

THE RULE OF LAW ORAL HISTORY PROJECT

The Reminiscences of

P. Sabin Willett

Columbia Center for Oral History

Columbia University

2011

PREFACE

The following oral history is the result of a recorded interview with P. Sabin Willett conducted by Ronald J. Grele on June 25, 2009 and May 3, 2010. 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.

MJD

Session One

Interviewee: P. Sabin Willett

Location: Boston, MA

Interviewer: Ronald J. Grele

Date: June 25, 2009

Q: Let's start. Just speak a few words so that I can adjust the sound.

Willett: Ron, thanks for coming up to Boston today.

Q: Yes, it is a real pleasure to be here. It's a pleasure to be here. There are a number of places where we can begin, but why don't we begin where you want to begin with your story about your involvement. We can start with 9/11, we can start with George [W.] Bush, we can start with your first knowledge of Guantánamo.

Willett: I think it starts with my partner, Jim [James C.] Stokes, one day early in 2005. Jim, at the time, was in charge of a section of our local bar association dealing with international law. Jim is a vet. He served in Vietnam. And he says to me, "We're doing this little panel on Guantánamo. Do you want to come along? It might be interesting." So I said sure. I didn't know a thing about Guantánamo. I mean, I knew there was a Guantánamo. And so I went to this little seminar, which was conducted by someone from a Naval war college, an Army captain and a local professor. And I basically listened to these people describe how we were in transparent violation of the Geneva Conventions at Guantánamo. I thought, "Really? Can that be?"

So I started to snoop around. At this point the *Rasul* [*v. Bush*, 2004] decision was pretty hot, it

was six months old. I did a little reading around and got fairly concerned with what I was reading. So I decided that our firm ought to get involved. I saw that WilmerHale was involved. It was [Wilmer Cutler Pickering] Hale and Dorr in those days.

Q: How did you find out that Hale and Dorr was involved?

Willett: I did learn that they had filed a case in the fall after *Rasul*, for some Bosnians. And there were a couple of other firms involved. I started reaching out and people said, "You should call CCR [Center for Constitutional Rights] if you're serious." So I did.

And it was at that time that they said, "Well, we've got these Uighurs that present a really fascinating problem." And I said, "What's a Uighur?" And they explained. Their concern, at the time, was that the Bush administration would simply pitch the guys back to China. So they were looking for a big firm that could mount a multi-front war if necessary.

Q: Now, who told you this? Michael [Ratner]?

Willett: No, I spoke with Barbara Olshansky and Tina [Monshipour] Foster. I met Tina in New York and she sketched it out and basically set the hook and was reeling me in. And at this point, I engaged in one of my only successful efforts at advocacy in this whole mess, which was to get the firm to do the case. I first wrote a memo that was a real tug at the heartstrings about the humanitarian crisis and the rule of law and then I tore that up and threw it away. Then I wrote a memo about how Sherman & Sterling was doing it and Hale and Dorr was doing it.

Q: I'm a little hard of hearing.

Willett: Oh, I'm sorry.

Q: You have a soft voice.

Willett: I wrote a memo about how these other large firms, like Sherman & Sterling and Covington [& Burling] and Hale and Dorr were all doing this work, and where were we? We needed to be involved. So I got leave to take on the case of the first two Uighurs, which we filed on March 10, 2005.

Q: Were there any questions raised in the firm about doing this?

Willett: Yes, but only when it was too late. I got some emails from some people. I remember one email. I think there had been some newspaper article that said, "Firm Volunteers to Represent Guantánamo Detainees." One of my partners sent me an email saying, "Can I volunteer to help the government?" To which I answered, "They could actually use a few good lawyers, so that would be a good idea, in my judgment."

But there were some partners who thought it was awful. And some who maybe still do.

Q: Did the firm have a tradition of doing pro bono?

Willett: Very much, particularly in the Boston office. There was a very strong tradition of taking unpopular cases, taking them hard, taking them all the way. It went back to when Jack [John J.] Curtin [Jr.] was running the firm on the litigation side. Jack was the past president of the ABA [American Bar Association] and a kind of a revered figure in litigation circles in this town. And he kind of set that standard for us. And so this was really no different. And it was an extension of that same idea, that you got involved where there was really important legal principle, as well as an urgent humanitarian one. From the point of view of the Boston firm this was nothing new, although the whole issue continues to be so politically charged that it was unpopular with some partners.

What was interesting was the reaction of clients, and of corporate clients, who were very supportive.

Q: Oh?

Willett: Yes. I can't tell you how many assistant general counsels of banks and hedge funds that you may have heard of have sent me emails to say, "Atta boy. This has sickened and shamed us. We believe in the rule of law, blah, blah, blah, we're glad our firm is doing this work." Really quite nice.

Q: Do you think that's just because they're lawyers and they feel the illegality of it all?

Willett: Who knows? Who knows? But it has been quite encouraging. It's not that surprising to me, because in business and our business clients, you need rules. You need reliability; you need black and white, so that you can make predictive choices and organize your affairs. And in a system where there are no rules and there's no judicial inquiry and the president does what he likes, that just feels too much like the last business deal you tried to do in Yemen. All you can remember is, "I'm never doing that again." And the idea that we had become Yemen was just intolerable for too many people.

Q: Had you heard about the Center for Constitutional Rights before?

Willett: I had never. Didn't know what it was. I'm a big fan of theirs now, but I did not know them then.

Q: When they said Uighurs, what did you know about Uighurs?

Willett: Not a thing. Zero. I had never heard the word before. I didn't know the existence of this group of people. Learning about the Uighurs was a complete start-from-scratch learning experience. And that was a really fascinating part of this exercise. We learned enough in our research, between sort of February and March, when we filed the case—.

Q: What kind of research did you do? I ask as a historian.

Willett: We Googled everything we could find. We pulled some books from the library on the

history of the Uighur oppression and the Uighur minority within Central Asia and the take-over by Mao in 1949. And we sort of began to ground ourselves. We picked up enough chatter about Uighurs at Guantánamo to predict that maybe some of them had been cleared in these CSRTs [Combatant Status Review Tribunals].

If you have followed this litigation closely, then you would have to have to know what the government did, when you filed cases back in 2005, is immediately move for a stay. They said, "We can't address the merits because whether we can address the merits at all is up on appeal." Which is a flagrant violation of the final judgment rule in my view, but they're all law review nerds down there, so they all went for this, all the judges. They filed this motion in our case. We hollered, "No, we're different. We're Uighurs and we think we may have been cleared and we need to see the records to find out." Couldn't get [James] Robertson to bite. And then we found out they were cleared when we finally met them and then he bit quick after that. But in the spring our case was treated like everyone else's.

Q: So you filed a motion before you had ever met them?

Willett: Yes. The government filed its usual motion to stay and we filed an objection that was really quite intensive and researched about the Uighur situation, trying to point out a different set of facts.

Q: Now, I read someplace that they become your clients under a next friend authorization.

Willett: Yes. In fact, it is right over your head. That's it. Framed on the wall.

Q: Oh! Request for legal assistance.

Willett: Yes. It was given to, I think Marc [D.] Falkoffgot it, somehow, from one of his clients. But we went ahead and we called that a direct authorization and so we filed in their names. The next case, *Kiyemba v. Bush* was a next friend authorization because all we had was a memo from this [Jamal Abdullah] Kiyemba that all these guys wanted us.

