

Gates Public Service Law Speaker Series

Vincent Warren

Director of Center for Constitutional Rights

September 29, 2008

Michele Storms: Well, they say it pays to be patient, and I know that in this case it really will pay for all of us. I'm so delighted to now get up here to introduce our speaker and get us beginning with our program this afternoon. We have with us Vincent Warren who has been the executive director of The Center for Constitutional Rights since 2006. The Center of Constitutional Rights, as I know many of you know, because there are many CCR supporters out here, is dedicated to advancing and protecting the rights guaranteed by our United States Constitution and the Universal Declaration of Human Rights. It was founded back in 1966 by attorneys who represented the Civil Rights movement in the South. So, it's a very strong organization with a strong history towards social justice.

Vincent Warren comes to that position with incredible experience as a public interest lawyer. He was seven years a national senior staff attorney with the American Civil Liberties Union, where he led national constitutional and impact litigation to advance civil rights and civil liberties. He also worked as a staff attorney in the Criminal Defense Division of the Legal Aid Society in Brooklyn, the single largest provider of criminal defense services in the city of New York. And that's really not all. He also was a judicial law clerk in the US District Court in New York, and has worked with the National Lawyers Guild and the Haitian Refugee Center in Miami.

He has litigated incredibly important cases with regard to affirmative action, with regard to poverty law, with response to Hurricane Katrina, and most recently, and also very importantly, regarding cases for people accused at Guantanamo Bay. I think that, since you have waited so long, I shouldn't give you too much more by way of an introduction, but just to express my own personal gratitude and the sense of honor that I feel that someone doing such important work, who's had such a difficult day, is here with us to share what he knows. Thank you.

[applause]

Vincent Warren: Thank you very much, Michele, and hi, everyone. Thank you all very much for being patient. Is there any food left? No. I'm joking.

It's been kind of trains, planes and automobiles today. I was thinking, though, Michele, that perhaps the next most important case that I'm going to litigate is the one against the guy that rear-ended my car on I-5. I'm kidding. I'm not going to...

It's really great to be hear, and I want to thank very much the Gates Public Service Program, the Speaking Series. I know that you all have tremendous speakers that are here. It's a great honor for me to be here. Finally. And I wanted to spend a little time with you talking about two things, really. The Guantanamo situation, how the Center for Constitutional Rights and other groups

have dealt with the George Bush Regime, post-9/11, and the various policies that were put into effect. And I want to talk a little bit about what we can do and ask the next president to do in the next 100 days to really begin to make things right.

I think, to start off, we've seen an unprecedented policy debacle, here. It really started, of course, prior to September 11th, but let's just talk about September 11th for a minute. I don't know where everybody was. I was in New York when the World Trade Center came down. And I remember at the time feeling, my god, this is it. This is really the chickens coming home to roost. I know people don't like to say that, but that's what it felt like to me. And people were filled with fear, they were filled with anxiety. We didn't know where anything was going to happen. You remember, very shortly after that there was that big anthrax scare. And everybody thought, my god, it's - they're all - this is the most incredible group of terrorists, and they're coming at us on every front. And the fear was just palpable.

And at that moment, there were a number of people, and maybe you were among those people, who began to think, well, what do you think is going to happen next? How is the administration going to deal with it? How do we begin to deal with this? And it didn't take long for the writing to be on the wall in terms of how the Bush Administration was going to deal with this. They essentially didn't do something new, they did something really old. What they did was they dusted off a policy, a policy - a neoconservative strategy, the unitary executive, the all-powerful executive.

This was something that had been thought about and worked on for 30 years by very much some of the same people, even in the years of Gerald Ford and before. Donald Rumsfeld was in that cabinet. Dick Cheney was there. Paul Wolfowitz had been working on this stuff for a while. And the theory is that in times of cataclysmic change, in times of great fear, that's when the all-powerful president need to be able to step up and create some sort of leadership for the rest of the country. And there are certain things that the president should not let get in his way, especially during times of national security or war.

One thing that you don't want to let the president get in the president's way are the courts. The courts are a pain in the neck, because all they really do is try to circumscribe the power of the president. And the other thing that you don't want to do is you don't want to let the politicians determine what your national security or your war strategy is, because they just get in the way. And they're going to inject politics into what the president and what these men were saying is a surely military, domestic and international strategy.

When the president says that I don't want to let the courts, and I don't want to let congress get in my way, it begins to look a lot like tyranny. You know. We have these balance of powers that are enshrined in the constitution. The three branches of government are supposed to work together to create checks on each other. But, the whole idea behind this program was that that outdated notion of constitutional checks and balances really gets in the way of either us winning a war, gets in the way of us finding the terrorists abroad, it gets in the way of us keeping people safe from domestic attacks here in the United States.

So, never mind the fact that the intelligence community was a mish-match of agencies that

weren't working well together, outdated policies. None of these guys were able to communicate with each other, they couldn't catch a terrorist if they really wanted to. And in point of fact, they really haven't caught any domestically here, in the United States, with the exception of one or two, which we can talk about a little bit briefly.

But, when the Bush Administration was talking about these men, the worst of the worst, these people that they were out to get us. And when you look at how, after their arrest and apprehension, what did the courts do? Were these men convicted of huge terrorist conspiracies? No. They were convicted, primarily, of this thing called material support for terrorism. That's an important thing for us to think about. Because the way that this paradigm was set up was that they were going to use the federal court system and including military systems that they were setting up on their own to try men that were captured here in the United States and were captured internationally, with the goal of bringing the terrorists to justice. In effect, they weren't able to do that. And the entire policy has been an abysmal failure, in our view.

