

- Aggressive I mean for me it's just the best you could have. Who is a grassroots activist.

- [Male Interviewer] Right, right.

- And you enter the Center once you start the Guantanamo you're behind a desk all the time. And we needed to get our lawyers back in the streets so not all of them, but you know some of them, so Bill is, that's what he comes from so.

- [Male Interviewer] That's right yeah.

- And that's what we started as.

- [Male Interviewer] So it's good.

- So it's great no, no, I'm thrilled. I mean, we went into the R20, SOA stuff, everything so.

- [Male Interviewer] Oh, great good.

- So.

- [Male Interviewer] Well we can talk about that after but okay so good afternoon. We are very grateful to you for participating in the witness to Guantanamo project. We invite you to speak of your experiences representing CCR Guantanamo detainees and your involvement in the legal issues that concerned Guantanamo Bay, Cuba. We are hoping to provide you with the opportunity to tell your story in your own words. We are creating an archive of stories so that people in America and around the world will have a better understanding what you and others have contributed. Future generations must know what happened and by telling your story you're contributing to history. We appreciate your courage and willingness to speak with us. If at any time during the interview you wanna take a break just let us know and we can stop. And if any time you say something you'd like to pull back just let us know and we can reverse that. So I'd like to begin by having you introduce yourself, telling us your name and a little background, what you've done before you started with CCR and maybe just your title now and anything else that will help the viewer understand who you are.

- I'm Michael Ratner, I'm an attorney and I'm president of the Center for Constitutional Rights in New York which is a non-profit litigation organization. I graduated in probably early 70s, late 60s from Columbia during the tumultuous 1968 years. I then went to clerk for the most progressive judge I could find who was Constance Baker Motley the first and only African-American woman judge when I clerked. And then from then on I really between working at the Center or teaching has been most of my career. Tremendous activism around Cuba, Central America, wars, civil liberties, Alien Tort Statute cases suing dictators for

torture and then being involved in both what I call Guantanamo I in Guantanamo II, Guantanamo I, being the Haitian cases when the Haitians were taken to Guantanamo in the early 90s and Guantanamo II of course being the so-called post-911 Guantanamo.

- [Male Interviewer] We might wanna talk a little bit about Haitian but I'd like to begin with how you and CCR got involved in the post-911 Guantanamo issues.

- Well you know CCR is only a mile or so from the World Trade Center probably. And on that day in September 11th, 2001 I was actually jogging past the World Trade Center. So I saw everything that happened. I saw the planes go in, I stayed there while the second plane went in and we were so naive at that point I thought when I saw the second plane come up and over I thought it was examining the damage or gonna drop water on the building and of course then took a nose dive right into the building. At that point, I ran home, my children are both in schools downtown you know the whole thing and then of course New York City for that period of time was essentially a huge tomb. I mean there was pictures of people's missing parents all over the walls and you know it was a very, very difficult, sad situation for all of us. At the same time, almost immediately at the Center which is on Broadway nearby, we started getting calls from particularly Muslim families who couldn't find their brothers, their fathers, their sisters, people who were picked up after 911 just in broad sweeps that were taking place throughout the country which they were picking up non-citizen Muslims. And so we began by starting to try and find those people and represent them and of course that's not the story here but that's, we began to funnel our work into post-911 work. This is, you know by middle September already. And then of course you heard the president's speech on whatever it was, the 15th or the 18th, you know it's them and us basically the crusade speech and we all looked at that really and we were just sort of, we were really shocked by the reaction not obviously 911 was completely serious and we were all of us utterly upset by it, but I certainly for myself had a reaction of saying if this is what war is I don't wanna see another war started because of this. And we immediately took the position we wanted to treat these as criminal acts and not as war at acts which of course is still a central theme going through the Guantanamo litigation today.

- [Male Interviewer] Can you explain that a little bit?

- Well we looked at the attack on the World Trade Center as a whatever you wanna call it a terrorist act or whatever, but it was murder, it was a crime, it was a, you could call it an international crime a crime against humanity, but it was a crime and the perpetrators of a crime in our view should be picked up, arrested, captured, however that's done and tried in a criminal court. And we did not believe it was started by a state which would make it more like an act of war and that therefore it should not be treated as a war but the entire framework should be a criminal prosecution framework and not stretch it out so it's essentially a war of the US against at that point it was both the Taliban and Al-Qaeda and Muslims in general it got extended to certainly in Central Asia. So that we began very quickly at my office in our theoretical thinking about what should be the result of the attack? How should it be dealt with?

- [Male Interviewer] Well, could you tell us a little bit about the, what CCR's philosophy is and exactly who you've defended in the past just to get a sense of the organization that you?

- Yeah, I mean CCR came out of a Southern civil rights movement and the philosophy was generally that we would defend groups, social groups, political groups, we're trying to make social change in a progressive direction. And we would not necessarily represent people whose aims we didn't agree with. So with that for example the ACLU would represent not to its discredit, but you know not the neo-Nazi or monitor a march through Skokie. It wasn't that person shouldn't be defended or the first amendment shouldn't be defended in that case it's just not the work I wanted to do coming out of law school, it's not the work CCR was founded for. So the people we would represent were, the day I got to the Center we represented, I represented people in the Attica rebellion in 1971. We represented Vietnam war soldiers who were resisting the war in all kinds of ways. We represented all kinds of, all the Puerto Rican liberation movement in this country ranging from Puerto Rican Socialist Party to the alleged people in what was called the FALN. So a wide variety of really political groups believing the lawyer's role was essentially to help political groups that were trying to make social change, believing that social change doesn't come through the courts but comes through people on the streets. And that's where we came from. Guantanamo represents something different for us and that made it difficult.

- [Male Interviewer] While we get to Guantanamo were you thinking, when you saw the planes crash into the buildings did you think they were cases coming out of this? Did you think that CCR might be involved and you know at that point?

- No, not at that point. I had no idea what was really going on there. I mean, none. I mean really none. I mean, the first cases I said came in were with the Muslim pickups which some of those cases are still going on.

- [Male Interviewer] And what do you think or did you feel CCR should get involved in that and you thought that's all that was going happen?

- Well there was a lot going on very rapidly I mean, you know you have a sequence of events you have the pickups, you have the then the fingerprinting of all non-citizen males from 19 or 18 countries, big pens being set up, you had the Patriot Act passed within six weeks, you know with hundreds of page Act with no one reading it. So you had a series of events before the November 13th, military order that I, in my view lead, led to Guantanamo.

- [Male Interviewer] And were you ready to go on board? And were you looking at pretty soon CCR was gonna have to stop defending these people?

- Well you know CCR wasn't set up really as a defense counsel organization, we don't, we didn't have criminal defense attorneys. So we never thought of ourselves as criminal defense attorneys. Some of our founders had been criminal defense attorneys, some of us could do it, but it's not what we founded ourselves as. So we saw ourselves as Patriot Act, challenging provisions of the Patriot Act including the broadening wiretap provision, the definition of terrorism, things like that national security letters in the Patriot Act we found ourselves wanting to represent the people in the prisons throughout the country who

were being treated as terrorists, who were being beaten and we have actually recovered judgments on behalf of a number of those people who subsequently were deported many of them, but we did, we were able to. So our, we never saw ourselves as actually representing someone who was going to be indicted for conspiracy to fly a plane into the World Trade Center. That was not what we saw. And we certainly nothing about Guantanamo happened until the earliest note about Guantanamo was late December. I mean we had an earlier military order which is the key moment for the Center, but we didn't know about Guantanamo until later.

- [Male Interviewer] That November 13th order, why was that important to you?

- Yeah, I think that was for me and I was already even before that order I had written an article called I think "Fortress America" or something about, you know each of these issues that we've just discussed. The Patriot Act and wire tapping and the roundups. I hadn't entered the military order was November 13th, 2001. And so the first notice I had of it really was November 14th picked up the paper and there it was and I went to the, I read it and I went to the office I said, let's, we're gonna have to do something about this and the key things in the act just really stuck out one it was called at that point, it was called Military Order Number One. So what do you say to yourself that they're issuing a military order after a yes, a heinous attack on the World Trade Center. But to call it a military order which meant essentially that the country is being taken over by the military and the president's looking at himself as commander-in-chief not as the civilian president although he of course has both functions but for this purpose just looking at himself for that. So that's always, it remains shocking to me today. It's now called Executive Order Number One or whatever it's called but it originally said Military Order Number One. And underneath that of course it had a couple of provisions some which weren't as noticeable as the others. It's interesting. The first thing people notice of course is the abolition of habeas corpus. That's what I noticed at least. The taking away of person's right to go into court and challenge their detention, which has every, I mean if you go to law school for anything that's one you learn. That this is fundamental, it came out of, you know, England out of it goes back to, you know, conceivably to 1066 or 10, what's the year of the Magna Carta 1215, 1215 is time immemorial how could I forget it? But anyway, it goes back to the Magna Carta and then on through a series of challenges that happened during that period. So that's fundamental and of course it followed interestingly enough the Roosevelt Order during the Second World War. But of course parts of that Roosevelt Order were later-

- [Male Interviewer] Could you tell us what the Roosevelt was, what you mean by that?

