

THE RULE OF LAW ORAL HISTORY PROJECT

The Reminiscences of

Karen J. Greenberg

Columbia Center for Oral History

Columbia University

2013

## PREFACE

The following oral history is the result of a recorded interview with Karen J. Greenberg conducted by Myron A. Farber on February 10 and February 15, 2012. 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.

VJD

Session One

Interviewee: Karen J. Greenberg

Location: New York, NY

Interviewer: Myron A. Farber

Date: February 10, 2012

Q: This is Myron Farber on February 10, 2012, interviewing Karen Greenberg for Columbia University's oral history project relating to Guantánamo and related matters.

I have here, Karen, a piece that you wrote on September 27, 2007, called "Relax, Mitt," and you begin by saying, "Take a breath, Mitt." Well, actually, you're quoting Mitt Romney at the top, saying, "Some people have said, we ought to close Guantánamo. My view is, we ought to double Guantánamo." Then you say, "Take a breath, Mitt. Whatever you may think, your bravado statements about doubling the size of Guantánamo—part of your bid to lead the American people faster and farther into the Global War on Terror—are by no means completely off-the-wall."

Now, are you going to reprint this, without changing anything now? It looks to me like nothing would have to be changed.

Greenberg: That's very interesting. How sad is that?

Q: Karen, what is your current position?

Greenberg: What do I do now? I'm the director of the Center on National Security at Fordham Law School.

Q: Right. And you've had this position since—?

Greenberg: September.

Q: Right. And prior to that, you were—?

Greenberg: I ran the predecessor to the Center on Law and Security at NYU [New York University] Law School.

Q: Right. For how long?

Greenberg: I founded it in 2003.

Q: What did that center do, basically?

Greenberg: That center did a lot of things. It was an attempt to keep people aware of the more pressing issues involved in the administration's handling of the war on terror. Originally, what I thought I was going to be doing was looking at the kind of legislation that was coming from the [George W.] Bush administration, and at any kind of military action that may or may not have been taken. I really had no idea that we would be doing the kinds of things we did, because we got heavily involved in torture. We got heavily involved in the Guantánamo issue. We became much more oriented toward civil liberties issues than I had anticipated we would be. I didn't

quite realize that the national debate would be so partisan and nasty. It wasn't as clear in the fall of 2003 as it became after that.

Q: When you say you founded it, was this something that NYU law school was looking to do?

Greenberg: Yes. They were looking to start a class, and they had approached me to help them raise some money for that course. I had worked in the NYU arena for a while, and at the time I was teaching a course that I had been teaching for a decade on European history. They approached me about it and I wasn't much interested, but as I began to scope out the possibilities of funding for such a course, I got the idea that I could do a center. So I wrote a proposal for a center and I funneled it up through a larger NYU central organization applying for government funds, and pretty quickly I got funded for many years.

Q: Including federal funding?

Greenberg: Entirely federal funding at first. I think that's what the law school—they thought there might be money for a course, and I thought, "You know, I think I could probably get some money for a larger institute," and I got funded very quickly.

Q: By the Bush administration.

Greenberg: Yes, by the Bush administration. Originally, I believe, the money came through the Department of Justice. After that, we also got Department of Homeland Security money. When

we first applied, the Department of Homeland Security wasn't set up. It took a while. I had federal funding for probably the first four years, at least, for that center.

Q: Among the activities, certainly, was having speakers, right?

Greenberg: Many.

Q: Many. Right. Including speakers who were favorable to the Bush administration during its first term?

Greenberg: I'm a believer that before you disagree with somebody, you at least give them the privilege of listening to them. If they're willing to talk to you in a direct and civilized way and to engage you, that you should let them engage you. I've taken a lot of heat for it, but I think you learn a lot that way. When you're in the position of countering policies, you really have to understand what they're all about. Part of what I've always been interested in is changing people's minds. I don't know how they make their decisions about what civil liberties can and should be breached in the name of national security, or anything else for that matter, but if you're going to change their minds—or have your own mind changed—you really have to understand who it is they're identifying with, and whose opinions they're following. Not that we ever succeeded in changing any minds, but that is why I invited a lot of the Bush administration people to speak, and everybody accepted our invitation and came.

Q: You issued reports, did you not?

Greenberg: Many. Every year we issued the Terrorist Trial Report Card, which came out once a year on September 11. We also issued a report in conjunction with the Markle Foundation on the national security apparatus in Washington and how it functioned, and, perhaps, how it should rethink how it functioned. We did a number of reports related to detention, and then we did sort of informational packages on things like the NSA [National Security Agency], wiretapping and its capabilities, and a few other things like that.

Q: Why did you leave last year?

Greenberg: Fordham made me a really good offer. I wanted to expand from terrorism to national security more broadly, and it just seemed to me the right place to go. I wanted to stay in New York.

Q: Karen, where were you born?

Greenberg: I was born in New London, Connecticut.

Q: And you grew up there, I take it?

Greenberg: I did.

Q: Right.

Greenberg: I tried anyhow.

Q: Tried. Right.

Greenberg: I went to Cornell as an undergraduate. I went to Yale to get a Ph.D. That's my education.

Q: You have a Ph.D. in what?

Greenberg: My Ph.D. is technically in American politics, but I sort of did two fields. The other field was European intellectual history. I started there and spent half my career doing that. The other half I turned to American politics.

Q: With a focus on the presidency?

Greenberg: Well, the people I worked with were focused on the presidency. I was pretty much focused on American institutions [unclear] sometimes. I wrote about the universities. I wrote about the migration of refugee scholars from Hitler's Europe to the American universities, and how that was internalized into the university's sense of itself.

Q: My wife teaches at the New School. That was a recipient of some of these scholars, wasn't it?

Greenberg: It certainly was. It was created in 1919 by Alvin [S.] Johnson, a man who had a very progressive vision of how important universities or higher education could be towards the policy world. He was very keen to bring a lot of refugee scholars, and brought some of the better ones at a time when it was hard for Jews to get positions at Yale and Harvard, even though they might have been the best scholars in Germany. The New School benefited from that. It was called the University in Exile, originally. Yes. It's interesting.

Q: You taught after or while you were getting your Ph.D., did you not?

Greenberg: Yes. I taught at Bard College for many years, probably six or something around there. Then I moved to NYU.

Q: May I ask when you were born?

Greenberg: 1955. Sorry you asked that, by the way. [Laughter]

Q: I ask everyone. Do not take it personally. Did you also work, at one time, for the Soros Foundation?

Greenberg: I did. When I left Bard I went to work at the Soros Foundation, originally to head up their higher education programs like the Central European University, which we needed to get accredited, and a few other things. Then I got heavily involved in helping to run the foundations

throughout the Eastern European/Russian world. I spoke Russian, so it was kind of a natural fit. I eventually became vice president for programs there at the Foundation.

Q: What was the occasion for your learning Russian?

Greenberg: I like languages. I was at Cornell. They had an immensely famous immersion program, and I loved it. The reason I wanted to do it was to be able to read Russian literature in Russian. That was the reason.

Q: Was Vladimir [V.] Nabokov at Cornell when you were there?

Greenberg: No.

Q: But his butterflies probably were.

Greenberg: Yes, his butterflies were, but he was not. They were roaming in the air.

Q: When did you start teaching at NYU?

Greenberg: The same year I came to the Soros Foundation. That was probably 1994, I think.

Q: Did you say that was European history?

Greenberg: Yes. Tony [R.] Judt was running the Remarque Institute at the time, and had started this European studies program and asked me to teach in it. I really loved him, so I thought that would be a nice thing to do. So I did.

Q: Right. Have you read his biographical material that was published first in the New York Review of Books and then as a book?

Greenberg: Some of it.

Q: Wonderful stuff.

Greenberg: It's really good.

Q: Very vivid.

Greenberg: Yes. He's one of my favorite people. He was great.

Q: Rumor has it that despite all this high-powered academic work, you really wanted to be a ballet dancer. Is that correct?

Greenberg: Who told you that?

Q: Well, it's just a rumor. My taxi driver told me that. Is that true?

Greenberg: I am a ballet dancer.

Q: Oh, really?

Greenberg: Yes. Rumor has it right. When I went to college I got a dance scholarship at a place called Kirkland, which you had to audition for—send in a tape for. That was kind of what I wanted to do, but I wasn't really good enough, I don't think. But I have danced forever. I still dance.

Q: Professionally?

Greenberg: No. I just dance. That's the great thing about New York, and there's no city like it in the world. I've taken classes pretty much every place I've ever traveled that has classes. In New York you can just go to class day and night, anywhere, and dance with really good people and great teachers. New York is a ballet dancer's heaven.

Q: You've also written some fiction, have you not?

Greenberg: That's true.

Q: I see on your shelf here your book *The Least Worst Place*, which was published in 2009, I think, and is about the first one hundred days of Guantánamo detention camp. Prior to that, you edited a couple collections, did you not?

Greenberg: I did.

Q: Basically, they dealt with—?

Greenberg: One of them was *Al-Qaeda Now*. Another one, which might have come out right before *The Least Worst Place*, was on enemy combatant cases that had gone to the federal or military system somewhere. The books that really mattered that I edited were two books. One was called *The Torture Papers*, which I believe was the first book to use the word torture—for which I continue to get in trouble.

Q: To use it in the context—

Greenberg: To use the word “torture” to talk about what Americans were doing. No other book had done it. A lot of journalists were doing it, a lot of people were doing it, but to actually name it *The Torture Papers*—and the only reason that book came out was that the vice-chancellor of Cambridge University at the time—it’s a Cambridge Press book—a woman whose name I don’t recall—it got all the way up to her, and she decided it should come out. So it was touch and go. That book was published because I had gone to meet Josh [Joshua L.] Dratel, whom I didn’t really know, but I thought was somebody I should know—and one of the things I try to do in my

job is to find people that I think are healthy and helpful parts of the conversation, and Josh was one of them. He asked me to look into a torture article that a law magazine wanted to publish and to fact-check it. I fact-checked it, and in so doing ended up finding a lot of documents, a lot of people, and a lot of material, one way or another, on this torture policy that had led to Abu Ghraib. This was early. This was right at the time of the exposures at Abu Ghraib.

That was the spring of 2004. I was so astonished by what I found that I Xeroxed it all and put it into four volumes with purple covers, because that's my favorite color. I called everyone I'd known and I said, "You know, I have something here that you need, so just come and pick it up." All the human rights people I knew and a bunch of lawyers who were interested in this—that was twenty or thirty people. Then I was deluged by requests for this compendium I had put together.

Q: A compendium of—?

Greenberg: Torture documents. All the memos we had and all the original reports like the [Antonio M.] Taguba Report and the backup to the Taguba Report—which nobody had actually seen or paid attention to, and which is immensely valuable.

Q: Did that include the Office of Legal Counsel [OLC] memos?

Greenberg: Yes—all the Office of Legal Counsel memos we could find, the August 1 memo that we originally had, the spring 2001 memo that led up to the torture memos that were debates

between the Department of Defense, the Department of State, and the Office of Legal Counsel, and just sort of the back-and-forth that was going on in Washington about what to do with these detainees and how to get information out of them—the whole gamut of issues. The executive order to launch detention and trials under the supervision of the Department of Defense rather than the Department of Justice—all those things I compiled in one book, chronologically put together with the documents, the memos as a piece, the reports as a piece, and some extra material as the third part.

Q: They did not exist in one place before that?

Greenberg: No. It didn't exist anyplace, and some of it wasn't even online at the time.

I just got deluged, and I had met this editor at Cambridge. He came to one of our events. We did a lot of public events, and he'd come to something. We hadn't done anything on torture. I tend not to do things at the Center that are my particular thing to work on, except rarely, and I called him up and said, "Hey, I know you've been to some of our events. I'm not a publisher, and I cannot continue to meet the demand for this. Would you like to do it?" He's a very brave soul, John Berger, so he did it. Immediately, within a day, he had decided to push this project. Then I called Joshua, and I said, "Joshua, the only reason I assembled these was that you asked me this question, and I needed to find the answer. This is what I found. I'm a historian, I'm not a lawyer. I need a lawyer to make sure this looks, tastes, smells like what it is, and I need somebody to write a really good intro." So he did *The Torture Papers* with me. Then I did *The Torture Debate in America*. That's a very popular book—and it should be—because it does what you were

referring to before—you let Bush administration people come and talk. It doesn't have everybody I wanted to get, but it has all the arguments in it. It's a document in and of itself, of what America was all about, as it presented thoughts about whether or not we should torture people. To me, it is still unbelievable that we had this national debate. It's unbelievable that we had the national policy, and it's unbelievable that we had the debate. So, for what it's worth, it exists.

Q: Karen, how would you describe your political leanings?

Greenberg: I have no idea. I try not to describe myself and my political leanings.

Q: Okay. Would you call yourself a committed civil libertarian?

Greenberg: Yes, but only because—I didn't decide to be a civil libertarian. It turns out I am. Those are the issues that I just can't not participate in. But I don't see that as a political party issue. I think, as I often said about torture and many other things, that opposition to this was across the political spectrum. It wasn't just one party or another.

Q: You went to Guantánamo Bay in 2007, I think.

Greenberg: That probably could be right.

Q: Was that in preparation for the book that you wrote, *The Least Worst Place*?

Greenberg: That was as part of the book. I had already done a lot of the work on the book by the time I went to Guantánamo—a lot. I needed to see Camp X-Ray, which is why I went.

Q: You hadn't been there before.

Greenberg: No.

Q: Have you been there since?

Greenberg: No, but I would like to go.

Q: Okay. Can I assume that you were given not carte blanche there, but given the guided tour, so to speak?

Greenberg: I was given the guided tour. That's for sure.

Q: Okay. We'll come back to that.

Where were you on 9/11?

Greenberg: I was living on the Upper West Side on Riverside Drive. I was home that morning.

Q: Were you watching television?

Greenberg: Eventually, yes. Did I watch the towers fall? Yes.

Q: Can you recall your actual reaction to what was going on that day?

Greenberg: Yes. My reaction, after I got over—my son was living out of town at the time. My daughter was in school, so my first reaction was to call my ex-husband and to say, “I don’t care what you do, but go and get her.” She was in Brooklyn. We did not go get her. We couldn’t. But she was safe and sound. My reaction, in terms of what had happened, was immense confusion and a real disbelief that anybody would ever want to do that to us. It was incomprehensible to me. Talk about naïveté, whatever. Incomprehension, but major incomprehension. That would be my reaction.

Q: Did you have any idea, in your own mind, without being told, who could be doing this?

Greenberg: I knew we were at war. I knew it immediately. I remember calling my brother, who doesn’t have a TV, and telling him that he should go to a bar and watch this, and that we were at war. Unlike people like Joshua or others who had been working on Al-Qaeda for a long time—I think Al-Qaeda was mentioned very early in the news coverage. That would have been how I got it. It wouldn’t have been anything internal to me that I can recall. I wouldn’t have known.

Q: What was your work at that time?

Greenberg: What was I doing at the time? Basically, I was just teaching. I'd built a number of foreign campuses for NYU. I was taking some time not-abroad, and I was writing fiction. I owned a business in Connecticut.

Q: You were not focused on Middle East politics or on radical Islam?

Greenberg: No, not at all, not in any way. Or national security. Or anything even remotely related. Nothing I can think of.

Q: You said you founded the NYU Center in 2003. Can you give me some idea of whether between 9/11 and 2003 you were concerned at all, or involved at all, or thinking at all about what had happened on 9/11?

Greenberg: Well, I was a New Yorker. Between September 11 and 2003, I'm sure I thought about it every day.

Look. I'm a New Yorker who has children. Whether or not you had children doesn't matter, but to me it mattered. Of course, I'm sure I thought about it every minute. I was extremely aware of how it was affecting my friends, what it was doing to the adults in New York, and how impenetrable I thought a number of adults became because they were so harmed and so affected. I thought it was very dangerous for children to be around these kinds of adults. I was very

focused on the issues that would have affected that next generation. I thought I would write about it. I thought I would write fiction about it, actually. I'm sure I thought about it constantly.

Q: But you were not professionally engaged to study this thing.

Greenberg: I had no interest in being professionally engaged in it.

Q: You had none, you say?

Greenberg: No. I wasn't thinking about it. I did know that I was going to do something else. I was aware of the fact that I probably wouldn't be writing fiction forever and living in Connecticut. I knew that I would know what it was when it came along, but I didn't know that this would be what—NYU called me in the fall of 2002 to first run this by me.

Q: The Center idea.

Greenberg: Well, they called about this course. It took me a while. I wrote the proposal over the late fall and early spring of 2003. I got the money in late winter, early spring, somewhere around there. Somewhere between March and May. I don't remember the exact date. So I had the summer to set it up.

