

PRO BONO
NEWSLETTER

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SCHNADER TAKES ON REPRESENTATION OF GUANTANAMO BAY DETAINEES

Schnader recently joined a loose network of individual attorneys, private law firms, academics and public interest organizations that have agreed to represent individual Guantanamo Bay detainees in testing the legality of their confinement.



On March 14, 2005, **Elizabeth Ainslie** and **Gordon Woodward**, with research assistance from **Vincent LaMonaca**, filed a petition for writ of habeas corpus in the U.S. District Court for the District of Columbia on behalf of Abd Al Nisr Kahn Tumani and Muhammad Kahn Tumani, a father and son currently being held at Camp X-Ray. The objective of this representation is to obtain the right to meaningful access to the judicial system for these individuals, or in the alternative, release from confinement.



Broadly speaking, the government's policy with regard to Guantanamo Bay detainees has been that the United States has the right to detain enemy combatants for the duration of the war on terrorism. While this policy may

not appear unreasonable on its face, the devil is in the details. Specifically:

- Who is an enemy combatant?
- Who makes this determination?
- Do enemy combatants enjoy any legal rights?

The Department of Justice and the Defense Department have declined to publicly provide a precise definition of "enemy combatant." When pushed, however, Justice Department

lawyers have taken a very expansive view. Their definition might even include the following hypothetical examples posited by Judge Joyce Hens Green during her recent hearing in *In re Guantanamo Detainee Cases*:

- A little old lady in Switzerland who writes checks to what she thinks is a charity that helps orphans in Afghanistan but really is a front to finance al-Qaeda activities.
- A person who teaches English to the son of an al-Qaeda member.
- A journalist who knows the location of Osama bin Laden but refuses to disclose it to protect her source.

Moreover, the label has also been applied to unarmed individuals taken into custody thousands of miles away from any battlefield and most significantly, to an American citizen on American soil.

With respect to the second two issues – who makes the determination and what rights do they have – the government has also taken an expansive view, asserting that the executive branch of the government has complete discretion to make the determination of who is an enemy combatant, that the designated individual may be confined for the duration of the war on terrorism, and that the individual has no right to legal counsel during his or her confinement.

The result of this broad claim of executive power is that a single branch of the government is asserting unchecked authority to place anyone it defines as an enemy combatant

(continued on page 4)

SCHNADER TEAM'S PERSISTENCE PAYS OFF



A team of Schnader lawyers – **Dennis Suplee, Nancy Winkelman, Bruce Merenstein, Alison Finnegan** and **Linda Alle-Murphy** – have been working with attorneys from HIAS, a Philadelphia public interest immigration law firm, assisting Kadiatou Camara and her two teenage daughters, Khady and Mariam, in their attempt to gain asylum in the United States. The Camaras are from the Ivory Coast. For more than a decade, Ms. Camara was politically active in an opposition political party. The Ivorian government blamed that opposition party for a 2001 coup attempt, which led to a violent crackdown by government and paramilitary forces on leaders, members and suspected supporters. Following the coup attempt, members of the opposition party were taken from their homes and found dead in the streets the following day. The government set up free telephone hotlines to encourage citizens to report people who were believed to be “assailants” critical of the government, which led to the arrest, custody, and often death, of those denounced.



In late 2002, Ms. Camara and her husband experienced marital problems. When Ms. Camara asked her husband to leave their home, he threatened to inform the government about her political activities. Following these threats, Ms. Camara was pursued by the government's security force, who twice came to her house in the middle of the night and demanded that she come out. After the second incident, Ms.

Camara, fearing for her life, fled her home with her two youngest children, first to the homes of family members and then to the United States. She arrived in the United States in December 2002 and immediately sought asylum on the ground that she had a well-founded fear of persecution because of her political activities. She and her children were immediately placed in detention, and have remained in various detention facilities – sometimes together, sometimes not – ever since.