Q: So they had given this to another detainee, who gave it to his lawyer.

Willett: Yes.

Q: And that's how you got it?

Willett: Yes.

Q: And that was the basis on—?

Willett: Yes, that was the basis, right there.

Q: Yes.

Willett: When you take one of these cases, there is an FBI [Federal Bureau of Investigation] background check. It takes a couple of months. And they call everybody whoever rented a room to you to make sure you are not a dangerous sort of character. And after they ran through that, it was time for us to go to the base. Our first trip was Bastille Day, July 14, 2005. But it was a real problem, translators. A translator has to have a security clearance, too; has to be a U.S. citizen; and has to speak Uighur. Not many of those, are there? Very small universe.

So we looked at that authorization and we noticed—this is how ignorant we were—that the clients wrote their names in Arabic characters. We couldn't get a Uighur translator, so we thought, “Well, maybe they speak Arabic and we'll bring an Arabic translator.” Well, it's just the characters and the words are Uighur. But we didn't know that at the time. So, we turned up for this first meeting and we walked in to see Abu Bakker [Qassim] with a translator called Felice [Bezri], who is a great, wonderful translator, a wonderful Arabic translator. We walk into the box where Abu Bakker is chained to the floor at the little table. "Tatakallam al Arabiya?" Do you speak Arabic? And Abu Bakker says, "*La*," which is “No,” in Arabic. So we thought, ah, this will be a short meeting. We played charades for a whole day. Of course, you cannot be at Gitmo for four years and not pick up some Arabic, and he had. But he wanted to speak Uighur. We went back and forth and we played charades to communicate.

Q: Did they know who you were?

Willett: No. They knew they had given this. This is one of the great problems about Gitmo. The ordinary sort of human touch was missing. So they wouldn't say to a client, "A lawyer is coming

next week," so that he might prepare. They would come into his cell and say, "We need to take you right now to a lawyer visit," which means shackling you. And the guy, he might be in the middle of praying, would say "What lawyer? No one has ever written to me." I think we had written to them but none of their letters reached us. So we didn't know how much notice they had. But both of these guys, Abu Bakker and Adel [Abdu Al-Hakim], were very keen to meet us and we had none of the relationship problems that later developed with other clients. That was the summer of 2005.

Q: They responded to you?

Willett: Oh, yes.

Q: And began to trust you?

Willett: I would say that the relationship with those two men, Abu Bakker Qassim and Adel Abdu Al-Hakim, left us completely spoiled and unprepared for the difficulties of relations with later clients, clients who had suffered more or began to suffer horrendously at a later period. We were a little spoiled at first because the relationship was one of complete trust. There was no area the guys didn't want to talk about, there was no hesitation to meet us. And partly it was because almost as soon as we met them, good things began to happen to them.

Q: Like what?

Willett: But to illustrate this trust point, we had this very odd situation worked out. We went down to the base in July, we found out they had been cleared by their CSRTs. We ran back to the U.S., lit our hair on fire in front of Judge Robertson, and got an immediate hearing in August. And basically, he dressed the government up and down.

Q: Now, he had not known that they had already been cleared?

Willett: No. And the government hadn't told him. In opposing the stay motion, the government had neglected to mention that fact and he was not happy about that. So he ripped them up one side and down the other and basically exerted a lot of pressure on them to "Fix this problem, find another country and come back and tell me about it soon." At the same time, we were able to leverage this embarrassment to the government into their transfer into a new camp. Camp Iguana.

Q: They were in Camp Echo?

Willett: Well, Camp Echo is a short-term interrogation facility. They were in Camp 4, which was the lightest duty of the camps but Iguana was much better. Iguana, you went indoors and out as you liked, there was more room, and there were more privileges. So immediately they saw that. And we had learned that Adel had a sister in Sweden. I was at the lectern, in front of Robertson and he was hammering the government and so I decided a little ambush was in order. I said, "And Your Honor, the man has a sister in Sweden he hasn't talked to in three years. Why can't he talk to her on the phone?" And Robertson said, "Yes, why can't he?" To the government. And

they sputtered that, "This wasn't in the motion papers." And he said, "I don't want to hear any of that. Get it sorted." So within a few days Adel has a phone call with his sister. And as he later told me, before that phone call, his words were, "It was as though I had evaporated from the world. And then I began to come back."

I'm slowly coming around to your trust point. We then began to meet them in Camp Iguana. But we had this odd scenario where we still didn't have a cleared Uighur translator. So Judge Robertson leaned on the government to permit a non-cleared but completely reliable and trustworthy Uighur American to come and be our translator, with the stipulation that we had to have a Department of Defense escort in our meetings with our clients. All the other lawyers said, "You're nuts. You can't do that." We said, "We don't care. Don Rumsfeld can come. I don't care. We don't have anything to hide from anyone." So down we go to meet these guys, the lawyers, the translator, and the Department of Defense minder, and Adel is happy to see us and we hug, we embrace. And he doesn't know, he thinks the Department of Defense guy is another lawyer, so he hugs him, too. I've never seen a guy look so embarrassed. He's being hugged by a Guantánamo terrorist! It was a wonderful moment.

Q: When you say we, who was we?

Willett: In those first meetings, it was Susan Baker Manning, my partner in Washington. She was then an associate. She became a partner during this case. Had all of her children while this case was going on. And she and I were the first two to go to the base, then subsequently other people would go. Susan never got a hug because of the Islamic correctness around women.

Q: But she was with you when you came—?

Willett: Oh, yes, very much. And a key player in this team. I always said to her, "The one piece of this that you missed was the hug and the handshake," because there is something very powerful about the handshake, to somebody who doesn't get touched. The handshake communicates a relationship and trust in a way that almost nothing you say does. And so the women didn't quite have that same—but the men were very fond of the women and very appreciative of the professionalism and their important role. They knew that the men were no different than the women in terms of acting for them as lawyers. There was just that one cultural aspect.

Q: I was going to ask that question a little later. Is that because their Islam is a little less conservative than the Middle Eastern?

Willett: It is less conservative. I don't know the answer to your question but it is that some of the Uighurs vary. But our first two clients and most of the rest are fairly liberal in terms of their ideas about the practice of the faith and so on. They are just extremely polite about women and it seems too forward to engage in more Western behaviors like hugs, or kisses, for example. They would not do that. It was from the right wing, on the news that some of our other clients might be released to the U.S. this year, that we heard all this hysteria about bare-armed women being offensive and all this stuff. It's just not true.

Q: When you flew into Guantánamo, what was your impression of the place?

Willett: First time?

Q: Yes. How do you get there? You go to Fort Lauderdale?

Willett: You get on a prop plane. On that first visit, I was full of trepidation that there was this incredibly high security prison. We had never met our clients or spoken to them. Deep in my heart there was a fear that I was about to meet some [Osama] bin Laden confederate. The impressions of Guantánamo were inconsistent. Some aspects are very high security; some aspects are incredibly low security. For example, I got from the Fort Lauderdale airport into the interrogation cell in Camp Echo where I met Abu Bakker, and I never went through an electronic screen. That has changed now but for a couple of years you never went through a screen when you went to Gitmo. And I thought, "This is ridiculous." On the other hand, some nineteen-year-old soldier wanted to poke through every piece of paper in my file. As if he would have any idea what those pieces of paper meant or could mean. Clearly he didn't. So there was this kind of inconsistency about the approach. That was odd.