- The Roosevelt, there was a Roosevelt Order issued I think after the Nazi saboteurs came into the country about how to try them. And I guess the administration, even though there'd been many intervening events between 19 whatever year that was, it was, I forgot what year it was, but in the 40s and today including the new Geneva Convention, they just copied it. And even though some parts of that order had been held illegal they just copied it and said, we're gonna do it that way. Anyway so the lack of habeas corpus. And to me and what I said then is when you don't have habeas corpus you essentially have the trappings of a police state. So a police state is one in which the executive can take a person by the scruff of his neck and toss him into prison and never hear from them again, never give them a chance to go to court and make the decision totally as an executive decision. Yes, you can do that for 24 hours, you can do it for 48 hours, sometimes you

can do it for three days, but can you do it indefinitely or forever? So in my view, that's the idea that you can test your detention in a court is a critical democratic right and it comes out of our structure of government but it is a critical democratic right. The other two provisions, which were, the most noticeable one, the one that got the most attention at that moment was the military commissions. And that was a huge issue in the country actually in fact even as I recall the times right one guy who recently died came out against the way that was provisioned. And that's the one that normally there's two sets of, there's two ways to try people. There's a regular criminal trial, or there's a military court-martial and both have a set of rules, they both have all kinds of due process, protections, et cetera. And then this one order set up what I would call a Third Way which is called the military commission, it's essentially a rum tribunal. It's one in which the rules are made up after the fact, after the acts, after the arrest and they're made up for the occasion. And whenever you have ad hoc rules, what you have is of course rules made by essentially the prosecutor and the executive and then they're very slanted in favor of prosecution. And military commissions hadn't been used in the country for 60 years, 50 years by then again it was the Ex Parte Quirin it was a case coming out of the Second World War just after the war. And there've been a lot of human rights law between Ex Parte Quirin and today and a lot of Supreme Court and other decisions that made military commissions really limited. They were already limited then, really limited now. So it looked to me like they were first denying the writ of habeas corpus, then they were setting up if they picked someone up a military commission for trying them and then of course it had incredibly draconian secrecy provisions and that had a death penalty and it had execution without a majority of the even handpicked military jury. So the scenario which wasn't fanciful was that people could be picked up, tried secretly in the military commission, sentenced to execution, executed and tossed off, you know some aircraft carrier. So essentially it was a completely secret system of justice that went against everything certainly not just that we've been taught in American law schools but everything in international law, everything on the Geneva Conventions, everything in really I mean, you know you could almost say it's time immemorial. I mean, it's just was unheard of. The provision that was not noticed as much was what I would call the indefinite preventive detention issue. People focused heavily on the trials and heavily on habeas as did we at the Center although we were aware of the other one and what the order actually said is the president as commander-in-chief can direct the secretary of defense to pick up any non-citizen later applied to citizens but any non-citizen anywhere in the world and hold them indefinitely forever until the president decided they would either go to trial or just be held. In other words they never had to be tried. So even though there's this trial quote trial system is a system in which they're held forever. So it's a long, it's forever detention without habeas again. So you're talking about, I've described it as essentially a coup d'etat in America. Which is to say it was the complete takeover of any kind of due process or judicial system or protection of a human being's or individual rights by one single person and that was the precedent and it just overthrew, you know certainly 200 years of our own constitution and hundreds of years before then.

- [Male Interviewer] What were you thinking if that's what you saw that day, what were you thinking?

- You know, now it's, unfortunately now today, you know some parts of that order have become accepted, but then it looked completely outside. It still looks that way to me, but it then looks so far outside that it looked like we just had a dictator taking over the country with the military to me. It was completely outside of any, I mean just the military order part itself was outside of anything for me. But the military

commissions, I mean I thought I was living in another world. I just had no sense, you know and I'm not a naive person about this stuff I'm very skeptical of my government. And I just thought it was completely of anything I had seen and was utterly, utterly shocked by it. Now you have to understand the country was utterly shocked by 911 as were we all. And you know, I, my guess is it was felt that a lot could be gotten through by a president who wanted to, you know conceivably use 911 as a means of increasing his own power or the power of the executive and that shocked to essentially do it and that's what I think we saw happening. So that means that that was our, so that was on the 14th of November. And you know we had a legal director there a wonderful guy named Bill Goodman, who my age lawyer out of Detroit now back in Detroit and quite a good, wonderful radical lawyer and Bill and I met about it and said, we're gonna, we just agreed we're gonna challenge it. And remember the times came by maybe the next day and they did an interview about it and it's still it's in there about saying we're gonna find the client to challenge it. And we raised it at the Center and, you know, first of all there was a big difference for us at the Center because the Center represents people who it's in general agreement with and obviously or not obviously but it seemed at that point particularly that the people who were to be picked up under this order were not people who stood for the values of progressive change that the Center was established for. And so that, you know, that became a somewhat I wouldn't say controversial would be too strong a word but it became an issue. And then the second thing was of course when you're in a nonprofit, how do you deal with the fact you may be very well and we had to assume we weren't gonna be representing some of the co-conspirators who were involved in setting up the plan, assuming it was that to fly planes into the World Trade Center. And one did we wanna be representing them? And secondly, what was gonna happen to our funding if we did that? And at the same time we also weren't sure, at that point it wasn't representing them in criminal cases. At that point the challenge that we had to undertake was getting them the right to habeas corpus and getting them at least the right to go to a court and say you can't pick me up like this and challenging the military order. It's not clear, well I don't think we drew a public division between us representing people as defense counsel or not, but certainly I think that was in our minds that it wasn't what we were not that I don't think we, some people would have objected to that I just think that's not what we were thinking. We said we're losing fundamental democratic rights. The right to habeas is just, you just can't do that and this military commission stuff and then of course the preventative detention stuff. So we decided after some debate we're gonna do it and my contribution to the debate was actually interesting. Bill Kunstler one of our founders the well-known civil rights lawyer had written an autobiography before he died on the case called the Central Park jogger case. That case had come and it was a concerned as quote wilding rape in Central Park by five or so young black men of a white woman in Central Park. And everybody assumed they were guilty. It took place in the 70s. And Donald Trump put a full-page ad in the paper saying give them the death penalty and Bill wound up representing on his own one of the young men Yusef Salaam. And he brought the case to the Center and the Center I don't think I was there at the moment, but turned down the case. Either because we didn't do criminal defense, it's not clear or because the guilt was just so well established that they weren't gonna do it. And Bill writes in his book how disappointed he was in the Center at that point which he founded not taking this case and Bill was ultimately sentenced to contempt on it, the kid was a juvenile, so he eventually got out at a reasonable age, but of course, you know, 10 years after bill died the Central Park joggers were completely exonerated, false confessions, the whole business. So I took the pages of Bill's book and I circulate it to the staff at the Center and to the board probably and I said we're not making this mistake again. This is even, this is fundamental, we have to represent the first people, we have

to represent and fight this order. And so that's how the Center started and from that little start, somehow, we started to put together a conference call around the country because there was a death penalty and there still is in Guantanamo, for Guantanamo for the violation of the laws forward and the way the US has looked at it. And so we picked up some death penalty lawyers who you know, death penalty lawyers are different than the Center. I mean, we would represent people on a death penalty but they, they don't you know, they're the people who you know a guy goes in and slaughters a family they're against the death penalty, they're gonna represent them, their defense counsel. And so for them the issue that came up at the Center about the politics of it are not important. So they came out, you know and good conference call and Joe Margolis was one, Clive Stafford Smith who ran the death penalty project in Louisiana was the second. And those were the, those were the core eventually became Joe, Clive and myself at the Center were the three earliest and then there were people on the side, Eric Friedman came in as a habeas expert, Tom Wilner came in a few weeks later with the Kuwaitis, the conference call consisted of a broader group for awhile, people who were expert on the death penalties, people from LDF Legal Defense Fund, some other places, but ultimately it came down to Joe who had criminal experience, death penalty experience and habeas, Clive who obviously had huge death penalty experience and Eric who had huge habeas experience. And there were series of meetings that started at the Center primarily about how to do these cases. There wasn't a case yet, we didn't have a case.

- [Male Interviewer] So if I'm understanding you you brought these other men in that in fact, Clive and Joe hadn't really been thinking about this and you call them up.

- I don't think that's correct no, no. I think they had independently been thinking about it. And probably when, whoever we brought in somehow knew about them thinking about it, or they probably read the article in the Times actually. Because that came out within a couple of days of the order. So, no I think Joe and Clive were already on this without us. I never knew Joe and Clive, I mean Clive I knew vaguely but, no, no I think they were there.

- [Male Interviewer] And they left their jobs to join with you is that correct?

- Well Clive kept this job for a long time at the Louisiana Death Penalty Project. And Joe who sort of had an independent civil rights practice kept that. I mean, whatever he did with it he had a practice in Minneapolis. So he kept going on that and you know, the first couple of years were very intense work by, you know by that group more or less, I mean Clive tended to be less of a, Clive doesn't, I don't think, courts are not his thing. I mean they're his thing in a way, but not writing briefs. Joe likes to write briefs, Joel likes to do all that. But Clive lead us really and do a lot of that. Joe taking a very important role in that. You know Clive's a trial guy and a very good, I mean amazing we all, so we all learned a lot and then we had you know a group of experts and we didn't have a client. So if you want me to talk about that I can.

