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Blind Justice

From Austin to Gitmo

By Richard Whittaker

According to the Department of Defense, 340 detainees still are being held at the **Guantánamo Bay** detention camp on the island of Cuba. Classified as enemy combatants, most remain in a legal limbo. Now a new project at University of Texas at Austin is working to bring some due process to their detention.

Starting this semester, 20 graduate students at the **National Security and Human Rights Clinic** at UT's Law School will join more than 500 lawyers around the country volunteering to help detainees with their legal challenges. "This isn't about releasing anyone or saying they need cushy pillows," said clinic director and clinical professor **Kristine Huskey**. "They deserve a legal process, just like anyone else, before we go calling them terrorists."

Last year, UT professor **Derek Jinks** started an independent study program through which students would assist detainees' lawyers. In part, this came from an April 2006 conference at UT on the detainees at which Huskey, then working at the **Human Rights Law Clinic** at American University, was a guest. She recommended that Jinks contact the **Center for Constitutional Rights**, a New York-based nonprofit, whose **Guantánamo Action Center** project had become a coordinating resource for lawyers wishing to become involved. When UT decided this year to formalize the project as a working law clinic, they approached Huskey to join as its director.

This will be a real course for students, insists Huskey, "You learn the law, and you apply the law in an area of national security," she said. "The clinic makes a commitment to this issue, a combination of constitutional law, international human rights law, and rules of conflict." Some students are assisting with the representation of 12 Kuwaitis before the Supreme Court in the case *Al Odah, et al. v. United States, et al.* Others are working with D.C.-based nongovernmental organization Human Rights USA on challenging the legality of rendition to Guantánamo. However, two teams already are directly representing clients taken on last year as part of the original UT program: two Afghan citizens who were picked up in their native country, not on the battlefield, and are now at Guantánamo Bay.

Even though they took up the case a year ago, Huskey still has not been able to visit the clients, due to changing legislation and shifting litigation. The students are preparing motions, to be filed with the D.C. District Court, to give their lawyers access. Because Huskey has security clearance, she'll probably be the one to travel there. "That will be the first time we'll get their story from their mouths," she said.

This will not be Huskey's first trip to Guantánamo. The UT graduate had been working for Shearman & Sterling LLP, a D.C.-based legal firm specializing in international law. In 2002, the firm started representing the Kuwaitis in *Al Odah v. U.S.*, and Huskey joined their legal team. "This was just after 9/11," said Huskey, "when no one would touch it with a 10-foot pole. For the first few years, it was totally hush-hush, and lawyers weren't even allowed to visit the detainees." But by 2004, their case had been heard before the Supreme Court as part of another case, *Rasul v. Bush*. Their victory helped re-establish habeas corpus for the detainees, a judgment the administration did not take lying down. "That sparked a whole new series of litigations, because the government refused to give up," said Huskey. "We had to litigate for access, what kind of access, how do we communicate, and other simple stuff."

According to the Center for Constitutional Rights, 250 detainees now have some form of counsel. The Kuwaiti

government has retained Huskey's old employers, Shearman & Sterling, and some families also have hired their own lawyers. Some detainees whose cases are being heard before the D.C. Federal District Court have been assigned a public defender. But most are dependent on volunteers taking on cases pro bono, and projects like the UT clinic are an important part of the equation. "The clinics have been amazing," said **Shane Kadidal**, a staff attorney with CCR. "One advantage they have is that there are big groups of people – because of the many students involved – and they have a lot of occasions to sit in groups and brainstorm, which is a normal part of law school. So they're constantly coming up with very creative ideas."

Huskey described that creativity, and the simple number of students available, as essential in fighting cases like *Al Odah*.

"It's the same case and the same people I represented five years ago," said Huskey. "It's been up to the Supreme Court and down to the District Court and back up to the Supreme Court, and the reason is the government fights everything." It's not just the constant legal challenges that complicate cases for the detainees but the changing laws themselves. "When Congress passed something like the Military Commissions Act, that really affects the rights of detainees," said Huskey, "we had to litigate to see if it was constitutional and whether it even applied to our clients."

The clinic also is involved with *Rasul v. Rumsfeld*, the follow-up case to 2004's *Rasul v. Bush*. It comes before the D.C. Circuit Court this week and could be equally precedent-setting. "This is the first damages case being brought by former detainees, who were released after a couple of years without any trial," said Huskey.

So far, according to Huskey, the project has been well-received, with only one piece of hate e-mail and one concerned about the course's neutrality. "They said, 'I hope you're accepting students who want to support the government,' and I said, 'I accept students with high grades.'" However, it is that very neutrality – that blind justice – that Huskey hopes the clinic will reinforce. "This kind of litigation has taught me more than any other that this is why you have laws – to protect yourself from an arbitrary government. And that's why we have the appeals system. But it's still a lot of years that those people are down in Guantánamo."

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