

War Criminals in the White House?

A Conversation with Michael Ratner of the Center for Constitutional Rights

“THE PRIVILEGE of the writ of habeas corpus” — that is, the right to challenge one’s imprisonment before a judge — “shall not be suspended,” says Article I, Section IX of the U.S. Constitution, “unless when in cases of rebellion or invasion the public safety may require it.”

Do Muslim guerrillas fighting U.S. troops in Afghanistan represent such a “rebellion or invasion”? What about Muslims in Pakistan or Sudan arrested in sweeps aimed at disrupting Al-Qaeda? What about American citizens or foreign nationals on our own soil who may be plotting terrorist incidents? Following the attacks of September 11th, 2001, President George W. Bush issued an executive order that deemed all such people to be unworthy of habeas corpus protection. Within four months, twenty prisoners from Afghanistan were arriving at Guantánamo Bay, a U.S. military base on the island of Cuba, for indefinite detention. Five weeks later, the Center for Constitutional Rights (CCR; www.ccr-ny.org) was filing a habeas petition on behalf of three of them.

CCR was founded in 1966 by activist attorneys Morton Stavis, Arthur Kinoy, William Kunstler, and Ben Smith, with funds mostly organized by another progressive lawyer, Robert Boehm. In its first year, CCR convinced the Supreme Court to ban state ‘anti-sedition’ statutes that were being used to harass and prosecute civil rights activists and attorneys. CCR also defended the Selma-to-Montgomery civil rights marchers and challenged the seats of five Mississippi congressional representatives on the grounds of voter discrimination.

Other notable CCR cases through-



Michael Ratner speaks at Washington, DC rally in January, 2007 calling for the closure of the Guantánamo Bay prison facility.

out the decades have included the defense of the Chicago Eight (1968); the defense of H. Rap Brown and Black Panther leaders against the FBI’s COINTELPRO conspiracy (1968); several suits that laid the groundwork for the Supreme Court’s *Roe v. Wade* decision of 1970; defense of prisoners involved in the Attica State uprising of

1971; defense of the Vietnam Veterans Against the War against government misconduct (1972); the outlawing of forced sterilization (1975); the protection of women’s right to self-defense against battery and rape; the protection of international human rights in Haiti, Chile, Argentina, Paraguay, El Salvador, Puerto Rico, the Philippines,

Photo by Jonathan McIntosh

and elsewhere; against nuclear weapons proliferation (1983); in protection of flag-burning as an exercise of free speech (1989); protecting the right of religious groups to give sanctuary to Guatemalan and Salvadoran refugees (1991); holding Haitian dictator Prosper Avril responsible for torture (1994); opposing environmental racism in Louisiana (1998); blocking New York Mayor Rudolph Giuliani's privatization plan for public hospitals (1999) — and many, many other cases that have given impetus and protection to the movements for civil rights, human rights, women's rights, and social and economic justice.

Michael Ratner has been the president of the CCR since the 1990s and has spent nearly the entirety of his law career there. An expert on international law, war, and human rights, he has litigated numerous cases opposing wars initiated by the U.S., including the Persian Gulf War and the bombing of Kosovo by the Clinton administration. Ratner also successfully sued on behalf of victims of the Bosnian Serb leader, Radovan Karadzic, for war crimes.

He has been a lecturer on international human rights litigation at Yale Law School and Columbia School of Law, and has served as president of the National Lawyers Guild. In 2006 the *National Law Journal* named him one of the hundred most influential lawyers in the United States. Ratner's awards include the Columbia Law School Medal of Honor (2005), the Marshall T. Meyer Risk-Taker Award (2005), the Brandeis University Alumni achievement award, the Lennon Ono Peace Grant, and numerous others.

His leadership has been outstanding regarding the issues of habeas corpus and torture raised by George Bush's handling of the 'War on Terror' and by the war in Iraq. CCR was the first

organization to involve itself with the Guantánamo detainees, and its headquarters on Broadway in the East Village of Manhattan now serves as the 'command center' for a coalition of dozens of concerned organizations.

CCR convinced the Supreme Court to declare in 2004 that detainees can challenge their detention in federal courts (*Rasul v. Bush*) and that U.S. citizens cannot be detained without due process of law (*Hamdi v. Rumsfeld*). Following these rulings, Congress passed the Detainee Treatment Act, which strips detainees of their right to habeas corpus; President Bush signed it into law on the last day of 2005. CCR has continued to press on these issues, and on June 29th, 2007 the Supreme Court announced that it would hear the cases of the Guantánamo detainees during its next session, which begins in October.