- [Male Interviewer] I do so you saw yourself creating a corps thinking your client would be coming in your door soon. I mean essentially that's-

- Right we got out the word we put out the Times piece and some other things and, you know we didn't

know, we had no idea who was gonna be picked up first. We didn't know, we thought it would probably wind up more as representation in front of a military commission and maybe on a habeas maybe we didn't, you know, we weren't really focused on preventive detention if that's what they call it or whatever then it wasn't called that in the order but then the long-term detention without trial.

- [Male Interviewer] You we're preparing for something and you had this corps.

- Right and we started, when we read the cases we started off with the, you know when we had some of the people on the phone they said you don't have a chance. I mean you read Eisentrager you don't have a chance. I mean you can read it, it's a very broad case and we all had 18 different ways to talk about it, but it's a strong case against us. And so Eisentrager was very bad, I mean Quirin wasn't great, so we and you have an environment that was very bad. I mean, you know I mean, you know when we got out the word I mean, I don't know whether I started doing interviews before we had a client or after, but certainly with within a few weeks of our getting a client or you know between that period of November and January 11th when Guantanamo opened of 2002, I had hundreds of Hayden Miles I mean literally hundreds. Oh no it was like extreme, you know take your children to Afghanistan and let the Taliban eat them. I mean, you know or go be a guard yourself whatever it is there were just hundreds. Oh sure, sure, tons of it, hundreds of them. And every, within every minute of a TV appearance there was you know, I would have a Blackberry with me and there'd be emails coming in just saying, you know kill you and all this kind of stuff. So, no it was a period in the country that this was a real uphill battle. And an interesting part of this is of course we tried to get other human rights groups. I mean that's why I sort of mentioned the death penalty guys. Other human rights groups wouldn't touch this thing. This is part of a and it's become public now so I don't mind talking about it but we tried to get the ACLU and they wouldn't do it. And that became a big controversy among the board and others at the ACLU. And I remember going to a meeting with a friend of mine from the ACLU and we had a big audience up at Columbia maybe a year after the cases. And we talked about why they didn't take it and they said there were two reasons, They said we thought we were gonna create bad precedent because there was no way you could win it and secondly our funding. And I remember a Muslim woman getting up and saying, you know thank God for you guys because while our doors are being torn down they're worried about bad precedent. I mean ACLU was terrific now it's as good or aggressive as we are, but they had an early rough period on this, you know partly conceivably Anthony was new, he was only there a few months and you know it was not so easy to take these cases. So if I feel really good about one decision the Center made it was that one, but no other groups, I forgot who else we contacted would come and so we got death penalty lawyers, which you know you would expect.

- [Male Interviewer] Did you feel isolated in the community? So did you feel like you, you know you had a mission and you were just gonna-

- Well we were isolated, we were isolated I think probably we got, no, I'm not saying we lost, we may have lost some funding in the beginning, we got certainly phone calls about it from funders. You know compared to where we started to where it's become today is, you know night and day, it's become you know it's now like it's big firm work now you know.

- [Male Interviewer] I wanna go into how you got involved in the actual Guantanamo litigation but just as an aside that John Walker Lindh's family come to you at all?

- No John was going on right during that period.

- [Male Interviewer] I know, I'm just wondering why they didn't go to you.

- You know, I don't know they, well they had Brosnahan out in California who's you know, he's one of the most important California attorneys, they're a California family so, you know I presume and they also probably wanted to play it straighter than the Center. The Center is a left-wing organization so I'm not sure that would have wanted to come to the Center.

- [Male Interviewer] So could you go on Michael and tell us then how you moved into Guantanamo then.

- I think there were two sets of cases coming. The first case that we got was David Hicks from Australia. And we read in the paper one day, I don't remember what day, whether it was late December, that he was picked up and you know they had a bad picture of him with a rocket launcher on a shoulder and he was picked up and I mean that picture was from Afghanistan, from Bosnia when he was actually fighting on the same side as the US. But it was a bad picture and they picked it and he was known as I guess he was called a Turkey skinner or something kangaroo skinner. So we see this guy David Hicks, we know nothing about him except he's Australian, but they mentioned the name of his attorney, I have to cut the name I know him really well, the guy in Australia a good friend of mine. Now he's a friend of mine but, anyway I'll get it. Anyway so I see the name of the attorney in the newspaper and I just I find his address in Melbourne and I just give him a ring and I say we'd like to represent David Hicks. I mean I talked to Joe and say it's like Joe I'm gonna call him and I would to represent Hicks. And he asks us who we are and what we do and what we're planning to do on habeas and all this kinda stuff. And I explained it to him and everything like that and then he, you know the Center has by that point is that I had decent reputation on this kinda work. So he agrees basically that we can represent Hicks on a habeas case. So that's the first case. Now, at that point we're still thinking I don't know how much detail you want, we're still thinking that Hicks is held under the Military Order or Executive Order, Military Order Number One and they actually sent a note to the, Americans had sent a note to the Australian Embassy that they had David Hicks an Australian citizen and he was being held under Military Order Number One. We drafted the papers as if it was under Military Order Number One, it was in the side eventually they just said, no, no forget about the military order and that's of course why he got Americans picked up and everything this is just under the president's power to fight a war I mean period. This is not about orders or anything, the president has inherent constitutional power to pick up you know enemy combatants, as whatever they call them at that point but enemy combatants. So that was David and that was, so that would be January 11th he was taking to Guantanamo so within a few days of that we were representing David. And then Clive actually because of his English connections, his English lawyers as well as American had a couple of other English people picked up very soon thereafter which were Rasul and-

- [Male Interviewer] Asif

- Asif right, they were three of them, right three of them picked up. And so that was the beginning of the case. And we drafted, you know we were thinking of how to draft the habeas papers and what to do about it and you know we had all kinds, I don't know, illegally you're interested in all this stuff, but you know these questions about whether you make it a habeas or whether you make it as Tom said, we don't wanna make it a habeas we wanna make a straight direct litigation and to what extent international law would come in and Geneva and you know that kind of thing. And because that was my area more was Geneva and arbitrary detention and all that so I probably drafted that part and how we eventually and who we decided would be lead plaintiff of course we didn't want, we I don't know who but we, I'm tending to be less worried about this but Hicks was not the name plaintiff that's why it's called Rasul, because we didn't want a picture of a guy with a rocket launcher as the lead plaintiff. So there were all kinds of decisions made like that and one interesting part of that, just to jumping in for a second we could not, I had trouble getting a, we had a file in Washington which is where you can file these kinda cases. There were lots of little issues like we couldn't, we didn't know, David Hicks never knew anything about us, we couldn't contact him, we weren't allowed to communicate. He's at Guantanamo with no idea, so we represent his father who is called the next friend you're allowed to do that in habeas. But so he never knew about the litigation unless it got snuck to him somehow by a guard or something we don't think he did. So we have a father and then we have to decide what was the point I wanted to make there, anyway so that, so we had to get a local counsel to file in Washington. Joe is not a local counsel, I'm not a local counsel and neither is Clive. And so I try and get a local counsel from the National Lawyers Guild. I didn't try a lot of people but I tried a few and I couldn't get one. It was because it was so, the case was so controversial. And that's, you know people are afraid of attracting all this negative publicity. And finally, Joe knew somebody I think Barry Boss was his name was sort of straight criminal lawyer, good one. We went down and we did that. But we also had, during this period is when Tom Wilner and Sherman Sterling also got involved which you know in retrospect is quite remarkable. I mean you know it was the Kuwaitis and maybe there were all kinds of things, you know connections because of, you know Tom's representation of, I think he represented either OPEC or something some oil stuff at some point so maybe there was some reason but it was not easy for Tom I would not say that at all. I think you know it was probably a quite a courageous act in that period. And we had our first meeting that Joe and I and Clive and I don't know who else came down but the three of us and maybe Eric went down to their office in Washington and of course you know my office is okay I mean it's a linoleum you know carpet and you know low ceilings and you know Celotex or whatever they call it. Their office of course is all marble from the first minute you get in. And they're sitting there with Tom and another couple of lawyers and about five young lawyers in a big conference room and here's, you know Clive look scruffy completely, Joe looks a little better and I look, you know in between. And you know and they obviously didn't know anything about this area at all. Nothing, nothing about habeas, nothing about the Alien Tort Statute, nothing about international law, nothing about Geneva and so they really needed us. I mean, they had no idea there's some, I mean Tom is smart enough and aggressive enough he was gonna figure it out, but no idea. So it turned out to be actually a very good meeting. I mean, partly 'cause they really just tried to you know pump us for all our information and of course there was this issue about the fact whether you could really bring habeas after Eisentrager and that's when Tom came up with this theory I'll call it something else. I mean, I think Tom would make that decision probably no matter what right now, but I thought it was ridiculous. I mean, I'm an experienced litigator and the idea that you think you could trick the court by putting a different label on the papers I thought it was just and then of course, as soon as the oral

argument happened it was over in like two seconds. But it was an idea and why not there're two papers? And we decided to file separately although they were gonna be joint cases and-

- [Male Interviewer] What was the mood among all of you? What kinda, what was the mood? Was it upbeat? Was it just serious lawyering? What were people thinking that early post-911 you know litigation?

