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John Adams Project: Standing Up for Justice In The Military Commissions Proceedings

"It is when the stakes are the highest and when tempers run the hottest that we must work doubly hard to keep a check on our government and prevent it from trading in our values for visceral and political motives ... It is during the most challenging situations that our country's values are most intensely tested... "
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Protecting the Rule of Law

The ACLU and NACDL are assembling defense teams to be available to assist in the representation of detainees facing prosecution at Guantánamo. We are taking this step because of our grave concerns that the Guantanamo military commissions process does not reflect our country's commitment to justice and due process. The military commissions' authorization of the use of coerced evidence possibly derived from torture, secret evidence, and hearsay is unconstitutional and counter to American traditions of fairness and justice.

In **Hamdan v. Rumsfeld**, the Supreme Court ruled that the original military commission system established by President Bush to try detainees at Guantánamo Bay was unlawful because it had not been authorized by Congress. Unfortunately, in 2006, Congress provided that authorization when it passed the **Military Commissions Act (MCA)**, legitimizing a system of military tribunals that fails to meet minimum due process standards. At the same time, the MCA stripped Guantánamo detainees of their right to habeas corpus, thus limiting their ability to challenge the legality of any conviction or sentence resulting from the military



Legal Director Steve Shapiro on rulings regarding the unlawful detention policy at Guantánamo Bay

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commission proceedings. The legislation also provides retroactive immunity to government officials who authorized torture and abuse, and permits convictions based on coerced evidence obtained through torture.

The ACLU and NACDL have consistently and vehemently condemned the grave flaws of the Military Commissions Act, so far to no avail. Now, we are confronted with an egregious situation, the upcoming prosecution of several detainees under the procedures established by the Military Commissions Act.

Lawyers

- ▶ [JOSHUA L. DRATEL](#)
- ▶ [THOMAS ANTHONY DURKIN](#)
- ▶ [NINA GINSBERG](#)
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There has never been a more urgent need to preserve fundamental privacy protections and our system of checks and balances than the need we face today, as illegal government spying, provisions of the Patriot Act and government-sponsored torture programs transcend the bounds of law and our most treasured values in the name of national security.

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John Adams Project - Lawyer Biographies

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THE JOHN ADAMS PROJECT:
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Already, some of the most prominent and experienced criminal defense lawyers in the U.S. have been recruited to represent the high-value detainees described below. These lawyers all have experience defending cases involving charges of terrorism and issues of national security. Additionally, the attorneys who will represent detainees charged with capital offenses also have experience with death penalty cases.

Although the project organizers are still identifying lawyers to participate in this project, below are descriptions of some of the lawyers who have agreed to represent the high-value detainees, including those currently facing charges by military commission. All of these lawyers have received an "AV" Peer Review Rating by Martindale-Hubbell, which is the highest rating a lawyer can receive and indicates a reputation among his or her peers for having achieved professional excellence. In addition, all but one currently holds or has previously held a national security clearance.

Joshua L. Dratel

Joshua L. Dratel has defended criminal cases in state, federal and military courts since 1982. Mr. Dratel has extensive experience in both terrorism and death penalty cases and is considered to be an expert in issues related to the use of classified evidence in criminal proceedings. For example, Mr. Dratel defended Wadiah El-Hage against charges related to the U.S. embassy bombings in East Africa in 1998 in the case of *United States v. Usama bin Laden*. That case involved extensive litigation of issues related both to the use of classified evidence and to the imposition of Special Administrative Measures that restricted Mr. El-Hage's ability to assist in his own defense. Mr. Dratel also defended Mohamed El-Mezain in the case of *United States v. Holy Land Foundation*, which involved allegations of material support for Hamas (a designated terrorist organization) and also required considerable litigation regarding national security issues. Mr. Dratel has also been a member of the capital defense panel for the federal court in the Southern District of New York, and has served as lead and learned counsel in a number of federal death penalty cases. He is also a member of the Capital Punishment Committee of the Association of the Bar of the City of New York, and chairs its *amicus curiae* subcommittee. As noted above, Mr. Dratel also served as lead and civilian defense counsel for David Hicks, an Australian citizen charged by military

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commission and detained at Guantanamo Bay.

Mr. Dratel is a past president of the New York State Association of Criminal Defense Lawyers, is on the Board of Directors for the National Association of Criminal Defense Lawyers (NACDL), and serves as co-chair of NACDL's *amicus curiae* committee. He has co-edited two books related to the treatment of detainees and other prisoners in the ongoing "war on terror," including *The Enemy Combatant Papers: American Justice, the Courts, and the War on Terror*, Cambridge University Press (forthcoming in 2008), and *The Torture Papers: the Road to Abu-Ghraib*, Cambridge University Press (2005). He has written numerous law review articles challenging the constitutionality of the Classified Information Procedures Act as it is applied to deny criminal defendants access to evidence, as well as Special Administrative Measures that limit the defendant's ability to assist in his or her own defense. In 2006, NACDL awarded Mr. Dratel the Robert C. Heeney Award, which is the organization's most prestigious award, given annually to the one criminal defense attorney who best exemplifies the goals and values of the association and the legal profession. He has received numerous other awards and commendations from NACDL and other legal organizations for his work on behalf of criminal defendants.