Ms. Camara's asylum application was heard by an Immigration Judge, who found that, while her fear of persecution was credible, it did not give rise to a well-founded fear of persecution as required by the asylum statute. The Schnader team became involved at that point, and filed a petition for review in the Third Circuit, along with a motion for a stay of removal pending disposition of the petition. The Court of Appeals granted the stay, but on the merits affirmed the denial of the Camaras' asylum petition.

But that did not end the case.

In early November, 2004, another civil war broke out in the Ivory Coast. Despite the fact that the Court of Appeals' mandate had not yet been issued and the stay of removal was still in place, BICE officials precipitously removed the Camaras from the United States for deportation to the Ivory Coast. The Camaras were escorted out of the United States by two United States deportation officers. The Camaras were sent to Senegal, where the deportation officers relinquished custody of the Camaras to Senegalese officials. When the Camaras arrived at the airport in Senegal, Senegalese officials were unable to repatriate them to the Ivory Coast because of the civil war. The Camaras spent more

(continued on page 5)

SPECIAL THANKS

Much gratitude is extended to **Alison Finnegan** for attending the two most recent Caton Village clinics, one of which was on the firm holiday of Presidents' Day. Alison's efforts are greatly appreciated.

MORE SCHNADER LAWYERS ASSIST CLIENTS SEEKING ASYLUM



Han Nguyen represents Muhammad Baba Sherif and his wife Halima Sylla Sherif, natives of Liberia, in their petition for asylum. The Sherifs came to this country separately in 2002. They have six children: three of their young children recently joined them in

Philadelphia from a displaced persons camp in Guinea; their youngest was born in the United States; and their two oldest children are still in Guinea at the displaced persons camps.

Upon arriving in the United States, Mr. Sherif applied for asylum and for Temporary Protected Status (TPS), which is a temporary immigration status provided to natives of certain countries that are in the midst of political or social upheaval. Because Liberia was engaged in a civil war and run by a dictator, Mr. Sherif and his wife were granted TPS. They have been legally employed since arriving in the United States.

Han discovered last year that the United States Immigration and Citizenship Services (USCIS) was beginning to phase Liberia off the list of countries for which TPS status is allowed because Liberia's ruling government had been toppled. At the same time, Han learned that Mr. Sherif's pro se asylum petition was denied. The crux of his petition was based on his involvement with a political organization that was critical of the former government. Han intends to proceed to a full hearing before an immigration judge—who can either affirm denial or grant full relief—this year. Mr. Sherif's petition has been potentially weakened since the former regime has been toppled, but widespread reports continue of former government sympathizers attacking and harassing activists who criticized the government. Han recently learned that masked men suspected that Mr. Sherif had returned to Liberia and raided Mr. Sherif's house, where his relatives still live, in the middle of the night demanding to know Mr. Sherif's whereabouts. Fortunately, since Mr. Sherif was a fairly prominent figure in Liberia, the raid was reported in Liberian newspapers and various publications and wire services accessible on the Internet.

Han will represent Mr. Sherif at his Master Calendar Hearing scheduled for April 25, 2005, and at his merits hearing that will take place soon after.



Nancy Paik is representing Maria Esperanza Orozco, a 38-year-old Nicaraguan woman who was discovered by U.S. officials as she attempted to cross the Texas border. Her case has been moved to San Francisco, near Hayward, California, where Ms. Orozco's sister

is residing. She is seeking asylum based on having suffered severe domestic violence from her common-law husband. Ms. Orozco has two daughters who are currently living with her mother in her hometown of Esteli, Nicaragua. Ms. Orozco fears that if she were to return to Nicaragua, she would be unable to escape her partner's wrath and would continue to suffer the same abuse, if not worse. She feels that she cannot speak to the Nicaraguan authorities about her situation for fear of retaliation from her partner. While the Nicaraguan government criminalized domestic violence in 1996, the police seldom intervene in private matters in the current political climate. The State Department country report for Nicaragua indicates that despite the 1996 legislation, domestic violence is widespread and underreported and remains the most prevalent women's rights violation.