The base is a combination of things. Some pretty grubby, kind of mean, dispiriting Marine barracks. A perfectly adequate motel where we stayed, called the Combined Bachelors Quarters. It was called that then. They have changed the name now to Combined Visitors Quarters, which is not so romantic as Combined Bachelors Quarters. It is a sleepy military base where not much is happening. And then this high-security prison at one end of it, where lots of stuff is happening,

was my impression.

Q: To get a clearance you submit your name to the FBI?

Willett: Yes. You fill out a long form and a nice retired FBI agent comes and interviews you and then people start calling you up on the phone and saying, "God, I just heard from the FBI." They chase down your friends. It was a minor inconvenience. The main concern we had was the length of the thing. It took almost two months.

Q: And at that time your clients were being treated how? They were chained.

Willett: It is amazingly powerful, resonant fact to say that your client is chained to the floor, which we always say, and was true when we met them. They weren't chained all the time. Our clients at the time that we met them were living in Camp 4, which was then the closest thing to a POW [prisoner of war] camp that existed in Gitmo. And their relations with the U.S., with interrogators and with the military, had been not bad, with one single exception. Not bad until that point. They were about to get horribly worse. After the first two guys were out in 2006, they started stocking Camp 6 with Uighurs, which was awful. But prior to the summer of 2005, the men had been there three years; a long, long time. The conditions were Spartan, but they weren't cruel.

Q: What was your reaction at that time when they told you that they had been cleared? When you found out that they had been cleared?

Willett: Oh, hell, it was fantastic. They said, "Goonasis [phonetic], they told us we are goonasis!" *Goonasis* is the Uighur word for innocent. Of course we were saying, "Who told you this? Did they give you a piece of paper? Where is the piece of paper?" "Oh, it's back in my cell," one guy said. But you know, "Then describe to us, did you go into a hearing room? Before three?" "Yes, yes, before three. Then they gave us the decision and the decision was we were goonasis, we were innocent."

So we thought, that must be a non-combatant finding. I remember thinking that the rules are anything your client tells you is classified, which means it cannot be written about or emailed about or phoned about except in the secure facility at the Pentagon. I desperately wanted this fact unclassified.

[INTERRUPTION]

Willett: So, where were we? What was the question?

Q: They had just told you that they have already had been ruled innocent.

Willett: Yes. I wanted this fact unclassified but I knew that would take months for that to happen. So we were in the Navy Exchange after this incredible meeting, with our escort, and I said to myself, "I think I know a way to do this." So I asked the escort, who has a phone, "Could I talk to the SJA?" the Staff Judge Advocate, the military lawyer. I called the SJA and I said to

myself, even here in Gitmo I'm on a phone but I just won't repeat what the client said. I said, "Is it true that these guys were determined non-combatants?" And he said, "Yes, that's true." I thought, "Now I have the SJA saying it, to me on a phone. That's not classified."

When I got back to Washington I sent an email to some of the habeas lawyers, not disclosing the substance of the communication, but explaining the circumstances and asking "If I get this from the SJA, is it unclassified?" And they said yes. Which is what I thought, too, from the protective order. I was then able to put that in an unclassified affidavit that I filed, which we then sent straight to the press. It raised a ruckus because it got the judge's attention and we got an immediate hearing. We actually filed a motion that we called the "hotel" motion. We said they shouldn't be in a prison camp—they should be in a hotel. In fact, we said there is a hotel and we stayed at it! They should be there. And that got a little bit of buzz, too. But we always had to think really hard about the rules, how to comply with the rules but still accomplish your objective, which is difficult when everything your client tells you is classified.

I'll tell you a big example where this is a problem. A client would say, "Can you try to get me a book? Or some socks, or a pad of paper. Can you call my sister to tell her I'm okay?" Which was a little tricky because you cannot pass messages but we used to think, "Well, if we are authorized to we could call the sister and say, 'We met your brother and he looks fine.'" So the client would tell you this, you would write it down in your notes, the escort takes your notes, and your notes go to the secure facility in Washington. Now you have to fly on an airplane to see them again, and you forget that the guy wanted you to call the sister. You're focused on your case and the brief you've got to file and this and that. And so you go back in three months and the one thing

he cared about, you forgot. And all that stuff you're doing, filing papers in some court that's never going to do anything, that's what you were doing when you should have been calling the sister. But the fact that you couldn't take your own notes with you and look at it the next day and say, "I have got to call the sister," was a constant problem for me. It was always these trivial little things, "I asked you to try to get me a Koran tape." I forgot the Koran tape. I wrote it down in the notes and then I didn't look at the notes until the next visit, and then, "Christ, I've got to get the Koran tape." And where the hell do I—

Q: Koran tape?

Willett: There would be these tapes of famous Koran singers, like the Jews have cantors who are wonderful singers of the Torah.

Q: Right.

Willett: The same thing. In Islam you have these guys who pronounce the Koran in some beautiful way and they are on cassette tapes. And you would get them and then you would submit it and they would have to review it for secret terrorist information. But a couple of months would go by and the guy might get the tape. Things like that would happen. I mean, in the cells they didn't have any way to listen to a tape. But in Iguana they got a tape recorder and we could do things like that.

Q: Now, you mentioned habeas. Had you ever had a habeas case before?

Willett: Never. I couldn't spell it.

Q: How did you learn to go about doing this?

Willett: Well, I always thought habeas corpus was the last refuge of a serial murderer from Texas who had exhausted all the appellate courts. I didn't realize it was this incredibly fundamental idea, that if you are held in a jail by the king, or the executive, you must be able to get to court to be heard about that, even if there is no statute. Wow! You would have thought that was settled like a thousand years ago, but it isn't. It's not settled today, in any way. So, we just started at first principles. The great thing about this work was there were all these brilliant scholars who were involved and who would help you. Guys like Eric [M.] Freedman at Hofstra.

Q: I was going to ask you, who did you go to?

Willett: Eric was a constant help to us and is today. John Hafetz. Plus the practicing lawyers, like [Thomas B.] Wilner and [Stephen H.] Oleskey and [Robert C.] Kirsch at WilmerHale, always there to help. I just learned it as we went along. The intersection of history, military law, and law—I have never had a case more fascinating than this.

Q: Did you meet with these other lawyers on any scheduled basis, or just on an ad hoc basis?

Willett: A lot on the phone, and then ad hoc meetings. We had one very sticky meeting in the

years to come. Congress passed the DTA [Detainee Treatment Act] at the end of 2005. But there was a really good argument that it didn't reach existing cases, as it was then phrased. Congress responded to the *Hamdan v. Rumsfeld* in 2006 with the Military Commissions Act, which clearly shoots a bullet in the head of habeas, in my view. And I know they argued about it in *Boumediene* [*v. Bush*, 2008] but the argument was crushed. All you were going to have left was the DTA so there was a war council in the fall. We come to the fall of 2006. The Military Commissions Act has been signed by President Bush, it is the law. We've read it. We think it shoots a bullet in the head of habeas and our only thing left is the DTA. The guys up on appeal are going to challenge this act as a suspension. Ultimately *Boumediene* will hold it as a suspension—right?

Q: Right.