That's pretty close to 9/11, so it's hard for me to say that I wasn't interested in doing something right after, because within the first year I was already putting this proposal somewhere on paper.

It wasn't like I decided that I'm going to do something about 9/11; it was that this opportunity fell into my life and I saw pretty immediately how to do this. The center at NYU stayed very close to that original proposal. I don't know if that's good or bad, but it's a fact.

Q: Would you say that from that time on, until now, you have, in one way or another, been engaged in studying 9/11 in a broad sense, and its aftermath and its consequences?

Greenberg: Yes.

Q: Okay. Now if we can, I'd like to ask you about the elements of the Bush administration reaction to 9/11 that contributed to the establishment, indirectly or directly, of the Guantánamo Bay detention camp. Indeed, even whether this was ultimately intended—by ultimately I mean by January 2002—as a place to hold detainees, or to prosecute detainees, or to interrogate detainees, did anybody have a clear idea at that time why they had created this and what purpose it was going to serve?

Let me back up a little bit. Do you attribute any importance to the fact that, at the time of 9/11, the administration included some major figures who were committed to what's called the unitary executive theory and the very strong presidency—perhaps even, at times, to the exclusion of Congress or the courts? I'm referring particularly to people like Dick [Richard B.] Cheney, David [S.] Addington, Donald [H.] Rumsfeld—these so-called “vulcans” who were at the top of the administration. Does this matter, in retrospect?

Greenberg: Does it matter that they embraced the idea of a unitary—?

Q: Does it matter that they were the ones?

Greenberg: Absolutely. I think constantly about what would have happened if we hadn't had George Bush and his close circle, whom you just named, in charge. I'm not sure the initial reaction would have been all that different, but I am sure that the long-term reaction would have been different, and maybe even the initial reaction in some ways. They didn't just embrace the concept of a unitary executive—they lived it, and then other people named it for them.

They had a notion of what the country could be prior to 9/11, I'm convinced. They didn't like the way the country was headed in terms of its—what they saw as a liberal and uncontrollable direction. They used 9/11 to establish control in every way they could see fit, and they had very little respect for the law in doing so. They believed deeply—I will say one thing. This was not hypocritical. This wasn't just, "Well, they really wanted these things anyway, so they used 9/11 as an excuse to get them." That's too facile. They did want the country to go in a certain way, but they weren't just using 9/11, saying, "Here's 9/11. This fits into us. Let's do it." They were scared and they were angry. So was the rest of America. They harnessed their own fears as well as the rest of the country's fears to do what they did. That's something nobody's written about or thought about—which is well enough—which is just what these men and women and whoever were afraid of. I've always felt—it's the missing question, not just of those guys, but of the lawyers who backed them up. They weren't just insulted, they weren't just angry—they were terrified. You ask me how I have Bush people come and speak. This is what I picked up from

listening to them come and speak, among other things, or come and talk, or come and share what they were doing. They were protecting themselves and protecting the country, and they didn't care about the law. It wasn't that they got up in the morning and said, "We want to break the law." It was that they really believed that, to be safe, the law was in the way. They honestly believed that, and that's why, when they issued documents that said things like, "What will make us safer is to stay away from international fora, courts, etc.," they really meant it. Or, when they said things like, "We have to take the gloves off." All these phrases.

Q: Work the dark side.

Greenberg: Exactly. Work the dark side. People always say, "They're evil." It wasn't about evil. It was about really falling prey to what terrorists want you to fall prey to, which is to be terrified.

Q: Would you say that that same thing would apply, at a different level, to people like [W. James] Jim Haynes [II], John [C.] Yoo—

Greenberg: Yes.

Q: Jay [S.] Bybee.

Greenberg: Jay Bybee. As of today, I don't know Bybee or Haynes personally. I know a lot about Haynes from research that I did with other people and interviews that I had done.

Q: They were believers in what they wrote.

Greenberg: Absolutely. Certainly John Yoo. John Yoo is interesting in all this. He had thought about national security issues way before this, stemming back to his time at Harvard as an undergraduate, and about the nuclear question. This is a Cold War generation, with certain trigger points, that had run out of the Cold War. I've never really understood what happened, but we were ready, as a nation, to react fearfully.

I don't know if you remember, but before 9/11 there were rumors of an Asian flu or whatever—bird flu—and Tamiflu became the thing that you could get to make sure you didn't die of the disease. I don't remember where it was—maybe Colorado or someplace like that—they were giving out Tamiflu. People were standing in line. They didn't have any disease; they just wanted to make sure they didn't get it. Then there was this rumor they were going to run out, and there was kind of a low-level hysteria in the country over this. I remember thinking at the time, “What's wrong with these people? First of all, why are they getting so hysterical? Second of all, do we know something about this disease? Is this irrational or rational? Can we think about it?”

I'm convinced that, prior to 9/11, we were very unsettled as a nation, and I don't know the reasons. The reasons could stem from what it means to have a president—George Bush—come into power whom you know didn't win and the fact that [Albert A. “Al”] Gore [Jr.] was not willing to have that full recount. I don't know what it was that destabilized us, and I haven't really thought about it the way I should have, but something did. It wasn't just 9/11; 9/11 tapped into something that was there already, and these men and women were a part of that.

Q: Just in parenthesis.

Greenberg: That was all parenthesis. Don't worry. [Laughs]

Q: No, no. I'm doing this somewhat awkwardly but—have you studied the record of who knew what about what was coming on 9/11, or thereabouts, by Al-Qaeda?

Greenberg: Yes, of course.

Q: How would you characterize the administration's handling of that information?

Greenberg: Poorly. I think I would say that the *9/11 [Commission] Report*, even, and a number of other histories that have come out since then—Richard [A.] Clarke's *Against All Enemies*, to name one, and a host of other books that have come out—made it clear that, look, there's enough blame to go around. But the refusal of the National Security Council and of the National Security Advisor—Condi [Condoleezza] Rice, at the time—to bring the threat that Al-Qaeda posed, particularly the threat of planes coming into a building, and the virtual demotion of Richard Clarke, who kept saying, “We need to worry about Al-Qaeda,” in a way that people were like, “Go away. Don't—,” was willful neglect.

Time will tell. We've reconfigured our entire national security apparatus and very many things about our country because of 9/11. There was another way to view 9/11, which we weren't

willing to do because we either had to find fault or not find fault in this case, and that is to say—this is very unpopular, and probably I shouldn't say it—that 9/11 was a fluke, and it shouldn't be viewed as “This is the beginning of a new era in which Al-Qaeda is going to try to attack us and succeed.” 9/11 was a massive failure of the intelligence community and the national security apparatus, which were asleep at the wheel and willfully asleep at the Al-Qaeda wheel until the first week of September in 2001, when they allowed it onto the national security team's agenda and brought it to the president. It was too late.

We're back now, in some ways, where we were then, after these ten years. I'm not saying that Al-Qaeda was an easy enemy. I'm not saying they weren't going to plan other attacks. But to see 9/11 from [Osama] bin Laden's point of view, which is what we did—to implement—I don't know what you asked me, but whatever.

Q: His point of view would have been what?

Greenberg: Bin Laden's point of view was, “I'm going to scare the bejeezus out of them. I'm going to make them think that there's going to be this attack and that attack,” and what did he say from day one? “What I care about is bankrupting the United States.” And he did it.

Q: Well, he had been saying that for a while.

Greenberg: He said it. That's what his goal was. It wasn't just the caliphate. It wasn't just a restoration of authority, or a claim for authority against disliked and monarchical regimes, or

autocratic regimes in the Middle East. It wasn't just about U.S. presence. He wanted to cripple the United States financially—and he used to keep accounts. In the first months after 9/11, in the first year, he would calculate constantly, trying to figure out how much it had actually cost us. That's a pretty amazing thing to do.

It was always on his mind. The attacks got us into a number of wars—a number of very expensive wars. It got us to spend the federal budget, which was in a surplus, down to a staggering deficit. So whether it was his fault or not, it certainly lined up with his intention.

Q: When you spoke of the ingrained fear of people like Cheney and others, after 9/11, and certainly in the immediate aftermath of 9/11 and for some time thereafter, there was a real, palpable fear among the American public, was there not?

Greenberg: Yes, for good reason. It was an intolerable thing that had happened. I think most people like me just didn't understand it. It was like, "What did we do wrong? How could somebody want to hurt us?" That was my feeling. Honestly, why would somebody want to hurt us? I'm sure that there are a lot of people out there saying, "Well, we told you we didn't like the United States' Middle East policy," or whatever. But, really? It was a soul reorganizer. It reorganized your internal landscape.

Q: Did it make it easier for the administration to do what it wanted to do?

Greenberg: Of course it made it easier for them to do what they wanted to do, but that wasn't the only thing.

Q: The Authorization for the Use of Military Force—the AUMF—was adopted in September, I think, was it not?

Greenberg: The AUMF. Yes.

Q: Was that overly broad? Was it right on target? How would you characterize that? Did it make a difference what the language was?

Greenberg: Yes. It was intentionally as broad as it could be in terms of identifying the enemy. I just taught it in class last week, and I wish I had the language in front of me. Look, what's wrong with those early documents is not the documents themselves. If you're asking an administration to be held accountable for what they did—yes, it would have been better to do something maybe in a more curtailed way, with less power, less vagary in terms of what this meant, where the battlefield was, and who the enemy was. But that's not my beef. My beef is not, "You shouldn't have passed this, you shouldn't have passed that," particularly in the fall—you want to know something? My personal opinion is that for a number of months you get a free pass. You're the president of the United States, whoever you are, and you get attacked in that way, and you're scared, and your people are scared—I don't care what you do. But as the dust begins to settle and you start to come back to yourself as a nation, then you have to say we were wrong. What was wrong with the Bush administration, in my opinion—and I know people will disagree with me—

was that they were never willing to say we were wrong, so they just kept doubling down on what they'd done.

That's why I wrote *The Least Worst Place*. They knew that they didn't need Guantánamo and that it didn't have who they needed as detainees, but they were not going to give this up. That's where they made the mistake. Does that make sense to you?

Q: Happily, it's your views today that count. How about the Military Commission Order on November—

Greenberg: —thirteenth.

Q: Was that consequential?

Greenberg: We're living with that today. You could almost describe everything I've had to pay attention to, or chosen to pay attention to, since I started the Center at NYU, as what resulted from that military order. Without a doubt. That was a military order that said, essentially, that in matters of detention and trial related to the so-called war on terror, the president and the secretary of defense would be the determiners of who our enemy was, and that these people would be under military jurisdiction. It was the beginning of what became a massive emasculation of the judicial system. It was the beginning of a policy legacy—by which I mean Guantánamo and indefinite detention—that this president, President [Barack H.] Obama, has found no ability to move away from, etc.

Q: It has certainly come to that. But sticking with the—

Greenberg: —military order—

Q: —do you think you understand why that was adopted?

Greenberg: Yes. Because they didn't trust—they believed—

Q: Was it a considered decision, do you think?

Greenberg: It was not considered by the military. It was not discussed with the military to the extent that I know it may have been discussed with, you know, Rumsfeld—but with the Armed Services and with the Joint Chiefs I never found any evidence of that. In fact, I found I the opposite—people just saying, "They could have been lying to me." Who knows? But consistently, I heard, "We didn't know anything about that until that actually came out."

Q: Why was it chosen to go the route of the military commissions?

Greenberg: Well, that's the beginning of the military commissions. They distrusted the courts from the very beginning, and they had a lot of lawyers advising in that way. They had Haynes, they had Yoo, they had—

Q: Does it go back to the thinking even before 9/11?

Greenberg: It must. You're hitting on something very strong. There was a deep distrust, immediately, of the courts as protectors of rights and liberties, as a morass that people just couldn't get through. I wouldn't be surprised if what you found between September and November, when the order came out, was a flurry of phone calls to distinguished people inside the courts, asking questions and getting answers that led to that military order.

Q: Karen, is there a concise way of saying to what extent, and under what basic conditions, military commissions had been used theretofore?

Greenberg: Yes. You could say that they'd never been used in a context that was even remotely comparable to this. They'd been used in the [*Ex parte*] *Quirin* case, which was the Nazi saboteurs who were found to come on shore. They'd been proposed in a number of cases. You could pull it back to the Civil War. In terms of what we were actually dealing with, I don't buy these precedents. We didn't have a military commission system. When they said "military commissions," there was nothing they were particularly referring to. They knew they were referring to something that would have to be created. Now it's been created, and recreated, and recreated over, and over, and over again.

Q: But they used the *Quirin* decision—upheld eight to nothing by the Supreme Court of the United States in 1942—to bolster their argument, right?

Greenberg: Yes, they did.

Q: Do you say unfairly, or inaptly?

Greenberg: Yes. I think it was a whole other type of thing. I think we understood who the Nazis were. We understood what the enemy was. That particular case was symbolic in some ways. I just feel that this was not just same-old/same-old. Maybe I'm wrong, but we did not have a functioning military commission system that anybody was trained in. I don't think the military commissions are so important in that military order as the turn away from the domestic federal courts. That's what's important. What's important is not to use those courts, whatever they were going to create.

Q: Again, around this time, there was an inter-agency task force led by a State Department official, Pierre-Richard Prosper. Wasn't their mandate to come up with some way—what was their mandate?

Greenberg: I don't know. Remind me.

Q: To form some kind of approach for dealing with people who were being captured in Afghanistan after the United States started blasting Afghanistan in early October of 2001. What did we do? Because apparently General Tommy [R.] Franks didn't want a hand in holding these people in Afghanistan.

Greenberg: That's right. He didn't.

Q: So Prosper was called to the White House, apparently, and charged with this inter-agency task force to figure out what to do. At some point, between that time, which was around Thanksgiving or so—

Greenberg: It was Thanksgiving when Prosper got the phone call, yes.

Q: —and December 27, when Rumsfeld announced Guantánamo Bay, Prosper and his group were sort of—

Greenberg: —looking around.

Q: —looking around but ignored, in the end. Overridden.

Greenberg: I don't know. Is that what happened? Is that what they said?

Q: Apparently, they were not for the detention camp at Guantánamo; it was somebody else's idea that manifested itself in Rumsfeld saying, on December 27, "This is where we're going."

Greenberg: I've never been convinced that we have a full understanding of who was and who wasn't on the side of opening up Guantánamo. Once Tommy Franks said that he didn't want a detention facility—that it was too dangerous, that he didn't want to have to protect it, that there

were humanitarian concerns, and it was just a pain in the neck and he just didn't want it—once he said that, and once Rumsfeld agreed that that was an okay thing to say—to move people who were detained—which was very unusual—out of the operating theatre—once they'd done that, the real options were where to put them. I would be hesitant to say that Prosper and his committee weren't tasked with just thinking of places to put them. Guam would have been a possible place to put them, right? But wherever you have a status of forces agreement with a country, there is a problem. I don't know what they had in their minds, but they were worried about legality in every single inch of this.

So you're right. This group of people attached to Cheney, Rumsfeld and Addington wanted a place that, conveniently, didn't have laws that would affect the detention operation. And Guantánamo was nearby, which made a big difference. It meant they could get back and forth.

Q: Was that a credible position? Certainly one they continued to argue for some time—that U.S. law did not reach to Guantánamo Bay?

Greenberg: Now you ask me, was that a sufficient position to say it wasn't American territory? Well, in terms of American law, no. But nobody made that argument. Nobody said it, and they got away with it. Right up until that Supreme Court decision, years and years later, even the people arguing on the side I would have argued on didn't know that and didn't care. There was a buy-in early on by everybody that we were going to accept the fact that 9/11 was so unusual that we obviously had to have a different place for these people, no matter whose side you were on or which side of the coin—liberty, security, whatever. Nobody raised that question.

Q: Well, Guantánamo Bay was a Naval base, and it existed. In fact, isn't it true that Mike [Michael R.] Lehnert, who became the first commander down there, had been there before? Had done duty there before?

Greenberg: Yes.

Q: Now the first detainees were brought to Guantánamo Bay, to Camp X-Ray, on January 12, 2002, I think. Do you remember seeing the pictures that were published at that time of the detainees?

Greenberg: I remember seeing them later. I didn't see them at the time. I don't remember seeing them at the time. I don't remember the opening of Guantánamo as a piece of my life. I remember it as something I looked into later.

Q: Right. Now drawing on what you learned later, in a very singular book dealing with the first hundred days, what did Marine Brigadier General Michael Lehnert think his mission there was, and who he was going to get at the time it opened? Do you know?

Greenberg: Yes. They were told at the time it opened that they were going to get the worst of the worst. They were told by the Pentagon and by the Joint Chiefs that they were going to get the detainees from the war in Afghanistan, and that they should be prepared, basically, to be

receiving people with super-human destructive powers. That's what they were told to prepare for.