Let's just talk about September 11th and what happened afterward. Very shortly after September 11th, President Bush issued an executive order, I believe it was November of 2001. And in that executive order he authorized the president to take any and all means necessary to be able to capture Al Qaida operatives. People that were responsible for the September 11th attacks, people connected with Al Qaida, people connected to people connected with Al Qaida. The president gave himself, through executive order, the basic authority to do whatever it was that he felt was in the national interest.

This, at the time, for most Americans seemed like a reasonable thing in a time of fear. But, let's look at how that shaped up. And I'll sort of posit something for you. I think that we have embarked, over the last eight years on an unprecedented international and domestic racially profiled intelligence gathering operation. That is how I think of the post-9/11 policies with respect to terrorism. Not in terms of investigating, finding the people that are actually doing, or going to be blowing up buildings, people that have blown up buildings, people that we have evidence against, and detaining them and trying them.

It's been about intelligence gathering. So, let's talk about the international piece first... Let's talk about the domestic piece first.

Domestically, right after September 11, one of the first things that happened was that the Immigration and Naturalization Service, I'm not sure whether it turned into the Homeland Security department at that point or not. But, what they did was, they began to round up thousands of men who were of Arab, Muslim, or even South Asian descent, that weren't even Arab or Muslim. They began to round them up. When they rounded them up, one of the first things they did was they created this special FBI questioning program. It was voluntary. They would come and talk with you, and they would say, hey, the idea is this is intelligence gathering, we don't have anything on you, but we just want to know who you know? And what are they doing? And who do you think are terrorists?

The media spin was this is a way for the US government to use the Arab and Muslim and South Asian population as a way to learn where the terrorists are. But, let's sort of think about the

practical effect of this. I was at the ACLU at the time when this was going on. We pulled together a network of lawyers that went into mosques in different communities to begin to represent people during this questioning period.

For most of the men, or for a lot of the men, that they were of - they had immigration issues, a lot of them. So, you have to think about what it meant to be questioned by the FBI in the context of your immigration status. Well, a lot of people didn't want to cooperate. But, people also didn't think they had the choice. They also didn't know that they could bring lawyers. And we negotiated and we were able to get lawyers to come to these meetings.

But, if you think about it, right, and that the whole idea, and this is a law enforcement piece, generally, is that if you've got nothing to hide, you've got nothing to fear from the police, right? And let me just say, I'm a former criminal defense lawyer, don't buy that stuff. If you've got nothing to hide, that's fine. But, the reason why we have the constitution is to keep the police from being able to question you randomly about things, to be able to gather intelligence. Even the innocent intelligence gathering, it should be voluntary, it should not be coercive, they can't make you do it, they shouldn't be able to make you do it. So, whether you have something to hide or not, that was really the piece that we were trying to bring forward.

But the practicalities are, it was a trap. And I'm not... And it's a trap that materialized in interesting ways. So, if you were someone who is here that's not a US citizen, you go and you speak to an FBI officer, what you need to do, you need to do, you need to... The first questions they're going to ask you is what is your immigration status. Now, if you're out of status, if you say that you're out of status, you're deportable. If you're out of status and you say that you're not out of status, then you are liable for criminal prosecution for lying to a federal agent. Here is sort of the trap that began. It began innocently enough, from the government's perspective, but it was a tremendous trap.

The next thing that they did was they decided, in New York they did this, they rounded up whole groups of men who they knew were out of status. And they put them in immigration detention. And they didn't put them in immigration detention in order to determine their immigration status to give them hearings under the immigration laws, they held them as ways to interrogate them and to ask them questions about who was in their neighborhood and what was going on there. The Center for Constitutional Rights, very early on filed a case called *Turkmen vs. Ashcroft*. The case is actually still kicking around in New York in the Second Circuit.

Turkmen vs. Ashcroft is a group of 12 Arab men who were rounded up and kept in the Manhattan Correctional Institution. They were held there for months without any meaningful hearing whatsoever. You'll also remember that during this time, the government said, hey, you know what we're going to do? We're going to close the immigration proceedings. We don't want everybody to see what's going on, because we don't want the sensitive information that's going to come out to come out.

People should have realized then that when they start closing hearings, and even immigration hearings, that that's pretty much the end. It's going to go down hill from there. And that's what they began to do. We filed a lawsuit alleging 4th Amendment violations, alleging 8th

Amendment violations, different types of violations for these men. They ended up being deported, because, of course, none of these men had any connection to terrorism whatsoever. And when the government was done interrogating them, asking them those questions, rather than returning them to their families—they all worked, they all had families, they all had careers. They said, well, guess what. You're deportable, you're going to Pakistan. They put them on a plane and they sent them to Pakistan.

So, we're in this kind of interesting situation where we filed a lawsuit that was protesting their detention while they were detained, they have since been sent off, and now we have a case for injunctive and declaratory relief where our clients all had been removed from the country.

The government has essentially said that in a... and this is something that I think is reflected in the new FBI provisions that were proposed recently that it's OK to racially profile people in the context of the war on terror. What that means, essentially, and it's really the sort of stringy syllogism that if the men that flew the planes into the World Trade Center were Arab, and if we know people who are Arabs, we can then look at Arabs as a way to try to determine where the next terrorists are going to come from. It's that kind of scenario.