The availability of asylum in the United States is unsettled for those claiming to have experienced domestic abuse in nations that rarely enforce penalties for such violence. The main case cited by such asylum seekers is that of Rodi Alvarado, a Guatemalan woman who was granted asylum in 1996 by a San Francisco immigration judge, based on Immigration and Naturalization Service (INS) guidelines recognizing gender-based persecution as a basis for asylum. However, INS itself appealed the ruling, and the Board of Immigration Appeals (BIA) denied her asylum in 1999. In 2000, then-Attorney General Janet Reno vacated the BIA's decision. Then in February 2004, the Department of Homeland Security (which absorbed the INS) submitted a detailed brief urging that Ms. Alvarado be granted asylum and promising quick action.

Before former Attorney-General John Ashcroft left office, he referred Ms. Alvarado's asylum case back to the BIA. By doing so, Ashcroft's message was to reject asylum applications based on claims of domestic abuse. The argument against such claims is

(continued on page 7)

RECENT FAMILY LAW PRO BONO MATTERS



Rob Feder and **Meredith Brennan** represent Mary (not her real name), a 49-year-old woman who suffers from chronic multiple sclerosis and muscular dystrophy that keeps her confined to bed. Mary receives Supplemental Security Income (SSI) of \$590 per month and lives with two of her adult children because she is unable to support herself.



Mary and her husband were married in 1976 and separated in June 1994 after 18 years of marriage when she became ill. Her husband never paid any child support or spousal support, despite being employed full-time as a maintenance worker. He continued to live in the marital residence in Philadelphia, for which there is no mortgage. While the property is not in good condition, it has advantages for Mary's condition, notably a first floor bathroom that would be wheelchair-accessible for her.

Rob and Meredith filed for divorce on Mary's behalf. The only real asset to be distributed was the marital residence, and they argued that Mary should be awarded the house so that she would have a place to live that would be wheelchair-accessible and for which expenses would be fairly minimal, given that there is no mortgage on the property. Based on the equities of the case, the master agreed with Rob and Meredith's position. Acknowledging that it is "extremely rare," he recommended that Mary be awarded 100% of the marital estate. He recommended that Mary was to be awarded the house and that her husband had 20 days to vacate the premises and execute a deed transferring the property to

Mary's name alone. He also awarded Mary permanent alimony of \$100 per month.

Mary's husband has filed for a de novo trial before the Philadelphia Court of Common Pleas, but Rob and Meredith are hopeful that the court will similarly find that based upon the equities, Mary should be awarded both the marital residence and permanent alimony.



On February 11, **Mark Momjian**, **Natasha Gonzalez** and **Lauren Sorrentino** filed an appellee's brief with the Pennsylvania Supreme Court in a pro bono case that will test the constitutional application of the Commonwealth's Grandparent Visitation Act. The Schnader team is representing the maternal grandmother, who was awarded limited partial custody of her 8-year-old grandson after the boy's mother died of cancer. *Amicus* briefs were filed in support of the maternal grandmother's position by the national office of the AARP as well as by a coalition of Pennsylvania nonprofit organizations that advocate on behalf of children and seniors, including SeniorLaw Center and the Support Center for Child Advocates. Oral argument is expected to take place in May 2005. ♦



SCHNADER TAKES ON REPRESENTATION OF GUANTANAMO BAY DETAINEES

(continued from page 1)

into legal limbo for what could be the remainder of that person's natural life. This astounding assertion of authority by a single branch of government runs counter to a system historically built on checks and balances. With no effective check on the executive branch's control over conditions of confinement, the potential for abuse abounds, as evidenced by the recent problems at Abu Ghraib prison in Iraq and from the reports of torture already flowing from Camp X-Ray.