- It was, I think, I don't, you know it's interesting what Tom felt might be different than what others felt. Certainly, I think most of us felt was hopeless. Most of us thought that there was no way certainly the district court judge was gonna distinguish Eisentrager. And particularly a circuit judge is unlikely and the Supreme Court I think most people were very pessimistic. I don't, you know i wanna speak for Joe who was more optimistic once we, on the cert. grant than I was. And Tom I, Tom just saw this thing, you know as sort of black and white, how did they mean they can't have been an attorney? You know this is like crazy. So I probably coming, that I think, to that extent my long political experience probably was not helpful. That it probably made me more cynical of ever getting anywhere in this case than perhaps Joe or Tom, it's possible I don't know.

- [Male Interviewer] If you thought it is hopeless given your belief in the American system and the rule of law and you so fervent about it, what does that mean to you that at that point you're thinking, you know you said earlier that you thought maybe there was a military dictatorship forming with this November 13th order. I mean is that still kind of the mood going on?

- I mean I think things have fundamentally changed since 911. I mean, I think, you know I think certain democratic rights have been destroyed and I don't see them coming back. I mean, the idea that we can treat it as an act of war, that we can use preventive detention, that we can set up military commissions, I find it abominable, I can't even like, I don't even, I can't, I don't even know what to say about it. I can't and I don't understand how it's been allowed to continue. I just it's completely alien to me and I don't and with no purpose. So I really feel, you know you can put it into a broader analysis of declining empire and all this, but whatever the analysis is, something has changed fundamentally about our judicial system. And, you know I always used to mouth and I don't know if it'll be true or not but they're reading about the Irish you know in the Diplock courts and all that and Helena Kennedy stuff, you know to what extent that will then creep into the regular system of justice we have whether and you know so if you combine a preventative detention military commission's, you know state secrets, you know these all torture which has been allowed to flourish without, I mean you've talked about a real significant, a fundamental change in American liberties and not one that will quote pendulum swing back, it's not happening. You have Obama now, nothing is sworn at all and I you know maybe do we wait 30 years like in Pinochet I don't know. And if you look at Garzon in Spain it's still from the, anyway but the point is that I think I would say that there's been a fundamental shift. On the other hand the fact that we were able to keep a toehold of habeas is quite significant. I mean I, that was 2000, Boumediene was 2000, I mean Rasul was 2004 and that's only, you know roughly what two and a half years afterwards. And that was significant.

- [Male Interviewer] Well, going back to the spring of '02 then it sounds to me like you were still determined to go forward and even if you were thinking there was a sea change going on you were gonna fight for, you

know for what you believe, you know shouldn't be happening.

- Yeah but I still think the role of progressive lawyers is to fight for fundamental democratic rights. I mean, that's one of the, I mean there's a number of aspects of it but that's one of them. And you use all the legal means you can. I mean what that's you try every niche. I mean you try, the first thing we did actually in, by February of 2002 so we represented Rasul, we represented, you know Hicks, the others, we filed with the Inter-American Human Rights Commission because we knew we had a problem, because we knew we had a big problem with Eisentrager. And we filed at the Inter-American Human Rights Commission for preliminary, for precautionary measures. And we got an incredibly good ruling on roughly March 12th, 2002. Saying, this is like to me ringing testimony of, ringing a statement. Every human being is a person under law, every single person has to have a legal status, every single person has to have a body of rights attached to that legal status. And we basically said we urge the demand the United States hold hearings immediately to determine the legal status of the people at Guantanamo. And I don't remember the famous German philosopher but who talks about legal status or not and the idea that you could have a group of human beings with no legal status and no legal protections you might as well be talking about you know, whatever you know cave men or something. I mean, it goes back and so that's what was at stake. And to me, you know in some way we've lost a lot of those issues, we've, it's not as bad as it was that day, it's worse in some way 'cause I think it's now dug deeper into the soul of the society that it's okay to have preventive detention or okay to leave people at Guantanamo that are innocent. You know or okay to have military commissions. But on the other hand, you at least have a right to get those people into courts so they're not disappeared people. So you've changed some of it although you know the have Bagram sitting out there and other places. But it's still, it's chilling stuff.

- [Male Interviewer] Could you tell us what the Eisentrager said because I think people that are watching might not know and before you do that, I just need to make a quick.

- Okay.

- [Male Interviewer] Yeah so let's talk about that, okay we're rolling. So could you just tell us what Eisentrager is about? So people who are watching this can understand the context.

- I don't think I wanna say it. Eisentrager concerned Germans who were working in China after the Armistice with Germany was agreed to. And they were there for looked at as people who were violating the laws of war. And they were put on trial by the United States in China on the grounds that they were essentially war criminals of some sort. And the case, the people who represented, the people who represented the Germans filed a case with the Supreme Court eventually and the issue they claimed was that they had a right of habeas corpus the right to test their detention in the Supreme Court because they had various legal reasons why either they claimed it was not a war crime was the main one or some others. And the Supreme Court in relatively what I would say today is careless language but at that time was looked at as the law, the Supreme Court said that an enemy alien, I would say these people were aliens and there were quote enemies of the United States, an enemy alien has no right to go into an American court and litigate his status particularly the right of habeas corpus. So if you look at the case in a certain way, which is relatively

broadly but it has language like I'm saying that it meant that if you were picked up overseas by the United States, tried in a military commission and you filed a writ of habeas corpus to get your case reviewed in the Supreme Court. Just don't worry about the technical terms to get your reviewed in the Supreme Court the Supreme Court said nope the door is closed to anybody who is an enemy alien of the United States. So it's a very broad ruling. So if you apply it to Guantanamo people, David Hicks, he's picked up outside the United States he's considered by the United States and that's an important, this is an important distinction as an enemy alien, if files a writ of habeas corpus, the government sites Eisentrager and says the doors to the courthouse are closed period. So that case was the main part of the litigation for the first couple of years. And getting how to distinguish that case, how to get overcome it and of course it's hard to get the court to say we are overruling another case, they always have to find distinctions. Without going into it there was many distinctions of course lawyers is confined distinctions in anything but these were actually relevant distinctions.

- [Male Interviewer] So can you take this a little further as to how did CCR then hired additional lawyers or what CCR did next in terms of going forward with these cases?

- Well it depends on what period you wanna bring us up to.

- [Male Interviewer] The one after your meeting with Tom Wilner.

- Oh, we didn't need additional lawyers at that point. At that point the case is not so big. I mean, you know, you had me, you had a woman named Barbara Olshansky at my office. Then she didn't get involved probably until the Court of Appeals but you know you have a habeas, there's not a lot going on, you have some research, you have a couple of people at the Center, Joe, you have you know Clive a little bit, Eric was an expert on habeas and it's and I had Beth Stevens I think professor at Rutgers helped me on some of the international law stuff, arbitrary detention. I forgot who we consulted possibly on Geneva, I think I probably was the person on Geneva at that point although my knowledge today is much less than some other people. So we put together a habeas case and some briefs. So it wasn't, really the real expansion of these cases started happening after Boumediene, I mean, after Rasul after 2004. Before then, you know eventually picked up you know I think both Heifetz and Gita were at, you know it was at the New Jersey firm. And so they started I forgot how, what, when they started, well Gita may have started early 'cause she was a friend of Joe's and worked at the Center and for Joe and so I think Gita may have come in a bit earlier, you know, quite early.

- [Male Interviewer] So there was a very small core of attorneys who were involved in these cases and in the litigation.

- It was tiny in the beginning, yeah there were-

- [Male Interviewer] 'Cause you can I think.

- Oh I think, you know, I may not be remembering of any perfectly and there were some lawyers in England

who Clive knew but they were, you know and eventually by the Supreme Court then you had a bigger court, it wasn't huge, but the Supreme Court in Rasul, but then you had people Wishnie they doing a habeas brief and you know, you had experts in certain areas doing history of habeas and all this other stuff but certainly it was quite, quite small going up. And there was, you know the courtrooms weren't filled in the beginning. You know so and so the Center didn't at that point didn't really need much help. It was the explosion happened after, really after 2000 and June, 2004.

- [Male Interviewer] So when the, when your cases were granted cert. in the fall of 2003, that change your mood, attitude at all?