And that's essentially what the government has been arguing, and that's what the courts have really bought. In the context of racial profiling, it's OK for the government. It's reasonable for the government to assume that people in that community of that guilt are people that had less rights, essentially. Or that their rights get waived or the government gets more leeway in terms of detaining them for no particular reason other than the fact that they want more information from them.

We also, then, look at it on the... There was the National Registration Project that the immigration officials did. They looked at the Axis of Evil countries. They looked at North Korea, they looked at all these different places. And everybody had to specially register in the United States if you were from those countries. There have been waves of mass deportations and, of course, the interesting thing is, of the people that they're deporting, and the masses of the people that they're deporting, the government itself has never claimed that these are dangerous people in the United States and, therefore, we're going to ship them off. They've never claimed that.

And so the idea what got us into this was that somehow we needed to take some affirmative steps to isolate terrorists has now turned into: 'Well, they're not terrorists, so much, but we can just ship them off someplace else and now we've sort of lessened our immigration problems.'

Let's look at it on the international scale, and this is kind of where it gets interesting. Does anybody know, has anybody heard of the phrase or idea of Extraordinary Rendition? Most people have heard about that, and for people that don't know, it's the idea that the government can essentially kidnap, arrest, detain kidnap people anyplace in the world if they have reason to believe the person is connected to terrorism or connected to someone who's connected to terrorism. And they can isolate them, and they can send them to different places in the world where they can be interrogated and tortured, in fact. That's what the general program is.

Does anybody know who was president when the Extraordinary Rendition policy was created?

Clinton. This is what gals me about this entire process, is that there were policies that were in place that were created before George Bush that ended up being a very key and vital role to the broad racial profiling torture paradigm that the Bush Administration has taken on. There is a lesson here. Here's the lesson. The lesson is, and I'm not asking people for their political stripes, but the lesson is when the president has power, and when the president says I promise, I promise I will use my power for good rather than evil. Trust me, there are some bad people out there. We're just going to put this thing in here, even if the president, this president, doesn't use it.

Those powers get passed on to the next president, and that's essentially what happened here with George Bush. And he was able to use an already created paradigm to begin to effectuate what I'm calling some of the largest racial profiling and interrogation program in modern history.

Let's talk about Guantanamo a little bit, because it all begins to sort of tie together. Guantanamo, we know, is a place that is in Cuba. It's a military base, it's owned jointly - there's a joint lease between the US and Cuba. The lease is 100 years. It was started in 1912, and that also... The reason why the US can use it is because it takes both parties, both the US and Cuba have to agree to terminate the lease. Cuba has been trying to terminate the lease for a very long time. The US not so much. So, until the US says we agree that this lease should be terminated, that it will be used as a Naval base.

Now, what's kind of interesting about it, what are it's characteristics? It's been used for various purposes over the years. In the 1980's and 90's, it was used to house Haitian refugees, people who were HIV+ and it was essentially a holding cell for people who were HIV+. Interestingly enough, the Center for Constitutional Rights, back then filed a lawsuit, which we won, saying that you can't hold these men and women, these people, who are HIV+ in essentially in leper colonies that's in a place that's outside of the rule of law. Well, they stopped using that.

When they were thinking about this terrorism thing and how are we going to be able to detain, how are we going to be able to get information from folks? How are we going to be able to stop people from moving forward with terrorist activities, or even how can we buy the time to figure out whether they are terrorists or not? They began to look around the globe, and they began to look at different holding facilities.

The goal was as they recognized that the US Constitution would never tolerate a paradigm in which the US could hold people indefinitely without any trial. They knew that the Constitution couldn't listen to that. They also knew that if you had lawyers that were there advocating, the lawyers would raise a big stink, so they had to find a place where they could reasonably say that US law didn't apply.

Where is a place that is under US control, but the US can say the US law doesn't apply? It's Guantanamo, so they started shipping people to Guantanamo. How did they find these guys? You remember, right?

The first 20 people were brought to Guantanamo in February of 2002. Several months after September 11th the president said, "These guys are the worst of the worst. They will bite your heads off. They will kill your children. They will blow up anything. We need to isolate them, and

we are going to keep them in Guantanamo."

They will not get trials. They will not have lawyers. They will not be able to see the International Committee of the Red Cross. They will not be able to correspond with anybody. They will be held incommunicado. Congress can't come down and see them. The courts can't come down and see them. Only the military is allowed to have exclusive jurisdiction over the handling of these people.

When that happened in February, the Center for Constitutional Rights and other groups began to say, "Well, this is really extremely problematic. We can't allow the government to say we are going to hold somebody forever, and we might not ever release them until the war is over. We can't let the government say that we picked these guys up on the battlefield, but they are not combatants in the traditional sense."

It's a war, but it's only a war for the purposes of what we are doing, but it's not a war for the purposes of how we treat people that we are capturing. And they are saying that the Geneva Conventions and all those things do not apply to the men that they are capturing, and the people at the Center for Constitutional Rights said that's ridiculous.

What we did, one month after the first 20 men were brought to Guantanamo; we filed the first habeas corpus petition. The habeas corpus petition was filed in Washington D.C. in the D.C. courts where there is jurisdiction over that case. It was a broad assault on the administration's policy, but it said, essentially, that the president cannot hold men or women in detention indefinitely without trying them or releasing them. At the very least, a court needs to make a determination as to whether they are held lawfully.

