

THE RULE OF LAW ORAL HISTORY PROJECT

The Reminiscences of

Ramzi Kassem

Columbia Center for Oral History

Columbia University

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## PREFACE

The following oral history is the result of a recorded interview with Ramzi Kassem conducted by Gerry Albarelli on June 1, 2011, by Gabriel Daniel Solis on December 9, 2011 and July 6, 2012, and by David P. Briand on September 13, 2013. This interview is part of the Rule of Law Oral History Project.

The reader is asked to bear in mind that s/he is reading a verbatim transcript of the spoken word, rather than written prose.

3PM

Session One

Interviewee: Ramzi Kassem

Location: New York

Interviewer: Gerry Albarelli

Date: June 1, 2011

Q: Okay, so why don't you start by telling me when you were born and a little bit about your early life?

Kassem: You can hear me decently?

Q: I'll stop in a minute just to play it back if that's okay with you.

Kassem: Okay.

Q: But get started.

Kassem: I was born in Beirut, Lebanon, during the civil wars. My family is a mix of things. My nationality was Syrian at birth. Of course I'm now a naturalized U.S. citizen, but my family is a mix of things. We were Syrian, Lebanese, Moroccan, Circassian, Turkish, as far as I know.

I spent my early years in Beirut, and then we left because of the war. My family and I relocated to Baghdad, Iraq, and lived there for a total of seven years. Although at one point in that stretch, my family again relocated to Damascus, Syria, for a year because of the ongoing Iraq-Iran War.

We finally left Baghdad for good after the first Gulf War had begun. So along the way, since Iraq, I've lived in Jordan.

I finished my last two years of high school in Switzerland on a scholarship to study there. I came to college in the United States. I've been more or less in New York since then, with a little bit of time in New Haven, a couple years in New Haven, and a couple of years in Paris for law school there. I completed my law degree here and then went over there and did another law degree there in Paris, France. That's been the run of it.

Q: Tell me when you were born.

Kassem: When?

Q: Yes.

Kassem: I was born in 1978.

Q: In 1978? So just tell me an early memory. Something that has to do with you. We can stop anywhere along the way. You've witnessed a lot of history. I said something that might have led you to be doing the work that you're doing today.

Kassem: I don't know if I can connect this to a single anecdote or incident, but it's really more tied to a pattern of observations, incidents, experiences, anecdotes. I lived in many countries. My

formative years were spent in countries where there was not much of a functioning system of government, or at least not what would be seen today as a reliable, democratic, transparent system of governance and what's known as the rule of law. I think that definitely influenced my decision to go to law school and the choices I made when I was in law school.

I completed a U.S. law degree, and I went to France to get a French law degree because I figured having grounding in both the common civil legal systems would better prepare me for work in the international sphere, specifically on rule of law and transparency and accountability issues. That's where I saw myself going. Since most countries' legal systems were based on the French, unlike ours, I thought that having that grounding would be helpful. That was part of the idea for me going to law school. It's thematically related, but it's also an odd twist, because in the end I found myself doing rule of law work here in the United States, which was not at all my expectation going into law school.

Q: And some of your early memories from Lebanon? Did you say you lived through the war?

Kassem: Yes. Most of my memories from Lebanon are happier childhood memories, thanks to my parents and my family, my grandmother, my father's mother and the lengths to which they went to protect my sisters and I from what was going on and preserve the possibility of a real childhood for us despite what was going on. Of course I do vividly remember, and my earliest memories also include memories of conflict and things like that.

Q: Well, tell me both.

Kassem: Shelling.

Q: I'm not against hearing those.

Kassem: I could tell you both in one anecdote, actually. Whenever there would be intense shelling, fighting outside. Just not to assume any background, the Lebanese civil wars went through ebbs and flows. But when things were flowing, so to speak, it would be raging street battles and things that were happening literally at your doorstep. Sometimes that would directly impact the spaces that people inhabited. The windows in our apartment were broken many times because of the vibrations from explosions, and bullets flying through the windows. Fortunately we never had a shell explode in our apartment, but our neighbor three flights up had a piece of ordnance basically destroy her apartment.

When those things would happen, my father would take my sisters and I to the hallway in the apartment. It was a small apartment, but he would take us to the hallway because there weren't any windows in the hallway and so it was seen as a safer place to be in the apartment when fighting was getting particularly intense outside. He would either organize games for us, or painting competitions where my sisters and I would paint. He would read stories and he used to read *The Count of Monte Cristo* to us out loud a couple of times, at least. It was one of his favorite novels.

I think my parents and my grandmother were involved in these attempts to preserve some semblance of a normal childhood for my sisters and I despite what was going on outside. I think to a very large extent they succeeded—not that we were unaware of what was going on, and not that they weren't honest with us about what was going on, but they didn't let that stop us from living normal lives.

Q: And the first move was to where?

Kassem: The first move was to Baghdad, Iraq.

Q: So what are your memories just leading up to and then first memories in Baghdad?

Kassem: At that point, the Iraq-Iran War had already begun in Iraq, and so in theory it was a country at war. But Baghdad was less regularly affected by that war than Beirut was, obviously. To me, it seemed like a transition towards more stability, even though on a fairly regular basis, incoming scud missiles from Iran would strike Baghdad. The sirens would sound and people would have to hide. At one point our school was hit.

But for me, at that point, my basis for comparison was Beirut and I felt that Baghdad was a much safer and stable place, where I could play much more freely with my friends in the streets, where there was less of an immediate danger. I experienced that transition as a respite from what had been our experience collectively in Beirut. I think during the Iraq-Iran War, for the most part, Baghdad struck me as far more livable than Beirut. I remember mostly being just outside on the

streets with my friends, like kids my age from the neighborhood, just running around playing soccer or whatever it was that we could get our hands on, and obviously going to school and whatnot.

Because it was a country at war, and because of the nature of the regime, there were many things that we didn't have. For example, bananas and eggs were always in shortage. But again, that to me didn't seem like such a huge problem, given where my family and I were coming from at that point in our lives. I think maybe for someone coming from elsewhere, it might have been experienced as a shock.

The other thing that I definitely remember about living in Baghdad was how reserved our neighbors were for the first few years. That's because, again, of the nature of the regime and the fact that it was a totalitarian state with very heavy infiltration by the security services. I remember a few times when we would leave Baghdad to go on visits to Lebanon or Syria, when we would come back home we would find that the doors had been left deliberately open, with cigarettes in the ashtrays and things like that, with nothing stolen, but just to signal to my family that we were under some form of surveillance.

At the time, we were Syrian nationals, and at the time the Iraqi Baath party was at complete odds with the Syrian Baath party. They had splintered and Hafez al-Assad, the president of Syria, was antagonistic towards Saddam Hussein in Iraq and vice versa. Because we were Syrians in Iraq that was always viewed with suspicion. I think generally all foreigners were kept under watch in Iraq.



There were little incidents like that, such as our parents telling my sisters and I never to mention the president's name on the phone, Saddam Hussein, and never to engage in political conversations. All in all, I think my experience in Iraq at that time was that it was a great place to live as long as you kept away from politics and as long as you didn't cross those kinds of red lines.

I think objectively now in retrospect, knowing what I know and things that I've read, I think my impression was fairly accurate. Iraq, at the time, had probably the highest literacy rate in the Arab world. It had a very high PhD per capita rate, if not the highest. It had universal health care, free universal education, and great access to employment opportunities for women in the region. Of course that was all at the expense of any form of civil liberties or freedoms for the population. That was very clear to me even as a child that there were certain things you didn't say or do in Iraq.

I think all these experiences, the good and the bad, colored and influenced my decisions, when I was thinking about what to study and why. I had a certain plan in mind that was connected to all those experiences but I think that plan didn't play out the way I had expected it to, in large part because of 9/11.

Q: Where did you go after Iraq?

Kassem: I went to Syria for a while, for a year, and then I came back to Iraq. After that, as I said, we spent some time in Jordan. Amman, Jordan.

Q: So can you tell me some stories along the way? Why Syria?

Kassem: I think that was just because at the very height of the Iraq-Iran War, living in Baghdad was getting pretty dangerous. At that point, Syria was one place for us to go where we had a place to stay. My grandmother lived there, my father's mother lived there, and so there was an easy place for us to land there.

It was just a situation where my parents felt that they had to get out of Baghdad in order to keep the family safe, and Syria was the easiest, most accessible, and readily available place for that. We just ended up there for a year, until I think the armistice was signed between Iraq and Iran. Yes. My sisters and I went to school there for one year, and then came back to Iraq.

In my many ways my experience in Syria was a jarring transition because we were being separated from a school that we had attended for years at that point, friends in the neighborhood and school and all that. At the same time it was familiar, not just because I had been to Syria many times before and I had family there, but also because the quality of life was comparable.

On certain fronts, it was a bit better being in Syria. For example, you could find bananas and eggs, but in other ways, it was the same, in terms of the political atmosphere and how visible and concrete that was even to children. Also, daily things like playing and being able to play freely

on the streets with my friends. It was a relatively safe city, Damascus. We could be out at night late and there was nothing wrong with that. I think in those ways it was a great experience for me at that age.

But politically, it was a very similar atmosphere to Iraq. It was a different branch of the Baath party but it was at the same level of infiltration by the security services. People were generally wary of speaking to anyone about anything remotely political because you really didn't know if the guy selling you your vegetables or the taxi driver or the bus driver were actually informants for the security services. That sentiment was very familiar, equally present in Syria, and still is to this day.

Q: And Jordan?

Kassem: Jordan is an odd place because it tries very hard to project a façade of openness and transparency. In many ways it's more open and more transparent than some of the other countries in the region. I think from the personal perspective of, at that point, a teenager, Jordan is a much more enjoyable place to be because there are many more things to do, by virtue of its connections to the industrialized world. You have access to many more forms of entertainment than I ever did in Syria and Iraq.

Just to give you an example, in Iraq when we were kids, we never watched television because there were only two channels, one of which was almost entirely devoted to praising Saddam Hussein. The other one very rarely had programming that I found interesting. A lot of the

programming was programming that had been acquired from the Soviet Union at the time, so it was these claymation Soviet films with very strong ideological messages. It wasn't something a child particularly wanted to watch, even though I did sometimes because there was nothing else.

That was what I had access to in Iraq, and the offerings were a bit better in Syria in terms of what I could do to enjoy myself, but there was very little by way of organized activities for children. Everything that I did in Syria or Iraq was designed by myself and my friends. It was games that we improvised on the street, playing soccer, things like that. There was very little by way of outside entertainment, like music or film or television or organized activities, group sports, anything like that.

So Jordan, in that respect, was a more open and a friendlier environment for a teenager, and I guess lends itself to a more perhaps recognizably American or Western way of life, at least being in Amman, because I don't want to generalize about Jordan as a whole. That was part of my experience and observation at least in the capital. But at the same time, on the political side, despite the Jordanian government's attempts, it was equally clear to me and my friends that Jordan was also very much a security state. There were also some very clear red lines that you didn't cross. You didn't talk about certain topics publicly, you didn't talk about the royal family, you didn't talk about the military, and you didn't talk about the king. Oh, sorry, about religion. There were certain things that you just didn't do or say in Jordan at the time.

You often heard stories, and I heard more and more of those stories, because at that point I was getting into that age where I was a younger teenager. I started knowing people or hearing about

people who were one or two degrees removed who had run into trouble with the authorities over things like that. It was still very obvious to me and to some of my friends that despite the appearances, Jordan was very much a security state. In that way, perhaps there was a difference in degree from the way things were in Syria and Iraq, but certainly not a difference in kind.

These places look extremely different, and they're in many ways such as culturally, historically, and even in their day-to-day functioning. They're extremely different, but there was also this undercurrent of continuity, this sort of thematic continuity across these places.

Of course Lebanon was too chaotic to be that way. Rather than it being a police state, my recollection of it was really the sentiment of a vacuum. I say that because I remember, as a child, observing and being confused by the plurality of authority figures or groups that wielded power. That was something that was very obvious to me, even as a young child in Lebanon, that when you would go on the street there would be these different checkpoints and the people would look different. They would dress differently and there was even this militia that I remember, and my grandmother's since confirmed this, but I remember this militia in Lebanon that wore these outrageous, loud, pink camouflage outfits. I think they went by the Pink Panthers or something like that. They didn't last too long for obvious reasons, but I do remember their being present in our neighborhood, along with a number of other factions. Depending on where you went, you would have to show your ID or be searched by this faction or that.

I remember that very clearly, and I also remember reading the adults, as a child reading how the adults were responding to the situation. When I saw the adults being alarmed, when I saw them

worry, when I heard them worry or sometimes cry, all those things also communicated to me what was going on, really, or how I should interpret what's going on, and whether I should be afraid. All of those things left an impression of utter chaos in Lebanon, compared to all these other countries such as Jordan, Iraq, and Syria where on a daily basis there's a far greater degree of order and stability and safety, but with this latent form of extreme political violence guaranteeing that order and ensuring that people do not cross certain lines and express themselves in particular ways.

Q: Were you, as a teenager, tempted to cross any lines?

Kassem: Yes.

Q: Teenagers usually are. Can you give me an example?

Kassem: Yes, my friends and I would do foolish things and break public lighting with stones. These were stupid, silly acts of vandalism that had no particular purpose behind them. It's not like we were doing it to protest anything. I think we were just bored and looking for something mischievous to do. In Jordan it landed us in trouble and we often got into trouble with the police there for that reason, or for similar reasons. But yes, nothing major, nothing deep, certainly nothing like what young people are doing today in places like Syria and Yemen, which I think is a far better use of youthful energy.

I essentially came here for college. I had just turned seventeen, and that's when I started college here in New York at Columbia. My last few years of high school were funded through this scholarship program. At that point, I was at the point when I was almost done with high school. I was looking at universities. My preference at that time actually was to go and study either in Paris or Geneva. Those were the universities that I was looking at for my undergraduate studies.

My parents' perspective was that I had at that point met the requirements for another scholarship to go study anywhere. Their advice was to consider going to the United States because the quality of education was superior here in their view. It was obviously far more expensive to study in the United States than it would have been to study in France or even Switzerland. Because I had the scholarship, I could actually have that option.

What they suggested was that I consider applying to U.S. schools, and if I got in, I could go and try it out for a year and if I didn't like it, I could then switch back to France with the understanding that the French and Swiss systems were the opposite of the U.S. system, in that the U.S. university system will admit fifteen to twenty percent of applicants, but then they'll pride themselves on graduating upwards of ninety percent of those applicants. In the French system, and the system in Francophone Switzerland, was of the opposite approach, where pretty much everyone gets in, and then there is a draconian selection at the end of the first or second year where only ten percent make it past.

I followed that suggestion. I applied to a few different schools here, got into those schools, and then considered where to go for that one year. I settled on Columbia because it was in New

York; it was a big city, I was curious about living here and more interested in living here than some of the other places I was considering and perhaps smaller cities, like Providence or more rural areas. I came to New York, and started my studies here at Columbia. That was in 1995. It was a very, very harsh winter. I was just shocked. I remember the blizzard. I don't know how it rates historically, and maybe I should look at an almanac to try to figure it out. But I do remember that winter being particularly harsh. The blizzards were terrible.

It was also my first year studying everything in English. Up until that point, my schooling had been in Arabic or in French at different schools. Most of the subjects were taught either in Arabic or in French. Of course, I studied English as a second language but that was it. Of course I knew some English from music and films and things like that, but first year of just studying everything in English at that level was pretty trying.

I still have this old dictionary that I bought at the time. It was one of those small red Merriam Webster dictionaries that I just had with me everywhere, at least when I was on campus, when I was going to the library, going to classes, or studying in my room. I was constantly going through that thing, especially the first year of Columbia where you have to do a lot of reading for the required core classes of literature, humanities, and things like that.

But it was still a great experience. Despite those kinds of little difficulties, it was still great to get to know the city, to meet people who I'm still very close friends with and I still see on a regular basis. I had people who were very different from me in some ways, and obviously very similar as well. We got along for a reason. There were definitely affinities there.



But I met people who, if they had grown up internationally had grown up in different places and had different experiences from mine, and if they had grown up in the United States, had also had very different experiences from mine. They came from places that I'd never really, or had the existence that I had only perhaps seen in American TV shows, like that typical American high school experience that to me was just fiction up until the point when I came here.

Q: Where were you on September 11?

Kassem: I guess after college here I worked for a bit, for a year. I worked as a paralegal for a while. I didn't like that. I quit. I managed to secure some funding to make a film, so I went and made that film about Palestinian refugees in Lebanon.

At the same time after I had quit my job and I was applying for money to make that film, I decided to apply to law school for some of the reasons that I mentioned earlier. When I went overseas to shoot the film, I found out that I had gotten in. I knew I was going to be done shooting the film at the end of the summer, and so the timing was right. I decided not to defer law school and just went back to law school that fall. I figured I would be in New York. I could start law school. I could edit my film at the same time, since I would have all the footage from four months of shooting.

I came back. I started law school in the fall of 2000, so about a year and change after I graduated from undergraduate. On 9/11, I was literally starting my second year of law school. I was on my

way to the law school. I remember, I lived on 113th Street and there was and there might still be a firehouse there.

As I was walking by, I heard some of the guys outside of that firehouse talking about a plane that had crashed into the Twin Towers. I stopped by. I was chatting with them and some of the other people who live on the street. 9/11 was just one week after Aaliyah, who was a famous R&B singer at the time, had died in a Cessna plane crash in Florida or the Bahamas, or on her way to Florida from the Bahamas because her Cessna plane had been overloaded.

Everyone was thinking it's probably again another small plane, another Cessna that was overloaded or something. That's what everyone was saying on my street, at least on my block at the time on the first plane crashed. They were like, "Oh, it's a small plane that crashed into one of the towers. It's an accident."

I got to the law school, and I was meeting with some of the other editors on the journal where I worked. We had a TV there. By the time I got to the law school, the TV was on, and they already had images of what was going on and I start realizing that it was not a small incident. I think it was while I was at the law school that the second plane hit. At that point, everyone rushed out. I rushed home and used my land line to try to call my family, let them know I was okay, and also to call some friends of mine. I had a friend who worked in one of those buildings, and some other friends of mine who worked in the neighborhood.

Obviously I couldn't get through to them all day long, and so after many, many tries I just decided to go out and I ran into a bunch of people that I knew on the street who were similarly lost and panicked. I went down to the Red Cross building, down in Hell's Kitchen and I worked. I asked them if there was anything I could do. At that point, there was nothing I could do.

I went back uptown. Someone told me that they were already collecting blood and asking for donations at different hospitals in the city. I went to the hospital up by Columbia on Amsterdam and gave blood. I went back down to the Red Cross building and I asked if there was anything I could do either there or further downtown, and they said, "We have these phone banks here."

I guess they were fielding a lot of calls from distressed families of people who worked in the Twin Towers. Many of those family members didn't speak English because obviously a lot of the workers in the Twin Towers were from different immigrant backgrounds. They needed people who could take calls in different languages. I told them I could field calls in Arabic or French or even some Spanish.

I had just come back from Haiti. I had spent the summer working in Haiti with the human rights organization, so my Haitian Creole decent enough. I put myself down to take calls in those languages. I volunteered at that phone bank for the rest of the day. By the time night came, when I went back home I was able to get through to some of my friends. I figured out that, thankfully, my one friend who worked in one of the towers had gotten out alive and that my other friends in the neighborhood were also unscathed.

But I was also hearing accounts from different people who had lost relatives or friends or loved ones. I was also hearing things. I also got in touch with some of my journalist friends. I had a friend at the time who was a reporter at the *Daily News*, and he was one of the first reporters on site. Some of the things that he was describing were just horrendous. They're all things that we later heard about or sometimes saw, but he was just describing the bodies that he saw and even little things like just seeing like wallets, just wallets, by themselves. Things like that that he described that stuck with me.

That was my experience on that day. In the back of my mind, obviously my primary concern was for the people that I knew and generally for my fellow New Yorkers, and other people in different parts of the United States that were also affected. But in the back of my mind, I was even on that day, I was starting to think how is this going to change things.

Generally, I was thinking about that as a lawyer, and what's going to be the policy response? What's going to be the legal response, the political response, the military response? I already had those questions in my mind that day. But personally, I also wondered what would be the response towards people like me, towards Arabs, Muslims, Arab Muslim males of a certain age.

I think very early on, even on that day, the early reports pointed to, if I remember right, a Palestinian faction. Then very quickly, it shifted to Al-Qaeda. Maybe earlier on during the day, if I remember the media reporting accurately, there was some talk about sort of withholding judgment, and to remember the Oklahoma City bombing. But I think as soon as the focus shifted to Al-Qaeda that became the narrative.

Over the next few days, I heard about—fortunately, I didn't experience any violent harassment. I wasn't attacked or anything like that. But I do know people who were, in this neighborhood, in Harlem who are visibly Muslim or Arab or perceived as such. I have heard many stories from people who experienced harassment and physical violence, really.

A mother of a friend of mine, on 9/11, her mother was stuck in traffic in Brooklyn because she wanted to head back into the city to get one of her kids from school, one of my friend's siblings, from school as this was happening. She was stuck in traffic, and the mother is a middle-aged woman who wears hijab, who wears the veil. At one point, apparently her mother was surrounded by different people, mostly men with baseball bats. She was locked into her car, and people were pounding on the car. My friend described that, and she was very agitated that happened in Brooklyn where not only was she born and raised, but her mother was raised in Brooklyn as well.

There were experiences like that that I heard about secondhand and some things that I observed personally. But thankfully I was never personally attacked in a physical way. But of course, conversations at the law school and generally in the media and generally in public, in the general discourse, things changed significantly. I'm not saying that it was a particularly friendly—that the United States was ever a particularly friendly environment for Muslims or Arabs. I think there always was a certain degree of prejudice towards Muslims or Arabs in this country, and towards other groups as well.

But after 9/11, it was this huge jump, a radical jump in the frequency and intensity of that sentiment and of those kinds of attacks. Any time I would turn on the television, anytime there would be a conversation at the law school or at a public place, it would always be charged with a lot of undiscerning animosity towards large groups of people. To think of one concrete example, I remember one of the classes I was taking in the fall of my second year in law school was a criminal law class where part of the discussion right before 9/11 in class had to do with the propriety of racial profiling in the context of the war on drugs.

It's funny. Before 9/11, the consensus across the board among most of the students, save for a few extremely conservative ones, but including the faculty member who was leading that class, was that racial profiling in the context of the war on drugs—state troopers pulling people over for driving while black or Latino on the New Jersey turnpike, things like that—didn't really work, were unconstitutional and immoral. There was that liberal consensus that obtained.

In the same conversation right after 9/11 in class, some of the same people who were opposed to racial profiling in the war on drugs, including the professor, were now openly considering it and advocating it in the context of the war on terror, in terms of profiling certain people at airports, based primarily if not exclusively on religion or perceived religion, or race or perceived race. Those things were being discussed, and people who were basically my allies a week earlier in a related conversation were now on the other side.

I distinctly remember finding myself arguing with the professor and five students of different racial backgrounds after class, where not a single person in that other group was on my side.

Everyone was making exceptions, allowing for exceptions to the reasoning that had controlled what they said and what they believed not a week earlier. Those kind of experiences were very, very common.

I do remember generally just being actually physically sick around that time. I don't know if it was a combination of factors, including the stress of that event, the trauma of that event and maybe some environmental factors, like whatever was in the air as a result of the attacks. I also spent part of the week working downtown during that period of time. I was working at the courthouse, working for a judge. I was at the federal courthouse downtown. Maybe it was a combination of the things that I breathed in, and psychological factors like the stress and the trauma of the event and of those sorts of conversations that followed the event, and the sorts of things that were constantly being repeated that got to me.

For a period of two weeks around that time that fall, I felt constantly weak and just ill. Not in an incapacitating way. I was able to go about my business, or I forced myself to, but I just was not well. I still don't know what it was. I still don't know what mix of factors contributed to it. But I think it had to do with sort of the constant assault of that kind of rhetoric in the wake of the attacks and having to deal with it when I turned on the television, having to deal with it if I opened a newspaper, or if I went to school and engaged in a conversation. It was a feeling of being besieged.

Around the same time, as you well know from your work, over one thousand Muslim immigrants were rounded up and dispersed to various detention sites in the tri-state area. These people were

held on pretextual immigration charges, but really it was in the context of a larger national security investigation where the government decided to round up people from Muslim-majority countries, because the hijackers were from Muslim-majority countries. It really was not more sophisticated than that.