- Well you know Joe and I remember we had dinner one night on some city we were giving this speech and I was really pessimistic. I couldn't, I mean I said it has all the attributes of a case the court shouldn't take. It's during a court what the government refers to as war, it is still going on, it's two and a half years afterwards, you're in the face of Eisentrager, you've lost in the Court of Appeals, you have a relatively a better court then than we have today, but you know you still have a moderate to conservative court and you have guys sitting at Guantanamo. I mean, so you'll have both on as a textual matter, as a political matter, why would they touch this case? And I tried to recall what happened during the Japanese concentration camp cases. And as I recall, they didn't do much during that period. It wasn't until afterwards that they really exonerated or they really went after the issue. So I in my own mind I compared it to that and I said and then we had trouble always thinking there was one issue that we still don't have a real answer for which is, you know there were 450,000 German prisoners of war in the United States during the Second World War or some number like that. And we kept asking ourselves, did they file habeas corpus? What if they picked up some little Jewish shopkeeper in Berlin as a Nazi soldier and brought him here would never write the habeas, but we couldn't find one. I mean they may have filed them but we couldn't find any that were decided. So we're sitting there, well, what do, this has never happened, what's gonna happen here? And of course then tactically maybe you've already talked about people with Amsterdam and when we met with him to work out our strategy in the Supreme Court, but that's a separate thing. But in any case at this point I was pessimistic. Partly I was pessimistic I think while we win a fair number of cases at the Center we do so many cases that take on the edge politically and legally that we lose a lot. And I think Jules Lobel and I filed probably 14 cases against various wars in Central America and lost every one of them. And Jules has a book even called "Success Without Victory," talking about using the law as a means of raising consciousness whatever. So I was pessimistic about it during that period and Joe, I got to talk to Joe but he was certainly you know much more optimistic than I was about it and of course he was right.

- [Male Interviewer] Do you think if you lost in the Supreme Court it would be worse?

- If we, if they had denied cert.?

- [Male Interviewer] Or even if you had gone to the Supreme Court and lost in the Supreme Court both.

- Well my theory has always been, I'm not, you know when we talked about why the ACLU didn't take these cases for bad precedent I generally disregard that as an issue. Because I think my view is if you have clients

who need to test their detention, you have to test it in every way and you can't worry about creating a bad precedent it's human freedom that's at stake and you can't mess around. So I don't, I rarely think about precedent and I rarely think it's gonna make it worse. So I, that would almost never be an issue for me. It's an issue for some other lawyers, although less so, you know the ACLU has come a long way on that issue. I mean look at the cases they brought, they brought a case against the Rumsfeld in the end, the criminal, attempt to criminal prosecution. You know were in a civil certainly. So, you know people have come, I think what happened in the Bush period is people began to have a very different view of how to think about litigating these legal issues. Because it was and it was just going so far beyond anything we had experienced that people said we just have to do this. We have to use every form we can.

- [Male Interviewer] Did you do any public speaking during that time too to try to raise consciousness that you just mentioned that I mean, since you are a public speaker?

- I think during this period I was probably a very active public speaker. I tended certainly at this period to be less, although in the beginning I was very involved in the legal issues but during the, up through the Supreme Court but after that I became much less involved. But I was a very active public speaker on this issue everywhere and writer as well.

- [Male Interviewer] Did you feel a need to do that even more than you usually do?

- Yes, I, this was really an issue we had to go out there on. You know one thing that's just an aspect of this one interesting part is whether any of us realized that torture was going on during this period. And again I don't think we did. I mean I think a lesson that was learned and again I would have to see what Joe and Tom thinks and whether they really remember but I remember writing a chapter of a book and having read what was happening, it was an early couple of pieces in the post the things that resulted in the "Taxi to the Dark Side" the killings there, the torture killing. and having said well, maybe this was going on in Guantanamo and then putting in a couple of paragraphs in a book saying and there may well be torture going on in Guantanamo here's what happened here and they took it out because I didn't really have the evidence of it. I did interestingly had the first evidence 'cause I interviewed Rasul they were let out before the Supreme Court. I interviewed him in February, Clive had a conference in England in February, 2002 I think where the three came together in a room and I was there with, I don't know if Joe was there but I was there and Clive was there and that was a wonderful thing. I mean, they like great, but then they, that's when they described, before anything had happened about torture they described what had happened to them. And it was pretty stunning for me to hear that but I think we were naive about it. And I think one lesson is that incommunicado detention is generally gonna be about torture. That's what it's for. I mean, why, that's why, I mean yeah there may be other reasons but the basic reason is you wanna be able to mistreat people. And that's what this was from the beginning. So that was where we were all of us I would say, naive although we may have had this undercurrent of being upset or uneasy because of incommunicado detentions but you realize that's what goes on. So Joe was at least, the bottom of it is Joe was much more optimistic bucketing cert. than I was.

- [Male Interviewer] And after the Rasul decision was released did your mood, attitude change, did you think

like maybe this is the end and maybe things will go back to the way it was before 911?

- I mean and what was amazing about the Rasul decision, I mean two things one is that it was six to three of course but secondly, that it was so one-sided really, I mean, it was clear we were gonna win when we walked out and just as an anecdote it was clear we were gonna win by the next week because I don't know if you call it happened the next week it was either in both Hamdi and Padilla were argued the next week and that's when they got the famous question from Justice Ginsburg to the acting solicitor I forgot his name now but he became a solicitor was all out of the blue Justice Ginsburg says, you mean to say we can't do anything about what's going on at Guantanamo. We could have with Hamdi or Padilla whichever one or not even in Guantanamo and it's not our business, and you know he kept saying this is a war and then she says what if there's torture going on? And there'll be no evidence of torture publicly other than the couple of little disregarded pieces in the post. And then the solicitor says, don't worry there's no torture going on, nothing like that and then Ginsburg pushed and said, well there's a little bit of torture and it's run by the executive. And he says, there isn't, but in the end you have to trust us. And he says, trust us and that's either April 23rd or whatever the day is of 2002 and that night CBS puts on the hypocrite photos. At that point in my view I don't care what the arguments were, the cases are over because the court is saying you know because they're saying, the government is saying trust us which is the whole thing that's going on from the beginning here where Bush is doing whatever he wants and then they're saying the court you mean if there's torture going on we still can't look at this? So that was really, I think that that would have, had we not, I think we're gonna win anyway, but I think that really shifted things it's on that issue.

- [Male Interviewer] So then with that and then with the decision Rasul were you feeling more positive about the rule of law ultimately in America? You think it still could go back to way it was pre-911?

- I was hopeful, I certainly was hopeful because, you know he quoted, I mean Justice Stevens right as I recall now, Justice Stevens, he quoted from the dissent in the case called Mezza which is not that interesting for the listeners here but it's the dissent in which it goes back to the Magna Carta and talks about the anathema that executive detention is which is where we had begun. I mean we began with saying you just can't have a system of executive detention. That's a pretty strong quote. I mean to go back and understand that this is the basics of our law. So we were pretty hopeful on that. Now of course the decision was, had two different ways of looking at it. Was it Guantanamo based or was it habeas based? And that ensued another four years of litigation until we could get the habeas part out of the thing, but or into the thing. But sure we were optimistic although, you know, I mean Joe was much more optimistic. This is where Joe was more optimistic. Joe and I had a phone call and Joe said to me, Michael we should be moving on to Bagram because we're gonna have this place closed in a year or two. And I said, Joe, I've been against this government too long and too often, we're not gonna have this place closed. And very quickly you saw how, the government didn't react as fast as it probably should have considering. It took them six weeks to get there or four weeks to get themselves together. We knew what was going on by that time, Joe, all of us did. Even our Joe felt much more optimistic than I was. I, you know, but to the credit of the team and I think again Joe in particular but all of us we felt that the main thing that had to happen next was to file habeas petitions on behalf of every single person at Guantanamo. Get them into federal court as fast as possible 'cause we suspected that the government would wanna do some kind of administrative procedure in

Guantanamo and you know get back finding down there with their own sort of people and we wanted it up in federal courts. And then they would wanna treat it if technically they wanna be like as if it's this habeas from a state court going up to a federal court where the facts are essentially agreed. We wanna treat it like a federal habeas period. And so there, then there was and they were a little slow, but not that slow it didn't make any difference they are sort of do what they want but at that point is when the litigation began to explode because by that time we probably had, I don't know how many names we had. I mean, they're getting names, we had filed subsequently filed cases for names and everything but we probably had I don't know they're at 50 names or a 100 names of people at Guantanamo. And you know then what would happen is, you know the, I don't know, how did we get the names? Oh Rasul came, you know, those guys, we got names from different people, all kinds of sources plus the families would get in touch with us 'cause it was, at that point, we put out a call to various bar associations at other places to get habeas attorneys. And of course, most people that don't know anything about habeas. I mean, most law firms don't have any idea. And while it wasn't, I wouldn't say it wasn't the easiest thing in the world getting attorneys, it wasn't exactly impossible. And by and very quickly we had probably a 100 attorneys who were willing to represent Guantanamo attorneys and then at the Center was looked at 'cause it was the only institution it was looked at as the core place to organize it. And that's when the Center worked with, working again with Joe and Clive and et cetera began trainings of habeas attorneys, set up the network, that's when the Center started to hire people, that's when probably the first grant came into the Center which was Ford Foundation. The Center would never normally have gotten money from Ford or we did for our voting rights work but not generally. And Ford took a, you know even for Ford that was a, not even for Ford Ford is a pretty, it's a liberal foundation but it's not where we would normally get money from. But they gave us a grant to begin that setting up of the network, to hire, you know all the Guantanamo people, I don't know when, you know when exactly when Gita got on board but it was not long after that and some others.

