS

Week One grew out of a recognition that "legal education is behind legal practice," says Georgetown Law Dean Alex Aleinikoff. "Law and legal practice reach over borders with increasing frequency."

Virtually any dispute or transaction, in any area of the law — tax law, antitrust law, competition law, health law, human rights law — can be affected by treaties, customs or conventions that cross borders, Aleinikoff says. Because of this "it was our view that law students at an early point in their legal education need to feel comfortable dealing with laws and legal cultures other than their own."

Week One also reflects the school's desire to offer students a different way of learning than they're used to in most of their first-year classes, says Professor Vicki Jackson, who helped create the extradition problem and taught it during Week One. By immersing students into a dispute and giving them a role to play — as opposed to only reading cases where the issues and arguments have already been decided — Week One's problem-based approach "gives students a learning experience that was designed to draw on a different range of talents, capacities and learning styles than the



PHOTOS BY HOLLY EATON

Every student who participated in Week One was required to give some type of oral presentation. "I was a little bit worried that a five-minute argument wasn't long enough for somebody to get into it," Professor Richard Diamond says. "Boy, did they get into it."

first semester had done," Jackson says. "It's a way to learn that is very different from what goes on in most first-year law school classrooms."

Although many law schools offer "bridge" programs that expose students to concepts and subject areas they wouldn't otherwise experience, Week One is unique for its focus on transnational legal issues and its problem-based format, says Professor Julie Ross, who also helped devise a Week One problem and taught one class section.

The amount of effort the faculty spent developing the program also makes it stand out, Aleinikoff says. "We're the only school in the country that has put together these intensive, interdisciplinary week-long programs in which a large segment of the faculty participates," Aleinikoff says. "In many schools this is the work of one or two professors, typically international law professors or comparative law professors, but this really was the work of the Georgetown faculty as a whole."

VEXING PROBLEMS

Faculty members were "ambitious" in deciding to create three separate problems for Week One, rather than just one for all five class sections, Jackson says. The faculty wanted to ensure that students could draw on at least some knowledge from their first semester classes, she says.

"Our thought was that there was a richness of materials out there and that our students all take basically

the same courses in the first year, but they don't take them in the same order," she says. Thus, students who had taken Constitutional Law worked with the extradition problem because interpreting language in instruments such as the ICCPR and European Convention is similar to the constitutional interpretation they studied in class.

Those who had taken Torts worked with a defamation problem involving a French wine exporter, a Los Angeles-based financial news outlet ("FNN"), and a California-based Internet service provider. In the problem, FNN runs a story on its subscription Web site alleging that the exporter used his business to launder money for organized crime, and the exporter, claiming that the story is wrong, demands a retraction, removal of the story from the Internet and compensation for damages to his reputation and business. FNN's online subscription agreement specifies that an international arbitration panel should settle disputes, but does not mention which substantive law should apply.

For students who had taken Contracts, faculty members created a problem involving a contract dispute between an Indiana-based construction company and a French barge manufacturer. The French company, which had agreed to provide the construction firm with several barges as part of a dam construction project in Laos, realizes that it will actually lose money on the deal after the Chinese government imposes environmental rules preventing it from using a low-cost manufacturing process at its factory in China. Whether the French company can successfully assert an impracticability excuse could depend on whether French law, U.S. law or an international convention applies.

Georgetown Law professors developed the "core" of the three problems in a collaborative process. A small group of eight worked throughout the summer and fall of last year to research relevant international and domestic legal materials, structure the problems with balanced and different roles for the students, and identify, edit and write appropriate legal and background materials, Jackson says. These professors presented early drafts of the problems and materials to the faculty and to upperclass students and received feedback that led to further revisions. The problems,

in their final form, were designed to be as realistic as possible — and that means complicated, she says.

“One of the things about solving problems in the real legal world is that the legal world doesn’t come packaged in categories — ‘contract,’ ‘tort,’ ‘public law,’ ‘conflicts of law,’ ‘negotiation and arbitration,’” Jackson says. “A legal problem will often involve strands of many areas of the law. And all of these problems have levels of complexity in them that went way beyond how we typically teach doctrinal development in the first year, which is very step by step by step.”

