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LEGAL TRAINING



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AFGHAN LEGAL TRAINING PROGRAM

REPORT ON THE SUBSTANTIVE ASPECTS OF THE PROGRAM FOR THE PERIOD

JUNE 1973 TO DECEMBER 31, 1973

This report covers the introductory intensive English training at Georgetown University in June/July 1973, the Orientation in the U.S. Legal System at the Georgetown University Law Center and the first semester of study at the George Washington University National Law Center, August 27 to December 5, 1973, as well as the examination period and Christmas vacation.

There are now nine participants in the first group under this program of whom three are professors in the Faculty of Law and Political Science of Kabul University, the remaining six are legal practitioners in various positions in the Afghan Government. A list of the participants follows:

- AMIRYAR, Abdul Qadir, Professor, Faculty of Law and Political Science, Kabul University
- BAKHSHI, Taj Mohammed, Professor, Faculty of Law and Political Science, Kabul University
- BASHAR, Gulam Faruq, Professor and former Vice Dean, Faculty of Law and Political Science, Kabul University
- CHORWAL, Zmaray, Prosecutor, Court of Appeals, Kabul
- HABIB, Rahila (Miss), Judge, Juvenile Court, Kabul
- PAIKAR, Mohammed Sadiq, Judge, Central Court of Appeals, Kabul
- PAYMAN, Abdul Rahman, Ministry of Justice, Kabul
- SERAJ, Zabihulla, Judge, Narcotics Division, Kabul High Court
- ZAEEFI, Azizolhuqe, Senior Judge, High Court of Cassation, Kabul

OBJECTIVE OF THE TRAINING PROGRAM

According to Appendix B of the Contract between the United States of America and George Washington University of May, 1973, the objective of the legal training program is "to improve the competence of Afghan legal personnel so that they may operate more effectively within their present legal system and to enable them to adapt their present jurisprudence and administer their legal and governmental institutions... The aim is not to "Americanize" the Afghan legal system or to train Afghans to become American lawyers but to offer them some insight into comparable legal systems, elements of which can be adapted to the Afghan system."

This overall objective has been pursued in the training program by having the participants take regular courses in the George Washington University National Law Center and supplementing these courses by special seminars tailored specifically to the needs of the participants.

It should be noted that all of the participants took the brief Seminar on Orientation in the U.S. Legal System at the Georgetown Law Center and that they regarded this seminar as a useful, general introduction making the transition to the more extensive work during the first semester at George Washington University somewhat easier.

THE PROGRAM OF THE FIRST SEMESTER

The Problem of Individualization.

When plans for the first semester were discussed with the participants by the Project Coordinator, it became apparent very quickly that there was a need for greater adaptation of the program to the requirements of the individual participants than had been anticipated. Actually, the group, as far as training needs were concerned split into two major segments, one was composed of what may be called the professors, the other the practitioners. For a variety of reasons the needs of the professors were more diversified than those of the practitioners. One reason was that the professors had different fields of specialization and within the overall framework of the training program wished to pursue studies which would be most helpful in their own field of teaching and research. Another reason derived from the make-up of the Faculty of Law and Political Science from which all three academic participants were drawn. In line with the usual pattern of continental European faculties of law and political science, the Kabul faculty has lawyers, political scientists

and economists on its staff and teaches all these disciplines. All three academic participants have legal training, but one of them is primarily a political scientist, another an economist. It became obvious that the training program had to be highly individualized particularly for these two participants. However, to some degree this had to be done also for the third academic participant who had had an extensive and very thorough purely legal background, but was, of course, also interested in taking courses with particular relationship to the subjects he had been or expected to be teaching and on which his research activities were concentrated.

The problem of individualization is not quite as pressing with the participants from the judiciary, the prosecutor's office and the Ministry of Justice. Nevertheless it is prominent in this group also. To some extent members of this group can be assigned to the same classes, such as criminal law and procedure or civil procedure. However, beyond these classes of general importance for the practitioners, the program for them also has to be tailored to individual needs. Several of the participants from among the practitioners are taking additional courses in line with their special concerns. Practical experience likewise has to be adjusted to the requirements of the individual.

A further aspect is added to the problem of individualization of the program by the fact that all participants will have to produce a major paper on a specific topic which will require individualized research in consultation with the Project Coordinator and other professors.

One of the important tasks of the program is therefore to balance the requirements of general familiarization with the American legal system with the goal of serving individual professional needs. It is felt that in constant consultation between the Project Coordinator and the individual participants (including other professors of the Law Center where indicated) this balance is being achieved.

During his visit to Kabul last May the Project Coordinator had an opportunity to have lengthy interviews with the prospective individual participants in addition to a general session in which all of them took part. This gave him an opportunity to discuss in some detail the various phases of the program and get an impression of the special interests and requirements of the individual participants. In addition, the Project Coordinator found it extremely helpful to be

able to discuss the various aspects of the program with high officials of the Afghan Government and ascertain their views as to the needs the program should fill. As a result of these personal contacts the planning of the general and the individualized aspects of the program was greatly facilitated.

Attendance at Regular Law School Classes.