- [Male Interviewer] So yeah strikes me as a CCR was instrumental in being the clearing house for all Guantanamo lawyers, habeas lawyers post-2004 they pretty much all were trained by CCR.

- Well, CCR, Joe and Clive, yeah that's correct. That was the main, it was the only clearing house. Occasionally there was a, you know an outlier lawyer but not really. They were all, they still are almost all, they're much more independent today but they were all on, they're still all on our network, we run the network and we still have a number of clients and at that point there were model pleadings, model habeas pleadings, there were trainings, you know people didn't know, you know and people even, nobody knew how do you run a habeas hearing I mean in this kinda case where there's all kinds of issues? And there were all kinds of protective orders and secret evidence and of course the government meanwhile is running CSRTs.

- [Male Interviewer] Can you tell us what they are. Well CSRTs are, what the government tried to do is set up an alternative system for fact-finding at Guantanamo. And because they didn't want the fact finding to happen in Washington DC in front of a federal judge, they wanted to control the fact-finding. And so they set up CSRTs or Combatant Status Review Tribunals and they're staffed by essentially military people not necessarily lawyers and the person doesn't get a lawyer the person gets a quote rep the detainee at Guantanamo gets a yeah it's called a personal representative and any and it's not like there's any

confidence so if you were my personal representative and I say, well look at, you know I wasn't in Afghanistan but I was in Pakistan when I was at this madrasa but not that madrasa. You have an obligation as my personal representative to tell the tribunal everything I tell you. So there's no personal confidence. So there's no consulting at all, there's nothing it's like. And then there's no, while they say there's an ability to call witnesses, there isn't any, I don't think at any Combatant Status Review Tribunal there's been one witness called. All the evidence is you know secret essentially that's most of it that's any good that you might wanna see. And of course there's classic statements about a guy says well you're accused of associating with somebody from Al-Qaida and then the poor detainee says well, who's that? Or they say did you associate and the guy say well I don't know until you tell me who it is. Well, we can tell you that's classified. So that's just Kafka. So these tribunals essentially create a factual record that allows the people to be kept in Guantanamo while the government claims that that's all they need to do. And they don't even, they even tried to feed habeas with that, they said that's all we need to do. And in the extent they got the habeas they tried to say that's the record. So it was a complete rum bullshit system there's no other thing to say about it it was just, but again the government, you know I mean the people who were the Guantanamo attorneys going down there just, you know, it's half Mickey Mouse it's half terrible, you know from protective orders it's not a way any lawyer ought to practice law. I remember one of my lawyers at the Center said they gave him the one of the early protective orders about what they couldn't say, you can tell if your client's tortured, you can't make it public, basically it hides everything bad the government's done. And the lawyers are put to this choice of can I represent, they litigated of course but you don't get anywhere. Do I represent the person under these draconian conditions where I can't tell if, you know it sounds like the Catholic church and abuse I can't tell if my client's been tortured. Nothing I can't do anything publicly. You represent your clients under these conditions where there's a video camera there all the time, where your notes are given to somebody right away and they go up to Washington and you have to work in a secure facility in murderous conditions. Do I do that or do I simply not represent the client? And you're in an impossible situation. And you know it the stuff is very seriously, taken very seriously by the government even if most of it is BS. And if you violate that stuff disbarment, you could go to jail I mean it's serious stuff. So it's a, so if we, when we talk about what's changed in preventive detention, what's changed in military commissions, we should also and it's not for me to talk about it but it's 'cause the details are the lawyers who were going to Guantanamo, but I think there's been a shift in what in the role of the defense attorney, and the role of the attorney end and what's allowable and what's not. What's going on at Guantanamo and the restrictions put on defense attorneys should never be allowed in the system in which you have vigorous defense counsel. It should never and that's changed, that's a change and that's a draconian change.

- [Male Interviewer] Did lawyers ever talk to you about their own attitudes with this change and how shocked they were that they were restricted like that? Do you have any stories about lawyers who went down there?

- Well, sure I mean our lawyers at the Center who represent people and you know when you read about torture and what's going on and what's in the newspapers, I mean they are under these restrictions where even though their clients may well have been tortured, may well have been subjected to even waterboarding, they cannot talk about it. And they write papers to the Courts of Appeals where they're under, no one can see them they're all under restrictions and they can't come out in the Courts of Appeals

they'll sit there for months or years sitting on the fact that this guy was waterboarded or tortured and they find it utterly frustrating. And sometimes sure people wanna say I just wanna go out and let them disbar me, let him do this but of course he represent clients and the question is how do you continue to do that and represent clients? So it's a terrible dilemma and you know one day if those attorneys can ever talk will be remarkable. But I don't know if they'll ever be able to. And if you look at what happens to the, you know, there's now that of course in the US there's this thing called SAMs put on people's special administrative measures attorneys are restrictive, are restricted in the same way as Guantanamo attorneys were being restricted or models for each other. And so you're getting an, if you really look at it even though we have this few minutes of being in the public in a habeas hearing when even the habeas hearing is not closed or is not, you know classified evidence it's basically the entire process is like an iceberg where seven eighths of it is underwater and no one sees it except the attorneys if they're lucky, the client often doesn't see a lot of it and the US attorney. So you're running an entire system of justice you know that's underwater in the country.

- [Male Interviewer] How did your attorneys handle if their clients didn't wanna see them or were they ever told that the government, or did the government would try to interfere with CCR attorneys meeting the clients with-

- Well, these are, I mean Wilner has stories about you know telling clients that their lawyers are Jewish and in fact the number of the lawyers I mean, Joe, I and, Joe and I were Jewish, Wilner is Jewish, so you know Clive claims he's somewhat Jewish so I don't know, maybe he is or isn't. So that was an issue that yeah their clients get-

- [Male Interviewer] How was that an issue?

- Well, because the guards would tell the clients you don't wanna be represented by these people they're Jewish, or the only way you're gonna get outta here is if you don't have an attorney, those stories are not uncommon. And of course the lawyers that were women had sometimes problems with you know with Muslim men who didn't necessarily want women attorneys, but they eventually worked out. I mean some, I've heard, I heard stories where a lawyer one of our, one of the lawyers went down 10, almost for 10 months in a row before the client would turn around and face her. So these are hard jobs. These are, these lawyers I mean, went 10, 20 times to Guantanamo. And you know I'd been to Guantanamo a few times in the Haitian cases and I would never go back. I mean I was so, I mean I guess you could call it a form of post-traumatic stress but I just can't even think about it. It was so awful, it was just so awful. And so the lawyers, you know, Joe, Gita, the ones who've gone, Tom that gone 10, 20, 30 times, you know everything from the flight, to how you're treated, to the Mickey Mouse stuff, to the security, to seeing people who are innocent just locked away, it's devastating stuff, devastating.

- [Male Interviewer] Were, do you have any of the stories as to you know how the lawyers were when they, the shot they took when they went down and what they saw, not just how they're treated by the government but just what they saw with their clients or how they met with their clients in their you know these little rooms?

- Those are all, you know you can get those stories from each of the lawyers right? I mean they're all pretty clear what happened so mine are second-hand stories. I mean, you're right the rooms are these small rooms, the client is you know locked to the floor essentially. I mean, you have a million stories like this, you have David Remes' clients who you know, cut his wrist, you know the blood under the table and throwing it on David. I mean, you have a million stories of the utter frustration of the clients. And you know I remember a story from my Haitian experience when I first went and this happened, this is not probably this is analogous to what happens. When I first went down to see the Haitian clients who were the refugees in the HIV camp, who were locked behind barbed wire, they yelled and screamed at us saying we don't want you to represent us, maybe if you were getting paid you'd be better, you're pro bono lawyers, we want paid lawyers who can get us out of here. And so what happens after a period of time, that's an attitude. What happens after a period of time it probably gets worse because there they are this is eight years for some of these people and they have to say to themselves and it's going on now, we don't wanna see the lawyer anymore. It's not any point. And of course, some of them, you know probably have done things to themselves to draw attention or to just say they're frustrated completely. They can't take it, so they throw their lawyers out and sure we've had a lot of lawyers who they go through all this work, they get the clearance, they get on the airplane, they fly from Miami, they get on the ferry, it's exhausting and then the client doesn't even tell them, like I'm talking to you, they put in the notice to see the client and they get a note back saying the client won't see you and there's nothing they can do. They can't communicate with the client, they can't talk to the client, they can't pick up a phone. So what do they do? They wait there for two or three days, they send a note in and then I go home. And the government, every note is monitored, you don't have, there's nothing confidential you can give, attorney-client nothing. They supposedly have a team that going through the prosecution that looks at this, that looks at this, but I think if you were to measure the restrictions on the lawyers right now it would be, it just, you know in another environment it would be so shocking as to be unbelievable. So it's one of the most, I mean we have lawyers who've worked for years and then all of a sudden the client just says what am I doing here? Why do, why would I do this? And now think about it who've been both, even these stupid CSRT procedures the Combatant Status Reviews some people have been found to be innocent under that or at least not enemy combatants as the term. Some people who have been found innocent or many in the habeas corpus. And so the lawyer does all that, thinks he's gonna get their person out and the person sits there and can't get them out. So some people think they're better without lawyers. Why do I have a lawyer? What do I need a lawyer for? And I know it's what are you gonna say, these people who've been there eight years, they have a right to determine their own lives at some point and say that's it I can't do this anymore. It's gotta be heartbreak, I mean it's heartbreaking work there's no. And of course when they get transported, if you ever talk to any of the people that transported them in jail or others who've gone back with their clients the clients chained all the way, even though they've been so-called free, found innocent, et cetera, found not enemy combatants and the country is willing to take them until they get off the plane after a 10, 12, 15, 20 hours in Palau or more, you know they're chained to the, they're chained in the plane. So the thing is, I mean Kafka didn't have a correct description of it. Someday someone will write the novel but yeah.