Very quickly, the ACLU [American Civil Liberties Union] and the Center for Constitutional Rights began trying to interview some of these people who were in the various detention centers and prisons. They were even putting people in general population in jails, as you well know, which is contrary to the way things are done normally in the immigration setting, because immigration violators or alleged immigration violators are not criminals. But they disregarded that, and they put people together because they needed to find places for the people. They had arrested so many people.

Around that time, I started working. I think this was in October. I started working with the ACLU visiting different sites and sort of acting in an interpreter/legal assistant, legal intern role because I was a second year law student. I went to various sites with various ACLU attorneys. I remember this hilarious incident. Obviously the stories we heard were extremely disturbing and shocking and about the sorts of mistreatment that people encounter.

One of the men that I interviewed, or I helped interview, was a Mauritanian who was a businessman, detained on a visa violation. He was thrown into general population at this prison in New Jersey with common criminal offenders. Of course, everyone was very eager to do their patriotic duty, including the guards and the prisoners, some of whom were violent offenders.



They took it out on him. He had his jaw broken. He was abused, and the guards turned a blind eye because he was a “terrorist.”

There were stories like that that were very, very common in those interviews that came out. Other stories were no less shocking, including people who like this Syrian man who had actually tried to cooperate with the authorities because when he saw the pictures of the hijackers on television, he recognized one or two of them from this mosque in Virginia that he used to attend. He called the authorities to let them know. As a result of that, he was thrown into jail himself, placed in deportation proceedings. There are a lot of stories that were just really disturbing.

But to take it back to a personal account, there was this hilarious incident where I think I was at the prison in Patterson. I can't remember exactly which prison it was. But I had got in there and was one of the ACLU attorneys. We were both in suits. Again, I was there to be his legal intern and to help interpret the conversations he might have with any Arabic-speaking prisoners there, if there were any.

We had done our day's business and we were on our way out of that facility. There is an antechamber. You go through it one at a time, and the door shuts behind you. They clear you through a one-way mirror, and then the other door opens and you can leave, and then another person comes in. The attorney went first, and he cleared the barriers and was on the outside. Then I went second, but I was stuck in the antechamber for a much longer time than he had been. I was there five to ten minutes and I was wondering what was going on.

I could see through the other door. I couldn't hear, but I could see through the other door through the window in the next door that I wanted to clear that the attorney was gesticulating and arguing loudly, and he was visibly very angry. But by the time I got out, fifteen to twenty minutes later by the time I got through finally, I realized that what the attorney was arguing with the authorities about was that the authorities thought he had snuck in a suit and had given a suit to one of the prisoners whom he had interviewed. They thought I was actually one of the prisoners trying to sneak out with the attorney.

The delay was while they tried to look at their log and figure out who had come in and they looked at some of the security footage to make sure that the same people who went in were the people who went out. But anyway, they suspected because of my appearance that I was one of the detainees in a suit trying to escape.

That was also a very important experience in my second year of law school, doing that work. At the end of my second year of law school, I decided to spend the summer working at the Center for Constitutional Rights as an Ella Baker fellow. I worked on some of these issues. I worked on the *Turkmen* [*v. Ashcroft*] case, which was a case brought on behalf of the post-9/11 immigrant detainees here in the United States.

I developed an interest in how these issues were playing out post-9/11, so that even when I went to France, after I had finished my law school here, I kept an eye on these issues. I kept on reading about them. The idea started forming at that point in my mind that I wanted to do

something about it. I wanted to see if there was a way for me to work on those issues. I don't know what took us to this question.

Q: What happened? That's great. That's great especially that story of the suit, the smuggled in suit.

Kassem: At the time, I thought it was hilarious. I was laughing my ass off. Sorry. Can I curse on this?

Q: Absolutely.

Kassem: Okay. But at the same time, I also thought this is deeply, deeply messed up and it's symptomatic of what's happening in our society. I think for anyone who comes to the United States, it very quickly becomes apparent how important race is in the national narrative here and in popular culture and in the way society functions. I think that also facilitated the racialization of the response to 9/11. I think that is the way we as a society deal with things.

Of course, I'm not historically blind to the point of saying—even if in the present moment today the Muslim or the Arab is the most reviled sort of person in the American psyche, I think that historically and in the future, that is always temporary. That's a moment. I think ultimately, unfortunately, it will go back to being the American narrative and the obsession with African Americans. I hope we will move away from that, but that has been the pattern. I think there have

always been other groups that have temporarily taken that position, but very quickly that position goes back to where it was before.

But I think that might explain why things got translated the way they did in the way that our society responded to that trauma and in the response not just domestically, but internationally as well. I think very quickly the United States started treating any Muslim out of place as necessarily suspect. If you were a Muslim in Afghanistan, and you were not Afghani, you were automatically a fighter. You were automatically a threat. You were automatically suspicious.

There never was much room in that perspective for, for example, the Saudi charitable worker who may have gone to Afghanistan for the same reasons that many of our young men and women go to different places with the Peace Corps. There never was room for that in the narrative. The narrative was just very narrowly focused on the Muslim and Arab who is out of place as a threatening other, and nothing else.

To those guys who were seeing me through that one-way mirror at that prison facility, to them I was just an Arab suspiciously out of place. I was wearing a suit, and I was trying to get out of that facility. My place was not in a suit. My place was not on the way out of the facility. My place was on the other side of those bars, from their point of view.

Q: So what's the next big incident or personal experience related to the work you are doing today?

Kassem: I left. I finished law school here in May 2002. I finished the requirements that I had to meet here at law school, at Columbia in May 2002. Over the summer of 2002, I moved to France to spend two years there earning the equivalent degree to a JD, a *maîtrise*. When I was in France, again I was following these issues very closely.

When I came back to the United States in 2004, I came back to New York on a two-year public interest fellowship, to work on wrongful convictions, basically exoneration and post-exoneration cases. In those two years, I represented mostly black and Latino young men and some poor young white men who had been wrongfully imprisoned for crimes they hadn't committed.

One phase had been to demonstrate that they were innocent, and usually that demonstration came through DNA evidence. Those were most of the exonerations that I worked on. The next phase that I was most involved with were the post-exoneration cases where we would file civil suits to press for reforms to ensure that whatever happened at those precincts, whatever happened at those crime labs, would not happen again to other people, to reduce the odds of the next wrongful conviction.

Most of my clients at that point had spent upwards of ten years in prison for crimes they hadn't committed. So that was connected to what I would end up doing. One, in the general litigation sense because you learn trial skills. You learn litigation skills that you can export to other settings, but also there was a thematic connection in terms of a fundamental denial of justice. I think that is a large part of what I found most compelling about that work.

One year into that work, I went to my supervisors and I told them that I felt comfortable enough with my case load that I wanted to take on, in my personal capacity, on a case that had to do with this other set of issues, these post-9/11 issues. I was thinking about trying to take on a Guantánamo case, for example. This was in 2005.

My supervisors said that they were fine with me taking the time to do that, but because it was a public interest fellowship I was on, that they wouldn't have the resources to underwrite that work. I would have to either fund litigation expenses and traveling to Guantánamo out of pocket or find some other way of funding it. My outfit at the time wouldn't pay for it, essentially. Of course I couldn't fund it out of pocket because I was on a public interest fellowship and I made next to nothing.

That set me on a course where I was looking for different partners to work with. I reached out to some of the law firms that had started working on Guantánamo cases pro bono. I reached out to the Center for Constitutional Rights and other groups. I offered a quid pro quo where I said, "If you let me co-counsel on one of your cases and you underwrite my expenses, I can save you some money by providing ad hoc interpretation and translation services, and I can also do some of the legal work, which would save you also some time and money again in exchange for my expenses being covered."

No one really bought it. That really didn't go anywhere. I tried that for a while with a bunch of different parties, but it didn't get me anywhere. Then randomly, I met a student. I was at a party or something, and I met this guy who was a law student at Fordham. We were talking about this

stuff, and we talked about Guantánamo and he said, “Oh, I'm in the criminal defense clinic at Fordham Law School. My professor is going to bring on a couple of Guantánamo cases. She's about to start those cases now. Would you be interested in talking to her? And I think she'd be interested in talking to you.” I said, “Of course.”

I went and I met with her. Her name is Martha Rayner, at Fordham Law School. She is another person you should talk to. We chatted for an hour or two. After that, she was just like, “Well, are you interested in coming on as an adjunct? We'd have to go through the process. But if you're interested, we can try to bring you on as an adjunct. You can co-teach the class with me and help me with those cases. Your expenses would be underwritten by the law school because the students would be working on these cases and it'd be part of their experience.”

That's how I got into the work, and that's how I got into teaching, actually. I really had no intention of becoming a professor. A lot of people go to law school with that intention firm in their mind. It was never really a priority for me. I didn't feel very strongly about clerking for that reason. I just wanted to litigate right away. At first, I thought, “Okay, I'll do it not because I want to teach, but because it's way for me to work on the case I want to work on.”

But then I discovered that I actually enjoyed teaching. I enjoyed working on cases with students. I found it personally fulfilling, but I also think not just that the students grow from it and they learn from it, but also that working on cases with students uniquely serves the client's interests as well. There is an advantage in it for the clients, and we can provide often superior representation

from that platform, just because of the energy and the single-minded focus that students bring to the work.

That's how I started. I ended up working at the Fordham clinic with Professor Rayner for three semesters. During that time, we met with our clients at Guantánamo. We went to Bahrain with some students and met with families of other prisoners were looking for lawyers. We had placed ads in local newspapers announcing our visit and asking any families in the region who could come to Bahrain who knew that they had loved ones at Guantánamo or who didn't know where their loved ones had gone, to come and talk to us and a group of other lawyers.

We met the family of one of our clients that way, and ended up representing him. It turned out he was at Guantánamo. We also went to Yemen with another group of students and Professor Rayner and met with families of some of the Yemeni prisoners that we represented in Guantánamo, and met with government officials who might influence the process one way or another.

That's really how I got my start in the Guantánamo cases and in the national security realm more broadly.

Q: Tell me what the first time you went to Guantánamo, and I guess about security clearance also.



Kassem: Until recently, I held the record for the longest delayed security clearance in the Guantánamo setting. I'm not saying this is a world record or anything like that, but it took my clearance nearly a year to process. Some people get clearance in a month. Some people clearance in six weeks, depending on your background. My background being what it is in terms of where I've lived, where I've travelled, and the fact that I'm a dual national with Syria as my other country of citizenship; all those factors really extended the process. I had to go back a bunch of times and provide more information, provide more people.

It was a very invasive process. At the time, some of the people who lived in my building where either undocumented or didn't really want to deal with the authorities for a variety of reasons. Sometimes part of the background investigation is that the FBI [Federal Bureau of Investigation] investigators just show up at your place of residence and knock on your neighbors' doors and talk to people about you, unannounced. You don't know this is coming, and your neighbors don't know it's coming.

Some of my neighbors were really pissed off at me that the FBI was at their door, leaving cards for them. They wouldn't open the door. I told them they're under no obligation to talk to them. That's their prerogative. I had to put them in touch with a whole bunch of people that I knew. Some of my friends found it humorous that they were being asked questions such as, "Does Ramzi love America? Is Ramzi loyal to the United States? Is he someone you could trust with sensitive information?" I understand why the agents have to ask these questions, but to my friends who are completely unconnected to any of this stuff, it just really sounded odd and funny.

One of my friends even asked the FBI agent, “Special Agent so-and-so you, what makes you so special?” I didn’t think that was particularly helpful. But then again, I was running out of friends. They kept on coming back to me for more and more people, and at some point I didn’t know anyone else. It was a very lengthy and intrusive process, but it’s what I expected and I’m happy to have paid that price.

It’s not that I’m comfortable with government intrusion into my private life. Given my childhood and young adulthood experiences in places like Syria and Iraq and Jordan, it’s not a step that I took lightly to open the door to the government to come into my life and loom as large in my privacy as the Iraqi or Syrian government might have. It was really something that weighed very heavily on my mind as I was doing it.

One of the things that I appreciated the most about living in New York and living in the United States was not having to worry about that so much, or as much, and knowing that I had a guaranteed sphere of privacy, and that I had more room for the expression of my thoughts. It was not a step that I took lightly, but I thought it was worth it given the work that I wanted to do. That was the security clearance process for me.

I think there are many important questions about requiring security clearance for this work. I don’t know that the majority of the information that you come across in this work ought to be classified. I think there is definitely a lot of over-classification going on, and a lot of the secrecy is unnecessary and worrisome.

I also think that requiring lawyers to obtain security clearance to work on certain cases gives the government far too much control over the pool of lawyers who can do this work. Ultimately, it's the government's decision whether to grant or withhold security clearance. There is case law protecting the right to apply, but when it comes to whether or not security clearance is granted, courts don't interfere with that. It's viewed legally as an exclusive executive prerogative. If the executive said, "Sure, you have a right to apply and you have applied, and we've considered your application, but you're not entitled to clearance," that's it.

If your client wants you and only you as their lawyer, then tough luck for him if his case involves classified information. He will have to get another lawyer, or he will have to go forward with that lawyer knowing that that lawyer will not have access to the classified stuff. There are a lot of issues with the requirement that lawyers be security cleared, the amount of control it gives the government, whether or not the government has abused that control just yet.

I think as Americans we historically and culturally think we should be far more suspicious of power than we are. I say culturally because I think mistrust of government and the assumption of bad faith on the part of those who wield power was something that was very common in the founding framers. When you read their writings and any documents from that period, one common theme is you have to set up the system of checks and balances, and you have to set people's ambitions up against each other because fundamentally, you can't trust people with power. I think that's the common theme that undergirds the entire political system in a way.

To find ourselves today in a society that's so trusting of people in power is at odds with our political philosophy and in some ways un-American. From my vantage point, I think even if the government has not abused its power to grant or withhold security clearances, just the fact that they have that power, that it's completely unchecked with the possible consequences that it carries for some of our clients, makes me deeply uncomfortable. There is larger issue of just classifying everything as a default, such as anything my client says to me at Guantánamo, including, "Oh, isn't it rainy today?" That's presumptively classified. That's really troubling.

Of course I have obtained security clearance. I have signed the memorandum of understanding. I have signed the protective order, and I have to play by those rules. I treat every single utterance that a client makes at a meeting in Guantánamo as presumptively classified, because I have to. I go through the processes that are set forth in the protective order before I discuss it publicly. I go through all of that, and I'm legally bound to do that. I still question its wisdom, maybe even its legality. Not that I've challenged it legally yet. Yet. I think in a nutshell that is the security clearance process.

It's an ongoing thing. You grant the government basically *carte blanche* to look into your financials, to look into your academic records, to look into your medical records or some medical records for five years. They can do that any point, and you're never given notice that it's happening. They can go to your bank and look at what is going on with your finances. The bank by law can't notify you. You have no way finding out that it's going on, but that's something that I voluntarily signed away.

Q: So first impressions of Guantánamo, or tell me about the first trip.

Kassem: My first trip to Guantánamo and Cuba was in September of 2006, if I remember right. I've been there roughly thirty to forty times since, but September 2006 was my first trip. Since then, I have gone every two or three months, usually for a week, to meet with clients in military commission proceedings when a military commission case was live.

My first trip actually coincided with when the announcement was made of the arrival of the so-called high value detainees to Guantánamo, like Khalid Sheikh Mohammed and all the former CIA [Central Intelligence Agency] black site prisoners. When those guys were moved to Guantánamo, that was the day that I got to Guantánamo, that the announcement was made.

It turns out—we just found out now that for some of them, it had not been their first time at Guantánamo, that some of them had moved to Guantánamo in 2003 and then whisked out back to the black sites in 2004 because the [George W.] Bush administration was afraid that the Supreme Court might not go its way in *Rasul* [*v. Bush*, 2004]. We only found that out this year. At that point in time, everyone thought, “Oh, wow these guys are being brought to Guantánamo for the first time.” The Bush administration was also acknowledging that black sites existed, and that it was no longer going to use them, but that they had existed and that these people had been there. That was the larger context for my first trip.

I was there to meet with two Yemeni clients and two Saudi clients who were my first clients at Guantánamo. Only two of whom are now still there, one of the Saudis and one of the Yemenis. They have both been released since that meeting.

My first impressions are that I think I'm generally uncomfortable in military settings and around military people, or I was at that point in 2006, probably mostly because of my experiences as a child and as a teenager with things military or paramilitary. I can't say I'm someone who idealizes or fantasizes about the military generally or martial things.

I think for my family and I and our friends, and the people we knew and cared for, our experience of military things was always on the unarmed civilian side of whatever was going on. We were always on the wrong side of the rifle, so to speak it. For that reason, I think I was very uncomfortable having to deal with that, going to a military base, being surrounded by and having to deal with folks in the military. Of course, since then at this point, I'm in my element there, but initially in 2006, that was one thing that jarred me.

For me, it was just a contrast between what Guantánamo already had come to represent in my mind symbolically, like the associations that Guantánamo carried for me personally, from what I had read and I understood and the survivor accounts that were out there and stuff that was already in the media. The symbolic weight of Guantánamo for me was a very uncomfortable contrast with the reality there that I observed most immediately with the setting, because it's this beautiful Caribbean, pristine, untouched setting.

I travelled around the Caribbean a fair amount at that point in my life. I had been working in Haiti. I had been to the Dominican Republic. I traveled to a bunch of Caribbean islands. I realize that Guantánamo was probably one of the least touched, undisturbed corners of the Caribbean, because it has been a U.S. military base for so long. You don't see a lot of the rampant over-development that you might find in other places in the Caribbean. It's really beautiful in just a raw way.

But the contrast of that beauty with its symbolic ugliness as a place that I came to associate with torture, imprisonment without process or charge, indefinite detention, not knowing if you're ever going to see your family, and racism. Of course I wasn't blind to the fact that every single prisoner at Guantánamo was a young Muslim male, just like me, most of whom were Arab, just like me.

All of that together made for a really strange and uncomfortable feeling when I first got there. To this day, I say I'm more comfortable with it and I think I am. I'm more comfortable with that place. I know how it works. I'm more comfortable with how the military works, how our military works, how the U.S. military works, enough to get my business done and try to help my clients. I was at Guantánamo last week. I came back on Friday. To this day, I'm always very happy to meet with my clients and I very much enjoy my interactions with them. I'm very happy to do what I can to help them and their families.

But to this day, one of the things that makes me the happiest about any trip to Guantánamo is when the plane takes off and I'm on it. I always have that feeling of relief, like on Friday last

week when the plane took off. There's always this feeling of relief that I still experience, even now years into this. I have been going there for five years now. To this day, there is still some level of discomfort there.

As my paternal grandmother that I was telling you about always says, of all the things for you to do with your life, you have to find a line of work that would take you to the one place on earth that is dedicated exclusively to the imprisonment of Arab Muslim men. She says it in probably more colorful language in Arabic, some curses thrown in. That's one of the general impressions from that first trip that I remember.

Also, the feeling of finally meeting your clients. At that point, by the time I got security clearance and I was able to travel down there, it has been over a year that I had been working on some of these cases. I knew a lot about my clients and I had spoken with their families. But finally putting a face to that, and a personality and a voice was, in many ways, exactly what you would expect, like the orange jumpsuits and people shackled to the floor. It was all those things that people had read about. In many ways, it was what I had come to expect, but in many other ways, it was really surprising and in some good ways too and in some very helpful ways, I think, for my own sanity.

Because when you work on these cases, very often you will read about what your clients have been through, like extremely physically and psychologically scarring experiences, torture. I have clients who have been to black sites, who have abused by proxy in the United Arab Emirates, and who have been in the dark prison of Afghanistan, which was one of the CIA sites there. You



read all these harrowing accounts about things that went on there, and you even hear from your clients. That is part of the narratives that I would get from my clients at Guantánamo, the things that they had been through. You would hear these horrible things.

But at the same time, what's helping me retain my sanity is actually meeting the individuals. Because only at that point can you realize that despite all the things that you have read on paper about what they have survived, and despite all the things that they may have told you that are corroborated by many other people, including the government—a lot of government documents that are now public confirm a lot of the things that my clients have described in terms of torture and abuse, it's only when you meet them do you realize that, despite all of these horrible experiences, these horrible dehumanizing experiences, they've still managed to survive and they've managed to retain some of their humanity. You see that. They still have a sense of humor. They still laugh. They still love. They still care about their loved ones. They have managed to preserve their dignity and their humanity, despite a whole series of efforts that were designed to strip them of that.

The U.S. government made no secret of the fact that Guantánamo, a place like Guantánamo by design was aimed to dehumanize people. When you read some of the accounts of interrogations that are now public that you can find online, prisoners are regularly being told that they're inferior to a banana rat, which is a rodent that you find in Cuba. To a lot of prisoners, the interrogators would point to banana rats outside the interrogation room and would say, "You are less than that, because that rat can decide to climb up that tree. That rat can decide to leave. You can't do that." Everything about Guantánamo was designed to isolate and dehumanize people.

When you actually meet those people and you find out that despite a calculated effort by the most powerful force on the planet to strip them of their human dignity, they have managed to retain that and they have managed to still find humor in things, and they still manage to love and care about people dear to them who are in different places, it's not to say that they aren't going to deal with sometimes physical and almost always psychological scars of what they've been through. Different people will have to deal with that to different extents for the rest of their lives after they leave Guantánamo. No one, I think, can emerge from that place unscathed.

But still to me at least, it really helped me keep some balance and keep some perspective and preserve some sanity. Because I think I wouldn't have had that if I had just gone by the accounts that I had read, or if I just had the information I got from them without the direct experience of meeting them and talking to them and having a normal conversation.

The number one question nowadays is, "Oh, is Guantánamo still open?" Because of course, everyone thinks [Barack H.] Obama closed it in the United States, which is part of why it was so brilliant to make that announcement and sign that executive order and then not deliver on it.

What used to be the number one question was, "How do you as an American, as a New Yorker, feel about representing terrorists who may have had something to do with what happened to your city, to your friends, and to your coworkers?"

To me, I always feel like, first of all, the fact that you had nearly eight hundred prisoners at Guantánamo at its height and that we are now down to 171 tells you something. It tells you that

the selection mechanisms were deeply flawed. Most of the people who ended up there should not have been in U.S. custody of any shape or form to begin with. That's assuming a place like Guantánamo should exist.

To me that is the next question, is should this place exist, even for that minority of people who may have been involved in some way in 9/11 or in the conflict that followed 9/11, who fought with the Taliban or who were commanders in Al-Qaeda and intended to harm the United States. Even for those people, do we think there should be a place like Guantánamo? Are we fine and are we comfortable with that as a society? Are we comfortable carving out that space of exception, with the understanding informed by history and experience and historical knowledge, with the understanding that that space of exception will have a tendency to grow, and will threaten the rest of our liberties in less exceptional spaces?

We already see that today. I have personally observed some of the litigation tactics that have been used by the government in my Guantánamo cases. I have seen them in recent years use those same tactics in non-Guantánamo cases. We are already seeing that bleeding over, and that erosion of whatever barrier we imagined existed between that exceptional space of Guantánamo and the rest of our legal system and the rest of our world.

I'm already seeing that erode, and I'm already seeing some of these tactics and some of these arguments being used in settings that have nothing to do with Guantánamo in some of my other cases. I think progressively, the exception will spread to the point where it will completely

undermine, or potentially could undermine, the way we live and our legal system as we know it, and our freedoms as we live them and as we cherish them.

I think that's an important question that I throw back at people. I just ask, "Is that something you're comfortable with, Guantánamo and everything that it represents as a part of the way that the United States participates in the world? That we have this offshore prison where people are afforded less rights, and we have these military commissions where despite all of the modifications, the very point of their existence is so that they provide fewer guarantees and fewer protections to the defendants?" If that weren't the case, we wouldn't need that system. We would try people in the regular military systems, the courts martial, or in the regular federal courts, the Article III courts.

We created the military commissions, or the Bush administration created the military commissions, to give people fewer guarantees and to secure convictions at the expense of justice. I'm always curious. Are people comfortable with that? Unfortunately, I think on some level—and I don't know if this is as true today as it was five years ago when I first started thinking about this and asking people that question—definitely five years ago people were comfortable with that. I think the authorities were aware of that.

The political decision makers who decided to set up Guantánamo were doing so in part because of the very real, concrete political benefits that they knew they could gain by being able to say, "Look, we've got this prison out there and we're treating them horribly. And the 'them' we're talking about are men who to you look like the guys who committed the 9/11 attacks. The 9/11

attacks were committed by these Arab Muslim men, and we've got all of these Muslim men at Guantánamo and we're treating them really bad." It's this exercise in scapegoating almost, where regardless of individual innocence or guilt, just the fact of the place's existence serves a political purpose.