Willett: But that's not going to happen until 2008. It was 2006 in the fall and there was this big powwow about what to do. The broad consensus of everybody is not to indulge this insult of a statute, this DTA, by bringing DTA cases, because God forbid the Supreme Court decides that they are an adequate substitute. And we said, "We're going to bring one. What are we supposed to do for our clients?" I mean, that was all they had. It is the only port so that is where we've got to sail. And I remember Debevoise [Debevoise & Plimpton] and we were at this meeting. Debevoise had filed a DTA petition because they got their case in 2006 and there was literally nothing else they could do. And everybody was mad at Debevoise and there was us saying we think that is what we've got to do. And I remember saying to this group, "I come to praise Debevoise, not to bury them," after everybody had been hooting and hollering about it. That was

one of those times when there was a big disagreement in the room. But we said, "You know, what guys? This is not really about crafting the law. We've got clients."

Q: Well, what was their fear?

Willett: I think their fear was that we would win and then the Supremes would decide that the DTA was an adequate substitute for habeas. As it later worked out, I think they were wrong tactically, anyway. If nobody had brought a DTA case, it would have been so easy for the Supreme Court to say, as [John G.] Roberts [Jr.] did say, "Go try that." We brought our DTA case and the Debevoise case and our case were paired as the first case to get a real hard look. And we had all those ridiculous rounds in the Circuit [United States Court of Appeals for the District of Columbia Circuit] over the record. We never did get the damn record, but we kept winning paper victories about that.

Q: Did you make an argument that your clients were unique among the clients because they had been cleared already?

Willett: We made that, among many arguments, but I said, "Guys, I think I have an ethical issue here. I have a client who wants to get out of prison. This is the only route." I think this argument touched on a point I ended up writing an article about, called "Clericalism and the Guantánamo Litigation." But there was this constant theme—certainly in the D.C. Circuit and in the district courts within that Circuit—from the point of view of the government and a lot of our defense lawyers, of clericalism, of needing to incrementally build decisions that are going to craft and

move the law in a certain way. As opposed to, "I have got a case or controversy that needs a decision on the merits. We need to be done, we don't need to write an interlocutory appeal of an issue that goes up sixteen courts and waits two years to get an answer." And here we find ourselves with clients who are beginning their eighth year of imprisonment, and we're still dicking around in the appellate courts with what the remedy is.

Whereas the way to do this is what was done in the *Hamdi* [*v. Rumsfeld*, 2004] case. [Yaser Esam] Hamdi is the American citizen who was captured, so the government says, red-handed on the battlefields of Afghanistan. *Hamdi* is decided when *Rasul* is decided. But *Hamdi* is in the Eastern District of Virginia because he was being held at Norfolk. So he's outside this law society that exists in the D.C. Circuit. And Judge [Robert G.] Doumar says, "I've got a Supreme Court decision that says I've got to hear this case. I've got a habeas petitioner, bring him to my courtroom." The government says, "Whoa, wait a minute. Bring him to your courtroom? Are you serious? No. We need six years of briefs before we talk about bringing him to your courtroom." And Doumar says, "I'll give you two weeks. Bring the son-of-a-bitch to my courtroom." And so they sent him home, to Saudi Arabia. Now, the case is over, without a lot of dicking around. We'd still be dicking around over *Hamdi* if they had it in the D.C. Circuit.

Q: Right.

Willett: And they lost that idea in the D.C. Circuit, of a federal court exists to decide and resolve cases and controversies. Done, period. Full stop and move on. Not to, "Let's wait until the D.C. Circuit decides an issue of law for us." They've got it ass-backwards. Sorry. Got off on one of my

tangents.

Q: You made the argument before Judge Robertson?

Willett: Yes.

Q: As the lead lawyer. Which particular parts of your argument do you think he was most receptive to? I know that you used the example of the Italians in World War II.

Willett: Yes.

Q: Did that go over too well? At all?

Willett: You know, I don't know.

Q: No sense of that?

Willett: It is hard for me to say what argument hit him. He reminded me of a case years ago when I was a young associate. I went into the Boston municipal court and the judge was just crucifying my opponent. Ripping him up and down—"You need to settle this case because you're going to lose it sixteen ways for Sunday." Boy, I felt good. Well, I ended up losing that case. The judge had decided he couldn't rule for me—damn it—but he ought to be able to, so he would beat up the other side and maybe the case would settle in some appropriate way. That was

what happened with Robertson.

I think early on he figured out, "I can't give them a remedy because I think it is an immigration remedy." I disagree with Judge Robertson on that. I like Judge Robertson a lot and I just disagree with him on that point. He beat the stuffing out the government for as long as he could and ultimately we asked him to rule before this stupid DTA got passed, thinking it might matter on the timing. And he did rule. December 22, 2005, I'll never forget it. Boom, it was like having your heart broken. So it's hard for me to say which aspect of our briefs appealed to him. I kind of liked the Italian POW camp in Boston. I thought it was a good point.

Q: When I saw it as part of the argument, I was, "Gee, I wonder if Judge Robertson is going to respond to that at all." That is just a kind of precedent that he would find interesting.

Willett: We did have one exchange where we said, "Judge, maybe you could come to Gitmo and have a hearing down there." And he said, "Counsel, I last saw Guantánamo Bay as a junior grade lieutenant. I vowed I would never go back and I am going to keep that vow." I guess he was in the Navy a long time ago. We had some good rounds with old Jim Robertson.

Actually I had an exchange with him. I called up his clerk. Robertson wrote a wonderful article about habeas corpus that was published in the *Buffalo Law Review*, I think. And I was trying to find it at one point. I think I emailed his clerk saying that I was trying to find the judge's article, can you give me a citation. I got an email back from the judge complimenting us for our work. It was really quite a touching email. And so I emailed him back and I sent him a piece I had

written—this was in 2006—about the client's ultimate release to Albania. So we had a nice exchange. I haven't talked to him in a while, but I would like to do that again.

Q: But he did rule in your favor.

Willett: He said, as we never tired of repeating, he ruled in the first Guantánamo case on the merits that the imprisonment was illegal.

Q: Right.

Willett: And then he said he couldn't do anything about it. But we liked the first part of that ruling pretty well.

Q: And the government immediately appealed.

Willett: They did and we got it expedited. I think the oral argument was going to be May 8, 2006. On May 5 the phone rang. It was Bob [Robert M.] Loeb at the Justice Department, four o'clock in the afternoon, saying, "We're moving to dismiss your appeal."

"Really? Why?"

"They're not there anymore."

"They're not there? Where did they go? Where did they swim?"

He said, "Albania."

I said, "Bob, where are they really?"

He said, "Albania."

So I look up and Christina is standing in the door. "Christina, how the hell do you get to Albania?"

She said, "That's easy. Fly to Milan, change for Tirana."

So I went that weekend and I turned up in Tirana on a Sunday. The oral argument was to have been on a Monday. And I and met them. It was quite a day, too.

Q: Tell me.

Willett: All I knew was that there was a UN [United Nations] refugee center and it was in a part of Tirana called Babrru.

Q: Now who told you this?

Willett: I think I got that from Loeb, from the Justice Department. So, I got into a cab. The guy didn't speak any English but I said, "Babrru. We must go Babrru."

And he says, "Babrru?"

And I said, "Yes, Babrru."

And he goes, "Why?"