Thomas Anthony Durkin

Thomas Anthony Durkin has been practicing criminal law in Chicago for almost thirty-five years and has a wealth of experience defending clients in complex cases, including cases involving classified evidence and allegations related to terrorism. For example, Mr. Durkin represented Dr. Abdelhaleem Ashqar, who was charged with providing material support to the Specially Designated Terrorist Organization, Hamas. That case required extensive pre-trial litigation regarding application of the Classified Information Procedures Act. Mr. Durkin also served as lead trial counsel for Matthew Hale, the self proclaimed Pontifex Maximus of the World Church of the Creator, an avowed white supremacist organization, on widely publicized charges that Hale solicited the murder of U.S. District Court Judge Joan H. Lefkowitz. The FBI designated Mr. Hale's case as a "domestic terrorism" case, resulting in the Attorney General's decision to impose Special Administrative Measures that restricted Mr. Hale's ability to assist in his own defense. Mr. Durkin successfully challenged several of these restrictions on Sixth Amendment grounds. In the civil arena, Mr. Durkin challenged the constitutionality of the U.S.A. PATRIOT Act on behalf of the Global Relief Foundation, Inc., an Islamic charity whose assets were blocked after the attacks of September 11, 2001. Mr. Durkin is also lead counsel for two men currently imprisoned at Guantanamo Bay, Walid Mohammad Haj Mohammad Ali (ISN 081) and Abdul Raham Houari (ISN 070). He presently serves on the National Association of Criminal Defense Lawyer (NACDL)'s Select Committee on Military Tribunals and Terrorism.

Mr. Durkin, a former Assistant U.S. Attorney for the Northern District of Illinois, also has considerable experience with the death penalty. Not only has he represented defendants in capital cases, he currently serves as Chairman of the Expert Panel for Capital Appointments for the United States District Court for the Northern District of Indiana. Mr. Durkin also serves as a liaison to the United States Court of Appeals for the Seventh Circuit's Judicial Council Committee to Study the Appointment of Counsel for Indigent Habeas Corpus Petitioners under a Sentence of Death. Mr. Durkin is currently listed in the Illinois "Super Lawyers" Magazine indicating he is rated among the top 5% of Illinois lawyers.

Nina Ginsberg

Nina Ginsberg has been practicing criminal law since 1978. Her practice concentrates on complex criminal trial and appellate litigation, with a focus on financial and government fraud, espionage, Patriot Act and other international litigation, money laundering and professional ethics. For example, she represented a former US Air Force intelligence analyst on charges that he offered highly classified information to China, Libya and Iraq in exchange for

millions of dollars in a case in which the government sought the death penalty--the first attempt to obtain the death penalty in an espionage case since the prosecution of Ethel and Julius Rosenberg in 1951. She also represented an FBI agent charged with selling national secrets to Russia, a case which required extensive litigation regarding the use of classified evidence, and represented an Australian intelligence analyst who tried to sell national secrets on the international market, which required her to obtain evidence from foreign countries. She is considered an expert on the application of Classified Information Procedures Act (CIPA) in criminal cases, and has been appointed by the court to serve as CIPA counsel in a terrorism case where trial counsel lacked a security clearance. Ms. Ginsberg also has experience litigating death penalty cases. For example, she represented a MS-13 member in a federal death penalty case, which required her to obtain mitigation evidence from foreign countries.

Ms. Ginsberg received the Presidential Commendation Award from NACDL in 1989, 1990, 1995, 2001 and 2007 and was named one of the 75 Top Lawyers in Washington by Washingtonian Magazine (April 2002). She has served on NACDL's Board of Directors, and its National Security and International Affairs Committees. Ms. Ginsberg is also one of the NACDL delegates to the United Nations. Ms. Ginsberg is currently a member of the Editorial Board of the Criminal Law Advocacy Reporter, is on the Board of Governors of the Virginia State Bar Criminal Law Section, and served two terms as a Virginia State Bar Council member. She is a frequent lecturer and commentator to state and local bar associations and the National Association of Criminal Defense Lawyers and on local and national news programs. Additional information about Ms. Ginsberg may be found at www.dimuro.com/attorneys/attginsberg.html.

Nancy Hollander

Nancy Hollander has practiced criminal law for thirty years and has considerable experience defending clients charged with offenses related to terrorism and national security. For example, Ms. Hollander was one of the lawyers representing Wen Ho Lee, a scientist accused of stealing secrets about the United States nuclear arsenal for China. She handled many of the issues relating to the suppression of evidence against him and issues relating to the Special Administrative Measures to which he was subjected. She is currently lead defense counsel in *United States v. Holy Land Foundation*, a multi-defendant case involving allegations of material support to the Specially Designated Terrorist Organization, Hamas. That case has involved significant litigation over the use of classified evidence and foreign intelligence. Ms. Hollander also served as a consultant to the defense in the first case in Ireland charging a defendant with directing terrorism and has assisted counsel in other international cases. She has coordinated and taught training courses for criminal defense lawyers wishing to appear before the International Criminal Court and the International Criminal Tribunal for the Former Yugoslavia, was the coordinator of a jury trial training project in Russia, has served as a consultant to the United Nations Development Programme in Vietnam and was a founding member of the Council of the International Criminal Bar for lawyers who will appear before the ICC. Ms. Hollander is lead counsel for Mohamedou Ould Slahi, a Mauritanian man currently imprisoned at Guantanamo Bay.

Ms. Hollander is Past-President of NACDL, and is a Fellow of the American College of Trial Lawyers and the American Board of Criminal Lawyers. In 2001, she was named as one of America's top fifty women litigators by the National Law Journal. She is listed in The Best Lawyers in America, the National Directory of Criminal Lawyers, New Mexico Super Lawyers and the International Who's Who of Business Crime Lawyers. In 1987, NACDL awarded Ms. Hollander the Robert C. Heeney Award, which is the organization's most prestigious award, given annually to the one criminal defense attorney who best exemplifies the goals and values of the association and the legal profession. Ms. Hollander is also one of the NACDL delegates to the United Nations. She has lectured in the United States and Europe on national security issues. She is co-author of *Everytrial Criminal Defense*

Resource Book, Wharton's Criminal Evidence, 15th Edition, and Wharton's Criminal Procedure, 14th Edition. Additional information about Ms. Hollander may be found at www.fbdlaw.com/profileNH.html.