I don't want to say most people, because I don't know that, but to some people and many people that I have spoken with at least, they don't care if eighty or ninety percent of the people there shouldn't be there. That doesn't matter. As long as ten or twenty percent of the people who are there had something to do with hostilities against the United States, they're comfortable with the other eighty or ninety percent paying the price. I've had that conversation in those terms with people, even here in New York City, which is supposed to be a more liberal place, or more enlightened place, however you want to put it. That's not an uncommon attitude.

Of course, they're not talking about sacrificing their own liberty or that of people that they know. I don't think they would be comfortable doing that. But that's not the question, because the conversation is all about is it okay to do that to these other folks who are completely nondescript, dehumanized, generic, hypothetical, fictional über-terrorists? So it's fine. I think that is at least one of the Bush administration's victories. They managed to paint people in that light, paint them with that one single color, undifferentiated. They're just this mass of threatening individuals; they're the "worst of the worst" collectively. That was the phrase that was trotted out often while the Bush administration was still with us, that they're the "worst of the worst."

Unsubstantiated. We now know it's not true. The Bush administration's own actions belie that statement, such as the fact that the Bush administration released hundreds of the "worst of the worst." But the fiction, that myth, still has a very tight grip on our conversations in the United States today, on discourse in the United States today. It's still assumed to be true on some level. It's what guides policy. It's what guides discussion and debates. It's what dictates outcomes. It's really disturbing when you've actually met the individuals in question, and you've actually met their families or spoken with their families, and you're aware of the very real human costs.

Q: Talk about some of those meetings if you can.

Kassem: I don't know. We are almost out of time for today aren't we?

Q: Maybe we have time for one meeting.

Kassem: Just to give you an illustration that the impact, I will say this. I don't want to sound too harsh or too judgmental, because I think there is definitely value in the following idea that what is happening at Guantánamo and beyond, this whole range of post-9/11 policies and practices that were put in place by the Bush administration and have been maintained, adopted further, and expanded by the Obama administration, that these things erode and they cut against our values, that they undermine our rule of law, and that they are going to erode the freedoms that we cherish. I think there is some validity to that, and that is part of what brings me to this work. It's one part of what brings me to this work.

But the problem I think with discourse in the United States, even from people who claim to be advocating on behalf of the prisoners, on behalf of individuals and communities who are affected by these policies, who are affected by Guantánamo, who are affected by counterterrorism laws, the problem with discourse even from those quarters of people who claim to be advocating for the people affected is that it focuses too much on what this means for us. It automatically becomes about us and what this does to our values. It almost ignores the individuals affected.

To me, that should be a, if not the, primary consideration. What has been done to the men, for example, what has been done to the individual Guantánamo prisoner? What has happened to him? How has this destroyed his life? How has our government attempted to strip his humanity, his dignity, and what does that mean for him going forward? But also, what has this done to his family, to his immediate family? What has this done to his community? I think you have to engage with it on that level first and foremost, and then talk about the impact for us as a society, as an American society.

To give an illustration, I represented this Algerian prisoner, Mammour Ameer, who actually I think would be happy to talk to you guys. His story is not so atypical for Guantánamo. He was a UN [United Nations] mandate refugee in Pakistan. He was under the protection of the United Nations High Commissioner for Refugees [UNHCR] in Pakistan. He had his refugee card there.

Some countries like the United States give out refugee status directly. Other countries farm out that function to UNHCR, which is a branch of the United Nations dedicated to refugee issues. Pakistan is one of those countries. My client and his family are Algerian nationals. He had gone

to Pakistan in 1990, before the civil war in Algeria, to work with Islamic humanitarian organizations that were catering to the needs of victims of the Soviets, refugees who had been displaced at the time of the Soviet occupation in Afghanistan. That has just ended in 1989, so there were still a lot of Islamic and other humanitarian organizations that were active in Pakistan and Afghanistan serving that population.

He was a very religious Muslim. He wanted to do it out of religious principle. He went to Pakistan and worked with refugees, Afghan refugees in Pakistan and Afghanistan as a humanitarian worker. The civil war breaks out in Algeria. Any Algerian returning to Algeria with a Pakistani or an Afghan stamp on their passport was automatically assumed to be one of the Islamist rebels there who were engaged in armed conflict with the Algerian government. People were being imprisoned on those grounds, and tortured and sometimes killed. He couldn't go back home to Algeria.

On those grounds, he applied for refugee status through the UN in Pakistan and got it. He and his family were living there legally and he was working in Peshawar, Pakistan with these humanitarian organizations for years. 9/11 happens. Of course, this is his home. He stays in Peshawar. At one point shortly after 9/11, after the U.S. invasion of Afghanistan and after the beginning of the war—I think it was like at 1:00 AM. I have the exact dates in my files, but I cannot remember off the top of my head.

But at one point, it was like at 1:00 AM, in late 2001, early 2002. There is a knock at the door, and my client, Mr. Ameer, goes and opens the door. There are a whole bunch of armed Pakistani



men there, some in uniform, some not. He assumed that some of them were part of the ISI [Inter-Services Intelligence], which was the Pakistani intelligence service. They were with one visibly Western, seemingly American man in civilian clothing, who I assume was a CIA agent. But I have no way of knowing that for sure.

They don't tell him they want to arrest him, but they just say they're there because they want to see his neighbor. "We want to see a Sudanese man by the name of x who we are told lives in this building." My client informs him that that is his upstairs neighbor, and leads them to the stairwell and so they go upstairs and they arrest the Sudanese guy who lived in his building who they were after.

On their way back down, the American guy takes an interest in my client, and asks him where he's from. My client, who is in his forties, says he is from Algeria, and produces his ID card, his UNHCR refugee ID card. At that point, there's an argument between the American and the Pakistani agents about arresting my client. The American wants to take him in. The Pakistanis are saying they came for the other guy. This is all going on in English, and my client could understand some English.

Essentially, the American orders them to arrest my client. The Pakistanis tell my client's wife not to worry and that he will be back in a couple of days. They take him, and from there he goes to a couple of different U.S. sites. He's questioned, ends up at Bagram, and from Bagram is brought to Guantánamo. He's there for years.

That's how I came to represent him. We eventually got him out after the *Boumediene* [*v. Bush*, 2008] decision. Initially, the government didn't want to produce the factual return in his case. The factual return is basically the government's evidence justifying his imprisonment. After the *Boumediene* case where the jurisdictional question was finally out of the way, we made a motion asking the judge to order the government to produce its evidence, to show us why this man should be in prison. The government opposed that motion, but we won. The judge granted our motion and set a deadline for them to produce the evidence by the end of October, 2008. By mid-October, my client was on a plane out of Guantánamo to Algeria because, obviously, the government didn't want to produce the evidence. I'm guessing it would have been weak to non-existent.

But he got caught up in the system, all the same. It's the sort of system where once you're in, absent an order by the secretary of defense himself, you're not getting out. He was stuck at Guantánamo for years with a perfect disciplinary record. He was one of the older prisoners so everyone looked up to him, including the guards who were eighteen or nineteen years old themselves.

He often mediated disputes between guards and prisoners. He was a very well-respected figure among prisoners and among the military authorities at Guantánamo because he was just an all-around great guy, very smart, but also very personable and very decent. That's why I think you guys should talk to him.

Q: Where is he now?

Kassem: He's in Algeria. He went back home to his family. At that point, his family came back.

Once he had been abducted, his family had to go back to Algeria, so now he's in Algeria.

The situation has changed enough in Algeria that it's not dangerous for him the way it was in the early 1990s, or through the 1990s, to return to Algeria. He's leading a normal life there. He's fine.

But the plan I wanted to get to was, in the process leading up to his release, while we were representing him, my students and I would often be in touch with his wife. We often spoke to his wife to obtain documentation that we needed for the litigation, just to make sure she was doing okay. She was our main point of contact in his family—his wife and his brother. She would often share with us how difficult it was just bringing up the kids on her own without having his income or his partnership in her own life, emotionally, or for the upbringing of the children, and how the children were suffering because kids were making fun of them that their dad was a “terrorist.” They weren't doing so well in their results in school because, again, they were resentful and frustrated that their father wasn't there, and they couldn't quite understand why.

It had all sorts of emotional and economic impacts, and academic impacts, on the kids, on his wife, on the rest of the family. What really touched me, and it's something that I think I will remember for as long as I live, is when I finally called her to tell her. The government and the court had instructed me not to inform anyone of his release until he was on the plane. I couldn't give her much advance notice.

But as soon as that plane left Guantánamo, I was free to tell anyone. I called her once I knew he was off the island. I called her to let her know that he was on his way, and that he would be in Algeria soon, and that there would be some procedures in Algeria that under their laws and the practices that they had for Guantánamo prisoners, that they might keep him in isolation for ten or twelve days to interrogate him, but that, eventually, he will be home within a couple of weeks at most.

She was very quiet. Then she just started sobbing. She started crying more and more loudly. It was the first time in years that I'd heard her cry. Once she got through that, she said that she never really knew if she was ever going to see him again, all this time, on some level. She said that she was not quite conscious of it, but she never really cried before. She never really allowed herself to cry because she was really trying to keep all of these extremely painful feelings and thoughts in check. That's what she told me after she was done crying. She said she was trying to control all this pain and all these difficult feelings, including the main question to her, which was not knowing whether or not she would ever see him again, and the possibility that she would never see him again, right?

I expected her to be relieved, to laugh, to, you know—but I guess she was just letting out all this pain that she was bottling up all these years to enable herself to function, and to enable herself to support her children. There are four kids that she was raising on her own, most of whom didn't even remember my client. They didn't remember their dad—one of whom had never seen his father because she was pregnant with that child at the time he was abducted.

I will remember that, I think, for as long as I live because having worked with her for all that time, and spoken with her on a regular basis, it just never really occurred to me. I knew that she was going through a lot. She was telling me what she was going through. But it never occurred to me that the main thing that is on her mind is the possibility that she's never going to see her husband again, you know?

I don't think she's unique that way. Since then, of course, I have applied that to everyone else, to all the other families that I've worked with. It has informed my dealings with them. But up until I had that experience with her, I knew what she was dealing with very prosaically, that she had a hard time making ends meet, that she had a hard time bringing up the kids on her own, that she had all these daily concerns, and a general concern for the health and well-being of her husband, but this existential concern, the possibility that she would never see the father of her children again, that is not something that I thought of as being part of her, a lot.

Of course, now I know a bit more. But I think that's the concrete reality that a lot of the discussion misses, unfortunately. Part of that may be our fault as advocates, that we haven't been able to tell those stories. I speak for myself, and my students, and many, many of my colleagues who try very hard to tell the human story, to explain and show what this is doing to different families and communities. But a lot of times, what we are met with is, at best, indifference from the public, or maybe more accurately, from the media.

A lot of times we're told things like, "Well, your average American viewer is not going to be able to connect with, and empathize with, a woman speaking Arabic in a veil," which I find

deeply offensive and racist. I hope that's not true. I think it gives your average American far too little credit. I understand that language can be a barrier and you might not, immediately, be able to relate to someone if they look very different and if they sound different. But at some point, emotions are emotions and tears are tears. The experiences and feelings of a mother and a wife, or children, are universal on some level.

But a lot of times, we have been met with a lack of interest. By "we," I mean people who represent prisoners who are trying to get their stories out there and who are trying to tell the story of what has happened to their families. It has just been, very often, a dead end.

Q: Good. Okay. I think we're going to stop there. What time is it?

Kassem: It's 3:00.

[END OF SESSION]

VJD

Session Two

Interviewee: Ramzi Kassem

Location: New York, NY

Interviewer: Gabriel Daniel Solis

Date: December 9, 2011

Q: Today is December 9, 2011, and I'm here for the second interview session with Professor Kassem. Thank you for agreeing to follow up with us.

Kassem: You're welcome.

Q: In the interview that you did with Gerry, you ended the interview talking about your client that had left Guantánamo Bay and went back to Algeria, I believe in 2008. You were talking about working with his wife, and eventually calling her once you had confirmed that he was in the air, out of Guantánamo Bay. Since then, have more of your clients been released from Guantánamo Bay? And if so, could you speak a little bit about their cases—without jeopardizing attorney-client privilege, of course—and the conditions of their release, and how they're doing, that you know of?

Kassem: Yes. Since then, since Mammam Ameer, who was my Algerian client, was released in the fall of 2008, I've had one client released, and that was a man by the name of Ahmed [Zaid Salim] Zuhair. He's a Saudi national. My students and I represented him for a couple of years, and we met with him at Guantánamo a number of times. By the time he was released, he was the longest-term hunger-striker at Guantánamo. He had been on continuous hunger strike from June of 2005 up until the day of his release in June of 2009. His case was actually real interesting.

He's a remarkable man. Anyone who's able to remain on hunger strike for so long has to be unusual, and it was a battle of wills between him and the prison administration at Guantánamo. They tried to force-feed him in some pretty brutal ways in order to break his hunger strike, in order to break his will, and to get him to suspend his strike, but it didn't work. I think for four years it was this pitched, long-term battle between him and the prison administration—not necessarily in the violent sense, at least not from his end, because from his point of view, the hunger strike was the only means of peaceful protest that he had at his disposal. It was one of the very few ways in which he could exercise his free will at Guantánamo—by refusing to accept food from his captors.

But he wasn't suicidal. He didn't want to die. He didn't necessarily reject the idea of being force-fed, but he did reject the idea of being force-fed in an unnecessarily brutal and violent fashion, which was what the prison administration turned to when they saw that they couldn't deter him from continuing his hunger strike. They initially force-fed him on a bed, in an unrestrained way, and, again, he never resisted physically or violently. But when they realized that he was just going to keep going with his hunger strike, they shifted to another protocol that was much more brutal, where they would put him in a six-point restraint chair that looks a lot like an electric chair. They took away any lubricants to facilitate the entry of the feeding tube through his nose and into his stomach. They took away any soothing lozenges. They took away any local anesthetic that was once used to ease the process of inserting the tube and extracting it, and they would leave him in that chair for hours on end. All of that was deliberately calculated to make the process as painful and uncomfortable as possible so as to get him to end his hunger strike, which he didn't.



We took on his case at a time when he was already a couple of years into his hunger strike. We litigated a number of issues. As of June of 2008, when the *Boumediene* decision came down, his case started moving forward in a number of ways. We finally saw the government's accusations and the government's evidence against him, so we responded to that evidence, both publicly, on the public docket, as well as responding to some of the secret evidence under classified seal. Some of our briefs addressing what the government put forward as evidence in his case—you can see some of those briefs on the public side, on the public docket. Then there is a separate set of briefs which remain classified, where we're responding to the secret evidence. Our view was that the evidence was extremely shoddy, and we were able to systematically rebut every single accusation, every single element of evidence that the government advanced to justify this man's imprisonment without charge at Guantánamo.

We were doing that on one track. Then on another track, we were trying to litigate the conditions of his confinement, specifically, the way he was being treated as a hunger-striker. That was a protracted legal battle as well, but we ultimately got to a point where we were able to convince a federal judge to order the government, in Mr. Zuhair's case, to come forward with specific justification for the use of the six-point restraint chair that Mr. Zuhair called the "torture chair," when they were force-feeding him. The federal judge ordered the government to basically force-feed him in an unrestrained fashion, on a bed or otherwise, the way they used to do it, and if the government wanted to use the restraint chair for some reason, they would have to come before this federal judge and explain why it was necessary to use the restraint chair to force-feed Mr. Zuhair.

That was a huge victory from his point of view because it obviously greatly improved the conditions of his imprisonment at Guantánamo. Unfortunately, as he often noted, he wasn't the only hunger-striker, and the court's order only applied to him. All of his fellow prisoners who were also on hunger strike were still subject to the brutal force-feeding protocol on the restraint chair, but he was excepted because of this court order.

That's generally the run of that case. Another interesting factoid about the case is that the *Boumediene* decision came down on June 12, 2008, so from that point on we litigated his case aggressively, both in terms of responding to the government's accusations and its evidence, and in terms of trying to push for some improvement in his conditions of confinement at Guantánamo. By the time we got into 2009, we had responded to those accusations and we were pressing for a trial date. It was our sense that the government was not too keen on going to trial in this case, so what ultimately happened is we asked the judge to set a trial date, which he did. The judge set a trial date for the end of June in 2009, so on the first anniversary of the *Boumediene* decision—on June 12, 2009—our client, Ahmed Zuhair, was on a plane to Saudi Arabia, which we sort of took as confirmation that the government really didn't want to go to trial on the really weak case that they had. We were, at that point, two or three weeks before trial.

So he was released on June 12, 2009, and he made good on his promise. One thing he'd always told me and my students when we met with him was that he was going to remain on hunger strike until he set foot on Saudi soil, and only then would he break his hunger strike. I think it's sort of a remarkable triumph of the human spirit, and his really free will that he was able to

deliver on that promise. When he got on the plane in Guantánamo he was still on hunger strike. Finally, when arrived at home, after, at that point, seven years in U.S. custody, he broke his hunger strike.

I guess the epilogue in this case is that when he got to Saudi Arabia, he obviously got to see his family, but he was placed into what's known as the Saudi—in the U.S. media it's been called different things, but you can translate the Arabic into "re-integration," or "rehabilitation." I think "rehabilitation" would probably be the better translation of what it's called in Arabic. It's what they call the Saudi Rehabilitation Program, and it's a program that the Saudi government put in place primarily in order to, in my view, address U.S. concerns about what was going to happen to Saudi prisoners who were released from U.S. military prisons at Guantánamo, at Bagram, Afghanistan, where my students and I also have a client, or at the U.S. military prisons in Iraq. The U.S. government had this concern of "What's going to happen to Saudis that we release from Guantánamo?" I think because of the close alliance between the Saudi regime and the United States, this program was created, in part, to accommodate that concern, and to allow the U.S. government to go out and say to the world, "Well, look. We're not just releasing these people. They're being watched closely by their own government. They're in some form of continuing custody."

That's the tragic note, I think, or sort of the continuing negative note in Mr. Zuhair's case, that in June of 2009 he goes home to Saudi Arabia and he's placed in this program where the conditions are far better than they were in Guantánamo, of course, and they're far better than the conditions that obtain in normal Saudi prisons, but, still, it's deprivation of liberty. He's not free to go and

live with his family. He's not free to resume his life. He obviously can speak to his family on a daily basis, which he couldn't do at Guantánamo. His family can visit him periodically, which they couldn't do at Guantánamo. He's allowed home leave during holidays, so for the major holidays of the Muslim calendar he can go see his family in Jeddah and Mecca. But he has to report back to the Rehabilitation Program, which is near Riyadh, the capital, and he basically spends most of his time there.

What's really unfortunate is that he was placed in that program in June of 2009 and he remains in the program today. He still hasn't been released, and that's been of great concern to us, to him, and to his family, that two and a half years from his release from Guantánamo, he's still under some form of custody in Saudi Arabia without any relief, without any justification, and without any process. He's only there because, at some point, the U.S. said that he was dangerous, but they never had to defend that in court, and if they would have had to, the U.S. government would have lost.

We've had some contact with him since then, and he obviously has contact with his family. I'm in touch with his family as well. But to me, that's sort of like the bitter aftertaste to his story. I've had other Saudi clients who went through that program on their release from Guantánamo—a couple of Saudi clients who were released before he went through that program. Typically, they would spend six months in the program and then they were released back to their normal lives in Saudi Arabia, but that hasn't been the case with him and with the other men who were on that plane with him, that last batch of Saudis to go home from Guantánamo. That was the last plane-

load, essentially. Since then, there has been a moratorium imposed by the Obama administration on any releases from Guantánamo towards Saudi Arabia or towards Yemen.

That's been the sad after-note to Mr. Zuhair's release from Guantánamo.

Q: It's interesting to think that you framed this Saudi Rehabilitation Program as continuing custody. It sounds very much like that's what it is, but in other interviews that I've heard where they've referenced what I think is to be the same program, in some ways it was portrayed positively as Saudi Arabia as one of the few places where they're working with former detainees to try to reintegrate them back into society. But it's interesting because this isn't a voluntary program.

Kassem: It's not. I think there are parts of the Saudi approach that one could say, legitimately, are positive, right? But this isn't a necessary part. So, for example, one way in which the Saudi approach to accepting returnees from Guantánamo is unique and positive—and that's primarily because they have the means to do it—is that they give returning prisoners some amount of financial aid. Right? Which is good, because you're talking about men who have been outside of the work force for years, and it's going to take them some time to re-acclimate to normal life, find jobs, and get used to the idea of functioning in a normal society as productive members. You need that kind of financial cushion, to the extent that their families can't provide it. Saudi Arabia is wealthy enough as a government that it can provide that kind of cushion.

I can't take issue with that part, and it would be great if every country to receive its nationals from Guantánamo could do that, but I don't think that necessarily goes hand-in-hand with the custodial part. You don't need to hold on to people as long as you've held on to Mr. Zuhair in order to enable him to re-enter society. Maybe there's an argument that could be made for some sort of temporary period of a couple of months where you want to make sure that that person is provided with some mental-health counseling and some physical health follow-up. All of that would make sense, I think, but we're talking about a limited duration. We're not talking about two and a half years of open-ended confinement.

The part of the program that deals with giving returning prisoners financial aid, enabling them to get married if they want to, enabling them to acquire a home or a car—things like that are unqualified positives. I don't think that requires the existence of a continuing custodial program of the sort that Mr. Zuhair finds himself in today, in 2011.

Q: Do you still have contact with Mr. Zuhair?

Kassem: Yes. I'm in touch with his family, and I've spoken to him as well. He gets home leave periodically from the Rehabilitation Program, so when he's home he can call me. I've spoken with him a few times since his release, and he's gotten more and more frustrated with the fact that he's still in this program. I think initially his attitude was, "Well, okay. This is what I expected." He and I had had this conversation before his release to give him a heads-up, based on what I knew from my other Saudi clients who'd gone through the program. I had spoken to them after they'd gotten out of the Rehabilitation Program and I had a pretty good sense of what the

program was about, so before Mr. Zuhair's release, we had had some conversations about what it might be like for him to go back to Saudi Arabia, including the program. He knew what to expect, and in my earlier calls with him, what he was living through was in line with his expectations. He was patient. He had anticipated all of that. Then we got to a point where we were past everything he had anticipated, everything he had expected, and at that point I started seeing, with each call, that he was growing more and more frustrated with the fact that he was still in the program, with the fact that he wasn't really being told at what point he would finally get out of the program, or what the considerations would be, even, that could lead whichever Saudi official makes the decision to release him.

Q: Is it your understanding that this program is holding Mr. Zuhair and others for this kind of extended period because of their own interest in keeping them there? Or do you think it's more because there are officials in the United States who are pressuring the officials in this program to keep them there for some reason, or some semblance of the two? Who's making the decision to keep these men—?

Kassem: I think that's really the key question. To my mind, I think it's in an effort to placate U.S. concerns about—not about Mr. Zuhair specifically, but just sort of the larger atmospheric, undifferentiated U.S. concern about Guantánamo prisoners, and what's called here in the United States recidivism. That is really a problematic and loaded term because it assumes that you have to be a "cidivist" to be a recidivist—you have to have done something. Part of the issue with Guantánamo is that the men were never proven to have done anything, but there's this assumption of guilt on their part. There's this assumption that if they're at Guantánamo, they are

the "worst of the worst," and that narrative that was put out there by the Bush administration has persisted, and it continues to shape perception, and it continues to shape policy, even now, almost a full term into the Obama administration. As a result, I think the Saudis are responding to that larger, political, atmospheric concern of the United States that the men at Guantánamo, broadly read, are dangerous, especially the Arabs and the Saudis among them, so you have to keep a very close watch on any of them who are released, and you can't just let them go.

I think the Saudi government's calculus is, "Well, we don't want to take any risk. We don't want to risk letting anyone go, or letting anyone out of our sight who might, at some point in the distant future, do something that the United States dislikes, which the United States will then blame on us." They're deciding to resolve that risk, to the detriment of men like my client, by just keeping them in custody. I think that's the thinking. It all really begins, I think, in December of 2009 when you have the Umar Farouk Abdulmutallab case, with the young Nigerian man who allegedly attempted to bomb this airliner in Detroit. He was called the "underwear bomber" in the media here.