It was an epic slum, Babrru. And we finally found this detention center and the guard wouldn't let me in. I thought, Christ, what do I do now? I'm in fricking Tirana, Albania, and nobody speaks English and the guard slammed the door in my face.

Q: Is it a UN guard or an Albanian?

Willett: Albanian. So right before I had left the States, one of the people on the list serve had sent me an email, "If you have any trouble in Albania, call my friend Eri [Erion Veliaj]; he knows everybody." Well, I'm kind of out of cards at this point, so I call Eri. Eri says, "Let's have dinner!" It's like Sunday night. Great. So I meet Eri for dinner and I explained my woes to Eri, who speaks fluent English. Eri turns out to run a sort of MoveOn.org organization in Albania. Handsome as a film star. He's about twenty-eight years old, knows everybody. And I'm telling him this thing. He had heard about because it's been in the press. He says, "It is clear what you need to do. You need to have a meeting with the foreign minister."

I said, "Yeah, right, I need a meeting with Bush, too, but I don't think I'm going to get one."

He says, "No, no, no." He gets on his cell phone and he goes and he yakety-yakety-yaks for a while and he says, "All right. It's all set. He's going to meet you."

I said, "The foreign minister is going to meet me?"

"Yes, it's all set."

And then I thought, well, Christ, I can't hang around Albania. I've got to practice. "How soon?"

"He's going to meet you tonight."

"Tonight? Sunday night? Nine o'clock?" This guy is going to meet me?

He says, "Yes, come on. Finish your coffee."

As I live and breathe. So we drive across town, me and Eri, and we turn up at the foreign ministry. We go through this phalanx of armed guards and are led into a room that I swear is a movie set from a James Bond film, the one where the Russian bad guy is there with the slowly turning ceiling fan and the cigar smoke twirling to the ceiling? There is kind of desk in the middle of this huge parquet floor. And there he is. And so we walk in and they basically talked

around a bit about this. I explained that I had been out there and had the gate slammed in my face and we want to work with the government. I don't know what I said to him. And the next day I had an escort and a shiny car and three Albanian guys to take me out there. And I was a big celebrity. I vowed that these clients were going to come out to a restaurant like decent people, after all this imprisonment. And so we go charging out of the detention center—it wasn't a detention center, it was a refugee center but it was walled and it had barbed wire and stuff—in this escort car and then we go on this chase to elude the press. And then we drive through slums, terrible slums of Albania. And I remember saying to Adel, "What are you thinking about?" And he says, "It looks like Afghanistan." We end up at a restaurant and the poor guys were so shelled-shocked, they were like, "I am not hungry."

So that was Tirana.

Q: Now there were five of them released to Albania.

Willett: Yes. Three were not our clients.

Q: Three were not your clients. Were they included in the case that you were bringing?

Willett: No. Kramer Levin [Kramer Levin Naftalis & Frankel LLP] had brought a case for those three guys. There were a group of eighteen Uighurs who had all been together in Afghanistan and Pakistan. Five of the eighteen were cleared as non-combatants. Thirteen were held to be combatants, for reasons that no one could ever explain. There was no difference in the facts. It

was the five who got to Albania and it's the thirteen that included the four who are now in Bermuda.

There were a couple of more stories I should be sure to tell you before our time runs out. One of them is about this guy who is now in Sweden but was one of the two who went to Albania. He had the sister and the phone call. I'll tell you that story. I must also tell you about our client, Khalil [Mamut], who is now in Bermuda.

Q: Don't worry about time. I can come back anytime.

Willett: Okay. Let me tell you the story about Adel. Adel got to Albania and we knew that he had this sister in Sweden. Once he was found and his case was in the press, she surfaced. We knew all about that but we never knew quite why this Uighur guy has a sister living in Sweden. So Adel is in Albania and we hook up with a wonderful lawyer in Sweden, who has gotten wind of the case. He is a human rights guy. And he calls me up one day and he says, "I've got an idea." He says, "I'm going to get you and Adel invited to come to a human rights conference in Sweden to speak. Once I get the invitation I'm going to use that to get a four-day visa for Adel. Once he's here we'll file an asylum petition and see what happens. It's a long shot. A sister relationship usually isn't good enough, but why not?" Great, fantastic. So that's what we do. And it was at this meeting during Thanksgiving-time in 2007, which then Adel shows up in Sweden and I show up and learn the whole story about the sister, which is this.

In 2000, Kavser [Hakamjan] became pregnant with her fourth child. She has three children. She

is married and has three children. In China, you are allowed to have two children, no more. The third child she has secreted with a relative who is pretending that it is her child. And if she has another child, it's going to be an enforced abortion. So Kavser and her husband decide to flee the country and they go to Pakistan with the toddlers. The third child is left behind with the aunt. And Chinese agents grab the husband, he's brought back and put in prison for the crime of leaving China. She is destitute on the streets of Islamabad with these two toddlers. She washes up into the UNHCR [United Nations High Commissioner for Refugees], they place her in Sweden. She goes to Sweden, where the child, Fatima, is born.

Now you fast-forward five years and Kavser's world is rocked because she discovers that her long-lost brother, whom she thought was dead, is in fact alive and living in a place called Guantánamo. You fast-forward two years from that and now it is Thanksgiving 2007. Adel is going to walk through the arrivals gate at Arlanda Airport, and the twenty-three Uighurs that live in Sweden are going to wave flags and everybody is going to cry and gather at the home of Kavser, who has now been joined by her husband. And the child who had been held by the aunt has somehow escaped, too.

So the whole family is now in this flat in a suburb of Stockholm with Uncle Adel. And this child, Fatima, is now seven. A lovely child. And all of us there are thinking that all these people have been led to this place by this child. You know? It's because of this child that all these people are this one place. Very powerful, sort of spooky, feeling we had. I remember I took a picture of Adel holding his niece. It also occurred to us that one of the things that the men never saw or interacted with in Gitmo was children.

Q: Right.

Willett: So, you know, he just didn't want to let go of these kids. And they were kids—they were leaping on him and climbing on him because the new uncle was here. They were giggling and running around and he was just hanging onto these kids. That was a very powerful moment for me. That was one story I wanted to tell you.

Q: Was he able to get to Sweden?

Willett: Yes. He won his asylum petition. He won round one, lost round two, and then to everyone's surprise, the Supreme Court of Sweden reversed. A great win on the part of a wonderful lawyer named Sten de Geer because Swedish immigration law is like ours—you need a parent or a spouse or a child. A sister or a brother is usually not enough. It was a really tricky case to win, but he won it. He is now a fully-papered asylee in Sweden. His wife and children are still back in China. It is a bitter-sweet end. But it was a great night, that night in November.

The other story I'll tell you, which just had such an effect on me, was our client, Khalil, who is now in Bermuda. He was one of the next friend group and we didn't meet him until August of 2006. We filed a next friend petition in August 2005 but now the government had lost patience with us and so they were fighting us hard. They said, "We don't think it's a good petition and we want to litigate that and we want to take an appeal." It took a year to meet the client.

So we meet Khalil in a cell in Camp Echo. And we have had some tough meetings with clients who've now been held in tough conditions and they don't trust us. But this is a great meeting. Really sweet guy. Good thoughtful questions. And right at the end of the meeting, the guard hammers on the door, "You've got ten minutes."

And so Khalil kind of urgently wants to talk about one more thing. He says, "What do you think the downside of this habeas case is?"