At the time, it was the most controversial decision to happen in the post-9/11 paradigm. The Center for Constitutional Rights got death threats. People were calling up. People were writing, "How come you hate America?" It was really a horrible, horrible time.

We reached out to all of the organizations that we could. We said, "You have to come with us on this journey. This is going to be big." We couldn't get any other organization to even do cases with us. We couldn't get a law firm to walk across the street to file the papers in the D.C. Circuit. That's how scared people were. But, we knew that it was a really important and fundamental effort that we needed to work with.

If you know anything about the Center for Constitutional Rights, you will know that we come from a very progressive, radical tradition. We are more likely to represent people who mount liberation struggles than we are to represent people who are accused of terrorist activities in a fundamentalist context.

We generally tend to represent people whose political views we agree with, but with these guys we don't necessarily agree with what their political views are. But, it was so clear that the rule of law was being violated by George Bush. We know that over the period of time, about 778 men have ended up in Guantanamo; 778 men in Guantanamo over these last eight years.

There are approximately 240 left which would lead one to think, "Well, geez, what happened to the other 500 people?" There has to have been a tremendous victory, a legal victory, where the judge would order people released. But, there was no victory.

The court has never, not once, ordered anybody released from Guantanamo, ever. Well, who released these 500 people? The military. What? The military released the worst of the worst? Yes, they did. And here's why they released the worst of the worst, and it goes back to the racial profiling piece. Here we go.

Men came to Guantanamo from a myriad of sources. One key source was that they began to look in Afghanistan where, of course, they knew that Osama Bin Laden was hiding on the border between Afghanistan and Pakistan. They knew that was where the Al Qaida camps were, so they began to focus on there.

The way they began to focus was not just using informants which they did and not just using military personnel which they did, but they created a bounty program. What is the best way to get people turned in to the US forces? And they said, "We're going to give bounties. If you turn somebody in, we'll give you money."

Donald Rumsfeld has this famous quote, which he gave at a press conference where he said, "We're dropping leaflets in Afghanistan, and they are falling like snowflakes in December in Chicago." And the leaflets say, "You will have more money than you'll ever dream. You will be able to keep your family alive forever. Just turn people over to US forces," and of course, that's what they did.

Here's where the racial profiling comes in, and it's kind of interesting. One of the things that was a criteria for how you knew somebody was a terrorist in Afghanistan is if they were Arab, right? Arab guy in Afghanistan; not Arab country equals terrorist.

The first thing that happened is that, of course, if anybody that knows anything about Afghanistan is that it has been wrought with factional violence, with rival clans, and they began to turn each other in. They began to turn in people that they didn't know, and so there was a wave of people that began to come from Afghanistan directly to Guantanamo whose crime, whose connection to terrorism was being Arab in Afghanistan.

There is one guy who was represented by one of our cooperating attorneys. We recruited about 600 lawyers to work on these cases. This guy was from Afghanistan and went to Guantanamo, and eventually he was released by the US military, and he found his way back to Afghanistan. When he went back home, the person that was living in his house was the person that had turned him in. That's the kind of stuff that's happening.

Meanwhile, we are all thinking, well, these guys are really hardened criminals. Now, no, they are not all sheep herders. I'm not that naive. Nobody should be that naive, but what we did was we looked at - here was a study at Seton Hall University Law School where they looked at the information that the government had to determine who was going to be considered an enemy combatant. They looked at all of that information, and they said, "Best case scenario, based on

the government's own information, how many people in Guantanamo does the government think really pose a threat?"

When you analyze the government's information, you find that 92 percent of the men at Guantanamo, according to the government, have no connection to terrorism, have no connection to Al Qaida. Fifty-five percent of the people in Guantanamo, the government is saying, have never raised arms or been hostile to the United States.

Now, you have to remember, terrorism and hostility to the United States are two very different things. The government likes to conflate them, but they are two very different things. Even using the best case scenario for the government, the overwhelming majority of the men that they put in Guantanamo, the 778, no connection to terrorism whatsoever.

Well, the other piece of it is what do you do with the men that don't end up in Guantanamo? There were a whole range of people that ended up in Abu Ghraib Prison. There were a whole range of people that ended up in Soviet Arab prisons in Afghanistan, prisons in Iraq, prisons in different places. They were held there primarily for intelligence value. What do you know? Who do you know?

This is where the torture program begins to come in. There is another piece of this as well. You guys have heard of the secret CIA black sites, I am assuming. There was another piece where the government threw the rendition programs in. There were some dudes - we're not talking about the sheep herders in Afghanistan. There were some people who we actually think are Al Qaida operatives.

These guys - we're not going to keep them in Abu Ghraib, and we're not going to ship them to Guantanamo. We are going to hold on to these guys, and we're going to ship them to secret facilities that we're not telling anybody about.

We are going to work out deals with foreign governments that they can't tell anybody about, and we will literally kidnap them off the street. We will put them in hoods. We will put them in diapers. We will give them sedatives. We'll put them on planes. We'll fly them from place to place to place, disorient them, and they'll end up in a prison ward somewhere in the world, and the only people that will know who it is are the CIA and the CIA interrogators. And these are the secret CIA black sites.

There is some dispute as to how many there are. Of course, the government denied that they existed whatsoever, and it wasn't until 2005 when Dana Priest from the Washington Post broke the story about the CIA black sites, which of course, she sat on for a year because the government didn't want that information to come out.