Denise LeBoeuf

Denise LeBoeuf is a capital defender with a private practice in New Orleans, Louisiana; she was the founding Director of the Capital Post-Conviction Project of Louisiana and is currently of counsel to that defender organization. She represents persons facing death at trial and in post-conviction in state and federal courts, teaches and consults with capital defense teams nationally. She is particularly interested in the litigation of mental health cases and in the ways in which race and poverty increase the traumatic burden carried by many clients. She was a member of the 2003 Committee that formulated the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, and Chair of the post-Katrina Orleans Parish Indigent Defender Board 2006-2007. She holds a B.A. from Hunter College and a J.D. from Tulane University.

She is past President and past General Counsel of the Louisiana American Civil Liberties Union, and was a Member of the Board of the ACLU for a number of years. She was the Chair of the Orleans Parish Public Defenders Board post-Katrina, a member of the Executive Board of the Moratorium Campaign, a member of the Board of the People's Institute for Survival, an Undoing Racism Organization, and the Louisiana Association of Criminal Defense Lawyers. In 2006 she was of counsel to the ACLU Capital Punishment Project in Durham, North Carolina.

Amanda Lee

Amanda Lee has been practicing criminal law since 1996. Recently, Ms. Lee represented Daniel McGowan, an environmental activist accused of domestic terrorism in connection with arson in the Western United States. Ms. Lee moved for production of NSA surveillance of the defendants in the case, which led to successful hearings and plea negotiations. Ms. Lee has also represented clients in international terrorism investigations. For example, shortly after September 11, dozens of Middle Eastern truck drivers were rounded up around the United States, on the suspicion that they might drive trucks loaded with hazardous materials into American buildings. Ms. Lee and her partner Jeff Robinson represented a client arrested and taken into custody in the Seattle area. Since 2001, Ms. Lee has been a frequent speaker on the Patriot Act, the National Security Administration's domestic surveillance program, national security letters, the Foreign Intelligence Surveillance Act, and domestic terrorism. Ms. Lee also has significant experience outside her law practice related to matters of national security. Ms. Lee studied industrial engineering and technical writing in college and worked as a systems analyst for Science Applications International, a well-known defense contractor, before attending law school. Her work required security clearances, and she interacted closely with a number of military units. Ms. Lee has a strong technical background, and is comfortable deciphering complex data and managing large sets of documents.

Early in her legal career, Ms. Lee clerked for United States District Judge John C. Coughenour for four years, and also for Ninth Circuit Judge Robert Beezer for one year. In both of her clerkships, Ms. Lee worked on death penalty matters. Judge Beezer designed Ms. Lee as the sole death penalty clerk in his chambers. In that role, Ms. Lee reviewed and analyzed every death penalty case that came before Judge Beezer during her term. During her tenure as Judge Coughenour's law clerk, Ms. Lee prepared bench memos on numerous death penalty cases and drafted orders for the judge's signature. As a result of her experience in the district and circuit chambers, she was appointed by Judge Beezer to serve on the circuit's task force to update procedures for processing habeas petitions in the court. Ms. Lee is the immediate past president of the Washington Association of Criminal Defense Lawyers, and is consistently listed as one of Washington Law & Politics "Super Lawyers,"

indicating she is rated among the top 5% of Washington's lawyers. She is also listed in Best Lawyers in America. Additional information about Ms. Lee may be found at www.sgb-law.com/attorneys.php?name=Amanda+Lee.

Edward B. MacMahon, Jr.

Edward MacMahon has been practicing criminal law since 1986, and has represented numerous clients charged with offenses related to national security as well as clients facing the death penalty. For example, in the 1980s, Mr. MacMahon represented one of the Army officers tried by Court Martial in the Iran-Contra case. More recently, he was lead counsel in the case of *United States v. al-Timimi*, who was charged with soliciting others to levy war against the United States and inducing others to use firearms in violation of federal law. Although that case is currently on appeal, it was recently sent back to the district court for further proceedings regarding claims that Dr. al-Timimi was subject to the warrantless wiretapping.

Mr. MacMahon also represented Zacarias Moussaoui, who was charged with crimes related to the attacks of September 11, 2001. Although the government sought the death penalty in that case, a jury ultimately elected to spare his life. That case remains, until any cases are tried in Guantanamo, the only trial involving the September 11th attacks. According to the government, the Moussaoui case involved the largest quantity of classified evidence ever produced in a criminal case requiring dozens of hearings to address the use and admissibility of that evidence.

Scott McKay

Scott McKay has been practicing law since 1991, and has actively practiced criminal law since 1996. During the course of his career, he has represented foreign nationals and consulted with lawyers around the country on cases involving issues of national security. Mr. McKay received the Clarence Darrow Award from the American Civil Liberties Union of Idaho for his defense of Sami Omar Al-Hussayen, a Saudi national acquitted of terrorism charges following a lengthy trial in federal court in 2004. Mr. McKay has co-authored an article discussing the USA Patriot Act and has addressed a variety of audiences concerning his experiences in the Al-Hussayen criminal trial. He also has worked on capital litigation at the trial and post trial levels. Mr. McKay works on complex civil litigation and, since 2003, he has been involved with the pending federal litigation consolidated in New York arising out of the terrorist attacks of September 11, 2001.

Mr. McKay has been selected by his peers each year since 2003 for listing in "The Best Lawyers in America." He is listed in Mountain States Super Lawyers magazine (2007 and 2008) which features the top 5% of lawyers in Nevada, Utah, Montana, Idaho and Wyoming. Additional information regarding Mr. McKay's background can be found at www.nbmlaw.com/attorneys/scott_mckay.html.

