

THE RULE OF LAW ORAL HISTORY PROJECT

The Reminiscences of

Zachary P. Katznelson

Columbia Center for Oral History

Columbia University

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PREFACE

The following oral history is the result of a recorded interview with Zachary P. Katznelson conducted by Ronald J. Grele on March 7 and March 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: Zachary P. Katznelson

Location: New York, NY

Interviewer: Ronald J. Grele

Date: March 7, 2013

Q: I guess where I'd like to start is to talk about where you were born, and where you grew up, and where you went to school, and when you were a kid.

Katznelson: When I was a kid?

Q: Oh, could you hook that up to your sweater? That's why I wasn't getting the light. Okay.

Katznelson: That better?

Q: Yes.

Katznelson: Okay. So I was born in New York City in 1973, and I grew up in Manhattan and in Chicago for a number of years. We moved to Chicago when I was just a baby and moved back to New York when I was nine. My father [Ira Katznelson] is a professor; he's now at Columbia [University]—was at Columbia when I was born, and was at the University of Chicago for a while. So I grew up in both places. I definitely consider myself a New Yorker. Most of my family's from New York—most of my family who is still alive is in New York, so this is really home.

I have three sisters and my parents—thankfully, they're still alive—they're in New York. We were a very close family. My father, as I said, is a professor, my mother is a social worker, and I think they really shaped my view of the world—my outlook on the world, and why I ultimately came to work on Guantánamo issues and social justice issues.

Q: I wanted to get to that, but since you've raised it, let's explore that. What do you mean by that?

Katznelson: Growing up, my mother ran a senior center and I would often go to work with her—help her out at different events, whether it was just serving lunch or there was some program for the clients at the center.

Q: It was here in Manhattan?

Katznelson: That was in Chicago actually, initially, and then in Washington Heights when we moved back to New York. She works in Washington Heights now, still. And it was always—first of all, I suppose, gave me the sense that there was much to learn from older generations and it was an opportunity I should take advantage of throughout my life—but also that it was always critical to give back.

Q: This was when you were in high school?

Katznelson: I probably started doing it when I was five or six, and then all the way through high school. As I said, my mother is still there, so when I go visit her at work now, I still see her in action. And I suppose it was always taught that—my father is a political scientist and the dinner guests we'd have when I was growing up—people that would come visit or come stay with us, family friends—often were somehow affiliated with one of those two worlds of academia or social service or both. And the values I was taught were that if you have the opportunity to go to school, to get an education, you have the responsibility to give back. So it's kind of informed a lot of my career as I've moved forward.

Q: Your politics? Did you pick those up from your father?

Katznelson: I suppose I must have. I mean, we disagree on some things, but by and large, I come from a pretty liberal family and a pretty liberal background. And I think growing up in New York, it's a city where you're surrounded by people from all over world from all different backgrounds, and if you're not liberal living here, you're not really opening your eyes. You can't take advantage of New York and all it offers if you're not open to different viewpoints and different lifestyles, and certainly bigotry had no room in our household or in my community. We're Jewish and—

Q: Your father has written eloquently about Judaism and Jewishness. Was that conveyed to you?

Katznelson: It was always a critical part of our household and my upbringing. My parents really made an effort that all of us—me and my sisters—were all given—. We didn't go to Yeshiva, we

didn't have a deep-rooted education, but we always went to Hebrew school. We went to synagogue for holidays. Every Shabbat, the Sabbath, was key that we were all home and that we celebrated that together as a family, and it really, I think, informed a lot of my worldview and a lot of my sense of community. And we've been fortunate enough to grow up in places where there were other Jews and we could have that community together. Later in life, I've lived a lot of places where there are very few Jews and it's a very, very different experience, but it's given me a strong sense of identity and self, I think, which I value tremendously.

Q: Can we explore those differences for a minute? Just because I'm intrigued by it.

Katznelson: Yes. What do you mean by differences?

Q: What is it to be a part of a very large community and then to move someplace in which community no longer exists? You just mentioned the differences.

Katznelson: Sometimes it quite surprised me. So for instance, in San Francisco, where I lived for five years, many of the people that I met—and I consider San Francisco a liberal, relatively cosmopolitan place—many times, people I met, I was the first Jew they ever really sat down and talked with. Or they had a sense maybe that more of the Jews they had come across—if they had come across Jews—were not observant at all, were Jewish maybe in name only. And that people had really no awareness of what it meant to be a practicing Jew, what it could mean for your life, what the values of Judaism, teachings of Judaism were. Usually they were very respectful and curious, but it really surprised me that in a city like that people had limited experience.

Even more extreme was that I spent time down South in Louisiana, Mississippi, and Alabama, doing death penalty cases—mostly in law school. I did some work after law school. In fact, in 2010, I did work down there representing juveniles who had been given life without parole sentences. And that is a very, very different world, a world that is, in many ways, filled with warmth, kindness—a world that's filled with racism and extreme division.

One example that comes to mind—I had a client on death row and I went to see his brother who lived in a town called Corinth, Mississippi. It's up near the Tennessee border. And he invited me into his home; we sat down, just the two of us in his kitchen—

Q: He's an African American?

Katznelson: No, he's white. And he starts telling me about how wonderful the Ku Klux Klan is and about how it's a great community organization. They have picnics, they have barbecues, all the kids get together. “It's just,” he says, “a really great community organization.” And he leans in after a while—after telling me all this stuff—and he says, “Because down here we hate the blacks and we hate the Jews, but there are no Jews around here so we've got to kill the blacks.” And then he says, “You want some more Coke?” like it's the most casual thing in the world. And he had no idea who I was—my background or anything. Clearly had never met a Jew before, otherwise he would see instantly. If you look at my face, I'm pretty obviously Jewish. And he had no concept whatsoever.

And that mentality—that he clearly had been taught certain things and was raised to believe them while never having actually experienced any of it. And it's that realm of hate that exists in many places around the world; it certainly exists in Israel and the Middle East where you're taught from a very young age to despise another group when you have almost no interaction with them. And of course, that will color any interaction you ever do have.

And so part of one of the most fascinating things about ultimately doing Guantánamo work has been meeting with men who come from—

Q: Yes, I want to ask you about that.

Katznelson: —from very strong Muslim views and backgrounds and some extreme views, culturally and religiously—some yes, some no. But certainly, there too, I was often the first Jew they had ever come across. Not always. Moazzam Begg, who's a British national who was in Guantánamo, went to a Jewish day school growing up, and so grew up with Jews and was very comfortable. But I actually didn't meet him until after he had gotten out. But the people in Guantánamo, it was fascinating for me, and I think many times for them, to actually sit down as a Muslim and a Jew—both practicing, both observant—and to try and see where we could meet eye-to-eye.

Q: I want to explore that a little later on, but now, if we can double back to put you back into New York as a kid. Where did you go to school?

Katznelson: I went to Bank Street Elementary School until eighth grade, and then I went to Horace Mann in Riverdale, in the Bronx, for high school. Both of which I think gave me excellent although very different educations scholastically. Bank Street was a very diverse, very warm, very welcoming place. It was attached to a teachers college, so obviously there were a lot of student teachers who were there and really added to the vibrancy of the classroom. I remember loving it always.

It was there that I first—obviously I learned a lot about politics at home, but we studied it in my last year, my eighth grade year, and we went on a class trip to Washington, D.C. And my teacher that year, his name was Sam—we always called our teachers by their first names at Bank Street. I think Sam Brian, but I'm not positive. I can't really remember his last name. Sam was a wonderful teacher and really awakened the subjects that we had.

Also, I remember having a mock trial in there, which I loved as well—the idea of debating and thinking on your feet, which we both did politically, and in that little window into the legal world as well. We went on a class trip to Washington and I remember going to the floor of the Senate and seeing that, and meeting with congressmen. I was twelve, thirteen years old. I was excited by some of the wrong things—like I thought it was great that they all had Mercedes and were driving along with tinted windows and drivers. And I was like, “What a life!”

And I went in to see them give speeches. Actually, I remember a senator—somebody was talking and there were probably three or four people in the chamber, which is not abnormal. One guy,

he's got his feet up; he's drinking coffee, reading the newspaper—and it's a senator. And I was like, “This is the life.”

And I loved the little train they took between their offices in the Senate. I was like, “Okay, I could do this.” And then I loved the politics end of it, too. And of course, later as I got older and learned more, I thought that you actually can make a positive difference in people's lives if you're a politician. I'm more cynical about that now, but back then—certainly by college—I thought I wanted to be a politician. I wanted to be a congressman or senator.

Q: And Horace Mann was more competitive?

Katznelson: Horace Mann was not more competitive, but Horace Mann was much more homogeneous, certainly economically. The social values of the school were not positive. That is a generous way to put it. Halloween, kids would come in dressed up, in costume. I remember several kids came my senior year as homeless people and thought it was hysterical. And they took some garbage cans, lit the contents on fire, huddled around to keep warm, and pretended to sleep in cardboard boxes. It was obnoxious behavior, but they thought it was the funniest thing in the world. It's this amazing sense of detachment from the realities of New York or the realities of just life. Kids would turn sixteen—

Q: Gee, it prides itself on being so liberal.

Katznelson: Yes. I mean, it's interesting because a lot of the teachers are, at least they were then—but the amount of wealth at school just seems to color so much. You turn sixteen, you get a BMW. You get in an accident? Okay, don't worry. You can get a Jaguar instead. That was the ethos of the student body. I only went there for high school. Maybe if I'd gone there longer, who knows what impact it would have had? I don't know. But academically, it was great. Socially, I met some excellent, wonderful people, and made some great friends. But overall, I wouldn't necessarily recommend it.

Q: Why Brown [University]?

Katznelson: Brown was somewhere I had heard good things about. Actually, when I first heard about it, I thought it might be too hippie. People who told me about it said everybody's just smoking pot all the time, and I didn't know what to expect about that. And I went to visit one weekend.

Q: When you went there, it was undergoing a real revolution.

Katznelson: Yes, but it was definitely a liberal place.

Q: It was a hot place.

Katznelson: It was a hot place, and it became hotter. I think if I had applied five years later, I probably wouldn't have gotten in. I went to visit for a weekend and just loved it. And I thought

“This is a great place.” And it really was. I absolutely loved Brown. I loved the academic freedom. I loved the quality of the professors and the scholarship facilities. Being in Providence was fun. I could get back to New York when I wanted to. I just met amazing people. I met great friends. I am getting together with a bunch of them in a couple weeks. It was a really amazing place where there were people from all over the world. I lived for two years in International House, which was a dorm that was half American and half international students, and it was just amazing to have that opportunity to meet people from all over with different perspectives.

Q: What did you major in?

Katznelson: I double majored in history and public policy.

Q: Ah. Who did you take in the history department?

Katznelson: Who did I take in the history department?

Q: I had to ask. [Laughs]

Katznelson: I took Gordon [S.] Wood. I'm trying to think who is history versus political science. I can remember the classes I took. I took Urban History, I took America in the 1960s, I took Latin American—[Robert D.] Cope? Professor Cope, who's a Latin American historian. I took a class with—

Q: It doesn't make any difference. Urban History, you probably took Howard [Chudacoff].

Katznelson: Yes.

Q: Yes. An old friend.

Katznelson: Yes, an unfortunate hour in the morning for me, but yes, I remember taking his class. I didn't make it there as often as I should have.

Q: Were you at all involved in student issues at that time there?

Katznelson: Yes, in different protests. The big issue was about need-blind admissions at the time, and obviously what that meant for the student body. Now, Brown ultimately did become need-blind, but at the time it wasn't. There were a huge number of protests, some of which I participated in. At some point, actually, people occupied the president's office—I didn't, but other students did. It was definitely a big deal.

Q: Now you weren't there when Amy [L.] Carter was, were you?

Katznelson: No. She's a couple years older than I am.

Q: After, probably.

Katznelson: I graduated in 1995. I don't think we overlapped.

Q: When you were at Brown, what did you envision yourself doing? You said you had earlier decided that you were going to be a politician. How did that begin to define itself?

Katznelson: Well, I did student government. I joined student government at Brown. I was the only representative of my class on the student council—in part, that was because nobody else wanted the position. There were supposed to be five posts. One other kid ran. We both got elected to a post. I could have voted for myself; I would have got elected. And then the other guy quit, so that was it—it was just me

I wouldn't say that was exactly a formative experience in terms of government, but I decided I wanted to work in Congress afterwards. And so as I went through Brown and learned more about the political system and about history—history of politics and government—and from the public policy angle, saw the way that government could leverage dollars and shape policy through tax policy or through programs, what have you, I wanted to be part of it. And so I applied for jobs after my senior year. I ended up getting an internship only—I couldn't find a job—but an internship with Jerry [Jerrold L.] Nadler.

Q: Oh, that's before you went to law school?

Katznelson: Before I went to law school. He was my congressman—not my congressman now, but still my parents' congressman. I went to intern with him and after a few weeks, someone was leaving and they offered me a job, and so I ended up staying there for two years.

Q: Now, how did you intern? He just had interns and you applied, or—?

Katznelson: He had interns, I applied. I'm sure the Career Services at Brown helped some, let me know what was out there. But because I was from the district, it certainly helped.

Q: Did he know your father?

Katznelson: No. However, his wife, it turned out—she wasn't part of the hiring process so I don't think it was exclusively nepotism that got me the job, but his wife had been my dad's student at some point years back.

Q: When you were at Brown and you were talking about the ways in which you were defining your political positions, did you have conversations with your father about any of these things?

Katznelson: I'm sure I must have. Whatever were the issues of the day we would talk about—we'd talk about current events. My parents always had the *New York Times* delivered every morning and we would discuss it. Whether they would read it in the morning or the evening or something, a lot of our conversations were shaped by current events.

Q: What is most difficult to document in history is the everyday. We're just not conscious of it.

Katznelson: Absolutely. It just drifts by. I'm sure with both of my parents, we would talk about—

Q: Now, did you work for Nadler in D.C. or in New York?

Katznelson: In Washington.

Q: In Washington. How was that experience?

Katznelson: It was great and disappointing at the same time. I was there at the height of Newt [Newton L.] Gingrich and the “Republican Revolution,” the “Contract with America.” And it was a time when it felt like all we were trying to do was to fight against things.

Q: Now, Nadler was relatively new to the Congress at the time.

Katznelson: He was relatively new. He was chosen and elected in 1992 after Ted [Theodore S.] Weiss died—I started there summer of 1995—so he was pretty junior. And he was on the Transportation and Judiciary Committees. It wasn't where all the action was. It was interesting. He's an incredible lover of rail freight and one of the most knowledgeable people about it, so transportation was perfect for him. His dream is to rebuild New York Harbor—Brooklyn Harbor. Maybe, hopefully, he'll achieve it at some point.

But he was still a player from one of the most important districts in the country. If you think about the power and wealth of New York City and of his district in particular, it's almost unparalleled. And so even though he was junior, he was somebody that people needed to consult and listen to—not as much as I think we all hoped they would, but especially given the balance in Congress, it was difficult for a liberal Democrat to get some traction.

I think the main thing I took away from that job—well, two main things—one, you could leverage an amazing amount of money directed at social problems. And therefore, government has a powerful, powerful role to play for good. At the same time, you need to constantly be fundraising—or the sense is you have to constantly be fund raising and thinking about the next election. And so much of what happens in Washington is dictated by money for campaigns.

Sometimes it was blatant. Initially, I was basically a receptionist, but then after that I started advising the congressman on various issues, and lobbyists would often have to either meet directly with me or have to meet with me before they met with the congressman. And so in some ways, I think if I were a lobbyist, I would have been quite frustrated. Here was this twenty-one, twenty-two year old kid—what do I know, right? And they have to try and convince me of something before they get to see the congressman—or they never get to see the congressman; they just get to see me. And of course, all of Congress is like that. It's a bit absurd that you're chief of staff by the time you're twenty-seven, twenty-eight, just because you've been there for a few years and everybody else has gone off to law school, business school—or what have you—gone to be a lobbyist. And you're just—you're left and maybe you're great, but you're still

twenty-seven years old. So the idea that that's the main advisor to a congressman on issues is a bit absurd.

So people would come meet with me and sometimes, every once in a while—it didn't happen very often—but sometimes someone would say as we were chatting, “Where should I send the check?” Of course, they meant the campaign donation. It was completely illegal. We weren't allowed to discuss any campaign matters in the office. They certainly shouldn't have been offering me money almost like a quid pro quo.

But even if nothing happened in the office, we'd go to a fundraiser—and I would go to a fundraiser, it would be off site, following all the rules and everything—but it would be all the lobbyists who were there. They're the ones who gave the money, whether they're from railroads or from the car industry or what have you—the people that Congressman Nadler has some power over, relatively speaking, because of his committees or whatever. They were all there, and they would circle like sharks to try and get in to talk to him and break out their checkbooks.

And he is from a safe district. He wins eighty-plus percent of the vote all the time, but he has to run every two years. And he was worried not just about a Republican challenger, but sometimes a challenger on a Democratic ticket as well—and occasionally he had those. And it's this sense that you get maybe a breather of three months in the House after each election where you don't have to worry about it, and then pretty much by the time you're sworn in for your next term, you're off and running again to fundraise for the next election.

And it's constantly like that, and I think he was quite sensitive to it and tried to really just focus on the issues, but every once in a while, it intruded. If you were in a tight district, I can only imagine how dominant it would be. So by the time I left, I think I was much more cynical about the process and about what could really be achieved and how much could be achieved. A lot of Congress people that I met—their staffs and talking to them—a lot of it seemed to be more about self-perpetuation than actually achieving something. So that if someone had to take a tough vote and it was, “Okay, what do I really genuinely think is the best policy thing for my constituents, for the country? Or what's going to get me reelected?” Chances where they were going with the latter, and that's pretty disappointing.

Q: How did you like being young and in Washington, D.C.?

Katznelson: That was a lot of fun. It was great. It was before a gift ban had been enacted in Congress, so pretty much every night there were free dinners—there were free steak dinners, we would go to whiskey tastings. Oh, do you want to go see the basketball game? Sure. Here's some tickets. For someone just out from college it was great. I had so much fun.

I don't think anyone ever influenced me that way, and I would go to places and I was like, “If you want to pay—if the tobacco lobby wants to buy me dinner, I'm never going to support your cause, fine, but I'll take your food and your money. If you want to waste your money on me, great! I'd rather you waste your money on me than actually somebody who might listen to you. So sure, you want to buy me a steak dinner?” It wasn't like sitting down at a fancy restaurant. They would just have a big buffet for everybody. I'd say, “Okay, I'll eat your food. Fine.”

It was fun. I remember one night—I got to be friends with people across the political spectrum, which was interesting. So I met staffers from Newt Gingrich's office, and one night we had pizza in his office overlooking the Mall. I sat in his chair, hung out; put my feet up on his desk. It was a lot of fun. I used to give tours of the Capitol with constituents or people coming in, VIPs.

Q: That is great for a young kid.

Katznelson: It was just fun. It was fun. Washington, D.C., after a couple years—I had had enough. It's a pretty conservative town. It's all about politics, so it was really rare to actually be able to go out and not talk politics. I like to have a life outside of work, and it wasn't so easy there. And it's a small place coming from New York.

It was, in many ways, a friendly place—it's got a Southern feel of friendliness. I remember going to work my first day, and I was going on the Metro there. As I was getting on the train, someone was getting off and they said, “Good morning.”

I said, “Do I know you?”

They said, “No, I'm just being friendly.” And I was thinking to myself, you are a freak. Why are you talking to me? I don't know you. Don't talk to random people on the street. And then after a couple of years of that, I would start saying hi to random people on the street. It was kind of nice to build that in.

Q: And you decided to go to law school?

Katznelson: I decided to go to law school. In large part, whether I was meeting with people on Capitol Hill or seeing witnesses testify at hearings or meeting with constituents or groups in the district, it became clear that one route to having influence and trying to actually get things done was to go to law school—that people who were lawyers, just having that title meant something.

Whether it's justified or not, people give lawyers a level of respect often. Or certainly if you were testifying, if you could say you were a lawyer for X, Y, or Z, people would listen to what you were saying. It gave you access to power. It didn't guarantee you could manipulate the levers of power, but you at least had access. And getting in the door was critical—if you can't get in the door, if you can't get those appointments, if you can't get someone to actually listen to what you're saying, why bother? So you need to find ways to get in, and that was a way to get in.

And it also was pretty clear to me from what I had learned in school and there and other internships I had—for instance, in college, I did an internship with an agency that ran homeless shelters in New York for families. And seeing the way that lawyers could help homeless families—whether it's dealing with eviction or a domestic violence restraining order or whatever it was, helping kids who were having special needs and they needed a proper education plan at school, and lawyers sometimes would step in. The role you could play was tremendous. And so just forget about politics, but other ways that you could try and make a difference in people's

lives, and so I thought I'd give it a shot. I'm the first lawyer in my family, outside of a great uncle that I never met.

Q: What did your parents think about your decision to become a lawyer?

Katznelson: They supported it. I think they would have supported most things, as long as they felt like I was able to support myself and be happy and support a family when I had a family. You know, kind of tick the boxes that are necessary to be an independent human being, they would have been happy.

Q: Why NYU [New York University]?

Katznelson: NYU was—

Q: Another hot school, becoming a hot school.

Katznelson: A hot school. I visited there as well and really loved it. I wanted to come back to New York. I actually initially thought I wanted to go to California and I applied to Berkeley, and I got on the waitlist at Berkeley. And as an out of state student, it was a long shot. I went there and visited, and I really loved it. I asked them where I was on the waitlist, and it was something like—basically everyone they admitted would have had to say no before they got to me, was the sense I got. But it was okay.

