

UT students take part in high court debate

Law school clinic helps develop Guantanamo detainee arguments.



By Chuck Lindell
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When the U.S. Supreme Court takes up the difficult Guantánamo Bay detainee issue today for the third time, almost 20 University of Texas law students and faculty members should be seated in the wood-paneled courtroom.

That is, if they survive a breezy night camping on the court's marble terrace amid possible snow flurries and lows in the 20s.

They'll need to gather early for the first-in-line courtroom seats to witness the highly anticipated legal struggle to balance national security against the nation's principles of liberty and justice.

The UT students have more than an academic interest in the proceedings. Four of them helped research and write a key portion of the legal briefs attacking government claims that enemy combatants can be held indefinitely at the U.S. Naval Base at Guantánamo Bay, Cuba, without access to federal courts.

"The United States is unquestionably the world's leader in human rights and a standard by which other countries hold themselves. Do we really want to set the ceiling this low?" law student David Currie asked. "We shouldn't do anything to foreigners that we wouldn't (want) other countries doing to our citizens."

The students are part of the UT Law School's National Security and Human Rights Clinic, formed in August to delve into the rapidly changing jurisprudence surrounding security, terrorism and international relations.

Eight students have represented two Guantánamo detainees, including one who was recently released into the custody of the Afghanistan government.

"The students filed several motions on behalf of the detainees asking the D.C. Circuit Court of Appeals to review the determination ... that they are enemy combatants," said Kristine Huskey, director of the clinic.

"One was released within a couple of weeks after filing the motion. I feel their hard work caused him to be" returned to Afghanistan, she said.

Four other students were assigned to research issues related to legal proceedings afforded to wartime detainees

under the Geneva Conventions, a key issue in today's proceedings.

At the very least, professors hoped the students would gain exposure to an obscure area of law. Any usable arguments would be gravy, law professor Derek Jinks said.

"As it turned out, the students made terrifically important contributions with their research, their insights, their suggestions on how arguments can be framed," Jinks said.

Dozens of Guantánamo cases were combined for the hourlong oral arguments, the third time since 2004 that justices will consider detainee issues.

The two previous rulings affirmed the rights of detainees to challenge their detention in federal courts, prompting Congress to erect new barriers each time.

In today's cases, justices must decide whether the new barriers were properly applied.

The UT students focused on a second question before the court: whether military tribunals, three-officer panels that determine if each detainee is properly classified as an enemy combatant, provide an adequate alternative to federal court oversight.

The Bush administration says Guantánamo houses dangerous terrorists whose continued incarceration and questioning are essential to the war on terrorism.

The president's lawyers claim that detainee rights are respected because the tribunal process was modeled on Army Regulation 190-8, which advises soldiers on how to separate prisoners of war from civilians based on the Geneva Conventions.

The UT law students — Kari Erickson, Ariel Juarez, Anh-Thu Nguyen and Currie — concluded that Regulation 190-8 is the wrong standard to apply to detainee cases.

Instead, they turned to a previous Supreme Court ruling to argue that tribunals fail to meet two necessary standards: that the proceedings inform detainees of the charges against them and that they have a meaningful opportunity to rebut the charges.

Most cases, however, rely on classified information that is not available to detainees, Jinks said.

"Also, no witnesses can be called (by detainees), so there is no opportunity to rebut the charges," he said. "The practice has fallen far short of basic requirements."

Watching these arguments play out on the nation's grandest legal stage will be an invaluable opportunity, students and teachers said — provided the tents, sleeping bags and woolens can keep the cold at bay.

clindell@statesman.com, 912-2569

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