



by Bill Glovin 

Land of the Free?

Persecution followed them from their homelands to an American prison—until a Rutgers law clinic took their case.

Penny Venetis vividly recalls that Monday morning—June 19, 1995—when she opened *The New York Times*. The headline flashed like a neon sign: DETENTION JAIL CALLED WORSE THAN PRISON. At a federal Immigration and Naturalization Service (INS) detention center in Elizabeth, immigrants who were seeking political asylum in the United States overpowered armed guards and went on a five-hour rampage. Venetis was shocked to read the detainees' charges of serious abuses at a center that was just minutes from her office at the Constitutional Litigation Clinic at Rutgers' School of Law–Newark.

"Immediately after the disturbance, I received about 25 personal letters and one universal letter from detainees who were asking for help," says Venetis, who has taught at the law school for five years. "Some wrote that guards had stolen their life savings and irreplaceable personal belongings, like a wedding ring. Others complained about beatings, unsanitary conditions, and meals that consisted of rotten milk and spoiled food—served inches away from toilets that were never cleaned. After reading the newspaper stories and letters, the allegations were too serious to ignore, and I decided to investigate."

Incarcerated because they lacked passports and other documents, the letter writers were being held by the INS pending decisions on their petitions for asylum. (According to Andrea Quarantillo, district director for the INS, most detainees now receive a hearing before a judge within 90 to 120 days, although, with appeals, some cases drag on for a year or more.) But simply meeting with the asylum seekers was the first of what would prove to be many obstacles for Venetis. Most of them had been moved from the 350-bed center—managed by



Esmor Correctional Services, Inc., of Melville, New York—to county jails in central Pennsylvania and Maryland. These far-off locations, she suspected, were selected so that detainees would be away from the media spotlight and public-interest lawyers like herself.

Despite a slate full of other worthy cases, Venetis and five clinic students carved out some time and took three trips to interview the political asylum seekers. A caravan of two or three cars would meet on campus around 4 a.m., drive two to five hours to the facility, and return late at night. Detainees serving as translators helped Venetis and her students to understand the asylum seekers' stories of persecution, escape, and abuse.

PENNY VENETIS'S EXPERIENCE WITH DETENTION CENTERS EXTENDS TO THE BALKANS, WHERE SHE PROBED ABUSE CLAIMS ON BEHALF OF THE UNITED NATIONS COMMISSION TO INVESTIGATE WAR CRIMES IN BOSNIA.

Dennis Jaji of Nigeria came to the United States through London after his life was threatened for trying to mount a petition supporting the country's newly elected president, who had been jailed. Agatha Cerwaa had been raped, beaten, and left in the street for dead after protesting the tribal warfare policies that had wiped out her entire family in northern Ghana. Abdi Jama suffered bayonet wounds at the hands of the Somali militia during a protest against the country's fascist government, then fled the harsh conditions of a refugee camp at great risk to her safety.

Venetis and the students found conditions that were even worse than the letters had indicated. "Detainees were discouraged from practicing their religious beliefs and had problems making crucial phone calls to attorneys working on their asylum cases," Venetis explains. "They were thrown into solitary confinement, physically and sexually abused, and humiliated on a daily bases—often called 'African monkeys' by the facility's guards. Despite the fact that they met with the facility's top administrators and with the INS on a weekly basis, the abuses they complained about did not stop. These people were essentially treated as prisoners, but they weren't criminals. They had come to find freedom in America, but they wound up in jails that were as abusive as anything they had ever faced in their homelands."

Venetis was convinced that the detainees' rights had been violated, but she knew that their status as asylum seekers meant that they had limited rights to sue. Taking on the INS and a large corporation like Esmor would be an enormous challenge, so Venetis phoned a former colleague for help.

Ten years before, Martin Glenn (NLaw'71)—head of litigation in the New York office of O'Melveny & Myers, an international law firm with 680 attorneys—had handled a pro bono case involving political asylum seekers who had been detained at a former hotel near Kennedy Airport in Queens, New York. Says Glenn: "Although that case was settled out of court, at the time, I thought that political asylum seekers would never be held under such deplorable conditions again. I was wrong."

Glenn had never forgotten his own stint as a law student participating in

cases through the Constitutional Law Clinic in its founding year, 1970. For three decades, the clinic's mission has been twofold: to provide pro bono legal services in deserving cases, and to offer practical experience and course credit to Rutgers–Newark law students. Many of the cases they have litigated through the years have been sponsored by public-interest organizations like the American Civil Liberties Union, the Center for Constitutional Rights, and the National Association for the Advancement of Colored People. Based on its success, nine other clinics with public-interest law missions

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have since been founded at Rutgers–Newark in areas like the environment, women's rights, and special education.

"When I was a student, one case I worked on went all the way to the U.S. Supreme Court; that experience opened my eyes to the impact we can have," says Glenn. "And the law school's rich tradition of public service is a primary reason I've always carved out some time during my career to do pro bono work."