But then coming back to New York was great. Like I said, two years in Washington was probably enough for me. And it was a great school, great opportunities, and they had a really fantastic loan repayment assistance program where if you did public interest work, public social justice work, they would pay back your loans for you. And that obviously appealed to me because I knew I wanted to go into something in the realm of social justice, and being burdened with \$100,000 in debt—which is what I came out with, which is much less than you would have now—it would have been prohibitive for me to do the work based on the salaries in the social justice public interest world. I just couldn't have afforded to do it in the cities I wanted to live in, not easily, at least. And so to have a positive living environment and also be able to do the work I wanted to do, NYU made it easy.

Q: Now I assume the first year, no matter how hot the school was, no matter how much [John E.] Sexton wanted to change it—I assume the first year was still pretty pro forma—contracts, procedures?

Katznelson: I think the biggest difference NYU had was the Lawyering Program, which is the legal research and writing program. It had been crafted just for NYU and was quite socially aware. The examples we had were not just corporate examples, but people that had genuinely been hurt—you worked on a case where someone had been injured by a product, or who was facing eviction, or a prisoner for a parole hearing—whatever it was, the examples that were used weren't always the standard corporate examples.

And the ethos of the school was in many ways public interest-oriented—although the vast majority of students still go into corporate law. And even though the Lawyering Program was, I think, quite liberal, most of the examples in other classes were not. They were more traditional law school, corporate law models.

Q: But you decided against that, or you never even considered it?

Katznelson: My first summer, I ended up doing death penalty work down in Louisiana, and at the end of your first summer—if you wanted to work for a corporate firm, you had to apply then. And I started to consider it. It was what everybody did, plus you could earn thousands and thousands of dollars for a summer when everybody said you don't do any work, they just wine and dine you because they want you to come back to work there. So they just take you out to dinner—it was sort of like the ridiculous experience I had in Washington where it's just free dinner all the time, but now just more extravagant. And it was honestly tempting, but when I started to look through which firms I would apply to and by the time it got to August or so, near the end of my internship, I just couldn't do it.

I thought to myself, the work that I had been doing that summer had been fascinating and incredible and interesting, and I could see I was, in some small way, making a difference in somebody's life. The idea of shifting from that to going to do some banking case where two banks are suing each other just wasn't for me.

Q: How did you make that decision to go to Louisiana?

Katznelson: I had met folks from there at a public interest job fair at NYU. I had initially thought when I went to law school that I would do something in economic community development—housing, homelessness, something along those lines—along the lines of what I had done at the internship I talked about for the congressman. I worked on housing issues among other things, health care issues, too, and trying to bring various things together. So I applied to a few of those jobs and I almost took one in New York to do just an internship in an economic community development organization.

Around the same time, I was just wandering around the job fair and I came across some folks that were in Louisiana, and they were hiring for juvenile justice work and death penalty work. I started chatting with them and it sounded really interesting, and I had never been down South. And ultimately, they offered me a job to do death penalty work.

Q: What was the organization?

Katznelson: It was the Louisiana Crisis Assistance Center [LCAC], which is now called the Louisiana Capital Assistance Center. Back then, they didn't want to advertise that they were doing death penalty work, so they called themselves the Crisis Assistance Center. It was in downtown New Orleans. It just seemed like an amazing opportunity to try it, to have a totally new cultural experience, and to do work that I thought might be interesting. I didn't know how I would feel about it. In fact, when I first got down there, I wasn't even sure how I felt about the death penalty—I could see certain times when I would, in theory, have been in favor of it. By the

end of the summer, I was completely against it, particularly having met people on death row and actually met some victims' families.

Q: Who were the lawyers who ran the place?

Katznelson: Well, Clive.

Q: Clive, ah.

Katznelson: Clive Stafford Smith.

Q: So that's his place.

Katznelson: So Clive Stafford Smith had founded it. There were other lawyers, obviously, involved, but it was his shop. And Rachel [E.] Chmiel was the lawyer that I worked with mostly, and Clive. I did a trial—helped Clive out—it was a trial in Cajun country during the summer I was there.

Q: Which trial was this?

Katznelson: Scotty [Alvin S.] Lloyd was the client's name. He was accused of killing and raping a two-year-old girl. It was a horrific, brutal crime. The state had tried to put him on trial for death three times already. This was attempt number four. The previous two times, they had been

unable to find jurors who would be neutral enough to actually hear the evidence and decide the case, so they kept having to move the case. They moved it to a new county, and it was a kind of place where you drove into town and all the signs were in French. It was definitely another world. People would try to figure out where I was from, and they'd never come up with New York. One guy said to me, "You talk different. You must be from Lafayette." [Laughter] That was their vision of the world—what's the nearest big place I can think of, and there you go. It was just an eye opener in many ways.

But actually, Clive masterfully, amazingly got life in prison for that client, which, considering everything, was an incredible result. And I had done some investigation on the case and spent time with the client. The first time I remember meeting the client—and I had been reading about what he was accused of doing for two weeks before I actually met him, and I didn't know if I could even bring myself to shake his hand. Then I was suddenly in a room with him, and there he was approaching me with a warm smile on his face, and he's like, "Oh, you're the New York guy." He was just like an average person, and really it blew my mind. I spent quite a bit of time with him and with, probably during that summer, maybe forty people on death row at various points I met—in Mississippi mostly. Like I said, it just changed my view of things. I saw the humanity in them, and really, that whatever they had done they still had something to give back—whether it was even just to their fellow prisoners. There were prisoners who were teaching each other how to read for the first time, or some of them had become religious and would preach to the others, or they had relationships with their families outside.

I had a client in Alabama later who had shot his wife in front of his two children. His wife survived—he killed someone else as well in the same incident. But his daughter was now eighteen and he had started to rebuild a relationship with her. She had had a baby and had brought the baby to meet the baby's grandfather and it was kind of amazing to see that, despite everything, there was still love and caring and he wanted to give back, and he was giving back. It didn't mean I thought he should be free, but it meant that I didn't think he should die, not at the hands of the state.

Q: Did you get a chance to watch Clive in court?

Katznelson: I did at that trial.

Q: What's he like?

Katznelson: He's amazing.

Q: He's described it to me, but what did it look like from the outside?

Katznelson: I would be interested to know how he described himself. I remember the trial was not far from the home of Tabasco Sauce—I think it's New Iberia, Louisiana. So the factory was not that far away from where we were. So Clive had a Tabasco tie—it was just a giant bottle of Tabasco—that he wore to court not infrequently.

He never tried to hide that he was British—there was no way he ever could. Sometimes, that meant people just had no idea what he was saying. But I also think that Americans tend to think that British people just sound smart, so it is helpful as well. But Clive was, I remember, masterful. He confronted a doctor who had initially said the client was sane and there was no reason to think that he had any mental illness. The doctor said he had no mental illness at all.

Clive picked apart this diagnosis primarily based on the fact that the doctor had spent something like an average of eight minutes a week with this guy—because the doctor was so overloaded and he had so many other things going on, and there were terrible conditions in the facility where the guy was being kept before his initial trial. The doctor was overwhelmed and the other doctors, one of them was on drugs. So there was this guy, who was a decent guy, but was just drowning. The idea that he could make a reasonable diagnosis for anybody was ridiculous. Clive in the end managed to turn the guy so he was a witness for us, and he was one of the key people. He was one of the last people to testify where the state thought he was going to be their crowning achievement—that not only had this guy done all these horrific things, but he was perfectly sane when he did it all and of course he should die. At the end, the guy said, “No, I really think he probably was mentally ill.” He was somebody that I had also spent a lot of time investigating, and so it was amazingly gratifying to see Clive take whatever we had found and shape it into this cross examination that the guy just—I wouldn't say he crumbled, but he obviously had to rethink how he had viewed everything all these years.

Q: That's a rich experience for a first year law student.

Katznelson: Yes, it was great. It was a unique opportunity for sure.

Q: So when you came back for the second year, were you more or less convinced of what you were going to do with the law?

Katznelson: Well, I still knew I wanted to social justice. I didn't know if I wanted to do death penalty work. I did internships during the year as well—I did work on urban poverty and real estate issues, so public housing—

Q: Was this the Clinical Program down there?

Katznelson: That wasn't. I did a clinical program on the death penalty actually my third year.

Q: Ah. With Tony [Anthony G.] Amsterdam?

Katznelson: No, with Bryan [A.] Stevenson, who runs an organization in Alabama, the Equal Justice Initiative [EJI]. It was the first year he had run a clinic out of NYU. It is still going now. But we spent a semester down in Alabama and then a semester in New York continuing to work on the cases. My second summer, I went to Seattle, actually, for the first part of the summer. I worked in at a union side labor law firm. I thought I might want to do that kind of work. Turned out I didn't want to do that kind of work. They were a great firm and great people, but if you're representing a union, you represent them for everything. So you represent them if they're striking

and they're on the cause of right. If they're accused of racial discrimination, you also represent them. That wasn't for me.

Then the second part of the summer I spent in Mississippi doing death penalty work again. And then my third year, I also did capital work. I think by the time I finished that, I was convinced that it was incredibly valuable work, but I wanted to work a little further up the chain because with a death penalty case you already waited until somebody was dead before you stepped in. Now there was potential someone else would be killed, but the victim was already dead.

And it was very clear from meeting clients that for most of them, throughout their lives, there were various opportunities where if some caring adult had stepped in and taken responsibility or given them guidance then their lives would have gone off on a much more positive path, but nobody ever did. In fact, usually the adults in their lives just brutalized them more and made everything worse. So I was really interested and anxious to try and do something farther up the line, not in a totally different world, but farther up the line. First though I actually spent a year working for a judge, clerking for a judge in San Francisco.

Q: Now how did that happen? How did you end up out there?

Katznelson: When I applied to law school and thought I wanted to live out there and it didn't happen, I still thought it might be a great place to be. So that, and my girlfriend at the time, her sister lived in Oakland, and so she wanted to move out there. So I applied and I was fortunate enough to get a position for Marilyn Hall Patel, who at the time was the chief judge of the

Northern District of California. And she was absolutely incredible, a remarkable woman, a brilliant judge.

Q: She had the *Korematsu* case [*Korematsu v. United States*, 1944; vacated in 1983].

Katznelson: She did indeed. I didn't work on that case; it was before my time. But she's someone who very much approached the law as “What's the right thing to do here? How can we make it happen within the law? If the law really constrains me, okay, I can't do it, but I'm going to do everything possible to try and make this happen.” To me, that's the right way to approach cases. People might say people are activist judges. Every judge is an activist judge.

Q: She did have a reputation of being against the death penalty. She ruled that the gas chamber was cruel and unusual punishment. Was that before you got there?

Katznelson: That was before I got there. We didn't work on capital cases during my year.

Q: Did you know about that reputation before then?

Katznelson: I certainly knew. I applied only to judges that I thought I would want to work for. I didn't want to work for somebody—I didn't want to be investing my time to help somebody do something I fundamentally disagreed with. There were lots of people wanting jobs; let one of them do that.

I think a lot of times people said to me, “You should work for a prosecutor,” for instance, “so you can see the other side.” I was like, “I see the other side plenty. I don't need to go work for them and advance their cause.”

Q: What kind of work did you do for her in her office?

Katznelson: So as a clerk, I'd research and draft opinions for her and advise her on how I thought she should rule on things. She obviously always made the final call, and she was somebody who was very on top of every case. She read all the briefs; she read everything I submitted to her. She was incredibly thoughtful and thorough, but she couldn't do it all herself. Each week, we would see what cases were coming up and try and figure out, what does the law say and what should we do? What's the right thing to do? So it was an amazing opportunity. You saw an incredible breadth of case law and subject matter.

Q: Any particularly interesting cases that you recall?

Katznelson: Let's see. The biggest name one we had at the time was Napster [*A&M Records v. Napster*, 2001], which I actually didn't work directly on. We had two temporary clerks, year-long, and then there was a permanent clerk. But my other yearlong clerk did the Napster case, and it basically took over his life; it was a huge issue. Judge Patel was the first one who held that it was copyright infringement—what they were doing—which I think was the right decision. Obviously, there was part of me that was saying, come on, who doesn't want free music? But she was right.

We had a lot of hearings, but I think the only trial we had—we were preparing for a major gang case but it never went to trial. But there was a trial of somebody who was accused of assaulting a flight crew. He got drunk. I think it was a good lesson for me as how not to be a lawyer because the guy's lawyer was terrible. I think the plane had landed in Houston or somewhere, which is where the guy was from, and he had hired a local lawyer there who had come up with him to San Francisco.

This guy, his basic defense was, “My client was so drunk he doesn't remember anything, so you can't hold anything against him because he was just wasted.” And he would say, “He was knee-dropping, toilet-hugging drunk,” and things like that. He would use these phrases which were fun and whatever, but you're destroying your client. You're not helping him in any way whatsoever. You may be having fun and you may think you're great, that you're connecting with the jury and they think you're interesting, but they went out to deliberate, they were back in, I think, maybe twenty minutes, and that was probably because some of them had to use the bathroom or something—“Guilty, guilty, guilty.” The prosecutors had offered a deal to him where he would have to do, I think, community service or something. Instead, it was a mandatory minimum of a year in prison because he had gone to trial and he was convicted.

That taught me a few other things about the criminal justice system, which is also that prosecutors tend to overreach sometimes, and they overcharge, and it's a huge problem. Huge problem. I've learned much more about it as time went on, but they do it to try and get people not to go to trial because there's no way the system can handle that many trials. If I think about how

many cases we had and if all of them had gone to trial, the whole system would have stopped—ground to a halt.

So they pressure, pressure, pressure people to plead guilty, and people plead guilty to things that maybe they didn't really do, or they were involved in but only tangentially. Otherwise they go to trial like this guy, and get prison time. He was married; he had a kid. He didn't need to go to prison for a year. He was an idiot; he got drunk. He should have done something to make it up to the flight crew. Nobody got hurt. So it was just one little piece of the stupidity that sometimes is our criminal justice system.

Q: Right. Now, you had not appeared in court yourself at all.

Katznelson: No, not at all. Just watching.

Q: After Judge Patel, you stayed in California?

Katznelson: I stayed in California. I worked for a place called the Prison Law Office, which was based right outside the prison walls of San Quentin, basically, and worked on prison conditions throughout the state of California. It had already achieved some landmark results and continues to even now. They won a case in the U.S. Supreme Court two years ago now where the Supreme Court ordered that California had to release thousands of prisoners because they were completely overcrowded and weren't able to provide a constitutional level of care to people.

One of the things I did there was I represented several lifers who were being denied parole illegally based on purely political grounds that Pete [Peter B.] Wilson and Gray [Joseph G.] Davis [Jr.], who were the governors, had just decided they weren't going to grant anyone parole—regardless of what the merits were of their case—for political reasons. So we challenged those, but we also worked on cases of people with disabilities in the prisons—who are some of the most vulnerable prisoners. The prison world is already a brutal, vicious, vicious place. I would travel throughout the state inspecting the prisons as part of a court settlement that the office had reached.

Q: This was in the state courts?

Katznelson: All state. Sorry, some of them were federal cases, but they were all state prisons. And every single time I went to a medium or maximum security, every single time, there was a violent incident that day—either a guard beating up a prisoner—. Usually it was prisoner on prisoner violence—someone getting their head bashed in with a brick; someone was stabbed; someone was beaten—whatever it was. It was constant, and you would talk to people and the stress and the fear that was a constant part of your life was probably the dominant thing that I would take away from talking to people.

So that's why people join gangs. If they weren't already in a gang outside, they'd join something. All the gangs are organized along race lines. There were no interracial gangs. So as a white Jew, I would have been in real trouble because the Aryan Brotherhood, or other Nazi-affiliated gangs, were the white gangs. There's no way in hell—I'm not going to put a swastika on my arm. You

had some people that didn't fit. There was a group of eleven or twelve Samoans who were at one of the maximum security prisons I went to with a prison population of five thousand people.

Q: Big.

Katznelson: Big guys. But there are only eleven of them versus hundreds and hundreds of all the other gang factions that were there, and they didn't fit in any of the gang factions. So they had just decided that they were going to be known as the Crazy Samoans. They were big enough they could do some physical damage if they actually attacked somebody. So they decided as soon as they went out into the prison yard, they would all of them just pick somebody and attack him, and beat him almost seemingly for no reason. And of course, whoever that was, was in serious trouble—they may not have done anything wrong, but that meant that people were scared of them. But it also meant, maybe more importantly for them, they were immediately punished and put into isolation, and in isolation they were safe because in isolation nobody could get to them. So it bought them time because anytime they were in the general population, even if they didn't attack anybody, they were vulnerable. There was that sense of constant fear.

Then if you were disabled, if you have a disability—if you're blind, or you're deaf, or you're in a wheelchair—you're that much more vulnerable because you can't always protect yourself or know what's coming. Then on top of that, the prison typically handled people with disabilities incredibly poorly. Either there was no way to get around with your wheelchair, so you'd have to crawl to the bathroom. To get to the mess hall, which was half a mile away, you'd have to hope that somebody else would carry you there—things like that. So sometimes a prisoner would say,

“Well, I'll carry you if you do certain things for me.” I mean, there are stories of incredible kindness as well, but there's real balance.

There was a policy where if there was a fight somewhere in the yard—and like I said, there were fights all the time—an alarm would go off. And sometimes there would be flashing lights, sometimes there would be a noise, sometimes there would be both but not always. The policy was anyone who doesn't hit the deck must be involved in the fight and you can shoot them.

You're supposed to use nonlethal ammunition first. The guards didn't always listen. Sometimes if it was nonlethal but you missed or whatever, and the guy still doesn't drop, the guards would go to live ammunition. They didn't think, “Oh, maybe he was deaf. He didn't hear the alarm or the report of the gun so he didn't drop where someone else would have, even if they hadn't been hit.” Several people had died because they had a disability. They didn't know what was happening; they were blind and couldn't tell that the flashing lights were going off and the guards took their lives. So it was kind of that world that I was working in.

Q: Did you get up to Pelican Bay?

Katznelson: It's one of the prisons I didn't make it to, actually. Southern and eastern portions of the state were more my area. I spent a lot of time also in the Central Valley, in some prisons there. There was a massive, a ranch—Harris Ranch—something like that. On I-5, there's a massive ranch between LA [Los Angeles] and San Francisco, and you'd drive by there, you would just smell the manure—and the prisons were very close to there. I would stay at that ranch and then go visit the prisons. You'd ask the guards at the prison what restaurant they would

recommend in the local town, and they're like “McDonald's or Burger King.” Those are the two choices. It's that piece of America.

Anyway, as I was doing that work, many of the guys I met cycled in and out of prison. It was clear that when they got out, they had no options. They obviously made stupid choices at times, but sometimes they also felt like they had no choice, particularly around drug dealing. Three Strikes had come in not that long before, and I met people who were in prison twenty-five to life for shoplifting \$8 worth of groceries, or had enough drugs on them that it was a street value of \$25, \$30, or something. But, twenty-five to life.

Q: Crazy system, just a crazy system.

Katznelson: Horrible, ridiculous, and useless for everybody. I actually wanted to try and set up a halfway house for people when they came out of prison. I started working with local authorities in Oakland to try and set one up, and it ended up falling through for a whole bunch of financial reasons—but that was my hope.

Eventually, I shifted. I went to work for something called the Public Interest Clearinghouse, developing public interest law programs for law students in the San Francisco area. I helped students who were interested, either trying to encourage them to explore public interest and social justice, or helping students who were still in a quite corporate world to try and find a way to actually make it happen.

I continued to do legal work on my own time. For instance, for several years I ran a tenants' rights clinic in the evenings with a friend of mine.

Q: In Oakland, or—?

Katznelson: In Oakland. I also represented and sat on an advisory committee of something called the California Habeas Project, which worked with women who had been convicted of killing their abusers but who hadn't been allowed to introduce evidence of the abuse at their trials. A law had been passed in 2000, 2001 allowing them to reopen their cases and present evidence of the abuse and to see whether or not that would have made a difference. The reason they couldn't introduce it earlier was because under the law of self-defense, unless the danger is imminent—right then and there you're about to get hit, beaten, raped, whatever it was—you can't take any action.

So if you've been raped for ten years every day, and you've tried to leave, the guy comes and tracks you down, beats you, whatever, and you feel you have no option—he rapes you, he falls asleep, and you take out a gun and shoot him—everything that had happened in the previous ten years was legally irrelevant. But that changed after the new law was passed, so we went into the prisons to try and find the women, let them know about it. I think now there have been almost forty women have been released from prison because of that law and because of the work of the Habeas Project.

Q: When you say "we," who else? Other lawyers or community activists?

Katznelson: Legal Services for Prisoners with Children was the name of the organization that was spearheading the matter, but most of the lawyers were pro bono. Some were from firms, some were solo practitioners in a variety of fields, some public defenders—people who had just taken on the cases and were really interested in trying to help.

Q: Were you coordinating the—

Katznelson: I was one of several.

Q: Oh, one of several.

Katznelson: Legal Services for Prisoners with Children were the main people. I was on the advisory board, and so we'd meet to set policy and direction for the Project. I would screen the women and see if a case could move forward. Then I also worked on a few individual cases.

Q: Now that got you into the courtroom itself?