While Liz and Gordon do not yet know whether the courts will conclude that their clients are entitled to relief, the importance of the issues involved in this case – the scope of executive authority in time of war versus the rights of individuals to contest this authority and assert basic rights – presents Schnader with an excellent opportunity to demonstrate its commitment to human rights, the rule of law and the efficacy of our judicial system. ♦

REDUCING RENTAL EXPENSES FOR AIDS SUPPORT ORGANIZATION



AIDS Fund, Inc. is a Philadelphia-based not-for-profit that supports HIV/AIDS education and prevention initiatives throughout the Delaware Valley, including funding for treatment and caregivers for those who suffer from HIV/AIDS. The Fund coordinates several events each year, including the annual Philadelphia AIDS Walk, which last year raised more than \$500,000. The Fund currently leases space on 15th Street in Philadelphia, and rental payments on this space are one of the Fund's primary expenditures. In an effort to reduce expenses, **Kevin Blanton** has been working with the Fund and its landlord to find creative ways to

abate this expense through a combination of subletting and converting a portion of the space into a "high-end" retail thrift shop. The proposed thrift shop will be staffed by volunteers, and the proceeds will be used to offset rental expenses, allowing the Fund to dedicate more of the money that it raises to the community in which it serves.

SCHNADER TEAM'S PERSISTENCE PAYS OFF

(continued from page 2)

than two days at the airport in Senegal, sleeping on the floor of a small room in the airport. Senegalese officials would not permit the Camaras to leave the airport. When Senegalese officials informed the Embassy of the Ivory Coast in Senegal that the Camaras were at the airport, Ivorian officials refused to accept custody of them.

After more than two days in the Dakar airport, Senegalese officials told the Camaras that they could not stay in the airport any longer. The Camaras boarded a plane and returned to New York's John F. Kennedy Airport. When Ms. Camara disembarked, she was met by an immigration officer. Ms. Camara told the officer that she could not return to the Ivory Coast, that she and her children needed protection, and that they again were seeking asylum because they faced an increased risk of persecution in the Ivory Coast. Thereafter, Ms. Camara and her daughters were taken to separate detention facilities, where they remain to this day. At that point, the Schnader team obtained a rather extraordinary stay of issuance of the mandate from the Court of Appeals, to prevent the government from attempting to deport the Camaras once again.

Ms. Camara then notified the immigration department that she wanted to file a new asylum application. The first step in that process is a "credible fear" interview. However, the immigration department refused to grant Ms. Camara a credible fear interview, taking the position that she has no basis upon which to seek asylum

again because her deportation was not effected when she was sent to the Senegal airport. According to the immigration department, Ms. Camara's only option was to seek to re-open the first asylum application.

So the Schnader team went back to court, this time with a petition for writ of mandamus in federal district court to compel the government to provide Ms. Camara with a credible fear interview. The Schnader team was successful in obtaining another stay of the removal from the District Court pending resolution of the mandamus petition.

On February 11, 2005, Judge Joyner denied the petition for writ of mandamus in a one-page order with no written opinion. Undeterred, the Schnader team went back to court and filed a brief motion for reconsideration, which again clearly enunciated the statutory and regulatory provisions that showed that Ms. Camara was entitled to a credible fear interview and to file a new asylum application. The team's effort was worth it: on March 3, 2005, Judge Joyner granted the motion for reconsideration, vacated his February 11 Order and granted Ms. Camara's petition for writ of mandamus, thereby ordering the government to promptly provide her with a credible fear interview. The Schnader team plans to remain involved in the process as Ms. Camara files her new asylum application. ♦

PITTSBURGH POSTINGS ...



Jim Abraham, Lindsey Alton and **John Gisleson** represented the Wilkinsburg Community Ministry (WCM) in an unfortunate dispute it had with another nonprofit charitable organization concerning the operation of a senior citizens center in Wilkinsburg (a suburb of Pittsburgh). Mulberry Presbyterian Church (MPC) operated Mulberry Senior Citizens Center, Inc. (MSCC), and it merged that entity into WCM in the spring of 2004 in the interest of economic efficiency if MSCC were operated as part of the senior citizen programs conducted by WCM (e.g., meals on wheels, adult education, etc.). The principals of MPC who were involved in managing MSCC prior to the merger subsequently decided that they wanted to resume control of MSCC, and certain individuals with MPC effectively asserted control over MSCC's day-to-day operations (which were located in the basement of MPC's church) even though they did not have the right to do so. WCM asked the Schnader team to take appropriate action to protect WCM, including bringing a lawsuit if necessary, to ensure that WCM maintained control over MSCC's operations. Jim, Lindsey and John negotiated a resolution of the dispute without having to sue and drafted the necessary documentation to divest the Center from WCM. MPC now operates the Center. Jim and Lindsey relied on their corporate and nonprofit experience in guiding the negotiations and drafting the documents, and John negotiated the agreement.