On November 14th, 2006, Berlin attorney Wolfgang Kaleck filed a 400-page complaint in a German court on behalf of CCR and more than forty other groups charging former Defense Secretary Donald Rumsfeld, Attorney General Alberto Gonzales, former CIA Director George Tenet, and other high-ranking American officials with torture and other war crimes committed in Iraq, Afghanistan, and Guantánamo. Twelve Iraqi citizens who were held in the Abu Ghraib prison, and one Saudi citizen still held at Guantánamo, were among the complainants. The suit garnered considerable publicity before German Federal Prosecutor Monika Harms announced in April of this year that she would not pursue an investigation since the crimes were committed outside of Germany and the defendants neither reside in Germany nor are currently located in Germany. In fact, Germany has a law of universal jurisdiction that expressly states it to be a universal duty to fight torture and other serious crimes, no

matter where they occur or what the nationality of the perpetrators and victims is.

JEWISH CURRENTS met with Michael Ratner in June to discuss this and other CCR cases.



JEWISH CURRENTS: We understand that General Janice Karpinski, who oversaw Abu Ghraib, was with you in Germany, ready to testify.

MICHAEL RATNER: Yes, and we told this to the German prosecutors when they said they didn't think they could do an adequate investigation of the case. General Karpinski took a risk in going to Germany to testify, because she could have been indicted herself.

We're appealing now in the German courts, and we're also looking at going to Spain with a slightly different case involving two Guantánamo detainees who were tortured. Spain may be slightly more open right now than Germany to this kind of case. Judge Baltasar Garzón, who pursued the case against Chile's Pinochet, has even made a public statement that he wishes he could get a case against President Bush for 'aggressive war' regarding Iraq.

Unfortunately, American involvement with torture is not limited to the post-9/11 period. I've had as clients Black Panthers who were tortured by police, and the School of the Americas has certainly trained Latin American forces who engaged in torture. What's different about the present situation is that our torture has been open, public, and notorious — and has been provided a supposedly legal basis by the lawyers of the Bush Administration, who basically said that the president can torture in the name of national security. They're almost proud of it: Dick Cheney goes on television and

says about water-boarding, which is recognized as torture — *Well, what's a little dunk in the water?*

JC: What is it like to go to Guantánamo as an attorney?

MR: I haven't been there on this round; my first Guantánamo cases, which were the only ones ever before, involved HIV-positive Haitians who were put into a special camp there in the early 1990s. I spent a lot of time in Guantánamo then, and I called it "Dante's Ninth Circle of Hell." We closed that camp successfully, and there was a brief halt before the place was used again.

Guantánamo is horrendous in every way. Getting there is horrendous: You have to get security clearance for yourself and your translator; you take a small plane from Fort Lauderdale; you get ferried across what I used to call "the River Styx," where the prison is; you get into a small room; your client is usually shackled to a chair or the floor; there's a video camera on at all times (it supposedly doesn't pick up the sound); notes you take have to be given to the guard outside the room — they're eventually sent to a secure facility in Washington, which is the only place our lawyers are permitted to do their work.

The government has done everything it can to make it impossible for us. We couldn't get lawyers into Guantánamo until we went to the Supreme Court. Then our clients were told, "Your lawyers are Jewish," or whatever else was needed to sow distrust among Muslim prisoners. And we didn't know any of their names to start with, of course. The only way we could learn their names was from families. When we finally took on our first dozen clients, it took hours, or days, or sometimes even months, before they would trust us. It would help if we could bring a letter from the family urging the prisoner to trust us.

The Center took on the first Guantánamo cases — the four of us who started all have Jewish origins, by the way — but there are now some six hundred attorneys from a very broad spectrum of groups, including conservative Republicans, representing

legal obligation. Different legal strategies are being used, but we do try to coordinate through discussion that's based here at the Center.

JC: Do you think a Democratic victory in the next election would make a

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detainees. These detentions have become central to people's understanding of what this administration is doing to the Constitution. The idea that you can take away the right of habeas corpus, the right to go to court and challenge your detention, as a matter of executive power, is anathema to anybody who understands law and what a police state is.

JC: With many different groups now involved, how do you all coordinate your activities and divide up responsibilities?