David Nevin

David Nevin has defended criminal cases throughout the United States for nearly thirty years. He has obtained acquittals in a number of high-profile prosecutions which implicated issues of civil rights and government overreaching, including the 1993 Ruby Ridge case, and the 2004 terrorism prosecution of a Saudi Arabian graduate student, Sami Omar Al-Hussayen. Mr. Nevin has been actively involved in the defense of capital cases since 1981. This representation has included the defense of two cases at the trial level, neither of which resulted in death sentences (one acquittal, one second degree murder verdict). Mr. Nevin has also represented at least six death-sentenced defendants in various stages of post-conviction litigation, including direct appeal, *certiorari* petitions, and federal *habeas corpus*, in Idaho and federal trial and appellate courts. He has been qualified as an expert witness on the constitutional standards for lawyers in capital cases on five occasions in state and federal courts. He has informally consulted on numerous capital cases.

Mr. Nevin is a founder and past President of the Idaho Association of Criminal Defense Lawyers, and the namesake of its Nevin Professionalism Award, which the organization awards annually to a criminal defense lawyer who has advanced the ideals of the profession. Mr. Nevin has twice received the organization's President's Award for outstanding service to criminal justice. He is also co-chair of the Litigation Technology Committee of the National Association of Criminal Defense Lawyers, and is a frequent lecturer and author on issues involving criminal law and civil rights. Mr. Nevin, along with co-counsel Scott McKay and Joshua Dratel, received the Clarence Darrow Award from the American Civil Liberties Union of Idaho for his defense of Sami Al-Hussayen. Mr. Nevin is also a Fellow, and the current Idaho State Chair, of the American College of Trial Lawyers. Mr. Nevin is a Top 75 Mountain States Superlawyer, was named one of the top 500 lawyers in the country by Lawdragon Magazine, and is listed in Best Lawyers in America for criminal defense. Additional information about Mr. Nevin may be found at www.nbmlaw.com/attorneys/david_Nevin.html.

Jeff Robinson

Jeff Robinson has been practicing criminal law for over twenty-five years. He has tried almost 200 criminal cases in both state and federal courts, and he has significant experience defending against complex allegations involving conspiracy, DNA evidence and crime scene analysis. He has been trial counsel in a death penalty case in Washington. He has won numerous acquittals in homicide cases, and has been involved in some of the most serious criminal cases in Washington State. He was trial counsel in a triple aggravated murder case lasting almost 7 months. He represented the international President of the Bandidos Motorcycle Club charged as the lead defendant in a broad RICO conspiracy alleging arson, attempted murder for hire and witness tampering. Mr. Robinson also represented a young man facing mandatory life in prison for alleged acts of domestic terrorism associated with the Earth Liberation Front and the Animal Liberation Front. Extensive motions regarding the surveillance techniques used by the NSA and other Government agencies paved the way for a negotiated sentence of 7 years instead of life in prison.

Mr. Robinson is a past president of the Washington Association of Criminal Defense Lawyers, and in 2004 received the William O. Douglas Award, which is the highest honor given by that organization and is awarded in recognition of "Extraordinary Courage and Dedication to the Practice of Criminal Law." Mr. Robinson has been listed in Best Lawyers in America since 1993, and is an Elected Fellow of the American College of Trial Lawyers, whose membership is limited to one percent of the lawyers in any state in the country. He was recognized by Black Enterprise Magazine as one of the top 100 Black lawyers in America and has consistently been rated by Washington Law and Politics Magazine as one of the top 5% of all lawyers in Washington State and one of the top 10 criminal defense lawyers in Washington State. Mr. Robinson was also appointed by the Mayor of Seattle (and approved by the City Council) to serve as the civilian auditor of the Seattle Police Department Intelligence Files. Additional information about Mr. Robinson may be found at www.sgb-law.com/attorneys.php?name=Jeffery+Robinson.

Gary D. Sowards

Gary Sowards has litigated capital cases at the trial, appellate and post-conviction level in state and federal courts for over twenty-five years. In 1986, he was among the capital litigators recruited to staff the California Appellate Project soon after its founding by the California State Bar Association to provide assistance to private attorneys handling death penalty appeals before the California Supreme Court. He later formed a private law firm, Sternberg, Sowards & Laurence, devoted exclusively to defending death penalty clients in trial and post-conviction (habeas corpus) proceedings. In 1998, he was recruited to be a founding deputy director of the California State Habeas Corpus Resource Center (HCRC) in San Francisco, providing direct representation to death-sentenced prisoners in state and federal habeas corpus proceedings. Since November 2006, he has continued to serve as a

consultant to HCRC as well as private counsel in capital cases.

He is a graduate of the University of California at Los Angeles School of Law (J.D., 1975) and the University of San Francisco (B.A., 1972).

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There has never been a more urgent need to preserve fundamental privacy protections and our system of checks and balances than the need we face today, as illegal government spying, provisions of the Patriot Act and government-sponsored torture programs transcend the bounds of law and our most treasured values in the name of national security.

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John Adams Project - Statement of Anthony D. Romero

There are times in this country when we find ourselves at a crossroads – where the path we choose has the potential to define us as a nation for generations to come.

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No doubt we've been at a critical juncture since September 11. How we respond to the atrocities thrust upon us after that terrible day says everything about who we are as Americans – what values we defend, how the world sees us, and how history will remember us.

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The manner in which we seek justice against those accused of harming us will determine whether the United States will be seen at home and abroad as a nation of laws. We must decide whether we live the values of justice that make us proud to be Americans, or whether we will forsake those values and continue down a path of arbitrary rules and procedures more befitting those who are our enemies. Because we are a great nation, true to our founders' vision, we must uphold our core values even in the toughest of times. The right to a speedy trial in a court of law before an objective arbiter; the right to due process; the right to rebut the evidence against you; the right not to be tortured or waterboarded, or convicted on the basis of hearsay evidence are what truly define America and our commitment to the rule of law and our founders' aspirations.