I said, "I don't think there is a down side there. It may not be much upside but there's no downside."

He said, "Do you think I might be punished at all in the camp for bringing the case?"

I said, "No, I don't. And I didn't think so. Everybody is bringing a case. It's not a big deal."

He says, "You know, this summer they took away my bed sheet."

I said, "Well, there were some suicides this summer. That's why they did it. I don't think it had anything to do with the case."

He says, "Um." And then he says something in Uighur to our translator, who at this point was our new translator, Rushan Abbas, and her face just falls. And I go, "What did he say?"

And she says, "I'll tell you outside."

And the MP [military police] is hammering on the door, "Time's up. You've got to go."

And I said "Wait a minute, don't stop, what did he say? We've got to deal with this."

"Your time's up, sir."

So out we are in the hot gravel of Camp Echo and she says that Khalil said, "Drop the case, it's not worth it"—it might have cost him the bed sheet—"Clearly nothing is happening in the courts but bed sheets are useful and real."

Q: Right.

Willett: And I had this sort of revelatory, "My case isn't worth a bed sheet?" moment. That was just before they put him in Camp 6. That was a hard, dark period, 2007. It was nasty.

Q: I was going to ask you what your client's sense of time was. You were in court, going through these motions, and it's taking months and months and months and years, and they don't see much.

Willett: No.

Q: What was their sense of, "What you're doing?" What do they convey to you about it?

Willett: It depended on the client. There actually was a ton of activity in our cases, although none of it mattered to the guys. We brought a DTA petition, we had hearings on what the record was, we had a decision, then there is a motion to reconsider, another decision, then a motion for en banc, another decision, and it goes on and on and on. So we were always coming down with piles of papers and explaining the latest thing. And some guys would look at you like you had three heads, like, "What the hell difference does that make?" Other guys were interested—"What does that mean, the record on review and a DTA case? How does it work? Why don't I even get to testify? How could that be a fair record of the case if I can't testify?" We would have those conversations with some clients.

By the time they reached Camp 6, most of them had reached a point of terminal depression. In the case of Hozaifa Parhat, one of the Bermuda Four, in the fall of 2007 after nine months in Camp 6, he was the one who told us that we needed to tell his wife that it was time for her remarry.

Q: Is he "Joseph," in the op ed you wrote?

Willett: Yes, he was Joseph. There was this profound depression that set in following the solitary confinement in Camp 6. It was like having withered, parched rose plants that you water and they bloom again once the guys got of there into Iguana and then got released to Bermuda. But Camp 6 was just brutal. If you could imagine, think of the last time that you were completely alone for an entire day. Completely alone. Not only no people, but no mental stimulation of any kind. You

probably can't remember the last time that happened, right?

Q: No.

Willett: Imagine that lasts a year. It is almost inconceivable to us. That is what these guys went through. It was a very, very, very dark time, 2007. Nasty.

Q: You mentioned the Chinese. With your first meeting with your clients down there, did they tell you that they had been interrogated by the Chinese?

Willett: Yes. They were very upset about that.

Q: What was that experience like that for them?

Willett: It was very traumatic. It was a harsh, tough, threatening interrogation. It wasn't waterboarding but it was sixteen straight hours of being screamed at and being threatened and being held in uncomfortable positions and that kind of stuff.

What we later came to appreciate was how profound a betrayal that was, of the guys. They were brought to Gitmo in approximately May or June 2002. They enjoyed relationships of complete trust with their interrogators, at that time. Essentially, they were telling the interrogators everything the interrogators wanted to know, including information about their families at home. And they were being assured by the interrogators that, "This is a snafu. We're going to find a

country for you."

And then to have Chinese interrogators show up, who have the files, and know about the families—the men regard it as a complete betrayal. That broke trust with Gitmo. And then, of course, the long years and everything else. But I think in their mind, most of the clients, there was always a little bit of concern of if we really were lawyers—I mean, nothing was happening—or are we somehow aligned with those people who sold us out to the Chinese. I was fired by some clients because the clients thought that I had put their families at risk by contacting the families, to tell the families the guys were okay. In fact, the guys didn't have the facts precisely right. The families had contacted us. But it didn't matter. It illustrated the profound concern about family interaction.

Q: Some of the Uighurs?

Willett: Yes.

Q: What happened to them?

Willett: They are now represented by Clive Stafford Smith. Good old Clive. He has got fifty clients.

Q: Five of them are now in Albania.

Willett: Yes.

Q: And another seventeen are still in Guantánamo.

Willett: No. Four in Bermuda.

Q: No, no. I mean then. Back at that point.

Willett: Oh, yes. That's right.

Q: How did you then become counsel to other Uighurs?

Willett: Before the guys got to Albania we brought the next friend petition for ten more. We carried on for those ten. We still do for two of them. Four are out, three fired us. Five are out actually. One got to Saudi Arabia. Now let me get my numbers right. Five are out. We had ten.

Five are out, we have two left, and three fired us. That's right.

[INTERRUPTION]

Q: Let's go back to the question about you bringing evidence of the CSRT before the Court.

Willett: Yes. We were now in a DTA case where we were stuck with the government's record. We couldn't add anything to it as you might in a habeas case. And the question wasn't, "Are they enemy combatants or not?" The question was simply, "Did the Department of Defense follow its own rules when they determined what they were?" We rooted around in those rules and we stitched together a theory for saying they didn't. We had an argument that we could broaden from what the government described as the CSRT record, additional records to indicate whether or not in the process the government had ignored exculpatory evidence. We fought for a year and a half in the D.C. Circuit on that issue, although we never actually got those records. They brought every general they could think of to say that the republic would be brought to its knees if it had to actually give us this material, but they were just wrong under the statute.

Anyway, we ended up not getting the record that we were entitled to. We said, "All right, screw it. We will litigate this on the government's version of the record." So we filed a motion for judgment, saying even if we're stuck with this limited record, we win. And we won in June of 2008. The Circuit agreed with us, three-to-zero.

Q: That was *Parhat* [*v. Gates*, 2008]?

Willett: That was *Parhat*.

Q: That's a scathing review, on the part of the court.

Willett: Well, I thought it was. I saw [Merrick B.] Garland wrote it. I thought we were on a good horse. But then they threw in the towel on the next cases in the queue. There were four more cases in the queue that were next. And right about then they threw in the towel on everybody on the habeas side in the arena. That all sort of dominoed into August and September 2008.

Q: What is your next step?

Willett: Somebody asked me that today. I said I'm going to be like Keats' nightingale. I'm going to fade away into the forest dim, let other people fight these battles. We still have two clients at Gitmo. We've got to get them out. There is talk of Palau and some of the other Uighur counsel have been leading that effort. We are just sort of playing a support role there.

Q: At one time, I sense you were kind of hopeful of getting them located in Tallahassee.

Willett: Tallahassee was part of the plan. There was a church group down there that was going to host three. We had the Lutheran Immigration Refugee Services were going to take care of the rest, when Judge [Ricardo M.] Urbina ordered release. But since then the Congress panicked and became paranoid. The president threw in the towel and decided not to bring anybody here. He is, in my view, kidding himself if he thinks the rest of the world is going to clean up our problem, even if they got Bermuda to do four. You know, a hell of a lot more people got released under Bush than are getting released under [Barack H.] Obama.

Q: Did you have hopes for Obama?