MR: At the beginning, there were no human rights organizations willing to get involved. They were frightened about public reaction, so close to 9/11. We were out there by ourselves. But once the Supreme Court ruled against Bush, all of these other lawyers became involved. We now have a room in the Center with computers that host confidential listserves and e-mail services; we have monthly trainings for lawyers; there are weekly phone calls among groups represented by those six hundred attorneys. There's some division of labor, but there are limits to how much we can work together. If you represent one client, and you think it's in his best interest to pursue his case differently from how I'm pursuing mine, you're going to go ahead and do that unless I can convince you otherwise. That's your

significant difference when it comes to issues of detention and torture?

MR: I don't know. I don't think the Democrats would have taken us into the Iraq war — but I have felt betrayed in the past when Democrats were in the White House. The first round of Guantánamo imprisonment, with the Haitians, was put into place by Bush the First. Before the 1996 election, Clinton promised us that they would close the HIV camp, lift the HIV exclusion for people coming to the U.S., and they would not send all the refugees from Guantánamo back to Haiti. I met with him, I met with Hillary, I met their whole team. But a week before Clinton took office, he said that he was *not* going to change any of the policies or close the camp. We then had to litigate against Clinton, even though we knew everyone in the administration, including HIV activists, who told us: *The last thing this administration wants to do is bring into this country a black, HIV-positive immigrant.*

Today, the easiest thing for the Democrats in Congress to do would be to restore the writ of habeas corpus, which is, on a procedural level, what these cases are all about: whether or not, when the government grabs you by the neck and throws you into jail, they can simply 'disappear' you. The Democrats are making sounds about it, but when it comes to voting, we're

so far not getting the right restored.

JC: Are any of the major candidates, as far as you know, willing to swim against the tide on this issue?

MR: Certainly not among the Republicans; one of those guys said he wants to double the size of Guantánamo!

JC: What is the scenario you would have liked to see following the attacks of 9-11?

MR: The wrong response was very clear: treating this as an act of war when it could have been handled by our criminal law system. It was wrong to escalate a problem we had with a small group of Al-Qaeda warriors, non-state actors, by going global with attacks on countries. I would have called the World Trade Center attack a ‘crime against humanity’ on an international level, ‘murder’ on a national level, and dealt with people through the criminal law system, not through places like Guantánamo. You interrogate people — without torture

— and then charge them with a crime and take them to a court. (We have some disagreements within even our own team about whether that should be a uniform court of military justice or a criminal court.)

I’m not at all one of those conspiracy theorists who suspect that 9/11 was either fomented or executed by our own government to create more of a police state. But it certainly has provided cover for implementing a lot of long-sought changes by the Rumsfeld-Cheney crowd: beefing up the intelligence agencies; getting rid of the FBI guidelines; getting rid of the War Powers Resolution; increasing executive power. This administration was very opposed to the kind of accountability that had been installed post-Vietnam, especially under Jimmy Carter.

JC: What do you make of that drive for power? You’re a worldly guy; you’ve had encounters with people with power. What do you make of them — men like Cheney or Rumsfeld, who can instigate policies of torture, and then lie to us about it? Do you think they go to bed at night with a clean conscience, believing that they’re serving the public good?

MR: That’s a difficult question, and I don’t have a really good answer. I think they probably don’t concern themselves much with matters of conscience, and it’s clear that they don’t care very much about human beings, particularly about people who are different from them. To carry out those kinds of policies — to bomb Iraq the way we did, without any clear and certain reason for it — how can you care about other people? I think they’re simply devoted to furthering what they see as U.S. interests, hegemonic interests, without much regard for the human consequences.

They definitely don’t seem to be-

lieve in the written Constitution and its fundamental rights. They think that U.S. hegemony is *it*, and that anything is justified to be able to continue U.S. domination and empire.

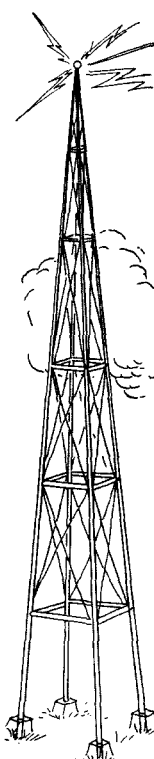
In the cases of Cheney and Rumsfeld, they’re also major capitalists, with huge amounts of money. They’re major corporate guys, and they’re devoted to spreading their power around the world.

JC: What about you? Do you believe in law and the Constitution? In the Jewish tradition, you know, the people are portrayed as being organized out of slavery and mindlessness by being given ‘the law.’ Do you think of the law as having some kind of progressive arc?

MR: To me, there’s good law and there’s bad law. The Center for Constitutional Rights’ origins were never about law as an organizing principle, but about using the law to advance progressive social struggles. It was the Southern civil rights movement, with its mass arrests and state repression, that led Morty Stavis to found the Center, to protect people who were fighting for equality and justice.