Katznelson: I got into the courtroom more at the Prison Law Office litigating on various things. I got before parole boards more on the Habeas Project. We filed court papers but often that would actually trigger the government to act. Rather than lose in court and set a precedent that would apply to lots of people, they would say, “Okay, for your case, we'll revisit the parole decision and maybe we can find a way out.” That's a recurrent theme in my litigation against governments—

which has been pretty much my entire career—it's that they often know they're doing wrong and admit they're doing wrong quietly, but don't want in any way to start to change law for the better so that they always have the possibility to do wrong to somebody else. If we go to court and we win, any other person can point to that decision and say, "Hey, you've got to treat me the same way." But if they just make an individual case go away, you get the result for your client but you don't help anybody else.

Q: In the meantime, what was your life like in San Francisco? Did you live in San Francisco or Oakland, or Berkley?

Katznelson: I lived in Berkley for the first couple years.

Q: Whereabouts in Berkley?

Katznelson: I lived on Curtis and University. Curtis is near University and San Pablo. Do you know the area?

Q: Oh yes.

Katznelson: There was a Fosters Freeze on our corner.

Q: I used to work there.

Katznelson: Oh. In West Berkeley.

Q: It was a long time ago.

Katznelson: The lifestyle was amazing. Initially when I first got out there, I loved it. I loved how quiet it was. I'd walk to the BART [Bay Area Rapid Transit] station. It was probably a ten minute walk and I'd see maybe three or four people on my walk in the morning. It wasn't a crazy hour. It was eight, nine in the morning, whenever it was. And nobody was around. It was quiet, it was calm, and it was warm most of the time. It was great.

I met amazing people. There was a great group of people all around similar ages in our apartment building. We just got to know them and had a lot of fun—some of my best friends in the world I met there. After a while, I kind of missed city living and I ended up moving a couple years later to San Francisco, and I lived there for the last three years I was in the Bay Area. It was nice to be back in a more vibrant city.

Q: What happened to the girlfriend in Oakland?

Katznelson: We broke up. We moved out there together and then we broke up, and that's when I moved to San Francisco. She still lives out there. So then I experienced the Bay Area as a single guy and it was a lot of fun—definitely a lot of fun.

Q: Why did you leave?

Katznelson: I decided to move to England. After living in San Francisco, the Bay Area, for five years, it was starting to feel kind of small to me—small town-ish. I had been at my job for a couple years and I knew I didn't want to be a career counselor for the rest of my life. I was interested in a new challenge. I thought about where I would want to move. I thought maybe Los Angeles was a possibility and I applied for some jobs in the domestic violence-related world down there.

I didn't get them, and I was thinking about where else to go. We lived in England for a little while when I was a kid as well—just six months or so—but my dad was teaching there for a term and we stayed for a while after that or before that, I can't really remember. But we've been back to visit many times since then. My dad got his PhD at Cambridge [University], and so we had a lot of friends there, and so over the years, we'd spent quite a bit of time in England. It was a familiar place to me. So I was thinking about moving there and I was starting to apply for jobs there at the same time as applying in Los Angeles. Clive had set up Reprieve since then and moved back to England from Louisiana, and I had seen, actually, a play about Guantánamo in San Francisco a few months earlier.

Q: By this time 9/11 had happened.

Katznelson: 9/11. It was 2005 by now.

Q: Let's back up for a couple minutes. Where were you on 9/11?

Katznelson: San Francisco.

Q: What do you remember about the day?

Katznelson: So it was a three hour time difference, right? I was getting ready for work—I'm trying to remember what it was. No, I remember how we found out. Someone called us, someone must have called us. I was still living with my girlfriend at the time who I had moved out there with, so she was from New York as well. Her mother lived on Sullivan Street, a few blocks from the towers. Someone called us and told us to turn on the TV. And we did, and the towers both had been hit at that point—it was probably getting close to seven in the morning in San Francisco—but they were still standing. We just remember watching and then seeing that cloud of dust, and it was like, oh my god, one of them just collapsed. And just utter disbelief. I obviously was worried about family and friends. I didn't think I knew anybody that worked in the towers. It turned out later that a friend of mine from college had gotten a job there and had died that day. It was just utterly shocking and horrible. Even after the towers collapsed there was so much hope that people would be found alive, and nobody was.

I came back to New York probably about fourteen, fifteen days later because Anna, who was my girlfriend at the time—her mother died. Her mom was living on Sullivan Street, and she died in part because she already had a lung condition and the air quality was so awful afterwards that it exacerbated it. We came back for the funeral and to try and help sort out everything at the apartment.

I remember coming back and you could still smell the burning even though it was two weeks after. The smoke was still there. We stayed at her aunt's place, which was right next to a fire station that had lost eleven guys, I think—eleven or twelve people—almost the entire company. Every day, somebody came out and played the bagpipes, and it was just haunting. It was a time, I remember, New York was kind. Everybody was looking out for each other, and it was different.

It also felt like our heart had been ripped out. Even just seeing the skyline, I never even noticed any of the buildings around the Trade Center because my eyes were always drawn up, and it was just, all of a sudden, I didn't even recognize that part of Manhattan. I had lived here most of my life. It was just an awful, awful thing.

I went back to California after a few weeks here, and by the time I came back again, I can't remember exactly when the next trip was back, but already the city was getting a bit more gruff. Certainly by—because I was only coming back every several months, but by a year later, it was almost like nothing had happened in some ways. Yet, it will never be the same.

Q: When did you first hear about Guantánamo? Did it register at all?

Katznelson: A little bit. I sort of vaguely knew about it, read about it, and didn't think much about it. I'm sure I probably first really paid attention when it went up to the Supreme Court in 2004, and the Supreme Court said that men there had the right to habeas corpus. I was aware that it existed before, but I believed a lot of the government's rhetoric that the guys who were there

were the people who had done 9/11 and that the government was working towards trials for them, and blah, blah, blah. I knew trials took years to happen, so it wasn't yet something that necessarily—

Q: Now, had you kept in touch with Clive Stafford Smith at all?

Katznelson: Very loosely. More maybe once or twice we'd been in touch since I stopped working for him. The people I worked with in Mississippi were protégés of his, and so I was in contact with him that summer, too, that was my second summer in law school—that was 1999. So I don't know, maybe from then until 2005, very loosely I kept tabs—and probably the people I had worked with in Mississippi were the ones who had told me he had gone to London.

I saw the play about Guantánamo in the late winter or early spring of 2005, and it was stories told verbatim from prisoners, from their families, from the lawyers, kind of all spliced together. So Clive was in there in some way—somebody portraying him—and they were reading from various documents that had come out. It painted a picture that I hadn't fully been aware of before, what it actually meant, what the conditions were like. It really got me thinking about it as something that was much more than I thought it was and that clearly the government, as I should have known, wasn't telling the whole story.

Q: Surprise.

Katznelson: Surprise, surprise. I was party to what I think a lot of people do, which is that when there's enough anger—as well as a kind of hurt—you don't always delve deeper into what might be there.

And so I was thinking about moving to London. I call up Clive, I say, “Hey, remember me?”

Q: Did he?

Katznelson: He did, thankfully. I worked with his wife, too, and so she remembered me as well. She had been working at the same death penalty organization down South. I said, “I'm thinking about moving to London. Do you know anybody who is hiring or anything like that?” He said, “Well, I could use some help, but I don't have any funds to pay you right now. So if you want to come over and volunteer for a while, I'd love to have you.” And so I thought about it. I thought, okay, I have enough money saved up for about six months. I'll make a go of it.

If it doesn't work out, if I don't get a—sorry, can you hold on one second?

[INTERRUPTION]

Sorry, I just wanted to make sure that wasn't something urgent.

Q: Okay, we're back on, I think.

Katznelson: So Clive said he couldn't afford to hire me, but he could use my help as a volunteer. I had enough money saved up for a little while. I thought if I don't get a job, if I can't make a go of it after a while, worst case scenario, I move back home. I figure out a way to go back to New York, go to my sister's, whatever, find somewhere to stay, and I'll find another job and I'll figure something out—figure out where I want to live. And I had a sister in LA at the time. One of my sisters was in San Francisco; one was in North Carolina; my parents were in New York. I was like, I got places. I can go live with a friend, whatever. I'll figure it out.

I got to London and I started doing mostly Guantánamo work, some capital work as well—Reprieve at the time represented British nationals facing the death penalty around the world. Now they also work on behalf of EU [European Union] nationals who are facing the death penalty in the United States. And Guantánamo work.

Of course, to do Guantánamo work, really do it, you need a security clearance because without a security clearance you can't go to Guantánamo. You can't see the evidence against the prisoners and you can't meet with them. Within a few weeks of being there, Clive got a grant and he said, "I'd love for you to stay if you can."

Q: Now what exactly were you doing when you went there as a volunteer? He said, "These are the folders, these are the the—"?

Katznelson: Yes, I think one of the first things I did was worked on a case of an Egyptian man named Sami [Abdul Aziz Salim] Allaithy.

Q: Ah.

Katznelson: You know Sami's case? He was someone who had been picked up in Pakistan as he fled the U.S. bombing there, who had been in Afghanistan as an English teacher. And in 2004, 2005, the Bush administration had started to hold Combatant Status Review Tribunals, which were hearings to determine whether or not there was any justification to hold someone prisoner at all. Sami was one of the thirty-some-odd people who were found, “No. He was not an enemy combatant. He never should've been picked up in the first place.”

But while Sami had been in Guantánamo, he had been beaten so severely by guards that they had broken bones in his back and he was now confined to a wheelchair. He was probably in his mid-to late-forties, but he was a very vibrant, athletic man—played soccer all the time.

The government was finally due to release him when I joined Reprieve. At the time, Egypt was not exactly a friendly place. Sami had left Egypt many years ago because he was opposed to the government, and he was terrified about going back and being abused and tortured. One of the first things I did was litigate to try and stop his transfer and to say, “You have held him wrongfully all this time. You never should have picked him up in the first place. You have no right to therefore send him anywhere, frankly, besides where he wants to be, and you certainly have no right to send him somewhere where he's in danger of torture.”

We lost the case, and he was transferred sometime in early 2006. He was held for a while by the Egyptians, but eventually they just released him. Fortunately, our worst fears did not pan out, but it just showed to me the callousness, yet again, of the government in how they were treating these men.

Q: You were talking about the security clearance.

Katznelson: Yes, security clearance. So after Clive got the grant and said, “Do you want to stay?” I said yes, and we started the immigration process to actually get me a proper visa.

Q: How was Reprieve organized?

Katznelson: Well, at the time I started, I was the—

Q: Yes, what was it like when you first went there?

Katznelson: I was basically the fourth full-time employee. And Emily [Bolton], Clive's wife, was there sometimes. Clive was there, obviously. I guess if you count Clive and Emily—they weren't in the office every day—so they were five and six, or I was number six. But in the office every day, there were four people.

There was only one other lawyer; there was kind of a receptionist/bookkeeper/office manager person; and an executive director who was trying to grow the project, to fund-raise and whatnot.

And Marc [Callcutt], who's actually still there now—who was a young British lawyer—and then me and Emily and Clive. Emily and Clive were far and away the most experienced people obviously, and incredible resources. Clive was traveling a lot and trying to work on his cases, raise funds, whatnot. Emily did a lot of the death penalty work because that was her specialty.

They really needed, first of all, someone to work on Guantánamo cases, but they also needed an American. Marc was British, and to get security clearance, you have to be a U.S. citizen. And it was a long process. It took Clive, I think, fifteen or sixteen months to actually get his clearance. It took me nine months or so before I was approved. They investigate you. The investigation can be incredibly cavalier, based on my experience in talking to other folks, or they can be incredibly thorough.

They chose to be thorough with me. I think they chose to be thorough in those earlier days with a lot of Guantánamo lawyers, but the fact that I lived overseas didn't help. I was interviewed by someone at the embassy in London. Most of the people who apply for clearance are not trying to oppose what the government's doing. They're trying to work for the government. The questions were all geared towards that.

This woman was really flummoxed by some of the answers I gave. So they were questions like, “Would you ever speak out against U.S. government policy?”

I said, “Every day. That's my job.”

She looked really puzzled and just said, “Oh.” I remember for the first half hour or so, she probably asked me about ten times, “Are you sure we're supposed to be doing this? Are you sure you're supposed to be applying for security clearance?” I kept trying to explain to her what was going on. And she said, “And the Justice Department told you that you were supposed to do this?” I was like, “Yes, yes, yes, yes.”

It was really challenging. So we ended up talking for four hours or something like that, part of it because my answers were just so foreign to her and she was trying to figure out how to go about doing this interview. Every answer I was giving normally would have disqualified me—every single one. They would say, “Do you have any contact with any foreign nationals?” I was like, “Yeah, I do.” At the time, I was dating somebody who was British.

It was all these things where it was extremely problematic from their perspective—from their, I think, very xenophobic perspective, but okay, fine. They're looking for any reason that someone might be blackmailed or somehow manipulated into giving evidence, right? Your personal loyalties obviously matter. So who are your friends? Well okay, this is who I'm hanging out with—a bunch of foreign nationals. All problems for them.

But they also ask incredibly intrusive questions about psychological history, and sexual history, and drug use, and all these kind of things. And you've got to be open, but it's kind of like, I don't know you, why am I having to bare my life to you? I guess you do what you have to do.

So finally, I get through the process and I kept working on cases, but during the nine months I was waiting for clearance, I wasn't able to go to Guantánamo. I wasn't able to go to the secure facility in Washington, which is where they keep all the classified documents related to Guantánamo that they were willing to share with the lawyers. Of course they wouldn't share most of the documents, but what they were willing to share was held there and you could only go in there if you had a security clearance.

So there were limits as to what I could do, but I could certainly do a lot of the education and outreach work that was a huge part of what we were doing. Because even though the Supreme Court had held in 2004 that people had a right to go to court, the law was changed and very quickly Congress tried to take that right away.

When I got to Reprieve, basically, the cases were on hold. There was litigation about where people could be transferred, there was various other litigation, but a lot of what we were doing was trying to build political pressure on the U.S. government and on people's home countries, to actually take an interest in the men's cases and to get them out through political means.

That worked best with the European governments. Clive and others—and then as I joined; I took on a lot of it as well—really pressured them. “People had great success in saying, “Your citizens cannot be treated this way. If you want to put them on trial, fine. Bring them home, put them on trial, or the U.S. can put them on trial if they've committed crimes against the United States. But you can't just hold them indefinitely.”

We were able to generate enough publicity and enough press using the stories that started to come out of Guantánamo. As you know, anything that came out of a client's mouth had to be run by the military censors before you could say anything publicly about what they said. The censors initially censored most things that would be embarrassing somehow to the United States. Most of the time someone would tell a story about even just something small—relatively small potatoes about how they got beaten up by a guard that day, and the censored version would say, “This morning I”—and then at the end it would say, “guard.” And reading that you would never know what had been blacked out. I didn’t have access to the classified information yet, so I was working within those limits.

But then I finally got clearance and went to Guantánamo for the first time in the summer of 2006, and started meeting with the clients and actually seeing them face-to-face and seeing the base. We had a huge number of clients.

Q: Yes, thirty-something or forty-something clients.

Katznelson: Overall—I had to tally it up recently—I represented fifty-five people in Guantánamo at various points, including some people I represented since Reprieve as well. Some of them got out quite quickly and some of them are still there today. The vast majority have been released.

Q: Who was your first client down there?

Katznelson: That's a good question, I don't know if I can say any one particular person, because when I would go, I'd meet with ten, fifteen people at a time. I mean, the first people I met with were English speakers because we didn't have funding yet to pay for interpreters. And so I met with British residents who were there—Bisher al Rawi, Jamil el Banna, Abdenour Sameur, some others, who are all free.

I remember meeting with them, and in many ways it was very similar to a lot of the prison meetings I'd had with people before. When I went to meet with clients on death row, they were strip-searched coming in and out of every meeting. It was humiliating and debilitating. The guys in Guantánamo had to go through similar humiliation, shackled and hooded and blindfolded—sensory deprivation when they were transported to the meetings. They were always shackled during the meetings, sometimes at the hands, but always at the feet.

We were watched during our meetings on video camera, and you could hear the camera shift depending on if we moved a bit. And the cameras, we were told, were sensitive enough they could read what was on our pages. We always thought they were listening too. At least on death row I trusted nobody was listening to me.

Q: How did you get to Guantánamo?

Katznelson: These little tiny planes.

Q: You flew to Fort Lauderdale?

Katznelson: We would fly to Fort Lauderdale and there were two charter airlines that flew to Guantánamo, neither of which fly there anymore. One of them is sort of still going, is limping along maybe, but the plane was grounded last I heard. They were these little prop jets. You can't fly over Cuban air space so you have to fly all the way around the southeastern edge of Cuba and then back up to Guantánamo, because Guantánamo is right at the southeastern tip of Cuba.

So it would take about three and a half hours. The planes can't fly very high, so you're not going very quickly at all. If there's bad weather, you feel every single bump. And there was no toilet on the plane. So if you fly at four o'clock, you sure wouldn't want to drink anything after about 9:00 AM. It was not fun, the travel. It was obviously nothing in comparison to what the clients went through or anything, but it was not something I ever looked forward to. And then I'd go down there, and because we had so many clients, and I would spend half a day or a day with each one. I would often go for two to three weeks at a time.

Q: Oh really?

Katznelson: I would stay at the Combined Bachelor Quarters, as it was called at the time, which was sort of like a motel. It has been done up quite a lot since the early days and now is pretty nice. Back then, it was more rudimentary. It was fine. It was nothing to complain about. There were other lawyers who would often be there during the week, sometimes with interpreters, sometimes without.

Q: How did you get along with them?

Katznelson: Usually very well. It was actually really nice because when I was there on the weekend, I was often there by myself and it was pretty isolating. The only other people that lived on that side of the base at the time were Cuban refugees who had been picked up at sea and who had been brought to Guantánamo because they had an asylum claim.

So if they were picked up at sea, the U.S. automatically brought them to Guantánamo while they sorted out their claims. Most of them were then granted asylum, and then they were held in Guantánamo while the government was trying to find a place for them to be resettled. It wouldn't be the United States. That was only for Cuban refugees who had made it to U.S. soil. So they were usually European or sometimes Latin American, but usually European countries that would take them. But meanwhile, while they were waiting, sometimes for years, they weren't allowed to talk to anybody except other refugees. They weren't allowed to talk to anybody who wasn't Cuban.

So that kind of cut things off—occasionally, you could kind of exchange some snippets of conversation, but there was always worry about a patrol going by. And there were Jamaican and Filipino contractors who also weren't supposed to talk to anybody who wasn't Jamaican or Filipino. It was kind of me and the contractors and refugees who weren't really allowed to talk to me.

But during the week, and every once in a while on the weekend, when the lawyers were there, there was actually really nice company. It was a really great group—continues to this day to be an incredible group of dedicated, passionate, smart, caring people, who were often a lot of fun. They're from all different backgrounds. That was interesting as well—big-time firm lawyers, and solo practitioners, and public defenders, and people from nonprofits like I was. It was a really diverse group across the political spectrum as well. People who were die-hard Republicans, certainly before this started. I think few of them remained as such, but people you wouldn't expect to be doing Guantánamo cases, and there they were.

Q: Did you share information about your clients?

Katznelson: To the extent we could, that we were allowed to. There's a whole need-to-know about classified information, to be careful about that.

Q: Well, you had to sign very elaborate kinds of things about what you could and could not talk about.

Katznelson: Yes, we were briefed on it. Issues about prison conditions would come up all the time, which we would talk about and strategize about how to improve things for our clients. The rules in Guantánamo, even to this day, are remarkably changeable and changing. The rules would change every time there was a new shift commander or a new guard force came in—and the guards changed every six months or so, if not more often, and the commanders changed frequently too.

And almost never did they have any prison experience. The government would bring in people. It's one of the things I've never quite understood about how the military is operating Guantánamo and why they're so foolish about this. But in all the years I've done it, there have been maybe two or three instances I can remember where the crew that they brought in—whether they were Navy or Army or Air Force or whatever it was—that they had any prison experience.

There was a group of reservist prison guards they brought in, I think from New Jersey, at one point, who knew how to run a prison. They knew how to keep things in order; they knew how to keep things running smoothly because they also understood fundamentally that one of the ways you keep order is that you give prisoners some benefits and a decent standard of living, and that if you are brutal to them, it's not going to work for anybody. You may think that you're being harsher, and therefore you'll keep control of everything. Nonsense. That's not how you run a prison environment. Never works that way.

One thing that did stand out to me also about Guantánamo is in comparison, for instance, to what I was saying about California—Guantánamo was far and away the safest prison I've ever been to in my life, and I've been to a lot of prisons. It's the least dangerous place by a long shot. Every single time I went to visit a medium or maximum security prison in California, there was a vicious, violent incident that day. Almost none of that happened in Guantánamo.

There is almost never prisoner-on-prisoner violence, almost never. And even when a guard is attacked—and guards are assaulted sometimes in quite disgusting ways where urine and feces

may be thrown on them, for instance. But almost never is a guard actually injured. And certainly guards are not stabbed and beaten and brutalized in the way that they are in California prisons. It doesn't happen. It's a very different population in Guantánamo, and it says something about how "hardcore" some of those guys are. But it also changed the feel of the place.

But the brutality that was visited on the prisoners by the guards and the interrogators is a very different story. So I would come out of these meetings, which are often quite intense where people would have been telling me their story about how they ended up in Guantánamo or their experiences in Guantánamo, and at no point did I feel like anybody was being treated fairly, justly, or kindly in Guantánamo.

