First Cases: How the Center for Constitutional Rights
Launched the First Guantánamo Cases

On November 14, 2001 I awoke to read that President Bush, under his authority as Commander in Chief, had issued a Military Order for the detention and trial of non-citizens in the war against terrorism. I recall my shock: I felt as if there had just been a coup d'état in America. It was a watershed moment for a country that I still though had some semblance of a democracy and some adherence to the principle that presidential authority was under law.

Three of the order's key provisions were the most troubling. First, the president claimed the authority to capture, kidnap or otherwise arrest any non-citizens (this was later extended to citizens) anywhere in the world, including the United States, if the president believed they were involved in international terrorism; the order said they could be held forever without any charges, proceedings or trial. I was amazed: the president had taken on the power to disappear people.

Second, the order provided that *if* a person was tried (though the order made clear there never needed to be a trial) such trials were to be held by special ad hoc courts called military commissions. These commissions had no resemblance to regular trial courts. The entire proceeding could take place in secret, with evidence garnered from torture; those found guilty could be executed and the executions could be held in secret.

Third, to the extent the names of those imprisoned or tried could be determined and lawyers found, no court could hear any case of anyone detained under this military order. The president did not need to demonstrate in any court a legal reason for a person's imprisonment. In other words, the writ of habeas corpus was abolished.

The order even claimed to prohibit any proceedings in any foreign or international court. All of a sudden any non-citizen anywhere in the world, even within the United States, could be kidnapped by a secret presidential determination, held *incommunicado*, and imprisoned forever.

The order embodied within it the violations of fundamental rights we are facing today: indefinite detention without trial, Guantánamo, secret sites, special trials and disappearances. While the order did not specifically mention torture, that appears to have come a bit later: inevitably, a secret detention system is part and parcel of a torture system.

This order was the latest in a succession of laws, executive orders, and actions taken since 9/11 that alarmed me and me and colleagues at the Center for Constitutional Rights (CCR). We saw fundamental constitutional rights under attack, and we saw the president, often with congressional collaboration, grabbing almost unchecked powers. In the two months since 9/11 there had been roundups of thousands of Muslim men; the

Patriot Act, with its grant of broad spying powers, was passed; and Congress offered an Authorization to Use Military Force which arguably gave the president the power to use military force anywhere in the world, even in the United States, against those nations, organizations, or persons involved in 9/11 (an authorization the president has read broadly to attack anyone he claims is an alleged terrorist).

Even prior to the November 13 order, I had been especially concerned by the erosion of our liberties. (e.g. "US: No Longer the Land of the Free" *Le Monde Diplomatique*, Nov. 2001) Along with a few others, I took the position that the 9/11 attacks were a crime, not an act of war, and that the perpetrators should be arrested and tried in regular federal courts. I felt that al Qaeda should be treated like an international drug cartel, worldwide mafia or other international terrorist band. The attackers were not state actors, were not part of a nation-state, and not subject to the laws of war. I understood that force could be used against al Qaeda, as it could against an international drug cartel, but that did not mean that the war paradigm could be employed to detain people without charges or trials until the end of an undeclared and indefinite war on terror.

The Bush administration took a different position. It argued the attacks were an act of war, that the U.S. was fighting a war on terror, and that the war would continue for a very long time—fifty years or more. Under this theory, the president could, did and continues to claim special, highly exaggerated war-time powers to override treaties, statutes, Congress and the courts. The Bush administration could also then look to the laws of war to claim the right to detain those it termed "enemy combatants" until the war was over. Yet, at the same time, because it was clearly not a conventional war, the administration claimed it could pick and choose among the laws of war those it felt were most applicable to what it asserted was a new paradigm. This Bush administration argument was central to its claim that the November 13 order was a lawful order.

It was this November 13 order that pushed the Center for Constitutional Rights into action. It was this document that made CCR begin the historic fight for the rights of those who would a few months later be imprisoned at Guantánamo.

At first, most of the focus in the media and by CCR was on the draconian, ad hoc trial provisions and on the death penalty aspects of the order; the trial provisions came under immediate fire, even from conservative critics. Few paid much attention to the indefinite detention aspects of the order.

We began a discussion at CCR about representing the first people who would be imprisoned or tried under the order. It was not the easiest of discussions. Our office in Manhattan is close to the World Trade Center. I had actually witnessed the attack. For months New York was like a massive funeral, with ongoing fear and hysteria throughout the country. Did we really want to be representing those who may have been involved in the 9/11 attack? Some of us were uncomfortable doing so. Others were worried about

funding, as CCR depends on private donations and foundations. Would it be personally dangerous to represent those accused of the attacks?