The military commissions set up by the Bush administration for the men imprisoned at Guantánamo Bay – including those it suspects were involved in the September 11 attacks – are not true American justice. These trials should represent who we are, what America stands for, and our commitment to due process. They are not about how civilized the accused are, but how civilized we are. America does not stand for trials that rely on torture to gain confessions, or on secret evidence that a defendant cannot rebut, or on hearsay evidence.

For these reasons, the American Civil Liberties Union and the National Association of Criminal Defense Lawyers have taken on the task of assembling defense teams to be available to assist in the representation of those Guantánamo detainees who have been charged under the Military Commissions Act, subject to the detainees' consent. More than 30 lawyers have agreed to work on this important endeavor, including such experts as:

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In addition to these leading criminal defense and death penalty lawyers with unparalleled expertise in national security issues who have been tapped by the ACLU and NACDL, there are more than 20 lawyers at the ACLU who stand ready to assist with the effort. The ACLU/NACDL cooperating lawyers have defended cases such as those involving David Hicks, Lynne Stewart, Zacarias Moussaoui, the Texas Holy Land Foundation, Sami Omar Al-Hussayen, and Abdelhaleem Ashqar, among others. The ACLU and NACDL have assembled the "dream team" of criminal defense lawyers not only because of the seriousness of the charges – the government has stated that it intends to seek the death penalty – but because America deserves the best and brightest of advocates defending our values.

The ACLU and NACDL do not agree with how the government is conducting these commissions. Nonetheless, we believe in vigorously pressing our cases, defending fundamental American values, and challenging the government's attempts to stack the deck in its favor.

We take this step because we simply cannot stand by and allow the Bush administration's military commissions to make a mockery of our Constitution and our values. We believe in the American justice system – despite its imperfections and distortions by pundits, politicians and ideologues – and we believe we can make the system stronger by engaging it and fighting for what is right, fighting for fair trials and for America's reputation.

The prison at Guantánamo Bay, and the military commission proceedings set to occur there, were set up to evade the American justice system and the rule of law. The proceedings, as proposed under the Military Commissions Act and run by the Department of Defense, are nothing like the trials guaranteed by our Constitution or the long-established military commissions promulgated by the Uniform Code of Military Justice – the finest system of military justice in the world.

The Bush administration decided to scrap both time-tested systems of justice. Instead, the Administration made its own rules. The President alone has the power to determine who will be tried by the Guantánamo military commissions. These commissions ignore the fundamental tenets of due process and were set up to convict detainees based on secret evidence that they cannot rebut, hearsay evidence, and confessions that could be based on torture.

At Guantánamo, the government has been making up the rules as it goes along. This should be shocking and unacceptable to all Americans.

In America, we do not believe in having fair trials for some defendants but not for others.

The defendants in these proceedings have been charged with horrendous crimes. Any person found guilty of a crime in a legitimate proceeding before a court of law deserves to be punished appropriately; however, it is a central tenet of our system of justice that guilt must only be decided after a fair trial, not beforehand. A defendant's guilt – or lack thereof – should be determined in a manner consistent with our Constitution and proper due process protections. A guilty verdict obtained any other way would rob this country, and the world, of any true sense of justice.

While the ACLU and NACDL are preparing to provide for a vigorous legal

defense in keeping with the best of American values in a military commission process we believe is deeply flawed, we also believe there are other options. The perpetrators of the first World Trade Center bombing in 1993 were tried and convicted in our civilian court system, as were the perpetrators of the 1998 embassy bombings in Africa. The Uniform Code of Military Justice also sets forth procedures with adequate protections of due process.

These prosecutions are some of the most important criminal proceedings in our nation's history. There is no reason to make up new rules for these trials. Fairness and due process do not weaken our justice system – they are what make it strong – and Americans deserve better than to have these deeply flawed commissions carried out in our names.

To date, calls to close Guantánamo and to give legitimate, fair trials to those individuals imprisoned there by our government– most of whom have been detained for years without charge – have gone unheeded. As the government prepares to commence these proceedings, the ACLU and NACDL will prepare a robust legal defense while simultaneously working to expose how fundamentally flawed Guantánamo's military commissions are.

The ACLU and NACDL will offer our services to the so-called "high-value" detainees and we will endeavor to secure their consent to our legal representation of them. This has not yet occurred, as ACLU and NACDL lawyers have not yet had access to the Guantánamo detainees. We hope to ensure that those prosecuted in the military commission proceedings receive a fair trial and have qualified counsel. As it stands right now, the accused are provided with one military JAG lawyer, while the prosecution has well-equipped teams with the resources of the entire U.S. government behind them. We will attempt to ensure that the accused are provided with the best legal teams not only to prepare their defense, but – critically – to challenge the existence and procedures of the Guantánamo military commissions themselves.

There are those who might ask why the ACLU and NACDL would get involved in such difficult cases with controversial clients. We have chosen to become involved in these cases because Guantánamo has shown us that, as far as our government is concerned, the Constitution does not matter, human rights do not matter and due process does not matter. And when our constitutional values are most seriously threatened, we believe that we must step into the fray. That's what we're here for, what we've always done for generations before us, and what will be certainly expected from us for generations to come. Our founders did as much – like John Adams who defended the British soldiers charged with killing Americans in the Boston Massacre, and said that the case was "one of the best pieces of service I ever rendered my country." Our founders would expect nothing less from 21st century Americans. We are proud – and not cowed – to fulfill that dream of a democratic republic governed by the rule of law – and not the whims of leaders.