We did not come out of the tradition of the ACLU — of defending the guy who’s a neo-Nazi who wants to exercise his constitutional right to march in Skokie. I’m not saying that guy shouldn’t be defended, only that the personal interest of Morty, and me, and Arthur Kinoy and Bill Kunstler, was to defend people whose causes we believe in: anti-war, civil rights, the Indian rights movement, etc.

So the Guantánamo cases have caused a bit of consternation at the Center. These were not going to be people whose general causes we believe in. In fact, when we took these cases, we were told that these detainees were, among jihadists, the worst of the worst — although in the five years



ON JULY 20TH, a federal appeals court ordered the Bush administration to turn over “virtually all its information on Guantánamo detainees who are challenging their detentions,” reported the *New York Times*. The decision “effectively set the ground rules for scores of cases by detainees challenging the actions of Pentagon tribunals that decide whether terror suspects should be held as enemy combatants.”

On the same day, the White House reauthorized the CIA’s use of “severe interrogation methods” with detainees in secret prisons overseas.

since, while the number of captives at Guantánamo rose to more than 750, only ten have ever been charged with offenses — and none have yet been found guilty at trial. In fact, only eight percent have been classified by the government as al Qaeda fighters, and Guantánamo officials have admitted that three out of four of the detainees have no intelligence value to the U.S. whatsoever.

But even before we knew all that, we saw the situation this way: There's less overt social struggle going on in our country, yet more repression in terms of fundamental rights. If we want to preserve any semblance of democracy, and any chance for there to be peaceful social struggles again in America, we have to defend those fundamental rights, particularly at a time when no other organization is willing to do so.

JC: CCR has some cases going about corporate accountability, or what's usually called corporate "social responsibility." The movement to pressure corporations to adopt socially responsible policies through shareholder campaigns and screened investing has become pretty huge in the past thirty years. How seriously do you take this strategy of reforming corporations?

MR: We approach the issue differently from the people who try to make codes for corporate behavior — environmental codes, no sweatshop codes, and all that. We don't buy that strategy, we think the codes often serve as covers for corporations to be able to continue to operate badly. Corporations are just too ungoverned and have incredibly too much power in this world; we don't believe that codes are going to make much difference.

We sue corporations for their misdeeds, for really gross violations: the torture and enslavement of workers,

criminal neglect in matters of safety, serious human rights crimes. So we're at the edges of the social responsibility movement — we want accountability for the irresponsible. Of course, we have social screens on all our investments and we take it seriously for our own operation.

There's an historical and philosophical reason for the growth of the social responsibility movement: namely, socialism has not been successful, not as an economic system, not as a political system. There are still a lot of social activists out there who want to make changes — but it has to be done in a capitalist framework.

JC: CCR also has brought charges of war crimes and crimes against humanity against Lieutenant General Moshe Ya'alon, the Israeli military's former chief of staff and head of intelligence, in connection with the 1996 shelling of a United Nations compound in

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southern Lebanon. Last December, the U.S. District Court for the District of Columbia dismissed your case. You've also brought a war-crimes suit against Avi Dichter, the former director of Israel's General Security Service, on behalf of the Palestinians who were killed or injured in a 2002 air strike in Gaza. This suit has also been dismissed, in May of this year. How and why has Israel come onto CCR's docket list?

MR: It's certainly one of the most difficult issues in this country to look at: Israel and Palestine. There are a lot of social justice groups in the U.S. that are doing very good work, but they won't take that one on.

Over the years, we've had a lot of discussion about the issue, and there are several factors that weighed in on the side of our involvement. One is that Israel is the main recipient of U.S. aid, which means that our government is deeply involved in human rights violations, particularly in Lebanon.

JC: But Egypt, which also gets a ton of U.S. aid, is known to torture its dissidents . . .

MR: And if a known Egyptian torturer came to the U.S., we would have no hesitation about going after him. That's the first factor: U.S. involvement. Those were American-made cluster bombs being used by Israel in Lebanon. Aryeh Neier and Human Rights Watch, by the way, did an excellent job on the issue, and they've been slammed for it.

And that's the second factor: Oftentimes, we'll do cases that other

groups won't take on. When it comes to Israel, there is no other progressive organization with any clout that is willing to take on Israeli human rights violations. We're not singling out Israel — our work includes taking on issues of human rights violations, aggressive war, and so on, in various countries — but we're not exempting Israel from our scrutiny.