This was not a new discussion at CCR, which, from its beginning in the civil rights movement, was different from other legal rights organizations: our goal was to use law for progressive social change. When neo-Nazis wanted to march in Skokie, Illinois, the ACLU was willing to represent them because of the First Amendment rights involved. But in the 1980s CCR would not have represented the neo-Nazis, although we believed strongly in the First Amendment and their right to march and to be represented. That work was for the ACLU; CCR wanted to represent those with whom it was in general agreement.

Now the post- 9/11 world presented us with a new challenge. Would we represent those who may have been involved in 9/11 and who we obviously were not in agreement with? How could this help movements for social change?

We decided that the military order was so contrary to law and represented such a threat to fundamental liberties that we would need to challenge it, particularly its denial of habeas corpus rights. Habeas corpus, the right to challenge a detention, went all the way back to the Magna Carta of 1215, and was the hallmark of a state in which authority is under law. Without habeas corpus a government can imprison people at whim for any reason at all; there is no court in which they can test the legal basis for their imprisonment. Habeas corpus is the dividing line between a democracy under law and a police state. This principle was so important that we at CCR were willing to put aside our own fears, our concerns regarding funding, and the angry, vengeful mood in much of the country.

I had a personal caveat. I said to myself that we would only take the cases to challenge the denial of habeas corpus rights and would not represent people at criminal trials. In the former case we would be fighting for a fundamental right necessary to any democracy; in the latter case we would be defending an individual at his trial for a heinous crime. I now realize I was wrong to make this artificial distinction, and, in the end, I did not act on it. I would come to realize that many of those the Bush administration claimed were guilty were not; that trials would be a complete sham in which evidence elicited from torture would be employed. I did not realize at the time how important it would be to challenge every denial of rights the Bush administration attempted, on every front.

Some at CCR had an additional concern: whether we could win habeas rights for our clients, or whether the case was a dead loser. After all, this was the president issuing an order in the face of the most serious terrorist attack in our history; would a court be willing to override him? Related to this concern was the question of bad precedent. If we went into court at the time when anger over 9/11 was at its height, would we get bad decisions from the court that would make future cases hopeless?

But CCR always had a different position on these questions from other litigating civil liberties organizations. Many other organizations weigh precedent and creation of bad law as critical factors in bringing cases and hesitate to engage if they may lose a case. While CCR carefully examines the law, it will still bring a case that might not prevail. If

we have a decent argument, if the client needs representation and if the case is politically important, we will go ahead. We believe that law, lawsuits, and court hearings have a public education and fight-back dimension that can aid in social struggles and struggles to protect fundamental rights. While concerned by bad precedent, we think it critical to protect rights and those oppressed by their denial at the time they are suppressed. This philosophy is best explained by Professor Jules Lobel, a cooperating attorney with CCR, in his book, *Success Without Victory*. Lobel shows how, in the anti-slavery movement, the suffragette movement and a number of contemporary CCR cases, losing cases made a difference and that cases considered hopeless can result in resounding victories. This is in fact what occurred with the Guantánamo cases.

Although we had no clients, we quickly went to the law books. There was a Supreme Court precedent that could be read against us: *Johnson v. Eisentrager*. The case concerned a military commission trial in the immediate aftermath of WWII. It could arguably be read as stating that non-citizens held outside the sovereign territory of the United States had no right to habeas corpus and no right to go into an American court. That was a broad and selective reading of the case, but a plausible one. We thought it contained other language indicating we might have a chance. The petitioners in *Eisentrager* had a military trial with all kinds of rights. Even in these circumstances, the Supreme Court reviewed certain aspects of the conviction, and put forth some language that did not limit habeas to those imprisoned on sovereign territory. We knew getting around a wartime precedent like *Eisentrager* would be difficult, but believed a case could be made.

Once we made the commitment to challenge the November 13 order, we went public with our decision as a means of putting the administration on notice that their overreaching would not go unchallenged and to encourage the timid to fight back. The first major news story on our intentions appeared in the *New York Times* on November 30, 2001. Bill Goodman, the legal director of CCR, and I were quoted saying we would take on the November 13 order and particularly its denial of habeas rights. "We don't believe in one-man rule in this country," I told the reporter. Bill Goodman delivered a great quote about CCR's thinking in taking on these cases: "My job is to defend the Constitution from its enemies. Its main enemies right now are the Justice Department and the White House."