There were individual instances where a guard may have been human, and usually the guards that were the most human were very quickly moved out. If they built any kind of relationship with the prisoners, they were moved out. They were considered some kind of security risk if they showed any humanity to the men. So they were often very difficult days, and then you come out, and it was actually really nice to have other people who were experiencing the same thing. Even if you didn't talk about what was going on, sometimes that was the best thing as well, just to actually have a normal conversation with somebody who's allowed to talk to you, and you could just talk about sports, you could talk about a movie, you could talk about whatever.

Q: You talked earlier about you being Jewish in a Muslim environment. What did you know about Islam? What did you learn? How did you learn? Had you ever really thought about it?

Katznelson: I knew some but not very much. I think I probably knew a bit about Ramadan. I knew that Muslims prayed five times a day. I knew about the prophet Muhammad, the Koran. I knew the names, but not many details. And I certainly knew, because I also have a lot of family in Israel, about Middle Eastern politics and the religious overtones of all of that. But I didn't know much about the religion.

I think I learned a lot from the clients. I was the first Jew that most of them had met—though not always. I had a client, Saifullah Paracha, who ran a travel agency in New York for ten years and knew lots of Jews. His business partner was an American Jew. But most people had no exposure to Jews, so they would often ask me questions like, “What do you believe?” or “For me, the story of Ishmael and Abraham goes this way. How does it go for you?” So it would kind of give an opportunity to go back and forth.

It was an interesting education in that way, and also culturally. A lot of the norms of Muslim culture, and certainly the Middle Eastern culture that most of these men had grown up in, are very similar to Jewish culture. Very family-oriented, very community-oriented, organized around the synagogue or the mosque. And feeling that you're a religious minority in a lot of ways—certainly in Europe, the men who had lived in Europe, which were many of my early clients—and how they felt kind of on the outside of a different society.

There are 250,000 Jews in all of Britain and most of them live in London, but there's two million Jews in New York City. So even when I was living in London, I felt very, very alien in many ways. I could kind of relate to the men in a way that I thought was fascinating.

As time went on, almost all the British prisoners were released, almost entirely through political pressure. I remember one night a number of former Guantánamo prisoners who had been released met for dinner and invited me along. It was me and them.

Q: In London?

Katznelson: In London. Not all of them were British. A couple of them had come into town for a conference at Amnesty [International]—organized with Reprieve. We all went out to dinner afterwards at a halal restaurant. I keep kosher. And what is kosher is halal—

Q: Just about, yes.

Katznelson: —everything that's halal is not kosher. So for instance, if you're halal, you can eat shellfish. I can't eat shellfish. Observant Muslims can mix milk and meat. I can't do that. But even meat that I can in theory eat—chicken, for instance—even if it's halal, it's not strict enough for me; it's still not kosher. That is the easiest way to put it. And so as we were ordering, one of the guys, who was one of the more fundamentalist thinkers of the group, who had admitted he had gone to a training camp—it wasn't to fight against the U.S. He wanted to go to Chechnya. He was going to fight there. But he had gone to a training camp. He definitely was a believer in many ways about violent jihad—not terrorism but violent jihad. He's ordering for the table. I'm sitting next to him and he says, "I'm getting this and this. Is that all right?"

I said, “Yeah, can you please order me a vegetarian dish?”

He said, “It's halal. Don't worry about it.”

I said, “I know,” and I explained that halal wasn't enough.

He said, “That's pretty extremist of you, isn't it?” [Laughter] It just came out of his mouth. I said, “Yeah, I guess so.” It was a really interesting way to look at it.

For the most part, everybody said to me—the prisoners I met—“You're a person of the book, right? We believe in the same way.” The way they would view Christianity and Judaism and Islam is they all start in the same river, and they're branches of the river. At some point, from their perspective, the Jews went off, and the Christians then went off, and then the Muslims have continued on the proper branch, right? And we all come from the same roots.

Many of them wanted me to convert, though they didn't push. There were a couple that were particularly persistent about it, though. They were older men who felt like it was their duty to try and bring me to Islam because they wanted what was best for me. That was clearly where they were coming from. They weren't trying to say that I was wrong—they were just like, “I want what's right for you and your family. Please.”

Q: Now, there had been some British releases before you went to Guantánamo. The Tipton Three, were they?

Katznelson: Yes, in fact all the British citizens had come home in the year or so before I started. All of them had come home. The last ones came home in 2005, just a couple months before I got there. So there were nine of them that came home, but there were British residents who were still in Guantánamo—men who had lived in Britain for a long time, many of whom had British citizen families, but they themselves were not citizens.

Q: We interviewed Moazzam Begg and Feroz Abbasi.

Katznelson: They're good guys.

Q: Obviously you can't talk case by case, but there were three or four cases that are really outstanding. You mentioned Sami al-Hajj as one, but Shaker Aamer is still there.

Katznelson: Yes, he's still there. I'll talk about Shaker first, or Sami first, whichever you prefer. Shaker, I guess. I spent quite a bit of time with Shaker's family. I met Shaker only a few times because Shaker, at some point, stopped cooperating with the legal team and didn't want to see us. I tried many times to see him and he wouldn't.

Q: I was interviewing David [H.] Remes and he was interrupted by a call from Gareth Peirce—this was just very recently—about trying to get him to cooperate. Very difficult.

Katznelson: Very difficult. He's someone who—he's incredibly charismatic. Everyone has talked about it—he's incredibly charismatic, incredibly smart. He's probably one of the most knowledgeable people I've ever met about religion in general, not just about Islam but about Judaism, about Christianity, about Buddhism, whatever it was. He's just an incredibly smart guy. Could see connections and parallels, and you got this feeling he was really just someone you wanted to talk to.

He was an incredible organizer of the other prisoners in Guantánamo. Because he speaks fluent English—he lived in England for a long time. He's from Saudi Arabia but lived in England for a long time. He's married to a British woman. He's got four kids, all British, the youngest of whom he's never met because his wife was pregnant when he was picked up and taken to prison. And he's passionate and he's fluent, and he was able to, one, organize the men, but two, also to be a go-between with the guards and the commanders to say, “Look, I want what's best for everybody. Let's try and see if we can reach a solution.”

At some point in 2004, 2005, the commander of the guard force actually agreed to negotiate, Colonel [Michael] Bumgarner. And Shaker was among, I think, six prisoners that were appointed, chosen by the prisoners, to meet with the guard force and to try and figure things out. And they started to make some progress. Then it was never clear if it was a rogue guard or there was some commander trying to disrupt things, but a prisoner was beaten. And the guards tried to get other people to come out for interrogation. They said, “No, you just beat that guy. We've been cooperating; we've been making progress. You just beat that guy and there's been no repercussions; no one's been punished.”

The commander came to Shaker and said, "You need to get these guys to come out of their cells," and Shaker refused because no one had been disciplined for the beating, and things just deteriorated. Shaker ended up getting put in isolation and he's basically been in isolation since. That was 2005. So eight years, he's basically been in isolation. And it's not just been isolation; it's been isolation and brutality.

When I first saw him in 2006, he already certainly physically was undergoing tremendous difficulty. He was kept in a shack. We had a lot of our meetings with clients in those shacks. They would be brought from the prison to these shacks to meet with us in a place called Camp Echo. But Shaker lived in Camp Echo in a separate section away from where we met with the other prisoners.

The way that the shacks were set up was, they were probably a little bigger than this room, but let's say they were probably twelve-by-twelve, something like that. They were divided in half. One half was open space, nothing there but a table and a couple chairs and an eyelet on the floor where the prisoner could be shackled, and a camera up there. The other half was divided into two cells. One contained a bed, a toilet, a sink, and the other one was a shower cell. And the guards could lock each one individually.

So sometimes they let the prisoner out to go take a shower. Sometimes they let him out into the main area, or he could go out the door and go into a recreation area outside. Shaker was not allowed outside at all. He was every once in a while allowed to shower, but usually he was kept

in that probably six-by-four cell, and most of that was taken up by the bed. Maybe a tiny bit bigger than that—but a really small area. And there was no natural light; it was just solid walls. There were no windows at all. So unless someone opened the door, you had no sunlight.

He had been in the shack for a couple months already by the time I saw him, and he had been in isolation for longer. And already, he was having tinnitus; he was having difficulty focusing. His body was starting to break down. He had been beaten, he had been strangled not that long before—they had come in to try and take a retina scan of him, and he was just brutalized as part of that procedure.

So we actually filed court papers to try and get the government to stop their treatment of him, and the court refused to intervene.

Q: There's no reason to keep him anymore.

Katznelson: No. He's someone who's been cleared for release since 2007, 2008. The UK [United Kingdom] is willing to take him back. They want to take him back. The main thing is the U.S. wants to send him to Saudi Arabia where he can be kept under much tighter restrictions—basically kept in prison. They can't keep him in prison in the UK; there's nothing to charge him with. And he wants to be in England. That's where his life is, that's where his family is, that's where his world is, and the U.S. won't do it.

Q: You read the Scott Horton thing in *Harper's Magazine*? Yes. Kind of searing.

Katznelson: Yes, that's what—when I'm talking about the retina scan, that's exactly what happened.

Q: What about Sami al-Hajj? He was released.

Katznelson: He was released.

Q: In 2008.

Katznelson: I met with Sami for a few years before he was released. Incredibly smart, caring, kind man, who I believe wasn't involved in anything. The allegations against him shifted all the time. It happened to most people in Guantánamo, but it happened to him to an even greater degree.

The U.S. would say, “Oh, you went to a training camp.” And then it would turn out, actually the guy wasn't even in Afghanistan at the time they said he was in the training camp. And they'd say, “Oh, well you were a money courier.” And then it turned out that he worked for a company that was contracting with the U.S. military that had asked him to send money somewhere and he had done it. “Okay. All right, you ran an extremist website.” Turns out the website never existed.

It was things like that. They were coming up with new reasons to keep Sami locked up. And Sami—that was a lot of what Sami went through where every time he would knock something

down, something else would pop up. It was like Whac-A-Mole, but Whac-A-Mole where it's your life is at stake. And it was nonsense. It was nonsense. You box at shadows for as long as you can, but eventually the darker and darker it gets, it's hard to even see them anymore.

But Sami was amazingly strong, and he went on hunger strike to protest being held for years without being charged or put on trial, with the allegations against him changing all the time. He stayed on hunger strike for over a year, until the day he was finally released. He was force-fed brutally twice a day, where they would take a tube—in the beginning not lubricated—shove it up his nose, down his throat, snake it down into his stomach, and they'd pump nutrients in. Especially in the beginning, several times, the tube went into his lungs instead of into his stomach. That's incredibly dangerous and incredibly painful. Force-feeding was painful enough as it was. And eventually, I think, he could only use one nostril because he had been so destroyed by what they'd done to him.

But the force-feeding was clearly a punishment mechanism. It wasn't trying to save his life or help him. It was clearly to brutalize him as much as possible in hope that he'd give up the hunger strike. He refused. So I'd often meet with him and he'd be incredibly weak. It would be very difficult for him to focus, but he always would do his best. He would always smile, always be sure to ask—as almost all the guys did—about my family and how I was doing. Always the first thing he wanted to know about was how I was doing. And then the second thing was he wanted to know how his son was doing and how his wife was doing. His son was very young when Sami was taken, and I'd sometimes be able to bring pictures. He always had a picture of his son in his pocket.

Q: You were able to act as a courier between his family?

Katznelson: Yes, although getting even the most innocuous picture past the censors was very difficult—let alone a video message or anything like that. At that time, nobody had any phone calls home, so the prisoners never spoke to anybody back home. It's different now. Back then, letters took forever to get through, six months, a year, year and a half sometimes, and they were usually heavily, heavily censored by the time they did get to the prisoner.

Sami's son wrote him a letter, I remember, saying that he had gone to the park, and just telling him about his day. I ultimately saw the actual original letter, and I saw the censored version. The censored version, they took out almost everything. And even the message, "I love you," was taken out because they said it might be a code. And so basically, all that was left was, "Dear daddy," and then the kid's name at the bottom, and that was almost worse than receiving no letter at all because it was kind of like you were taking every last little connection from him.

It was heartbreaking, especially because here's someone who—we couldn't go to court for him because the courts were closed to us at the time. We'd filed the case; we were just sitting there waiting. And luckily, after a lot of pressure, Al Jazeera took up his cause. At first, they weren't so interested. But they made Sami's case a cause célèbre, and then Sudan took up his cause, because he was originally from Sudan.

He became almost, in many ways, a poster child in the Arab world for Guantánamo. If not for that publicity, I don't know if he would have ever gotten out. But it became such an issue that it was an issue of national pride for Sudan and in Qatar, for Al Jazeera, and for the emir of Qatar to try and get Sami out. In Sudan, you would buy something from a restaurant, and instead of just the name of the restaurant being on the bag they gave you, Sami's face would be on the bag. That was the level that it was reaching. It was like missing children, how they used to be on milk cartons—they'd put a missing kid—Sami would be on the milk carton. So it was amazing, this public campaign for his release.

What ultimately got him out, it was remarkable. Sudan, to their credit—I think the Sudanese government is not a wonderful government by any stretch—but to their credit, they put on the list of things they wanted from the United States, the release of Sami al Hajj and the other Sudanese prisoners in Guantánamo—there were five Sudanese prisoners at the time. I don't think it was entirely voluntary. There was tremendous public pressure on the Sudanese government.

But a totalitarian government, an authoritarian government, they can pretty much choose what they want to respond to, right? And they chose to put Sami and the others on the agenda. The U.S. at the time still needed Sudanese intelligence cooperation, Sudanese oil, so the two sides were in discussions.

The U.S. had an embassy there. The U.S. wanted to import equipment for their embassy in Khartoum, and Sudan impounded it at the port and said, "We'll release it if you pay us duties." Sudan is on the list of terrorist nations, right? So, the U.S. couldn't pay duties because that would

be giving money to a terrorist country. Sudan said, “Sorry, we're not giving you equipment. If you want the equipment, these are our demands.” One of the demands was the release of Sami al Hajj and the other Sudanese prisoners. And so they went back and forth, back and forth, and ultimately, the U.S. released three of the five, one of them being Sami, and then the other two later on. Just after Sami and the other two men landed back home, Sudan released the equipment. It was millions of dollars’ worth of equipment, but that's what bought Sami's freedom.

Q: Now, have you kept in touch with him at all afterwards?

Katznelson: Yes.

Q: Oh, really?

Katznelson: I haven't spoken to him probably now—it's been probably a couple years now. We've emailed. He was going to come to my wedding. He was in the UK just before it, but he had to go home a bit earlier than hoped, so he didn't make it. Several other former Guantánamo prisoners did come to my wedding.

Q: You were married in England?

Katznelson: In England.

Q: Because they couldn't have come here.

Katznelson: They couldn't have come here. They wouldn't have wanted to come here, nor would I have ever asked them to come here. We were married in London. My wife's British. So it was amazing to see them there, including the guy who told me I was an extremist. He was at the wedding. It was the first Jewish wedding the men had ever been to. Bisher al Rawi witnessed our civil marriage contract.

I'm still in touch with many prisoners. Sami, it's probably been a couple years, but he seemed to be doing reasonably well—he was working for Al Jazeera again; he was rebuilding his life with his family. I think the hardest thing was trying to reestablish a relationship with his son, who had lived for many years without a father.

Q: Do you have any general comments about the people who have been released, how they put their world all back together? Has it been difficult for them? Traumatic? Have they been able to do it? Under what conditions?

Katznelson: I think it's been extremely difficult for all of them, frankly. Some have been more successful than others. The people, I think, who have been the most successful in many ways had a support network, which is key for a lot of people who come out of regular prison. But even then, there are all kinds of new challenges. Your family has had to adjust to your not being there. Your children who grew up—who were little, say two years old—they don't really remember you. You've been gone for eight years. They don't know who you are. And obviously, they're told you're their father, but the adjustment period, it's not easy for anybody.

You add on that health concerns, which a lot of the men had, because the medical care in Guantánamo was atrocious most of the time, sometimes debilitating. Guys were fine until they got the medical care. Other times, it was just inadequate. So many of the men suffered.

Jamil el Banna is an example. He's got five kids, lives in England. He was in his mid- to late-forties when he went in. He was there for seven years altogether. When he came out, his hair had turned completely white and he looked like an old man. He went to the doctor and the doctor said he had the body of man who was in his seventies. He was in his early fifties at that point. So twenty years he'd aged during his time in Guantánamo.

And it was not a vibrant seventies. He was constantly tired; he couldn't think clearly. He was really debilitated by his experience. And he was surrounded suddenly by five young children who wanted him but didn't know him. The older ones remembered him some and had been advocating for his release, actually. His oldest son, Anas, is incredibly eloquent. He was probably ten or eleven, maybe, when Jamil was released. He had written a letter to [James] Gordon Brown—who was the prime minister—and spoken to the media a few times, and was just an incredibly impressive child. But all of them had to readjust, and his wife had to readjust.

And on top of that, Jamil couldn't work because he was too debilitated. So financially, it was very difficult for all these men. I think that's been one of biggest problems. For anyone coming out of prison, it's always an issue, but Guantánamo, come on—“Where have you been the last few years?” You go to apply for a job, even if you're incredibly well qualified, say you were a

chef before and you're going to a restaurant. Well, "Where have you been the last eight years?" "I've been in prison." That's hard enough. "I've been in Guantánamo Bay." "Thank you very much, bye-bye."

Most of the guys have had an incredibly difficult time finding work, and that adds all kinds of stresses. For some of them, they're in countries that have helped them out, but very few. Obviously, some of the guys in Britain have eventually reached some kind of financial settlement with the UK, and so maybe they now have some funds. But most people who are outside of Europe have nothing, no support network, just their families if they can help them. Some of the families are incredibly poor themselves.

So they have to rebuild their lives having been traumatized, having been brutalized, potentially physically debilitated, suffering from post-traumatic stress disorder, trying to readjust to their family life, which is an incredible support and a burden and challenge as well, and they can't find work. So I actually marvel at many of the men and how much they've been able to do and achieve, and their outlook and their positivity.

Most of them, they aren't angry, which I think is pretty surprising. They're sad, they're disappointed. They may be angry at individuals. They felt like they were done wrong, and they're right. But they don't want to lash out. They just want to move on. They just want to go on with their lives. It's hard. They have trouble sleeping.

Q: The next one I have—I've already mentioned it—is Saifullah Paracha.

Katznelson: Yes, Saifullah.

Q: Still there.

Katznelson: Still there. He's still there. He's one of the guys that I like the best of all the people in Guantánamo, someone I wish were here to go have lunch with. I first got involved in Saifullah's case when I was in Pakistan in 2006, 2007, and I spoke at a conference about Guantánamo, and his family was there. They came up to me afterwards and asked if I would take on his case. I didn't know of him before.

They told me his story. They had lived in the United States for a number of years. A lot of the Parachas are U.S. citizens, originally from Pakistan. He's got three kids—two daughters and a son—and his wife, and I've met all of them, and I've met them a number of times, talked to them a number of times. Incredibly kind, warm, caring folks. He and his son—his son is in prison here in the United States as well for the same set of facts—they always said that they were basically duped by Al Qaeda members who claimed they were investors who wanted to invest in their companies. They had a media—a film studio, basically, in Pakistan—and they also ran a clothing import-export business with a Jewish-American partner. And two men came to them, said they wanted to invest funds, blah, blah, blah—never said who they were, that they were Al Qaeda—in fact, one of them was Khalid Sheikh Mohammed. But Saifullah didn't know who Khalid Sheikh Mohammed was, and the two men had IDs that had different names.

Ultimately, the U.S. accused Saifullah of being a money launderer, essentially, for Al Qaeda. Interestingly, after 9/11 Saifullah had written—written to the U.S. ambassador in Pakistan offering to help—and saying, “I’ve been in the U.S., I understand Western culture and Pakistani culture. I want to assist. I think there are ways we can bridge the gap because there’s so much misinformation, certainly here in Pakistan.” He’s someone who also is in poor health. He has a very bad heart, and his family has serious heart disease that runs throughout the generations. Most of his brothers and sisters and—

Q: I’m a little hard of hearing.

Katznelson: Most of his brothers and sisters have passed away because of heart attacks or some form of heart disease in their forties, fifties, or sixties. Saifullah’s now in his late sixties, so it’s pretty amazing that he’s lived this long, but he’s had heart attacks in U.S. custody. And so he’s been living under the constant fear of dying in Guantánamo.

He was first picked up—he was kidnapped in Bangkok, Thailand by the CIA [Central Intelligence Agency]. He was lured there, it seems, by his American partner—or he was certainly told by his American partner—perhaps it was true—that Kmart wanted to meet to discuss importing clothing from Pakistan. The partner said they were holding a series of meetings in Thailand with people from the region, could Saifullah go from Pakistan to Thailand—because the Kmart people weren’t traveling; they were bringing everybody to Thailand—meet with them there, and then hopefully arrange a deal?

“Great,” he said. Went to the airport, called his daughter as he was getting on the plane in Pakistan, “I love you very much. I’ll call you when I get to Thailand.” They never hear from him. They search everywhere. They go to the airline, yes, he was on the flight. But he just disappears. It turns out he gets off the plane in Bangkok, passes through immigration. He sees somebody holding a sign with his name on it, thinks that’s somebody that Kmart has sent.

The guy says, “Welcome,” takes his bag. They go down to the garage to go to the car. As they approach the car, on either side of the car are two vans. Guys jump out of the vans in ski masks, grab Saifullah, hood him, throw him into one of the vans, take him away. It’s the CIA. And they keep him in a secret Thai facility for several days—no food, no water.