As a result of these various considerations, seven of the participants were enrolled in the regular class on criminal law and procedure. In addition one of them took a class on labor law, another one a class on torts. Of the remaining two participants, one took courses in jurisprudence, international law and constitutional law in line with his professional interests and the participant with economic training took a course in law and economics.

The participants who took Criminal Law and Procedure also attended a special seminar given exclusively for them by the professor teaching the Criminal Law and Procedure class as well as a tutorial given by a third year student with teaching experience. This gave an opportunity to explore some of the concepts in greater depth. The students did absorb the principles of American criminal law and procedure and became familiar with American methodology, but found participation in a large class with the usual give and take between professor and students inherent in the American law school teaching method somewhat hard to follow, especially in the beginning because of difficulties in understanding rapidly spoken English.

A special problem which arose in this course was whether the participants should take the regular examination. Because of the difficulty of the subject matter and the problem of solving exam questions designed for the average American student in a three hour examination it was agreed with the professor and the law school administration that the participants would not have to take the examination, but could write a paper summarizing the course work and making some comparison with Afghan law and procedure. Out of the seven participants taking the course, five chose to write such papers which were generally of good quality and satisfied the requirements set for them by the professor. These papers did not give them credit that could be counted toward a degree, but gave them credit for the special certificate which will be issued at the end of the training period as discussed with A.I.D. and the Government of Afghanistan. Two of the participants took the regular examination.

The experience with the course in Criminal Law and Procedure demonstrated that even more care than anticipated has to be taken in exposing the participants, especially shortly after their arrival, to a large basic class compulsory for American law students. While it is certainly useful to expose most of the participants to the American teaching method in a class where fundamentals are taught, it must be realized that these classes are the hardest to follow and also the ones in which the instructors are usually least able to give a group of foreign students the degree of special attention, which they need. Great emphasis therefore has to be placed on the special seminar.

The reaction of the participants to this class was that they learned a great deal and achieved a good insight into American criminal law and procedure and the methodology of teaching the subject matter, but that the course was hard, the work very demanding and the rapport with the instructor in this specific case, despite the special seminar, not as close as it might have been.

It is not anticipated that the course in criminal law and procedure will be dropped for the second group, since it is of very considerable importance, particularly for the practitioners. However, care will be taken to have as much special attention paid by the instructor to the Afghan participants as is at all possible and to give the instructor as much of an insight into the special problems of the group as is possible on the basis of this year's experience.

In this respect it should be mentioned that seven of the nine participants are taking another basic course, Civil Procedure, in the Spring Term. The professor teaching this course, who is also the Deputy Project Coordinator, is devoting a very considerable amount of time to special seminars with the Afghan participants and is particularly intent on linking the American experience the participants are gaining with the experiences and problems of Afghan procedure. I do not expect any of the problems which arose with the course on criminal law and procedure to arise in this course.

As pointed out above, several of the participants took regular law school courses in the field of their special interest, in a few cases in addition to the course of criminal law and procedure, in others in the pursuit of a different curriculum. In all these courses and seminars the participants took the regular examinations and did well.

Special Seminars.

There can be no doubt that the special seminars tailored to the specific needs of the Afghan participants have become an extremely important part of the program and the individual participants have been unanimous in stressing the value of these seminars. They give the participants a chance to discuss problems more thoroughly with the instructor and to apply what they have learned here to Afghan situations and problems.

All participants attended the special seminar on modernization of the law of the Near and Middle East given by the Project Coordinator. The seminar, which is continuing in the spring term, was utilized not only for an exposition of the means and methods used by other countries of the Near and Middle East to reform their legal systems, but also for a discussion of Afghan reforms and of the ways in which the experience of other countries of the region could be applied to further reforms in the Afghan legal system. Ideas, concepts and methodology developed in the seminar itself as well as in other courses taken by the participants were utilized in these discussions. Several of the participants wrote papers for this seminar for which they received regular credit under the general category of "legal writing." Others will write papers during the spring term.

A seminar on legislative drafting which has overlapped the fall and spring terms was offered by Professor Murray Zweben, Assistant Parliamentarian of the U.S. Senate and was attended by all the participants. After outlining the system of law-making in the United States, Professor Zweben has worked with the participants on the actual drafting of legislation taking into account Afghan circumstances and needs.

As already mentioned the professor who had taught criminal law

THE ENGLISH LANGUAGE PROBLEM

There is little doubt that the problem of being able to handle the English language sufficiently to derive the maximum benefit from the work here is crucial. The capabilities of the participants in this regard vary widely. In all cases the introductory intensive English language training course at Georgetown University was felt to be beneficial by the participants. However, it became very clear that more English language training was needed by all of them, although, of course, the need of some was considerable greater than that of others. As a result the professor who teaches English for foreigners at George Washington university was asked to give a special seminar for the participants tailored to their specific needs. One of the participants took in addition, his regular course in English for foreign students. The English language work is being continued during the spring term on an individualized basis.

The experience with the first group as far as knowledge of English is concerned points up the need of as much English training as possible in Kabul before arrival here. However, it seems certain that whatever English training has been received there will have to be further supplemented here as the students have to make the important and often difficult adjustment to living and studying in a wholly English-speaking milieu.