Q: How long did it take them to realize, or did they come to conclude, that some of these people were not the worst of the worst? I'm thinking of Lehnert and his team.

Greenberg: Yes. I don't know if his team of close advisors even thought in that category, once they got there. What they concluded was that these were, for the most part, not enemies that were harmful to them when they were there, which was the first thing. There was this idea that you're going to have to contain them every moment they're there, because otherwise—they're carrying explosives, or whatever. Many didn't seem to be people who had any kind of ability to have been involved at any command level with Al-Qaeda. The impression they gave was to be, if they were fighters at all, low-level members of whatever terrorist organization they belonged to. Nothing more than that.

Q: Is there a way of characterizing how Lehnert and his team chose to deal with these people?

Greenberg: Yes. They were told to deal with them in a way that was consistent with the Geneva Conventions, and the spirit of the Geneva Conventions, but not to call them prisoners, not to consider them prisoners of war, and not to consider any policy we had in place to attach to them. Because once they were prisoners of war, they would have to be treated in a certain way, and that means not interrogated, basically. So when Lehnert and his team arrived at the end of December to build this thing in January—some of his team came in early January—when they arrived, as

you know from reading the book, they had no policy at all. They kept saying, “What’s the deal? Are we going to have some laws? What are these people? Can you even give us a name for these people?”

So they decided they would just follow the Geneva Conventions, even though they weren’t supposed to follow any kind of law, which they did the best they could, given that they were putting these people in cages—which already means that you can’t follow too many humanitarian concerns. In order to do that, Lehnert brought some expertise to his command. Among the expertise was a Muslim chaplain and the ICRC [International Committee of the Red Cross], which is a very interesting story. The Pentagon did not want the ICRC involved, for obvious reasons, to oversee detention conditions. But, finally, somebody on Lehnert’s team, who happened to be Cuban by birth, picked up the phone and called the ICRC. And once you call them, there’s no going back.

Then Lehnert brought in—which is a little more complicated—somebody who actually knew something about detention and about being a prison guard—Terry Carrico. He assembled a team that would help him know what this world of rules and regulation was because he wasn’t being given one.

The point of the first hundred days is that, left on their own, without any policy, the military is trained to follow laws, and they did. They followed the laws as best they knew them—the Uniform Code of Military Justice, the Geneva Conventions, whatever it was.

Q: President Bush announced that, in fact, the Geneva Conventions did not apply to these detainees as a matter of international law, but that the military—he didn't mention the CIA [Central Intelligence Agency]—as a matter of policy, quote, “The United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.”

Greenberg: Right, which is what they kept saying from the beginning—the spirit of Geneva.

Q: In the spirit of Geneva, so to speak, but they don't have the rights of Geneva. Correct?

Greenberg: They're doing it out of their good will. It's not because it's a policy that you have to follow it. It's more, “We're going to do this this way, but we're not bound to anything.” This is a document that you're reading from, freeing them from being bound to the Geneva Conventions.

Q: Right. Now, Karen, what is your understanding of who these detainees actually were and how they were chosen to end up in Guantánamo?

Greenberg: One word: Largely randomly. If you talk to different detainees or different people who were in detention at Afghanistan who may or may not have come to Guantánamo—both those who came and those who didn't come—they will say that they found the process arbitrary and random. A military person would walk in and they would sort of say, “You, you, you and you—you're coming with us.” Many of those people had been traded for bounty, we later found out, by people who knew they could get money—people from Waziristan, from the border area,

and others who knew they could give a certain amount of money to be given a person. They really didn't know who they had. They never knew who they had. In those first three hundred and in the subsequent five hundred, we knew very little about who was there. There may have been reasons for one or the other, but understand how little we knew about what we were doing. We didn't know as much as we should have about Al-Qaeda, right? That was the problem with not having it on the front burner of the National Security Council, right? Then we had all these detainees. You know what we wanted them for? We wanted them to tell us who was in command in Al-Qaeda and where Al-Qaeda was—basic stuff that you would expect your intelligence agency to have.

But we didn't have it. We didn't know. If you ask them, the first thing we asked them was, "Where's Mullah Omar? Where's Mullah Omar? Where's Mullah Omar? Where is Osama bin Laden?" Do you really think these guys who got traded for bounty know where they are? Then, we needed them to explain little things about how the society worked—not just inside Al-Qaeda, but in the tribal areas in Afghanistan and Pakistan. We were at such a loss. Then we put them in Guantánamo, where the expertise of SOUTHCOM [United States Southern Command]—which has command responsibility for Guantánamo—was Colombia and the drug trade, and the South America/Caribbean sphere.

So how exactly are we going to increase our knowledge of these guys? I'm just making this as an aside. They had no idea who they had. They had no idea who they wanted, other than bin Laden and Mullah Omar, and maybe five or six other names. When the Europeans came to Guantánamo, during that first year, they knew who we had. They knew who they wanted us to

have. They had names of these people. This was a threat that was alive in Europe in a way that it wasn't alive in the United States. They'd been grappling with this for a long time. You talk to the heads of Scotland Yard and the people in the intelligence services, or even in the judicial realm, in the European countries, they at least knew the kinds of questions to ask some of these people. We actually were a little bit behind on this. At least that's my impression of it. That's how it seemed. I could be wrong, but that's certainly how it seemed from my point of view.

Q: Let me back up. When the administration concluded that these people were not entitled to the Geneva Conventions as a matter of law, surely that was of interest to the State Department, no? What was the State Department's position?

Greenberg: At the time, Colin [L.] Powell was secretary of state. At the time, you had a tension between Donald Rumsfeld and the secretary of state, who happened to be a four-star general. My understanding is that, from the very beginning, Rumsfeld didn't want Colin Powell running two departments, so just put that in the background. The secretary of state wrote a memo, among all these other memos—I believe it was in January of 2002—in which he basically said, “I don't think this is such a good idea, the way we're going down the detention track.” He specifically mentioned interrogation. I believe it's the first memo to actually use the word “interrogation.” I'd have to go back and check, but that's my recollection. He gets what's happening, he and his lawyer, Will [William H.] Taft [IV]. They understand. In a perfect world, Powell would have resigned—in a perfect world. But we don't live in a perfect world, and it was a tough time.

But I believe he understood, and I think the question you asked, that you're getting at, is what was the intention of Guantánamo from the start, in terms of information collected to try people, or information for the intelligence services?

Q: Yes, I want to get to that, but I'm interested in your assessment of what the State Department was doing at this time, which you just got into. In *The Least Worst Place*, you describe Prosper, whom I mentioned before, and Taft as "naïve."

Greenberg: Yes.

Q: A word you even dared to use to describe yourself a moment ago.

Greenberg: And forgiving. [Laughs]

Q: Yes, but is that really too charitable? They have responsible positions, don't they?

Greenberg: They do, but—yes. And I could have been harder on them.

Q: I'm not asking you to be. I'm asking how history ought to view these actions.

Greenberg: I'll tell you exactly how they should view them. They should view them as naïveté with drastic consequences, and that it was a wakeup call. If you're going to be the lawyer to the secretary of state or to the national security advisor, John [B.] Bellinger [III]—if you're going to

have a position like that, you are not allowed to have the kind of naïveté that the rest of us might be allowed to have. What they thought was that the United States would never, ever, take the kind of legal leeway they'd given themselves. They figured they'd be around to make sure they could stop it from happening. But they weren't, they didn't, they were wrong, and their naïveté turned out to be crippling. I think that's a hard thing to live with, particularly for Colin Powell.

Q: I don't know to what extent someone like Taft's resignation would have counted—

Greenberg: No.

Q: —but Powell could have created a ruckus, no?

Greenberg: He could have created a ruckus.

Q: He was a general, among other things.

Greenberg: It would have made a huge difference because he was a general. I think, in every way, Rumsfeld kept outsmarting him, like that story I tell about them going to Guantánamo and the timing of it, and Rumsfeld getting ahead of Powell's objections to the emerging policy of interrogation. Powell just wasn't willing—and why are we criticizing Powell? Have you found the politician yet, or the person in any kind of appointed position, who is willing to say, "You know what? We're pretty safe as a nation. We're willing to take certain risks. Here's what we need to do to be safe, and here's what we don't need to do to be safe." We still don't have a

politician willing to do that. I'd like to criticize them, but I don't see much leadership in "We're going to have to manage the risk," rather than "We're going to have to eradicate the risk."

Q: Do you recall that, after initially raising objections, the State Department, in the person of Will Taft, signed off on a lengthy memo to Jim Haynes on March 22, 2002—

Greenberg: Yes, I remember.

Q: —in which he, one could reasonably say, goes along with everything that Haynes and that the administration wanted?

Greenberg: That's correct.

Q: There's a covering note. He says, "I hope this will be helpful to you."

Greenberg: But remember the memo that came out of State that he wrote prior to that? I go through it extensively, I think, in *Least Worst Place*, in which he uses every pejorative adjective in the book to describe the original memo? Everything from "bad lawyering," to "reprehensible," to "unforgivable"—whatever words, I'm paraphrasing. So he knew, and he fought back.

This is all part of the shift of power from the State Department and other places in government, like the Department of Justice, to the Pentagon. In this case, I think the Pentagon had to fight harder. I think Will Taft's idea was that, even then, he would be able to put it in a vault and it

would go away. Nothing was really going to happen, but I do believe there was a kind of intimidation there. I don't think it was just naïveté. I think more that, indeed, the lawyers were intimidated.

Q: How about Larry [Lawrence B.] Wilkerson?

Greenberg: What about him?

Q: I'm looking at a declaration by Colonel Wilkerson in 2009, in the case of *Adel Hassan Hamad v. George W. Bush, et al*, and he's giving this declaration. Hamad was formerly a Guantánamo detainee. He says things in this declaration like, "With respect to the assertions by Mr. Hamad that he was wrongfully seized and detained, it became apparent to me as early as August 2002, and probably earlier to other State Department personnel who were focused on these issues, that many of the prisoners detained at Guantánamo had been taken into custody without regard to whether they were truly enemy combatants, or in fact whether many of them were enemies at all. I soon realized from my conversations with military colleagues as well as foreign service officers in the field that many of the detainees were, in fact, victims of incompetent battlefield vetting."

He goes on to say, "It was also becoming more and more clear that many of the men were innocent, or at a minimum their guilt was impossible to determine let alone prove in any court of law, civilian or military. If there were any evidence, the chain protecting it had been completely ignored." "It was politically impossible to release them." Cheney felt "the end justifies the

means,” and at one point, just parenthetically, he even says, “fifty to sixty-percent of those imprisoned in Abu Ghraib were probably innocent.” And he says, in the end, “ I have made a personal choice to come forward and discuss the abuses that occurred because knowledge that I served in an Administration that tortured and abused those it detained at the facilities at Guantánamo Bay and elsewhere and indefinitely detained the innocent for political reasons has marked a low point in my professional career.”

Isn't this another example—he's writing this in 2009.

Greenberg: Yes, he's one of the people who finally came out and spoke. What did they know, and when did they know it?

Q: Exactly.

Greenberg: I believe that, in terms of intention, they should have known more. That's the naïveté. The problem with how this all came down is not just the 2002 memo. The problem was the reaction to Abu Ghraib, which they then traced back to Geoff [Geoffrey D.] Miller, and to Guantánamo. You began to see the trail. That's why *The Torture Papers*. You begin to see that this wasn't about Abu Ghraib; this was state policy.

Q: Let me get to that in a second. I appreciate that you're not a lawyer, but the term “enemy combatants,” or “unlawful enemy combatants”—was that of consequence, using that term?

Greenberg: Well, the term changes from “enemy combatant” to “unlawful combatant.” The biggest consequence was that they are not prisoners of war. That was the big legal distinction they wanted to make. Once they were in an enemy combatant category, they were in a gray area that we felt we could get around.

Q: But was it a term that had been used prior to this?

Greenberg: Yes. We’d used it, and I explain it in *The Enemy Combatant Papers*.

Q: Okay. General Lehnert was there only for a couple of months, right?

Greenberg: Three.

Q: Three months, and he was replaced. General Lehnert was in charge of something called Joint Task Force 160 [JTF 160]. At the time he came, was that the only task force running the show?

Greenberg: Correct. When he came, he brought his task force, 160.

Q: When he left, he was replaced by a two-headed configuration, I think. One was General [Rick] Baccus, who was to run the camp, and the other was General Michael [E.] Dunlavey, who was to do intelligence. Is that correct?

Greenberg: That’s right.

Q: Right. Who had been doing intelligence before?

Greenberg: Good question. Well, Dunlavey had been there for the weeks leading up to Mike Lehnert's departure, so he'd been doing some of it. There had been a number of unnamed intelligence officers from a variety of agencies—FBI [Federal Bureau of Investigation], CIA, etc.—who had been coming in and interrogating prisoners.

Q: The NCIS [Naval Criminal Investigative Service], also, I think.

Greenberg: Yes. Everybody, from the beginning. But it wasn't organized. It wasn't organized into its own unit. Mike Lehnert didn't have much to do with it, other than to arrange transportation for these guys, and also insist that a military officer sit in the room with them. But he didn't have true authority over it. It was sort of dropped in from Washington and sent back to Washington. They came on these very short jaunts. When Dunlavey took over—

Q: He took over the intelligence part.

Greenberg: He created JTF 170, which was another unit, and what it was basically for was for the intelligence—which was the mission of Guantánamo. That's when it became clear—they thought, anyway, because the evidence seemed to point that way—that Guantánamo, from the point of view of the Pentagon, was going to be about intelligence collection.

Q: Okay. Dunlavey is there until November of 2002, when he's replaced by Major General Geoffrey Miller.

Greenberg: Correct.

Q: As you reconstructed it some seven years later, did it make a difference to the detainees, and to the camp, that it had moved into this more formal intelligence setup with Dunlavey, and then onto Miller, even through the end of 2002? Did it make a difference in that world?

Greenberg: Yes. Dunlavey was brought in to break the system. He succeeded. He broke the idea of unity command and effort. You don't have two competing enterprises in the military in the same jurisdiction, in the same area. Donald Rumsfeld knew exactly what he was doing when he put Michael Dunlavey in there. That's exactly what he wanted to do—he wanted to break the sense of a mission. He repeated this at Abu Ghraib. This idea of harming professionalism, whether it's taking things away from the judicial system, or the State Department, or whether it's setting up an intelligence interrogation effort inside the military—he disrespected the notion of professionalism. It got in his way everywhere. This is another example.

So he puts Dunlavey in charge. He picks somebody to replace Mike Lehnert in the care and custody side of it—which is now what they're now calling what the 160 becomes, so it's a part of it. He picks Rick Baccus—poor guy. This guy is out of the National Guard in Rhode Island. Before that, he had been running a cemetery. He is the wrong person for the task. A lovely guy. He means well, but this was way above his ability. What he does is—when he feels all this

conflict around him about what's going on, what is our mission, who's reporting to whom? Why is Dunlavey reporting to Rumsfeld, and I'm reporting up the chain of command through—what's going on here? Don't forget—one of the ways that Rumsfeld took aim at professionalism was to make sure there was no one in charge at SOUTHCOM, which is the command that supervises Guantánamo. You normally have some sort of three-star, maybe, running it. Instead, they had nobody of any significance running SOUTHCOM.

So, again, breaking the professionalism. Rick Baccus basically just started to issue memorandum after memorandum after memorandum, trying, in his frustrated way, to set up rules and to set them up on paper. We're replacing an active general in the Marines, who had been at Camp Lejeune and had a number of missions all over the world, with a guy who had been pulled out of a cemetery directorship in Rhode Island. It was cruel, personally, to Rick Baccus, who I don't think will ever recover from that mission, and it succeeded exactly in making sure that anybody in charge of care and custody was irrelevant, and interrogation was going to rule the show. And did. That's what happened in those six very pivotal months, getting ready for somebody to come in and then reunify the command—that being Geoff Miller. Wow.

Q: I'm trying to do this in this question—from the point of view of whether it made a difference to the detainees' life.

Greenberg: Of course it makes a difference to the detainees, but what you have to understand is that the detainees move at the same time. They understand that something bad is happening when Dunlavey is there prior to Mike Lehnert leaving. They feel the difference, and they talk about it.

What's really going on at the same is that they're moved out of X-Ray to Camp Delta, which means they're moved out of these open-air cages into a prison. Now for most of us that sounds like, okay, finally you're not as affected by the elements, you have some privacy, and you can go to the bathroom in some kind of—the whole thing. But, in essence, they were put into isolation.

So for them, it's not just what's happening with Mike Dunlavey; it's what's happening in terms of their terms of incarceration. It begins to dawn on them that now they're here, and they're really here. It's a whole bunch of things that happen at the same time, in addition to which they lose the person that they had at least established some kind of respect for, and that's Mike Lehnert. So yes.