Our next step was to try and round up a legal team for what we knew would be major cases that would need more than just the few attorneys at CCR. We had difficulty finding other lawyers due to fear of public reaction, loss of financial support, and the creation of bad precedent. However, by early December 2001 we had attracted some lawyers from outside CCR to a first meeting. I do not know all their motivations, but the fact that their experience was in the area of the death penalty and habeas is a clue about their interest. The earliest members of the team who came to that first meeting at CCR were Joe Margulies, a civil rights and death penalty lawyer from Minneapolis, Clive Stafford Smith, a death penalty lawyer from New Orleans, Eric Freedman, a professor at Hofstra and an expert in habeas corpus. All of us are, six years later, still deeply involved with these cases.

Of course we had no clients. But we did not need to wait long. On December 13, 2001, it was announced that David Hicks, an Australian, had been captured by the Northern Alliance in Afghanistan and turned over to the United States. A few days later it was revealed that the United States would be using Guantánamo as its offshore prison, where presumably Hicks would be sent and where he could remain forever without any court hearing or access to a lawyer. In a newspaper I found Steven Kenny's name, an Australian who was a lawyer for Hicks' father (David Hicks himself could have no contact with his family or lawyers.) I called him immediately. We began the discussion of our representation of David Hicks, and after a week or so, it was agreed that CCR and the lawyers we were working with would file a writ of habeas corpus on Hicks' behalf. However, David Hicks would not know about our lawsuit, nor would we be able to consult with him. He was barred from all communications with Kenny, us or his parents. We would file the habeas case as Hicks' "next friend"—a provision in U.S. law that allowed close relatives or others to act on behalf of those who could not.

I was quite shocked that the U.S. was planning to use Guantánamo as its off shore prison—*again.* I had been one of the attorneys who had worked on an earlier Guantánamo case, and I knew the place well. In the early 90s, the administrations of George Bush and then Bill Clinton had used the military base to detain Haitians entitled to asylum who had been prohibited entry to the United States because they were HIV positive. We suspected at the time that Guantánamo was chosen by the first Bush administration because of the argument that the Constitution did not apply there, the argument that habeas corpus did not protect detainees outside the fifty states. It took almost three years until a combination of litigation, activism and political pressure forced the HIV camp's closure and refugees were brought into the United States.

I had learned important lessons from that litigation. First, Guantánamo was a really bad place in which to be imprisoned. I compared it to the refugee camp to Dante's Ninth Circle of Hell with its extreme heat, barbed wire, scorpions, hard scrabble ground, arbitrary beatings, hunger strikes and appalling detention facilities. But more critically, I had learned that the United States could win some legal arguments that Guantánamo, because it was offshore, was a law-free zone; that the refugees we represented were not protected by the Constitution; and that no court could hear their cases or protect their rights.

So we knew what to expect: horrendous conditions, arguments that no court could even undertake to hear a case about Guantánamo, and that David Hicks and others were not protected by the Constitution. When coupled with the *Eisentrager* case, and the so-called war on terror, we knew it would be a major uphill battle to get a court to even hear our new case. Subsequently, we learned of a memo written on December 28, 2001 from Deputy Attorney General Patrick F. Philbin to Deputy Assistant Attorney General John Yoo concerning *Possible Habeas Jurisdiction over Aliens Held in Guantánamo Bay, Cuba*. Their memo concluded "that a district court cannot properly entertain an application for a writ of habeas corpus by an enemy alien detained at Guantánamo Bay Naval Base, Cuba."

But the memo cautioned that the question had not been definitively decided, and "there [was] some possibility that a district court would entertain such an application."

Some time during January 2002, we began also to represent two English citizens who had been sent to Guantánamo, Shafiq Rasul and Asif Iqbal. Clive Stafford Smith, a member of both the American and British bar, through his work in the United Kingdom, had been in touch with their lawyers. The cases were added to our case on behalf of David Hicks. A bit later in January, we spoke with Tom Wilner, a partner at Shearman and Sterling in Washington, D.C. He had been asked to represent twelve Kuwaitis who had been taken to Guantánamo. We decided to get together and discuss our approaches to the case. At this point we had filed nothing with the courts.