I think it all begins there, because as of that point in December of 2009—in January of 2010 the U.S. government starts saying, "This man received training in Yemen, and he was trained at the hands of people who are members of Al-Qaeda on the Arabian peninsula." Then the next step was to say that some of the people in that organization, including, possibly, some people who got into contact with him, were former Guantánamo prisoners—Saudis—who had gone through the Rehabilitation Program, and who had gone into Yemen, joined this organization, and then this organization is the organization that supported this man. When that narrative got told, the result



was that the Obama administration imposed a moratorium on any releases from Guantánamo to Saudi Arabia or Yemen. That's why June 2009 was the last plane load of Saudis, which included my clients and three other Saudis.

That was one of the results. The other result was this increased scrutiny over any Saudis who had gone from Guantánamo back to Saudi Arabia. I think that's what really doomed my client's prospects of a timely release. December 2009 to January 2010 was when he probably expected to get out of the Rehabilitation Program, because all the other Saudis got out of the Rehabilitation Program within six or seven months. But then you've got this intervening event, you've got this change in U.S. policy, and you've got this increased U.S. scrutiny of what happens in Saudi Arabia with Guantánamo prisoners. Consequently, you've got this desire, on the Saudi government's part, to do everything it can to appear to the United States like it's not taking any risks. I think at that point there's a policy decision that's made in Saudi Arabia not to release anyone from the program, regardless of what would have happened before the intervening event—and the result is that now we're in December of 2011, and Ahmed Zuhair is still in that program.

Q: I just want to back up for a second and ask what was it like to meet with Mr. Zuhair while he was at in Guantánamo, in the midst of the hunger strike, just in your interactions when you would go down to talk with him about his case. I know that in your last interview, you described your discomfort being at Guantánamo because of the military atmosphere of it. Have you been back to Guantánamo since the last interview you did with Gerry?

Kassem: I go back every two or three months. I was there at the end of October, and I'll be there again in January.

Q: I'm interested in tracking the changes in the descriptions that I hear, listening to interviews with attorneys who go regularly to Guantánamo—over time, from the beginning until more recently. First, if you could speak to trying to work with Mr. Zuhair in the midst of the hunger strike, and then tell me about changes that you see since you started going there to meet your clients.

Kassem: In many ways, my meetings with him were unique because—I mean, I have had clients who've been on hunger strike, but none for as long as he had. You really get into some pretty unique manifestations when you have someone who's been on a hunger strike for that long. I've had meetings with him when he was on a gurney, for example. I've had meetings where he's lost consciousness and ones where he's vomited. But what's really almost miraculous about it is that he remained incredibly lucid. I don't know if that's by constitution or predisposition that he was likelier to withstand the toll a really long-term hunger strike would take on the average person's body and mind, but his ability to recall, and reason, and articulate and express himself—those abilities weren't severely impacted by the long-term hunger strike. That, to me, was always almost incredible. So we were able to have very productive meetings.

I think it's all a result of his really incredible amount of will power, even now. He's been out of Guantánamo for two and a half years—and I still represent men at Guantánamo—and he's still very vividly remembered by the other prisoners at Guantánamo, and missed. He played a very

vital role. That's not just me saying that, and it's not even just the prisoners saying that. Part of our litigation around his conditions of confinement included—we had to fight tooth and nail for this, as well—but part of our litigation included trying to get our own mental and physical health expert to go down there. We wanted to send our own doctor, independent of the medical corps at Guantánamo, down to Guantánamo to meet with Mr. Zuhair and evaluate him. The government fought tooth and nail against that. We had to litigate, file motions, and explain to the court why it was necessary to have our own independent doctor go down there to assess Mr. Zuhair in order for the court to have a sense of how these measures were impacting his health, and what that might mean for his ability to meet with his lawyers, and what that might mean for his ability to exercise the right that he has under the Constitution to take advantage of the court's jurisdiction. Ultimately, the way we framed it for the court was that ultimately this is about the court's jurisdiction, and if Mr. Zuhair is not healthy and the government is allowed to do things that jeopardize his health, then the government is basically, in an underhanded way, taking the case away from the court's jurisdiction.

We were able to convince the judge to order the government to allow our expert to go down there, and she had numerous meetings with Mr. Zuhair down there where she evaluated his physical and his mental health. One of the things that our expert said—she noted in one of her reports that he was—I guess the way she put it was that he was sort of like a very powerful and compelling personality, like a motivating personality for a lot of the other prisoners at Guantánamo because he was so strong-willed and so determined to maintain his hunger strike that he wasn't going to be discouraged by anything that the prison administration did. I think the way she put it in her report was that if she were a prisoner at Guantánamo, she would want to be

imprisoned with a man like Mr. Zuhair because he's the kind of person who would constantly encourage and support other prisoners, and didn't give in to depression or discouragement. That probably also accounts for how he was able to have a seemingly normal attorney-client working relationship in the sense that he was able to give us the information we needed to respond to the government's accusations. He was able to give us the information we needed to explain to the court what was happening to him and the way that the prison was responding to his hunger strike, even though he was in a severely weakened state. By the time he left the island, he was looking like—you'll remember the emblematic images of people after World War II being found in labor camps and concentration camps. He was that kind of skinny—just skin and bones. There are photos of him after his release from his time in the Rehabilitation Program where he just looks like a completely different person. He looks healthy, he looks athletic. The man that I knew really looked skeletal.

Q: How about changes you've noticed since you've been visiting Guantánamo, if any, in terms of conditions or in terms of interaction between guards and detainees? Anything?

Kassem: Yes, it changes a lot but it's not linear. I think there's a story that's told about Guantánamo that's a story of linear progress or improvement. I think that's the story that the Obama administration—or at least the Department of Defense—is trying to spin these days, that the Guantánamo of 2011 is this humane place that's very different from the image that people have of Guantánamo as it existed in 2002 or 2004. But I don't think that's true. I think you really have to get very specific. By that I mean not just what period of time are you talking about, but also what part of the prison are you talking about? And these details matter.

I think you can say that, on the whole, today, Guantánamo in 2011 is not like the prison that existed in 2002 and 2004, but that doesn't necessarily mean that everything has changed for the better, and it necessarily doesn't mean that everything has changed. The most important feature or dimension of Guantánamo has not changed to this day. We're a month away from the ten-year anniversary of the prison's opening. The most important distinguishing feature of Guantánamo that sets it apart from other prisons and makes it such an exceptional site—and remains unchanged—is the fact of indefinite imprisonment without charge, without end. I've represented people who were here in the United States—and I've even represented people who were ultimately proven to be innocent and were exonerated, after having served, sometimes, over a decade, for crimes they hadn't committed—but the difference with those men is that at least those men, even though they knew that they had been unjustly convicted, and were ultimately exonerated with DNA evidence and what not, at least those men had an end-point in sight. Even if it was an unfair, unjust conviction, if it was a wrongful conviction, they knew they had a sentence of twenty years, fifteen years, whatever it was.

The men at Guantánamo don't know that, and that takes an incredible psychological toll on a person. That's why I'm always surprised at how few prisoners have just completely lost their minds, because at this point it's almost a decade without knowing if you'll ever get to go home and see your family. If you stop to think about it, that's really incredible, and it's injustice, and it's cruelty. That feature, that facet of the Guantánamo experience, remains unchanged. That part has not changed at all.

Now there are other things that have changed. Prisoners are no longer held in Camp X-Ray. Camp 6, the way it exists today, to the outside observer might look a lot like what you would think a prisoner-of-war camp would look like, in the sense that there's some kind of a communal living experience that's no longer sort of a solitary confinement/permanent lockdown camp. The prisoners can intermingle, share meals, and pray communally. The prisoners at Guantánamo today can have phone calls and Skype video teleconferences with their families once a month, or once every couple of months, which wasn't the case three years ago. So there have been those kinds of positive changes.

But then you've got places at Guantánamo today like Camp 5 Echo where the conditions are as bad as they've ever been. I have a client named Shaker Aamer whose internment serial number is 239. He's a Saudi, as well, but he's a former UK [United Kingdom] resident. He's been basically segregated from the general population for years, and he's been in Camp 5 Echo for a very long period of time now, where it's essentially an isolation camp. It's solitary confinement. It's twenty to twenty-two hour lockdown. He gets two hours a day of exercise, alone, in a very restricted space. It is solitary confinement. The folks at JTF-GTMO [Joint Task Force Guantánamo], the prison administration there, will tell you that it isn't solitary. They'll define it as "segregation," because Shaker has the ability to try to shout through the concrete and steel to try to communicate with other prisoners. But he doesn't get to share recreation time with them. He doesn't get to share any time with other prisoners, so he has zero social contact with anyone other than the jailers or his lawyers when they visit. That camp exists at Guantánamo today, in December of 2011. When I met with Shaker in late October 2011, he was in that camp. So there

are some parts of Guantánamo even today that are still terrible, in the daily conditions of confinement sense, in ways that are reminiscent of the 2002-2005 era.

But I do think folks often overlook the underlying point of continuity that undergirds the entire Guantánamo experience, and that's the fact that you have men there who have not been sentenced and who don't know if they will ever get to go home. That takes a huge toll on people, and not just the prisoners. I always find myself trying to remind myself and others that you're not just talking about the prisoners here. If it takes a toll on the prisoners, it also takes a toll on their families and their communities because they're living the same thing. They're living the same uncertainty. You've got wives, and parents, and siblings, and children up there who don't know if they're ever going to see their loved ones.

Q: I don't know how much you can talk about Shaker's case, since it's ongoing. This is a case that has come up frequently in some of the interviews that we've done. I think, on the part of our interviewers, we're all curious as to why he remains at Guantánamo. I forget who it was, but one of our interviewees basically said that he remains there when other detainees who were from the UK, or living in the UK, have been released, because of his charismatic kind of personality, or his effect on other prisoners. That's not a legal explanation as to why he's there, but it might explain why he's in the type of confinement you've just described.

Can you speak a little bit about his case, and why he's been treated the way he's been treated, without jeopardizing—?

Kassem: What I'm about to say is completely consistent with Shaker's wishes. When I met with him he made it very clear to me that he wants the world to know what's happening with him. He wants the world to know the conditions in which he's being held. The thing is, with Shaker, the way he put it—and I think this is right—is that if he's in Camp 5 Echo today, if he's living in these horribly restrictive conditions today, and if he's at Guantánamo at all today, it isn't because of anything he did before Guantánamo. It's pretty clear that this man is one of the overwhelming majority of men who went through Guantánamo. There was no reason for him ever to be there. Even if you set aside, momentarily, the larger question about whether, in the absolute, a place like Guantánamo should exist—which I think is an important question, and I would answer that in the negative, but let's set that aside for a second—he's not one of the guys who, by any stretch of the imagination, should be at a place like that.

He's part of the majority, and when I say "the majority" it's because, at its height, Guantánamo had seven hundred-and-change, roughly eight hundred prisoners, and now you're down to 171. The overwhelming majority of the men who were ever held at Guantánamo were released unilaterally, mostly by the Bush administration and some by the Obama administration, which tells you something. It tells you that there never really was any basis, and they certainly were not the "worst of the worst."

So he's part of that core. Why is he still there when other UK residents went home? There's no reason why Shaker shouldn't have been on that plane that took Binyam Mohamed home. The UK government made it public that they wanted Shaker Aamer released the same way they made it public that they wanted Binyam Mohamed released and returned to the UK. I can't tell you what



the Obama administration's position is because, in this way—and, actually, in many ways—the Obama administration is much more reactionary, backwards, and secretive than the Bush administration. Under the Bush administration, Shaker was one of those prisoners who were approved for release. I can't tell you the way the Obama task force came out on that same question because it's considered protected information, so the only place you'll get the answer to that question is from the government—not from me or from any of the other lawyers, because we're bound by court order.

But I can tell you that under the Bush administration, there was a determination made by the Department of Defense that Shaker Amer should be released, but he stayed at Guantánamo. The UK government pressed for his release, but he stayed at Guantánamo. All this has nothing to do with anything that Shaker did before Guantánamo. It has everything to do with the amount of resistance he has put up, and I mean "resistance" in the best possible sense—the amount of opposition to injustice that he has put up since arriving in U.S. custody from his time at Bagram to his time at Guantánamo. I think Shaker, like my other client, Ahmed Zuhair, has not been willing to cave. Every step of the way he has wanted to remind his captors and the world at large that what is happening to him at Guantánamo is a gigantic injustice. He's wanted to peacefully protest and resist all of it, so he went on hunger strike. There were all these things.

He was viewed by the prison administration as someone who is charismatic, and wields some influence among the prisoners at Guantánamo. There was an article that was written about him in 2006 called "The Battle for Guantánamo." That was in the *New York Times Magazine*, by Tim Golden, I think. The entire article is about this moment in time at Guantánamo, in 2006, when

the commander of the prison camps basically asks Shaker and a few other so-called leaders or council members to mediate between the prison administration and the prison population. When that experiment collapsed, one of the consequences was that Shaker and all the other men in that circle of so-called leaders were basically isolated and segregated from the rest of the population.

That happens in 2006, and Shaker has been pretty much isolated from the rest of the population since then. As you were saying, I think that explains his conditions of confinement—the perception on the prison administration's part that Shaker is a leader, or an "instigator"—someone who has to be isolated from the general population because he's simply too charismatic, and too dangerous, and might motivate them to organize and mobilize in ways that the prison administration doesn't want.

Now, of course, the prison population at Guantánamo is organizing and mobilizing anyway. They staged protests and sit-ins in solidarity with the Arab Spring. They're staging protests and sit-ins now to protest some of the harsher conditions that have been brought back under the new leadership of the prison camps. There's a new commander who came on board a few months ago and instituted some pretty harsh measures reminiscent of 2005 and 2006, so the prisoners are peacefully protesting those measures. But the perception on the prison administration's part is that Shaker is this uniquely dangerous guy because of his charisma, so "we have to keep him at bay."

I think that explains his conditions. Why is he still at Guantánamo, period? The explanation for that, in my mind, is related to what we just talked about in the sense that I think the U.S.

government would much rather have someone like Shaker Aamer—someone who is outspoken and who is not afraid to make his rejection and his disapproval of the Guantánamo enterprise known to the outside world—in a place like Saudi Arabia than in a place like the UK, because in Saudi Arabia there are guarantees. The U.S. government knows, for example, that he'll be kept under close watch. He'll be in the Rehabilitation Program, potentially indefinitely, as we know from Mr. Zuhair's case. And the Saudi government will restrict his access to the media. It's much less embarrassing, I think, for the U.S. government, and maybe even for the Saudi government, to have someone like Shaker Aamer in Saudi Arabia, where he can be kept under close watch, under control, and where there can be a lid on what he will say, as opposed to the United Kingdom where the controls are fewer, and Mr. Aamer will be at greater liberty to go to the media and to denounce what he experienced and what he saw at Bagram and Guantánamo.

It's worth underlining this point because Shaker Aamer is a former UK resident who went through Bagram, went through Guantánamo, was interrogated not just by U.S. military intelligence officials in these places, he was also interrogated by the UK military and civilian intelligence officials. I think that can be a huge scandal. The UK has responded to its own government's implication and complicity in torture post-9/11 in a way that has been markedly different from the way the United States has responded. We've kind of swept it under the rug, and we've said, "The courts are closed, and there's no accountability in the courts for that kind of thing." Really, the only form of accountability in the U.S. to what has been done post-9/11 to people in our custody has been through the media. There has been this sort of informal accountability—and perhaps through projects like yours—but no formal accountability, and no real judicial proceedings or even congressional proceedings.

The UK has been different. They've launched inquests, investigations, inquiries, and they've given out compensation, including to the men that you guys spoke with in the UK. They're part of a lawsuit that was settled, and part of the settlement included compensation for the fact that the UK was complicit in their torture. That hasn't happened in the United States, and it's not going to happen, I think, in the foreseeable future. But all those things I think complicate Shaker's release in the eyes of the U.S. government and other governments. As a result, I think the U.S. would perhaps just be more comfortable with him going back to a place like Saudi Arabia than the UK.

Now, of course, there's also this obstacle that we have now to any release from Guantánamo, which is a statutory obstacle. There was this law that was passed by Congress—part of the National Defense Authorization Act a year ago—that makes it virtually impossible for anyone to get out of Guantánamo without a court order or without a federal judge saying, "There's no basis for this man's detention under *Boumediene*." Because that law required sign-off by cabinet-level officials like the secretary of defense and the secretary of state for any individual who's trying to get out of Guantánamo. Unless they have a court order, the secretary of defense has to sign a piece of paper that says, "I personally guarantee that this person, when released, will never do anything to harm the United States," which, of course, no official is ever going to sign. So for that reason, I think, you have seen no releases from Guantánamo in the last year—almost two years now. Well, in the last year and change.

Q: How was it representing people in Bagram? I don't imagine you go to Bagram.

Kassem: No, Bagram is like Guantánamo's lesser-known, larger, evil twin. Lesser-known because many people don't know what Bagram is, and when you say "Guantánamo," people know what it is, generally. When you say "Bagram," you get a quizzical look a lot of times. Larger because you've got over one thousand prisoners at this point at Bagram. It's also a U.S. military prison, outside of Kabul, in Afghanistan. It's like representing Guantánamo prisoners in 2004, before *Boumediene*, in the sense that the Obama administration's legal position as to Bagram is virtually indistinguishable from the Bush administration's legal position as to Guantánamo in 2004, before *Rasul*. Before the Supreme Court said in *Rasul*, in 2004, that Guantánamo prisoners had a right to access lawyers, the Bush administration's position was that men at Guantánamo have no right to counsel and that the federal courts have no jurisdiction over what goes on at Guantánamo. They can't bring habeas corpus cases. That was their position.

When you look at the Obama administration's position in late 2011 as to Bagram, it's basically the same. When I asked the Department of Defense for an opportunity to go meet with my client, Amin al-Bakri, who's a Yemeni, who's been at Bagram since 2003, who was abducted by the CIA in Thailand, of all places, when he was on a business trip in late 2002, nowhere near a battle field—when I ask the Department of Defense, today, to allow me to go see my client, Amin al-Bakri, at Bagram, their response is, "Your client does not have a right to counsel." When we go to court, the Obama administration's Justice Department lawyers say exactly what the Bush administration justice lawyers said in 2004 about Guantánamo. They say, "Well, there's no jurisdiction." The federal courts do not have jurisdiction over what goes on at Bagram prison in

Afghanistan. It's beyond the reach of the courts. The U.S. government can essentially do as it pleases there, without any form of judicial review, without habeas corpus, without anything.

So we're still fighting that jurisdictional battle in the courts. I haven't had any real access to my client. I've had indirect access through his family and what not. But again, whenever I ask for a privileged, confidential meeting with my client, in person or by phone, even, or the ability to send privileged legal mail back and forth, so I can communicate with my client, Amin al-Bakri, the response from the Department of Defense is always the same: "He's got no right to counsel. There is no jurisdiction over Bagram, so there's no reason for us to allow you that kind of access to him."

That's where we find ourselves today. We're re-litigating the very same fundamental jurisdictional issue with respect to Bagram, and it's a protracted battle as it was in the Guantánamo case. You had four Supreme Court decisions between 2004, with *Rasul*, and 2008, with *Boumediene*, until you got to a point where, finally, it was established as a matter of law that the men at Guantánamo should have access to the courts, and should get a day in court. That was June 2008, six and a half years after the prison opens—six and a half years after some of the men arrived at Guantánamo. Right?

These legal battles take a long time, and even when you win them, in the end, the government has still secured a victory for that stretch of time, where it was able to hold onto these men without any charge and without any process. That's where we are with Bagram. We're still fighting that jurisdictional battle. We've gone up to the court of appeals [U.S. Court of Appeals

for the District of Columbia Circuit] once, now we're back before the district court [U.S. District Court for the District of Columbia] again, on the same jurisdictional question—whether U.S. federal courts have anything to say about the imprisonment of a man like Amin al-Bakri by the U.S. military at Bagram. It's pretty outrageous, because we're not talking about someone who was captured in Afghanistan, we're talking a businessman, a Yemeni national, who was on a five-day trip to Bangkok, Thailand, to buy precious stones. That was his business. He's abducted by the CIA there, he's taken to a couple of different CIA black sites—we think one was in Thailand and the other in Afghanistan. We know about the one in Afghanistan because we've interviewed another prisoner who was with him there, and ended up at Bagram with him, and was since released. So we know that he was definitely at a black site in Afghanistan.

That happened in 2002. He's abducted and disappeared in 2002. His family was waiting for him in Sana'a, Yemen, to celebrate his birthday, but he just never came home. They don't hear from him for six or seven months. Then in 2003 he's finally transferred to U.S. military custody at Bagram prison, Bagram air base, where he's able to send his family a heavily-redacted postcard through the International Committee for the Red Cross. That's when they find out that he's still alive. He's basically been in U.S. custody since 2002—no charges, no accusations, even. We haven't even seen any so-called evidence about Mr. al-Bakri because the government's position is that he has no right to judicial review, so why put forth any evidence? He's basically there, and it's kind of like a time-warp, where we're redoing, in the Bagram context, what was done years ago in the Guantánamo context, only we're not sure it's going to end the same way.

Q: Is there a coordinated attempt by groups of attorneys with clients at Bagram who are pushing for these rights for prisoners at Bagram? Are you working with other attorneys on these issues?

Kassem: My client, Amin al-Bakri, his case was consolidated with two other cases, and those three cases are the lead cases in the Bagram context. It's my client, Amin al-Bakri, it's another Yemeni by the name of Fadi al-Maqaleh, and then there's a Tunisian man by the name of Redha al-Najar. These cases are different because all three men are non-Afghan nationals who were captured outside of Afghanistan and brought to Afghanistan by the U.S. government, which is important because the argument that was advanced by the Bush administration, and that was completely adopted by the Obama administration, is this notion of Afghanistan as a war zone, and that it's different from Guantánamo for jurisdictional purposes for that reason—that if jurisdiction exists at Guantánamo, it shouldn't exist at Bagram, in part because Bagram is a place at war. If you allow judicial review, all hell is going to break loose.

The reasons our facts matter is that it would be very curious to allow the U.S. government to kidnap someone in Milan or Bangkok, far away from any conflict zone—or New York—then drop them off in a war zone, and then come into court and say, "Hey, wait a minute. No jurisdiction because he's in a war zone now, even though we brought him there." That was part of the argument that we made, and we won before the district court. The district court said, "No, no, they get jurisdiction." Then the Obama administration appealed and the court of appeals reversed. So now we're back before the district court, and we're trying to re-litigate the jurisdictional issue with the new facts that we found out that confirm and bolster our position.



Yes, there are other lawyers. One of the organizations that has been coordinating the Bagram litigation—and they're our co-counsel on the lead case, so they represent the two other—they're lead counsel for the two other petitioners, Redha al-Najar and Fadi al-Maqaleh, and my students and I are lead counsel for Amin al-Bakri. That organization is called the International Justice Network [IJN], and it's run by Tina [Monshipour] Foster, who used to be with the Center for Constitutional Rights. I think the International Justice Network is to the Bagram cases what the Center for Constitutional Rights was to the Guantánamo cases in the sense that they really started doing that work. IJN is lead counsel on those two cases and we're lead counsel on the al-Bakri case, so we work closely with IJN.

We've been litigating the lead Bagram jurisdictional case, which was consolidated under the name of al-Maqaleh, who is one of the three men. We've been litigating that case together with them for years. We also were in touch with the lawyers for some of the other Bagram prisoners—Afghans and Pakistanis who were imprisoned at Bagram—but those cases are farther back in the queue. Our case is the lead because we started first. I think our facts are different in the sense that, again, we're talking about non-Afghans captured outside of Afghanistan and brought to Afghanistan by the U.S. government, which sets us apart, and enables us to make certain arguments that we wouldn't be able to make if we represented someone who was, for example, an Afghan national captured in Afghanistan, perhaps on some kind of a battlefield.

Q: Listening to the interviews that this project has done so far with attorneys and activists, whenever the Obama administration comes up, there is always not even a sense of disappointment but kind of a sense of shock in his, as you say, adoption of Bush administration

policies and practices as related to this so-called war on terror. I think there are also other things that he does that go far beyond Bush, like the use of un-manned drones and the targeted killing list including U.S. citizens Anwar al-Awlaki and people like this. How do you understand the actions of the Obama administration as related to the so-called war on terror? What is your understanding of why they've been so willing to not only adopt but expand some of the practices that so blatantly undermined the rule of law and the Constitution, and these things? How do you come to understand, in your own mind, about this?