Q: In October of 2002, taking his cue, I think in part, from a Lieutenant Colonel or Colonel, Jerald Phifer, Dunlavey sends a memo, maybe to SOUTHCOM or maybe straight to the Defense Department, seeking the ratcheting up of interrogation techniques, harshly. Is that a fair description?

Greenberg: Yes.

Q: It's still sitting around, isn't it, when—?

Greenberg: That memo went two places. It went up through the chain of command, and it went to the Pentagon.

Q: And it's still sitting there when Geoffrey Miller arrives. Isn't that correct?

Greenberg: Yes.

Q: Now let me back up for one second here. You mentioned the interesting story about the ICRC—the Red Cross. I'm looking here at the minutes of a counter-resistance strategy meeting at Guantánamo Bay on October 2, 2002. It's being paraphrased—these are not exact quotes—and my copy is accompanied by a memo that was sent by an NCIS officer, a special agent who was deputy commander of the Criminal Investigative Task Force, up the chain of command. He's saying, "Somebody needs to be considering how history is going to look at this. This looks like the kinds of stuff Congressional hearings are made of."

Now going to the minutes one has here, of Lieutenant Colonel Diane [E.] Beaver, saying, among other things, "Disrupting the normal camp operations is vital. We need to create an environment of 'controlled chaos.' We may need to curb the harsher operations while ICRC is around. It is better not to expose them to any controversial techniques. We must have the support of the DOD [Department of Defense]."

Then someone else says, "We have had many reports from Bagram about sleep deprivation being used."

Beaver says, "True, but officially it is not happening. It is not being reported officially. The ICRC is a serious concern." These are American officers speaking here. Isn't this the same

Lieutenant Colonel Diane Beaver who wrote a legal memo—this memoir mentioned that General Dunlavey wanted to ratchet up the interrogation techniques, as did General Miller who succeeded him. Lieutenant Colonel Beaver, the legal officer down there, wrote saying this was okay, legally, did she not?

Greenberg: She did.

Q: I see somewhere that you're somewhat complimentary of her, or excusing of her.

Greenberg: Because I think she was used. I take her at her—I do think she was somewhat used. Not quite the way Janis [L.] Karpinski was used, but I think she was used.

Look. What she did was wrong, and she shouldn't have done it, but I think that without her it would have happened anyway, and that's probably how she was thinking. They were just going to force her into this, or end her career, probably. That's how I take it. I don't know if it was that drastic, but my guess is that that's how she felt it.

It doesn't make her okay, but she's a pawn. To focus on her doesn't make any sense because they didn't care what she said. Who cared what Diane Beaver said? This was going to have to be vetted by the Pentagon by itself, and everyone knew it. It was a high-enough level issue.

Somebody writing a memo in Guantánamo wasn't going to matter.

Q: In fact, it did go to the Pentagon.

Greenberg: Yes.

Q: It went first to Jim Haynes, right?

Greenberg: That's right.

Q: With the endorsement of General Miller, who had now succeeded General Dunlavey, right?

Greenberg: Yes.

Q: Is it fair to characterize that what they wanted to do, in terms of interrogation techniques, was now tougher?

Greenberg: Yes.

Q: Do you remember what kinds of things were included there?

Greenberg: No, but I can guess. What were they? Hot and cold, dogs, sleep deprivation, slapping. Am I getting it right? Am I close?

Q: You're close but no cigar, because I think they go beyond that.

Greenberg: Short-strapping, short-shackling they used at Guantánamo. I remember that. Yes.

Q: Do you have a handle, really, on the nature of the degree and character of the actual abuse that was going on at Guantánamo Bay?

Greenberg: No one does. If they tell you they do, they don't.

Q: We know about [Mohammed] al-Qahtani, right?

Greenberg: Yes, we know about al-Qahtani. But you know, in terms of how many and who they did it to, I think it's more extensive than we have documentation for—if that's what you're asking. I think it's more extensive than we know. I think the key to what was going on at Guantánamo is the apparent—it's clear that they weren't ever thinking of trying these people, and that this was really all about intelligence. Once they weren't worried about trying them—and that they would use the idea of trying them as a way to get more information—it's so corrupt in terms of following laws.

So, yes, I think the abuse was extensive. I think Mike Lehnert spent the first hundred days trying to prevent abuse. There was so much anger around anyway, and so much willingness to abuse, and the abuse goes very deep. I'm not even talking about the level of intelligence gathering. The religious disdain that the American soldiers and Marines had for these Islamic detainees was something nobody's written about, and it was rather intense. There already was a sense of abusiveness, even if it was just sort of a visceral hatred, religious whatever—anger, or disdain,

actually. Then you get this carte blanche in terms of how to treat people, including the first hunger strike, and how they treated the people after the hunger strike—by force-feeding, which is a form of torture. I believe it's much more extensive than we know and than we'll ever know. Unless there are films somewhere that we don't know about, we're just not going to know.

Q: Well, photos came out surrounding Abu Ghraib, did they not? And from Guantánamo?

Greenberg: What do we have? Nothing. It's not impossible that they exist. The military documents everything. They've documented everything. I don't know where they are, but it's not impossible.

Q: The Dunlavey/Miller memo, ratcheting up the interrogation went to Haynes. Haynes forwarded it on. I think there were thirty-five things they wanted to do, including prolonged interrogation sessions, hooding, extended exposure to extreme heat and cold, removal of clothing, increasing anxiety by use of aversions such as dogs, threat of rendition to a country that would subject the prisoner to torture and death.

Greenberg: Thank you for reminding me.

Q: It went to Haynes. At that time, some NCIS people and agency psychologists went to Alberto [J.] Mora—you know this history—

Greenberg: Yes.

Q: —the General Counsel of the Navy, to complain that this was going to be done and, in fact, was being done, because they had access down in Guantánamo. They had access to the logs at Guantánamo of the treatment of al-Qahtani, and perhaps others. Did they get something done that a guy like Taft didn't get done earlier on in terms of curbing the administration?

Greenberg: Yes, I think they did. I think so. Mora was able to put a stop to the process. He was. His defection was important. Should Taft have done that earlier? Would it have mattered? Probably, although getting further away from 9/11 helped as well. By the way, he did this in the post-interrogation—they'd gotten a lot of what they wanted by then, right?

Q: Yes.

Greenberg: So, hey. What's that all about? They got who they wanted. They had gotten [Abu] Zubaydah and al-Qahtani. That's what that whole thing was created for, and that's why we had that six-week period in December and January. So Mora's a hero.

Q: Well, in fact, Haynes had made recommendations along these lines to Rumsfeld. Rumsfeld approved them, then backed off and appointed a working group.

Greenberg: But he backed off six weeks later. He didn't just back off. He waited. During that period of time, I believe, is when Qahtani was interrogated.

Q: Continued interrogation.

Greenberg: Yes. So he didn't really back off. He finished what he needed to do, then he backed off. That's different than backing off.

Q: All right. Now, in fact, Rumsfeld appointed a working group—

Greenberg: Yes, two working groups.

Q: Two working groups. Here again, the State Department's not there. The military—even people like The Judge Advocate General of the Army, Thomas [J.] Romig, didn't even know—

Greenberg: Of course not.

Q: —that this working group had come to report.

Greenberg: The military order didn't know about it, so why should they know about this?

Q: Right. Now, before we come to talking about Abu Ghraib and what was going on in the prisons, in this time, up through 2004, the detainees were being held incommunicado. Is that correct?

Greenberg: Well, when they were in open cages it's hard to say they were incommunicado. They communicated.

Q: I don't mean among themselves. I mean with the outside world.

Greenberg: Not completely. There are a couple stories in my book about Mike Lehnert actually calling families and stuff like that. They weren't completely incommunicado. They had the ICRC. With the ICRC there, they're automatically not incommunicado. So not entirely.

Q: All right. We were discussing before what Beaver was saying about keeping the ICRC away from the harsh treatment, but, nonetheless, the ICRC was there in some capacity, right? How would you describe what they actually did?

Greenberg: I think they were important in the beginning. In the beginning, they were there to mitigate—what Mike Lehnert used them for was to be able to say, “You can't do that because it's not in the spirit of the Geneva Conventions.” That was very useful. It was the same way he used Carol Rosenberg. He used her to ask the questions he would like to be answered. He was very savvy about how he used these people who had access to the outside world.

In the beginning, they were there to make sure that there was an avenue to their families—“Can we get in touch with your family?”—that there was a sense of health care, and that they were being monitored, should any kind of interrogation go down. After Mike Lehnert left, that was no longer the case. They didn't have the same access.

Q: Do I understand you to say that Mike Lehnert was reassigned—Mike Lehnert would have stayed on?

Greenberg: Would he have pulled himself out you mean? I don't think so. I think he understood just how important he was to holding things in a quasi-legitimate fashion. He'd been assigned to Kuwait before he was sent to Guantánamo, and it was sort of a hiatus, in terms of taking a team to Kuwait. So who knows? Who knows what would have happened?

Q: Can you venture as to what would have happened at Guantánamo had he stayed on?

Greenberg: Well, you know me with my rose-colored glasses—I don't think for one second Mike Lehnert would have let what Dunlavey did happen. He would have fought that tooth and nail. He already was fighting it tooth and nail when Dunlavey was there. Don't forget, there was a kind of chaos in the camp, too—that idea of managed chaos. There was a chaos not just at the level of destabilizing the detainees; there was chaos from the moment Dunlavey got there, and started to have his parties, and started to sort of loosen up the rules all over Guantánamo in many different ways. Never, for a moment, would that have happened with General Lehnert there. There's not a question in my mind. He would have gone to the mat about it. I think.

Q: But you don't know that Rumsfeld had any hand in moving him on, do you?

Greenberg: Who?

Q: That Rumsfeld had any hand in moving Lehnert out of there.

Greenberg: I'm sure he had a hand in it.

Q: Are you, really?

Greenberg: Yes. I'm sure that his idea was to—absolutely. There was no question that they were not happy with a situation that asked for the ICRC to come to Guantánamo and asked for a Muslim chaplain. The last thing they wanted was people talking to the detainees. Mike Lehnert not only visits the detainees himself after everybody's told, "Don't talk to the detainees," but he brings in a Muslim chaplain who speaks a number of the languages to make sure he can talk to the detainees. No. This was exactly opposed to what Rumsfeld wanted, which was no communication of any sort among the detainees or with the detainees. They were at odds from the beginning. You could feel the tension.

Q: All right. Now, do you know the term "migration" as it's been used in the context of interrogation techniques from Guantánamo to Abu Ghraib?

Greenberg: Yes, of course.

Q: The story is more complicated than that, isn't it? First of all, Bagram was operating, was it not?

Greenberg: That's right.

Q: In fact, a couple of detainees were killed at Bagram.

Greenberg: Yes.

Q: Now we had gone into Iraq in the spring of 2003.

Greenberg: March 19, I believe.

Q: Bagram was up in Afghanistan. Abu Ghraib was a prison in Iraq. After General Miller came to Guantánamo in the summer of 2003, he and Lieutenant Colonel Beaver, among others in that group, went to—

Greenberg: Abu Ghraib.

Q: —Iraq to advise the generals there on interrogation at Abu Ghraib. Is that not correct?

Greenberg: That's right.

Q: The pictures of this abuse at Abu Ghraib that ultimately came out the following April were of activities that occurred after General Miller went there?

Greenberg: Yes.

Q: To go back to my question about migration, is it adequate to say that the migration was from Guantánamo to Bagram, or to Abu Ghraib, or was there some kind of cross-fertilization going on here? Or are they really separate, different worlds, and they really should be considered separately?

Greenberg: They're not separate in any way, and they start from the very beginning. That's why interrogation is on their minds in these memos, from at least January of 2002. It's all one story, from Bagram, to Guantánamo, to Abu Ghraib. It was the policy of the land to do this—the land, the country—so it wasn't migration. It was Washington, and that happened to be the three places Washington was. Also, the renditions would also come under this. So what I would say is that you could describe it either way, as a migration or a non-migration. It doesn't matter. The best way to describe it is a migration because you have the same personnel at Guantánamo. You get the migration thing because Geoff Miller migrates.

It's much larger than just a migration of a person who takes techniques. It's a coherent umbrella under which these things happen, and there are some very trivial little things—but wearing women's underwear on your head, both at Guantánamo and at Abu Ghraib? That's not about migration, that's about what people are talking about, and how they think about humiliation, and what they're thinking of doing. Same thing with the use of dogs, etc. This is not a migration; this is a wholesale policy. These are the places we know it was.

Q: When we resume, there are a lot of things I want to talk about, including the black sites, the rendition, and, to the public here, the almost unknown circumstance of Bagram, and whether that's of any consequence, going forward—and, of course, many other things, including, if we can, the consequences of the *Rasul* [*v. Bush*, 2004], *Hamdan* [*v. Rumsfeld*, 2006], and *Boumediene* [*v. Bush*, 2008] decisions, and whether the Supreme Court is backtracking somewhat from that, or whether they continue to be strong. There are any number of areas we can talk about next time.

Greenberg: I'm going to reread my book, I'll tell you that. I haven't read it in so long. And you're like, "I remember that!"

Q: Thank you.

[END OF SESSION]

VJD

Session Two

Interviewee: Karen J. Greenberg

Location: New York, NY

Interviewer: Myron A. Farber

Date: February 15, 2012

Q: This is Myron Farber on February 15, 2012, interviewing Karen Greenberg for Columbia University's Rule of Law project on Guantánamo Bay detention camp and related matters. This is session two.

Karen, at the time that someone like Zubaydah was arrested, which was before the 2006 *Hamdan v. Rumsfeld* decision, in which the Supreme Court applied Common Article 3 of the Geneva Conventions to Guantánamo Bay detainees—prior to that 2006 decision, were detainees, in your opinion, covered by the Geneva Conventions?

Greenberg: I would have argued yes. I would also want to say that I think they were covered under U.S. law, not just by the Geneva Conventions. In particular, when you're talking about people like Zubaydah or KSM [Khalid Sheikh Mohammed]—people who had been tortured—they were covered under our own statute not to torture, not to mention the Uniform Code of Military Justice, in whose custody—meaning the military—Zubaydah was. The intent of the Geneva Conventions and Common Article 3 was to prevent against the abuses of people who fell into different categories, which is why the world has expanded the Geneva Conventions over time, to account for more and more categories of individuals. I would have said that he was covered, if not by the Geneva Conventions, then by U.S. law.

Q: Even though he was hardly—

Greenberg: —a prisoner of war.

Q: Basically, is it not true that the Geneva Conventions were meant, originally, to cover people in armed conflict—

Greenberg: Yes, international armed conflict.

Q: —and then they were expanded to include civilians in some capacity? But a fellow like Zubaydah or KSM aren't your typical civilians, right? They're not wearing the uniform, or laboring under a command, or anything of that sort that are traditional to armies.

Greenberg: You're right. They're neither civilians, per se, because they are engaged in the battle, nor are they insigniaed combatants. They fall somewhere in a gray area. I would say that you would like to think you belong to a country, if it's the United States, that getting someone in custody who didn't fit into one of those categories would have thought about how to make it legal, and would have opted not for torture treatment but for a Common Article 3 kind of treatment, and didn't. In other words, we had that choice to make, and we didn't. We chose to exploit the loophole so we could torture him for information. I would say, probably, also for some kind of punitive reason and some frustration on our own part of not knowing what we needed to know to protect ourselves as a country.

Just because the law wasn't there and just because he might not have been covered didn't mean you had to abuse a commonly held assumption that you don't torture people. I love the idea of there's no law, and therefore, we can do something that's been illegal forever. Since medieval times.

Q: Do you think there's room to rework or add-on to the Geneva Conventions, even today?

Greenberg: Yes. I think there's a lot of talk about it. There has been talk for at least the last four years about, "Do we need to upgrade the Geneva Conventions to deal with this category of unlawful combatant, and how do we deal with it?" I think eventually that's going to happen. I still think that, with or without it, just because there isn't a law doesn't mean you can do something that violates basic principles, and basic constitutional principles.

Q: When we last spoke I made reference to Colonel Lawrence Wilkerson, and I just wanted to put on the record that Wilkerson was chief of staff for Colin Powell from mid-2002 until the end of the first Bush administration, and earlier he was associate director of the State Department's policy planning staff.

Now in your book, *The Least Worst Place*, you say that Marine General Lehnert, who was in charge down there, "confesses to knowing in the first weeks that the major portion of his prisoners were not particularly dangerous or hardened terrorists." I find that others have agreed, and studies have borne out, that many of these people did not really qualify as dangerous or hardened terrorists. Indeed, many of them were released over time.

Greenberg: Over five hundred by George Bush.

Q: But John Yoo, in his book, *War By Other Means*, published in 2006, says, “When our group of lawyers visited Gitmo”—this was actually in 2002.