That meeting with Tom Wilner, Neil Koslowe, and Christine Huskey of Shearman and our team—me, Clive, Joe and Eric—was the beginning of a long and still continuing relationship with Shearman on the Guantánamo cases. At first our CCR team did not know what to expect. We were the scruffy civil rights lawyers, and Shearman was the big firm with very fancy offices. But even the first meeting was great, and we were treated with respect. Wilner and others realized that the CCR team knew a lot in areas of habeas and international law where Shearman was just getting up to speed. We all felt we could work together.

We decided to file two separate habeas cases in the district court in Washington, D.C. CCR's case would go first, as we were already well along. There was a lot of debate on what should go in our legal papers. We filed for habeas relief even though we knew that the court might well dismiss it on the basis of *Eisentrager*. As an alternative we filed under a federal statute that CCR had pioneered, the Alien Tort Statute, which permitted suits by aliens for violations of fundamental rights protected by international law. The Alien Tort Statute gave us a separate jurisdictional basis that did not depend on habeas jurisdiction which we feared *Eisentrager* might foreclose. The international laws we relied upon were the prohibitions regarding arbitrary detention and the Geneva Conventions. We wanted to take this route in part because we believed that even if the constitution might not apply at Guantánamo, international law did.

On February 19, 2002 we filed *Rasul v. Bush,* the case that ultimately led to the Supreme Court victory in June 2004. We asked the federal district court to give our clients an immediate hearing and we asked for a declaration that their imprisonment was illegal.

The filing of this case was met with almost no media attention. Few people or reporters seemed concerned with efforts to gain a hearing or winning any rights for the Guantánamo detainees. The mood in the country was such that CCR could not even find a cooperating attorney in D.C. to help file the papers—even progressives were afraid of the case. And although there was little press attention, there was plenty of hate mail—hundreds of emails, some carrying implicit threats and others denying that those at Guantánamo should have any rights. Here are some examples:

> If you think the treatment of the terrorist idiots is inhumane, why don't you take them home with you to meet your family? Why don't you go volunteer to guard them unshackled? I would be interested in hearing your pathetic answer.
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> These terrorists do not follow any rules of engagement. They live in dirt and caves, plotting ways to kill innocent civilians based on their religion or nationality and you feel they deserve respect? Were the people who died on September 11th treated humanely by these terrorists?
>
> Stop coddling the murderers at Guantánamo and spend your time doing something worthwhile for society. They are entitled to exactly the same consideration they gave the workers at the World Trade Center and the Pentagon.

A few months later, on May 1, 2002, Shearman filed *Al Odah v. United States* in the same court on behalf of the Kuwaitis. Shearman took a different approach. Their case was not a writ of habeas corpus case. It sought, because of *Eisentrager*, to avoid habeas and any claim for release of its clients. Instead, the Shearman suit claimed violations of various constitutional rights such as the right to see counsel and the right to a hearing. I was not convinced of this strategy, as I thought the courts would quickly dismiss the effort to get around the negative precedent concerning habeas. But it was worth trying especially as we had a habeas case going forward and we needed to try every strategy.

We also attempted to go outside the U.S. court system. A few days before CCR filed in federal court, we sought, on February 12, 2002, a ruling in the Inter-American Commission on Human Rights that the men we represented at Guantánamo were entitled to a hearing in which their status could be determined by a competent court. The Inter-American Commission is a human rights commission that has jurisdiction over violations of the American Declaration of Human Rights; it includes questions of compliance with Geneva Conventions and other international treaties protecting human rights. Unfortunately, the commission has no enforcement power; its rulings need to go to the Inter-American Court if a country refuses to comply. The United States has not signed the treaty that grants jurisdiction to the court, so rulings of the commission cannot be enforced. However, a victory at the commission would send an important message regarding the illegality of the Bush administration's unlawful imprisonment of the Guantánamo detainees, and I felt it might favorably affect the court cases.

Within days of filing our petition to the Commission, we won.  Commission, on an emergency basis, decided exactly what the law required: that every human being had a status under law to which rights attached, and that hearings needed to be held immediately to determine the status of those held at Guantánamo. As the Commission stated:

> [A] competent court or tribunal, as opposed to a political authority, must be charged with ensuring respect for the legal status and rights of persons falling under the authority and control of a state…. To the contrary, the information

> available suggests that the detainees remain entirely at the unfettered discretion of the United States government…. On this basis, the Commission hereby requests that the United States take the urgent measures necessary to have the legal status of the detainees at Guantánamo Bay determined by a competent tribunal.