Students worked exclusively with their problem throughout the week in specified roles — either as advocates for a party or as judges or arbitrators. In the defamation problem, for example, students were



Week One is designed to be student-directed; the students themselves were responsible for sorting out the issues and developing arguments.

assigned to represent the wine exporter, FNN, or the Internet service provider, or to be “neutrals” who, among other things, sat on the arbitration panel. The role groups worked together in break-out sessions during the week to map out the best arguments or determine what arguments each side would raise.

Although faculty members and “Global Teaching Fellows” — upper-class volunteer students — were on hand during the break-outs in case students drifted too far off course, the first-years themselves were responsible for working with the materials and leading small-group discussions. This self-directed learning was no small task, given the problems’ complexity and the fact that at that point, students hadn’t even received their first grades back yet, let alone been formally taught any aspects of transnational law.

But that’s the point, says Professor Richard Diamond, who taught one of the sections tackling the contracts problem. “People learn a tremendous amount from facing problems that are beyond their current capacity,” Diamond says. “The idea that you shouldn’t give someone a problem to work on that is way over their heads is just wrong. Sure, you can’t expect them to do it the same way that someone with 10 or 15 years experience would, but that’s not our question. Our question is: How is it as a pedagogical experience?”

At some point later in the week, students were required to stand up in front of their break-out groups and either deliver an oral argument or, if serving as a judge or arbitrator, question the advocates and reach a final decision.

“If you think about it, after one semester in law school, all of our students have now had the experience of standing up and making a legal argument,” Jackson says. “That’s pretty terrific.... Not that it’s something everybody will want to do as a lawyer, but I had students who came up to me and said, ‘This is what I went to law school to be able to do. I’m thinking like a lawyer now. I really like this.’”

LOOKING AHEAD

Given that Week One has only just gotten off the ground, it is difficult to know exactly what kind of impression it will have on students, Aleinikoff says. The effect could be subtle. “I think the benefits of Week One will not be fully appreciated by law students until significantly later,” Aleinikoff says. “In my mind, the impact of Week One would be evident

in a student raising in a third-year antitrust class a question about what European anti-competition law says on the question, or raising in a constitutional law class the question of what the European Court of Human Rights has held on a similar issue.”

Ross says many of her students enjoyed being exposed to an alternative dispute resolution process for the first time — so much so that it may have already changed some career paths. “I had some students tell me in the months afterward that it actually affected their choices for what they decided to do over the summer and what kind of jobs they decided to interview for this year,” Ross says. “In a way it broadened their perspective and their sense of what they might be interested in doing. If nothing else, for that reason it was a success.”

For next year, faculty members have decided to work with the tort, contract, and public law problems they developed for the first program, with some refinements, Jackson says. The faculty will likely create additional problems for future years, she says.

Ross says her students were also eager to not only argue whether French law or U.S. law should apply in her Internet defamation problem, but also, after that’s decided, who should prevail. She is working to build in time at the end of the week for students to craft arguments centered around one piece of the substantive law of defamation — the burden of proving falsity or truth. Which law applies can make a big difference, Ross says. Based on free speech concerns, U.S. law places the burden on plaintiffs in defamation suits to prove that a statement is false; French law takes the opposite approach, requiring defendants to prove that a statement is true.

Students loved brainstorming and strategizing in their various role groups, Jackson says, so faculty members teaching each problem are trying to overcome space and time limits and squeeze in at least one additional small group break-out session during the week.

All students were assigned a role group during the week. Problem-based learning “engages students more than only memorizing legal doctrines,” says Professor Julie Ross.



Professor Robert Pitofsky consults with a student during Week One. More than one-third of Georgetown Law’s full-time faculty participated in the program.

Whatever changes it goes through next year or in years to come, Aleinikoff says Week One has already become an indelible part of Georgetown Law’s expanding transnational law tradition. The school, he notes, has recently adopted a study abroad program and created a new LL.M. program in global health; sends dozens of students to work abroad during the summer as part of an international externship program; welcomes hundreds of foreign students from more than 50 countries as part of its graduate program each year and runs an array of institutes focused on economic, health, immigration, Asian and Latin American law.

“[Week One] is a significant piece,” Aleinikoff says, “but just one piece of the law school’s development as a leading global law school.”