Willett: I had very high hopes—I did. I had a long dialogue with a very senior White House Obama person, whose name I won't mention, but very senior, and I said, "You guys are missing the point. This is a teaching moment, just as Jeremiah Wright was a teaching moment. Obama can use this to remind us of who we are. And he can remind us in a way that very few politicians can." But they wouldn't do it. They are afraid they're going to lose their health bill or the three other things they are doing. It wasn't worth it for some sadsacks from Gitmo. I think it's going to be a disaster. I think they'll be stuck in January 2010 with a pile of detainees now starting year nine. He will be ridiculed, from left and right, for having failed to accomplish his objective. They needed to take detainees into the United States, have Bill O'Reilly and all the other knuckleheads scream about it for a couple of months, and then have it die down. That's what they needed to do and they didn't have the stones to do it.

Q: Did you work with the Uighur community in the United States?

Willett: Very much. We were all set for a release here. We were very close. A bigger load of spineless muppets than the Congress of the United States you would not want to find, but they just stampeded on the White House and we lost that opportunity.

Q: When did you find out about Bermuda?

Willett: In late May 2009 we had some conversations with some senior government folks that Bermuda was becoming real. On June 4 or 5 we talked to the Interior Minister at Bermuda and

realized this was very real. It was a Thursday. And on the Friday I emailed the Bermuda representative because the only issue left was timing. In our meeting everything sounded great except they said they thought they were going to need two weeks to put it together. And we were saying, "You haven't got two weeks because as soon as this leaks, we are going to go through the same thing again. You have to just do it." So they said, "All right, we'll think about that. Then the next day I emailed, "By the way, we have a translator and it would be really helpful to you if we brought our translator there to help with the initial sort of shock."

They said, "We absolutely agree."

I emailed back, "What day should I plan to have the translator available? Because she has to come from California." We had a meeting scheduled between the State Department and the Bermuda folks, in Hamilton, for June 10 to seal the deal. And the best email in my life comes back, "We think you should have her there on June 10." Yes, this is going to happen! And then the deal is sealed. This is one wonderful little fact. The deal is sealed on June 10. We were sitting in the Cabinet room in Hamilton, Bermuda, and it was done. Everybody's happy. And the guy from the Pentagon is there. He gets on his cell phone and says, "We've got a problem."

"What's the problem?"

"The charter plane pilot lacks a GX-64 certificate."

"What the hell is that?"

"It's the certificate you need to be able to land at night at Guantánamo."

So I looked at Susan Manning and said, "How many ways did you think of for this to get fucked up?"

And she said, "About a hundred."

And I said, "Me too. Did you think of the pilot can't land the plane?"

And she said, "No, I did not think of the pilot not being able to land the plane."

So we sit around this table and the Pentagon guy has a Rube Goldberg fix that we can take off at four in the morning and land at one minute past sunrise. But that's going to be the middle of the British day. This thing is going to leak. Governments leak. We don't have that much time. So somebody found another charter plane in Peterborough, New Hampshire. It flies down to Bermuda, we board at midnight, and we hit the Gitmo landing strip at three in the morning. We never even make the terminal. The plane was at the end of the runway. Out comes the bus with the guys on it and the thirty guards. We were all standing around there, sort of lights in our eyes and jet engines whining. The Interior Minister from Bermuda was at the base of the gangway to the G4 and across the tarmac they came, got up in the plane. And then we were out of there.

Q: Did they know that they were being released?

Willett: This was a big issue because everything leaks, right? So we thought really hard about how we would time the consent. We called the guys on June 5 and told them about Bermuda, expecting that they were not going to go for it until we have some more calls. So we figure we've got June 6, 7 or 8 to try to build it in. At the end of fifty minutes of me describing the GDP [gross domestic product] being 1.5 times the U.S. per capita and all this kind of stuff, they said "We're in." In fact our client Abdul says, "How much more time do we have on this call?" I said ten minutes. He said, "All right. Stop talking. I want it very clearly understood that I want to do this. Write that down." So we said to the clients, "Now guys, do not tell guards about this." And at this point people in Gitmo are getting family phone calls. "Do not tell family. This must not leak." And they didn't. They kept it quiet. It didn't leak. And I remember all day on June 10 after we had cut the deal, people were on Blackberries to see if it had leaked yet. And there was all this hyperventilation in the press about Palau. It was a complete wrong foot. The press were all running to the Pacific Ocean. When they got out-of-office messages from us, they thought we were in the Pacific. It was beautiful. We hit the Bermuda airstrip at seven in the morning, local time, and no press was there. The premier gave a press conference announcing what had happened at nine-thirty in the morning and then all hell broke loose.

And there was a great moment that afternoon. It was about one in the afternoon, we walk into a haberdashery in Bermuda because the guys need clothes. It was like an Army/Navy store with pants and shirts and flip-flops. And we walk in and there was a radio playing. The radio is playing a radio talk show and the talk show host is the Bermuda version of Rush Limbaugh. He was going on about how the insane government has brought throat-slitting terrorists to Bermuda

shores and they're going to be loosed among the populace. And people are calling in to raise hell about this. And this guy is sitting behind his counter and he's listening to what is playing on the radio and in walk four guys from Asia with beards. And he looks up at the radio and looks at the guys, and he looks up at the radio again, and he looks at the guys and then you can see him a little nervous. The conversation gets into inseams and waist sizes and what you have for a shirt and what you have for pants and do you have any socks and stuff like that. And after about twenty of this and the radio still ranting away, the guy says—as I live and breathe—"Don't mind about that lot. Welcome to the island." Fantastic.

Q: I read something about the Congressional Black Caucus being somehow involved. Were they involved in this?

Willett: No. They weren't involved in the planning of it. Part of what is happening in Bermuda politically is that Ewart [F.] Brown [Jr], who is the premier, leans away from the UK [United Kingdom] and towards the U.S., and towards Obama. Brown went to Howard University. There are a lot of contacts, a lot of friendship among the Black Caucus and Brown and his administration, and there is a lot of warmth and a lot of support for what he's done, which was really epically courageous because he almost lost his job over it. But it was a wonderful couple of days for Bermuda.

Q: Yes. Well, for Bermuda, citizenship is tight.

Willett: Oh, yes. We don't have that yet.

Q: But even a work permit can be tight.

Willett: Yes. It is so great on so many levels.

Q: Did these guys know where Bermuda is at all?

Willett: They had never heard of it before. We were worried because it could sound like a kind of island exile. You know, it's a small island and, "They are going to send me to a small island that has no Uighurs on it?" We didn't fully appreciate until we had reached Bermuda and seen them interacting, but they had the most profound feeling of, "Nobody wants us. We're at Guantánamo because nobody in the world wants us." And all of a sudden there's this place that wants us. They had this profound sense of gratitude to Bermuda, and feeling of love for Bermuda because Bermuda took a chance on us. So it was really wonderful to see that and to see the reactions of the people. There was a lot of political hostility but the personal interface between them and the people has just been really great. Marvelous.

Q: Now, Greg [Gregory B.] Craig was on the plane with you?

Willett: It has been reported in the press that Greg Craig was on the plane with us.

Q: He wasn't there?

Willett: You know, I'm—let's see—

Q: You'll get a transcript. You can change anything you want.

Willett: This is a part of the interview that I would like to be confidential for some period of time.

Q: Sure.