Glenn, along with firm associates and fellow law school alumni Michael Holden (NLaw'95) and Tina Antonakakis (NLaw'97), volunteered their help. Antonakakis was already familiar with the case, having worked with Venetis as a student. After conducting extensive research, the legal team decid-

ed to sue under both U.S. and international law. They argued that the Alien Tort Claim Act, a statute enacted in 1795, allowed the detainees to sue the defendants for international human-rights violations committed in the United States. Says Venetis: "I knew that this case would require creative and inventive lawyering and had the potential to help many people; it was the perfect tool to train law students. Political asylum seekers had never sued under the Alien Tort Claim Act. Previously, the act had been used only to sue human-rights violators in other countries, for example, Ferdinand Marcos in the Philippines and Serbian war criminal Radovan Karadic."

Complicating matters was the separate legal web involving the asylum status of each client. In addition to the INS lawsuit, the clinic also took on the representation of three political asylum seekers in separate deportation proceedings. "In these cases, crucial documents that supported the clients' bids for asylum had been lost or destroyed during the riot," explains Venetis. "Without newspaper clips or other documents that show that a person is fleeing from political persecution or was a political prisoner, the chances of gaining asylum are seriously compromised. The political asylum seekers at the Elizabeth detention center had slept with their documents under their pillows; now those documents had disappeared."

"At times, there was tremendous frustration for Penny and everyone else involved," says Glenn. "In a few instances, clients were deported, and we weren't notified. In other instances, officials neglected to tell us before meetings that they were moving clients from one facility to another. Or we would send clients something to sign through the mail, only to be told that they had been moved or deported."

The wheels of justice continued to turn at a snail's pace; the suit was finally filed in U.S. District Court in Newark on behalf of 19 political asylum seekers in June 1997. Over a year later the defendants' motion to dismiss—based on the argument that the United States had no existing treaties protecting the rights of political asylum seekers—was rejected. The 200-page brief and 2,000-page appendix prepared by the clinic's team—

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a team that, at various intervals, included 80 law clinic students and a dozen student associates at O'Melveny & Myers—boiled down to this basic premise: that the physical and psychological abuse meted out by untrained and unsupervised Esmor staff members, and the failure of Esmor and INS officials to correct those abuses, constituted a violation of the human rights of the political asylum seekers.

"We argued that there are some rights that are so universal and so basic—like being free from the types of abuses our clients were subjected to—that a treaty isn't needed to protect those rights," explains Venetis. In October, Judge Dickinson R. Debevoise ruled that the basic human rights of the asylum seekers had been violated under both U.S. and international law and that they could sue INS officials, Esmor, and its employees for damages. He also ruled that the political asylum seekers could sue the INS itself for violations of religious freedom and property loss, but not for international human-rights claims. "This is the first time that international law has been applied to government workers in the United States," says Venetis. "We're hoping this will finally change the way thousands of asylum seekers are treated in this country."

Venetis credits her students and O'Melveny & Myers—who didn't take a dime in fees—for helping her win the first critical round. "This was a landmark human-rights case," says Glenn. "The attorneys may have generated the ideas and theories, but it was the students who fleshed it all out and helped us make the legal arguments in court. Penny especially deserves a tremendous amount of credit for her determination and for serving as the architect for the entire case."

The team—now working on the discovery phase of the case to recover damages—faces new obstacles. Of the original 19 clients, three won political asylum, three are still awaiting a decision, one was granted a waiver of deportation, and 12 were deported and are now hiding in their homelands. Of the three still waiting to learn the outcome of their asylum cases, two have been released and one is in detention in Maryland. "I'm very dis-

appointed that many of our clients were whisked out of the country; in one instance this occurred after we obtained an emergency stay of a client's deportation in a federal court," said Venetis. "I am optimistic about the next phase of the case. We've so far found INS and corporate documents that support the claims of abuse and stolen property, and evidence that officials at the highest levels of Esmor and the INS knew about it."

In recent months, Venetis has sent three detailed letters asking the INS to address the abuse claims of Oluwole Aboyade, another asylum seeker from Nigeria. The letters have gone unanswered. Quarantillo of the INS says that "not responding to Penny's letters doesn't mean we're not aware of the charges." Written abuse claims are reviewed on a weekly basis by a group that includes INS and detention center staff, medical personnel, attorneys, and judges, she says. "Many asylum seekers simply don't believe that they deserve to be incarcerated, and, as a result, their charges are often grossly exaggerated."

When the Elizabeth detention center reopened in February 1997 under the management of the Corrections Corporation of America, INS officials boasted that it would be a model of how a detention center should be run. Seven months later it made headlines again when detainees staged a hunger strike, demanding better treatment. This past March, the company paid \$1.6 million to settle a lawsuit over unsafe conditions in an Ohio prison.

Meanwhile, Esmor Correctional Services changed its name to Correctional Services Corporation and is currently facing several lawsuits stemming from abuse charges at facilities throughout the country. Says Venetis: "Unfortunately, the INS continues to abuse political asylum seekers with impunity. At least advocates for asylum seekers now have a published legal opinion that they can present in court. Bit by bit, we are sending messages to the INS and detention centers that the abuses must stop." □

Bill Glovin is the senior editor of Rutgers Magazine.