Kassem: You know, I would say it's partly—

Q: You've written about this a little bit. You've written a little bit for Al Jazeera about just his adoption of—

Kassem: I think it's partly politics over policy, and it's partly naïveté. Let me talk about those two things.

For me, maybe I was disappointed, but I wasn't surprised or shocked. I campaigned for Obama in Virginia, and part of what the campaign—they have these sort of standard messages that they coach campaigners to hit or propagate, and the one part of the messaging that I never did—and I told them I'm never going to do, because of my work—was this idea that Obama was going to be much better and more respectful of civil rights, human rights, and constitutional principles in his conduct of national security matters. I know that it was a large part of the Obama platform, that he ran on a platform that called for the rolling-back of a lot of Bush-era excesses and national

security matters in terms of liberties and protections and whatnot. I know that that was a big part of his platform, and that he promised to end the military commissions and shut down Guantánamo as a candidate, and that he was very much elected, in part, with that mandate. Right? But I came into it with the knowledge that these were issues that were heavily influenced by politics, and that you were potentially talking about a Democratic administration that was historically always vulnerable to Republican attacks on its national security flank, so any Democratic president can't afford to be labeled weak on national security matters.

For all these reasons, I knew that, politically, Obama was going to be the same, and that he was going to adopt and perpetuate a lot of Bush-era policies in the national security area, not just extra-territorially with Guantánamo and Bagram, but also domestically with surveillance, spying, and infiltration of Muslim communities, for example. That part was clear to me. When I campaigned for him, I never said, "Oh, he's going to roll back all these Bush-era excesses on national security." I said what I believed was true at the time—that he may be the same as Bush on these questions, but he's going to be better than his rival, [John S.] McCain [III], on a whole host of other issues, and, in balance, that makes him the better choice.

That was my expectation—that there would be a great deal of continuity, at least on national security matters. Where I was disappointed was that when he came into power, not only was there a great deal of continuity but there was also a great deal of development and innovation in the same direction. So not only did he maintain some of the policies and practices, but he also furthered and expanded some of them. So, like you pointed out—drones. He's used drones in extra-judicial executions far more than Bush, his predecessor, ever did. That's a clear example of

a way in which the Obama administration has not only adopted but expanded a Bush-era policy. State secrets. That was another one of his promises—that the Obama-era DOJ—Department of Justice—wouldn't use the State Secrets Doctrine to get rid of lawsuits it didn't like. The Obama-era DOJ has used that a number of times in cases—not just cases involving the CIA program, which was where the Bush administration had used it, but also cases involving domestic spying in California, like infiltration of mosques. The Obama-era DOJ has gone into federal courts and said, "State secrets. Even though these are Americans being spied on, potentially, this case has to get kicked out because it involves state secrets." That's another example of expansion.

The problem with the Obama administration doing this isn't just on that first level of adoption and expansion, it's also the larger idea that for the Obama administration to do it is a much longer-lasting normalization. If it were just the Bush administration—hypothetically, let's say that Obama had come in and he had rolled back all these policies and practices, and had taken the United States back to where it was on September 10, 2001, right? Then, historically, the story would have been, "Oh, the Bush administration was this eight-year outlier." Like it was this extreme aberration of a Republican administration that doesn't even fit in with other Republican administrations, kind of like a parenthesis in American history—it's exceptional, it's an outlier, it's an aberration.

But when the Obama administration comes in and adopts, expands, and perpetuates these policies, then what you have is normalization. Because you've got, arguably, the most seemingly progressive president coming in—the first black president in American history, a man by the name of Barack Hussein Obama, a former community organizer—he's coming in with all these

left-sounding credentials, and he's adopting and expanding these policies, so that makes them a permanent or semi-permanent feature of America's participation in the world. That means that these issues have gone from issues that were potentially limited to the Bush era of eight years to issues and policies that we're going to have to deal with for a generation if not more. That's a massive difference.

So that's the way in which I was disappointed. The naïveté part is that Obama comes in—and all of that is a result of politics, by the way. All of that is privileging politics over sound policy. I don't think these measures necessarily make sense as a matter of policy, domestically or internationally. I don't think it's in the long-term interest of the United States, even if you adopt that sort of self-referential, utilitarian perspective—I'm not even sure it's in the long-term interest of the United States to adopt and expand these policies and these approaches. But there are political considerations. That's what's driving national security policymaking. Because Obama's advisors know that if you take certain stands on certain issues, if you take certain steps, he's going to be exposing himself and other Democrats in the upcoming election to disastrous poll results because the Republicans are going to go to town on those issues. They're making the wrong calls.

Then there's a degree of naïveté as well. When he came into power he signed this executive order mandating the closure of Guantánamo, but then he sets this one-year deadline, which is a huge blunder. He shoots himself in the foot by doing that, because even assuming for a minute that they genuinely wanted to close Guantánamo—when Bush opened Guantánamo he didn't consult with anyone. He just did it, and it was done in a very short span of time. He didn't allow any time

for the opposition to mobilize against it to the extent that there was opposition in 2002. When Obama sets a one-year deadline as opposed to a six-month deadline or a three-month deadline, he allows the opposition to mobilize, which they did very successfully. They threw in all these statutory obstacles. They made a lot of noise about closing Guantánamo, and they effectively sabotaged it.

One error was setting that lengthy deadline. The other error was basically not purging the national security apparatus of the U.S. government. When you look at the people who were responsible for detainee affairs, various aspects of the intelligence enterprise that the U.S. government carries out daily—people who are responsible for some of these programs, like the Rendition, Interrogation and Detention program, or the RDI program—when you look at all these officials, there is a great deal of carryover from the Bush administration into the Obama administration. When Obama comes in, he holds onto a lot of these officials, and I'm not just talking about Secretary of Defense [Robert M.] Gates. A whole bunch of other, lower officials who were very active in the development and implementation of these problematic policies, and therefore have a stake in maintaining them and defending them, because they're covering their own rears—those people remained in their positions.

From the beginning, you have a core of very experienced people who have been working on these issues for years who remain in place, and who have every interest in covering up what they did, in justifying it and legitimizing it. I think that was another mistake, because at that point you've made it structurally impossible for yourself and for your administration to roll back any excesses or to expose any wrongdoing, and move ahead with any legitimate form of

accountability. All of that becomes structurally impossible when you have the culprits still at the helm.

I think that was the other moment—maybe it's naïveté, maybe it's deliberate, I don't know, but it's definitely something that has structurally made it impossible for him to deliver on all kinds of promises, including the closure of Guantánamo.

Q: We're coming up on a little over an hour.

Kassem: Let's adjourn. Are you guys going to produce a transcript for this?

Q: Yes.

Kassem: So let's adjourn. You can think about if we need another session.

Q: Definitely. A whole other area that I would like to talk to you about is things happening domestically, even in the city.

Kassem: That's not beyond the scope of what you guys are doing? We can talk about the way it connects.

Q: Well, one of the specific questions I had for you was that in your first interview session, at the end you mentioned how some of the tactics that prosecutors, particularly, were using in the

Guantánamo setting, have—your word—"bled over" into the domestic. I'm interested in that. I don't know if you could speak to that for a few minutes.

Kassem: We can definitely talk about that next time. The other thing—I don't know if we talked about it at all. I can't remember the last interview in great detail, but like military commissions and stuff like that. I don't know how—that's a part of the Guantánamo experience.

Q: You've seen it.

Kassem: I represented a client before the military commissions. We almost went to trial until the plug was pulled. If that's something you guys are interested in, we can talk about that, as well.

Q: Okay. Well, let's do another session sometime.

Kassem: Well, January, if you guys are—all right. Get in touch with me in January, and we'll schedule—we can do it here, or we can do it at your studio or wherever.

Q: Thank you.

[END OF SESSION]



VJD

Session Three

Interviewee: Ramzi Kassem

Location: New York, NY

Interviewer: Gabriel Daniel Solis

Date: July 6, 2012

Q: Today is Friday, July 6. We are in the home of Ramzi Kassem, doing the third session of our interview. Thanks, Ramzi, for agreeing to do this. I know you've got a lot going on, but it means a lot to us that you've committed so much of your time to our project. So, thank you.

Kassem: Thank you, Gabriel. Thank you and your colleagues for doing this project.

Q: As you know, one of the main things our project is interested in is the effects of extra-judicial detention on families and communities, of people who were formerly detained at Guantánamo or other prison sites. Do you have any updates about any of your former clients, or people whom you were close to, who were detained, and how they're doing since they've been released?

I'm particularly interested in Ahmed Zuhair, who, in our last interview, you mentioned. You talked at length about him and his incarceration, and then you mentioned that two and a half years after his release he was still in a Saudi rehabilitation center. Do you have any updates about Mr. Zuhair, or other clients?

Kassem: Yes. I think since we last spoke I actually found out—I spoke with Mr. Zuhair directly, and found out that he was finally released from the so-called rehabilitation, or re-integration program, in the kingdom of Saudi Arabia. He had been released from Guantánamo on the first

anniversary of the *Boumediene* decision, on June 12, 2009, then sent back—repatriated—to Saudi Arabia, where he was immediately taken into custody at this so-called re-integration program. He remained in custody there from June 2009, all the way until the end of February or the beginning of March, 2012. So that's close to three years of custody in Saudi Arabia. It's been very clear to us that that was one of the conditions that were imposed, directly or indirectly, by the United States so that the Saudis had decided to create this program to placate U.S. concerns, on the one hand, but more importantly to enable the U.S. government to save face. To enable the U.S. government to publicly take the position that men it imprisoned at Guantánamo, even though it ultimately, unilaterally, released them, still should have been imprisoned at Guantánamo, because their own governments are now imprisoning them. I think the re-integration and rehabilitation program plays that really vital role for the U.S. government, and enables the U.S. government to justify these imprisonments by pointing to what the home governments did, subsequent to release from Guantánamo.

Mr. Zuhair was released earlier this year, from the rehabilitation/re-integration program. Of course, there are conditions that still apply. He does not have the right to travel. He does not have the right to a passport. He has to check in periodically with the authorities, or the authorities in Saudi Arabia are checking periodically with him. Again, let me remind you that this isn't a man who was ever charged, or tried, or convicted of anything, anywhere, be it in Saudi Arabia or the United States. There has been no reliable process or anything that any trained lawyer would view as a reliable process, in any country, proving that he was involved in anything nefarious. Yet, he has had to suffer not just the indignity of Guantánamo, but the additional deprivation of liberty for three years in Saudi Arabia. Now he's free in his home country of Saudi Arabia, but subject

to conditions that set him apart from the rest of the citizens of Saudi Arabia. Travel restrictions are one; the fact that he has to check in with internal security services are the other.

Then, obviously—and this is a risk that applies to all former Guantánamo prisoners, no matter where they end up—anytime there is going to be, in the future, some sort of terrorism-related crisis, the authorities will, in all likelihood, round him up, as well as all the other former Guantánamo prisoners. The stigma of Guantánamo is such that you become an automatic suspect whenever there's a perceived threat or a crisis. That's something that he's going to have to live with for the rest of his life, no matter where he goes.

It's for that reason that, actually, we do have an ongoing lawsuit in Mr. Zuhair's name, that's now in front of the D.C. Circuit, basically arguing that even though he's been released from Guantánamo—even though he was transferred to Saudi Arabia in 2009—the federal court still has jurisdiction over his case, because he should still be able to clear his name. Because the consequences—the stigma of Guantánamo are such, both direct or indirect—the fact of continued imprisonment. The fact that there are still conditions other than imprisonment, since now he's been released, that were probably instituted at the demand of the United States, that are being applied to him, like deprivation of a passport. Those are all consequences of the fact that he was in U.S. custody at Guantánamo. Importantly, the fact that he will forever have to live with the stigma of having been a Guantánamo prisoner. The fact that he cannot, by U.S. law, travel to the United States, where he has a child—all of these things are consequences of his imprisonment at Guantánamo, and all of these things mean that a U.S. court should have

jurisdiction to decide whether or not he was ever properly held—which has not been decided by a court—and to give him a chance to clear his good name.

That's why there's still a lawsuit in Mr. Zuhair's name before the D.C. Circuit Court of Appeals. Other than that, he's finally out of custody. It's been a very long ordeal for him. It's one that's lasted a full decade, but he's finally home with his spouse and children, in Saudi Arabia. I think he's trying to rebuild his life, very slowly.

Q: We have an intern this summer from Brown University, and she's been assigned to work on the Guantánamo project. One of the things I asked her to do, in preparation for this next phase of the project, was to compile a report about the issue of resettlement, generally speaking. One of the things, in her own research, that she became interested in was this rehabilitation program in Saudi Arabia. In her report she mentions that it has grown substantially. In fact, she says that it's going beyond what it was originally intended for, which was for people who were detained at Guantánamo. Now it's actually targeting people within Saudi Arabia, to go into this program and basically be re-educated. Do you know anything about this?

Kassem: Yes.

Q: What are your thoughts on it?

Kassem: The program was actually, from its inception, never just about Guantánamo. I think the original idea was to create, again, some kind of rehabilitation/re-integration program for Saudis

apprehended by the United States anywhere, and then returned to Saudi custody. So it could have been Saudis from Guantánamo; it could have been Saudis from Bagram; it could have been Saudis from Iraq; from any number of sites and places, where the U.S. military was active and involved, and came to hold prisoners of that nationality. I think that was the original inception of the program, and it's had predecessors, I think, in that region. There was a program in Yemen that was, again, more for domestic consumption; for processing internal detainees, and "re-educating" them. So the Saudi version was sort of inspired by that earlier Yemeni model, and from the beginning it applied to Saudis not just coming back from Guantánamo, but coming back from a range of countries—or being sent back from a range of countries—to Saudi Arabia, as well as the domestic security detainees.

It's a very compartmentalized program, in the sense that they don't—at least to my knowledge—allow the returnees from Guantánamo, for example, to mingle with the returnees from other places. My understanding, at least from my clients who have been through the Saudi program, is that different groups are housed separately, but the processes and the conditions are pretty much the same. The rehabilitation/re-integration program in Saudi Arabia is not as unforgiving as your typical Saudi prison. It still is a prison—you do not have your freedom. You're not free to go about. They let you leave, on permission, for holidays, they'll let you go home on condition that you return when the holidays are over—but for the most part your liberty is restricted. You do have some additional privileges that you would not have in a normal prison. You have phone privileges. In some ways it looks like a medium or minimum-security facility in the United States, but it's still a prison.

I think there are some important questions that have to be asked about the role of the re-integration program and its actual efficacy, ultimately. We talked a bit about the role, and how it serves Saudi interests in terms of placating and accommodating its U.S. ally; how it also serves U.S. interests in terms of enabling the U.S. government to basically legitimize and justify its own detentions, by pointing to the fact that people are being held in Saudi Arabia, upon repatriation. But then there's that other question of efficacy. Even before you get to the question of how effective is it at re-educating and "rehabilitating" people, you have to ask the predicate question of is it even necessary to re-educate or rehabilitate those people?

When you look at, for example, the population set that I know most—folks who have been held at Guantánamo—it's very far from established that these people are in need of any form of re-education, even if you concede, for a moment, that re-education is desirable, or it's possible, or it's wanted. Right? Then when you get to that question, you have to ask, "Who's doing the re-educating and along what lines?" What are the ideological litmus tests that are being applied in that program?

Essentially, again, my understanding, based on what I've read, and based on what I've heard from my clients, is that through the Saudi re-integration program, the government has essentially used some of its own vetted, and approved, and trusted Islamic scholars to basically sit down and have conversations with prisoners, and try to figure out if their political and religious thinking is "deviant." I think that's problematic, for a host of reasons. You have to trust that the standard being applied by those scholars is a good standard—which, again, is not an easy leap to make.

Then you also have to believe in the idea that there is an accepted norm of thinking, and that deviations should be repressed.

I think it raises a lot of questions. Unfortunately, as outsiders, we don't have much visibility into the program itself and how it's run and the curricula that are applied in those programs, exactly what standards and processes are followed by the scholars and different, other officials that operate within that program. We only know as much as the Saudi government has been willing to let the outside world see. It has invited some handpicked journalists inside, so those are the press reports that you can find online. They're journalists from the Arabic media, but there are also journalists from North American and Western European outlets. Again, those are handpicked journalists; even their access was restricted. The only other source of information you have is former prisoners. I've learned what I can, over the years, from clients and former clients, even while they were in the program. I've been able to get some information, some insights from them, but, again, that's limited.

Q: It will be interesting to see how this program continues over the next—I don't know—it may be indefinite. It seems like there are no limits as to how much the program will grow, and the kind of ideological work that it will become engaged in; or other programs that might mimic that model, in other countries where people are being resettled to or released. It would be interesting to keep watch on that.

I didn't realize that you had a current case related to Zuhair, and this jurisdictional issue is constantly coming up in these cases. I'm wondering if you could speak about *al-Maqaleh v.*

*Gates*—kind of talk about your legal position, and the terms you're working with, and the position that the government took. I think there might have been some developments in that case since we've last talked. I don't know if you mind speaking about it?

Kassem: Because it's an ongoing case, I am in some ways limited. What I can say is that the *al-Maqaleh* case, that's the lead case in a set of three consolidated cases that were brought on behalf of two Yemenis. Fadi al-Maqaleh, Amin al-Bakri, and one Tunisian, Redha al-Najar—all three of whom were abducted by the United States, outside of Afghanistan. Then brought into Afghanistan to be imprisoned, eventually, at the Bagram Air Base near Kabul, which is a U.S.-controlled air base.

My role in that case is that I'm the lead counsel for Amin al-Bakri, who is one of the Yemeni prisoners at Bagram. He was abducted, mostly likely, by the CIA, in collaboration with the Thai services, most likely. This we know from public sources. Obviously, we don't have any access to that kind of information, from the government side. He was abducted, mostly likely, by Thai and CIA operatives in Bangkok, Thailand in 2002. We believe that he was held in CIA black sites, in Thailand and then Afghanistan, before ending up at Bagram Air Base in 2003. We brought this lawsuit on his behalf, to challenge the legality of his imprisonment. The Bush administration answered, saying that federal courts had no jurisdiction over prisoners at Bagram. We briefed that, and we argued it before the district court in D.C. Before the judge decided the government's motion to dismiss on jurisdictional grounds, the Obama administration came in.



The judge at that point basically issued an order giving the Obama administration an opportunity to change its mind. The order essentially said—the judge said, "I'm going to give the new administration some time, before I rule, to think through whether it's going to stick by the Bush administration's legal positions," namely, that there was no jurisdiction over Bagram, "or if it is going to take a different position." Within the court-imposed deadline, the Obama administration came back with a very short filing, saying, "No, we stand by the Bush administration's position."

That was one of the first of a great many points of continuity between the Bush and Obama administrations on matters of national security. I think in many ways, when you just look at the realm of national security issues, you will find that the Obama administration has been very protective of the policies, measures and approaches instituted and institutionalized by the Bush administration, and not only has it preserved those but has also expanded many of them significantly, and gone way beyond what the Bush administration ever did. I think drone killings is just one example where extra-judicial execution by use of unmanned, aerial vehicles, like armed drones, were used more in those first two years of Obama's term than they were in all eight years of Bush's presidency. That's just one example.

The Obama administration came into court and said, "We're going to stand by the Bush administration's position—no jurisdiction at Bagram," and the district court ruled in our favor, that jurisdiction existed for some of the reasons that we pointed to, which were that it would give the U.S. government a clear roadmap around jurisdiction; a clear way to avoid review if a court were to say, "Well, hey, you can pick up someone anywhere. Then, once you drop them in a war zone, there's no more jurisdiction." Because that was the Bush administration's and the Obama

administration's argument. That essentially if Afghanistan is a war zone, federal judges have to keep out. Our argument was that our clients were never near the war zone, like my client was in Thailand. He was kidnapped there and brought into the war zone. So it just doesn't make sense for the U.S. government to be able to come in and say, "No jurisdiction because they're in a war zone," even though we brought them into the war zone.

Q: Is there an historical precedent for jurisdictional issues related to active war zones? In your own research, in preparing these cases, is there some kind of precedent about this issue?

Kassem: I think the most commonly cited case is a World War II case called [*Johnson v. Eisentrager* [1950]]. I think that case was distinguished in *Boumediene*, and it was distinguishable in our case, as well. It's where the district court judge, Judge [John D.] Bates, ultimately ended up when he found that there was jurisdiction at Bagram. Essentially, our clients are indistinguishable from the prisoners at Guantánamo, in every sense. They were brought there the way the men at Guantánamo were brought there. It's a site that's within complete U.S. control, the way Guantánamo is, and in some ways, actually, more, when you look at the terms of the lease between the U.S. and Afghanistan, over the Bagram Air Base. To the extent that the Guantánamo prisoners have the right to challenge their imprisonment in court, through habeas corpus, Judge Bates found that our clients—at least our non-Afghan clients—. That's a minority of the prisoner population at Bagram, which now exceeds three thousand. It's much, much larger than Guantánamo. Today, on July 6, I think there are about 168 prisoners left at Guantánamo, but there are over three thousand left at Bagram. Only a minority of which—depending on which numbers you believe, thirty to fifty, according to public figures—are non-Afghans, like our

clients. Within that minority, I don't know how many are exactly like our clients, in the sense that they were captured outside of Afghanistan and brought to Afghanistan. I think that's another question mark.

Judge Bates found that at least for these non-Afghans, who were captured outside and brought into Afghanistan by the United States, jurisdiction should apply just as it does to the Guantánamo prisoners. The Obama administration appealed that to the D.C. Circuit Court of Appeals. Neal [K.] Katyal is with the Solicitor General's Office. Usually, appeals are handled by the civil division appellate office. That's normally what happens in a case. The civil division handles the lowest, like district court or trial level. If it goes to appeal, the appellate division handles it. Then if it goes to the Supreme Court, it's the Solicitor General's Office. But in cases that are viewed as exceptionally important by the administration, and ones that an administration might think are headed to the Supreme Court, exceptionally, you will find that the solicitor general will step down and handle a case on appeal.

That's what happened in our case. When the Obama administration appealed, it wasn't just the appellate division handling that case on appeal; it was Neal Katyal, from the Solicitor General's Office, whose name was on the brief. The Solicitor General's name was on the brief, as well, and when the case was argued before the D.C. Circuit, Neal Katyal, himself, argued it. The position he was taking and that the DOJ was taking—the Solicitor General's Office was taking—was obviously that the district court was wrong; and that, as a matter of law, there is no jurisdiction at a place like Bagram, because it's a war zone.

The court of appeals agreed with the government. The court of appeals, the D.C. Circuit Court of Appeals, is not the most prisoner-friendly, let's say. So they agreed with the Obama administration's position. They reversed the lower court, and found that there was no jurisdiction. Since then, we have discovered new information that we believe has a direct bearing on the jurisdictional question. We tried to submit that to the court of appeals, to get them to reconsider their position, because, essentially, literally in the week or two following the oral argument, information came out that directly contradicted some of the representations that the U.S. government made, in its briefs and in oral arguments—some of the things that Neal Katyal said to the court of appeals. That information was material to the legal question of whether there was jurisdiction.

So we went to the court of appeals and said, "You know, you should reconsider your opinion in light of this newly discovered information." The court of appeals said—on a procedural point they said, "Take that to the district court." So we did. We went back to the district court, we went back to Judge Bates. Rather than go up from the appeals court and go to the Supreme Court, we went back down and said, "Here's new information, and here's why, even under the court of appeals' reasoning, jurisdiction should still extend, and we should prevail."

That was the next phase. We briefed all that. We submitted all that new information. The court accepted it. The government didn't want the court to accept it. The government tried to oppose our motion to supplement the record, but we prevailed on that. We were able to supplement the record with his new information. The government then moved to dismiss—again, the Obama administration arguing before the district court that there is no jurisdiction at Bagram. We

briefed that, and we waited. Recently, a couple of weeks ago, the district court judge—again, Judge Bates and the D.C. District—ordered oral argument on the jurisdictional question. That oral argument is going to take place a week from Monday.

I'll be arguing that in the D.C. District, and again, this is the third time that we're arguing over jurisdiction of Bagram. Our first argument was late in 2009. Judge Bates found that there was jurisdiction in April of 2009. That was reversed. I told you the whole story. So the jurisdictional dispute has been going on for four years in the Bagram cases. Our clients have been at Bagram since 2003, and we're still fighting to get our foot in the door. Then there's sort of the larger question of futility, really, because I'm also involved in the Guantánamo cases, as you know.