Finally, they fly him to Afghanistan. He’s kept in CIA prisons in Afghanistan, interrogated, denied his heart medication, denied proper food and water, kept in sensory deprivation, put through sleep deprivation, all these things, and then taken to Guantánamo. He says, “I know this doesn’t look good at all, but I’m not guilty. I didn’t do anything. But if they want to put me on trial, please go ahead.” He’s always asked for a trial.

It’s interesting. He’s someone who over the years, more than any other prisoner, kept his faith in the American justice system. Even when I was losing my faith, he kept his. Because he lived here for many years, he knew the culture. He believed in American justice. And it was so hard for him to believe that it wasn’t actually going to work for him. There was just no way.

Even when we went to the court to try and get proper medical care because the military wouldn't provide it to him, the court wouldn't act. Either delayed or just wouldn't act at all and refused to help him. Offered some sympathy, but refused to actually take any action.

David Remes still works on his case, and Saifullah has said to him that he's just ready to leave in a box. Just die, just go. But Saifullah is someone who loves his family more than anything and desperately wants to be with them, and they of course want him back safely. In Pakistan, I met with Pakistani intelligence officials who, because Saifullah was in Guantánamo, had thoroughly investigated him, just like they had investigated all the Guantánamo prisoners who were left there from Pakistan to determine who they thought should go or stay. They had totally cleared Saifullah of anything. All the events that he was accused of took place in Pakistan, so they would know. They're pretty thorough, and they're also pretty brutal in many ways, and they're not the fairest in the world. Yet, they cleared him, and that should mean something. And the U.S. won't even put him on trial.

Q: The last one I have is Mohammed el Gharani.

Katznelson: Gharani, Mohammed el Gharani.

Q: The teenager.

Katznelson: Yes. Mohammed, he's a character. He's someone who taught himself English while he was in Guantánamo, pretty much. He was a man-child. He was just fourteen when he was

picked up. He was born and raised in Saudi Arabia, but a Chadian national. His family left Chad because there were very few economic opportunities there and went to Saudi Arabia, but in Saudi Arabia, there's great discrimination against people from Chad. So they made a go of it, but there weren't educational opportunities for Mohammed at all. He wasn't allowed to go to high school; he wasn't allowed to go to college because he wasn't Saudi.

He had a friend who was Pakistani who was also living in Saudi Arabia, who said, "We've got great opportunities for you in Pakistan. Why don't you go there?" And he worked it out. He was fourteen, but he got a fake passport that said he was slightly older, and he got permission from his family since they knew he had so few options if he stayed. He left the country and went to Pakistan. He met up with friends and relatives of his friend from Saudi Arabia who took him in, and gave him a place to live, and were starting to teach him English, and he was going to go to school there. Everything seemed to be going well. That was the summer of 2001.

Then 9/11 happens. Life continues in Pakistan. A couple months later, Mohammed's at a mosque in Karachi, where he was staying, and the mosque is surrounded by Pakistani forces. They arrest everyone who's in there who's not Pakistani, including him. He's got black skin; he stands out tremendously there. He's taken. He's taken up north to a prison, where he's then transferred—it seems bought by the U.S. There were huge bounties at the time. They were giving thousands of dollars for every prisoner. Dozens of guys were being passed over at this time. Mohammed was one of them. He was young and he didn't know what was going on. He had no way to contact his family. The Saudis, I think, were offered him by the Pakistanis and they said, "He's not Saudi."

They didn't bother getting in touch with Chad. So the Pakistanis sold him to the U.S. and the U.S. took him to a prison in Afghanistan.

The way the Pakistani policy worked at the time was if you were an Arab in Pakistani custody and your “home country” didn't take you—Saudi Arabia didn't take him—you were automatically handed over—sold—to the Americans. That was Pakistani policy. American policy was anyone handed over by Pakistan was then taken to prison in Afghanistan. If you're in a U.S. prison in Afghanistan and you're an Arab male, you're automatically taken to Guantánamo. There was no screening going on at any stage of that process, from Pakistan to Afghanistan to Guantánamo. There was some interrogation, but there was no screening. So once Mohammed was in that pipeline, he had no chance to get out. The Americans just paid a lot of money for him, so they weren't going to be very quick to release him.

So he was taken to Guantánamo. He was just brutalized there. He was subjected to what they call the “frequent flyer program,” which was every few hours they would move him to a new cell for weeks to keep him awake so he couldn't sleep properly. Beaten. Temperature extremes. He was used as a human mop to mop up his own urine—they dragged him through his own urine to mop it up. They kept him chained in incredibly painful, difficult conditions, blasting noise and music, subjecting him to freezing cold temperatures. He was just a kid.

He always denied everything. He always said he'd never been in Afghanistan until the U.S. took him there. Eventually, the U.S. came up with two other prisoners who said that they had seen Mohammed in Afghanistan. The two informants had pieced together facts about Mohammed that

they must have learned because he had been housed with them at various times. But their stories never matched. One said he was in one place at one time, and at the same time, the other guy said, “Oh no, he was up here.” One said he was part of Al Qaeda in England when he was only eleven years old—and living in Saudi Arabia. They clearly were making it all up.

He also was in trouble all the time in Guantánamo. He's a very strong-willed guy, and he was a kid. He was a teenager. He acted like a teenager, and if you act like a teenager in Guantánamo, you get the crap beat out of you. And the more the crap got beat of him, he's like, “Well, I'm not going to let you take me down.” He actually had an incredible will. They never broke him. Never broke him. Broke his teeth, but they didn't break him.

So every time I met him, he was a really funny guy. They used to call him “Chris Rock.” The guards called him Chris Rock in there. He taught himself fluent English. He learned to speak like an American teenager, which is what most of the guards are, eighteen, nineteen years old. He is a really smart kid who also struggled to sometimes stand down. So sometimes, they would try, just for his best interest, try and get him to calm down a bit about what was happening.

We finally in 2008 were able to get his case started again after the Supreme Court ruled that the cases could move forward. His case was one of the first ones to actually have a hearing, before a judge named Richard [J.] Leon in Washington. He was a quite conservative judge appointed by President [George W.] Bush. When it actually came time for the government to present their evidence, it just didn't hold up. Besides the contradictory witnesses, they didn't have anything.

They didn't have any proof against him except the jailhouse snitches. Nobody had actually seen him do anything except supposedly be at a training camp, but he wasn't at the camp at all.

The judge, to his credit, ruled that Mohammed had to be set free. The government just couldn't prove a case against him. So that was in the very end of 2008. He had been held since late 2001. It took many months for him to finally be released. I had worked a lot with the Chadian government on the case. Obviously, they're not a very powerful government, but I had been to Chad and I met with the Chadian embassy in Washington a number of times. I met with the prime minister of Chad in N'Djamena, the capital. When I went, there was one street in the whole city with streetlights that were on.

Q: God, that's a story in itself, isn't it?

Katznelson: It's the street where the president lived. Coincidentally, I'm sure. Everything else was just in darkness at night. The prime minister's office, when I went to see him—the contrast. The prime minister and the president were not from the same political factions, so they were just a deal of convenience rather than a true alliance. The power had been shut off at the prime minister's place because he hadn't paid his bills. It says something about the power of the electric company that they actually were willing to shut off the prime minister's power.

But it was sweltering. It was so hot there. There was no power, no AC [air conditioning]. We met with the prime minister in the dark. The parking lot outside his office was just dirt—and big rains there had created just huge gullies and craters. All these diplomats were coming in to meet with

him after us. You could see them coming in with their fancy cars, which were getting stuck in the mud, ankle deep, jumping around or even wading through puddles to get to his office. It was comical. It was amazing. He actually ended up being no help at all, but he was kicked out of office about a month later. The new guy was much more helpful because he was from the same political party as the president.

There was an issue about whether Mohammed would go to Saudi Arabia or would he go to Chad? Saudi Arabia didn't want him, yet again. Finally, Chad was the one to take him in, but his family lived in Saudi Arabia—his brothers, his sisters, his parents. He had extended family in Chad and they were willing to try and help him to the extent they could, but they were quite poor. It was very difficult.

He comes from a big tribe in Chad, the Goran tribe, and tribal links matter, but they're not a tribe that's in power. They speak a dialect of Arabic that is somewhat unique, so they're not as integrated as some of the other folks there. Some are. Some are university professors, and some are politicians. In fact, one of his relatives, who worked in the office of the president, actually helped us get a lot of meetings and things.

So finally he was released and sent to Chad, but the government there did not treat him as they had promised. He was not given identity papers for a long time, and he wasn't given working papers for a long time. So he was out but he was still sort of in prison. It was very difficult for his immediate family to come from Saudi Arabia visit him. They finally, many months later, were able to come see him. He's now gotten married, he's had a kid, is starting to rebuild his life, but

it's been a real challenge for him. He never got the education that he had gone to Pakistan to get so many years ago.

It is just kind of an example of a life cut off and cut short. A lot of times, I would talk to high school students or college students about Guantánamo, and his was one of the cases I would bring up because I'd just kind of say, "Imagine one of you, especially fourteen, fifteen year olds, you walk out of this room today and your life just stops. Everything you know now gets taken from you—everything. Your family, your friends, your home, your video games, your books—whatever, your sports, whatever you're interested in or excited about—and you're brutalized, and you're beaten, and you're taken to some far off place you've never heard of before where you don't even speak the language." I mean, it's almost unimaginable. And yet he lived through it and he went through it.

He still has physical problems. He's still got some debilitating injuries that he got from beatings. So he's a young guy, but he's got challenges ahead of him.

Q: One of the things that Reprieve did do—or I got Clive talking about it—was the attempt to find places for people to relocate. Were you involved in any of those relocations?

Katznelson: Definitely.

Q: Well, the Algerians?

Katznelson: Algerians, Tunisians, Syrians, Egyptians at the time. There were a number of people who just could not safely go home. They had been opponents of the government wherever they were from, regimes known for torture and abuse. Some of the men had been threatened by interrogators from their home countries who had come to Guantánamo. They really could not safely return home. Many of them had been cleared for release, but they had nowhere to go.

We spent a good bit of time going to European countries, particularly, to try and find safe homes for people. European countries were places where there were Muslim communities, where from a security perspective, the U.S. would feel comfortable. They're allies whom the U.S. has worked with over the years, and on the one hand, adhered to the rule of law, but at the same time had security services that could watch people if necessary, so to speak—at least they would check in with them. Places where the economies were in decent shape—they could potentially get a job; they could have a support structure; all these things. And most importantly, they'd be safe.

The U.S. at different times was more resistant than others, but at some points was cooperative. We would meet with the U.S. government as well to try and coordinate. But a lot of it was a real mix. Certainly when President [Barack H.] Obama was coming into office, everyone wanted to be his friend, and it seemed like a new dawn of American policy and relations, and European governments were much more open to resettling prisoners—more than they had been before. Before then, most of them had said: “Why should we help? The U.S. created this problem, let them fix it.”

A lot of work as a lawyer is about trying to find pressure points. And that was certainly true when we were working in the realm of politics and trying to convince politicians to do something which at first blush might not be in their interest, to try and find what would work to convince them that, in fact, it is in their interest—which is really what you have to do—not just that it's the right thing to do. But somehow, it's in their interest to actually do it. We had first started in the UK—put pressure on the UK—and as I said earlier put pressure on governments to say, “Your citizens cannot be treated this way,” or, “Your residents cannot be treated this way.”

But these men were different. These were people that didn't necessarily have ties to these countries, and we were just trying to have them taken in as refugees. A lot of it was trying to reorient people's thinking about Guantánamo. One of the things that we discovered after doing the relocation work for a while was that the State Department, when they were doing this work, was given one page summaries of the prisoners to give to the foreign countries, and the one page summaries were all the accusations against them.

So you'd read these, and of course, if you knew anything about the cases, you'd know that a lot of them were nonsense—but they looked pretty serious and they looked pretty scary, and there was almost nothing positive, except maybe that he was thirty-three years old or something. He'll be able to work, but you have to even extrapolate that. There was almost nothing positive in the materials. This was from the State Department, which was generally supportive of resettlement. But they would say, “We are hamstrung. This is what the Defense Department tells us and we don't have anything else to go on.” So it was such a self-defeating effort. So we'd have to reeducate people about, first of all, what they'd heard in the media—that everyone in

Guantánamo was an evil terrorist. It wasn't true. Then they would get from the United States more bad information about the very people the U.S. wanted them to take.

Then we'd have to tell them the truth about Guantánamo—about what it was like; about what the men had actually experienced there; about what they had or had not done; about what their job skills were; about what their life plans were; about what their support structure was—all the things that the government should have been doing if they actually wanted to resettle people, and we were having to do. We were glad to do it on some level because it would help the clients, but it was absurd that we are doing it, especially because there were restrictions on what we could say sometimes.

The client would say, “Oh, I have metalworking skills,” and the U.S. would censor that information. It would take months for us to be able to get it out. Finally, they say, “Okay, you can talk about it.” That's a pretty unique skill, like somebody who worked in construction before. That's a valuable skill. You can do that anywhere. You don't need to speak the language, right?

Anyway, it was a real struggle, but there was some real success. Germany, Ireland, Portugal, Spain, countries that took people in—England to some extent. Other very poor countries basically got bought off and were willing to take people. Albania was the first. But more credit to them, more power to them. They, in many ways, have done their best for the guys, a lot of these countries, though they haven't always been able to provide well.

But for the men, it's been a real mixed experience. Most of them have done very well. Some of them have felt like they're then trapped in that country—not unlike Mohammed el Gharani in Chad, where he didn't have the opportunity to work and he didn't have the opportunity to really rebuild his life—was under constant surveillance. Guys who had been cleared, guys who shouldn't have been in prison, there was no need to treat them like outcasts and prisoners when they got out, but it continued. And then they were isolated because they weren't necessarily around either other Muslims or other people who were from the Middle East, or wherever they were from.

Q: Did you have contacts, community groups, NGOs [non-governmental organizations], outside of government in Ireland, Portugal, and Germany?

Katznelson: Yes, some more than others. Usually, there was an NGO or two on the ground that we would be able to find. Sometimes Amnesty played a role. They have a lot of contacts and they were fantastically helpful. But in Chad, for instance, there was a local NGO that helped us set up. Sometimes there would just be one lawyer in a country that we could find who had some contacts and wanted to help.

Usually what would happen is you'd meet with at least a couple members of Parliament or someone in the Justice Ministry or something, and they would help you, put you in touch with someone else. You could hopscotch and find people that were useful. Sometimes it was journalists, and those were key—we couldn't have done any of this without the media. If journalists weren't interested, if people weren't willing to write stories, if they weren't willing to

fight with their editors to actually get something published—and get the full story placed, and not just a paragraph—we wouldn't have had anywhere near the success that we did. It really was key.

Q: I wonder if I can take you back to 2008 with the *Boumediene* [*Boumediene v. Bush*] decision and Obama's election. Was there a sense of optimism at that point in time?

Katznelson: Oh yes. Well, with the *Boumediene* decision, all of a sudden, it was nonstop because we had thirty-some-odd clients with active cases. And where we had not been able to do anything, all of a sudden, they were all moving at once. Logistically, it was not really possible for us to keep up. At that point, it was me, Clive, and Cori Crider, who's another lawyer at Reprieve—who's still at Reprieve now. And the three of us, we just couldn't do it. The government was turning over more information, but it was all housed in a secure facility in Washington, D.C. They were finally turning over what their case was against people, which we hadn't seen before. So we had to do investigation to the extent we could within security clearance. We had to litigate the cases, we had to go to court, go to Guantánamo, meet with the clients—you just couldn't do it all.

Q: I saw any number of petitions, things that you handed in in July, August of 2008. Did you have to move to the United States to do that, or did you—?

Katznelson: No, but we had to file everything from Washington.

Q: Right. I saw all the filings, yes.

Katznelson: Well, some of the things we could do remotely. But anything to do with the actual evidence, we had to go to Washington to do. So it felt like I was moving to Washington. I didn't, but it felt like I was living in Washington, basically. My girlfriend at the time, my wife now, she understood, but at some point, it's not fair to her. Thankfully, she's been incredibly supportive always of my work.

But it was a real challenge and the cases started moving forward, and there was positive movement, especially in the beginning. We were winning a lot of the cases. Not all of them, but a lot of them. The judges seemed to be considering these fairly, some judges more than others, but for the most part, being quite fair, really looking at the evidence, not being swayed by the rhetoric around the case.

The U.S. would open every single case—every single case—their opening statement would be about 9/11. And our clients, not a single client I ever represented was accused of having anything to do with 9/11, none of them. Of all the people in Guantánamo, there are six people who have ever been charged with having something to do with 9/11. Of the 779 people—six! But every single time, they talked about the towers. The emotional impact was dramatic. They do that for almost every terrorism trial in this country. Anyway, the judges were generally good.

Then Obama gets elected, and then he promises to close Guantánamo. We think, we're moving in the courts, we're moving here, it's going to stop. And in fact, the first thing that happened was

after Obama came into office and especially after he signed the executive order saying “One year from now, Guantánamo will close,” a lot of funders started calling Reprieve and saying, “Why should we keep giving you money? It's done. All the war on terror work is done. He's not going to render people to torture anymore; he's not going to torture them in CIA prisons; he's not going to have Guantánamo. We're taking your money away.”

Fortunately, we got them to at least wait and see what happens. I wish it had been right for them to take their money away. So there was a real sense of optimism. There was a sense of optimism in the camps because guys were being released. Politically, people were being released. The U.S. was really making a public effort to resettle people in Europe and elsewhere.

Then things started to go off the rails April, May of 2009 when the U.S. first was going to take the Uighurs—Turkistani prisoners, people who had been clear since 2002, 2003, but who were still in Guantánamo—Chinese Muslims who had been opponents of the Chinese government and couldn't safely go back, who no country had wanted to take because that meant standing up to China. The U.S. was going to take them and put some of them in Virginia. They had been cleared. They didn't do anything. Shocking how little evidence the U.S. had against them.

There was a plan, and at the last minute, Frank [R.] Wolf, who was the local congressman, got word of it and scuttled it. It just kind of blew up from there, mushroomed from there, where it became a political “not in my backyard. Don't bring terrorists into my backyard.” These guys were not terrorists. That was clear from everyone in the U.S. government that had examined the case since they had been brought into custody, and these guys couldn't even get resettled.

The U.S. refused to take them in, and that really limited what other countries were willing to do. They would say to the U.S., “You won't even take two guys, three guys, and you're expecting us to take guys? We didn't do anything wrong.” That wasn't always true. Oftentimes, those countries had done wrong, and we played on that a lot. They had let the CIA fly in and out of their air space; some of them had housed secret prisons; some of them had given intelligence information, knowing that someone was going to be tortured and abused based on it. So we played on that a lot. But these countries weren't running Guantánamo.

Obama sets up this task force to try and reach a decision as to what's going to happen with everybody. At that time, it still did seem like if they weren't going to be released, they were going to be prosecuted, probably in civilian court. Both civilian and military prosecutors were going down and meeting with people, trying to strike deals, and trying to work like prosecutors do. They get a low-level guy to be willing to plead guilty and testify against someone higher up. It seemed like at least the wheels of justice were moving.

As you got closer and closer to that one year mark, they weren't moving forward on the criminal cases. There was this turf battle between the military and DOJ [Department of Justice] over who would get to prosecute the men—and both of them wanted the feather in their cap. And even for lower-level people, there was an inertia, and nobody was mediating this dispute and saying, “Okay, now you get this one, and you get that one.” And they were just fighting, fighting, fighting, and nothing was happening.

At the time, I think they could have resolved a lot of these cases where people would have pled guilty just to get out. And some of them had gone to training camps. They would have said, “I plead guilty to material support for terrorism,” even though they had nothing to do with 9/11 or anything like that.

Q: The figures I have is that in the courts, after *Boumediene*, of the first fifty cases, thirty-six were granted habeas.

Katznelson: That sounds right.

Q: Now those would have been—the first trials would have been—those would be granted habeas.

Katznelson: Those men would have just been released.

Q: Just been released.

Katznelson: Just been released. So if you win your habeas case—

Q: Oh, you're released.

Katznelson: Free to go.

Q: Okay. So this is the next round.

Katznelson: This would be the next round. This would be people who hadn't litigated their habeas case yet.

But even some people who it looked like they might win their habeas case, that they probably would win their habeas case, they were still willing to take a plea if it just meant they could leave. That would be sort of a win-win for everybody, frankly. The government gets to say, "This guy pled guilty. He was involved in terrorism." At the same time, the guy gets to go home. He's already stigmatized enough; it's not like having that conviction is going to make a bit of difference. Anyone who says he was in Guantánamo, they're going to believe you're guilty anyway.

Then you have the whole debacle of trying the guys accused of 9/11 here in New York, and how that completely—just the Obama administration handled it terribly and didn't invest the political capital. What they should have done, I think, is they should have just brought the guys here, which they did with Ahmed Ghailani, the one guy who did get brought here to stand trial. They just brought him here and announced it after he was here, and then he stood trial. There was no security issue whatsoever, and he's now in prison.

They should have done the same thing with the 9/11 guys. To this day, I don't know why they didn't do it. Then when announcing their plans in advance didn't work, they step back from civilian trials. They still hadn't mediated this turf battle—and then nothing was happening. There

was still some hope that maybe there would be a burst of activity before the year ended. But the year deadline passed. Fewer and fewer countries were willing to take people in. By then it had become clear that Obama wasn't so different from Bush—he announced his support for indefinite detention—so people weren't as anxious to be his friend, so there was even less political reason for them to take people in.