And also, the other thing you should know is when these... It's great that we have a mainstream media that comes out with this information that the government won't tell us. But, for a lot of it, the mainstream media makes the determination that they're going to sit on this stuff for some times over a year before they screw up the courage to actually write about it.

Another example of that is the CIA, excuse me, the National Security Agency wiretapping program. I don't know if it was the Times or the Washington Post, but they knew about that an entire year before they made it public, and they were in the process of negotiating with the pentagon and the other groups to get that information out there.

So sometimes, very much like looking at a star that's far away, you see what's happening, but sometimes you see it much later than it's actually really happening. Of course, what happens in that context is by the time you know about it, it's over.

The torture program is a classic example of this. By the time we, as the American public, began to understand that people were being tortured in Guantanamo, they were being tortured in Abu Ghraib, they were being tortured in these CIA black sites. By the time the government had to admit that, they essentially said well, we didn't do it, but if we did do it, we're not doing it anymore. It raises this question about what is it that we know, and how honest is the government really being with us.

The rendition program, the prison complex is Guantanamo. The question is how do you challenge those things. As a lawyer. How do you begin that process? Where do you start? In some ways, you can really focus on age old principles like Habeas Corpus, but it becomes Habeas Corpus in a new context.

For those of you that are going to become criminal lawyers or pellet lawyers, you'll be thinking about Habeas Corpus in the federal courts, in the state courts, and these are mechanisms that we use by statute and through the constitution. The state constitution, the federal constitution, where you, essentially, through legislative and judicial practice have to wait until everything is done in the state court process before you can raise Habeas Corpus.

But, how do you do it in the context of a program that was authorized by the president that's not actually on US soil, technically. Well, technically, it is on US soil, but it doesn't look like it's on US soil, where you don't know the names of the people you are trying to file Habeas Corpus petitions in front of. You've never met them, and you actually don't have an authorization as a lawyer to do it.

What we did is filed the petition as Doe petitions. Doe petitions, you'll find out, the idea is that the government cannot hide behind the fact that they're not telling you who's being held in order to keep them from asserting their constitutional rights. So, you can file things like Doe petitions. We don't know the names of the people, but we know that they're being held. We think there are X number of people that fall into this category, so here's the case.

What we did is we got next friend petitions. We worked with various groups. We worked with Amnesty International, Human Rights Watch, Reprieve, Caged Prisoners, all sorts of groups around the world, to begin to talk with people that were on the ground to find out, all right, who is missing?

Who do we think got picked up by the US military, and what's the likelihood they're in Guantanamo, and then we work with the family members to file next friend petitions, so that the

people that were in Guantanamo behind held incommunicado were our clients, but they were our clients through the next friend, which would be the family member that we had talked to.

So, we actually, when we filed the Habeas Corpus petition, we'd never met any of these guys. In fact, it wasn't until two years after we filed the case when the supreme court ruled in *Russell vs. Bush* that we actually got a chance to meet these guys. We filed the cases, it is everybody thought we were nuts.

Everybody thought this is the craziest thing, it's never going to work. It will never work. And we kept moving the cases, we kept moving the cases, and finally we get to 2004, two years after we file it, and we had not won in court ever. In 2004, we get to the supreme court.

The supreme court says well of course there is a statutory right to Habeas Corpus. There is a law that says Habeas Corpus applies, they did the analysis, they found that the US had control and dominion over Guantanamo by virtue of its lease and military authority. Therefore, the Habeas Corpus statute applies to the men in Guantanamo.

Therefore, the men in Guantanamo can go to federal court, and they can assert their claims. They can go before a judge, and the judge can make a determination as to whether you're behind held illegally or not. This is not a get out of jail free card. This is simply I need to go before a judge, and a judge is going to review the evidence and make a determination.

It was a huge win in 2004. It was enormous. And after that, people started coming out of the woodwork, and we'd use that decision. We were able to work with that decision to be able to recruit what are now over 600 attorneys to help us, some of them here in Seattle, in fact. Perkins Cooney, actually, is one of the firms that has been doing tremendous work. Where we were able to recruit folks and then create a Habeas Corpus team. They call themselves the Guantanamo Bay Bar Association, all these lawyers. There's a list served, and they begin to coordinate and connection information now, because we've now won the right to represent the men. The men have a right to go to court, but we don't know who the men are.

One of the things we did are filed a case called John... not John Doe. It was *Does 1-570 vs. Bush*. In that case, we sought the release of the names and the information of the people who were in Guantanamo.

To this day, to this day, the government has never, ever, released or confirmed the names of anybody that has been to Guantanamo. Ever. And we had to put this together piece... well, we had a supreme court victory in hand. That means we can go down to Guantanamo, and we begin to work out how a lawyer goes down to Guantanamo, getting all the various clearances.

We ran into, when we negotiated that, one of our lawyers, who's know with us, Gita Gutierrez, was the first lawyer. She was the first lawyer to go down to Guantanamo to meet with the men in detention. Many, many people have been down since. But, when you get down there, you then run into a problem, which you as law students, I want you to pay particular attention to, which is the client.

We all get sucked into represented the issue. We all get really pissed off and worked up about the issue, right? Those of us who are in public interest work, it's like the issue man, that's wrong, we need to do something about it. It's about the client. So, you get down there to Guantanamo, and then you have men who, at that point, who have been in detention, incommunicado, for two years. No family, no nothing.