There were seven cases, including one of our cases—Moath al-Alwi—where the Supreme Court just denied cert a couple of weeks ago, as well—and a lot of commentators and analysts thought that for *Boumediene* to have any meaning four years after it was issued, the Supreme Court had to accept one or more of these Guantánamo cases. There were seven before the Supreme Court, including our own, and all seven were denied cert. All seven were rejected by the Supreme Court, which essentially means that *Boumediene*, as interpreted by the court of appeals, as applied by the court of appeals, has been largely gutted. The Supreme Court doesn't seem to have an appetite for stepping in and restoring *Boumediene*, and making it anything other than just an empty promise—ink on paper—for men like my prisoner clients at Guantánamo.

So the larger futility question in the Bagram cases is that we are now where the Guantánamo litigation was years ago, and we're fighting for access to the courts. But for those of us who are

also involved in the Guantánamo cases, we know that access to the courts, under *Boumediene*, is at this point in time meaningless. Of course, that's a very conventional way to look at the litigation. From that conventional perspective, you could argue that it's futile, but there are other considerations, there are other perspectives, and my own view of advocacy and litigation is more holistic, and not just exclusively conventional. I think there are other benefits for my client—Amin al-Bakri, at Bagram—to be derived from the litigation beyond the straightforward, conventional benefits of you win your case or you lose it, and you get what you want, formally, or you don't.

I think that Mr. al-Bakri can still benefit from our zealous advocacy in this case, even if the odds are stacked against us in a formal way. It's still important to press ahead, to draw attention to his plight, to his ordeal. To draw attention to the issue, in the hope that that kind of attention, that kind of pressure, will force those decision makers within the U.S. government to do the right thing by Mr. al-Bakri, and let him go. Mr. al-Bakri was approved—he's going through what's called the Detainee Review Board at Bagram, which is a periodic military assessment of the necessity of his imprisonment, and he's been cleared for release three times.

The U.S. government imposed conditions. The U.S. government initially was saying, "Look, we can't release him because the Yemeni government would have to meet all these conditions, and we can't resettle him in a third country because, you know, the Yemenis would be pissed that we're sending their nationals to a third country and not to them." Right? So we've obtained written documentation, evidence, from the Yemeni government, from as high up as the Minister of Foreign Affairs, that the Yemeni government does not oppose—that they welcome Mr. al-

Bakri's repatriation. That they would not object to his resettlement in a third country, should the U.S. deem that necessary, and should that third country be acceptable to him. They also gave us proof that they've met all the conditions that the U.S. government has imposed. We have letters from the different ministries in the Yemeni government saying that if Mr. al-Bakri is repatriated, he would check in at a particular precinct on a weekly basis. The Yemeni government has pledged, in writing, to suspend his passport for a period of time upon his repatriation to Yemen, so he wouldn't be able to travel, either.

So all of the conditions that were stated by the U.S. government, either publicly, to us, as Mr. al-Bakri's lawyers, or to the Yemeni government—all these conditions have been met. Mr. al-Bakri still languishes at Bagram, even though the U.S. military itself has approved him for transfer no less than three times, as far as we know. Obviously, he's got elderly parents. He has a spouse and children, who have not seen him for nearly a decade. He's fortunate enough to come from a family that is financially well off, sufficiently so that they're able to support him, whether he goes to Yemen or whether he's resettled in a third country. They've signed declarations to that effect and we've provided the U.S. government and the White House with those declarations—and the military—just to prove to them that he will be financially and morally supported by family, and that, really, he should not be of any concern to them.

Again, this is another man who was never tried, or charged, or anything. We're not talking about a convicted prisoner here, we're talking about, literally, someone who, under international law, was abducted, and a victim of extraordinary rendition—which is unlawful under international law; a victim of torture, because we all know now what was going on at the CIA black sites, and

at Bagram during that period of time. So he is really a victim of unjust U.S. policies, and we're here fighting over whether he should get his day in court.

Q: It's an interesting case.

This is a somewhat abstract question, but I'm just curious. Does the U.S. government's frequent use of drones, especially in the last few years—outside of designated war zones—has that somehow undercut their legal position about the fact that jurisdiction doesn't apply in designated war zones? Or is it just kind of a moral issue?

Kassem: No, because I think in a way it's very consistent with their position. Their position is that the judiciary has no jurisdiction over what the executive does overseas, really. Just to boil it down to its most simple formulation, that's one way to look at it. Again, it's reductive, it's simplistic, it's not nuanced, but essentially that's what they're saying; that the judiciary branch of the U.S. government has no oversight over what the executive branch does overseas, be it Cuba—Guantánamo, initially, but that was rejected by the courts—or Bagram, Afghanistan, or elsewhere. This is just an exercise of that executive prerogative. Namely, the idea that the executive can send a military or CIA drone to Pakistan—which we're not at war with—Somalia—which we're not at war with—Yemen—which we're not at war with—to kill someone. That's just an exercise of that executive prerogative, and if we were to go to court and try to challenge that—and some have, including Pardiss Kebriaei, at the Center for Constitutional Rights, Jameel Jaffer, at the ACLU, with the al-Awlaki case—when they went to court to try to



challenge, to try to enjoin the government from assassinating their client—Anwar al-Awlaki—before he was killed, one of the responses was that the courts have no say here.

There were a bunch of arguments advanced. One of them was that you have no standing to bring this lawsuit on behalf of someone—

Q: —who could "turn themselves in."

Kassem: Exactly. So that was one of the grounds—that Mr. al-Awlaki could turn himself in.

Q: —a totally crazy position to take on it.

Kassem: Right, and his lawyers made the argument that it was a crazy position. But, ultimately, the other part of the U.S. government's view is that the U.S. courts have no—the reason it's different in the al-Awlaki case is that he's a U.S. citizen, and citizenship is relevant to jurisdiction, even under the U.S. Supreme Court's cases so far, having to do with the extra-territorial exercise of like authority under the Authorization for Use of Military Force that Congress issued post-9/11. So al-Awlaki was a U.S. citizen, and that's why the U.S. government came back, not with the jurisdictional argument, primarily, but with these other standing arguments. Had al-Awlaki not been a citizen, I'm fairly sure they would have first stepped forward, or that a more central part of their case would have been the jurisdictional argument. Because for men like my clients at Bagram, my client Amin al-Bakri, and the others at Bagram, and therefore my clients at Guantánamo—they're all non-citizens, and that was a central part of

the government's reasoning as to why there was no jurisdiction; that not only were they abroad, not within the territory of the United States, but they were also non-citizens.

Q: This reminds me of another question I had, related to the *al-Maqaleh* case. How frequently does the government transfer detainees between Guantánamo and Bagram, or, more specifically, how frequently do they transfer non-Afghan detainees to Bagram, and why?

Kassem: That hasn't happened that much, of late. In the past, in the early period—let's say from 2002 until 2004, roughly—a lot of prisoners would transit through Bagram and other Afghan sites, en route to Guantánamo. In terms of non-Afghans who have gone the opposite way—from Guantánamo back to Afghanistan—I'm not aware of any such cases. I am aware, obviously, of many Afghans being repatriated to Afghanistan from Guantánamo. To my knowledge, those men were actually not sent back to U.S. custody in Afghanistan. They were sent back to Afghan custody in Afghanistan, to an Afghan-run facility—or, at least a nominally Afghan-run facility that's nearby the Bagram Air Base, that's U.S. controlled.

I think that's the way it's gone, but that ended—that sort of circuit of prisoners, non-Afghan prisoners going from Afghanistan sites like Bagram, to Guantánamo, that whittled down by 2004, at the very latest. That really stopped happening. But there was a very heavy flow of that between 2002 and 2003, and maybe into 2004.

Q: Are there plans to transfer control of Bagram to Afghanistan?

Kassem: The U.S. government has been saying that all along. It still hasn't done it. It's been saying that, in its effort to defeat jurisdiction in our Bagram case for years.

Q: That they were going to transfer—

Kassem: That they were going to transfer. They've been holding that out as a reason for the court not to exercise jurisdiction, because their argument has been, "Look, we're not going to control this place indefinitely. We're handing it back to the Afghans." That hasn't happened. To the extent we've seen steps in that direction of late, they've really been steps that had to do with transferring control of Afghan prisoners back to the government of Afghanistan. In other words, neither the U.S. government nor the government of Afghanistan has indicated any interest in transferring control of non-Afghan prisoners like Mr. al-Bakri from U.S. custody to the Afghan government. The Afghans don't want them, as far as we can tell, and the U.S. government has explicitly said, in many different places, that it intends to retain custody and control over the non-Afghan prisoners; and that even if it hands over the prison of Bagram to the Afghan government, it wants to retain its own separate, U.S. controlled facility, in order to house non-Afghans—both the ones that are presently in its custody, like Mr. al-Bakri and Mr. al-Maqaleh and any other future ones that they should choose to bring in.

So that's been our argument all along. That whatever the U.S. government may be saying about transferring control of Bagram to the Afghans, that hasn't happened, and even when it does happen, based on all the available indications, it's going to be only insofar as the Afghan prisoners are concerned, and our non-Afghan prisoners will remain in U.S. custody. Therefore, a

U.S. court should oversee what the U.S. government is doing to these people. Because if a U.S. court were to say, definitively, that there is no jurisdiction, you can rest assured that what happened to Mr. al-Bakri will happen to hundreds more in the future. That the U.S. government will take that as *carte blanche*, as leave to go around the world kidnapping people that it deems to be a threat, for whatever secret reasons it has. That it will never disclose to the public, and then transport them to Afghanistan, knowing, with certainty, that there will be no checks. There will be nothing to worry about in terms of judicial oversight or control.

Q: Because of the jurisdiction issue?

Kassem: Because there is no jurisdiction.

That's essentially a huge—already there's a range of really troubling and problematic options that the Obama administration has preserved, protected, and expanded. To add that to the options that the Obama administration feels are available to it would be an additional and troubling step, in that same, really disastrous direction that we've been going in, in terms of so-called national security issues, since 9/11 and since the Obama administration took over.

Q: This is somewhat unrelated but I want to ask—has the government, in the *al-Maqaleh* case that you're working on ever put forth this argument, or indicated that they might, in terms of what types of actors have access to habeas? This is beyond the jurisdictional issue. Have they ever indicated toward putting forth an argument that habeas corpus doesn't apply to detainees who have not been charged with a crime? This is a position that Katyal—he submitted a paper, I

believe to the Supreme Court, opposing the position of [Stephen H.] Oleskey and [Robert C.] Kirsch and *Boumediene*, saying that their clients didn't have access to habeas because they weren't actually charged with a crime—whereas his—[Salim] Hamdan—did, because he had been charged with a crime. What do you think about this argument about habeas? Which view is correct, a little more expansive, and has the government ever even indicated any position like this, in your own work?

Kassem: I would say two things. That's an argument, in the sense that Neal Katyal, as an academic, is trying to sell a position. He's trying to convince the courts to take the law in a direction that he thinks would be wise or preferable, for whatever reason. It's not reflective of the U.S. government's position. In other words, I haven't seen the U.S. government take the position in court that only those charged with a crime have access to habeas—if that's what he argued—because I haven't read whatever amicus brief I suppose he filed in the *Boumediene* case. So it's not reflective of the U.S. government's position. I haven't seen the U.S. government take a position like that. As extreme as its positions have been, I haven't seen the Department of Justice take that sort of position. Then it's not reflective of the state of the law, either. There's nothing in the law that would support that proposition, and then if it is really the position that he was advocating for, I would say—just my own view—is that it would be completely inconsistent with the history and purpose of the writ of habeas corpus.

The writ of habeas corpus, essentially, was about precisely challenging imprisonment in the absence of charges. Originally, it was a way to check the king's power to just order someone imprisoned for no reason, without any process. It was a way to force the king to come forward

with some justification, in front of an impartial arbiter who would then decide whether the person should be released, or could remain in prison.

So if habeas corpus is for anyone, it is specifically for people who have not been charged. And what we've seen post-9/11, at least in the United States, is a re-emergence of that original phenomenon that brought about habeas corpus in the first place—which is the phenomenon of just unilateral executive imprisonment of an individual, without any process and without any charge.

So to the extent that Katyal was arguing that, somehow, you know, habeas jurisdiction and formal charges have to be coupled, I think that position would be at odds with the history and purpose of the writ of habeas corpus. But, again, I haven't read what he wrote and submitted.

Q: I didn't know if that was ever a position that the government had maybe not taken, but indicated that it was something they could potentially argue. Since you pointed to the history of the concept of habeas corpus, it seems like it wouldn't have any kind of—

Kassem: If I were to characterize them, generally, I would say that under the Bush administration the government's arguments were twofold. They were about the president's own wartime powers, and how expansive they were. That was the so-called Article II argument. Then the limits on the courts' power. That was a jurisdictional argument, having to do with Article III. Those were the two broad characteristics of arguments against habeas corpus litigation, on behalf of Guantánamo prisoners, for example, under the Bush administration. Under the Obama

administration, one change was that the first of the two arguments was dropped. So you stopped seeing the Article II presidential powers argument under the Obama administration. Really, the emphasis remains exclusively on the jurisdictional aspect of the argument—which was unchanged. Not so much as to Guantánamo, because the Guantánamo battle, jurisdictionally, was lost in 2008, in June, even before the Obama administration took over. But as to Bagram, the jurisdictional argument is indistinguishable. Virtually indistinguishable.

Q: So you're comparing where you are now, with the Bagram litigation, to where Guantánamo lawyers were years ago, with Guantánamo. So you see this as a long-term kind of legal issue.

Kassem: Yes. But, you know, with the added twist or complication that we know the future, in a way. Again, for those of us who are involved in the Bagram litigation, but are also involved in the Guantánamo litigation, we know what's down the road, and it's not a particularly inviting sight. Because, again, one of my cases was one of the seven whose cert petitions were just denied by the Supreme Court on the Guantánamo side. I know what the D.C. Circuit has done in terms of its application and its interpretation of *Boumediene*, but it's essentially gutted *Boumediene* of any meaning for imprisoned men at Guantánamo and elsewhere.

So to then shift and think about it as someone litigating in the Bagram cases, and litigating with the goal or the aspiration of basically reaching *Boumediene*, and getting *Boumediene* to apply to Bagram. Knowing how hollow *Boumediene* has become—that's the conundrum that we're in, in a way, again, if we're just taking a very conventional perspective to the litigation—which I don't. But from that very conventional perspective, that's the conundrum, because the difference is that

we know what the future holds, in a way, whereas when *Boumediene* was being litigated, when *Rasul* was being litigated, before *Boumediene*, on the Guantánamo side, people were hopeful that jurisdiction would mean something, concretely, for the clients; that jurisdiction would mean significant, reliable, meaningful review of the legality of their imprisonment; that it would eventually, potentially mean release from imprisonment. For some of the men at Guantánamo it has meant that—for the lucky few who were able to get by, won their habeas cases, as most prisoners did before the district courts, before the court of appeals started making it harder and harder for prisoners to win. It was very hard to begin with, but the government's evidence was so weak that Guantánamo prisoners were winning upwards of seventy percent of the cases before the district court, until the court of appeals started reversing those victories, and narrowing the ways in which prisoners could win.

So that's the posture that the Guantánamo lawyers were in, earlier. There was still the hope that it might actually deliver what our prisoners, and their families, and their communities wanted—which was release from imprisonment. At this point, on the Guantánamo side, it's not clear that that's something that judicial review delivers. It's really become, in many ways, an empty exercise, where the odds are just so dramatically and ridiculously stacked against the prisoners. Even our starting point was skewed. But, again, the government's evidence was so weak that we were still winning, but even our starting point was one where they were talking about cases in the D.C. District, which is not a left-leaning district. You're talking about judges who tend to be conservative. You're talking about a standard that is the one that you would apply to a slip-and-fall case, a preponderance of the evidence.



There are, broadly, three standards of the U.S. adversarial system, three evidentiary standards. There is beyond a reasonable doubt, which is the gold standard that's applied to criminal cases. There is clear and convincing evidence, which is an intermediate standard. Then there is preponderance of the evidence, which is like fifty-one percent, forty-nine percent, and that means that the party with fifty-one-percent odds, or fifty-one percent evidence wins. That's the standard that we apply in the United States, at least to slip-and-fall cases. We don't apply that standard to cases where the outcome determines whether a person stays in military custody for the rest of their natural lifetime, potentially.

But that's the standard that was applied, initially, by the district court, to these Guantánamo cases. That was the starting point. Hearsay was freely admissible. That was the starting point. Secret evidence. Pretty much all we had was secret evidence. Most of the evidence we couldn't share with our clients and get their input on how to defend against it. Despite all of those obstacles, despite all those stark odds against us, prisoners were still winning the majority of their cases. So the D.C. Circuit stepped in and made it even harder. At this point, when you look at that system, it's very hard. When you look at it from just a very cold, dispassionate, pragmatic perspective, of someone who has to operate through that system and represent a prisoner or a client through that system, it's very hard not to see that system as it is today, as just a rubber stamp for executive imprisonment.

Q: Yes. So, final question. What, in your view, has to change in order for what some people would call the post-*Boumediene* phase of this story, to change direction? For *Boumediene* to either get its teeth back, to get its structure back, or Bagram. What has to change for the

conventional kind of legal approach to become effective for access to habeas, for people who are in Bagram or other potential sites that are within war zones, that may not even exist today? Or the next five or ten years, what, in your view, must change? Is it a mobilization issue for the public? Is it a different constitution of the Supreme Court in the next four years? A semblance of those two things? Or what is it, in your view, that must change?

Kassem: I think part of what makes that question so difficult is that we are really at the beginning of this phase. With the denial of cert in those seven cases, a couple of weeks back, that's when it really dawned on—. A lot of us were already thinking, in a sort of post-*Boumediene* mind-frame, even before the cert petitions were denied—but with the denial of those seven cert petitions was when it really dawned on most practitioners, and most of the advocates in this area, that, really, there has to be a paradigmatic shift for us now. What makes the question difficult is that we're really at the beginning of that phase for most people. People are still processing, and digesting, and trying to figure out what to do, really, and recovering from the blow.

To my mind, one thing to do is to take our cues from our clients. Our clients, for a very long time—for years—they haven't had their faith—their faith wasn't in the ability of the U.S. system, broadly writ, to deliver justice. They were, of course, willing to use the U.S. court system and other aspects of the U.S. governmental system to get justice, but they had no illusions about how reliable those systems would be in delivering justice. They'd seen enough from the U.S. government, they knew enough about the way the systems operate, that, for the most part—even though they are more directly concerned—oddly, our clients are probably much less affected, dispirited, discouraged by the Supreme Court not accepting these seven cases than a lot of the

lawyers were. Maybe that's because some of them are just too detached and desperate at this point, but I think for most of them it's because they have a particular perspective. They're still hopeful. They still hope to see the day when they get to go out and join their families and rebuild their lives, but they just haven't drunk the Kool Aid as far as the U.S. court system is concerned. I think we in the advocacy community need to also think more broadly and more holistically about advocacy, and not have all of our eggs in the litigation basket. I'm not saying that's the way everyone has proceeded. Some of us have always tried to diversify our portfolio, so to speak, and look at advocacy more broadly, and follow a range of advocacy approaches, not just the conventional litigation one. But there are some who have had all their eggs in the litigation basket, and I think this moment will highlight to them the necessity of really diversifying your approaches, and taking a more holistic approach.

I think that's one direction in which we'll be going. We'll be looking to other ways to achieve our objectives. I don't think people have given up on the litigation, but maybe in the advocacy portfolios of those of us who are active in this area, litigation might shrink. It won't disappear, but given the jurisprudential developments, it might shrink in favor of the development of other advocacy streams. I think a lot of people in our community will be going in that direction, and will be trying to explore other ways to exert pressure on the U.S. government to release our clients, including international fora. International law is very clearly on our side. Going to the international fora, advocating with foreign governments, and—more importantly—advocating with foreign constituencies and international public opinion. Guantánamo is unanimously unpopular, and that's a huge source of pressure on the U.S. government.

The U.S. government does not exist in isolation. The United States does not exist separate and apart from the rest of the world, and it makes a difference to the U.S. government what other governments think. It makes a difference to other governments what their public thinks—what their constituencies think. I think those are all potential advocacy areas for all of us to exploit. The other thing I would say is that we also have to be on the lookout, on the continued lookout, for Guantánamo. At this stage in time, even if Guantánamo were to be unilaterally closed by President Obama tomorrow, in some ways it would be symbolic. I have clients at Guantánamo. To those clients and their families, it would not be symbolic. It would mean the world. But it would be symbolic in the sense that, at this point in time, Guantánamo is not a place anymore, it's really an idea, and we're seeing that idea manifest in a range of ways, in a range of places, overseas but also domestically, and variations on that theme are popping up left and right. I think we have to be very aware, and mindful of, and careful about the emergence and the evolution of the Guantánamo idea, and the way that it's infiltrating and penetrating the different aspects of not just the way the U.S. participates in the world at large, but also what's happening domestically.

You see manifestations of it. You see manifestations of it in the NYPD [New York Police Department] surveillance program of Muslim communities, here in New York City and beyond. You see manifestations of it at the local level elsewhere, obviously, in what are often called preventive prosecutions but what I call predatory prosecutions, that are deployed by the FBI and the federal government, to net the largest possible number of convicts on terrorism charges. You see cases where the government is so involved that it's hard to imagine the outcome being different if the government were to take such an instigating role with any other community. But the message being sent is that this community is a threat, and that's another manifestation of

some of what's really the Guantánamo idea at this point. So I think we have to be very cautious and alert to those things, going forward.

But it's really a challenge. It's really a challenge, and I think it's hard to resist the idea that we're at an impasse. But we've been at similar impasses. The way I try to think about it is that we've been at similar impasses in the past, in the Guantánamo cases, for example, and we have to find ever creative ways to continue our advocacy efforts on behalf of our clients. The cynic in me thinks that because the government holds such a very strong hand at this point, that we're going to see a very quick regression at Guantánamo—even in terms of conditions of confinement for our clients—and in a way that's what worries me the most. Because the government, now, in the Guantánamo cases, is actually pushing for, for example, more limited access to lawyers for those Guantánamo prisoners who do not have, or have had their habeas corpus petitions dismissed, either voluntarily—like they withdrew their petitions—or dismissed by the court, as in they lost them. So the Department of Justice is now pushing for restricted access to lawyers.

That's directly connected to the day-to-day conditions of confinement for our imprisoned clients at Guantánamo. In other words, one of the successes of the Guantánamo litigation—and there have been many. I think a lot of people tend to focus on the formal outcomes, where you're winning your cases and your client being released—but the Guantánamo litigation, I think, has been extremely successful in many ways.

Let's look at three metrics. One is public awareness. Connected to that is conditions of confinement. The third is the concrete outcome that matters most—are your clients, are the

prisoners being set free, or are they remaining in prison? Because that's your role as a lawyer for an imprisoned client—to get them out as soon as you can. I think by those three metrics—which are conventional metrics—the Guantánamo litigation has been largely successful. It has brought a great deal of pressure to bear on the U.S. government, so much pressure, in fact, that of the roughly eight hundred prisoners, that were at Guantánamo, the overwhelming majority have been released. There are 168 left. The overwhelming majority were released unilaterally, so it wasn't through court order, but it's still a direct result of the pressure that was brought to bear by lawyers and advocates who were bringing attention to Guantánamo. One way they did that was through access, and that's where the jurisdictional part was important. Once *Rasul* came down, and jurisdiction was established that first time, under the habeas statutes, lawyers had access to Guantánamo. With access to lawyers, the prisoners had a channel to the outside world. Information began coming out about Guantánamo—about the conditions there; about what the men had been through, at Guantánamo and before Guantánamo, at various U.S. sites.

That information was spread by the media, and was picked up by advocates. It created a lot of pressure on the government to improve the conditions at Guantánamo. I think were it not for that, the conditions at Guantánamo today would remain where they were in 2002. Had there been no visibility, had there been no visibility from the outside world into what happens at Guantánamo, through the lawyers—communicating—relaying what their clients were telling them, you wouldn't have any of that. There would be no incentive to improve the living conditions of the prisoners at Guantánamo, and their treatment, more importantly. But once the outside eye was on Guantánamo, the U.S. government had to shake things up. They had to reform the prison.

Of course, the Guantánamo of 2002 survives today, most importantly in the fact of indefinite imprisonment without charge. That's the single most important point of continuity, regardless of the fact that Guantánamo prisoners now have access to radio in 2012 and they didn't in 2002. The more important part is that in 2012 they still don't know if they're ever going to get out, and that takes a huge psychological toll. That's a huge line of continuity. That's the defining characteristic of Guantánamo, and it's still there.