The NACDL has always believed that the rights of the criminally accused define the rights of all people. The ACLU has a proud history of standing up for civil liberties, even when it has the potential to be unpopular. During World War II, the San Francisco office of the ACLU represented Fred Korematsu, who was charged with the crime of violating curfew orders during Japanese internment. We also defended the rights of free speech and association during the decades when Communism provoked as much hatred and fear as al Qaeda does today. In 1977, the ACLU defended the right of Nazis to march in Skokie, Illinois, a substantially Jewish community with as many as 1200 survivors of the Holocaust. There was public outcry, but with time our principled stand was largely understood and vindicated. These cases were clearly controversial as they – like the situation we face today – involved a public that understandably felt injured, threatened and maybe even scared.

But it is when the stakes are the highest and when tempers run the hottest that

we must work doubly hard to keep a check on our government and prevent it from trading in our values for visceral and political motives – no matter what the motivation. It is during the most challenging situations that our country's values are most intensely tested, and along with them, the ACLU's commitment to its core principles. We are determined, as we have always been, to meet this challenge. We trust you will respect the work we do, why we do it, and even join us in reclaiming what America stands for.

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There has never been a more urgent need to preserve fundamental privacy protections and our system of checks and balances than the need we face today, as illegal government spying, provisions of the Patriot Act and government-sponsored torture programs transcend the bounds of law and our most treasured values in the name of national security.

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Norman Reimer

Executive Director of National Association of Criminal Defense Lawyers

NACDL believes that every accused person has the right to competent defense counsel to prepare a defense. This is no less true for the Guantanamo detainees who face prosecution and possible execution by the U.S. government. In light of the government's stated intention to seek the death penalty against the so-called "high value" detainees, it is critical to America's international reputation that these individuals have access to defense teams with resources that are at least on par with any other federal capital prosecutions. Accordingly, NACDL is working to assemble fully-staffed and experienced defense teams. These teams will be available to augment military defense counsel, subject to request by military counsel and their assigned clients.

It is especially appropriate that the nation's preeminent criminal defense bar association assists in facilitating representation for these detainees. The announced rules and procedures for these commission trials raise serious questions about the government's commitment to constitutional principles that are the bedrock of American liberty. A vigorous and properly resourced defense is essential to contest these proceedings.

Military and civilian NACDL lawyers have been representing detainees for almost five years, in the civilian courts, before military commissions and in the federal courts and will continue to do so as part of our mission to ensure competent representation and due process for all. The association itself has filed nearly a dozen friend-of-the-court briefs on behalf of military prisoners in the war on terror, including *Boumediene v. Bush* and *Al Odah v. United States*, the case currently pending before the U.S. Supreme Court.

If the government goes forward with commission prosecutions and seeks the

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death penalty for any detainee, we feel obligated to marshal the resources of the defense community and render whatever assistance the military defense office requests on its own behalf and on behalf of its clients.

That will require funding. Capital cases are expensive, often prohibitively so. There is no realistic way to expect experienced capital defense counsel to devote many months defending a person on trial for his life in a courtroom far from home without support. NACDL will seek to provide that support.

Janet Reno

Former United States Attorney General

The ACLU and NACDL's efforts to ensure that fundamental American legal protections and principles are preserved in these cases are certainly worthy of support. This is the time to demonstrate to the world that the United States need not abandon its principles, even as it seeks to ensure the safety of its citizens.

Retired Rear Admiral John D. Hutson

Navy Judge Advocate General from 1997 to 2000, Current President and Dean, Franklin Pierce Law Center in Concord, New Hampshire

I stand here today greatly troubled by the use of military commissions to prosecute Guantanamo detainees – troubled because we could do so much better.

As a former Navy judge advocate, I spent 28 years in the military justice system. We were able consistently and effectively to try challenging cases without compromising our nation's ideals or the rights of the accused. Those proceedings reflected the great principles of jurisprudence that have guided our country for centuries.

It is not as if we don't know how to do it. Think of what was achieved at Nuremberg. How justice was delivered after the My Lai atrocities. The way the military justice system has handled the myriad complicated and important cases over the years. Even Saddam Hussein was given a fair and open trial in Iraq, largely because our country convinced the Iraqi government of the importance of giving Hussein far better treatment than he offered his victims.

I have the greatest faith in the ability of military attorneys to conduct fair trials. We have seen what they can do throughout the long and honorable history of our military's courts martial system. However, I believe the brand of justice the current administration is now instituting via the Military Commissions Act does not reflect that long and honorable standard. I know the men and women who have been given the challenging job of defending these detainees have worked to provide zealous advocacy and will continue to do so. However, they are working within a system that they did not create, and that does not measure up to the standards of either our military or civilian criminal justice systems.

I was an early and ardent supporter of the use of military commissions to prosecute our enemies. They could have stood as a shining example to the world for how the United States treats its enemies. Unfortunately, I changed my mind after seeing how they have been conceived. We are now, as a country, seeking to prosecute Guantanamo detainees with military commissions that are, regrettably, neither appropriate, legal nor a true reflection of American ideas and ideals.

As the proceedings have been designed, standard elements of a fair trial are absent from the commissions: prosecutors will be able to use evidence potentially obtained by torture; prosecutors need not share evidence with the

defendants that is deemed to be classified; the right to confrontation will be severely limited; and hearsay evidence will be permitted.

The fact that the Guantanamo detainees have been accused of horrible crimes makes it even more important that we treat them in a way that is ethical and fair and grants them access to due process. The U.S. military and civil court system was created to find justice for victims, seek appropriate punishments for those convicted, fair hearing and spirited defense for the accused and exoneration for those whose guilt cannot be proven. It is not a rule of law if it applied only when it is convenient. It is not a human right if it only applies to some people.

I hope my fellow Americans will support the ACLU and NACDL as I do in asking the government to grant these detainees fair trials that follow the principals of due process provided in our Constitution. Let's bring this process into the light of day and restore American justice as we know it to be -- fair, equal and for all people.