- [Male Interviewer] But you're not giving up you're-

- Well I have to say this is not a good period. You're not talking to us in a good period. I'd be interested in, I haven't really talked enough to my attorneys at the Center or others, but this is like scraping on hard pebbles right now. Because here you have a situation where there's still a number of innocent people, majority at Guantanamo probably but number who have been found not enemy combatants by the federal court and they're still there. And there's bureaucracy hanging it up, there's all kinds of other things hanging it up and this is a way after a year after Obama promised to close it, you're seeing now that there might be as many as 50 people going to trial, many of them before military commissions, which I consider you know kangaroo courts and unauthorized. Many of them held in preventive detention possibly. So you're talking about us and you have innocent people there after eight years, you know what? I've never stood a couple of things one is, I've had clients put into jail here in New York for various reasons. And if they spend an extra day in jail we lift heaven and earth and it's an outrage. Like if they get picked up and they don't get brought before a court in 24 or 48 hours, that's considered to be, I mean crazy. I've had, you know, particularly clients in demonstrations and others where we lift heaven and hell to do it. And it's not that we haven't lifted that for the Guantanamo clients, but the idea that you could one day decide, okay, well we're not ready to send this guy out or he's innocent and then diddle around year after year while you have an innocent person there and not think that human freedom deprived for one day is an outrage, I don't know, I don't, I don't, I actually don't understand it. I just it's unclear to me how it could happen. It's not like these people have been convicted of anything, it's completely you know, I mean I've done habeas corpus before federal judges on a Sunday in churches where the federal judge lives upstate. I did one, almost my earliest case at the Center and he held a hearing and he handed me the writ and I went to the prison and I got the guy out. One extra day.

- [Male Interviewer] Will Obama make changes over time?

- I think it's unlikely. Yeah, I mean I think I, what are all the causes? I couldn't say. I mean, but I think it's, I mean he's, you know, I mean every time an issue comes up, it just, I mean for either reasons of he has other issues, he needs other votes or the right wing is just too strong and pushing him around or it's not important enough. Whatever reasons we wanna say. If you look at I mean preventative detention, the I mean the compromises on preventive attention and you know, they're doing it not even from the same basis I am are saying, well at least we're not gonna get a statute. We're just gonna have a, so you don't get a statute is the same as Bush. I mean a statute is probably worse they're thinking, because it's true probably going to this Congress you're gonna have you and I in preventative detention before we're finished. But, so they're just doing sort of, and of course Obama claims he's different because he's relying on the AUMF the Authorization for Use of Military Force and Bush was aligning on inherent constitutional authority. But for the guy in prison, it doesn't make any difference it's the same result. And military commissions to me I just, I, it can only be explained as saying that we don't have enough evidence to convict these people in a regular court with due process protections and therefore we're gonna convict them by a bastardized form of justice. I don't know what to say to that. You know, I mean it's just the whole system it's gotten completely corrupted. And I don't think there's a way out. I'm not convinced there's way. Yeah we're fighting and we're only seeing, as I said, even in the trials but even what's going on we don't look at background look at the prisons in Afghanistan, I mean, you know why shouldn't those people have a right to habeas? This is, you know, at least, you know this is actually an important part of the discussion I don't know if you've come to it

when we were talking with Tony Amsterdam about what we're gonna do in Rasul, Tony is the NYU professor who's the expert on Supreme Court. And we had a debate, do we just argue Rasul as habeas, the right to go to court because you're in Guantanamo which is a kin to the United States. It's owned essentially by the United States and it's leased in perpetuity, it's like an American city and therefore you should have a similar rights to the Americans or as some of our you know as we said last time in court, it's actually has more federal jurisdiction 'cause in a state you have the federal, you have the state, you have the city, you have the, you know the council. So, or should we argue that you got the right to habeas. whenever a person is in US custody anywhere in the world? And there was a big debate in the room, only a half a dozen of us listening you know Joe, me, Tom and at that point everybody thought, not everybody but some of us thought it was ridiculous, you can't argue habeas everywhere in the world that we're never gonna win that. I thought we had to do that. Tony said what you'd never wanna do, Tony Amsterdam you never wanna cut the court off from jurisdiction of a case and that's the torture case because at least the court even if it's gonna rubber stamp the habeas and say well he's classified as a prisoner of war we're not gonna look at it on the merits, you don't want a court ever cut off from being able to test a person's custody. And that's right. And now we're, so we've won Guantanamo and we've won it, even now on Kennedy's, you know three-step process for getting there, practicality and all that. But what about Bagram? What about Iraq? I mean, why should a person be in custody without being able to test their detention and my view is they never should. I mean, even if the court's going to eventually say, well this is in the middle of the shooting war, we're not gonna do it now, they're held as a prisoner of war, they're under conditions that are internment, but you know, if you look at Guantanamo what it really is it's an interrogation camp. I mean, that's, it's not, this is all, it's all junk about all the rest of it. Basically it's an interrogation torture camp or was originally a torture camp and now it's, and now it's, whatever it is but and that's what it was set up for and those were, and that's why it was done. And they'd been illegal you know certainly since the last set of Geneva Conventions it's what the Germans did even before the last conventions. And they're not supposed to be interrogated, that's what Geneva is all about. So they had to come up with some category in which was our earliest point that you have to have a legal status and they didn't give them any legal status. They just picked and chose whatever and I wouldn't say rights whatever disabilities they wanted to give them.

- [Male Interviewer] And is Bagram another interrogation camp?

- Oh I think it is. We know, we don't know much about it and of course the only habeas that has been won there has been for non-Afghanis which former Center attorneys have done you know Tina and Tina Foster and Barbara Olshansky.

- [Male Interviewer] So if CCR didn't exist where would we be today?

- Well you know we'd have Joe and Tom and Clive and they're, you know, they were pretty devoted to this stuff. And I think the problem would have been getting this big mass together and how would it have been done particularly that early. Yeah today if you went to a foundation and said fund us to do this, but I don't think early on you could that wouldn't have happened. So I think it played an absolute crucial role in not just pushing the litigation but putting a human rights organization behind it and also developing the infrastructure to do it. So, you know it's certainly a critical piece of work you know that the Center was

involved in.

- [Male Interviewer] And looking back Michael since you've been involved in this for you know 30, 40 years do you think the last 10 years your life has changed a lot more than the previous 20 or 30 years? There's been, a different in how you see the world?

- Well, I think that, you know I think on these issues that we've, I hate to be pessimistic about it, but I think it's a more permanent loss than I sustained in the past on these issues, on the issues of what I call on fundamental issues of human liberty or freedom. And it's, yeah I mean it's not a great feeling about that. I mean I've, I don't wanna speak for everybody in my office, but I was with a Congressman the other day actually talking about these national security issues and he basically said we've lost. I mean we've lost that and state secrecy Obama comes in saying he's gonna do better on state secrecy and we're getting the same opposition, the same rulings. What's interesting about that period is, you know the courts are only gonna do so much and of course we have a certain popular, you know in some way what the Center's done and I think it's a great thing has created a movement around the issue of Guantanamo and the habeas. And it's one I was not familiar with in my experience because it's a movement of lawyers that had began as a movement of lawyers particularly and then it spread out but what and so that gave me some one, that gave me some hope here is that we took a whole bunch of lawyers who, you know were trained as lawyers who hadn't, didn't have my politics at all, some are Republican, some are, certainly a lot are just straight Democrats, you know, a lot or nothing you know and they actually moved, you know tremendously and a lot of those people change their careers and their lives because of Guantanamo. I mean, they became, you know, they left the big practices, they became professors, they became litigators. So you know, that the chances of social transformation are not small on this and the fact that we won that much in Guantanamo is incredible. But it's also an example to me of how outrageous the practice was gonna be. And we still, we've not just lost on what I call these preventive detention issues and secrecy and we've lost that I think is the core issue of how you treat an act of terrorism. Whether you can use the rubric of this as a war even though my Obama calls it although he's moved again toward the war paradigm more, we've lost that. And once you start con being able to treat it as a war and not as essentially a crime you have the power on the presidency, the power, the shift, the rigorousness with which due process is applied is a shift. And there's no doubt we've lost that battle. We've lost that battle, we've lost some of these others and, you know we've probably lost the torture debate in the country so you know and it is well. So it's not, you know it's not a great feeling right now, you know although we have a lot of people, look and 900 people went through Guantanamo, I can't tell you the number probably Denbeaux can, but you know the number that are actually walking the streets as free men is probably, you know, it might be 600 or more and you know, how much that would have happened without the work of this core of attorneys? I mean I think we stopped the rampant lawlessness. So at least there's some accountability and some they have to justify. Obama can't stand up there and say I'm just the president I can do it, he has to tell us why he's gonna do it and he has to make an intelligent argument to the American people. So that's a shift, that's a positive shift. But boy, I'm I just think it's been a rough eight years I'll put it that way.