In swoop, these American lawyers. I'm a big star wars fan, sorry. But, very much like Luke Skywalker who goes into Princess Leah and says, 'Hi, I'm Luke Skywalker, I'm here to save you.' These guys have no clue what to do with us, and it took a lot of work, and interestingly enough, a lot of training for the lawyers to learn how to be sensitive to what the needs of the clients are.

I'll just give you an example. As you recruit big law firms that do insurance defense, the SEC filings and all that kind of stuff, really great resources, wonderful lawyers that are used to representing institutional lawyers, they don't know from representing individual clients.

They don't know from representing individual clients that don't speak the language. They don't know from representing individual clients that have been accused of terrorism, and they also don't know from individual clients who have been in severe isolation for two years.

What you have is in a connection with all of these things is people who are obviously distrustful, but they're also beginning to deteriorate mentally. So we, as part of our litigation strategy, it wasn't just filing the cases, we also began to put on trainings, and we began to bring in people. We worked with W Hospital that has a torture victims program to bring in people for these Habeas Corpus lawyers so that we could actually begin the process of connecting with the clients, because you don't get anywhere unless that client trusts you.

So, that is sort of the, as law students, I just want you all to think about that as you go forward in your careers. It is the connection that you make with the client is the most important thing. At some level, the client will turn over his or her life to you. They will let you make a really drastic decision, or a drastic decision for them, and I would really urge you to spend the time, to revisit, and to give them a chance to really participate in that.

We've been trying to do that in the Guantanamo cases. All right. So, we get down there, we see the guys, we begin to hear these really weird stories. We begin to hear stories about people being tortured. We begin to hear stories about female guards coming in and rubbing the men's bodies, about flushing Korans down the toilet, about prostitutes coming in, Cuban prostitutes coming into the prison to taunt the men, about smearing menstrual blood on the men. Individual lawyers were saying, my gosh, these guys are really... they're just not... this is terrible. I think that they're going nuts, until the lawyers began to make the connections.

A lot of clients were saying these really interesting things. And I think a lot of lawyers went down there that said I can't believe the US government would torture these people, that would put them in stress positions, that would keep them awake 20 hours a day for months and months at a time. I don't think that would happen. And you would begin to hear these stories from different people. And you begin to see that they've actually had no connection with each other, so they really weren't able to get their stories straight. And that's how the broader picture of

torture began to be created.

Here's the point. The Supreme Court decision was great. Aside from the sweeping decision the most valuable piece of it was that you get lawyers into the mix. And when you get lawyers, or human beings - whether it's the Red Cross or whether it's lawyers into the mix, the government cannot operate with the impunity that it had been operating under before. Up to that point, it had not told anybody squat about what it did.

As soon as you get the lawyers into the mix, the lawyers begin to want to raise those issues in court. The government has operated and created a very strict secrecy agreement - I can't think of the word. It's not secrecy. It's... not state secrets. It will come back to me. It's... Mike, you can help me out here.

Mike: Confidentiality.

Vincent Warren: Confidentiality Agreement. Thank you. In terms of what you can and what you can't talk about as a lawyer. And it raises very interesting issues for you as a lawyer, because, number one, you have to abide by confidentiality agreements in order to represent your client. Number two, you can't abide by confidentiality agreements because you also have an obligation to talk to the courts about illegal activity that was done to your client.

So, you have to begin to navigate this. It becomes a personal journey for an attorney. It becomes a very personal journey where every attorney needs to be able to make decisions for themselves. I know that we said that we were going to keep this confidential, but this is illegal. And you can't keep illegal information confidential. Especially when you have an obligation to your client. So, they began to form strategies about how to inform the courts about these things by filing things in camera, by submitting them to the military for review before and then informing the court when the military was redacting everything.

The other thing that you should know, there was no attorney-client secrecy in Guantanamo. Every note that you take as a Guantanamo attorney, with your client, gets passed through the military. Every single one. Then they have to clear the notes, it has to pass a clearance test for you to get them back outside of Guantanamo. That's the world that we live in. And that's a very difficult challenge for lawyers.

Moving on. The next phase of the Guantanamo piece was the Hamdan decision. Shortly after Rasoole, the Bush Administration - nine days, actually, after the decision, the Bush Administration announced that it was going to - that there was no need for Habeas Corpus, because it was going to create a program that quacked like Habeas Corpus - it was almost as good as Habeas Corpus, but the military would control it, so you don't need to worry about the judges. It's called the DTA process and the CSRT process. What's the DTA, what's the CSRT? I told you before that the Supreme Court said in Rasoole that this statutory, the law, right to habeas corpus applies to the men in Guantanamo.

The DTA, the Detainee Treatment Act, which was passed very shortly after the Abu Ghraib scandal broke with all of those pictures where everybody was saying this is so awful, we need to

protect the detainees. We need to treat them well. Contained a couple of provisions, and one of the interesting provisions in the DTA was, by the way, we're changing the statute. Remember that statute that the Supreme Court said applied to the men in Guantanamo, we're actually rewriting the Habeas Corpus statute, and now it does not apply to the men in Guantanamo.