Greenberg: January, I believe.

Q: January. “The Marine general,” undoubtedly meaning Lehnert, “in charge told us that several of the detainees had arrived screaming that they wanted to kill guards or any other Americans. Many at Gitmo are not in a state of calm surrender.”

Greenberg: I would agree with that. I don't find that the statement “these are not hardened terrorists”—look. It is true. I would say, “How did you know they were dangerous?” to the people who thought they were dangerous, and their answer would be, “They said they wanted to hurt us.” I'm not sure that's what makes somebody a hardened terrorist, of the ilk that we thought we had, or that we wanted to have at Guantánamo. I think the longer they were there, and the more they were in cages, the more they didn't know where they were, the more likely it was that you were going to get acting-out like that. But to call that what makes them dangerous seems to me a failure of judgment.

Q: As late as June of 2005, as you point out, hundreds were being released, and also, in the process of being released. In the same week—June of 2005. That's more than three years later,

after they had arrived. President Bush says, “These are people picked up off the battlefield in Afghanistan. They weren’t wearing uniforms, but they were there to kill.” Then, two days later, Vice President Cheney says, “The people who are there are people we picked up on the battlefield, primarily in Afghanistan. They’re terrorists. They’re bomb makers. They’re facilitators of terror.” Then, four days after that, the secretary of defense chimes in, saying, “These are people all of whom were captured on the battlefield. They’re terrorists, trainers, bomb makers, recruiters, financiers.”

It’s interesting to me that this is three years afterwards, and while the administration is trying to get rid of many of these very same people, they’re telling the public that this is who they’ve got. Can there be some justification for that?

Greenberg: First of all, it’s not correct. These people were not all picked up in Afghanistan. Some on the border were traded for bounty, but many were picked up elsewhere in the world, as we now know. It was the global battlefield, not the Afghan battlefield that they were referring to, even when they add the tagline “in Afghanistan.” What year was it? 2006?

Q: 2005.

Greenberg: 2005. This is an administration that was determined to keep Guantánamo open, determined to be able to round up people as they wanted, with or without justification, or the kind of justification that might be required by a legal system or the idea of a trial. They needed to keep this narrative alive. If they hadn’t had the word “Afghanistan,” I would say that they

defined the battlefield as the world, and anywhere they picked them up—that was a consistent policy. The only part of it that wasn't actually correct was the “in Afghanistan.” I don't think they felt they were misleading anybody. They thought of the battlefield as a global battlefield.

Q: One-third of the first five hundred or so who were transferred to their home countries or elsewhere during the Bush administration were, it later turns out, designated high-risk people. It raises some questions as to the quality of the determination as to who was high-risk, who was low-risk, and what-have-you and all. But I wanted to ask you about recidivism. A year ago, the Defense Department released a report in which it said that twenty-five percent of those who had been released from Guantánamo were confirmed or suspected of having gone back into a fighting position of some kind or another against the United States. They had a figure of 13.5% of those released were confirmed and 11.5% suspected. Do you have any faith in these statistics?

Greenberg: Absolutely not, and I don't have faith in the use of the term “recidivist.” First you have to prove there was an action, or that there was suspicious activity other than being traded for bounty by your neighbor or somebody who wanted the money. So I think the use of the term “recidivist” is taking some liberties because we don't know that they've done anything in the past. They're not returning to anything, necessarily, which brings up the issue—which I'm usually hesitant to discuss but in this context, I do discuss—which is the radicalizing impact of Guantánamo, of being in custody, making you become a terrorist, as opposed to returning to terrorism. Those are two different categories. The third thing is that when the *New York Times* published this study—Elizabeth Bumiller, I believe, was the person who reported it—immediately there was pushback from a number of experts who work on Al-Qaeda and current

terrorist threats, among them a number of people in Washington. Then, where did the statistics come from?

How we got those numbers and what they actually meant—there was no clarity. Let's just say there was no clarity to what they were doing. We didn't know what their criteria were. And to say "suspected of"—what makes them "suspected of?" We live in such a murky world when it comes to—

Q: In some cases, something they said—

Greenberg: In some cases it's what town they live in, because that's where a lot of violent radicalism is. We don't really know what any of the categories are, or in whose interest it is to have these recidivists look this way. Let me just posit something for you. In foreign countries, the idea of a recidivist is somebody from Guantánamo who goes home and decides to join the cause of jihad, again or anew. The way this works is that the family is going to suffer. They've made that very clear in these attempts at rehabilitation. When there's a recidivist, it's an example to the whole country of "Look what we can do if you don't—" whatever.

Some recidivism is not necessarily sending a bad message. You need that—to send a message of, "Don't participate in this," etc., etc. I think it's a much misunderstood category, and like so much else in the war on terror, it's just an easy mark without any of the distinctions that would lead to wise judgments and informed conclusions.

Q: Actually, let me take this opportunity to ask you what you think of the media coverage of Guantánamo over the last decade. At the Center at NYU, you had innumerable speakers. You, yourself, had been in touch with people who have written about this subject, as you have, over the years. Looking back, are you able to form in your own mind some view of how well, or how poorly, or—I don't want to put words in your mouth—the press has covered Guantánamo?

Greenberg: That's a very good question that I should have given much more thought to. Remember that at the beginning they were sort of chased away, as I tell in the book. They sort of got mixed up in their policy. They had cross-signals, so they let a few people stay. In other words, the people who covered Guantánamo very much wanted to cover it. They sort of had to fight to be there, so it made for a coverage that was very dedicated. It wasn't just like somebody said, "Go cover that." These people wanted to cover it, for whatever reasons.

The most consistent coverage, as I've written in a lot of places, has been from Carol Rosenberg, who's been there from day one. There is nobody else who's been there with that kind of consistency. The problem with the press coverage—and it's gotten worse over time, not better—is that there is a—it's very hard to cover Guantánamo, because in order to get what you need, you sort of have to sidle up to the authority figures. The military commissions right now are very good examples of this. In the days of Lehnert, that meant one thing; in the days of the military commissions, let's say, that means another thing. You can see the press kind of aligning with the military commissions process and there isn't a lot of room for a critique.

This was complicated by the fact that, at some point in Guantánamo's history—after my book and in the middle of the 2000s and 2000-oughts—they started to have these public invitations to the press. At the end of Bush and the beginning of Obama, this just became sort of across-the-board public relations. They would bring groups of journalists down and they would give them the standard tour. They would read to you from a notebook what they had to tell you about Guantánamo—its history, etc., etc. When I went down to Guantánamo, to visit it in 2007, I think, I was given that standard tour. I was given it by somebody who knew nothing about Guantánamo other than what was in that book. These public relations [PR] people are rotated in and out on a six-month basis. They have no knowledge of Guantánamo. They could have beamed in from the moon, and they could have been in any place in the world. They read what they had.

I had spent hour, after hour, after hour with maps, with building plans, and with the military people, talking about who was where, and what was where—both people who agreed with me and didn't agree with me. The facts were the same. This was the medical facility. This was where they took showers. This was the dining facility. When we actually got there and they laid out for all of us what the various buildings were, they weren't even close.

Q: You mean your minders weren't.

Greenberg: They weren't close. But they didn't know. They weren't lying, because they didn't know. That's what they were told. That's what was in the notebook. It could be anything from something very minor, like that was where they brushed their teeth, to whatever it was. That lack of attention to the facts is disrespectful, and they disrespected the media in such a way that the

media never really caught on. They were like, “Yay, we get to go to Guantánamo, we’re going to get to see all these things.” But all they needed to do was to sit down with anyone and to say, “Here’s a map of Guantánamo. Could you identify those buildings?”

The media coverage has been appalling. It has been way too accepting of this PR thing, not just as PR-look-how-good-it-is. Who cares? “Here’s the feeding tubes. Look, they’re not really so bad.” I’m not even talking about that level. I’m talking about a very basic level of not respecting the facts in any way, and not having knowledgeable people take you around. At one point on my way out, at the very end, I said, “Would you like to know that some of the things you’re saying are not right?” And they didn’t care. They were just reading out of a notebook. It wasn’t a big deal. That’s not okay. The major policy directive of two administrations and nobody cares.

Q: What do you think accounts for the fact that Carol Rosenberg has been there consistently for a decade? Is it because Cuba’s so close to Miami? Is it because of her? Can you actually envision a situation where no reporter would be there consistently?

Greenberg: Yes, I can. I think that at some point it seems like same-old/same-old. Carol’s being there is because it is tied to SOUTHCOM, so it is tied to Florida in terms of supervision. So it made sense, as an original beat, for her to go there, and she’s stayed because she’s become the eyes and ears on the ground. Carol once said something really wonderful about that first day, when there were no pictures allowed to be taken, except for the people who embedded themselves on the Cuban side and could see in. There were no pictures from the people who were actually there out by the tarmac, and Carol said, “This was fantastic. This was one of those

times in my life when what I wrote wholly mattered, because there weren't going to be any pictures." So the words actually mattered. It wasn't like the words were there to elaborate on what the picture was.

I think that's been a very apt description of everything that's taken place at Guantánamo in terms of the reporting. If there's not a reporter there, you actually don't know. Because there is a story, and from the very beginning they've crafted this story very well. The PR part of the Guantánamo mission is strong, and it's not about politics; it's just about whatever they want it to be about.

Q: Actually, wasn't it the PR operation of the Defense Department that put out these first pictures? That wasn't exactly a stellar PR moment, was it? They weren't proud of it at the time, I think. They were upset that—

Greenberg: Well, Rumsfeld was upset because Torie [Victoria] Clarke had put them out. But I think the reason she put them out was thinking, "We're proud of this. We like this. We're going to show the world that we're going to take the gloves off." I think a lot of that went on. You know, they were showing us. They were showing Americans what Americans are doing, not just the rest of the world. Rumsfeld, when there was backlash on it—like, "What the heck is this?"—pulled back on it. That doesn't mean that he wouldn't have supported it; it means that he was in the comfortable position of being able to say, "Well, that was Torie Clarke, and that wouldn't have happened." But we don't know that.

Q: How did you conceive the idea of doing a book on the first hundred days? When was that, and why was that?

Greenberg: You know, my original idea was to do a book on Guantánamo; it wasn't to do it on the first hundred days. I wanted to do it on Guantánamo. I thought I would take a look at it from beginning to end—whatever the end was—and just sort of describe what had happened. I wasn't really sure what I was going to do. Then as I started to interview people, and as I got to know it, it became apparent to me that there was a shift in the late spring of 2002. The personnel was changing, etc., etc., and it seemed that this was the abyss, in which there was no policy and no sense of direction. As you know from the book, this was just sort of left to the people on the ground.

After that, there was a policy, and we know that policy very well. It's probably the first chapter of a mega-book on Guantánamo, is how to think of it. But nobody wrote about this, nobody covered it, and nobody was interested. At the end of my research, which was a couple of years ago, a couple of people that I interviewed said to me, "Can you believe that no one else has ever talked to us? No one ever called us. No one cared about those days." Because it wasn't tied enough to the bad stuff that happened. "Here we are. We're going to try to follow the law," which is apparently not a really interesting story. To me, that was a very interesting story, and that's how it got started.

Q: But you were writing about it and researching it, what, six or seven years after, right?

Greenberg: No, it was opened in 2006, so four years. I started, really seriously, on this topic in July 2006.

Q: Did you find at that time that people like Lehnert and [Manuel] Supervielle—

Greenberg: Manny Supervielle.

Q: —and a Muslim chaplain, I think, Saif [Abuhena Saifulislam]—

Greenberg: Saif, right.

Q: —some of them were still on active duty, right? Were they willing to talk to you?

Greenberg: They were all on active duty.

Q: They were willing to talk to you?

Greenberg: Yes, I guess so. I think they felt like they needed to talk. I think they felt ashamed of what Guantánamo became. I think they were confused by their own attachment to the mission. Look what Manny Supervielle had done. He'd been the one to pick up the phone and call the ICRC. That's not a minor thing to do. It changed the course of Guantánamo. It put the protections in that Lehnert and those needed, who really didn't want to go to bed at night thinking they were here in some kind of lawless land. It just doesn't fit with military policy, not

to mention with these particular individuals. What Rumsfeld had to do was to find a way around the military codes, and he found it. You can always find people like that, and he found it outside the regular military. He went to people who were reservists and he went to people who were National Guard people. They stayed away from the professionalism of the military, and they had to figure out a way to do that. And they figured it out.

Q: You think that was a conscious move?

Greenberg: That administration diminished the power of the professions in every way I've encountered. In every piece I've studied of the war on terror, the first thing they did was to dismantle the professional hierarchy and the professional standards. That was the first thing. The second thing they did was to mess with the structures of authority within those professions. It had to be conscious. It happened repeatedly, time after time. This does not happen by mistake.

Q: You wrote in the book, or somewhere else—because you've done a lot of writing over the years on this subject—that General Lehnert saw Guantánamo Bay as “a custody regime adhering to international law.” But isn't it true that it morphed pretty quickly from a custody regime to an intelligence gathering and interrogation regime?

Greenberg: Not as rapidly as they would have liked, but yes.

Q: It did. But it's curious that if one looks at—is it Mark [P.] Denbeaux?

Greenberg: Yes, and Joshua [W. Denbeaux], his son.

Q: Mark Denbeaux's study was published around 2007, in which Denbeaux looked at Defense Department information that was available at the time. He found that during the first thirty months of the detainees' detention at Guantánamo Bay—that is, from January 2002 to July 2004—each detainee was interrogated barely once a month. Matthew Waxman, who was the deputy assistant secretary of defense for detainee affairs for a brief period in mid-2004 to the end of 2005, has written that maybe three-quarters of the detainees, by 2005, were no longer regularly interrogated. Now what do those stats tell you? They want to do all this interrogation to get the intelligence, to prevent another attack, etc., etc. Yet, by those figures, they're not doing too much interrogation.

Greenberg: Yes. What were the years that Denbeaux looked at?

Q: 2002 to—

Greenberg: That has a little more impact. What Matt Waxman is saying makes sense. One of the questions, really, is, if they're keeping them there for information purposes, how much information can they have after a certain amount of years? You pulled up the example of another attack, but, really, that's not what—there were some people in the early days of the Afghanistan conflict that we were looking at for plans for another attack, right? For follow-on attacks, or whatever. But that information, as any good intelligence person will tell you, has a shelf-life that's very short. So what they really wanted them for in terms of information was not about

where are they going to hit next, but who they were, what the structure of Al-Qaeda was, what the Muslim world was like, and how the countries related to one another. It was like “Gitmopedia.” It was the idea that these people were there for information that we didn’t have.

Q: Did you say “Gitmopedia?”

Greenberg: Yes. It reads like “Gitmopedia.” They continued, year after year, to call it that. When I went in 2007, I asked Admiral [Harry B.] Harris [Jr.], “Do you really think that questioning these people is going to give you something you need?”

He said to me—and I have written about this—“Yes, because someday there will be a change in leadership in Al-Qaeda, and one of these guys might have seen them, and they can draw us a picture.” That’s what he said to me. The kind of information they needed was a failure of American intelligence, and other experts, to know the world we were in, and it persisted from day one of Guantánamo. If they could tell us where a certain village was, that was useful.

Q: If they would tell you, also.

Greenberg: Right, if they would tell you. That’s a big question. The fact that they stopped interrogating them might have been that we started to get better information, in more reliable ways, from other parts of the world, number one. Number two, they couldn’t give us the kind of information that was tactical about a next attack.

By the way, as soon as you move them out of Afghanistan, out of the battlefield, the information that you need in terms of placement, and who, what, when, where, why, gets diminished immediately. We knew that by the time we moved them. That's why we keep people near the operating theatre of battle—because the information they have is relevant to where they are. To move them out of Afghanistan was such a violation of how we think about people we have for informational value. People can quote all they want, that, “Yes, we had Italians and Germans incarcerated in the United States during the Second World War.” Very few of them were here to be interrogated. Our lack of expertise in the area was staggering.

Q: Well, General Miller, who was as much an advocate for tough treatment of the detainees as anyone, right? And who was in command Guantánamo Bay from November 2002 until, I think, mid-2004—

Greenberg: Yes.

Q: He's quoted in the *Vanity Fair* of January 2004 as saying, “We are developing information of enormous value to the nation. We have an enormously thorough process that has very high resolution and clarity. We think we're fighting not only to save and protect our families, but your families also.” He goes on to say that the intelligence gathering is a young person's game, and that getting these young people out of Fort Huachuca—and then he actually says, “Last month,” meaning December 2003, “we gained six times as much intelligence as we did in January 2003. I'm talking about high-value intelligence here, distributed around the world.”

Greenberg: From the detainees? No, I believe that they were—

Q: Six times. That's remarkable that you can even calculate that.