Nothing can be gained from show trials or kangaroo courts. We know this truth as a people. Now is not the time to forget all we know of jurisprudence and the value of its proper application.

Thank you.

Patricia Perry

Mother of John William Perry, an NYPD officer who was killed on 9/11 while helping people escape from the World Trade Center

My name is Patricia Perry and I am here on behalf of my son -- NYPD Officer John William Perry who was killed on 9/11 while helping people escape the World Trade Center.

Six and one-half years have passed since his death and our family and John's friends continue to miss our cherished son, loving brother and caring friend. He can no longer speak for himself and I am privileged to give voice to his principles.

John was dedicated to the service of others and joined and served eight years in the New York City Police Department. Prior to that he completed law school and used his education to provide pro bono service to individuals whose civil rights and civil liberties had been violated.

On the morning of 9/11/2001 John submitted his NYPD retirement papers just as the first plane crashed through Tower One. He immediately reacted by retrieving his badge, buying a police polo shirt since he was not in uniform and then ran from One Police Plaza to the World Trade Center. There he joined other officers in directing the flow of escaping building occupants. While helping others, he also became a victim himself.

Today I am only one voice. But our family and his many friends believe that John would fully support the ACLU in this decision to fight the injustice taking place at Guantanamo.

John strongly believed in the integrity of the Constitution, the Bill of Rights, and in the institutions of our government established to use legal means to prosecute those who stand accused.

I believe that Guantanamo's military commissions do not reflect those principles of justice and that John would protest such procedures. No matter how horrible the crimes the detainees in Guantanamo are accused of

committing – and all of us who lost family members or had friends and family who survived but continue to be haunted by those events know how ghastly they were – these accused individuals should receive a fair and open trial that reflect our nation's professed values and commitment to due process.

I want justice for my son and all daughters, sons, husbands, wives, partners, mothers and fathers killed on 9/11.

However, what justice do we receive if proceedings are held in secret, tainted by evidence extracted by torture in methods reprehensible to all the values we hold dear?

Justice for my beloved son John should reflect what he stood for in life: the ideals of our country and service to the people he was assisting on the day he died.

Thank you.

Lt. Colonel Stuart Couch

Lt. Colonel Stuart Couch is a lawyer and officer in the United States Marine Corps. In 2004, Lt. Colonel Couch withdrew from the prosecution of a Guantánamo Bay detainee, Mohamedou Ould Slahi, because he believed the evidence he was asked to use to prosecute Slahi had been obtained through torture, and was therefore inadmissible under U.S. and international law.

From his ABA 2007 Norm Maleng Minister of Justice Award Speech

The issue of detainee treatment touches and concerns every case that will be brought for prosecution before military commissions, and all participants in the process should be equipped to deal with it in ways that are consistent with our American values of fair play and justice, that maximize our credibility in the court of public opinion, and uphold this nation's obligations to duly ratified international treaties.

The challenge for all involved at this stage in the process – Congress, the Executive branch, the Judiciary, and especially trial participants – is to clear a path forward so that as a nation we can be proud of what we do in these prosecutions, while taking into account where we are and not where we wish we were.

Our nation needs to lay claim to the humane treatment of detainees not as Republicans or Democrats, but as Americans who recognize the inherent worth and value of fellow human beings, regardless of the despicable criminal acts they may have committed.

William Webster

Chairman of the Homeland Security Advisory Council. Director of the FBI from 1978 to 1987 and Director of the CIA from 1987 to 1991, Webster is a former federal judge and served in the U.S. Navy during World War II

I support the ACLU's and NACDL's efforts to provide competent legal representation to those detainees at Guantánamo Bay who will be brought before the military commission. This is in the highest tradition of American values.

September 11th Advocates

Patty Casazza, Monica Gabrielle, Mindy Kleinberg, Lorie Van Auken
The September 11th Advocates are women whose spouses died on 9/11. The group was instrumental in the formation of the 9/11 Commissions and later called for a new, independent panel.

As women whose husbands were killed on September 11, 2001, we feel strongly that the perpetrators of that horrific crime should be brought to justice. But first it is imperative to prove that these six detainees are indeed the guilty parties.

Unfortunately, the Administration insists on trying the suspects in the broken military commissions system. Prosecuting these men within a system that is secretive in nature and lacking in due process, and which uses evidence tainted by questionable interrogation methods and possibly even torture, is a dangerous endeavor. All Americans, and indeed the entire international community, must have the opportunity to witness for themselves the body of evidence that ties these individuals to the 9/11 terrorists' plot. Otherwise the credibility of any verdict will lack legitimacy. Moreover, unless these trials are above reproach, any convictions will bring the wrath of the international community, damaging what is left of America's standing in the world. Considering that we continue to rely heavily on cooperation from other nations to provide us with intelligence information on would be terrorists, this course of action can only be detrimental to these crucial relationships, thereby jeopardizing our national security.

These trials, when they finally take place, will be scrutinized around the globe. Unless the victims' families, the American public and the entire world can be convinced that we are trying and convicting the people who are truly responsible for the 9/11 crimes, these trials will be seen as a miserable failure, dimming our prospects of improved international relationships, and making us more vulnerable to terrorist attacks in the future.

On behalf of ourselves, our husbands, and our families, we support the American Civil Liberties Union in its pursuit of justice and insistence on due process. The only outcome worth pursuing is the truth, and the only way get there is by fair trials that uphold the Constitution.

Bishop Peter Selby

President of the National Council for Independent Monitoring Boards for Prisons and Immigration Removal Centres. Formerly the Bishop of Worcester, England.

As someone who received further education in the USA, and was deeply moved by the freedoms guaranteed by the U.S. Constitution, I continue to be shocked every time I think about Guantánamo and the undermining of those constitutional values. All held there, if there are cases for them to answer, should be subject to due process and otherwise released. Americans should be aware of the lasting damage Guantánamo has done to their reputation.