The Commission got it exactly right: a court or tribunal must be used to determine status and rights; it cannot be left up to one country's executive. Sadly, the United States has never complied with this ruling. As I write this almost six years later, our clients are still waiting for a competent court to hear their cases.

CCR's and Shearman's cases in the lower courts did not fare well. The courtroom in the federal district court was almost empty at the argument. The rights of the Guantánamo detainees were just not a publicly important issue. A few months later, on July 30, 2002, Judge Colleen Kollar-Kotelly of the U.S. District Court for the District of Columbia issued a ruling in *Rasul v. Bush* and the accompanying case *Al Odah v. United States*. The judge granted the government's motion to dismiss the cases for a lack of jurisdiction. The district court judge was unwilling to distinguish *Eisentrager*, found the Geneva Conventions unenforceable, rejected CCR's international law claims, treated Shearman's efforts to get around *Eisentrager* as unavailing and dismissed the cases.

We appealed to the D.C. Circuit Court. We still had very little legal or public support. On March 11, 2003, the D.C. Circuit Court of Appeals affirmed the dismissal of our cases. In the decision, the court held that it had no jurisdiction to hear our clients' petitions for writs of habeas corpus. Our clients had been at Guantánamo for over a year without lawyers and without a hearing. Our only hope was the Supreme Court.

Review in the Supreme Court is not automatic. The Court only hears cases that at least four of the nine justices think are of exceptional importance. I was not optimistic that the court would grant review. It was only a year or so away from 9/11, fear and anger were still strong, and it was unlikely the court would want to take on an important presidential initiative supposedly meant to make us safer. Others on our team had more optimism. We filed our papers seeking review on September 2, 2003.

By this time the mood of at least some prominent lawyers and others concerned with human rights was changing. They were beginning to wonder how long detainees at Guantánamo could be held without a hearing. Also, activists and human rights advocates in countries whose citizens and residents were at Guantánamo began to pressure their governments and demand hearings or release of the detainees. To my shock, on November 10, 2003, the Supreme Court granted review of the Guantánamo cases, on the issue of whether U.S. courts have jurisdiction to consider challenges to the legality of the detention

of foreign nationals captured and incarcerated at the Guantánamo Bay Naval Base, Cuba. In other words, the court was going to decide if our clients had the right to file writs of habeas corpus to test their detentions.

That the court accepted review was a very positive sign; had the majority agreed with the lower court dismissal, there would have been little reason to get involved in the case. We were optimistic. Our case was called *Rasul v. Bush.* It was to be the first of three cases that the Supreme Court would hear regarding whether the Guantánamo detainees had habeas corpus rights. (The other two cases were *Hamdan v. Rumsfeld* decided in June 2005 and *Boumedienne v. Bush,* not decided at the time of this writing.)

The case was scheduled for argument on April 20, 2004. Prior to the argument, on March 9, 2004, some of the English Guantánamo detainees were released from detention and returned to the U.K. where they were immediately set free. Two of our clients, Shafiq Rasul and Asif Iqbal, were among those released. The story of their detention and treatment became widely publicized subsequent to the argument. In late March 2004 I spent a few hours with them in England and for the first time heard the chilling story of their torture and inhumane treatment. It included what are now known as the Rumsfeld techniques: stripping, hooding, dogs, isolation, sleep deprivation and other heinous treatment.

The argument went well and we expected to win. Eight days later, the case *Rumsfeld v. Padilla* was argued by Padilla's lawyers in the Supreme Court. Jose Padilla was a U.S. citizen held as an enemy combatant in the United States. Among other issues, the case concerned, as did all the detention cases, the role of the courts in imprisonments that the executive argued were none of their business. Although there had been almost no public knowledge prior to the argument that torture had been employed on detainees, Justice Ginsberg was concerned that even if torture was used the Executive still believed that the courts had no role. She probed this issue with the attorney for the executive, Paul Clement:

> "Suppose the executive says, 'Mild torture, we think, will help get this information,'" Ginsburg said to Clement. "Some systems do that to get information."
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> "Well, our executive doesn't," Clement replied. "And I think the fact that executive discretion in a war situation can be abused is not a good and sufficient reason for judicial micromanagement in overseeing of that authority. You have to recognize that in situations where there is a war, where the government is on a war footing, that you have to trust the executive."