You could feel the sense of desperation or desolation in Guantánamo. It was right around that time that I actually left Reprieve. Many months earlier, when it was still hopeful and it seemed like things were going to end—we had decided that we were going to move back to New York, for personal reasons. We both wanted to—

Q: By that time were you married?

Katznelson: We were married, yes.

Q: With children? Any children yet?

Katznelson: Not yet. We got married that summer, so we decided a few months before we got married that we were going to move to New York. Even at the last minute before I left, I was trying to negotiate deals with prosecutors. None of those came through, none of them.

When I decided to leave England, I thought that chapter of my life was finally closing. I never thought that I would go back to Guantánamo cases, that I would have to do national security-related work. The hope was Obama was different. This was an aberration. Utterly untrue.

Q: This might be a good place to break.

Katznelson: All right, good.

[END OF SESSION]

3PM

Session Two

Interviewee: Zachary P. Katznelson

Location: New York, NY

Interviewer: Ronald J. Grele

Date: March 13, 2013

Katznelson: Let me know when you're ready.

Q: This is an interview for the Columbia University Center for Oral History with Zachary Katznelson. Today's date is March 13, 2013. The interview is being conducted in New York City.

Katznelson: Good morning. It's a pleasure to be here on this beautiful sunny day—sort of sunny day.

Q: Terrific. I wonder if we could start by me asking you if you have any thoughts about what we talked about last time.

Katznelson: It was a very interesting experience for me to kind of think about things. You don't usually think about life linearly. So it's interesting to approach it that way. And I know I jump around sometimes when I speak. So hopefully it's somewhat coherent at least. I don't know if I have anything particular to add. If you have follow up questions, of course I could answer.

Q: Oh, I do, of course.

Katznelson: Let's dive into your questions.

Q: Well, sometimes we interview people and they say, "I should have said that, or "Shouldn't have said that." So this is a chance to say, "I should have said," or "I shouldn't have said."

Katznelson: Right. I think generally, I'm pretty comfortable with what I said.

Q: You'll get a chance to correct and add. In fact, we'll encourage you to add material later too.

Katznelson: Okay.

Q: But I have some kinds of follow-ups. I wonder if we can go back now to the habeas cases that came after the *Boumediene* decision. Generally, what is your take on them? Was that a successful method of dealing with it or were there criticisms of that process?

Katznelson: I think initially, it was a very successful process. As you said when we last spoke, the success rates initially were pretty astounding. And it actually, I think, was proof positive just of how poor a job the government had done over the years making sure they had the right people, if two-thirds of the cases roughly—the initial cases—where the prisoners were winning. And the courts were saying there's absolutely insufficient evidence—even at a very low standard of proof—to hold to show this person was involved in terrorism and is an enemy of the United States.

This was eight, nine years after people had been initially captured. And that was, even for me—and I had seen the inside—to see that time and again and again—the same results, the kind of constant really undermining of everything the U.S. government was saying, it was somewhat surprising. It was disappointing.

So that's all in the District Court [U.S. District Court for the District of Columbia], in the trial court level. And the trial court judges weren't given very much guidance at all by the higher courts, including the Supreme Court, as to what they were supposed to do. And I think they were trying to be as fair as possible. And some of them were more anxious than others to get involved, more eager to actually move the cases forward. I think some of them, as humans, didn't necessarily want to have to decide whether or not someone should be in prison.

But then when the cases went up to the Circuit Court [U.S. Court of Appeals for the District of Columbia Circuit], to the appeals court, things changed. And the Circuit Court, there were some judges there. The Circuit Court doesn't have a full complement of judges right now. There have been a number of vacancies over the years that have not been filled by President Obama—or even by President Bush before him—but particularly by President Obama. That means that there's a smaller number of judges, so you tend to get the same judges hearing the cases over and over again. And there's a set of—

Q: Judge [A. Raymond] Randolph comes up again and again.

Katznelson: Again, and again, and again. And it almost seems—it's supposed to be random assignment—it almost seems like it's rigged. But I have to trust they're not doing that. Okay. But there are certainly judges there, including Judge Randolph, that seem to have an agenda. And the agenda is that the Supreme Court was wrong to ever give these men rights—that the Circuit Court will try and limit those rights so severely that they're essentially meaningless.

The Supreme Court said the men have to have a meaningful opportunity to challenge their detention and the evidence against them, and the appeals court has basically said, “Any evidence the government provides has to be taken at face value. It has to be given a presumption of reliability.” It's very difficult sometimes for the prisoner to undermine the government's evidence. You may not be told the source—maybe that's too highly classified. But even in cases where they have undermined it, the court still has found against the prisoner. And every inference that could be made is being made against the prisoner. And they've also really questioned the judgment of the lower court judges, which is not how it's supposed to work.

The way, traditionally, a trial works—and this is like a mini trial, what actually happens before a District Court judge—is that the District Court judge is the one who actually sees the witnesses, who actually sees the evidence, who can kind of see body language and demeanor and tone of voice, in addition to the words that people speak—and really can judge credibility. The appeals court judges, who are just looking at how everything appears on a sheet of paper, they lose all of that, so they're not well placed to decide whether or not someone's telling the truth. That's for the trial court judge.

But the appeals court judges in Guantánamo cases have taken it upon themselves—the conservative judges—to sit as if they were in a trial court, and always to say the prisoner is lying—even though they didn't hear him speak, even though they didn't listen to his testimony, even though the trial court did and found it credible. And that is a real flip, not just—forget about Guantánamo. That's a real overturning of the way the court system is supposed to work. I think it's a real danger that Guantánamo cases will creep into other criminal cases and will really help undermine the system. That is a potential disaster. We'll see how it plays out. But for the Guantánamo prisoners, the court system now really is not a way out. It's really almost impossible for them.

Q: I was struck by Judge [Gladys] Kessler's ruling—talking about a mosaic—that what the trial judge has is the ability to see a mosaic. Of course, Randolph just demolished that argument there.

Katznelson: Well, the government also though likes to call their own theories a mosaic theory, where they would basically say, “We don't really have proof that this person was involved in anything, but there are lots of little suspicious facts and if you kind of put them together into a mosaic, you would see a picture of a terrorist,” right? So this person knew Mr. X; Mr. X knew Mr. Y; Mr. Y was involved in something nefarious. And you would kind of have these webs that they would try and weave, sometimes which were quite tangled, and some which were quite frayed.

But the government would always say, “You build all these pieces, pile them together, and there's too much there—the weight of the tiles is too great. You can't simply just let them go.” I

often referred to it as the kitchen sink method, where they'd try and throw whatever mud, whatever dirt they could find—throw against the wall and hope something sticks.

And examples are, if they had witnesses that they knew had lied countless times about other prisoners and that the government's own psychological report said they had mental health problems, all kinds of problems, they knew they were not credible witnesses. The Department of Justice in arguing a Guantánamo case would still put that information forward—put that witness forward and say, “Well, the judge can decide whether or not he's credible.” And that's nonsense. A prosecutor has his own independent responsibility not to put forth evidence that's clearly unfair or unreliable.

Q: Well, why would the Justice Department even appeal? Given that Obama wanted to clear out Guantánamo, why would they appeal these decisions?

Katznelson: It's an excellent question. It would have been an easy way out in many ways. The court had clearly listened to the evidence. The court had decided that there wasn't sufficient evidence to hold these people in prison.

If the Obama administration as a whole truly believed that Guantánamo should close, absolutely they should have done it. Then they had political cover. But they also had legal cover—someone that actually looked at the evidence.

I think there has been a debate inside the Obama administration for a long time. And there are hard liners, first of all, who don't want to ever undermine the executive's authority to hold people, and that worried that certain rulings could be seen to undermine that. Even the notion, I think, frankly, that judges could question the executive's decision—some people weren't comfortable with that.

Q: Well that depends on which argument that the—the situation allowed judges to, in effect, enact the laws.

Katznelson: Well, I think that's going too far. I think judges were looking at evidence.

Q: Well that was his argument for a separate court.

Katznelson: Right. But the reality is that our regular trial courts deal with national security issues all the time. They deal with classified information all the time. There's no need for a special court.

If you look at all the cases that took place, hundreds of cases were filed. Dozens and dozens of cases were litigated. There's never once been an allegation of a leak of classified information. There's no need for a security court. These were just fine.

Q: Yes. We'll get into this question later on when we talk about the real hard liners down at—the hard cases down at Guantánamo about whether or not the military commissions are a way to go

or the civil courts, or some of other third course. But we'll get into that. But now let's take you back to London and your decision to come to the ACLU [American Civil Liberties Union].

Why?

Katznelson: So it wasn't so much the decision to come to the ACLU. That came later. It was a decision—a personal decision, really—to come back to New York. And so my wife—

Q: Well, why? What was the attraction of New York?

Katznelson: Well, New York has always been home. My wife is from London. But she had lived in London most of her life and was ready for a new adventure. I was kind of excited by the prospect of being closer to family and being back in New York for a while. And so we thought we'd try it.

We move back here—we got married in the summer of 2009. We went away on our—we worked until October 2009. Then we went away on our honeymoon. And on the way back, came to New York, looked for a place to live, fortunately found one on the last day we were in New York, in Brooklyn. Then we went back to London for several weeks to pack up, spend some more time with her family, and then moved to New York in January 2010.

Q: What did you think you were doing?

Katznelson: We didn't know.

Q: What were your plans?

Katznelson: We didn't know. We didn't know. We started looking at possibilities at jobs, kind of different opportunities. But we didn't have any—neither of us had jobs when we moved here.

Initially I did some work for Reprieve, contract work from here. Then I started doing work for the Equal Justice Initiative, which is based in Alabama, which I had worked with in law school on death penalty cases. This time around, I did work defending people who, when they were juveniles, were given life without parole sentences, which the U.S. Supreme Court had found unconstitutional. These were non-homicide crimes, people who were fourteen, even as young as thirteen, fourteen, fifteen, sixteen years old when they committed a crime. Usually a serious offense—kidnapping or rape. But they were kids. And sometimes they weren't, actually, even the one who had done something, but they were on the scene or they were part of the idea and the plan.

But an older kid, usually who organized it, was sophisticated enough to reach a deal and plead guilty and then to testify against other people, including the younger kid. The older kid would get a few years in prison and this less sophisticated, younger kid, who was usually quite malleable and influenced by the older kid, would be stuck with a life without parole sentence.

So by the time the Supreme Court ruled a couple years ago this was unconstitutional, there were hundreds and hundreds of cases like this around the country. But most of the men had served

twenty, thirty, forty years. And so they were in their forties, fifties, sixties now—some of them quite debilitated with health issues, some of whom basically had never known a real life outside of prison. The Equal Justice Initiative, which had argued the case up to the U.S. Supreme Court and won, then set about trying to identify the men who could get help from this ruling and make sure they actually had legal representation and had the chance to go before a judge and say that you need to give us a new sentence.

I worked primarily in Louisiana on cases. The organization is based in Alabama, but the cases were in Louisiana. And so I would travel down there, meet with men in prison.

Q: Mostly African American?

Katznelson: A real mix, but yes, mostly African American. A large number had been convicted of—particularly in the rape cases, the rape victims were white women or white girls, so the racial dynamic was ever present. These cases in the sixties, seventies, eighties in Louisiana—chances are you weren't going to get such a fair hearing if you were a black kid accused of raping a white woman. Obviously, sometimes it was true. They had done it. But a lot of times the men professed innocence. And it was—

Q: Can you give me an example of one or two of the cases that you handled?

Katznelson: Sure. I worked on a case with a black guy named Terry Clark who, when he was sixteen—maybe he was just seventeen—was accused of raping a white neighbor. And he always,

always maintained his innocence. He actually had an alibi that night. But the woman insisted that it was him. She knew him. He was black, she was white. And he went to prison.

At first, it seemed like maybe he was guilty. As time went on, it turns out the woman was having an affair. She was having an affair, it seems, with a black man—she was white and with a black man in Louisiana. Her husband was white. Her husband was at work one night. Her father-in-law was driving past the house and saw a strange car in the drive way, and was going to go try and find out what was going on. The woman came up with a story that a black man had driven up, had said he had run out of gas and need some money, could she help? She said he had then come in and raped her, and that it was Mr. Clark.

It turned out it was the man she was having an affair with who was over and that she wanted to cover it up. So she was never raped at all, let alone by Mr. Clark. But he was the fall guy. He had never had trouble with the law before. He had never had any problems before. But he was the one she happened to choose. He was the one.

His family had hired a lawyer. They try to defend him. But this woman stood up in court and said he was the one. And a white woman accused a black teenager. Done.

In his case, it was really interesting. His case is from a parish that's the only parish in Louisiana that has a black district attorney. Every other district attorney in Louisiana is white. They're elected, but in Mansfield Parish, he's the only black district attorney in the whole state. I spoke to him. He went and did his own research. But I think it was quite clear that first of all, no crime

had actually been committed, let alone by Mr. Clark. Even if there had been somehow, he had already done thirty years. He was seventeen at the time of the crime. This district attorney, to his great credit, said, "You know what? Enough." He said, "I don't think I can go out there and say, 'I think she made the whole thing up.' But let's make a deal. Time served. He can go home with his family."

Most district attorneys weren't that open, right? But he said, "I want to do the right thing." I sat down with him. I had lunch with him. There's of course a different method of working in Louisiana and the South than there is up North, right? It's more of a personal relationship thing.

He was a genuine, kind person. We reached a deal. We went into court. They brought Mr. Clark from prison, drove him there with two marshals. He stood up and the judge talked to him. It was actually a very quick process, almost shockingly quick; I think a whirlwind process for Mr. Clark and his family who were there in the courtroom. But within ten minutes, the judge had ordered his release.

Q: And how old was he when he was—?

Katznelson: By then he was forty-seven or so—forty-seven or forty-eight. They then had to— they couldn't release him immediately from the spot. They had to take him back to the prison and process him. But the next day, he stepped out of prison and into the arms of his family. He's back home, and every six months or so I check in with him.

He's doing okay. He's got incredible family support, which is unusual for some of the men. He's somebody who has real job skills, auto body skills. He worked in a car repair shop; thousands of hours repairing cars in the prison. Fortunately, it was a prison with job training program. He would train other prisoners on the cars. So he's someone who can get a job outside. And he's still in reasonable enough health and young enough that he can work.

It's a real contrast to some of the other men with whom we worked. One man who was in his late sixties and blind and did not have—he had some family support—but it wasn't clear the family would be able to give him as much support as he needed. He was kind of released in much more uncertain terms, but he was actually finally let go.

It's been uneven. A lot of the work in that regard depended on the individual district attorney and whether or not they're willing to do the right thing, even with the Supreme Court saying that they need to. There were some judges in Louisiana who would deny the petition for a new sentence, one or two of whom said basically, “Who's the Supreme Court to tell me how to run my courtroom?” Well, they actually are allowed to tell you. And that's kind of their role to tell you how to run your courtroom. But it was kind of like, who's this Washington northerner telling us what to do?

Q: This unevenness is so disconcerting.

Katznelson: It's disconcerting. I've been a lawyer now I guess for thirteen years. So I have some experience, not a tremendous amount, but some experience. I think the number one thing I've

learned is that it's all about personalities. It's about the personality of the judge. It's about the personality of the lawyers, sometimes the personality of the client.

And the law is to be manipulated, to be used. And everyone plays with it, right? I mean, it's my role to try and demonstrate—as much as possible—that the law favors me. But if a judge does not feel comfortable in their gut—in their head too, but really in their gut—as to what they're going to do, they won't do it. I think it's very rare that a judge will feel so boxed in by the law that they'll do something that they don't want.

Particularly, when it comes to criminal justice or terrorism issues, it's even more important because someone is worried either they'll release somebody who will do something if they get out, or sometimes, on the other hand, what if I send someone to prison and they didn't do it?

But so much of it is about the personality. And if you happen to draw a judge who's open, you have a chance. If you happen to draw a judge who's closed, it doesn't matter what the law is. You're going to lose. So it's all about unevenness and personality.

Q: So how long did you stay down there?

Katznelson: I did that work for probably about five, six months. Then my son was born and I decided to take some time off.

Q: Whose name is?

Katznelson: Whose name is Azai. Azai was born in February 2011. I wanted to spend time with him. So I took, really, almost four months off and stayed home. I was fortunate because I was working on a contract basis, so I could just kind of say, “Done.” And they knew that. EJI knew that it was a possibility.

Q: Living in New York?

Katznelson: Living in New York. My wife's a community organizer. She went back to work after three months. I was fortunate enough actually to just have a month of taking care of Azai and being home, which I really cherished. During that time, the ACLU approached and offered me a position here at the National Security Project.

Q: How did they find out about you?

Katznelson: We had worked together somewhat when I was at Reprieve. There were a couple cases that we had teamed up on and exchanged information, including a case against Jeppesen [*Mohamed v. Jeppesen Dataplan Inc.*].

The CIA set up rendition flights, secret flights that would transport people without any judicial process or oversight—often under abusive or even torturous conditions—to other countries where they would be held in secret prisons and usually tortured. The company that set up the planning for those flights was a Boeing subsidiary called Jeppesen. Some of my clients at

Reprieve had been subjected to this. And so we joined with the ACLU on the case. The ACLU brought the lawsuit, but our clients joined in the lawsuit. So we had worked together. And they knew of Reprieve and my work from a distance as well.

Q: Right. And what was the job description?

Katznelson: So the job description—

Q: As you came in, where were you going to fit into this?

Katznelson: So I'm in the National Security Project and—

Q: But you were hired for the National Security Project?

Katznelson: I was hired for the National Security Project. The ACLU is divided into different projects. There's the Criminal Law Reform Project; there's the Immigrant's Rights Project; there's Women's Rights. There's various ones. And this one is the National Security Project.

I was brought in to kind of focus on two main issues. One, which I have, unfortunately, quite a bit of experience, which is the accountability for torture and abuse by the United States government. Trying to think about creative ways that we can attack what the U.S. did through their CIA rendition program—and other abuses that took place not in the United States, but overseas. To see if we can get justice maybe in the courts of those countries.

But also to look at cyber security, which was something new to me. But it was a niche that the ACLU needed filled—was somebody to address cyber security issues that often conflict with national security. And to see if there was a litigation angle, or advocacy angles or legislative angles for cyber security issues that need tackling.

Q: My impression is that Reprieve is a very small place—kind of a buccaneer almost—going here, going there, doing these things. And the ACLU is a much larger place, much more formalized, with formal job descriptions. How did you fit into the ACLU method after having the Reprieve experience?

Katznelson: It's a very different working environment, no question, and a very different organization. Reprieve in many ways was a more nimble organization because it was much smaller, but also an organization that was constantly having to fight for its reputation and for someone's ear because it was new—because it was small. The ACLU has been around for over ninety years and is really the lion of the civil rights/human rights community in the United States. And so when the ACLU speaks, people listen.

People may hate what the ACLU says on various issues, but they listen. And they have no choice but to listen. That wasn't the case at Reprieve. It's an amazing thing. You know the National Security Project is only really eight, nine people, depending on the time of year and whatnot. And there's really an outsize impact, I think, that the ACLU National Security team has on issues like drone strikes—for a long time on torture in Guantánamo, on overseas prisons, on warrantless

wiretapping, whatever it is—for a small team it really has an impact. A lot of that is due to the years of great work that people have done here at the ACLU. We didn't have the history at Reprieve.

At Reprieve it was much more client-focused than here. Here it is more issue-based and principle-focused. Obviously at the ACLU we have clients, and sometimes they're facing some real difficult situations—but there's more of an ability to step back and really be strategic about where you're going with cases. We always tried to be strategic at Reprieve, but sometimes the caseload was so overwhelming, you just had to get things done. Get them done, get them out the door.

One of the judges in the Guantánamo cases used to say to me, "The perfect is the enemy of the good." And sometimes that's true, right? Sometimes you just need to get it done and move on because you have thirty other clients—they need your help too. And this is not going to be your best work, but you're going to get your point across and you're not going to make any egregious mistakes. And it's going to advance the case and the cause, generally. Just do it. Here at the ACLU, I think we have the luxury, frankly, of being able to be more strategic and more careful and more precise sometimes.

Q: And your caseload is different.

Katznelson: It's very different. It's very different. I have some individual clients, but most of the issues—cyber security for instance—it's an issue-based discussion and portfolio rather than a person-based one.

Q: Well, in one sense, Reprieve was very politically involved in England, in particular. It's more like CCR [Center for Constitutional Rights] would be here, whereas the ACLU is not politically involved in the same sense.

Katznelson: Right. So for instance, the grassroots interaction. You know, the ACLU as a whole, because the ACLU has offices in every state, is involved in many ways in the grassroots. But the national office where I'm based, we don't get involved in protests. Maybe personally, somebody may go and occasionally, people may volunteer as legal observers, but it's never an organized effort by the national office to be involved in grassroots protests, rallies, or things like that. Whereas at Reprieve, we did it all the time. And we would often organize them.

So for instance, I remember one of my first days there, there was a company called the Hiatt corporation [Hiatt and Co.]—which is based in Birmingham, and makes the shackles that were used in Guantánamo Bay. We knew that because British prisoners would look down at the shackles and it would say “Hiatt. Made in England.” And they would just be like, “What? The UK is saying Guantánamo violates people’s rights, and my cuffs are made there?” I mean, the irony was powerful.

So we went up there to Birmingham to protest. There was a band—I can't remember the name of the band unfortunately—but they had written a song called the “Shackle Shuffle” about Guantánamo. Clive, the head of Reprieve, got this idea that we were going to—before I even arrived—that we we're going to go up there and we were going to protest. We were going to have the band come on a flatbed truck outside the Hiatt factory—which wasn't a particularly big factory—and protest there on the street, sing their song. And people would dress as Guantánamo prisoners in shackles, in the Hiatt shackles.