So, the Supreme Court deals a great deal to the Bush Administration. Congress comes back and flips the script. The other thing that the DTA did was that it created an alternative process that it said would not necessitate habeas corpus. And what that was, it said we don't need to go to federal courts. Here's what we'll do. We'll create a panel of military judges, and the detainee can go in front of the military judge, and the detainee will, through that process, the military judge will make a determination. And it will say, yes, this person is an enemy combatant, and they are legally detained at Guantanamo, or no, this person is not an enemy combatant, and they can leave Guantanamo. That was the idea.

Essentially, what habeas corpus does is determine whether you're illegally detained or not, and if you are, it provides you with the immediate right of release. What happened in the DTA process is they said we don't need courts, the military judges will do it. And there are all these other things that we're going to throw in there. But, you shouldn't worry yourself about it. And what were the other things?

Well, the detainee can go in, but the detainee doesn't get a lawyer. And the detainee doesn't get to see the classified information against him. And the detainee doesn't get a chance to appeal the case, and the detainee doesn't get a chance to call witnesses on his own behalf. But, they said, what we will do is we'll give a personal representative to the detainee, who is also a military official. But, what they... The little fine print on the personal representative is that it's a military office. And in the personal representative's job description, a personal representative has to disclose the information that the detainee tells him. So, there is literally no one that is advocating for the detainee whatsoever.

George Bush issued this broad process through executive order. In the Hamdan case, the Supreme Court looked at that and said because George Bush issued this process of - I'm sorry, it's the DTA's. The Military Commissions, which would be, sort of, the trial that comes at the end of the detainee's being held, the Military Commissions were issued by executive order, the court said, well, President, you can't issue these kind of broad case-related, and you can't create, essentially, a legal system just by executive order, you have to go through congress.

Another thing that we pointed out in the Hamdan case was that the Bush Administration had been taking the position that the Article three of the Geneva Conventions does not apply to the men in Guantanamo. Why? Well, because they're not prisoners of war. They're what we call enemy combatants. And we were saying, well, what, exactly, is an enemy combatant? And they say, well, it's someone who has taken up arms against the United States, but they don't wear the insignia of a foreign army. Because of the new war on terror, and the way this thing comes down, that it doesn't make sense for us to look at the old Geneva Conventions and to look at how prisoners of war were treated before.

So, in our conventional war, when you're on the battlefield and you capture somebody, you have

to detain them and you have to sort of jump through the hoops. You can also give them a battlefield hearing. Right? You don't have to go through a big, huge trial. You can make a determination as to whether they are combatant or they are civilian. Because in the final war, you don't always know who's a combatant and who's a civilian. And so the idea of that hearing was to be able to differentiate. And they said, well, we're going to take that concept, but we're going to be able to ship people to Guantanamo, and we're going to still give them battlefield hearings, but it's going to be in Guantanamo and not on the battlefield.

That was a tremendous problem for the Supreme Court as well. The Supreme Court dealt the Bush Administration another blow, basically that Article three of the Geneva Conventions applied to Al-Qaida people who are captured in the George Bush war on terror. They found that George Bush could not create the military commissions trials on his own, and they said only congress can do that. And then, that takes us to 2006 with the Military Commissions Act. And that's exactly what congress did. Congress said well, they're these trials at the end, and the Supreme Court said that President Bush can't really create it on his own, so we'll just create it for him.

So, they did the Military Commissions Act, and that is why you have these trials, like Salim Hamdan, who is Osama Bin Laden's driver, who was charged with all manner of things. He was charged with transporting surface to air missiles, he was charged with a conspiracy to commit terrorist acts, and he was charged with material support.

Through these Military Commissions trials, which were now done by congress, and which we oppose at the Center for Constitutional Rights, he was convicted not of surface to air missiles, and not of conspiracy, but he was convicted of material support. And so you ask yourself what was the materials support that he was convicted of? The material support was that he was Osama Bin Laden's driver. Literally. He drove Osama Bin Laden, so therefore, he is convicted of material support of terrorism. He ended up getting a sentence of roughly five months, and my understanding is that the government is trying to get that sentence lengthened in some manner. Yes.

Michele Storms: [off-mic]

Vincent Warren: OK. I'm going to cut it short. I'm going to talk very briefly about the recent case, Boumediene v. Bush. Here, there's obviously legal issues in Boumediene v. Bush, and it was that Boumediene dealt with the Constitutional right to habeas corpus, not the statutory right.

Does the constitution apply to the men in Guantanamo, and what context? If the habeas corpus applied to the men in Guantanamo, then the government still had an option to create another system that worked just as well. The Supreme Court gave us a tremendous victory.

We actually had seven possible scenarios of how that case was going to come out. And the least likely scenario from our view was going to be a full win. But, it was a full win. It found very distinctively that the Constitution does apply to the men in Guantanamo. It refused the administration's view that this DTA process, in which you have fake hearings in front of military officials where there's no ability to release anybody, is an adequate substitute for habeas corpus.

What's the takeaway? There are actually a couple. One is that the Boumediene decision is rather broad. I think, it begins to raise questions about other applicability. I haven't gotten into detailed discussions with immigration folks, but people seek to think that it's got a broader implication than just the men in Guantanamo, although the Supreme Court took great pains to narrow the decision.

The other piece that I think is extremely important, especially from this Supreme Court, is that in granting habeas corpus - and they not only recognized the right but a very crucial part of the right, which is the immediacy of the right. So, it wasn't allowing the Bush administration to say, "Well, we can just ship them to Diego Garcia or the Pul-e-Charkhi prison, or someplace else, " where frankly advocates would have a much harder time raising constitutional claims.