Lawrence Wilkerson

Retired Army Colonel and former Chief of Staff to Secretary of State Colin Powell

I support the ACLU's and NACDL's efforts to ensure that detainees at Guantanamo Bay who are brought before the military commission are provided with competent legal representation. It is stunning that one has to make such a statement of support in America. Due process should be a given in the country that just a few short years ago the world viewed as the paragon of the rule of law. Perhaps if we can take this fundamental step toward restoring the rule of law, we may begin the long road back to respectability.

September 11th Families for Peaceful Tomorrows

Peaceful Tomorrows is an organization founded by family members of those killed on September 11th who have united to turn our grief into action for peace.

The members of September 11th Families for Peaceful Tomorrows stand behind the American Civil Liberties Union in their decision to assemble defense teams to be available to assist in the representation of some of the Guantanamo detainees that the U.S. government is preparing to prosecute.

September 11th Families for Peaceful Tomorrows, founded in 2002, is an organization of individuals who all lost family members on 9/11. For six years we have advocated for nonviolent and legal responses to the terrorist attacks that claimed our loved ones' lives. By developing and advocating nonviolent actions in the pursuit of justice, we hope to break the cycles of violence engendered by war and terrorism.

We have a tremendous stake in seeing that justice is served in the prosecution of 9/11 suspects. It is our heart-breaking obligation to see those responsible for the deaths of our loved ones brought to justice. However, in our view, justice will not be served by a legal process that has been compromised by political interference and stripped of the minimum of defendants' rights and protections that define a fair trial.

Adding to the pain of our loss is the painful awareness that our nation is betraying its own values — and the values of so many who died on 9/11. If we wish to see justice and peace in the world, we, as individuals and as a nation, must embody the principles of due process of law. Terrorism has taken our loved-ones' bodies. We must not allow fear or a desire for revenge to take our souls.

We believe that the military tribunal commission process does not adhere to the principles of due process of law, the standard of justice for our nation. We find no comfort in confessions obtained by coercive techniques, nor in any of the other egregious violations of the Constitution and international law, and assaults against civil liberties by our government that have occurred during the six year period that the accused have been imprisoned. We believe that justice is not served in a trial that admits evidence obtained by torture; that justice cannot be served in a system that abandons due process; and that no truth can be discovered in a prosecution based on secrecy.

We urge all Americans to join with us in supporting the American Civil Liberties Union in their efforts to assure fair trials for all people, regardless of the charges they face. It is the only way to preserve our moral integrity as a nation.

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Samuel Walker - Defending Fundamental Principles: An ACLU Tradition

Samuel Walker is Professor Emeritus of Criminal Justice at the University of Nebraska at Omaha. He is the author of In Defense of American Liberties: A History of the ACLU

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The American Civil Liberties Union's decision to coordinate defense teams for detainees at Guantanamo is part of a long and honorable tradition of standing for fundamental constitutional principles in a time of crisis.

- In World War I, the National Civil Liberties Bureau, forerunner of the ACLU, defended the First Amendment rights of antiwar dissidents in the face of massive government repression.
- During World War II, the ACLU was the only national organization to challenge the government's evacuation and internment of the Japanese-Americans.

Those two earlier crises involved fundamental American liberties. During World War I, the government banned from the mails and prosecuted individuals who merely expressed opposition to the war, or criticized President Woodrow Wilson. People were convicted and sentenced to ten-year prison terms for allegedly interfering with the draft, even though they said nothing about the draft itself.

In that crisis, the Civil Liberties Bureau was the only national organization to speak out in defense of freedom of speech, freedom of the press, the rights of conscientious objectors, and the due process rights of radical labor leaders. The Bureau was led by Roger Baldwin, who founded the ACLU in January 1920.

History has vindicated the Civil Liberties Bureau's lonely defense of constitutional rights during World War I. Historians are unanimous in their judgment that the government's actions were among the greatest violations of civil liberties in American history. The U.S. Supreme Court upheld the wartime prosecutions, but subsequently embraced the principle that the First Amendment protects the right to criticize the government during wartime.

The evacuation and internment of 120,000 Japanese-Americans during World War II has also been labeled one of the worst violations of civil liberties in American history. The ACLU handled the two crucial cases before the Supreme Court – *Hirabayashi* (1943) and *Korematsu* (1944). Meanwhile, liberal, leftist, and conservative groups looked the other way, afraid to challenge the government.

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On the Japanese-American tragedy, the ACLU's courageous defense of fundamental rights has been vindicated by historians, legal scholars, and public opinion. No historian has found justification for the government's actions. The American public as a whole is ashamed of this ugly chapter in our history.

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These two episodes are only two of the most notable examples of the ACLU's active defense of basic liberties – from the Scopes case in 1925, the defense of freedom of speech and association during the Cold War, and challenges to unconstitutional aspects of the so-called "war on terrorism" today.

What is at stake in the military commission proceedings are a set of legal issues that go to the core of the American system of justice:

- The use of evidence obtained by torture;
- The right of defendants to see the government's evidence against them, so they and their lawyers can present an adequate defense;
- The right of a defendant to confront his or her accusers;
- The use of hearsay evidence;
- The right to an impartial hearing.

In the end, we have to ask the question, What are we fighting for? President Woodrow Wilson said that World War I was a war to make the world safe for democracy, but he trampled on democracy at home. Only the ACLU challenged him. World War II was a fight against Nazi racism, yet the president authorized the most racist action by the federal government in our history. Again, only the ACLU challenged the government. And so it is today. The federal government is casting aside fundamental constitutional principles with the military commission proceedings. The ACLU is again rising to defend the core values that we are fighting for.

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