So, you know, it was day three or four or whatever since I'd started, and Clive said, “Okay, we're going up to Birmingham. Will you dress as a prisoner, and will you be shackled?” And so there I was several hours later. It was my first time ever driving in the UK. So I'm trying to drive on the wrong side of the road with the steering wheel on the wrong side and everything. It mostly worked out fine.

We get there. I'm hooded and shackled while the band plays their song. We got some decent media coverage out of it, especially as Birmingham is a relatively quiet place. I eventually did quite a lot of media work in England. But my first appearance in the media was actually a shot—unfortunately—of my groin, because I was shackled with my hands right in front. Anyhow, that picture was my debut to the British media.

But that's indicative of the way that the office worked. We had a volunteer there who later became a staff person just like I did—volunteer first, then staff person—where his first assignment as a volunteer was to have someone pretend to force feed him. Clive even asked him,

“Are you willing to have a tube shoved up your nose?” Ultimately they didn't do it for a variety of health reasons. But it was just that notion. That would never happen here at the ACLU—never.

That's always been Clive's MO [modus operandi] and it became Reprieve's MO to kind of think about pressure points—visual, legal, political, whatever they are. I think the ACLU is much more—absolutely about pressure points, but different ones, and more traditional, small “c” conservative pressure points. Ultimately, the way that you obviously change and manipulate power is to try and find the levers and find those pressure points. But it's just a different approach.

Q: When here at the ACLU, when you sit with your colleagues talking about legal tactics, is the conversation in a sense a little more limited than it would have been at Reprieve, since at Reprieve you would get so many oddball kinds of suggestions for tactics or strategy? Do you get the same kind of stuff here?

Katznelson: No. But also it's somewhat of a different conversation. Part of it is also—in the UK, it's a much smaller community—much more a country—and the political world is much more accessible. And so you can do certain things that might grab attention, where here you might be more easily dismissed.

I think that not all the tactics that work at Reprieve would so easily work in Washington. And many of them are still tried. So, for instance, when Code Pink recently protested in the [John O.]

Brennan hearings against drones and they were thrown out—that's the type of tactic that Reprieve might have used, right? Probably not exactly, but it wouldn't have been unheard of to do something to grab attention. Probably not disruptive, but it would have been outside the hearing or something.

The ACLU does have a whole advocacy arm, but it's more geared towards Facebook and media campaigns and email, and a level of technological sophistication that Reprieve couldn't achieve, in a large part, because of size and resources. So it's a different way to reach out. One reason that Reprieve had to kind of be more stunt-oriented was because they had to grab attention—because they couldn't maintain a sustained campaign over months and years. The ACLU can and so they're able to have different strategies that Reprieve couldn't dream of.

Q: What were the cases waiting for you when you came in?

Katznelson: It's interesting. There weren't very many actually waiting for me. They were portfolios that had—

Q: No files were given to you?

Katznelson: Very few, because the issues that the team wanted to address here they hadn't yet been able to address because of lack of personnel and resources. The torture and accountability work, for instance—there had been a tremendous amount of work inside the United States by

ACLU folks, including the National Security Project. But every single one of those cases was being shut down by the courts.

So the courts were saying, “for national security reasons”—it's always at the urging of the government—“for national security reasons, we will not allow these cases to proceed beyond even very beginning procedural stages.” So we'd never reached the merits on any of the cases—court case after court case after court case we were losing. And again, not on the merits, just on these procedural grounds. But it meant no prisoner, no victim of torture, was having a day in court. It just wasn't happening.

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Another example is Thailand. Thailand was the site of the first prison the CIA owned and operated, so to speak. It was operated with the cooperation of the Thai government, but the U.S.

ran it and their personnel were the ones inside. Thai folks may have been on the perimeter, but the ones getting their hands dirty this time were American.

It was first time the U.S. really experimented with a lot of the techniques that they use, what the U.S. government has called “enhanced interrogation techniques”—what I think most people, when they actually looked at them, would call torture—and which legally are torturous. They really were testing them out in Thailand. So for instance, Abu Zubaydah, who was the first prisoner whom the CIA inflicted these techniques on—they hadn't yet established what the legal limit was for sleep deprivation. When does sleep deprivation become torture? If you deprive someone of sleep for long enough, their body breaks down and they have mental breaks, hallucinations. They can't control their temperature. Their digestive system, everything starts to fail. Your body needs sleep.

They kept Abu Zubaydah awake for over two weeks straight. Two weeks straight he was kept awake. They kept him awake by blaring music at him, loud music with strobe lights; by throwing freezing cold water on him; stripping him naked—keeping him naked almost the entire time—chained in incredibly painful positions. He was beaten. It was kind of whatever they needed to do to keep him awake, they did it for two weeks.

According to the CIA, he somehow managed to maintain some level of bodily and mental cohesion—it's not clear if he had both, but of at least one—through eleven days. Then they continued beyond that. But they decided then the legal limit for anybody else—the torture line,

they said—was eleven days. So for anyone else, going forward, the CIA declared it wouldn't be torture if they didn't keep them awake for more than eleven days.

But eleven days—I mean, that's more than a week and a half of no sleep. It's ridiculous that you consider that to be the limit for torture. Every reasonable study has found the human body just can't bear that level of abuse and stress. But even then, they went beyond eleven days for Abu Zubaydah. They were just experimenting on him.

There were two psychologists the CIA hired to implement these techniques, and they had never interrogated anybody in real life before. They had no real-world interrogation experience. They had done research. Their notion was you had to essentially—they would say—not break people, but you have to make people think they had absolutely no possibility for anything to ever get better unless they gave the interrogator what they wanted.

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Katznelson: The ACLU has over the years unearthed thousands of thousands of pages of U.S. government documents that demonstrate the torture that took place—including about Abu Zubaydah in particular, and other individuals, but about him maybe more than almost anyone else. But at the same time, Abu Zubaydah is still a prisoner of the United States in Guantánamo Bay. Anything he has said to his lawyers—and I'm not his lawyer—but anything he said to his lawyers is presumed to be top secret and has to go through a government censor before the lawyers can talk about it.

Anything he has said about his CIA treatment, custody, location, where he was held—all of that is censored. The only thing that lawyers have been allowed to say is that he was in fact in CIA custody for four years. Where, how, what—none of that has been allowed to come out publicly. So they've muzzled him completely. He's not able to even say what his memories of it are, his thoughts of it, his experiences—none of it. It's Orwellian, really, that government says they can control his thoughts because they hold him prisoner.

What's interesting is that a number of men who went through similar CIA experiences were released. They're not in U.S. custody. They are free to speak to whomever they want. I mean, they may be under pressure from their home government or whatnot not to, but they've given newspaper interviews. They've talked. Binyam Mohamed, for instance, in the UK has spoken out. Laid Saidi in Algeria has spoken out. Khaled el Masri has spoken out about his experience in prison in Afghanistan.

The idea that those men by virtue of their freedom can speak, but the U.S. can muzzle someone because they happen to be in a U.S. prison without charge—without trial, incidentally—is really almost totalitarian. But it's what the U.S. has done so far.

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Q: Yes. You've also been involved with Guantánamo with the military commissions and the trials down there in Guantánamo. And you yourself were an observer to some of those?

Katznelson: I have been, yes. I've been down probably three or four times now while at the ACLU to observe the military commissions, including for Hurricane Sandy down there. Then I came back here and experienced it again a week later.

But I also worked from another side. When I was at Reprieve, Binyam Mohamed, our client, was before a military commission. And another client of mine, Said Boujaadia, who was from Morocco, was a witness at a military commission hearing in Salim Hamdan's case, who was Osama bin Laden's driver. He testified at that hearing.

So I have seen it from different perspectives. The ACLU position is to be a neutral observer, an outside observer. We don't represent the prisoners before the military commission.

Q: Now is that an official categorization of your role there if somebody signs off—

Katznelson: An “NGO observer” is what we're called.

Q: An NGO observer.

Katznelson: Yes, and—

Q: The military commissions allow that—

Katznelson: —allow that to happen. In what they say is this part of their transparency and openness for the hearings, they allow NGOs to come in and watch.

Q: And you have the security clearance?

Katznelson: You don't need security clearance.

Q: You don't need it?

Katznelson: No. I do have it, but it's not necessary because the observers are actually not in the courtroom and are not privy to any classified information. The way the courtroom is set up is that there is a glass sound-proof wall at the back of the courtroom, behind which is the gallery where people can sit—members of the media, family members, victim's family members, NGO observers, other military personnel, whoever maybe there.

If anything happens in the courtroom that involves classified information or suspected classified information, the censor inside—well, we thought inside the courtroom, but it turns out actually outside the courtroom—hits a button and white noise gets blasted into the observing area. They will in fact then kick us out of the observing area if something is continuing. I suppose the fear is someone could read lips or something like that.

Now everything is also on a forty second sound delay. So even though you're sitting right there and you're seeing everything live, you don't hear everything until forty seconds later to give the censor time to work. And there has been, obviously, a real problem, which came to the fore a few weeks ago where there was a censor sitting right next to the judge who was—he thought—the one who was pushing the button. And all of a sudden, the sound got cut from the courtroom when one of the lawyers was speaking. He said something totally innocuous. He was actually

saying the name of a motion that he had filed. That was all. But it involved secret prisons. And so as soon as he started to read the name of the motion, the sound got cut.

The judge turned the censor next to him and said, "Did you cut the sound?" He said, "No, I didn't. It wasn't me." All of sudden it became apparent that the CIA was operating an external censorship mechanism that the judge didn't even know about. The judge was furious. I mean, the judge is supposed to operate his own courtroom. Even in a national security context, he's supposed to be the king of his court. He wasn't at all. He had no control.

It lets this whole issue, which is still ongoing now, not just about who controlled the external feed—so what people outside could hear—but also whether or not the CIA was listening to the lawyers and the communications between lawyers and clients—whether in the courtroom or in their cells or wherever they meet. It became clear, there was testimony that in fact all the meeting rooms have listening devices. The question is just whether they're turned on or not.

The military folks who testified—they weren't CIA people that testified; they were military people who testified—said, "We don't know if they're turned on." To my knowledge, they're not. But they wouldn't be the ones who know. It's clear the CIA is the one who's controlling, not the military.

So it's a military judge. He had no control over his courtroom. The CIA controls it. And the CIA was not called to testify. So the next hearing is coming up in a couple weeks, and it's going to be

really interesting to see whether or not any of this has been sorted out, whether the military judge wants to even grapple with it.

Q: This is a hearing on the procedures, not on a particular case?

Katznelson: It's the procedures, but in the context of the September 11 case—five men who stand charged with some involvement in September 11. These preliminary matters, which most likely would not come up in a regular federal court, are consuming every minute of the military commission process. One thing I've seen as an observer is that you get bogged down in these procedural matters, which would either take five minutes or not come up at all in federal court.

Now we're about year and a half into the pretrial hearings for the 9/11 case and we haven't even begun to touch on meaty matters leading up to a trial. Forget about the trial itself. Forget about jury selection and actual trial. That is years away! And the idea that we're getting any kind of justice for the victims of 9/11 is just a farce, a real farce at this point.

Q: What's your impression so far of the military in the handling of the commission?

Katznelson: Oh, the commission itself?

Q: Yes. Is it General [James L.] Pohl who's—?

Katznelson: Yes, Colonel Pohl is the judge.

Q: Do you feel he's a fair guy?

Katznelson: I think he's caught in a very difficult place. I think he's trying to be fair. I think it was shown by his real anger at what the CIA was doing that he doesn't want anyone to manipulate the court. I think he's kind of at times bent over backwards to try and appear fair to the point where his courtroom has been unruly, shall we say, where he hasn't kept a tight rein on things. But he's doing his best under very trying circumstances. He's not given a lot of guidance. He's not told whether even the Constitution applies in the case. Of course, we think it does. He's really limited in what he can do. He's under orders though, I'm sure. It's quite clear the idea that these men would ever be acquitted is unacceptable, right? And of course, if they're guilty, it should be unacceptable. But we need to go through the process and make sure these are the right guys and this is the right outcome.

If Guantánamo's has taught me anything, it's don't believe what the government tells you. And these five guys maybe have done something absolutely horrific, and if so, they should pay the price. But the government needs to prove it.

So I think Judge Pohl is doing his best. I think the military, though, is making it up as they go along. They've created this whole thing. They've dug their own hole and they've now jumped into it—and they're having trouble getting out.

They created this made-up court that had never existed before. They kind of tried to pick and choose what areas of the law they liked from the military court system, from the civilian court system, and then came up with brand new ones when they didn't like either one.

None of it really works properly. Nobody knows how it works. It looks like they're making it up as they go along. I'd say under the Obama administration—forget about all the nonsense under George Bush and how bad that was, where evidence from torture could get in for instance. Even now the rules still are far too loose. Coerced evidence can come in as long as it was coerced from somebody who's not the defendant. So if you're another witness and we coerce you, we can bring that in. You could coerce the defendant, actually, right on the battlefield. But that's a different story.

But under the Obama administration, they've changed the rules multiple times. The lawyers will head down to Guantánamo and the night before the hearing the government will give them a several hundred page new manual and say, “Here are the new rules for tomorrow.” What?! And it's not one time. They've done it multiple times.

It's clear they're literally making it up as they go along, and that just adds to the sense of illegitimacy. It really undermines America's image to the world. This is the most important terrorism case, probably, of our lifetimes and we can't get it right? That's just shameful. It denigrates American justice. It denigrates our image. It denigrates our ability to get things done. And frankly, it doesn't provide any form of justice to the victims.

Q: Yes. Did you read the op-ed piece by Neal [K.] Katyal arguing for a third system of trial—a third trial system—?

Katznelson: Some kind of security court.

Q: —in the executive court of some sort to try these five? Not through the regular courts and not through the military commissions, but to establish a third.

Katznelson: I don't understand why that's necessary. Our civilian court system is more than capable of handling these cases. It's handled, since 9/11, probably five hundred or so terrorism cases—no security breaches, no issue that someone didn't get a fair trial.

I don't think the federal court system is in anyway a perfect system. It's got some serious flaws. But it works most of the time. There is no reason why these men can't be tried in federal court. None. Except for politics—it's just about politics.

If they had been taken to federal court in 2010 when the Obama administration was going to do it—2009 or 2010—if they had just done it, we probably would have had a trial already. And they'd be sitting in prison for the rest of their lives. Maybe they'd even be facing the death penalty, which I oppose. But maybe that's what would have been put in place. It would have been done. It would have been done.

And now we are in 2013—years from a potential military trial. Ridiculous.

Q: Well the argument's been made that in the two or three cases where the military commissions have actually tried someone, they have gotten off relatively lightly—Omar Khadr got eight years or something.

Katznelson: He got eight years. But that was a plea deal. In Salim Hamdan's case, for instance, he got sixty-six months for his role as a driver for bin Laden. But they gave him credit for time served—he had already been imprisoned for years. So he went home pretty soon after that.

And yes, it's less than he would've gotten in a federal court. If he had been convicted there of the same crime, material support for terrorism, he probably would've gotten at least—he probably would have gotten thirty years. He may have gotten credit for time served. But the issue is not just the sentence; it's the legitimacy and finality of the outcome.

Salim Hamdan's conviction has since been overturned by an appeals court because he was convicted of something that wasn't actually a war crime. The military commission can only try people for war crimes. And material support for terrorism is not a war crime, but that's what the government tried him for. Nor is conspiracy to commit a terrorist act, which the government has charged—and convicted—a number of other people for. It's not a crime under the law of war. It may be a crime under civilian law, but then they should have been in civilian court, right? I mean, it's again where the government made its own lives difficult.

There are some issues where some of the things they want to try people for—they haven't been very creative, let's say—and they should have tried them in civilian court. But now they have a real problem because the military commission—if they lose the ability to try people for material support or conspiracy—most of the people in Guantánamo can never be tried before a military commission because they haven't actually taken an act to hurt anybody. They are accused of going to a training camp, for instance, for which you could be tried for material support, usually, in a civilian court. But if the civilian courts are off limits and you can't bring those charges in a military court, what are you going to do with these people?

Q: Aside from these five—god, I can't remember the name of the person who wrote the op-ed piece saying that they were better off at Guantánamo than in the American prison system—

Katznelson: It may be—

Q: —which is a strange commentary—

Katznelson: —Jennifer [C.] Daskal.

Q: —on the American prison system.

Katznelson: Yes. I think conditions in Guantánamo have improved over the years for most of the men—not for all of them, but for many of the men. I mean, hunger strikers are still treated brutally. People who are on disciplinary status are still brutalized.

But most of the men live communally. They live in a prison, but they're able to spend time together. They have cells. They go back to their cells at certain hours. But they are able to access outdoors regularly. They have meals together. Still, they don't have access to a lot of opportunities—they don't have job programs or many education programs or art programs.

So it's, in many ways, it's similar to a lot of more moderate prisons in the United States. If they came to the U.S., it's not clear what conditions they'd be held under. But the main problem is—forget about the day-to-day conditions—that's not really the issue. I mean, it is an issue, obviously. But the real issue is that they're held indefinitely without charge or trial.

What that means to someone mentally to never have any idea of when you might ever get out—and there's now really no court process that you can go through. The military commissions system is incredibly uncertain because the charges have been thrown out against certain people. There aren't crimes to try these people for. They can't be brought to the United States under congressional legislation to be put on trial or even be put in prison. There are onerous conditions which the Obama administration could choose to overcome and to say are met to transfer somebody, but they have chosen not to. And so the men are just sitting there. They're being warehoused. And more than half the men are already cleared for release—more than half. They could go home tomorrow—today, if the Obama administration showed some political guts and there was a country willing to take them.

The mental anguish is always there. Even if you're in prison and you have a very long sentence, you at least know how long you will be inside. And you can plan and kind of think about your life and think strategically and think about how you're going to handle it. This is just the military—

Q: Do you have any strategy for that?

Katznelson: How you deal with that?

Q: Yes. What is your—to my mind, it's almost like this impediment roadblock. There's nothing moving. Nothing can move. The Congress and the courts, it's just all closed down.

Katznelson: Yes. I think it's sort of like a twisted fun house with mirrors where it seems like everything is blocked off, but it's not. The images are distorted, I think, in the way things are often told in the media—that Obama wants to close Guantánamo, but Congress has closed the door on him and there's no real option. It's not really true.

Congress has left options for the president. For instance, while he has to certify before transferring anybody that the person essentially would be under some type of security regime to ensure they don't commit a terrorist act—he can certify that. And there are certain countries, like Britain, for instance, where fifteen people have gone back without a single problem—that is a trusted ally with strong security in place where they've handled people with some serious accusations against them without a hitch. And there's one prisoner—actually really two—in

Guantánamo who should be back in the UK, and one whom the UK has said, we'll definitely take back—Shaker Aamer, whom we've talked about. And the U.S. has chosen not to certify his transfer, right? That's a political decision. Even if they had trouble certifying everything, they can waive it for national security reasons.

President Obama has clearly said that closing Guantánamo is in the U.S.'s national security interest. That the men he would be transferring are people who have unanimously been cleared by the U.S. intelligence and security community. And that these are men that shouldn't be held. President Obama could send them back to anywhere he wants to with a waiver saying, "I order that this person be sent back regardless of whatever conditions Congress wants to try to impose." He's chosen not to. And so it's a matter of choice now, not law. It's a matter of choice.

So the question is, what's the political will? How do you get Obama to have some guts and use some political capital to actually do this? A lot of that may depend on his desire to have a certain legacy. Is his legacy going to be someone who utterly failed to close Guantánamo? He's got three and a half years to figure that out. Hopefully it will take a lot less time than that. I really hope we're not in this position near the end of the Obama administration.

Q: A little off the topic—you interviewed [Lakhdar] Boumediene.

Katznelson: I did, yes.

Q: How did that happen?

Katznelson: So he's free in France. He's somebody whom I hadn't met him before I interviewed him. I knew his lawyers and I knew his story—he's someone who truly was wronged by Guantánamo in many, many ways. He was never involved in anything terrorist-related. He was ripped away from his family. He had been cleared by the Bosnian courts—he had first been picked up in Bosnia at the U.S.'s behest. He was cleared by the Bosnian courts, and as he's being released from jail in Bosnia, the U.S. literally grabs him off the street, kidnaps him, and sends him into torturous conditions. And he ends up in Guantánamo. And he didn't do a thing.

The anniversary of Guantánamo was coming up. It was the eleven year anniversary of Guantánamo, and I was thinking, what's missing from a lot of the public story? The voices of the men in Guantánamo.

A lot of them don't speak English. That's one barrier. But also the men who are out are not in the United States and they're not very accessible. If you think about, over the course of history in other countries where accountability has come about for torture and wrong-doing—a lot of times, there have at least been people alive and able to speak, and in the country to speak. In Argentina, for instance, whether it was the mothers who marched or the people who were ultimately released or the families of those that disappeared, they were there. They could speak. They had voice.

That's lacking in large part for Guantánamo prisoners. And so we thought let's try and at least tell one of the stories, and maybe this is a way that we can reach some people. And so Mr.

Boumediene's story was one I wanted to help bring to the world. So I got in touch through his lawyers, and a colleague whom I worked with for a long time worked as the interpreter. Mr. Boumediene was gracious enough to speak with us and tell a little bit of his tale. I hope it was interesting for those who heard it.

Q: Have you seen the movie Zero Thirty—?