Greenberg: No. What they're getting is more information, because they have people around the world in these CIA black sites. Does he say they were from Guantánamo?

Q: Yes. That's what he's talking about.

Greenberg: Yes, well, I don't know what he's talking about. I can't imagine that they felt they were getting that much more information.

Q: In *The Least Worst Place*, you quote Rear Admiral Donald [J.] Guter, who was—what?

Greenberg: Navy JAG [Judge Advocate General].

Q: —as saying that he was told in the spring of 2002 by an Army intelligence officer that “We're not getting anything because there might not be anything to get.”

Greenberg: That's right.

Q: That's very different than Miller's portrayal of it.

Greenberg: Yes.

Q: Ten years later, have you—?

Greenberg: No. Listen. First of all, the one thing we wanted was bin Laden, right? Where's bin Laden? Where's bin Laden? Where's bin Laden? That's what they keep asking the detainees. If there was such great, useful information to get, why didn't we get bin Laden? If there was such great, useful information to get, why did we have to take people and squirrel them off to black sites and torture them? What information was there to get? What did we need? We didn't even know what we needed. The idea that there was more useful information—I think part of this is a myth. It's like the idea that we tortured Zubaydah, who's the poster child of worthwhile torture. "We tortured Zubaydah, and then we found out about [José] Padilla." They still say that, to this day—as if Padilla is some great threat to the country. What? First he was the dirty-bomber—which it turned out he wasn't—then he was something else. So that's what it got us? That can't be, that that's a justification. When you really look at the Padilla case, there's not enough there. I would venture to say that these kinds of facts aren't tested. So they'd say, "We got a lot of information." Well, let's have somebody assess this information that you got and tell us if it's really information. Because if they don't know how to judge information, and know what's real and what's not real, and what's a threat and what's not, then it all sounds pretty interesting.

I have no trust that these people would have known if they got reliable, valuable information. If they got such reliable, valuable information, it should have led to a whole other scenario in terms of our behavior in the world.

Q: Karen, as a result of the Supreme Court decision in 2004, the detainees were allowed lawyers.

Greenberg: For habeas cases, yes.

Q: Let me ask you this. Has the Supreme Court ever ruled on whether detainees, no matter what you call them, can be held until the end of hostilities, without charge? I thought in *Hamdi* [*v. Rumsfeld*, 2004], didn't the plurality of the court say that the U.S. could hold these people?

Greenberg: We can hold them until—that's why this National Defense Authorization Act [NDAA] is so important. Let me put it this way. Nobody has defined what "end of hostilities" is. So they may have written this, but it's meaningless. "Can we hold them forever," is the question, and according to President Obama, we can, in much more legal, codified ways, that even under President Bush—and that's not mentioning American citizens, which [Yaser Esam] Hamdi was—

Q: That's right.

Greenberg: —so let's just keep it—

Q: We'll come back to Obama, for sure.

So these lawyers were allowed, for habeas reasons. Did you ever notice how, those six years later, there was a flap over the fact that some of these lawyers, who had worked to construct habeas petitions for detainees, were now working in the Justice Department, and Liz Cheney [Elizabeth Cheney Perry] and Keep America Safe called them the “Gitmo Nine,” and wanted them thrown out? Do you remember that?

Greenberg: I do vaguely remember that. Who was it they wanted thrown out again?

Q: The “Gitmo Nine”—people they said were nine political appointees who had represented detainees in challenging their confinement.

Greenberg: Sure. This was part of a much larger pushback against any of the people who worked with the detainees, on their behalf. Do you remember when Cully [Charles D.] Stimson said you should boycott firms that have done pro bono work on behalf of the detainees, and he lost his job? He had replaced Matt Waxman. He was the undersecretary or deputy for detainee affairs. He was surprised that he couldn't say that. He said it on the radio. I think it was a generally held concept that if you defended a detainee, or tried to do anything, you were somehow an enemy. The lawyers, like the media, were treated as enemies when it came to Guantánamo. This has persisted, because in June of 2010, when the [*Holder v.*] *Humanitarian Law Project* decision comes down from the court, basically the idea is that material support can extend to those people who have aided terrorists in ways that are not about terrorism, but that have aided terrorists in a broader way. Lawyers immediately reacted with “Does that make us in this category of enemy?” This is part of a long-standing battle that's been there from the very beginning. If you come to

the defense of detainees, either on human rights grounds or legal rights grounds, you risk being put in the category of enemy of the state. That's what the Cheney quote that you mention is evidence of.

Q: Interesting you should mention *Holder v. Humanitarian Law Project*, which was decided in June of 2010. In that case, on June 21, 2010, the Supreme Court held that it does not violate the Constitution for the government to prohibit forms of advocacy and advice for a designated foreign terrorist organization, even if the aim is to support the group's peaceful or humanitarian actions. The case involving a federal law banning "material support" to listed foreign terrorist organizations pitted the government's interest in blocking assistance to terrorist groups against First Amendment values. It's interesting you should mention that case because, actually, I think that was the second major anti-terrorism case decided by the Supreme Court that month—I take it back. It was a federal appeals court that agreed with the Obama administration's argument that detainees captured, brought to, and held in Afghanistan have no habeas rights, like the Guantánamo detainees. That's a long-winded way, perhaps, of asking you whether the Supreme Court was always in the camp of the accused—the detainees. *Hamdi v. Rumsfeld* involves a U.S. citizen. He had dual nationality. That was decided in 2004, along with *Rasul v. Bush*. Then in 2006 you had *Hamdan v. Rumsfeld*, and in 2008 you had *Boumediene v. Bush*.

Let me ask you to reflect on those collective decisions, as against what we were just talking about in *Humanitarian Law Project*.

Greenberg: That's exactly right. The Supreme Court kept batting the ball back to the other branches of government, mostly to Congress. It kept saying, "Look, this doesn't gel with the law of the land. These military commissions are not military commissions." Just to give you an example. "We can't keep these people without having them be able to protest at least the grounds on which we're keeping them"—habeas. So there was a consistent feeling that the Supreme Court was some, you know, rational, constitutionally-based, decision-making body. Then you get to the *Humanitarian Law Project* decision, which is an extremely disheartening decision. It is a game-changer.

Q: Is it a different court?

Greenberg: Yes, it's a different court. Maybe. I think what happened is—and this has happened across the board in terrorism, and I don't quite have my thoughts together on this—we've gotten used to the conversation. We accept certain things now about terrorism cases that we never would have accepted in 2004, 2005, and 2007. People are exhausted—defenders of the civil liberties of detainees and others—and the material support category has continued to creep up on American law. We've added clauses, you know, since 9/11, as you know, to the material support statutes. It is the way we prosecute terrorists. It is now a very broad statute, and what this case did was to sort of codify that. I think in a lot of ways they were thinking about Joshua Dratel's Holy Land Foundation case. They were thinking about financial support to terrorists, which is a very unexamined category. We've focused on things that are a lot easier to look at than these financial cases.

So I think, in part, the temper of the times changed—therefore, the pressure being brought to bear on these decisions. Somehow the Obama administration has been allowed to get away with things that, if Bush had done these, there is no way they could have gotten a *carte blanche* on this. And it continues.

Q: During the time the Supreme Court ruled in *Rasul*, and *Hamdan*, and *Boumediene*—

Greenberg: —and *Hamdi*.

Q: —and *Hamdi*, throughout that period of four years, let's say, and up until the end of the Bush administration, the Bush administration was fighting pretty hard to overturn those decisions, at every turn.

Greenberg: They were not happy.

Q: Especially in *Hamdan*, where the Supreme Court said that Common Article 3 of the Geneva Conventions applied to detainees. Those were real losses, were they not?

Greenberg: They were losses.

Q: I mean losses for the Bush administration.

Greenberg: Absolutely. In terms of the solidity of their support. Yes.

Q: Speaking of *Boumediene*, recently, the *New York Times* had an editorial saying that the D.C. circuit court [U.S. Court of Appeals for the D.C. Circuit] was undermining *Boumediene*.

Greenberg: Yes, of course.

Q: Is that true?

Greenberg: Yes. When the habeas decisions get brought to the circuit, they're getting overturned. Yes.

Q: What is the status of the habeas petitions?

Greenberg: Worrisome.

Q: Does it have any resemblance to the real world? Does something happen?

Greenberg: Those are two different questions. The best person to talk to about this is Jonathan Hafetz, not me. But going on with the habeas is that, yes, they're finding ways to undermine the right to habeas. The decisions are being overturned, but to your more essential point, which is, if your habeas is put forward and they say no, they don't have the right to hold you, there is not enough evidence or whatever, are these people going home? The answer is no. I know. I said that's what you're getting at. The answer is sometimes, but less and less. That's why the

category of indefinite detention, that we can hold people—look. This president has at different points in his presidency made very sweeping statements about the right to hold people, with or without habeas decisions, and with or without trials. He's firm about it.

Q: Let me come to the Obama administration in a moment.

Greenberg: These recent cases are Obama cases, the habeas stuff.

Q: What I'm really asking is, how many detainees at Guantánamo Bay, as far as you know, have filed habeas petitions since 2004, and have been let go as a result of the habeas petitions, not as a result of some other determination by the military?

Greenberg: No, no, no. A bunch—some have been let go. I'm sure we have some charts.

Q: As a result of the habeas petitions?

Greenberg: Yes.

Q: In other words—just for the people who might read this fifty years from now and not quite understand it—when a Guantánamo Bay detainee files a habeas petition, he can only file it with the D.C. court, right?

Greenberg: Yes. The District Court [U.S. District Court for the District of Columbia].

Q: The District Court in Washington. That's the one venue. The court then makes a determination of what?

Greenberg: Of whether or not we have the right to hold that person, which is what a writ of habeas is about.

Q: For a Guantánamo Bay detainee, based on what considerations?

Greenberg: Whatever evidence is put before them, depending on your case.

Q: In some cases, maybe thirty-some—

Greenberg: Those cases have been granted. The habeas has been granted. Then a number have been overturned by the circuit, which is now a worry. But yes, there have been people who have been returned home because of the habeas petitions. A handful.

Q: If you think about how you felt in 2004, when habeas was granted in the federal courts, and this number that have been returned, do you have any feeling about whether it's about what you expected, wildly beyond anything you ever hoped for, or short of the mark?

Greenberg: All of the above—short of the mark and everything I expected. The idea that these are dangerous people has very much taken hold of this administration, like the past

administration. And the idea that we can keep people, no matter what happens to them legally, is ingrained now. We don't want to let these people go, and we have a lot of excuses to fall back on that have to do with what countries they're from, etc., etc. Things like that. "We can't put them in a safe place."

Q: I'm just speaking about how successful the legal move was.

Greenberg: I think the legal move was successful because it still gives you a chance to get in there and fight it. But in terms of numbers, nothing is going to compare with what happened under the Bush administration, which let over five hundred people go home. He didn't need habeas for that. He just let them go.

Q: Why would you say they did?

Greenberg: Because they determined that they didn't have enough evidence on them. We talked about this last time. There's some recent pushback on this of, how could the Bush administration have let these people go? And quotes of alleged recidivism figures. But partly the reason the Bush administration let them go was that countries wanted them back—negotiations and foreign policy with other countries. And part of it was just a determination that a lot of these people we shouldn't have had in the first place.

Q: We discussed this somewhat the other day. Is there any question in your mind—and I'm speaking now only of Guantánamo Bay—that there was abuse of detainees there that rose to the level of what a reasonable person would regard as torture?

Greenberg: There was some physical abuse at Guantánamo, particularly during the summer of 2002—at least from my research, and from people who talked to me, many of them off-the-record. There's no question in my mind. I don't think there was the kind of torture that we identify with the black sites, but I could be wrong. I do want to say—we're talking about early on now, pre-2004—that being held in legal limbo for years, without the right to a lawyer, is a form of torture, in addition to all the things they did in terms of isolation, hot and cold, sleep deprivation, and the use of dogs. All of that went on at Guantánamo. So yes, it rises to the level of abuse and torture. It doesn't rise to the level of torture at the rendition sites, or in Bagram early on.

Q: Let me come to that. You know, of course, that various lawyers in the Office of Legal Counsel in the Justice Department at that time would argue—and, indeed, argued—they put forth various definitions of torture, what constitutes mental or physical torture that other people might disagree with. In fact, some people did, of course, disagree with it, when it came to light what they were. They also argued that the president, the commander in chief, could order torture if he needed to, or wanted to. As John Yoo told Jane Mayer of the *New Yorker*, Congress cannot “tie the president's hands in regard to torture as an interrogation technique—It's the core of the Commander-in-Chief function. They can't prevent the president from ordering torture.”

Greenberg: Awesome.

Q: I know you're perhaps not a constitutional scholar—yet—but what do you make of that?

Greenberg: I make of it that they were going to find a way to justify torture no matter what, to punish Al-Qaeda, and to try to get information on Al-Qaeda. There was a combination of both, and they found that the commander-in-chief power was the way to do it. If they hadn't found that way, they would have found some other way, and the legacy of that is astronomically bad. We see it today in the Predator program. The Predator program is a direct—who decides who's going to get killed? Who decided who was going to get tortured? It was the beginning—you think the slippery slope got us to torture? I think the slippery slope is much vaster than just torture.

So what do I make of it? I make of it that John Yoo is an ideological lawyer who argued for his client, who he thought was not the American people or the Constitution, but the president. He made a distinction between those two, and it begs the question of what OLC's function is.

Q: All right. Actually, I daresay few people had ever heard of the Office of Legal Counsel in the Executive Branch. It seems to have quite a powerful position there, even to this time.

Greenberg: Powerful and unsupervised.

Q: Well, supervised by the attorney general, no?

Greenberg: Yes, but there's no—

Q: You look skeptical.

Greenberg: Yes. [Laughs]

Q: In 2010, some years after those decisions were made about what the commander-in-chief could do, etc., the Office of Professional Responsibility of the Justice Department—this was during the Obama administration, but it might have started before him—reported that Jay Bybee and John Yoo had demonstrated professional misconduct in the Office of Legal Counsel, and I believe they were recommending that they be disciplined. That was overruled by a Justice Department official, a career lawyer—David Margolis—saying that they had used “flawed legal reasoning, but were not guilty of professional misconduct.”

Now let me give you an honorary LLD, or JD, or whatever they're called. What do you think? Should some action have been taken against them?

Greenberg: Yes, but the reasons are complicated. I think they were part of a group that felt this way, and were going to make the legal reasoning for what they wanted to do, which was unconstitutional. For that, there should be at least some professional penalty. Because, as I told you before, this was part of the attack on an entire profession, and that profession was the legal profession—which continues to suffer to this day from it. Therefore, it would have been good for the profession itself to be able to say, “Look, we have standards. This is what they are. The

Constitution is the basic law of the land, and even if you do this in secret,” and it was done in secret, “and there are other people in the government who know about it, so there is some kind of cover, you can’t be just a loyal citizen who says, ‘I will codify whatever I’m told to codify,’” like the killing of an American citizen without due process.

Q: Yes, but Yoo would say, “No, I didn’t do that. I wasn’t trying to give the administration what they wanted.” In fact, he wrote in his book that he didn’t really know what they wanted.

Greenberg: Can I write that book next? I’m not sure I would buy that. I’ve talked to a lot of people who were involved in those discussions in the National Security Council, in the national security apparatus, and that’s not how they tell the story. There were tremendous discussions and debates, as I understand it, among the lawyers at the highest levels of the government, who debated John Yoo on this, and who pointed out to him what I’m saying about overstepping a constitutional principle and just doing something. Now John Yoo’s defense could be, “I really believe this.” That’s why they went to him. And that could be true. But that doesn’t mean that it wasn’t a direct violation of what the Constitution is about—or, that he didn’t know that, and that he was, among other things, redefining torture. So that statement, in and of itself, is insufficient to give him any kind of immunity against what we’re talking about.

Q: But lawyers appear in court all the time, including the Supreme Court, arguing what’s constitutional and not constitutional. One lawyer argues one way, the other one argues another way, and the Supreme Court decides. You can’t condemn the lawyers for taking a position, no?

Q: Well, it would have been nice if this could have gone to the Supreme Court. That's what I mean by no oversight, no supervision, and no vetting. John Yoo's defense at the time, as opposed to in his book, was "It was only a memo." You can't have it both ways—"It was only a memo" and, "Well, I was just arguing, and nobody told me to do it," etc. Wrong.

Q: It was a decision by him.

Greenberg: It was an attempt to change the understanding of the law in the country. If you're going to do that, then who says that you're the final say in the land? There has to be some kind of supervision. I would have loved the Supreme Court to decide on torture then.

Q: Before we leave the Bush administration, there are a couple of areas I want to mention. As far as you know, going significantly beyond the first hundred days, up until, even, the end of the second Bush administration, and through the first, of course, did the conditions at Guantánamo Bay change significantly for detainees?