But, the Supreme Court said "No shenanigans. You need to start these processes, these hearings very quickly." And so, this month we expect that there will actually be habeas corpus hearings in Washington D.C. A number of people are working on them. We're very excited to see how these things work out.

But again, it's not a panacea. It's a bedrock fundamental right, but advocacy for the men actually goes on. The government has said of the 240 men that were there, that are there now, it has absolutely no intention of trying over 100 of them. No intention whatsoever - 120 of them.

And so, the question is, why are they still there and what are they doing there? The reason why they're still there is because the government will not release them to other countries. They want to release them to places like Syria, where people will be killed and tortured; to Turkmenistan; to Egypt.

And so, we're in this strange situation where we're representing the Guantanamo detainees, and in more than one case we've actually had to file for an injunction to keep the men from being released, because he was going to be released to a country that tortures.

So, essentially, the Center for Constitutional Rights and other groups are working - as the State Department should - spending a lot of time in Yemen. Most of the men in Guantanamo as of right now are Yemeni. All of the Saudis are out. All of the Europeans are out. A lot of these countries got their men out very early.

But now, you're left with poorer countries that have worse relationships with the United States, and it becomes a purely political process as to why these men are still there. So, we are combining our litigation with our political work.

Anyway, thank you all very much for being patient.

[applause]

Vincent Warren: Are there any questions.

Audience Member 1: [off-mic]

Vincent Warren: The question is the proceedings that are going on in D.C., the habeas corpus hearings, what level will they be at. They are currently in the district court of the District of Columbia.

Audience Member 2: Could you talk a little bit about the case of [off-mic]. There's been some [off-mic].

Vincent Warren: Yes, can you repeat the question? OK, the question is, can I talk a little bit about Maher Arar. Maher Arar is a Canadian citizen who the Center for Constitutional Rights represents.

Maher was traveling from another country through JFK in New York City to fly to Toronto, where he lives and where he's a citizen. His name showed up on a terrorist watchlist, and so the US government immigration officials stopped him. They questioned him. It is not clear whether the FBI and the CIA were brought in, but there were other agencies that were involved.

They were questioning him because they thought that he had information on terrorist. Well, he didn't have any information on terrorists. They kept him for two weeks in isolation in the detention center in Manhattan. And then, they sent him to Syria. Not to Canada, but to Syria, where he was tortured brutally for ten months.

Just to recap, a Canadian citizen, American officials send him to Syria rather than to Canada. We represented him. We filed a lawsuit based on the 6th Amendment with respect to his right to an attorney, which was denied, and the 8th amendment and other things.

The case is against officials, George Tenet, John Ashcroft. That's what makes it interesting and also perilous from an immunity perspective. But, the question is, clearly if they had tortured him in the Metropolitan Detention Center in New York where they sent him, they would all be liable for torture. There would be no constitutional question.

But, the question that we raised is, if the US government sends him to Syria for the purpose of being tortured to get information from him, can they be liable? We of course say that they should be. The government says, "Oh, we didn't send him to Syria to be tortured. We actually just removed him and deported him under our plenary immigration authority." It's true, they made that argument in court.

But, here's the piece that that gentleman was talking about. This is really interesting. We lost terribly in the district court. We appealed it to the Second Circuit. We argued it and lost in the Second Circuit recently. We were going to file a motion for reconsideration. And for the non-lawyers in the room, that means you're saying that the judge has got it wrong and needs to rehear it in light of this other information.

This very interesting and unprecedented thing happened, where the Second Circuit sua sponte - and I'll translate this - said that they wanted to rehear the case en banc. We didn't even file the

motion to reconsider. So, what we think is that the broad Second Circuit is very interested and thinks that the panel got it wrong.

But, the people in the room that are not lawyers, it's basically like getting a tax refund before you file your return. It's amazing. [laughs] The court said, "You know what, we think something was messed up, so all of the judges that are involved in this panel are going to hear this case."

So, that's the interesting development. That case, I believe, is argued on December 5th. You can check on our website, ccrjustice.org for updates on that. Anybody that's going to be in New York, we're going to be packing the courthouse, so you can come check that out as well. Any other questions? I'll take one more question. Yes?

Audience Member 3: [off-mic]

Vincent Warren: Well, this was way back in the beginning. Back in the beginning, there were a number of groups that I know. I'm not clear about the National Lawyers Guild, and I know that since then the Lawyers Guild obviously has been very deeply involved and supportive.

But, there were other legal and non-legal organizations that frankly didn't want to touch it. I think, people have come around and now everyone is working extremely collaboratively and cooperatively, because you can't do this alone. And that was our theory in the beginning. We can't do this alone, we're going to need a lot of people.

But, I think, honestly, one of the things that separates the Center for Constitutional Rights from all of the other organizations - and I know, because I used to work at the ACLU - is that we respond to cases really quickly. Quickly and fearlessly. We're a relatively small group of people. For example, we filled a lawsuit against the Blackwater corporation one month after the Nisour Square shooting that happened in 2006.

Most organizations have to go through a much broader vetting process to that happening. But, eventually, I think we are in the process of setting the tone for this. And we're not doing it for our own glory obviously, but some of these things need to happen quickly. We're always very happy when other groups come around and want to support or complement the work that we're doing.

Anyway, thank you all very much, and thank you all so much for being patient. And I'm sorry that I was late.

[applause]

Transcription by CastingWords