

Former U.S. Secretary of Education questions use of Guantanamo Bay

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Shirley Mount Hufstedler, the first U.S. Secretary of Education and one of the first women to serve on the federal bench, spoke out against the lack of availability of federal judicial review for prisoners incarcerated at Guantanamo Bay during the University of Georgia School of Law’s 26th Edith House Lecture held in March.

In her address, titled “Freedom and Justice for Some,” Hufstedler said deeply troublesome constitutional questions have arisen from the imprisonment of hundreds of people in the facilities located at Guantanamo Bay, and the nation’s reputation of fairness is suffering by confining those people “as if they were livestock.”

While most Americans probably think the people confined at Guantanamo are terrorists, Hufstedler said that is not the case.

“The 9/11 attacks were terrible, but there is no basis on any of the evidence produced so far that the hundreds of men that have been confined without trial in Guantanamo had anything to do with those attacks, that they had anything to do with Al Qaeda or with the Taliban or that they are citizens or even residents of Afghanistan,” she said.

In fact, according to Hufstedler, a very large number of those being held were actually captured by bounty hunters and handed over to the military authorities in

Afghanistan for a monetary reward.

“For years these men have not had access to counsel. They have not had access to federal trial courts or to any other remedy that can successfully challenge their confinement,” she said.

While the Detainee Treatment Act of 2005 set up military tribunals to handle the cases of people detained at Guantanamo Bay, it also simultaneously deprived any court justice or judge jurisdiction to consider a habeas corpus application on behalf of any of the prisoners at Guantanamo.

According to Hufstedler, the military tribunals are a poor substitute for habeas corpus for a number of reasons.

One is that the military commission can exclude the accused and their civil counsel from any part of the court proceeding. Also, almost all detainees are not allowed personally selected counsel and are instead appointed military counsel. And, the introduction of any evidence – including hearsay and evidence obtained through coercion – is allowed if the commission’s presiding officer deems it would have probative value to a reasonable person.

Statements extracted by torture or other inhumane treatments are inherently unreliable, and using evidence obtained by cruelty corrupts the judicial system, Hufstedler said.

“I am one of 10 former federal judges, both trial and appellate, who have filed an amicus brief to the United States Supreme Court arguing that the review permitted by the current Detainee Treatment Act is an inadequate substitute for habeas corpus because the court is not authorized to determine the extent to which the [Combat Status Review Tribunal] has been relying on statements obtained by torture and other impermissible coercion,” she said. (At the time of her lecture, the court had yet to make a ruling on this brief.)

Hufstedler also stressed how vitally

important it is for anyone who cares about the administration of justice to let their representatives in Congress know they deeply disapprove of the confinement of prisoners at Guantanamo Bay, and that they also disapprove of the removal of jurisdiction to entertain petitions for writ of habeas corpus.

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Considered a trailblazer for women in the field of law, Hufstedler has held positions at the highest levels of legal and public service in our country. She began her legal career in private practice in Los Angeles during 1950. Eleven years later, she was appointed as judge of the Los Angeles County Superior Court and, in 1966, she was named an associate justice of the California Court of Appeal. President Lyndon B. Johnson appointed her judge of the U.S. Court of Appeals for the 9th Circuit in 1968, where she served for 11 years before President Jimmy Carter named her the first U.S. Secretary of Education.

In 1981, Hufstedler returned to private life, teaching and practicing law. At that time, she was a partner in the Los Angeles firm Hufstedler & Kaus, now Morrison & Foerster.

Hufstedler earned her law degree from Stanford University and her bachelor’s in business administration from the University of New Mexico. She is also the recipient of 20 honorary doctoral degrees from various American universities.

The Edith House Lecture Series is hosted annually by the Women Law Students Association (WLSA) in honor of one of the first female graduates of the University of Georgia School of Law. House, a native of Winder, Ga., was co-valedictorian of the law class of 1925, the first class to graduate women.