Greenberg: Between when and when?

Q: Between, let's say, 2004 and 2008.

Greenberg: Yes, I think they did. They changed over time, significantly, in terms of comforts—things that could be offered to the detainees, that you could tell the world about. They would take visitors through and they would say, "Look at these armchairs we let them sit in." Or, in later

years, it would be, “Look at the satellite TV that they have,” or, “Look at the access they have to these books,” or whatever it was, as if you could trade decent, legal rights for creature comforts. So would you rather live in legal limbo for the rest of your life, without access to a lawyer—with or without access to a lawyer—but at least you get to watch TV? That was the calculation. If you went to Guantánamo and if you talked to any of these officials, that’s what they would say. They would say, “In no prison in the United States would any prisoner be treated like this. What are they bellyaching about?” But the question was, what were they bellyaching about? How many ice cream sundaes make up for incarceration without charge? And without a sense that you will ever see an end to it? How many videos can you watch that make up for ten years of your life being taken away, without there ever being a process about it?

Q: Right. I understand what you’re saying.

Greenberg: Yes. Conditions changed because they believed they could make this tradeoff. In other words, human rights are defined by armchairs rather than by laws.

Q: Well, Donald Rumsfeld, in his memoir, *Known and Unknown*, says that, “Contrary to the notions suggested by those early photos, the detainees at Gitmo had warm showers, toiletries, water, clean clothes, blankets, culturally appropriate meals, prayer mats, Korans, modern medical attention equal to that provided to our troops, exercise, writing materials, and regular visits from the International Committee of the Red Cross.” Sounds pretty good.

Greenberg: If there's a reason for you to be there, and you've been vetted as a prisoner and it makes sense, yes. If there's some law that you're being held under.

Q: There's no question, though, that over time, there was a difference between—

Greenberg: —between being in a cage and these accoutrements? Yes.

Q: And even today, would you say it's akin to a modern prison in the U.S.?

Greenberg: It's probably even better. It probably surpasses the living standards and treatment standards of prisons in the United States. One of the things that there's been some concern about, when they talked about whether they could move the detainees here, was the discrepancy between how they would be treated in the prison system at Gitmo and the standards of the prison system there. I'm sure it surpasses the American prison system, but that's because we have a pretty harsh, unforgiving, bare-bones prison system.

Q: Here.

Greenberg: Yes.

Q: Let me ask you, with regard to the Bush administration, about the CIA, the black sites, and the rendition program. I don't know how much the public appreciates the fact that the so-called high-value detainees weren't at Guantánamo Bay, but were in these black sites, and that where

this water-boarding went on—there’s actually no record of water-boarding happening at Guantánamo Bay—

Greenberg: None.

Q: —but it was happening in these black sites in Poland, Lithuania, or Thailand, or wherever it was happening. Let me bore you for a moment with something that—

Greenberg: Nothing about Guantánamo bores me. Trust me.

Q: This comes from a summary of minutes of a meeting at Guantánamo Bay about how they should be doing things, in October of 2002. This is a CIA person, a legal person—

Greenberg: Who?

Q: Jonathan Fredman.

Greenberg: Yes.

Q: Even though he later denied saying some of these things—and it is a paraphrase of what he had to say, in these minutes. He says, “The CIA is not held to the same rules as the military. In the past when the ICRC has made a big deal about certain detainees, the DOD has ‘moved’ them away from the attention of the ICRC. Upon questioning from the ICRC about their whereabouts,

the DOD's response has repeatedly been that the detainee merited no status under the Geneva Conventions. The CIA has employed aggressive techniques on less than a handful of suspects since 9/11." Further on, he goes on to say, "If, 'in interrogation,' the detainee dies you're doing it wrong." He also says, "When the CIA has wanted to use more aggressive techniques in the past, the FBI has pulled their personnel from theatre. In those rare instances, aggressive techniques have proven very helpful."

Then Lieutenant Colonel Beaver, whom we mentioned the other day, says, with regard to what they might do in Guantánamo, "We will need documentation to protect us."

So what Fredman, of the CIA, is talking about is what's going on in these black sites. Isn't that correct?

Greenberg: Yes.

Q: How should history look at the American government's use of these black sites and the rendition program? Was it valuable? Was it just? Did it comport with our values in any respect? Was it necessary? Was it valuable? And I speak both to the black sites and the rendition program.

You know, it's interesting that in 2005, when the high-value detainees were still in these black sites and the rendition program was going on, Condoleezza Rice, in December 2005, confirmed

that there were renditions, but said, “The United States has not transported anyone, and will not transport anyone to a country when we believe he will be tortured.”

Now, is that real-world?

Greenberg: You mean, did she know?

Q: Isn't it a matter of fact?

Greenberg: The question is, is this okay? Well, you're asking the wrong person. I obviously don't think it's okay.

Q: No, no. Go beyond okay, even. Was it necessary or valuable?

Greenberg: Well, who cares? That would be my answer. Was it necessary or valuable to our tactical or strategic advantage? People keep telling us that that's their justification for it. Put in other words, these are bad people, so who cares what happens to them? I would say our country took a turn after 9/11 that, in retrospect, will be seen as a turn we can't recoup from. The black sites and the rendition sites are one more piece of evidence that if we couldn't bend or break the law to make it work for us, we'd just keep it secret. There is always a tendency towards that in a time of stress, and that's when you're tested. It wasn't okay, and what information did we get?

George Bush announced the end of the rendition program at the same time he announced that there was a program in the fall of 2006—after denying it for so many years—when he moved the high-value detainees from these black sites to Guantánamo. But what exactly were we doing—?

Q: Well, in his memoir, *Decision Points*, former President Bush said that CIA interrogations “helped break up plots to attack American military and diplomatic facilities abroad—”

Greenberg: Yes.

Q: “—Heathrow Airport and Canary Wharf in London, and multiple targets in the United States. Experts in the intelligence community told me that without the CIA program, there would have been another attack on the United States.”

Greenberg: It's he said/she said, because as long as we don't see the evidence and we don't know—and I still want to raise one more thing. What's wrong with good, old-fashioned intelligence, by which you do your homework ahead of time so you're not confronting this kind of issue, and you know who the players are without torturing people? The question, “Does torture work?” seems to me so beside the point. Does torture work? I'm sure it gets some information. Is it reliable? How reliable is it? How much wrong information is also in there that takes you off on a wild goose chase? It cannot be a substitute for an informed intelligence gathering, and that's what we didn't have prior to 9/11. It's why we had 9/11, and it's why we continue to rely on ridiculous techniques that may or may not work in any given instance, but that is not how to defend a country. As a tool in the toolbox of national security, it makes you a

country that is insufficient in your law enforcement and intelligence-gathering efforts. There's no question about that.

Forgetting all the human rights issues and the constitutional issues, from a national security point of view, it's a road you don't want to go. You will be defeated. You can say all you want, that we happened to capture the right ten guys, and we happened to pull out their fingernails—which is not what we did in this instance. The fact is, you need to know what's going on in these countries, and you need to know who these people are. You need to be awake to the problem, and we weren't. If you think you can torture people to not have to do your homework, you're not a safe country.

Q: All right. There is the eminent law professor—someone who has the degrees that we don't—no less than Alan Dershowitz at Harvard Law School, who says that you could have a ticking-bomb scenario where you've got somebody, and you strongly suspect that he knows where this bomb is going to go off in Washington, D.C., or wherever.

Greenberg: Yes. Well, so torture him, and then go to jail for it. You know what?

Q: What did you say?

Greenberg: Torture him, and go to jail for it. If you believe that the national interest of the country is at stake, and you believe you need to torture somebody to get the information, you can torture them, and you can get the information. And then you go to jail. What's wrong with that?

If you really are that patriotic about your country—which you should be, if you’re in any one of these services or not—then you do what it takes. It is still illegal, and you still go to jail for it. Or you let a court decide whether or not you had to do that. Let them decide.

Q: Let me turn to the Obama administration. In August of 2009, shortly after he took office, you wrote that he now owns Guantánamo, and that you really wanted to give him some “slack,” as you put it. “I,” meaning you, “am going to trust President Obama, and the great team of lawyers he has surrounded himself with, to keep his promise and get the job of closing Guantánamo done within a year. I want to believe that they’re going to get it done. And in a way that respects due process, fairness, and the power of legal precedent.” That was in August of 2009.

Now on January 22, 2011, you wrote, “On each and every count of the original proposal for the ingredients necessary to resolve outstanding issues”—like “indefinite detention, military commissions, and transfers”—“and thereby close Guantánamo, the president has betrayed his original process. According to his record, Guantánamo will not close—maybe ever.”

Now is this the same person writing on these two things? Did you write both those things?

Greenberg: Yes, but I think I’m very consistent. I trusted him. I gave him the benefit of the doubt, and he threw it away. He failed.

Q: Well, would you put in that category things like state secrets doctrine and treatment of whistle blowers?

Greenberg: Yes, I would. That's not my issue, but yes, I think that the treatment of whistle blowers—I do not understand why the Obama administration wants to literally ruin whistle blowers. This attack on whistle blowers is unprecedented. We've never seen anything like this. It's a witch hunt, and it's getting worse. You saw [John] Kiriakou plead last week. It's a nightmare. It's unbelievable. Anyway. That's not my issue.

Q: The [*Mohamed et al. v. Jeppesen Dataplan [Inc.]*] case was an interesting case. That's where Binyam Mohamed, who was detained in Afghanistan and also in Guantánamo Bay for some time, rendered to Libya, and by all accounts—

Greenberg: —terribly tortured.

Q: —terribly tortured. He brought a case during the Obama administration, certainly before the Ninth Circuit during the Obama administration, and he wanted to take action against this company, this subsidiary of Boeing, that had provided the planes for rendering. The Obama administration opposed that, on the grounds that it couldn't go forward because it would reveal state secrets. That's a pretty stark case.

Greenberg: Yes.

Q: But why do you think the Obama administration has had the thrust that it has had, with regard to Guantánamo Bay and national security? Would you agree with an article by Jack Goldsmith

from May of 2009—I don't know if you saw it—in which he says that Dick Cheney is barking up the wrong tree when he's attacking Obama, and that, in fact, the Obama administration already pretty much looks like a second Bush administration.

Greenberg: I hesitate to make it exactly that, but you should know that last week or earlier this week, Glenn Greenwald published an article in which he said, basically, "I agree with Jack Goldsmith on this point." So it's kind of interesting that the people who have been the biggest critics of Obama are now saying, "Look, this lawyer for the Bush administration was exactly right. We fought that tooth and nail."

What I would have said in the past is that the intent of the Obama administration, at least at the outset, was very different than the intent of the Bush administration. The intent of the Obama administration was to try to find judicious ways around these national security issues. Basically, they gave up. They gave up. It was no surprise that we didn't capture bin Laden. I know the whole world, we all understand it—he's the worst enemy we've ever seen, etc., etc. But there was also the fact that it was just too damn difficult. What were we going to do? Bring him back here and put him on trial?

Q: You mean capture, as opposed to killing.

Greenberg: Yes, to capture, as opposed to killing. It's no mistake that we killed [Anwar al-Awlaki, an American citizen, without any kind of due process. We choose to kill these people, and we say, "Well, it's too difficult to get them." We were in the room with bin Laden. How

hard was it? I don't know enough of the details about Awlaki, and nobody does. I think part of the question is, did Obama change? I think the issue is, yes, and I think there are a couple of factors. I think the first is something that also happened with the Bush administration, in some ways, which was, if you don't know national security and you don't know terrorism, before you actually go into office, when you hear the briefings on who your enemies are and what they want to do to you, they are staggeringly terrifying. Those people who work in the field, who have heard them day after day after day—you begin to get a sense of what you've heard before and what raises your adrenaline level. That's what you want. You want an informed intelligence community. It could be the agency, it could be NSA, it could be the entire intelligence apparatus, that understands who the players are and how to assess things.

When you're coming from outside this, and you start to hear this, I think you start to think twice. "What? We're all going to perish," or some version of that. I think in the Obama administration there was some sense of this. But there's also something really interesting about the lawyers. You mention the lawyers that I had mentioned in my piece, who he had surrounded himself with.

Q: The "great team," you called it.

Greenberg: The great team. I knew a lot of those great teams. They'd been to the NYU Center many times. We'd had innumerable discussions about Guantánamo, both personally and in public, both privately and publicly. After they were inside the administration, what they said was, "We didn't know how difficult the issues were"—how difficult the issue of closing Guantánamo was, let's say. I find that very hard to believe. They knew exactly. We talked about

it all the time. “This is going to be difficult. We have the problem of the ninety Yemenis who we can’t put back in Yemen for security reasons.” And Yemen didn’t want them back for a long time. “We have a problem with this. We have a problem with that.” We knew what the problems were. “We don’t have enough information on the detainees.”

When they say it was too hard, I think what happened was that they punted, in the early days of the administration. “We’re going to figure this out.” Anybody running for president when Obama ran for president—I say this in hindsight but I thought it at the time—should have been putting together a plan then, so that on January 22, when he announced that he was going to close Guantánamo, he had a plan! Not, “I have a plan to think about each one of these people individually, for the next six months, until everybody can gang up on me and I have to fit everybody’s interests, because I know I have a political disposition to try to satisfy all comers.” No. You say when you’re going to close it, and here is my plan, and it will close. Not in a year. It will close.

Q: Well, isn’t the fly in this ointment, or whatever that expression is, something called Congress?

Greenberg: Not if he’d done it quickly. He gave Congress the rope to hang the country with on this issue. He could have gotten [unclear] from the right military leaders ahead of time—which is what he needed and he would have gotten—to make this happen very swiftly and very quickly. There was no plan on the table. I could give you three different plans. It’s easy for me. I’m on the outside. I don’t have to deal with the political hassles. But the real issue was timing. The real issue was swiftness. And the other issue, which nobody wants to mention, was leadership. There

was no leadership on this issue. None. From that day forward, the leadership disappeared. There was no leadership about who's in Guantánamo, who isn't in Guantánamo. Everything's considered to be spin. Recidivism rates is a good example, and what people said and what they didn't say. There's no reliable place to go, and this president was not able to occupy that place, that position. I'm not sure anybody could have, but that's what was needed. No one has done it. [David H.] Petraeus could have stepped up. There are a lot of people who have the right position and the right authority, and for whatever reasons, they didn't want to do it.

Q: Well, is it a fait accompli—

Greenberg: It's done.

Q: —that the Guantánamo detainees aren't coming to the United States, as Congress has ordered—?

Greenberg: They're not coming.

Q: They're not coming to the United States.

Greenberg: No, they're not coming.

Q: There was a controversy over the recent Defense Authorization bill that the president signed. Can you define what that controversy really is?

Greenberg: Well, the biggest controversy had to do with American citizens, and whether or not this would apply to American citizens. Yet another controversy that wasn't so controversial was how broad and long-lasting is this category of indefinite detention? It basically says we can have indefinite detention for foreign Guantánamo detainees. To this day, there is still dispute, in legal communities, about whether or not the NDAA of 2012 applies to American citizens.

It doesn't. An amendment that was included in it says, "This does not apply to American citizens or resident aliens." Or, "The authority should not extend to them." But President Obama, afterwards, issued a signing statement, when he signed it, basically saying, "And I will not tolerate, on my watch—" whatever.

Q: That's right.

Greenberg: Right. So the question is, if it was so apparent that it wasn't going to be U.S. citizens, why did he have to put that in a signing statement afterwards?

But there is still some debate. I think, rightfully, there is concern over what are the protections that American citizens will get. I know you're not asking about this, but like it or not, these kinds of Guantánamo issues are a thing of the past. The real issue is what's happening, going forward, with national security, not just with terrorism. Who gets to say who's an enemy of the state? Who gets to say where they get incarcerated? And what protections does anybody have if they're an American citizen?

This is the case of the whistle blowers. What rights does Bradley [E.] Manning have? What rights do others have who are accused of whatever the government accuses them of? Do they have the rights of enemy combatants or do they have the rights of U.S. citizens? We don't know the answer to that question.

Q: You have been long involved with this issue of trying detainees in the federal courts versus the military commissions.

Greenberg: Yet another losing battle. Yes.

Q: According to you, there have been hundreds of terrorism cases tried by the federal courts, with a conviction rate—as you put it—of eighty-seven percent, including both violent and non-violent crimes. If you include the penny-ante stuff, as you put it, nearly there's nearly a hundred percent conviction rate on high-profile cases—although I don't know whether you would include the [Ahmed Khalfan] Ghailani case with the convictions.

Greenberg: He was convicted.

Q: I suppose you do, even though he was acquitted on 283 other counts or something.

Greenberg: It's a conviction.