Those words, "you have to trust the executive," would have been impossible to have been uttered a few hours later. On that same day, on the evening of April 28, 2004, CBS televised the Abu Ghraib photographs of torture. No longer was it possible, if it ever had been, to "trust the executive." If the majority of the court needed convincing that it had an important role in involving itself in the legality of the detentions, it no longer did.

I thought we would have won the Rasul Guantánamo cases even had the Abu Ghraib photos not been released, but they certainly ensured our victory. On June 29, 2004, the Court, in a six to three ruling, held that the courts had jurisdiction to hear petitions for writs of habeas corpus from the Guantánamo detainees. The best part of the opinion for me was the majority's discussion of King John at Runnymede in 1215, the importance of the Magna Carta and the dislike of executive detentions by courts. This was really the core of the case: could the executive imprison people at will without any court review? The Court gave a resounding no. We were all excited by the ruling. The New York Times called it the most important civil rights case in fifty years, and we at CCR received letters from people saying that their faith in America had been restored.

While it was a resounding victory, a number of issues were not settled by the case. These concerned the nature of the hearing that the Guantánamo detainees would have; the scope of constitutional, international and treaty rights that were applicable, and the legal basis for holding them—did they need to be charged and convicted in criminal cases or would some kind of preventive detention apply? In addition, the court had technically ruled that the detainees had a statutory right to habeas although there was language in the opinion indicating that there was a constitutional right to habeas as well. All of these and other issues are still in litigation today.

Our team of lawyers acted quickly on the decision. We knew what the Bush administration would do. We guessed correctly that they would try and set up some kind of trump hearing at Guantánamo in front of some kind of military panel that would confirm the administration's position. Before they could do this, we wanted to get as many cases as possible into federal court, and present the administration and the courts with a fait accompli.

We immediately went to federal court and asked to get lawyers to Guantánamo to represent detainees in their habeas petitions. We also tried to file as many habeas corpus petitions as we could on behalf of those Guantánamo detainees whose names we knew and whose relatives we represented as next friends. We put out a call to lawyers throughout the country to help in representation; scores came forward. Gita Gutierrez, now an attorney at CCR, was the first lawyer to visit Guantánamo.

Today over 600 lawyers from big firms and small firms working *pro bono* are the attorneys for hundreds at Guantánamo. These many attorneys understand what is at stake in this litigation---liberty itself. The response of the lawyers, who include Republicans and Democrats, progressives and conservatives, will be seen as one of the great chapters in the struggle for fundamental rights in the United States.

The administration did what we expected. It set up the kangaroo tribunals and called them Combatant Status Review Tribunals (CSRTs). They were and remain an absurd attempt to evade federal court review of the detentions. Congress unfortunately also stepped in and tried to override the *Rasul* decision by abolishing the statutory right of habeas and giving the CSRTs some legitimacy. Again and again these efforts by the administration have been challenged**.** On December 5, 2007, the latest of the Guantánamo cases was argued in the Supreme Court; as I write this we await the ruling.

This has been a long struggle, much longer then we at CCR and others imagined. We have some amazing successes. Getting attorneys to Guantánamo stopped the most overt forms of torture. Well over half of the Guantánamo detainees have been released; my guess is almost none would have been but for the litigation.

On the other hand six years is a very long time to be held without charges, and we still do not know the outcome. We may eventually close Guantánamo, and that will be an important victory. However, even if we win habeas rights at Guantánamo what will the scope of these rights be? Even with such rights, will the United States in effect have a preventive detention scheme, but with habeas rights? What of other detention facilities such as Bagram and the secret sites? If we win habeas rights at Guantánamo, will such rights apply to these other facilities?

My fear, and I think it a realistic one, is that something important for the future has been lost no matter the outcome at Guantánamo. The administration has won its argument that it can treat the Guantánamo detainees as some sort of military detainees (enemy combatants) and hold them for many years without criminal charges—even if it is forced to give them court review of that status. I still think that alleged terrorists must be treated under a criminal law system, charged and tried. There is simply no place in a country where the courts are functioning and which lays claim to protecting fundamental rights for the current massive preventive detention scheme that now has the imprimatur of the executive and the Congress.

At CCR we fight on in the belief that we have, and can continue to make, a difference on these issues. We think that in the future, Guantánamo and the legal, political and moral outrages that have accompanied it will be viewed as most of us today view the concentration camps set up in the U.S. for Japanese-Americans World War II. Until that day, it is the obligation of all us to continue the struggle.