But there are other things that have changed through those external pressures, so I think, really, by the conventional metrics, the litigation has been quite successful. It's been successful in unconventional ways. It's been successful in indirect ways. It was almost sort of a guerilla lawyering effort in that way, if you want to take the military analogue—that it wasn't a conventional conflict, it was an unconventional conflict—goals were still achieved for the clients, indirectly through the litigation and through access to the clients. So I think now we have to be alert to the possibility that the government is pushing for less access, and if they get less access, and they're able to get the court to rule that less access is okay, then the next shoe to drop will be conditions. Because if we're prevented from seeing our clients, if our visitation rights are limited to once or twice a year—let's say—then you can be assured that the conditions of confinement will worsen. Because at that point there will be no outside check on what the U.S. military does at Guantánamo.

I'm not trying to overstate the importance of that outside check. It's not like the outside world and public opinion is all-powerful. The U.S. government still does most of what it wants to do at Guantánamo, including, most importantly, holding people without charge. But things like the

conditions, and the frequency of abuse and mistreatment—those are things that we have to be careful about and we have to protect, because I think if access is reduced then information to the outside world is reduced, and that means our clients will be forgotten, and that means that Guantánamo might be forgotten as a place with real people in it, as prisoners, and the result of that will be that the U.S. government will revert to doing some of the things that it used to do ten years ago.

I don't know what else we have on our plate.

Q: It's been over an hour. I know you have a lot to do. This is all very interesting. I know I've been jumping around a little bit, but I wanted to hit all these things with you. The one thing we didn't get to was the commissions.

Kassem: Is that all that's left, as far as what you wanted to talk about?

Q: There's always the domestics that I wanted to talk to you about, but we can do it another time.

Kassem: Let's do the commissions another time. My preference would be to do it with you, just because I've worked with you. But why don't you see what your schedule is like?

Q: I would hate to rush a discussion about commissions, especially some of the more recent commissions that have been taking place. I want to get your thoughts on that.



Kassem: My involvement with the commissions—obviously, I've been following very closely what's been going on. We had a live commissions case—the [Ahmed Muhammed Haza] al-Darbi case—so that was a case that I litigated before the military commissions. The charges were eventually withdrawn and dismissed by the prosecution. I know you've already looked this up, but if you want to do more research on that, that's a thing I can talk about from direct experience. Then, obviously, I'm happy to give you my opinion on what's been going on in other commission cases, other than my own. You'll find some materials about his case online. You'll also find his declaration on line, which I think you should read. He wrote a very detailed declaration, describing how he came into U.S. custody; the conditions of his confinement and torture, at Bagram and Guantánamo.

Q: And that's out in the public.

Kassem: Yes. That declaration is available online.

Q: Yes, let's do that. We'll figure something out for discussion.

Kassem: Probably in August. At that point you'll be settled in your job at the Brennan Center. We can take an hour to do that.

Q: All right. Thanks a lot. I appreciate it.

[END OF SESSION]

VJD

Session Four

Interviewee: Ramzi Kassem

Location: New York, NY

Interviewer: David P. Briand

Date: September 13, 2013

Q: It's September 13, 2013. I'm here with Ramzi Kassem, who is the associate professor of law at the City University of New York School of Law. He's the director of the Immigrant and Non-Citizen Rights Clinic. Welcome, Professor Kassem.

Kassem: Thanks, David.

Q: Thank you very much for being here.

Kassem: My pleasure.

Q: I thought we could start where we left off last session—or where you and Gabe left off last session—talking about the military commissions and your participation in a military commissions case. What was your first reaction when you heard that Guantánamo detainees were going to be tried by military commission?

Kassem: I think my first reaction to that—obviously, that news really came very early on, so at that point I was actually not even a lawyer yet; I was still a law student here at Columbia. That was in November 2001, I believe, that President Bush issued an order creating the military commissions. So it was a pure creation of the executive branch of government. Obviously, that

version of the military commissions is the one that the Supreme Court ended up striking down in the *Hamdan* case in 2007. Actually, was that 2007 or 2006?

Q: I think 2006.

Kassem: Thereabouts. And that's what led to the Military Commissions Act of 2006, so *Hamdan* must have been 2006, and in the Military Commissions Act you have sort of the legislative branch version of those military commissions.

So my first exposure to the military commissions was in 2001, when I was still a student. Obviously, at that point, it wasn't really clear, in November of 2001, who would end up being the defendant in those military commissions. It was sort of like the structure that was created, but who would be processed through the structure at that point was still unclear to me. I think everyone assumed that people who were captured in the course of hostilities in Afghanistan, perhaps individuals who were suspected of being responsible for the attacks on 9/11, would be candidates for trial by military commission. It did strike me as odd that sort of an exceptional structure was created, in the same way, I guess, that I was having a hard time accepting the war paradigm.

Q: What do you mean by that?

Kassem: Well, the notion that the 9/11 attacks were an act of war I think was a notion that was very quickly put out there by—within political spheres, I think it was the immediate reaction of

folks within the Department of Defense. Of course, they're conditioned to interpret events in that way because of their own training and professional background as military people. But I think very quickly, even within civilian spheres of our political leadership, that view was adopted. It was publicized through the media and it was very quickly accepted by journalists, commentators, analysts, and the public.

That that notion was so quickly accepted was troubling to me because I thought it deserved more reflection and debate, because it really is a significant shift and I think had the attacks on 9/11 been treated, perhaps, as a particularly tragic and horrendously successful criminal action, then the course of history would have been very different. The fact that very early on they were relatively unquestioningly accepted as an act of war, and that the war paradigm wasn't really questioned or interrogated significantly by the elected representation on the Hill, or by the intelligentsia, the academy, the commentators, analysts and reporters—I think that set us on a path that we're still on today.

So very early on, for the same reason that I had some doubts about the wisdom or propriety of the war-framing for this particular historical event—as tragic as it was and as personally affected as I was by it as a New Yorker—I still questioned that. I think the order announcing the creation of the military commissions, and my reaction to it, was part of that same bundle. And I also wondered, even if we were to accept the war framing for what was happening at the time—I also wondered why we had to create a new military judicial structure when we already had the courts martial—in addition, of course, to our civilian Article III federal courts.

So that was my initial reaction. I think my next really meaningful engagement with the military commissions comes years later when, I think it was on August 8, 2008, when I was retained by Ahmed al-Darbi, who was a prisoner at Guantánamo.

Q: Can you talk about how that happened?

Kassem: He had, shortly before my first meeting with him on August 8, 2008, been charged and referred for trial by a military commission. At this point, we're talking about the legislative version, the post-*Hamdan* version, of the military commissions. So you could think of it as Version 2.0 or 3.0, depending on how you want to look at the evolution over time. He had been appointed detailed military defense counsel, as consistent with the Military Commissions Act and the implementing rules that the Department of Defense issued. He wanted to retain civilian counsel to represent him before the military commissions.

One of the men who was imprisoned in the same prison camp where he was held—which at the time was Camp 4, which is no longer in use. It's a facility that's a part of Camp Delta at Guantánamo—no longer in use today, as far as I know, at least, at Guantánamo. But Camp 4 was where so-called compliant prisoners were held back in 2008. So the prisoners were given white jumpsuits and they had privileges that the prisoners in Camps 5 and 6 and the other prison camps at the time did not have.

So Ahmed al-Darbi was held in that camp. One of his fellow prisoners there was a client of mine, an Algerian man by the name of Mammam Ameer who's now back home with his family in

Algeria. Through Mammour I received a request from Mr. al-Darbi, Ahmed al-Darbi, to represent him. I exchanged correspondence like legal mail with Mr. al-Darbi. Then, on August 8, 2008, I had my first meeting with him and began solidifying the attorney-client relationship with him that still exists today.

So that was really my first meaningful engagement with the military commissions as a lawyer. Shortly after that meeting I entered my appearance as his civilian defense lawyer before the commissions. Under the military commission rules, and under the normal sort of courts martial rules as well. Whenever there is a civilian lawyer on a case before a court martial or before a military commission, that civilian lawyer becomes lead counsel, even if there is a military lawyer. So I collaborated with his military lawyer at the time. Since that time, he's had about six different military lawyers and I've been the one civilian defense lawyer on the case for the duration.

What happened with the case, actually, is interesting because I think it really reflects a lot of what's wrong with the military commissions. He was charged; he was referred and charged. He was charged and referred in 2008. We started moving towards trial. We eventually reached the suppression phase, one of the final pre-trial phases in any criminal proceeding. He had been charged with what was back then the normal military commission cocktail of charges—material support and conspiracy—both of which are not recognized offenses under the law of war. That's one of the arguments we made.

At this point in time—2013—the D.C. Circuit Court of Appeals has agreed with us as to material support. They are more or less on the brink of agreeing with us as to conspiracy. I think even the office of the chief prosecutor, as a legal matter, probably agrees with us as a legal matter—that conspiracy is not a war crime that's recognized under international law—but I think as a matter of policy, that office is no longer interested in charging that particular crime because they're afraid of how convictions of that crime could stand on appeal.

But at the time, in 2008, Mr. al-Darbi was charged with material support, conspiracy. We were on our way to trial. We were at the suppression phase where we were basically making all kinds of arguments about what sorts of evidence the government should be able to rely upon and which sets of evidence were too prejudicial, and what not. So just to give you an example—obviously, we were arguing over the admissibility of some of his own statements that they were going to try to introduce against him, given the circumstances in which he had been interrogated in Bagram and Guantánamo—highly coercive circumstances—so he even signed a declaration describing the torture and abuse that he survived in Bagram and Guantánamo. That declaration is now public.

Q: It's absolutely tragic.

Kassem: Yes. And, you know, his is one of the more extreme cases out of Bagram that we know about, at least. But, obviously, there are two prisoners that we know of who died, including Dilawar, whose death he more or less witnessed. So I think there were a lot of really powerful, moving details in his accounts of how certain statements were elicited from him.

The other part of it, obviously, was also having to do with evidence that the government wanted to introduce about the 9/11 attacks. So a lot of what we were saying from the defense side was, "This is prejudicial because, even going by the government's own allegations, Mr. al-Darbi didn't have anything to do with the 9/11 attacks, so why introduce that and taint the military commission members and the military jurors' view of our client?" We won some, we lost some, in front of Chief Judge [James L.] Pohl, who was our judge in the al-Darbi case—is the judge now in the 9/11 trial and the [Abd al-Rahim] al-Nashiri trial—the only on-going sort of proceedings before the military commissions at Guantánamo today, in 2013.

So back in 2008, he issued some rulings that were favorable to us, some rulings that were not favorable to us. I guess part of the calculus on the government's side was that there was a new administration coming in. Moreover, they didn't particularly like some of Judge Pohl's rulings on suppression—and because it's the commissions, because under the commission rules there is no speedy-trial clock, because they can hit the reset button as many times as they want to—obviously they took advantage of that. So they basically pulled the plug on their own case. They withdrew the charges; they had them dismissed, bringing Mr. al-Darbi back to where he was before he'd ever been charged with anything. In a normal judicial proceeding, that would be considered a huge success for the defense—you managed to get the charges against your client dropped. But in the military commissions, it's sort of meaningless. I'm not trying to minimize the reality that it was a relief to Mr. al-Darbi to no longer be in jeopardy in that way, in legal jeopardy in that way, but it was meaningless in the sense that they could renew the charges the very next day, or two or three years later. Which is what they did.



So the charges are withdrawn and dismissed by the prosecution in 2009. The Obama administration comes in. They choose to hold onto—at that point it became clear that they had chosen to hold onto the military commissions, which they should have scrapped for a bunch of reasons, including the ones I've mentioned and many others that we'll get to. Essentially, we were in a holding pattern on that case, on the commissions side, until August of 2012, when new charges were sworn. Now those charges have still not been referred, so the military commission system, like the courts martial system, functions in a way where the military prosecutors swear out a set of charges; those charges go to what's called a convening authority, and only when the convening authority signs off on the charges and refers them to a military commission does the case move forward. But again, because it's the commissions, in kangaroo-like fashion, for lack of a better term—that can take forever.

So for over a year at this point, the sworn charges—the new set of sworn charges from August 2012 against Ahmed al-Darbi—remain pending before the convening authority, awaiting action. So when my client asks me whether or when this case is ever going to move forward, I simply can't answer that because it's in the convening authority's hands and there's no structural pressure on him to take action. He can sit on it forever. He could move on it tomorrow.

One thing that was interesting to note—and this also illustrates how the military commission system, by design, was set up to favor the prosecution. Even more so. Yes, even more so than any other—I'm very critical of the way the Article III—the federal courts function, and even the way state courts function in criminal cases. But even if you look at just how federal courts

function in so-called terrorism trials, it's hugely problematic—and we could have a completely separate conversation about that.

But the military commissions stack the odds in the prosecution's favor even higher. It's a system that was designed to produce convictions over justice. It's designed to offer prosecutors all sorts of short-cuts. It is designed to protect the secrecy that the government wants to protect, so secret evidence can be used. Coerced evidence can be used. The accused can be excluded from their own proceedings in many ways. I think the prosecutors might argue sometimes that they can proceed *ex parte*, excluding even defense lawyers. So it's really a system that offers the prosecution all sorts of shortcuts. I think the most important function of the military commissions—and this is where the secrecy comes in—it to enable the government to proceed with these cases despite the elephant in the room, which is torture—because all of these cases have torture at their heart.

Q: Mr. al-Darbi included.

Kassem: Mr. al-Darbi being an example; obviously the 9/11 five being another example. People like Khalid Sheikh Mohammed and al-Nashiri as well. Any case that you can think of that's being talked about in the context of military commissions today will, by necessity, feature torture prominently. That kind of explains the design of the military commissions because there would be no need for their existence were it not for that imperative—getting around torture; being able to secure convictions, despite the prominent role that torture played in a lot of the histories of these cases.

So with Mr. al-Darbi, the charges that were sworn out in August 2012 remain pending and we're just basically in a holding pattern.

Q: The other thing you mentioned before—testimony gotten through coercion is allowed but testimony gotten through torture is not allowed.

Kassem: Yes. But even that—right—

Q: What does that mean?

Kassem: You can look at it in three ways. There are three conceivable grades, legally. You can think of torture as the highest, most extreme form of coercion. You can think the next lowest thing would be cruel, inhuman, and degrading treatment. Then below that is coercion. Statements extracted through any of the three—coercion, CIDT, or torture—would be considered involuntary. Now the commission rules, as they exist today, are clear that tortured evidence, perhaps even CIDT evidence—cruel, inhuman, and degrading treatment evidence—is not admissible. But who makes that determination? The military judge. So if a military judge presiding over a military commission at Guantánamo decides that, despite the defense's argument that particular forms of coercion constituted torture, the military judge, in his or her discretion, deems that the abuse that took place does not rise, legally, to the level of torture, then he can simply make the decision about—if it's probative enough, in his view, it can be admitted; it can be used.

So even where the military commissions pay lip-service to the notion that tortured evidence cannot be introduced at trial against a defendant—the devil is always in the details with the military commissions, and when you look at the *practice* of it, it vests the military judge with a great deal of discretion. And that's complicated. I think what further highlights how troubling that is, is when you look at the military commission rules, there are provisions that insulate the military commissions both ways, in the sense that if a judge, a military judge in a military commission, issues a ruling on a legal question, that opinion that was written by the military judge—if he wrote an opinion—cannot be used in the regular courts martial system. There's a provision in the rules that prevents anyone from citing what a military judge in a military commission says as precedent in the regular military courts. Why is that? Because we want to insulate our own men and women in uniform from the bad law that the military commissions are going to create.

And that goes both ways, right? So I can spend all day citing Supreme Court precedent; precedent from the highest military court; international law, to a military judge in my military commission case. But ultimately, it is entirely up to her or him to decide whether or not to follow that law. None of that law is binding on her or him. Now probably, in practice—because the judges are going to be lawyers just by reflex, by professional reflex—they're going to tend towards deference to those authorities. But they know they aren't bound by those authorities and sometimes, where it really matters, they will say, "Well, this is not a regular court. These are not regular cases. The authority you cite is instructive but it isn't binding, and here are the reasons why I'm going to go a different way here."

Q: "Instructive." It seems like this Orwellian use of language, almost, especially when you're talking about coercive techniques, or interrogations, or torture. It's "What we say is okay, and you can just stick with that legal precedent." That's how you're forced to go forward.

Kassem: Yes, and the use of language—you can look at it from the commissions on down to even the everyday conditions that our clients at Guantánamo—my clients at Guantánamo—endure, and how they're described by the authorities. So if I go to the media and say, "My client, Shaker Aamer, has been held in solitary for months," then the media takes that, a journalist takes that back to the Department of Defense at Guantánamo and says, "Shaker Aamer's lawyer is saying that he's in solitary." What they'll say in response is, "No, we don't have solitary confinement at Guantánamo." And the reason for that, again, is that they've defined it so narrowly as to define it out of existence.

So, in their view, it cannot be solitary, based on their definition—as long as a prisoner can hear another prisoner's voice. So even if Shaker Aamer—and this is true. This has happened not just with Shaker but with many of my clients. Taking Shaker as an example, Shaker spends twenty-three hours out of every day on lockdown, by himself, in his steel cell, 8' X 5'; he's allowed out to a recreation cage from 2:00 to 4:00 AM, by himself; he has no social contact with anyone other than his guards. As long as Shaker Aamer can bend down in his cell, shout through the slot in his metal door—through which they give him food—to another prisoner who may be at the other end of the cell block in his cell, and as long as that prisoner can hear Shaker shouting and can

respond, and Shaker might be able to hear him—in the military's view, for that reason, it is not solitary.

Q: Even though he has no real, actual, human contact with fellow inmates.

Kassem: Exactly. And by every recognized legal definition—including the one we use in domestic prison facilities—that is solitary. Most domestic prisons wouldn't even argue with that, federal or statewide. They would concede that "Yes, that's solitary confinement." It's even gotten so ridiculous that Shaker, that same client, once described to me—he would tell his captors—because he speaks fluent English, so he would complain to them about being held in isolation, which is a synonym for solitary confinement, and they would dispute that. Then he told me that he was being taken to a meeting with me and on his way to the meeting, on his way out of the cell block, there was some kind of an LCD display, I guess, regulating—I don't know if it's like electric flow or the air conditioning flow into the cell block—there was an LCD display that read, "Isolation Block." So he was laughing because he was saying their own systems acknowledge that this is an isolation block, yet they refused to acknowledge that in conversation with him.

Q: Maybe we can get to a little bit more about Shaker Aamer later, but I wonder if we can go back to Ahmed al-Darbi for a little bit and talk about how he ended up in Guantánamo in the first place, and what his story was there.

Kassem: I think a lot of that is actually, or some of that, is in his declaration and it's probably best for me not to get into it too much. Is that fine?

Q: Absolutely. So going back to—

Kassem: But in terms of—we'd started with the commissions. Do you feel like we've covered that enough?

Q: We can keep going on the commissions, if you want to.

Kassem: It's up to you. If you have other questions about the commissions, or if you've got to move on—I completely defer to you.

Q: Well, you talked about how he's basically just languishing now. He's waiting for the convening authority to do something with the charges that are before him. So he's basically in a state of legal limbo and has been for a while, right?

Kassem: Yes.

Q: So what's next for him?

Kassem: There really isn't much I can say. This is exactly the question that he'll ask and it's really sort of out of our control. In a normal court system, we would have been able to say,

"Look, there's a speedy-trial clock that has run, so now we can go to a court and ask for you to be released because they're not going to charge you." But that's simply not the way it works here because the government can have it both ways. Again, going back to that earliest moment, that earliest bifurcation of the rules when we went down the war paradigm path—given that that's where we are now, the government can always fall back on continued, indefinite imprisonment under their interpretation of the law of war, making the men at Guantánamo, in their view, in the government's view, detainable until the end of hostilities. They're very hard to define because they're not geographically or temporally limited. I'm sure there are some actors in government who would say, even after the end of hostilities in Afghanistan, the conflict still won't be over. So it's really unclear.

But, again, within that war paradigm, the government has a host of options. I think that's what's really dangerous—the ability of the government to toggle between these different modes of state violence. So the fact that the government has a range of options at its disposal that are reflected in what we now know the government calls the "disposition matrix"—that they can, for any particular individual who is of interest to the government, as long as certain parameters are met—that they be overseas, for example—there is a range of options. You can try that person; you can execute that person; you can send them over to another country for questioning and detention; you can hold them indefinitely in a U.S. military facility; you can bring them to the United States and make them stand trial before a federal court; you can hold them in a military facility and try them by military commission—or not, or hold them indefinitely under the law of war, as long as they qualify as an "unprivileged enemy belligerent," which was sort of the successor term to "enemy combatant."



So the fact that the government has all these options at its disposal is what's really troubling, and I think that's different from the way things stood before this historical moment, this post-9/11 moment. Not that the government didn't engage in all kinds of dirty business back then, but I think the default, the norm back then, was that, publicly, whatever dirty work the government was engaged in wasn't acknowledged and claimed as a legitimate policy option the way it is today. Today, a lot of this stuff is on the table. A lot of stuff that previously may have been done covertly, whether we knew about it or not—today, it's sort of openly a part of the legitimate array of options at the government's disposal—or that array of options that the government claims is legitimate.

Q: And they keep changing the rules and extending the stays of imprisonment.

Kassem: So we said we'd talk about commissions. Then there were a couple of other things on your list too, right?

Q: Yes. We could move on to talking a bit about the hunger strike of this past year.

Kassem: Okay.

Q: So your client, Mr. Zuhair, had been on his own hunger strike for a very long period of time before he was ultimately released. And your client, currently—Mr. [Abdelhadi] Faraj—

participated in the one that, I guess, the numbers grew to about one hundred, or even possibly more.

Kassem: Yes.

Q: What was your reaction to this year's sort of massive hunger strike compared to the one that you saw your client, Mr. Zuhair, go through?

Kassem: Ahmed Zuhair is a Saudi national held at Guantánamo. He launched his own, individual hunger strike in June of 2005. There was a group of people who were with him, but most of them came in and out of hunger striking over a period of years. But Mr. Zuhair and another Saudi national by the name of [Abdul Rahman] Shalabi, who began his hunger strike a couple of weeks after Ahmed did, in June of 2005—they were continuous hunger strikers. They never suspended their hunger strike. Mr. Shalabi remains on hunger strike today, so when you think of it, this is a man who's been on an uninterrupted hunger strike since June of 2005. He's the single longest-running hunger striker at Guantánamo. I'm sure he's shattered all kinds of world records—and he's paid the price, I think, with his health, both physical and, I'm sure, to an extent, psychological and emotional.

Mr. Zuhair, basically, he started his hunger strike in 2005. When I first met with him in 2006, when he retained me and my team of students to represent him—at the time I was about to start teaching at Yale Law School, and I was there from 2007 to 2009. I represented him with a team of students there out of Yale Law School. One of the first things he said to me was, "Here's how

we're going to work. I requested you as my attorney. I'm going to come for all of our meetings. I'm going to be frank and truthful with you. Whatever I can provide you to facilitate your work, I'll do that. But, in exchange, I don't want you ever to try to talk me out of my hunger strike." He made it very clear to me and to my students, from the earliest point, that this was the one way that he had left to exercise his human dignity, his autonomy, and his agency. It was a peaceful form of protest and resistance to injustice that he really wanted to engage in, and he made it very clear to us that he would not end his hunger strike before being returned to his homeland of Saudi Arabia. And that's exactly what he did.

We began representing him in 2006, 2007. *Boumediene* came down, so we pressed forward as aggressively as we could. We had a good judge on the case who was equally mindful—a fair judge who was equally mindful of our client's own interest and how significant the deprivation of his liberty had been—alongside the equities on the government's side, national security equities and whatnot.

So we had a fair judge. We pressed forward aggressively. After *Boumediene* we had the government produce their factual return, which was their evidentiary justification for Mr. Zuhair's imprisonment. Part of that was classified, part of it was unclassified. We responded. We filed a traverse, which is a response to the government's accusations and whatever evidence they put forth. A third of what we said was public, on the unclassified side; two-thirds were on the classified side. We're working with the government towards declassifying that. But just to summarize it, without getting into anything sensitive, the accusations were very, very poorly and thinly substantiated. We were literally able to rip apart the evidence that the government

presented, and once we saw that we started pressing for a trial. We had responded in writing with our own evidence and with our own rebuttals of the government's evidence, and we really wanted to go to trial to get our judge to look at everything we had put forth and make a decision whether or not Mr. Zuhair's imprisonment for all of these years had been justified, legally.