Q: But is this still a live issue? In other words, is it a thing of the past that anybody who's not an American citizen is going to be tried for a terrorism act committed outside the United States in the federal courts—the Article III courts, as they're called—in the United States? Or is it really that it's just going to be military commissions all the way through now?

Greenberg: Maybe the latter.

Q: The latter. There was a time when one of your critics called you “rabid.”

Greenberg: I am rabid about this.

Q: Yes. You are rabid.

Greenberg: I can't believe it. I cannot believe it. It's horrible. But it's a fact.

Q: But didn't you write, in April of 2011, that the military commissions are better than nothing, and maybe we should give them a shot?

Greenberg: What I said was, if we're going to have them, then let's hope they're as close to Article III courts as possible, so we can say, “Look, it's really Article III courts. Let's put them back in the Article III system.” That is what I said in that article. As I say, it's sort of like the marker keeps moving. There are more and more people who are buying into this. The fact that these are in military commissions—Mark [S.] Martins says, “Well, don't worry. There are going

to be Article III-like courts.” The proof is in the pudding. He can’t understand why he had so many critics before he started. The signs are not good. They wed themselves to transparency, and then—

Q: You’re speaking of the military commissions.

Greenberg: The military commissions.

Q: The procedures, as they are today.

Greenberg: Yes, but even what they’ve done on the roll up to them has been unacceptable. They call it transparency, or they’re going to have a few closed-circuit TVs with a forty-second delay—that’s not exactly transparency. Right before they decide to indict [Abd al-Rahim] al-Nashiri, they issue a brand-new manual on rules and regulations like that morning. What is that all about? That’s not about transparency and building trust with the community. There have been a number of other things.

So we will actually see what these military commissions provide. Of course, I’m willing to give them the benefit of doubt, but the signs are not looking as good as they were even then, and they’re going to find it difficult because there is going to be a tremendous amount of hearsay let into these military commissions. That’s my guess. I will hope that the defense attorneys, every time it happens, will stand up and say, “I understand that these are the rulings, and this is allowed, but let me just say that, in an Article III court, this would be hearsay, and would not be

allowed.” They need to do that every time it happens, so there is a line—so there is a marker, so we can see what is actually going on.

Q: Well, Karen, isn't it true, at least today, that a conviction in the military commission can be appealed all the way through the U.S. Court of Appeals and to the United States Supreme Court?

Greenberg: I think so.

Q: So it brings it back into the federal court system, does it not?

Greenberg: We'll see. We'll see how these cases get appealed. The one thing you can say these court cases aren't is efficient. That is one thing you can say with absolute, definitive certainty. They are not efficient.

Q: Efficient. How many convictions have there been since 2002?

Greenberg: Six.

Q: Six?

Greenberg: Yes. A lot of those guys are home. The irony is that, if you're a defense attorney and you want your defendant to have a chance of being free, put him through the military commissions. They don't have that chance in federal court.

Q: About eighty of those have been cleared for release by the Obama administration.

Greenberg: That's correct.

Q: They haven't gone anywhere yet, but they've been cleared for release, right?

Greenberg: Right.

Q: And about thirty-five or thirty-six are thought to be scheduled for trial by military commission. Is that correct?

Greenberg: That's correct.

Q: That leaves about forty-eight, or forty-six now. I think a couple have died recently—

Greenberg: That's also correct—two, recently.

Q: —who are scheduled, therefore, for what you call this indefinite detention. Now, again, you seem to be rabid about this issue of indefinite detention.

Greenberg: Yeah. I am. Rabid.

Q: I'm kidding.

Greenberg: Outraged would work.

Q: But look—make the case for them. They've got these people. Why can't they prosecute them? You tell me. Why can't they prosecute them, or why can't they let them go? What is the problem?

Greenberg: Good question. The material support statutes are so broad, and we use them with such incredible success in the federal courts. I really cannot understand why we can't just prosecute those people, because anybody we even breathe to a jury that they are a terrorist, they go to jail—prison. That's it. Why can't we try them? Is it “not in my backyard”? “We don't want terrorists on—”? It's ridiculous. Again, bad leadership.

But now we can't let them go, we say, because they hate us now, because they've been in custody for ten years for no reason.

Here's an example of bad leadership on our side. Who do you think these people are who have been there for ten years?

Q: I'd like to know.

Greenberg: I'll give you this case. These are many broken individuals. How many times since he went home has [Salim Ahmed] Hamdan stepped outside of his house? What does Hamdan want? What did [Lakhdar] Boumediene want when he wrote to the *New York Times* on the anniversary of 9/11? They want to be left alone. They want their lives back. They want to live with their families. They may be angry, but they're more hurt, and damaged, and crippled, than they are angry—most of them. That's the story nobody's telling, and, for some reason, nobody will tell. But if you meet the detainees, and if you go through a lot of their testimonies that have been collected, here, there, and elsewhere—or they've written their own books—they just want their lives. They want their wives, they want their children. They've been duly broken, a lot of them.

This idea that we can't let these people out is because the entire picture of Guantánamo is absent, and nobody who cares about it has written about it from the human point of view. Nobody. Nobody, and I include myself, has succeeded in finding out how to tell the story about human beings that will break through the ideological divides that have made this such a travesty of American policy. It's kind of like what Harriet Beecher Stowe did for slavery with *Uncle Tom's Cabin*. She found a way to write about it that got through to the people who somehow saw their own stake in the world, their own place in the world, all of a sudden compromised by slavery. It was brilliant that she did that. Nobody has figured out how to do that for the Guantánamo detainees.

Q: Maybe the public wouldn't care anymore.

Greenberg: I think that Boumediene piece that was in the *Times* belies that. I think they would care. I think that piece, more than anything we've seen from detainees—which was not defiant, which was not really about constitutional issues—had a humanity that just screamed out to people. Everybody noticed it. The other detainees' statements haven't come across like that—and this is Boumediene. This is not a minor person. This was *the* case.

So I don't give up hope. But it's possible.

Q: I don't want to belabor it for you, but what separates these people, who are being held for indefinite detention, from the other categories I mentioned, including people who are scheduled for release and people who are going to go to trial? Why are they in that bracket?

Greenberg: They've been in that bracket since the Bush administration. They had the same number—forty-eight. It might be forty-six now because of these two deaths, I don't know, but approximately four-dozen. Basically, my guess is that they're people that they have had who other people have pointed the finger to, or who have drawn attention to themselves in one way or another by what they know, who they don't have evidence on, and they were tortured, and who they know, in even a bastardized court process, they cannot convict. And they're keeping them. That's all there is to it. They have their names, they have their own information, and it is not permissible under our laws, and apparently not permissible under military commission laws.

Q: You don't think it's a more refined, intelligent assessment of those people than that?

Greenberg: No.

Q: You do not.

Greenberg: No. How much more refined do you need it to be? If it's so easy, then why don't they just give us a list of the names and the evidence they have on them, and let us know why they're keeping them?

Let me just tell you. The era of terrorism as we've understood it since 9/11—that curve is over. There may be other things that come, there may be other groups, and there may be new missions mounted. But this particular bubble, and the way jihad was defined for a decade, is coming to the end of its curve. Whatever issues we confront in the future about enemies, whoever they are—I'm not going to posit who they are here—this is going to seem like the good old days. This was where we had the chance to make the kinds of decisions that we needed to make to figure out how to go forward, if we wanted to embrace some kind of justice, rather than rule-less, Guantánamo detention forever. We missed our moment.

So we're worried about these four-dozen? Just come back in five years.

Q: Karen, you made an allusion before to the Predators and the drones, particularly in the context of the killing of Anwar al-Awalaki, the American citizen. Now can a case be made that there's al-Awalaki encouraging people to kill Americans—supposedly, for example, the underwear-bomber, who was trying to blow up that plane over Detroit.

Greenberg: [Umar Farouk] Abdulmutallab. Yes.

Q: He's at war with us, whether he's an American citizen or not—

Greenberg: Yes.

Q: —and we can't go get him.

Greenberg: Because?

Q: I'm raising this as a question. We can't go get him because he's hiding somewhere—

Greenberg: —because it's too hard. That's why we can't go get him. Because we've determined that it's too hard.

By the way, I don't accept "it's too hard" that readily. It gives too much of a pass to the kinds of things like targeted killing. It's too hard? Really? What is exactly too hard about it?

Q: Are you opposed to these targeted killings in all cases?

Greenberg: I'm the last person in America, but I am opposed to the targeted killings for just this reason. There's no way to contain it, apparently, once it starts. I see it very much like torture. It's

that it's a policy that's secret. We don't know how the targets are decided. We don't have a process yet, that we know of. Tell us what the process is of determining who it is. But I am way more opposed to it for American citizens, even, than for others.

So, yes. I'm not a fan of—I know everyone in the world is a fan of the Predator policy. It kills fewer people.

Q: Cheap, relatively speaking.

Greenberg: Yes.

Q: Well, there hasn't been a major attack in the United States by terrorists since 9/11.

Greenberg: Yes. And before 9/11 there wasn't one for how long?

Q: Wait a minute. You can't bring yourself to give some credit to the Bush and Obama administrations for that? No?

Greenberg: Nope. I think they're much better at protecting our national security than we were prior to 2001. I think that the tragedy of 9/11, which killed three thousand people, most of them Americans, was avoidable, and that, rather than accept our guilt for it, we turned around our entire system, our entire country, to make it look like we didn't have guilt. This was just going to

come to us from the heavens. I think we've made ourselves safer, but I think 9/11 was an aberration, and we saw it as the first of a new era.

Q: Let us say that the fellow who tried to set off a bomb in Times Square—

Greenberg: Faisal Shahzad.

Q: —not that long ago, or the underwear bomber had managed to set off the explosion that he had, and there had been something like that. Can you imagine what the results of that might have been in terms of government action, in terms of national security, or in terms of anything?

Greenberg: Right. What you really want is a list of all the Abdulmutallabs who weren't allowed on the plane over there, even though we had information on him. His father had reported him to the security services. If they're going to poll us, or if they're going to argue this, what we all need is a list of all the people we kept off the planes that were the Abdulmutallabs. I'm not saying that intensified scrutiny hasn't deterred people who might otherwise want to hurt us, but I think there is an inability to accept risk that has been now ingrained into the American public, and that terrorists are not our only enemies. Until we learn how to be wise in our management of threats against us, we're going to be at risk.

Yes, we haven't had any attacks, and we didn't have any attacks. Sure, all this enhanced stuff has helped. You know what really helped? The original war in Afghanistan. You want to know what kept us safe? Going to Afghanistan and taking out most of Al-Qaeda, which we did. If we had

finished what we set out to do in 2001 in Afghanistan. A lot of people will tell you this, not just me. A lot of experts will tell you this—military experts and others. We would have taken out all of Al-Qaeda. The move that Donald Rumsfeld made at Tora Bora, not to go after Tora Bora, not to go after bin Laden and his men when we had them in our sites, and to divert our forces to Iraq was fatal. It allowed Al-Qaeda to exist through the decade. It didn't have to happen. But that first attack on Afghanistan was immensely incapacitating. All we needed to do was finish the job.

So yes, we're safe. We've kept ourselves safer. But 9/11 was not the beginning of a new era, where there was going to be attack, after attack, after attack against us, in my opinion.

Q: Before we go, I want to ask you about Bagram. You've written someplace or another about a two-Guantánamo Bay solution. What do you mean by that? And isn't it ironic that, today, Guantánamo Bay is the "least worst place." Actually, Donald Rumsfeld is right, today. It's the least worst place, compared to prisons in Afghanistan.

Greenberg: That's great. Yes.

Q: Bagram probably doesn't get much attention.

Greenberg: Well, there is a new report on Bagram someplace that I scanned, but haven't read carefully.

Q: There are no habeas rights there, right?

Greenberg: No.

Q: What I'm getting at is, should anyone care about Bagram?

Greenberg: Yes. The issue of detention in Afghanistan is actually pretty murky right now, because there's been some kind of contest between us and [Hamid] Karzai about who should get what prisoners. Recently, he accused us of mistreating Afghan prisoners, so he wants those prisoners traded over to him.

Arguably, you could say that Bagram was a holding area for prisoners in an active war, in a war zone, as opposed to Guantánamo. So the question becomes, are we bringing people to Bagram from elsewhere around the world, like we did to Guantánamo? Is Guantánamo the least worst place? That's what we've decided. That's what it means to get rid of the federal courts, and that's what it means to get rid of the federal prison system as anything to do with these kinds of detainees. It's the least worst place because it's the most easy place, and because we cannot confront certain issues by keeping Guantánamo open—and open, now, in perpetuity, not just for indefinite detention but for trials.

Q: Actually, people could be transferred from Guantánamo Bay to Bagram, could they not? Isn't that a way to close Guantánamo Bay?

Greenberg: That would be a way to close Guantánamo Bay, but that won't happen, because we don't know where the authority in Afghanistan is going to—we haven't secured Afghanistan in a way that I think we're comfortable.

Q: Or whether we'll be there, even.

Greenberg: Exactly, or if it's Special Forces who will be there. In terms of “the least worst place,” it's the most convenient, intellectually and politically. That's what it is. That's what you mean by “least worst,” because those words don't mean anything. It's just easier. We don't have to deal with this stuff.

Q: Finally, after Osama bin Laden was killed, you wrote, on May 2, 2011, “There is no denying that bin Laden's death is the end of the menace of al-Qaida as we know it: that without his leadership, a diffuse network, frayed at the edges by a decade of effective counterterrorism and harried by military interventions, will likely fall further into disarray.” Some people argue that, in the long run, 9/11 backfired on Osama because it brought out the American forces in a way that they wouldn't have otherwise. Peter Bergen, whom I think you've held in high regard—

Greenberg: Very much so.

Q: —wrote that Osama's death marked “the end of the war on terror,” as he put it.

Greenberg: Yes.

Q: So it's a little confusing. Is it over? When you put forth the idea that we've passed out of a war into a phase of what you call "risk management"—is that true?

Greenberg: Yes. It's true because we have killed a lot of the leadership, number one. It's true because the threats around the world are going to change. One of the real reasons is that other threats are going to take over. That's what I think is going to happen. And whether they are threats that are from some geographic area, or whatever they are, I don't think this is going to be the dominant threat in the future. Who knows? Many people—Peter among them and myself among them, but Peter is more of an expert on this—had argued for ten years that the death of bin Laden would matter. The death of Al-Awlaki may also have mattered, because it was a focal point for American interests abroad and for Americans interested in jihad to have a place to plug in.

There are other things going on in the world right now. You have a war pending with Iran, which is not a minor issue. You have Africa in tremendous disarray, also with warlike situations with troops engaged. All these things. And you have a financial crisis. By the way, we say this backfired on bin Laden, but please do not forget that one of bin Laden's goals, prior to 9/11, was to bankrupt America. He was clear about it. We're in financial disarray because of over-expenditures on these wars, among other things.

So, anyway. I just wanted to parenthetically say that.

I do think this era is over. That doesn't mean that something else won't come up. It doesn't mean that these people who are warning about Hezbollah, Al-Shabab, and other forms of terrorists organizations—that something won't happen here or there. The really sad, very sad, bottom line to all of this is that the United States, which is, was, and remains the most powerful nation on earth, even economically, even with military power—how crippled it is, even in the cyber-attacks sphere. We don't have a president who's willing to say, "You know what? We're safe. There are threats, but we're largely safe." We're not allowed to say that. No politician can say that and get elected. Until we get to the day where somebody can say, "You know what? This is a problem, this is a problem, but, compared to where we were four years ago, ten years ago, or fifteen years ago, we've done a good job. We're pretty safe. Relax. We're going to pay attention to other things. We're going to do this, we're going to protect you, blah, blah, blah, blah, blah."

Nobody believes that. We believe we're unsafe, as a nation. We believe that cyber is going to destroy us. We believed that bin Laden was going to destroy us. We believe we're going to be destroyed. I can't tell you what the psychological impetus of that is, but as long as we're in that mode, we'll never be able to figure this out wisely, ever. It is the wrong place to start thinking from. You cannot think from a place of terror, and we are terrorized. Whether that's because of bin Laden or because of what we were primed for, anyway, that's where we are, and that's a huge problem as a country, particularly because this age of cyber—which takes many of its cues from the age of terrorism and counter-cyber, from counter-terrorism—is one that is going to test every single institution we have—military, legal, technological, and everything else. It's a game-changer. It's one of those technological advances that you saw with the steam engine. These things disrupt cultures, because we have to reorganize everything around it. Would that we could

do it from a way of embracing cyber, rather than living in terror of it. We're too primed to be terrorized.

Okay. I'm going to be quiet. Anyway, that's my thought.

Q: Thank you, Karen Greenberg.

Greenberg: You're welcome. I hope you got some of what you needed.

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