

Final Report for Summer 2009 Liman Fellowship
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In the summer of 2009, I worked at Human Rights Watch (HRW) in the Terrorism and Counterterrorism Program (T/CT), headquartered in New York. HRW is an international human rights organization with a dual mission: to document human rights abuses and target high-level government officials, NGOs, local activists, and journalists to advocate for change. The documentation is essential for effective advocacy because the facts help convince important actors of the need for action and lend credence to HRW's recommendations.

My tasks at HRW fell into three categories, each corresponding to one of my three supervisors: law research for Joanne Mariner, the head of T/CT; factual research for Letta Tayler, a researcher in T/CT; and administrative aid for Kate Wies, the T/CT associate. Although Joanne assigned me most of the tasks that qualify towards completing the Liman requirements, I learned a substantial amount about law from Letta's assignments, and learned other valuable lessons from Kate's assignments. I will proceed by listing some of my tasks from Joanne, elaborate on one of them, and then briefly discuss my work for Letta. Among my tasks for Joanne were the following: 1) compiling and summarizing European Court of Human Rights (ECHR) judgments on the independence and impartiality of Turkish security courts and British courts-martial hearing terrorism cases, in order to demonstrate by way of comparison the unfairness of trying terrorism cases in the U.S. military commissions, 2) researching the statutory history of the Authorization for the Use of Military Force to determine whether it authorized only the invasion of Afghanistan or broad executive power to detain people worldwide, 3) creating a list of Guantánamo detainees who have obtained injunctions against their transfer to a country likely to torture them, or at least 30

¹ Approved by Kate Wies, associate in the Terrorism and Counterterrorism Program at Human Rights Watch

days' advance notice before a transfer, for use in press releases and advocacy, as it appears that President Obama will soon transfer some Guantánamo detainees, and 4) collecting arguments for accountability for grave human rights abuses to bolster the letter HRW sent to Attorney General Holder urging him to open an investigation of all officials who authorized or committed torture. All of these assignments involved finding and reading carefully the appropriate sources and writing a memo summarizing the important elements of the sources.

Of the many things I learned this summer about human rights abuses, U.S. counterterrorism policy, and their intersections with the law, the lesson that resounds most with me is the importance of precedent, or *stare decisis*. The task of summarizing the ECHR judgments helps to illustrate how precedent functions. Joanne's motive for assigning me the ECHR project was to use the precedents of the ECHR rulings to argue that the military commissions used to try Guantánamo detainees violate the detainees' right to a fair trial. If the ECHR, the highest court of human rights in Europe, repeatedly found that certain types of Turkish and British military courts violated, by the very nature of the composition of the judges and administrators, terrorism defendants' right to a fair trial (under Article 6 of the European Convention on Human Rights), then HRW could make the case that U.S. military commissions similarly infringe on human rights. By referencing these ECHR precedents, HRW can make a strong argument against the military commissions.

Attending the oral arguments in the ACLU's lawsuit challenging the constitutionality of the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (FISA Amendments Act) further solidified my appreciation for *stare decisis*. During the hearing, the judge constantly inquired of the ACLU and the Justice Department lawyers if there were previous cases that touched on the same issues of standing, free speech, and unlawful search and seizure that the present case

engaged. It was clear that the judge wanted his decision to read as if it were emerging from precedent instead of departing from the past and revealing his individual preferences.

In recalling these two encounters with the issue of precedent, I do not mean to assume that the reader is ignorant of the vital process of using previous cases in order to argue about the law. I only mean to show that *stare decisis* is not some pretentious Latin phrase whose usefulness is confined to dusty tomes in law libraries. On the contrary, precedent, combined with the fact that judges in the U.S. must furnish written arguments for their decisions, is crucial in ensuring the predictability and fairness of our justice system. Without precedent, case outcomes would be much more arbitrary because they would depend more on judges' predispositions and less on legal arguments that could be identified, debated, and refined over time. U.S. military commissions and the FISA Amendments Act affect the human rights and civil liberties of real people, so witnessing the importance of precedent in debating and deciding these issues was very powerful for me.

Thinking about precedent also led me to conclude that tradition is essential to accomplishing change. I had always thought that liberalism and progressivism were about achieving justice through change only, but this summer made me realize what to many people is probably obvious: that calls for change are not persuasive without appealing to historical precedent and long-standing principles. The former can demonstrate that change is possible without complete chaos, while the latter serves to justify the expansion of rights. It struck me as counterintuitive that advocates of change must appeal to tradition, just as those who want to conserve the status quo appeal to tradition.

To return to my HRW assignments, I would like to mention an assignment from Letta, which was to create an Excel spreadsheet of the Muslim suspects detained by various Indian police forces for their alleged involvement in the bombings of major Indian cities in 2008. Letta will use the

spreadsheet to help her keep track of the suspects for her upcoming report on the Indian police forces' mistreatment of the suspects. Retrieved from news articles and court documents, the information in the spreadsheet consists of the name, age, hometown, charges, cities bombed, description, arrest, detention, and lawyers for each suspect. Among the glaring human rights abuses by Indian police that Letta has discovered are torture, secret detention, and denial of access to counsel and the suspects' families.

The police committed another type of abuse that was more subtle but equally harmful. Under Indian law, police custody is limited to 15 days. In many cases, however, the police filed a complaint against a suspect for one bombing in which he was accused of involvement, waited 15 days, then filed another complaint regarding another bombing within the same city, and repeated the process every 15 days. They were able to do this by taking advantage of the fact that multiple bombings occurred at the same time within a given city. Despite the fact that the new complaints rarely presented new information and despite the police's prior announcement that they were treating the bombings as a single conspiracy, the police were able to keep some suspects in their custody for as long as four months. In this way, the police violated the spirit of the law by renewing police custody without having a justifiable basis for doing so. The fact that the suspects are more likely to face torture in police custody than in judicial custody compounded this problem. Indeed, Letta was informed by lawyers and relatives for more than 30 suspects whose stay in police custody was repeatedly extended that these suspects were tortured in police custody.

From my work for Joanne, Letta, and Kate, I got to practice the valuable skills of presenting information clearly so that other people can understand what information I have and have not found;

doing legal research on court websites, SSRN, and Pacer; and talking to strangers on the phone, which I worked on when I called Guantánamo lawyers.

Interning at HRW and staying with friends and relatives in New York made this summer the best I can remember. The orientation at the beginning of the summer was quite helpful, the varying tasks structured the time nicely, and the weekly presentations by HRW researchers to interns taught me a lot about human rights abuses and current developments in the human rights field.

My post-graduation plans are still rather hazy at this point. I hope to spend a few years doing humanitarian work in the Middle East for the U.N. or an NGO in order to improve my Arabic and French and gain experience working on the ground with people in need. Then I would like to attend law school and possibly also pursue a master's of public affairs. After law school, I would like to work on human rights either in the federal government, the U.N., or a non-profit. I think I would prefer to concentrate on human rights issues that intersect with national security and counterterrorism initiatives, though I would welcome any opportunity to make a living promoting human rights.

I cannot think of anything that the Liman Program could have done differently to support me. I really enjoyed attending the Liman Conference at Yale, especially the panel on human rights clinical education. I am very grateful to have been awarded a fellowship, which opened up the possibility of completing an unpaid internship at HRW.

As a last addendum to this report, I want to express my heartfelt thanks to Professor Kim Lane Scheppele at Princeton, who has been an incredible teacher and mentor and generous advocate on my behalf. My success in securing a Liman Fellowship and HRW internship is due in no small part to her, and I will be forever grateful for her guidance and friendship.