The third factor is strategic, based on our thinking about how to get more peaceful conditions in the Middle East: We think Israel has to change its policies toward the Palestinians and toward the overall issue of peace.

JC: The National Lawyers Guild, which you headed for a term in the

1980s, has something of a reputation for singling out Israel, among all the world's human rights violators. Do you think the heavy presence of Jewish lawyers in the Guild and in CCR has something to do with this?

MR: Yes, I think there's something with Jewish lawyers — on both sides. There are Jewish lawyers who defend Israel no matter what it does, and there are Jewish lawyers who come out of a human rights tradition and feel that Israel's policies do not speak to what it really means to be Jewish.

JC: CCR has won some very basic legal breakthroughs during its years, in cases before the Supreme Court. Do you fear having this legacy overturned by the current Supreme Court?

MR: I came of age, as the Center did, in the time of a relatively liberal Court, the Warren Court. We didn't lose a single civil rights case in the Warren Court until 1971, when we lost an integrated swimming pool case called *Palmer v. Thompson*.

The Court often reflects what's going on in the streets. Not always — in Roosevelt's time, the Court went against the New Deal, for example. But often there is a relationship between Supreme Court rulings and popular struggles. That's part of how CCR looks at the future: We never count on litigation to be the main agent of change, but to be a source of support to a social movement for change.

Obviously, we're not looking at a promising scenario out there. With Justice O'Connor on the Court, we were winning decisions 5-4 and 6-3. Now, we're losing decisions 5-4. We've just been delayed for another year on Guantánamo, 5-4 . . .

JC: You don't see that announcement to review the detention policy as a victory?

MR: Not for people who have been denied habeas corpus for years, no. It's another delay for them.

Some of this Court's decisions are truly unbelievable — unbelievably terrible, and unbelievable as law. The recent Title 7 decision, about suing for wage discrimination within 180 days — I used to be a Title 7 lawyer, and I can tell you that the decision will gut the power of redress for workers unless the Congress does something about it. The decision on what they call partial-birth abortion, the way in which they spoke of women as not being fully aware of the consequences of their actions — Justice Ginsburg went completely bananas about that decision, and correctly so. So we're in a very negative time in U.S. history — and not just in terms of Guantánamo. We're at the tipping point of a sort of dark age, in my view, and not just on the rights that I litigate.

JC: There seem to be so many ways in which the American people are *not* rising to the occasion. They're willing to rip up the Constitution, it seems, if they're told that it will bring them security; they buy into corporate culture to the extent that some young people are wearing corporate logos as tattoos! Progressives are looking at a lot of frustrations, a lot of defeats. How do you manage to stay inspired to confront these really powerful and scary people, in a sustained way? How do you get up each day to do this work?

MR: It's just in my nature. I'm not interested in spending my life with a fishing pole. And I believe what Bill Kunstler used to say, that anyone who believes in freedom has to understand that it's essentially a constant struggle; every time you make a gain, they're going to push it back. What are our real choices but to act, if we have any belief in dignity and freedom?

I also feel obliged to remember that

I'm not really the victim, here! When we get depressed about our progress with Guantánamo, for example, I think: All right, so we lost another case in the Supreme Court, but this is not about *me*. The ones who are really hurting are the guys sitting in Guantánamo — four of whom have allegedly committed suicide. Or my Haitian HIV refugees: It was hell for me to visit their families and see, over and over again, how much they were suffering.

I recently sent a photo to some associates in Europe who are looking to establish a sister organization to the CCR over there. It was a picture of a group of refugees in the middle of the Mediterranean, between Malta and Libya, hanging onto a tuna raft. No ship would pick them up, because there is no country that will take them. They were going to drown. Now, can't we do something about this? It's a complete outrage — how can countries in Europe just let people drown in the Mediterranean?

The Iraq war has shown me that the U.S. is in a very bad, very dark situation, and I don't see how we're going to get out of it — Iraq is a much bigger strategic loss for our decision-makers, even, than Vietnam was. Our country has crossed a divide in terms of how we look at war, how we look at the Constitution, how we look at human rights. So there are times I think, *What am I doing? I'm going to win a few civil rights cases while the country slips into imperial decline!*

If we're really lucky, we may be able to look back in fifty years and express our regrets, the way we did about the detention of the Japanese during World War II — but I'm not yet seeing how we're going to achieve the paradigm shift that would enable that to happen. We don't have a people's movement to force the country back to our senses, as a country — and that has me very concerned. ■