LIVING COSTS AND LIVING CONDITIONS

One of the early problems which arose was the limitation of the per diem to \$10.00 which was clearly not enough to meet the steadily rising costs of living in Washington. The decision of A.I.D. to raise the per diem to \$15.00 has very considerably alleviated this situation. Of the participants four share apartments (two each), three have their families here and have rented small apartments and two live in graduate dormitories. All seem satisfied with their living arrangements and have adjusted very well to living in Washington.

QUALITY OF THE PARTICIPANTS AND ATTITUDE TOWARD THE PROGRAM

The quality of the participants is generally very high. They are mature individuals who take their studies seriously and are working very hard. Some slowness in reading and comprehension of

large assignments in English was felt as something of a handicap by the participants particularly during the early months. This problem is rapidly being overcome as the participants become more familiar with English, particularly legal English, and with American teaching methods with their emphasis on large reading assignments.

In interviews with the participants general satisfaction with the program was expressed. Certain shortcomings which became apparent with regard to the course on criminal law and procedure can and will be remedied for the second group on the basis of the experience gained. The participants were unanimous in stressing the usefulness of the special seminars. However, the regular law school courses which they took also were generally appreciated and, as the results showed, in most cases they were able to follow them and make grades which are average or above average. Continuation of the Georgetown language program and the introductory Georgetown program also was recommended by all of the participants. Some suggested that the language program at Georgetown might be more individualized to take into account the individual proficiency in English even more than is now the case. This point will be explored.

THE QUESTION OF A DEGREE

This question which was already discussed in Afghanistan last May with representatives of A.I.D. and of the Afghan Government as well as with the participants, came up again here.

As matters now stand, one of the participants, who has shown outstanding ability has been accepted into the Ph.D. program in the School of Public and International Affairs, with law a major part of the curriculum. There is also the possibility for individual participants to receive a Master of Comparative Law. The prerequisites are: the completion of 24 credit hours with a grade average of 55 and passing the Test of English as a Foreign Language (TOEFL) with a minimum of 550.

Two and possibly three participants should be able to get a degree of Master of Comparative Law, one of them almost certainly so. The rest will probably not get a degree. This is due to various factors: 1. interests in fields and training activities which do not lend themselves to work toward a degree, 2. difficulties with the English language, and 3. in one instance where the participant already

has a Ph.D. degree more interest in specialized work than in the acquisition of an additional degree.

The program thus will be able to achieve its purpose in this regard of being basically a non-degree program, but giving participants who desire a degree and do the work necessary the chance to earn a degree.

OUT-OF-TOWN SEMINARS DURING CHRISTMAS VACATION

As arranged by A.I.D. four of the participants attended a seminar in Los Angeles, California during Christmas vacation which they found very useful and enjoyable and which gave them an opportunity to visit another section of the United States. Two of the participants went to a seminar at Sioux City, Iowa, which also satisfied them very much and gave them a chance to see a Midwestern city.

The married participants who had their families in this country were not included in any of the A.I.D.-arranged programs. However, the Project Coordinator had to attend the meeting of the Association of American Law Schools at New Orleans as a member of a sub-committee of that organization. Since the program of the AALS was of definite interest to the participants, A.I.D. approved the attendance of the three participants not included in the other A.I.D. programs. Two of them went to the New Orleans meeting. They attended various sessions and round tables and had an opportunity to make contact with American lawyers from various parts of this country. They, too, of course, had an opportunity to see a different part of the United States. These out-of-town trips definitely widened the horizon of the participants and as far as is feasible within the strictures imposed by the training program schedule and financial considerations, trips to professional meetings or seminars outside Washington should be arranged.

PRACTICAL WORK

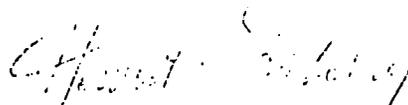
No practical work in courts or prosecutors' offices was scheduled during the fall term. The reason was that the participants needed time to get used to study in an American law school environment, and improve their language capabilities. Also, they obviously had to have some grounding in American legal principles before they could

begin any practical work with any significant profit. However, a judge of the Superior Court of the District of Columbia was contacted before Christmas 1973 and practical work for the participants is being arranged and will be expanded during the summer months.

CONCLUSIONS

Both from the reactions of the participants and the impressions gathered by the Project Coordinator and others connected with the program, the goals set for the first semester of the training program have been achieved. The participants have taken general law school courses and special seminars, are becoming familiar with the basic principles and methodology of American law and are, primarily in the special seminars, led to apply the knowledge and skills gained to problems of particular pertinence to Afghanistan. The main points that have emerged during the period covered by this report are the need for considerable individualization of the program, the great value of special seminars as a corollary to regular law school courses, the desire of most of the participants to take a larger number of regular law school courses in their fields of special interest as was anticipated when the project was first developed and the need for continued English training, increasingly on an individualized basis.

It is believed that the goals of the training program as stipulated in the contract have so far been met and that it will be possible to continue to meet them.


Herbert J. Liebesny
Project Coordinator