The government resisted that to an extent. They didn't want the judge to set a trial date, but ultimately the judge did. He set a trial date toward the end of June 2009, if I remember correctly. On June 12, 2009, exactly the first anniversary of the *Boumediene* Supreme Court decision, holding that the prisoners at Guantánamo had a right to habeas corpus review, my students and I got a communication from the U.S. Department of Justice informing us that Mr. Zuhair had been placed on a plane to be returned to Saudi Arabia. That was their way, I think, of avoiding the embarrassment of going to trial and losing, because I think with the evidence we had put forth, the way we had responded to their evidence, and the fact that we had a judge who was not afraid of contradicting the government on matters of so-called national security, they saw the writing on the wall and decided that the path of least resistance would be to send him back to Saudi Arabia.

He actually kept his promise. He remained on hunger strike all the way until his foot hit Saudi soil. Only then did he interrupt his hunger strike—when he saw his mother. He was placed in the Saudi rehabilitation and reintegration program. Now that's a form of detention, in my view. Obviously it isn't Guantánamo and obviously it isn't your average Saudi prison, either, in the sense that it's better. But it's still a deprivation of liberty. So for three years past that point, he remained in the Saudi rehabilitation and reintegration program, until the spring of 2012, when he

was finally released for good. Now he's home with his family in Mecca, Saudi Arabia. He recently agreed to give the Associated Press an interview about his experiences, commenting on—I think the journalist from the Associated Press's interest was really to get some insight into the mentality of a hunger striker, the motivations of a hunger striker—what it's like to be in that position at Guantánamo. Ahmed, obviously, is uniquely positioned to shed light on that. He's the next best thing to being able to interview an actual hunger striker at Guantánamo.

So he agreed to do that interview, and he explained to the journalist that it was the one way of protesting peacefully the injustice of Guantánamo, and that many times—that often his own family didn't understand, couldn't understand. The prisoners' families just couldn't understand what it's like to be there and why their loved ones felt compelled to engage in something as extreme as hunger striking—extreme in the sense that it really exacts a cost, physically and psychologically, and sometimes it's a long-term cost. Part of what Mr. Zuhair explained to the Associated Press journalist was that even today, in 2013, years after he finally suspended his hunger strike, he still suffers from some of the physical health consequences of having been on hunger strike for such a long period of time; that his back just hasn't been the same; that his joints just don't feel the same. He used to be extremely athletic. He just isn't able to do any of that anymore and he's still a relatively young man.

But for him, I think it was the way he chose to remain human at Guantánamo. And, as paradoxical as it might sound, I think for him it was the way, perhaps the only way, to survive Guantánamo—to put himself at great risk, not just because of the effects of hunger striking on his own system, physically and mentally, but also because of the authorities' response to hunger

striking and their constant attempts at breaking his will. We saw a lot of that play out with the recent hunger strike at Guantánamo.

As you mentioned, my client Abdelhadi Faraj was a Syrian national; my other client, Moath al-Alwi, who's a Yemeni national, both of them—actually, all my clients went on hunger strike. Shaker Aamer was also on hunger strike. Mohammed al-Qahtani, a Saudi, was on hunger strike. For a short period of time, al-Darbi was also on hunger strike. And, as you mentioned, at its height, that hunger strike included the majority of the prisoners at Guantánamo—depending on whose count you believe. The prisoners will say up to 140; the prison authorities were saying different figures between 100 and 120 out of 166 prisoners who were there at the time. But, essentially the majority of the prison population at Guantánamo has launched a concerted, collective hunger strike.

The spark for it, obviously, was a particular incident where prisoners believed that prison authorities had searched the Korans in a way that they hadn't before. I think that was the spark. But the real, underlying motivation that fueled the hunger strike, as expressed by my clients and other prisoners, was just the single, constant, unchanging characteristic of Guantánamo that has remained the same, whether you look at Guantánamo in 2002 or you look at it in 2013, regardless of changes in conditions—which is the reality of indefinite imprisonment without charge, without knowing whether or not you'll ever get to be reunited with your family, with your society, with your loved ones. Many legal and medical experts will tell you that something as extreme as that—indefinite imprisonment, without knowing, without any kind of certainty about if you'll ever get out—that that can amount to psychological torture.

So even if you set aside all of the horrible things that we know some of the men at Guantánamo have survived—we know from government documents now; we know from survivor accounts; we know from their own stories—even if you set all of that aside, just that one, constant, unchanging fact, that they're being held—they don't know if they're ever going to get out—that's really hard to negotiate. And I would say not just for the prisoners themselves but also for their spouses, for their loved ones, for their families. So the effect ripples out and touches not only the prisoners and their immediate families but also their societies and their communities as a whole—particularly if you take into account the way societies like Yemen are structured and the importance of expanded families and clan and tribal relations—that rippling out of individuals who are affected by this injustice that's being visited on the men at Guantánamo really brings in many, many more people than I think most Americans realize.

So with this hunger strike, what was notable to me was that there was sort of a unity in motivation and in action, that prisoners who have very different outlooks; who have very different political perspectives; who have very different individual goals and desires were able to find unity in action and motivation to that extent—that the overwhelming majority of the prisoners would engage in a single act of political protest. And it was successful in the sense that, politically, they were able to leverage that action and transform it into political pressure that brought President Obama from a place where he wasn't even willing to talk about Guantánamo to a place where he was forced to address it twice, in two public addresses; to a place where he was forced to revoke the moratorium on repatriations to Yemen and Saudi Arabia; to a place where he reopened the Office of Guantánamo Closure and appointed an envoy.

Now I don't want to overstate the importance of all that—because we had an envoy for the closure of Guantánamo for years, for the entire first term of the Obama presidency until Obama shut down that office—and little was done. So, ultimately, what it boils down to is political will—President Obama's willingness to make good on that promise. It's really, like, pay the political price and expend the political capital to make good on the promise of closing that particular facility. And that will, that political will on the Obama administration's part has been lacking for the better part of that first presidential term. We hope that what's happening now is a change and that the two Algerians who were recently released, in 2013, and sent back home, will be the first of many. It makes sense to start with the prisoners—the majority of prisoners at Guantánamo who have already been approved for release—but I don't really buy into that distinction too much. I think, essentially, all the prisoners at Guantánamo should either be released or charged, ultimately, and that there is no place for indefinite law of war detention in this kind of context.

So to my mind, if the administration wants to start with those who have been cleared for release, if that makes sense for bureaucratic reasons, so be it. But all the prisoners must be repatriated or released, or charged and tried if there is a basis for it.

But I think the hunger strike was successful, politically, bringing all these different kinds of pressure to bear upon the American political administration, be it international pressures from allies; from international organizations; from human-rights groups who were denouncing the hunger strike, denouncing indefinite imprisonment. It renewed international media attention on



Guantánamo and on the injustice of indefinite imprisonment, so much so that segments of the American public were taking notice. Rolling hunger strikes were organized nationwide—solidarity hunger strikes among Americans.

These expressions of solidarity I think were among the most meaningful for my clients at Guantánamo. At least, when I would describe to them the actions by organizations like Witness Against Torture; the rolling solidarity hunger strikes; the fact that people were staging protests outside the White House—people on hunger strikes, Americans—I think that really resonated with them. They're very grateful and they're very thankful for any gesture of solidarity, but they were always very—across clients, they were always very intentional about asking me to convey their thanks and their appreciation to those members of the American public who stood by their side in their time of need. I think the building of those kinds of bridges and alliances is really transformative. It's transformative for the people here in the U.S. who take those actions and it's transformative for my clients. It brings them to a different understanding of the complexity of American society.

So I do think that that act of collective protest was tremendously successful. It's not unusual. There are studies that will tell you that prison hunger strikes are successful to the order of seventy percent. So the odds—once a prisoner is willing to pay that price and take the extraordinary step of endangering their own life and going on hunger strike, they will be able to achieve some political objective—perhaps not all their goals but at least some of them. I think for most of the prisoners at Guantánamo today who are on hunger strike, they're not waiting to see—many of them have chosen to give the Obama administration a reprieve. They've suspended

their hunger strike temporarily now that the Algerians have been released to see if more releases will follow. If they come to a point where they realize that the release of the Algerians was just a blip, an aberration, and, really, the policy hasn't changed; the political will is still as it was before; the inertia is still the same—then I think they will go back to their hunger strike. If, on the other hand, they see sort of a favorable evolution over time, with more prisoners released, then I think they'll go on eating.

There are, however, I think, at this point, thirty to forty prisoners who are still being force-fed, tube-fed, including my clients Moath al-Alwi and Abdelhadi Faraj—at least on my information from my last contact with him. They're maintaining their hunger strike because they're somewhat more skeptical. But I think many other prisoners have decided to suspend it, at least temporarily, to see what the administration does.

Q: To see how it goes. The hunger strike really brought the human cost of Guantánamo back into the public eye.

Kassem: Yes.

Q: That is something that is so often glossed over, with all this talk about politics and what the Obama administration should be doing versus what it actually is doing. Can you talk a little bit about the human cost as you saw it, and your experience with your clients?

Kassem: Yes. It's primarily—I think for many pundits, many lawyers, and many people who track this stuff here in the United States, it's almost like a soap opera, having to do with judicial opinions, and what have the courts said here, and what are the policy makers saying there? To me, that's part of the problem in a sense that, in a way, unwittingly, it participates in a process of dehumanization because it takes the humanity of the population that is most directly affected out of the picture altogether and elevates this human situation to, really, just a policy and legal debate. To me, primarily, it's about the people involved. For my students, the same is true. I think that's really the main motivation for my students who are working on these cases—and the people who are involved including our clients, obviously, who are most immediately in the crosshairs, but also their families, their communities, and their societies. We try to work with all those circles.

So for Shaker Aamer—he never met his son, for example. He has a son who was born on February 14, 2002, which is when Shaker Aamer arrived at Guantánamo, having been held at Kandahar before, in U.S. custody. Ahmed al-Darbi—same thing. He's got a son. His wife was pregnant with that child when he was taken into U.S. custody. He's never met that child. He's also lost his father while he was in prison. Ahmed Zuhair lost a parent when he was in prison. Moath al-Alwi has lost relatives. Abdelhadi Faraj doesn't even know if his family is still alive in Syria because of what's going on there. These are real, lasting, human costs. They're tragedies, really, and sometimes it's a surprise to me that my clients have been able to survive to the extent that they have, not just physically, but also psychologically and emotionally, despite the difficulty. It's kind of unfathomable, really, that they can keep it together, despite all of that.

When I think about my client Amin al-Bakri, who was kidnapped off the streets of Thailand, probably by the CIA, who has been in U.S. custody since then, now at Bagram—the same thing. He hasn't seen his children. His father, who's been advocating relentlessly on his behalf, finds it really hard to process bad news. He's told me. He's told me, "If you have bad news, don't call me, call my son," Amin's brother. So whenever there's bad news or negative developments in the case, or the advocacy efforts we're undertaking on behalf of Amin or other Bagram prisoners, I'll call Amin's brother. If there's good news, I'll call his dad. His dad is an older man. He just can't bear it.

And I think that's true for many people. Like Mammour Ameer, an Algerian client—when I picked up the phone with my students to call his wife, to let her know that he was on a plane to Algeria, she broke down. There was silence, then she broke down in tears and cried. That was the first time I'd heard her cry, and we'd been working with her for years. We'd been getting documents from her. She had been a very steadfast advocate on her husband's behalf and she was a huge support to our efforts, legally. It occurred to me then and there that, despite all of our work with her, all those years leading up to his release, she had never once allowed herself to cry. It was only once we told her that he was finally on a plane headed home that she was able to let her guard down, I guess.

So that really triggered something for me. I realized it on an abstract level, but it really made it very concrete for me when that happened on the phone, and she started crying—just how difficult and impossible this is, not just for the prisoners themselves but for their families and larger circles.

Obviously we can talk about the policy ramifications as well—the fact that the Obama administration, even if it gets to a point where it closes the prison at Guantánamo, at that point in time, the closure of that particular facility is going to be largely symbolic because the policy of indefinite military imprisonment without charge—that policy option will have been fully preserved by the Obama administration. And what better illustration of that, what better proof of what I just said than the existence of the prison at Bagram, where al-Bakri is being held, right?

Because over there, the Obama administration actually—and we're going before the court of appeals on Tuesday, for the second time, on the jurisdictional question of Bagram—so the Obama administration continues to argue along the exact same lines that the Bush administration argued with respect to Guantánamo back in 2003 and 2004, before *Rasul*—which is to say that with respect to Bagram, the Obama administration continues to say, today, in 2013—and they will say this in court, for the D.C. Circuit of Appeals on Tuesday—that the jurisdiction of U.S. federal courts does not extend to what the U.S. government does to men imprisoned at Bagram in Afghanistan because it's the theatre of war, and irrespective of the fact that those men were brought into that theatre of war—men like Amin al-Bakri—were brought into that theatre of war by the United States.

So they will continue to make that argument. It's very similar to the argument that the Bush administration made as to Guantánamo saying, "Hey, no jurisdiction at Guantánamo." So when you think about that, I think it really highlights the fact that the Obama administration wants to

preserve that option; wants to preserve the option of being able to hold people indefinitely without charge, even if it brought those people into a theatre of hostilities.

That's a really radical notion—that a government can kidnap someone, someone who is not a citizen of a country at war with the United States; can kidnap them off the streets of another country that is not at war with the United States; that is far from any recognizable battlefield; that they can take them *into* a battlefield; into a detention facility that is within a battlefield—like Afghanistan—a zone of hostilities; which, in and of itself, is a violation of all kinds of international law, right? The fact of abduction, rendition, let alone rendition into a zone of hostilities, which is dangerous—Afghanistan, 2002 -2003. If the U.S. government can kidnap that sort of person from a place like Thailand, bring them into a theatre of hostilities like Afghanistan, and then go into federal court and say, "Judge, you have no authority to review the legality of this person's detention, because they are in a zone of hostilities—even though we brought them there, by our own discretion." That's a clear road map that allows this administration, any future U.S. administration, to circumvent any meaningful judicial review over the imprisonment of people overseas. That's the policy option. That's the tool that the Obama administration is fighting so hard in federal court to preserve.

We're just trying to get into the door. We're trying to get Mr. al-Bakri his day in court, essentially. We just want to be able to go before an impartial judge and say, "Judge, here are the government's accusations. Here's what they claim is the evidence that justifies his imprisonment for well over a decade at this point—without charge. Here is our answer. You decide whether or not this man's imprisonment is legal." That's all we want to do. But we're still at the threshold.

We're still trying to get through the door and the Obama administration is taking a position that is virtually indistinguishable from the position that the Bush administration took over a decade ago with respect to Guantánamo.

That's just one illustration of the longitudinal impact of the Obama administration's normalization of many Bush-era policies. Because now that the Obama administration has fought so hard to preserve this kind of option—indefinite imprisonment at a place like Bagram for non-citizens—I think it's a challenge that will be with us for a generation or more, along with a bunch of other policies.

Q: And a very dangerous precedent is set.

Kassem: Yes. Absolutely.

Q: Bagram so rarely gets mentioned when we're talking about Guantánamo, but in fact it's a much larger, much worse facility.

One of the things I saw this week—and this goes back to our conversation about the human costs and humanizing the individuals detained at Guantánamo—there was this piece in the *Miami Herald*. It was a feature of photographs of the detainees.

Kassem: Yes. I saw it.

Q: That's such a rarity, in terms of battlefield photography. Any photography that comes out of Guantánamo—just pictures of the detainees, besides what looked like just mug shots. It seems like that, in and of itself, is an effort to keep this issue as out of the hearts and minds of the American people as possible; to completely dehumanize them. And, as you say, your client Shaker Aamer hasn't seen his own child.

Shaker Aamer is one detainee who—it seems there are many more campaigns to get his release than most of the others. Can you talk a little bit about what his status is and some of those campaigns, especially in the U.K., that have occurred to try to get his release?

Kassem: Shaker doesn't view himself as in any way different from other prisoners at Guantánamo. I think he views his own individual struggle as a part of that collective struggle. He's said many times that, really, his objective isn't so much his own release as it is the shuttering of that prison as a whole and that if, by accepting release himself he can be in a position to accelerate the shuttering of the prison—for example if he's returned to his family in the United Kingdom and he's able to speak out—if that accelerates the process of closing the prison, then so be it. But he's always linked his own individual struggle, his own personal struggle, to the larger, political one, the larger group struggle that involves all the prisoners at Guantánamo. Shaker doesn't view himself as different or exceptional but I think the outside world—you've touched on this—there are these campaigns that have to do with Shaker's release and you don't see similar campaigns for others. I think part of it is because he's a former U.K. resident. He has family in the United Kingdom. They're all U.K. subjects. They speak English. They come from an English-speaking market; they have advocates in England. I think there's sort



of a collection of factors that make his case more palatable to English-speaking audiences in the U.K. and the United States.

Substantively, it really isn't different. It's indefinite imprisonment. There are many other prisoners like him at Guantánamo, including ones who have been approved for release by the Obama and Bush administrations. So he doesn't view himself as different. The Western public, or some segments of the Western public might, for reasons having to do with his, I guess, immigration status—that he was a former U.K. resident; that his spouse and kids are all U.K. nationals. I think the prison administration may view him as different, but, again, that is not for reasons having to do with what he did before Guantánamo—what he is alleged to have done before Guantánamo. However, it is entirely for reasons having to do with what he's seen, as having engaged in since his arrival at Guantánamo—some of which he proudly owns. Like the fact that he has no interest in being seen as a compliant prisoner; that he very much views peaceful resistance to injustice, like civil disobedience, as his main currency in a place like Guantánamo, as the only way he can retain his humanity and survive as a person.

So he does that every step of the way. He isn't particularly interested in improving his conditions at Guantánamo, earning the privileges that the prison administration can bestow on prisoners or revoke at will. He sees it very differently. His approach to it, his philosophy is to, I guess, use civil disobedience strategies every step of the way to signal to his captors that this isn't okay; that he's still a human being; that this is still an injustice. He wants to be that constant reminder to the guards because he recognizes the guards' humanity as well, and he feels sorry for many of them—because many of them are eighteen-, nineteen-year-olds who have been sort of trained out

of their better instincts. They may have instinctively felt like treating him humanely, but they're being told that he's this beast, this animal, so they're being trained to treat him and the other prisoners in a dehumanizing fashion. So he wants to use civil disobedience, in addition to his ability to speak English directly to the guards, as a way to help them retain their humanity, as well.

So I think that's very much his approach. And it's because he's taken that approach—because he can't be bought off, essentially—that I think the prison administration at Guantánamo views him, and has viewed him, pretty consistently, for years, as a threat—which is why he spent a significant portion of those years in solitary confinement, because they don't want him to be talking to other prisoners, serving as an example, influencing other prisoners. But, in the end, even in that attitude, he isn't unique.

To me, one of the most inspiring things about this hunger strike that started at Guantánamo and that grew to encompass the majority of the prison population this recent year is that it started in Camp 6. Camp 6, at the time at least, was the model, state-of-the-art facility that the prison administration at Guantánamo was showing off to visiting delegations of journalists, reporters, foreign and U.S. dignitaries alike. They would take them on tours of vacant cell blocks on Camp 6. They would show it off. They would say, "Hey, this looks like any other federal detention facility in the United States and here are all the wonderful things that the prisoners have access to. They can watch television. They can listen to the radio. They can even play video games. They get ice cream. They get food." That's Camp 6.

So the fact that the hunger strike began there, of all places, to me is what's particularly inspiring because it was in this way that the prisoners were sending a message to the prison administration, to the U.S. government, and to the world that it really doesn't matter what amenities you may throw in there. Ultimately, this is a place where an extreme form of violence is visited on people who have not been charged, and that's the violence of indefinite imprisonment without charge. And regardless of what you do to the surrounding conditions, it's still going to be lived and experienced as an injustice and it's still something that the prisoners will want to resist through an act of civil disobedience like a mass hunger strike, and it's simply as unacceptable in 2013 as it was ten years prior, eleven years prior, in 2002, when the prison started, regardless of the superficial differences between the way Camp X-Ray looked and the way Camp 6 looked eleven years later. Fundamentally it was still the same place, and fundamentally, it was still about indefinite imprisonment without charge.

For those reasons, they wanted to cry out for justice, and they did it in a very powerful and compelling way. It wasn't that they were suicidal. A lot of my clients said, "Hunger striking isn't easy. We're doing it because we understand we're going to pay a price. We understand that it's going to cost us, physically, psychologically, and emotionally, and that the administration is going to crack down on us and try to break our hunger strike, in many different ways," as they have. "We understand all that. But it's important to send a message all the same. We're not doing it because we're suicidal or we want to die, we're doing it precisely because we aren't suicidal. We want to live and we want to be released and returned to our normal lives, to our families, or start families." Down to the details, many of my clients would say, "My gesture of protest, my gesture of civil disobedience is not to accept food from my captors because it's one of the few

things I can choose. It doesn't mean that I would reject tube-feeding; I just reject force-feeding. I reject tube-feeding that's being implemented in an unnecessarily brutal way."

And that was the same attitude as Mr. Zuhair's. He would voluntarily present for tube-feeding. He just didn't want to eat food, voluntarily, given by his captors. That was his form of protest. But he would voluntarily present for tube-feeding. When the prison administration realized that he was going to keep this up indefinitely, *they* chose to escalate; *they* chose to ramp it up and make the tube-feeding more painful, more violent, more brutal, so they could pressure him and hoped that they could get him to the point where he would abandon his hunger strike—which never worked. But they did the same thing with these prisoners who went on hunger strike more recently. They started tube-feeding them, force-feeding them in the restraint chair, doing it in ways that were humiliating, painful, and uncomfortable—again, in a bid to break the hunger strike. It's not that it was necessary. It's not that all those prisoners presented a risk to themselves or to others, but it was just because the administration made a decision that it needed to put an end to this massive hunger strike, and that was one way that they thought they could do it.

Are we out of time?

Q: We're just coming up past an hour here.

You talked a little bit about Camp 6 and how it now just looks like any other federal prison. Guantánamo now has this sort of permanent status. It's not just fences and barbed wire anymore.

Now it's concrete. It's there. It's in the ground. Just to close up here—are we looking at another fifteen, ten years of Guantánamo?

Kassem: I certainly hope not. I say that not because I think Guantánamo is so uniquely horrible. That's not why I'm saying that. Like I said—even if the facility were to shut down tomorrow, the Guantánamo idea will survive in many ways, and it survives at Bagram, it survives in the minds of policy-makers, it survives in the law books. Policy-makers know that they have that option. They will inevitably choose to exercise it again in the future. As all power is, that's the irresistible temptation of power. It's in the law books as sort of a protected sphere of executive authority, that you can detain people like that. Bagram is the illustration of that. You don't have to give them process, you don't have to give them habeas. Even when you do give them habeas, it is virtually meaningless. The D.C. Circuit Court of Appeals has made sure of that, in the Guantánamo setting. When we started, post-*Boumediene*, we were winning seventy-five percent of these cases at trial, despite some pretty steeply-stacked structural odds against us—presumption, the burden of proof being a preponderance of the evidence. That was all the government had to show and even then they were losing those cases. But the court of appeals stepped in and made it even harder for a prisoner to win—virtually impossible.

Despite all that, I don't think Guantánamo is unique. I think there are many equally unique if not more horrible things going on in our federal prison system when you look at the conditions that exist in places like Florence, Colorado; when you look at the ways in which certain terrorism trials are conducted in Article III courts, sort of bordering on punishing thought-crimes. I really

don't want to exceptionalize Guantánamo, but at the same time we should recognize some of its unique characteristics.

So for my clients at Guantánamo, if the facility were to shut down tomorrow, that would be huge—for them personally, for their families, for their communities. There's no questioning that; it would mean the world to them. But how meaningful would it be beyond that? I'm not so sure. Again, I think, at this point, the damage is done. The Guantánamo idea is bound to remain with us for some time to come, a generation if not more, I would say. So the question whether this particular facility at Guantánamo Bay, Cuba, is going to close today, in a year, in two years, in five, in ten—in that perspective it becomes somewhat inconsequential. For someone who's worked so long on these cases and on these issues, it's kind of an odd thing to say.

Q: Okay. Thanks.

Kassem: Thank you.

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