Katznelson: Zero Dark Thirty, I haven't seen it, actually.

Q: No?

Katznelson: No. I'm probably one of the few people in the community who hasn't. But the reality is, I've seen enough torture and abuse depictions and heard enough stories for my career. I don't like to spend my spare time watching it.

Q: I watched Jose [A.] Rodriguez [Jr.] on CSPAN one night. It was just incredible.

Katznelson: Yes. I mean, he's slimy, duplicitous—he's someone who needs to own up to what he's done and be held responsible for the crimes he's committed. He's one of the key orchestrators of the torture program. It was with his entire blessing.

And then he destroyed the evidence of it—destroying videotapes from Thailand of water boarding and other abuse. And he's someone who—I think he kind of sees himself as a cowboy.

You see him driving—in his *60 Minutes* interview, he's driving around in his convertible, and the sunglasses, and kind of cavalier. But these were people's lives. He overstepped the line and he broke the law.

Q: Pardon?

Katznelson: He overstepped the line and he broke the law. He may have thought he was doing something to help the United States, but he's really hurt us. They didn't even get anything positive out of it. They didn't get information that disrupted plots out of the torture. It wasn't even “successful.” It's just a failure on every front, and a real offense to American values. And so he's not a hero in any way, even if he sees himself as such. He's a disgrace.

Q: You know the death of [Adnan] Latif almost kind of sums up the whole ball of wax down there doesn't it?

Katznelson: Yes. Well, it really does. Latif was someone who had always had a difficult life. He had a serious head injury when he was a teenager, and he had a lot of treatment for that, but it wasn't successful. The government of Yemen initially sent him to Jordan to be treated. He got some help. But he still needed additional treatments as he was getting older. He was finally told that he would get that treatment in Pakistan.

The person who brought him there was like, “Okay, you need to wait for me here,” and I think brought him to Afghanistan at one point to await treatment. But he always maintained he had nothing to do with terrorism and never attended a training camp or anything like that.

He was someone who was cleared for release multiple times by the U.S. government—first by the Bush administration, then by the Obama administration and by a federal court, by a District Court who heard all the evidence against him and who found that simply there was not sufficient evidence to justify holding him. When the Bush administration and the Obama administration cleared him, those were unanimous decisions by the security personnel looking at everything in his file that he should not be in prison.

He had been cleared for release again and again. First, just a few years into his incarceration—he arrived in Guantánamo in the early 2002—one of the first prisoners to arrive. He was cleared just a couple years later. But he was still held.

Then a couple years after that, he was reviewed and cleared again and still held. The Obama administration comes in, clears him yet again; still held. The District Court says he shouldn't be there; still held. Every time that this happened, someone would have come to his cell and said to him, “Here's the news. The panel has cleared you. You can go home.” “The judge has ordered your release. You can go home.” “Another panel has cleared you. You can go home.” And every time he would have gotten his hopes up. And every time it meant not a thing. Nothing changed. His living conditions didn't change. He certainly didn't go home. He never talked to his family. Nothing. Finally, the Court of Appeals reversed the decision of the trial court that he should go

free. And it was just, what's left? In his mind, there was no chance he was getting out. He was from Yemen and the Obama administration has stopped any transfer to Yemen because they say it's politically unstable. And so where was he going to go?

Mentally, he was breaking down, clearly—we know that from talking to his lawyers, from talking with people that knew him, from his fellow prisoners. The stress and the pressure and his knowledge that he being held despite being cleared time and time again. He always said he was innocent. Apparently enough of the government officials believed that even if they didn't think he was innocent, that he wasn't a threat to anybody. But it didn't matter. He just stayed there. And he tried to take his own life a number of times—slashing his wrists, slashing his neck.

Ultimately, he was found dead in his cell and the U.S. government says he killed himself. Maybe he did. But you have to look at how he got to that point. Who's really responsible for that? And in essence, we all are.

Q: Will you be going back to Guantánamo when the military commissions rev themselves up again?

Katznelson: I'm sure I will. We've had our second son recently so I'm not eager to travel too much right now. I'd much rather be at home and spend as much time with the family as possible. But at some point, I'm sure I'll be back.

Q: What are you doing on the other side of the charge—the privacy and surveillance matters?

Katznelson: I am incidentally still representing one prisoner in Guantánamo is his habeas process.

Q: Who do you represent?

Katznelson: Mohamedou Ould Slahi, who is a Mauritanian prisoner, who was initially slated to be tried before a military commission but the prosecutor assigned to the case resigned rather than prosecute the case because he says—it's a guy named Colonel [Stuart] Couch—because he said the evidence was gained from torture and that he refused to proceed, even though his superiors were telling him he should.

It's a very interesting case. He's someone who was picked up and interrogated numerous times by his home government, by Mauritania. He was questioned in Canada, where he'd been living for a while. Those governments cleared him and said, “We don't have any evidence against him.”

But the U.S. took him anyway and sent him to Jordan to be interrogated. The Jordanians then said, “There's nothing against this guy.” Jordan is not exactly a lightweight when it comes to things like this. The U.S. refused to believe that. So they took him to secret prisons run by the CIA, took him to Guantánamo, tortured him—really tortured him there—including making him believe that his mother would be brought to Guantánamo and raped if he didn't confess, in addition to sleep deprivation, and nudity, and beatings, and temperature extremes, and denial of food and water and things like that.

And so he's really, really been brutalized, to the point where this colonel was saying, "I don't care what he told you during those interrogations. Look what you were doing to him. He'd say anything. Anyone would say anything to make you stop."

So his case is slowly, slowly, slowly working its way through the courts. He had a habeas hearing before Judge [James] Robertson, who was the District Court judge. He won. The judge ordered his release. The government appealed. Not surprisingly, the Circuit Court reversed.

Interestingly, they didn't reverse outright. They sent it back down for a new hearing, which usually they don't do. But in the meanwhile, Judge Robertson retired and it was assigned to another judge who then had too heavy a caseload. It was assigned to the third judge who has done very little, if anything, on the case.

And so it sits. There are a number of pending motions before him, but we're not close to a hearing right now. We hope we have one. But it's just been sitting. He was initially picked up in Mauritania in October 2001. So he's been in prison since then, in various places—in Guantánamo since 2002—just waiting. He's just waiting for some kind of justice.

Q: Well in a case like that, it really is good that he has the ACLU because you can devote the resources necessary for time and time again on and on and on.

Katznelson: Well actually, while the ACLU—we do represent him—but his chief lawyers and the people who are owed the real credit for his case are two pro bono lawyers from New Mexico, Nancy Hollander and Teri [Theresea M.] Duncan, who have been working on the case for years, for free. They have been paying out of their own pockets to fly to Guantánamo, to travel as necessary, to go to Washington, D.C. to litigate the case. It's incredibly expensive. Hundreds of thousands of dollars they've paid. And they're criminal defense lawyers—they're not wealthy folks. They've been doing this for years now. The ACLU joined later to focus on the torture issues and constitutional issues that come up in the case, but the real credit and the real resource dedication has been by those folks.

Q: In the surveillance side—what are you doing there? Gosh, it's complicated, isn't it?

Katznelson: On the surveillance side, the more you learn the more reason there is to be paranoid.

Q: It's so complicated.

Katznelson: Cyber security is my main thing. I mean, I do some work on other privacy and surveillance issues—so wiretapping issues, for instance. There's a secret court that oversees the ability of the United States government to wiretap international communications, where one party may be in the United States or be a U.S. citizen, but the other party is overseas. It's the Foreign Intelligence Surveillance Court. It's been meeting since the late seventies, but it's so secret that it has only published three opinions that it's issued over the years.

The government applies hundreds and hundreds of times a year to put warrants in place. Maybe the court turns down four or five. I mean, it's really almost a rubber stamp. But we believe that over the years, the court has greatly increased—in part because Congress has loosened the law—the ability of the government to wiretap not just specific individuals, but wide swaths of the population.

So it's kind of a search not for individuals, but for—they're looking for a needle in a haystack. They say, “We want to listen to the whole haystack,” whereas normally you'd have to listen to the needle. I mean, that's what a wiretap is supposed to be. You're not supposed listen to everybody who's in the neighborhood. There's no reason. You don't have any reason to suspect any of them.

But kind of this idea of gaining as much information as possible and hoping to find patterns is—a lot of this is called big data often, right? Just gather as much information and look for the patterns. It's something that certainly before 9/11, but much more after, has been kind of one of the really main goals of the security apparatus of the United States.

It's not usually successful. In fact, I know of very few, if any, examples where it actually was successful—where they kind of plotted it out. The idea being, for instance, if you look at terrorist events and you try and look at what the—if you look backwards—obviously, unfortunately, after they happen—what did the terrorists do leading up to it? If you can find similar patterns where they rented cars and then they drove here and then they drove there. And they bought fertilizer.

And they did this. And they did that. Then if you find other people doing that, you can stop them in their tracks.

The notion is if we know everything—there was something initially proposed under the Bush administration, a program called Total Information Awareness—that was the actual name that they proposed. Where they wanted to know everything—your phone calls; your emails; who you visited; who you talked to; what you bought; what books you read; what movies you saw; whatever it was, what your health situation was, anything, everything—what medications you were on. And they could find patterns and spot terrorists.

The problem for this kind of analysis is, thankfully, there aren't very many terrorist attacks. And they don't follow a set pattern, right? It's not like every time the terrorists do the same thing. In part, because we sometimes are more successful at thwarting that type of attack, they change their tactics. So there isn't a pattern to look for. And yet they're trying to find a magic terrorist pattern. It doesn't work.

Making it worse, what program are they going to use to crunch all this data? Computer programs don't exist to mine all this and somehow come up with a magic terrorist pattern, right? There's too much data. There are three hundred million people in this country. Forget about people all around the world. Think about how much information that is when you try to figure out everything they are up to. No computer system is powerful enough to deal with that.

So what you have is a security system that is drowning in data—drowning in information. Leading U.S. counter-terrorism officials say, “You know, we get thousands of reports every day from analysts who are saying maybe we should look at this, maybe we should look at that. There's no way to know which is legitimate, which is a real threat.”

One of the guys was saying he has multiple computers on his desk—three computers, I think—where different email chains are coming in and coming in constantly. You can't even know where to look, let alone decide what to read. It's utterly detracting from our ability to actually fight terrorism because you don't know where to turn.

Even so, the government is trying to increase data flow to the government without a capacity to really handle it or use it wisely. And then they have it—and there are very few limits as to how long they can hold it, what they can use it for. It's a real scary notion that the government should know everything about your life. Why should they? What gives them the right? I mean, you're not suspected of anything.

Q: There's also sort of a legal limbo. There really isn't an enormous number of precedents upon which you can base the law in terms of kind of legal strategy, is there?

Katznelson: Yes. A big problem is that it's all secret, right? For instance, the FISA [Foreign Intelligence Surveillance Act] court I was talking about—the court about international surveillance—their opinions are secret. The ACLU has tried a number of times to try and get them to publish even just the legal reasoning they have. Forget about the facts—they may be

classified. Just give us your legal reasoning. But that's classified too. They won't release even the legal arguments.

The Obama administration, when they came into office, said, "We will review FISA court opinions and release as many as possible." It's four-plus years later. How many have they released? Zero.

On the cyber security front, there are a lot of scary headlines and scary stories about people's personal information getting hacked and stolen and government agencies and corporations having their secrets taken. Think about how much of your life is online. My medical records are online at my doctor's office. My email, obviously; my banking records; my education and school records, my whatever it is—my tax records, it's all there. It's all online.

The idea that someone, if they just got my passwords—all of a sudden would have access to all that and they could impersonate me. They could get my social security number. It's a scary idea. But that's not a national security issue, right? It's a criminal justice issue.

There are some national security threats out there. So a foreign government could hack into the Defense Department, in theory, and steal fighter jet plans. Or potentially, a power plant that is linked to the internet could be manipulated somehow and they could shut off the power.

Q: We see these things in the paper all the time.

Katznelson: Right. But the thing is it's never happened. There's so much hype, but it has never actually happened. The only thing that's come close is Stuxnet, which was a U.S. program, I believe—U.S./Israeli, it seems from reports—that got inside the Iranian nuclear power plant and destroyed some of the centrifuges they were using to create nuclear material.

Now the way that was transferred was on a jump drive, a flash drive—

Q: Oh, really?

Katznelson: —and it's an interesting case because it's a secure system, right? It wasn't linked to the internet. Their system wasn't linked up to the internet. Frankly, nothing of what's called critical infrastructure—power plants, water treatment plants, electrical grids—none of that should be connected to the internet. It's convenient, so you could operate it remotely. But it's not safe.

So you know what? If you want to operate one of these plants, you should have somebody sitting at a desk inside the plant, so if they got to do something, they push a button and they do it, right? They don't do it from thousands of miles away. Some things you need a person to do right then and there. But human beings are fallible. And we are curious. And we make mistakes. And that's usually how a hacker succeeds.

There have been experiments done on this. For instance, say you go outside the building of the ACLU—someone drops a flash drive outside on the steps and just waits to see what happens.

And it's got a virus on it. It's almost guaranteed that somebody will eventually pick that drive up and plug it into his computer to see what it is.

Maybe it's a good samaritan because they say, "Oh, I want to see whose it is so I can return it to them." Or maybe they're just curious. As soon as they plug it in, open up a file—done [snaps fingers]. The virus is now on the system. You can infect a closed system very easily—remotely—essentially because of human error.

So it's a danger. It's a real worry. A drone base for the U.S. military was hacked this way; it was infected with a virus because somebody used a jump drive on an outside computer and then brought it inside the closed system—which they're not supposed to do—plugged it into the system and then all of a sudden—

Yes. So there are real worries. But at the same time, there hasn't been a terrorist attack by cyber. It hasn't happened that way yet. It doesn't mean it's not possible. But it's still hypothetical. Yet, in Congress, the way the debates go, and the way national security hawks often put it, and what the national security establishment—which has a lot at stake here—says is that we're facing another cyber Pearl Harbor. Interestingly, though, the examples they give are where the New York Times website got shut down, or Sony got hacked and people's information was stolen.

Those are problems. But that's not Pearl Harbor. And they don't have any examples of Pearl Harbor. And god forbid—hopefully there never will be one. The real problem is Congress and the security establishment are using these scary possibilities and upsetting headlines to try to get

more of our personal information. They argue, once again, that the more they can see, the easier it will be to find computer viruses and protect systems.

In cyber security, when there's a virus, there's something called a signature. It's the code that's embedded in the program that's the actual virus. You can distinguish signatures from each other. Furthermore, if certain people constantly put out viruses, they have codes that are usually endemic to them, so that you can recognize it's them who's doing it—not always, but sometimes.

So if you look for these signatures—that's what you need to detect a virus. Obviously, the signatures change all the time so it's not like you always know what to look for. But to find a signature, this computer code, you don't need everything else that's around it. So for instance, if your Gmail account or Hotmail account has a virus in it, in order for me to attack the virus I don't need to read your emails—because that doesn't show me the virus. I need to see the code underneath it. I don't need to read that you tell me something more personal, right? Somebody emails, “I'm having real difficulty drinking again,” or “I think my wife is cheating on me.”

Whatever it is, it's nobody's business, right? I mean, maybe if someone's life is in danger, somebody should know. Fine, but the government doesn't need to know someone's having an affair. The government doesn't need know that they're having psychological treatment, right? It's none of their damn business. The idea that they need that to get to a virus is a complete disconnect. But that's exactly what a lot of the proposals in Congress want to make happen.

Q: Yes. I follow you along the way, but to a point—how did you bring yourself up to speed on all of this to get where you can say these things now? Could you have even imagined that when you took the job?

Katznelson: No.

Q: How did you bring yourself up to speed on it?

Katznelson: Talk to as many people as possible that actually have real knowledge.

Q: Yes. I talk to my grandson.

Katznelson: Yes. I mean, I consider myself a reasonably sophisticated computer user. But I am in no way a programmer or a technology geek or—I just don't have that experience, right? I'm a lawyer.

Q: Is there someone here who does?

Katznelson: There is now. We've hired a technologist—someone who's actually based in the Washington office—but a great guy named Chris Soghoian who's done a lot of work on the crossover and the intersection between civil liberties and technology issues. He's a brilliant guy. He comes from the computer world but has thought about the civil liberties implications of it all.

But even before he joined—which is probably about six months ago now—he was a resource. Other folks similar to him were resources—people in the industry; people who were independent; people who were hackers; and then other lawyers who have been working on these issues for a long time. And there are a few other organizations. There aren't very many organizations that work on these cases. But the Electronic Frontier Foundation, the Center for Democracy and Technology—they do work, and they were invaluable resources as well.

And then I just read a lot to try and keep up to date. And I try and always—I suppose as much as anything—look for the agendas that people are trying to advance. Whether it's positive or negative, and try and make sure that—there are kernels of truth in probably most of it, but sometimes it's just a kernel. It's not a full-fledged—it hasn't bloomed in the way that they say.

Q: What are you working on now?

[SECTION CLOSED UNTIL 2015]

Katznelson: The cyber security is reawakening in the new Congress. The proposals which were made last year, some were voted on but none ever made it into law. And so they've come back—some good, some bad, mostly so far bad. They're invasive of civil liberties in ways that are not necessary for security. And so that's taking up time. And then there's always issues like Guantánamo that crop up and kind of—

Q: Any final thoughts on all of this?

Katznelson: I think as I mentioned at the end of last time we spoke, when I left Reprieve, I didn't think I would do this again. It was a time of hope. At the time it seemed like Guantánamo was closing, that national security policy was going to change. The Obama administration was not going to be as antagonistic to civil liberties and civil rights. They were going to treat people fairly. People were going to get trials. They were going to be open.

I think initially, there was great relief in the community and the funders that work on the issues. That was then. Very little of what we hoped has happened. When it became clear that it wasn't happening, there was disbelief. But then also a real fatigue set in. We have to fight these battles all over again, even as the wrongs get more entrenched and mainstreamed. I think it's been a real challenge to get people to actually care about it—in the media, particularly, because the media is

so key in exposing this and kind of letting people know it's still happening. It's much harder to convince editors to tell the stories. People have moved on in many ways.

Now drones, for instance, are the hot issue. And in many ways, well they should be. I mean, it's a critical issue—hundreds of people are dying all around the world without any proper oversight and sense of responsibility really. But for instance, the men in Guantánamo are largely forgotten.

I think it's a real challenge for us; one, to find new ways to approach these long-standing issues, especially when there is so much fatigue on certain issues. But also on the privacy and surveillance issues, we have to counter the fear/what do I care kind of notion. A lot of people say, “It's a scary world so the government should protect me”—there's a fear element. But people also think, “Well, if they want to snoop and read my email, fine. Let them. I have nothing to hide. They'll be bored. Let the government do what it needs to do.”

I think we have to find different ways for people to think about these issues. How would you feel if your neighbor was reading all your mail? Every day before your mail was delivered, the guy next door would read it all and then he would give it to you. How would you feel about that? Would he have any right to do that? And why is the government any different? In fact, it's even worse because they have the potential to actually do something profound to you based on that information.

Finding ways to speak about issues, to kind of engage the American public—and the world public. It's a constant challenge in this work. It was a challenge from day one in Guantánamo. To

go from these are evil horrible terrorists, who gives a damn about them—let them rot. To a point where actually most people believed that Guantánamo should close and that the men inside were human beings, right? But now, we've lost some ground there.

Privacy and surveillance is something that, as the security state grows, it becomes also more accepted because you're used to it. You're used to going through TSA [Transportation Security Administration] security. You're used to having security cameras everywhere. You're used to having all these things where it kind of becomes a part of life. So you don't worry about it as much. And slowly your privacy shrinks. The private sphere, the ability to dissent, shrinks.

One case I worked on, a case of a University of Michigan professor named Juan [R.] Cole who—it started with a *New York Times* story where a former CIA agent said, “Juan Cole was known inside the CIA and the White House to be a critic of the Iraq war.” He's a Middle East historian, but he deals a lot with current events. He publishes a blog about it, and he'd been quite critical of the Iraq invasion and the way the U.S. was handling the war in Iraq. So, according to this former CIA agent, the Bush administration called up the CIA and said, “Dig up dirt on Juan Cole. Does he drink? Does he womanize? What does he do?” That would be totally, utterly illegal—because the CIA is not allowed to spy on Americans. And they are certainly not allowed to spy on Americans against whom there's no allegation that they're involved in terrorism or of any danger to national security. The government just doesn't like them.

So this guy came forward, to his credit, after he retired. This was in 2005, 2006 this supposedly took place. And so we litigated a Freedom of Information Act request to try and get to the bottom of everything.

Juan Cole said, “If you think about it, if they were doing this to me—I'm a professor. I have a blog. People read it. But it's not like—I don't have a massive readership. And I'm on TV. So I have some public footprint, but I'm not this big guy. If they do this to me, what are they doing to other folks? How many other people are they doing it to? You think I'm the only one? You really think I'm the only one they did this to?”

It's that kind of notion where if the government is allowed to get away with it, it becomes accepted for them to do it. Eventually it becomes accepted for things like this to happen to people. It takes people brave enough to stand up and say no. But also it takes organizations like the ACLU that are willing to actually fight—even when it's not popular; even when it's difficult. Organizations like Reprieve that take on causes and clients who are hated and say, “You know what, even in this case, it's not right.” And then succeeding and getting people to change their mind—being part of that has been an amazing privilege. Hopefully I can continue.

Q: Terrific. That's a good place to stop. Thanks a lot.

Katznelson: Sure. Thank you.

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