The Coalition of Veterans' Advocates (COVA) is an organization designed to promote and protect the interests of veterans in the Western Pennsylvania area. When the U.S. Department of Veterans Affairs announced the closing of three VA hospitals in the area, the Department argued that relevant services would simply be transferred to other facilities. However, COVA was concerned that services to veterans would be drastically reduced or eliminated and made a request under the Freedom of Information Act for information to allow it to assess the true impact of these changes. The Department advised COVA that it would have to pay more than \$30,000 for these documents, an amount far in excess of COVA's ability to pay, and denied COVA's request for a fee waiver. **Keith Whitson** and **Elaine Diedrich** have filed an appeal of the Department's decision on behalf of COVA, and the appeal is still pending.

New Trusts and Estates Associates Shine in Pro Bono Activities



Nadine Doolittle generously accepted three referrals from the Senior Law Center and one from Philadelphia Volunteers for the Indigent Program, agreeing to draft wills and other estate planning documents for three of her clients, and assisting the fourth in petitioning to change title on property from the name of her deceased parent to her own. **Morgen Cheshire** also jumped right in the pro bono spirit on two matters referred by the Philadelphia Volunteer Lawyers for the Arts, one of which is giving her the opportunity to renegotiate a payment plan with the IRS for unpaid payroll taxes on behalf of a theater company. Morgen has also worked on ongoing pro bono matters within the firm.



MORE SCHNADER LAWYERS ASSIST CLIENTS SEEKING ASYLUM

(continued from page 3)

that if gender-based claims for asylum are recognized, the floodgates will open and the United States will be inundated with women fleeing domestic abuse. The law will not be clarified until the BIA reviews the case again. Even then, it will likely be appealed to the Ninth Circuit Court of Appeals and perhaps even to the Supreme Court of the United States.

Nancy will submit Ms. Orozco's I-589 at a hearing scheduled for April 20, 2005, at which point the immigration judge will set a date for the merit hearing.

And on the Appellate Level...



Gittel Hilibrand and **Kelly Gable**, supervised by **Nancy Winkelman**, represent an asylum petitioner who is appealing the denial of his asylum claim to the Third Circuit Court of Appeals. The Third Circuit ordered appointment of counsel and requested briefing on two important issues in the case: should the Third Circuit be reviewing the BIA decision or the immigration judge's decision; and did the BIA and/or the immigration judge properly analyze the facts for which it was reasonable to expect corroboration and did the petitioner adequately explain his failure to provide corroboration. Both issues address complex questions in a rapidly developing area of law that is under tremendous pressure. Gittel and Kelly are working to

explore all avenues of these issues as well as develop additional arguments to assist their client. They are still in the briefing stage. ♦

The Pro Bono Committee would like to thank the following people for working at least 50 hours during 2004 on one or more pro bono matters. Each of you will receive a token of the Firm's appreciation.

- | | |
|-------------------------------|---------------------------|
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PRO BONO COMMITTEE

Diana S. Donaldson, Co-Chair	.215.751.2330	.ddonaldson@schnader.com
Nancy Winkelman, Co-Chair	.215.751.2342	.nwinkelman@schnader.com
Joanne G. Noble, Director	.215.751.2218	.jnoble@schnader.com
Kevin S. Blanton	.215.751.2419	.kblanton@schnader.com
H. Lee Schwartzberg, Jr.	.215.751.2283	.lschwartzberg@schnader.com
Samuel W. Silver	.215.751.2309	.ssilver@schnader.com
Paul H. Titus	.412.577.5224	.ptitus@schnader.com
Ralph G. Wellington	.215.751.2488	.rwellington@schnader.com
Gordon Woodward	.202.419.4215	.gwoodward@schnader.com

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