- [Male Interviewer] I don't have much more to say, but I, you know I'd like to just talk a little bit about, I kept it for the end about CCRs involvement in international issues because I thought CCR was unique in filing

lawsuits against Rumsfeld and other officials and because nothing is going on today with Obama's decision I thought maybe you could talk a little about how you got involved in it, where you see that going.

- Well, you know, international law played a huge role in the beginning of Guantanamo and still today. I remember when we drafted our first habeas petition as I said my job, at least part of it apart from some of the constitutional law was adding arbitrary detention, prolonged arbitrary detention as well as the Geneva Conventions. And even understanding that, you know, the issues around self execution and enforceability of some of those, although we actually had a claim, this, we had an Alien Tort Claim in the habeas petition which is to say we had a petition saying that the detention at Guantanamo violates the international, customary international law and norm of prolonged arbitrary detention and we can sue on that directly. We represent aliens the Guantanamo people, against the US officials who are violating international law. And what's amazing in the result opinion, the court held that there was jurisdiction under 1350 which is the Alien Tort Statute to use international law. Now that provision goes back to the very origins almost the origins of the Center but particularly remarkable person and Peter Weiss at the Center. Who from the day I got to the Center in '71 or 2 or 3 or whatever right in there, said I want you guys to put an international law claim in every single complaint you file. And one day we will get there and where we got there the first big case was 1981 or '80 with the Filartiga case which said that US, that aliens could sue officials from all over the world when they came to the United States for violations of customary international law. And from that of course a whole, that now you sue oil companies for, you know torture, for moving, you know for all kinds of disappearances you sue, I've sued the Haitians, I've sued the Guatemalan torturers, you know everybody we've done it and it directly went into Guantanamo. And of course we then moved as we got into the torture things in the last few years, those of course are international law. I mean yes they're domestic law because the US has adopted those you know parts of the treaties under its law has implemented it, but when we saw really early on that there was a failure to investigate and prosecute, really the word is hold accountable US officials for it was absolutely clear torture and we tried everything we could. I mean, we tried, we have still have pending civil cases in this country, you know we of course went to the commission but that doesn't have any-

- [Male Interviewer] What commission?

- Inter-American Commission but that's not, it's not obligatory but we tried civil cases here, we still have a bunch of those, tried congressional stuff, everybody we tried everything. And then we decided we'd go to, you know basically universal jurisdiction or what, or cases in Europe under the national laws of various countries in Europe that coming out of the Second World War have laws that say you and Geneva itself has it that say you, if there's a crime of genocide or it's a genocide convention or if there's you know torture or similar kinds of activities you can bring those cases anywhere in the world and actually Filartiga case said you had this great language saying the torturer is like a pirate and can be brought to justice wherever found or wherever in the world. So that's when we started going after Rumsfeld and others in Germany. And we brought two cases in Germany and then I'm actually going on Sunday, a week from Sunday to Berlin again and we're meeting with the Spanish attorneys to work on our intervention in the Spanish cases against the what are called the Bush Six which are the lawyers who formulated the torture policy as well as the Guantanamo issues and it's not wild stuff because Spain actually has a link with the Guantanamo cases

because four of the Guantanamo detainees had either Spanish nationals, Spanish citizens or passed through Spain. So we're looking at those cases partly for justice on their own, but partly 'cause there's nothing happening in the United States. And of course Obama is saying he was looking forward and not backward, to me that's crazy. I mean, looking forward is looking to a world without torture and you do that by looking back by prosecuting and holding accountable torturers in the past even for those that are currently in government. So we have a huge involvement with international law in fact I taught it for years and that's, I have a book called "International Human Rights Litigation in US Courts."

- [Male Interviewer] What kind of press do you get for filing your international cases against Rumsfeld?

- Well we did pretty well actually in the beginning. In the European, in the German cases the second filing I brought Janis Karpinski over with me, who was the Brigadier General who was disciplined and tossed out really for what happened in the prisons in Abu Ghraib, who was willing to testify before the Germans about Rumsfeld's role and the signs that were put up in all that, the Germans because of political reasons ultimately dismissed the case and so Janis never testified, but that press, in Berlin we had a couple hundred people or press in the room and it actually had a full page in the Times. German, Spain is interesting because even though they try and say this is all symbolic and Rumsfeld is never gonna go to jail in fact, it Garzon now and there's two judges Garzon and Velasco there's two companion cases in Spain, but they have a right to issue arrest warrants in Spain and warrants to testify and right now even as we speak those cases have been opened or at least one of them has been opened and there may be for all I know arrest warrants already issued for Rumsfeld and others which means that they cannot safely and they probably have not gone the what are called the Schengen countries which are 26 or 27 countries that make up the EU European union and the trading block. So it's not true that these are symbolic. These guys are already in deep and of course look what happened to the CIA in Italy, you know the CIA kidnapped Egyptian cleric from the streets and an incredible judge investigating judge actually indicted them and they were convicted and you know one the guy lost his house in Italy and they can't go, they can't move around at all and they know the names of a bunch of them. So there's some, you know there's some shift going on of course there's a fight back, there's always a fight back by the governments and others that say change the law, get rid of it, but I think the torture stuff, even though Europe had you know a dual role on some of the stuff at ransom at the secret prisons, particularly Poland, Romania, I think Lithuania as well, I think they're pretty upset on a certain level by the torture stuff, really upset by it and there're, you know because, I think after the war they'd just decided enough of the war stuff, enough of this let's do something else and they have a little more rule of law stuff than we do I think that has worked to their benefit. So I think it's gonna continue and it took 35 years to get Pinochet and I don't think it'll take that long to get these guys but we'll see.

- [Male Interviewer] You think we would get them one day?

- I'm hopeful, we'll see what happens with the Spanish cases are our best hope right now. And I'm really, I was more enthusiastic before their attempts to get rid of Garzon but 'cause he would have not stopped at this. So we'll have to see what politics, I mean to the extent there's countries in Europe Italy and Spain are the two where the investigating judges are independent of a judicial, of a political judicial system. Germany is a unified system and so we were bound to lose in Germany. We came close, but we were probably gonna

lose.

- [Male Interviewer] You knew probably in France too.

- Yeah we lost, that was ridiculous how we lost in France I have no idea. Again it's a unified system because France, you know France is, like we had Rumsfeld in Paris, which when you have the torturer in the country, that's everywhere in the world that's not even universal jurisdiction that's just the torturer is there that's the Torture Convention and we filed the case, Rumsfeld gave his talk and then he walks out the back door into the embassy and escapes the country but then the case gets dismissed. So I can't explain it, yeah I can explain it but not well.

- [Male Interviewer] Well.

- Okay good.

- [Male Interviewer] Do you have a, do you wanna close with anything Michael? Anything that I didn't ask you?

- No I think you did, I think it's-

- [Male Interviewer] I think it was great you know really fascinating in terms of I didn't know a lot of that.

- No well you must have known.

- [Lady Interviewer] Did you get signed statements?

- Yeah I gave him one.

- [Lady Interviewer] Right, 'cause there were a couple of quotes that would be great snippets on their website.

- Whatever you want.

- [Lady Interviewer] Yeah that I was taking.

- Just not one in which I criticize somebody.

- [Lady Interviewer] No nothing personal.

- That's what I mean.

- [Lady Interviewer] I know, but the piece where you kinda talk about 911 and then sort of the hysteria.

- Oh that's fine all that stuff I don't mind.

- [Male Interviewer] There's another really good quote that Michael gave that was more recent in the last 15, 20 minutes that I thought was great I was gonna watch the video. I'll send you a copy of the video if we do it but I was gonna grab that 'cause it was something really powerful I thought.

- [Lady Interviewer] Well I think also the quotes about the restrictions that the lawyers I don't think we have anything on that. The fact that the lawyers have such limited access is another really important bit.

- It's really, it's.

- [Male Interviewer] Right I know, no, you really did, the reason why I asked you, I might know the answer but the reason why I asked you that it's 'cause you're the one talking and you know and when I asked you to find those for lawyers you just told me because I think people need to see the breadth of lawyers were you know really confined by the government that it wasn't just the, you know people in Guantanamo the fact is they did everything they can to stop I mean the lawyers

- It's still going on it's just terrible.

- [Male Interviewer] Yeah it's still going right and you know I think it's also important and I, you know for you to talk about how Obama has disappointed these other people have too but I think, you know in the future people need to know because everybody will have thought of Obama as this godsend and it's important to hear that-

- No it's been really, you know, I'm sure that, it's so similar to our first Guantanamo experience with Clinton it's just like, you could write it, you could write the script and we have, I have a book, what's it called? I wrote a Harvard lawyer, some lawyer article where I talked about.