Willett: Greg Craig was on the plane. Greg Craig was an integral part of the negotiations. We met with him in the White House. I have to say, the White House is a place that gets the better of you. When you are sitting in a room with a guy who says, "I've just come from meeting with the president and he's very anxious to know what's happening with Bermuda," you just can't help it. It's hard to say, "Fuck you, guys. We're coming to America and we're going to sue you." You just feel the power of that. Basically they called us in to say, "We can't do a U.S. release. We can't stand up to the Congress, but we're going to try this Bermuda thing."

And we thought, "Yeah, right. That'll work." You know.

But Greg Craig showed up. He was there day and night, electronically and in every other way, to get this done, and it got done. And I don't think it would have got done if everybody in the room didn't know that the president's right-hand man was watching and was there.

Q: Right.

Willett: And he was on the plane for this reason—the Bermudan representative wanted somebody on that plane so that if any logistical thing went wrong at Gitmo, some general got a hair across his what-name, we had the White House with us. And it happened. It all happened.

Q: Right. And next comes Palau?

Willett: Yes, maybe. Who knows. Palau is weird. I'm not sure who's running that country but the president is running down the hall to issue press releases before anything's done. It has not been handled very well. There is no formal offer to release anyone to Palau that I am aware of, even today. I think it is coming.

Q: What has happened to the other four in Albania?

Willett: They are still in Albania. They're working jobs and one of them is in a university program. At the time, Jeff [Jefferson B.] Sessions [III] went before the TV cameras to say that the Uighurs were all scared of women's arms and were going to institute Sharia law and have American women wearing burqas and all this crap. One of the guys in Albania has a Facebook page and got a picture off it which was [Hajji] Mohammed Ayub on some hiking trip with thirty of his friends, of whom twenty were beautiful young women with all limbs uncovered. So I've got to send this to fricking Jeff Sessions. He probably would have more trouble with it than Ayub. They're making the best of it, I think.

Q: What are they like as a group? Are they rural, urban, educated, young, old?

Willett: They vary. They vary from guys who are now thirty and were in their young twenties to guys who are forty-two, forty-three. Some of them, like our client Khalil, had a fair amount of education. Very shrewd guys. Some of them are pretty simple. It's just a wide variety of folks. But I'm so glad for the guys in their young thirties. Three of the guys in Bermuda are bachelors and the fourth guy is the guy who turned his wife loose. But the bachelors, in particular, have a great chance to start over, to meet somebody, to start a family, to move ahead.

Q: Do you think they'll have a chance to do that in Bermuda?

Willett: I do. I do. I absolutely do. We had a meeting where a guy in the State Department was going through the conditions of this release and they wanted the Bermudans to agree that they would meet once a week with our clients and check on them and report to the U.S. And the guy in Bermuda, very diplomatically, said something like, "This is Bermuda. There's really nobody I need to meet with once a week." Once people get to know them, it's going to be okay.

Q: The ones who have family, will they be able to bring their families over at all?

Willett: No, they will be able to bring family in. None of them is married. The one guy has a son and he desperately wants to bring his son. The Bermudans will let him bring his son, but can they get the son out of China? Nobody knows that right now.

Q: Have the Chinese put pressure on the Albanians? They did at one point.

Willett: They did. I haven't heard what the official protest of China was to this Bermuda thing. I really don't know. But you know, we'll wait and see how it goes. The guys were just meeting yesterday about jobs with the Interior Ministry. So we can hope that goes well.

Ron, I'm going to have to go back into my crisis.

Q: That's okay. No problem. What I have left to ask you are more general questions about your sense and your views of the courts through all this, your views of American politics. I want to get into the Congressional hearings. More generalized kinds of questions in summing up. And I also want to know how it changed you, in any sense. And also, then I want to know how you carried the regular burden of the office, as well as this.

Willett: That's what my partners want to know. That's a lot of stuff to cover.

Q: Right. I can come back again.

Willett: Yes, let's do that.

Q: Sure.

Willett: Let's come back and deal with some of that stuff. But it was really great, chatting with you.

[END OF SESSION]

MJD

Session Two

Interviewee: P. Sabin Willett

Location: Boston, MA

Interviewer: Ronald J. Grele

Date: May 3, 2010

Q: We had gotten to Bermuda.

Willett: Ah.

Q: And the four detainees who went to Bermuda had gone three or four days before our last session. So that's where we left off, in terms of chronology. I have a set of questions I want to ask you, more general questions speculating out the meaning of the whole experience to you. But I thought at first we would just bring it up to date.

Willett: Bermuda. Had we talked about Bermuda at all? That was a whole separate adventure.

Q: We talked about how it happened and a bit about the involvement of the Black Caucus. The first few days that they had there, and that was it.

Willett: Okay.

Q: How are they making out?

Willett: Pretty well. They have been working at the Port Royal Golf Course [Southampton, Bermuda] as groundskeepers. They actually like the work a lot. It's outdoor work, they can get to work with cool machinery and stuff like that. It is a physically stunning, beautiful location to go to work every morning. They have been taking courses in English at a community college in Bermuda and they live in little apartments that are a mile or so from Hamilton.

Their main goal in life right now is to get married. To find wives—that is the burning issue. Culturally, it means being able to travel because you have to meet a girl, go where she is, which might be Turkey or somewhere, and marry her.

Q: There aren't very many Muslims on Bermuda.

Willett: There are a few, but the Muslims tend to be American and they're not Uighur. These are the first four Uighur people ever to set foot on the island. So an urgent priority in their minds is to obtain the necessary travel documentation so that they can go and find wives and be married.

Q: Now, will they able to get Bermudan citizenship?

Willett: No.

Q: No?

Willett: Their immigration status in Bermuda is up in the air. The rules are perplexing but it

appears to be that this is really a function of UK law. You can get Bermudian citizenship only if you were born on the island. But passports and things like that are governed by Whitehall, so the English governor on site has been, so far, unhelpful in regularizing their status. Efforts are underway right now, actually, to start that process moving. But we'll see. That could be another long saga, to get them status documents.

Q: When we left off, we left off with the first inkling that there would be something with Palau.

Willett: Right. Palau, yes. It was interesting because, unlike any other country that we've dealt with in this whole experience, Palau very quickly rushed to the press releases before there was anything nailed down. We were getting stuff from the president's office, you know, when it was just a twinkle in someone's eye. Usually these governments want to keep everything confidential until it's nailed down.

Word of a Palau release was leaking from everywhere in June of 2009. Luckily for us, all the press thought that was where we lawyers had disappeared to when in fact we were in Bermuda, so we were able to keep the Bermuda thing quiet until it was done. But then over the summer this Palau concept continued to percolate until some point in August 2009, when Palau extended formal invitations to twelve of the thirteen Uighurs who then remained at the base. We went down and talked to our clients about it and ultimately six men decided to go. Six rejected and then the seventh. It was poignant because there were six acceptances, six rejections, and the one fellow who wasn't offered. Among the six rejections were the brother of the guy who was not offered. The brother would have gone to Palau but he said he didn't feel he could abandon his

brother in Guantánamo.

So we were down to seven people when, at last, on October 31 the plane left. It touched down on November 1 in Palau with the six men, who are there today.

Q: I read some of those early releases, or the early things that came out, about Palau and it's almost as if they were trying to say, "We're doing you a favor."

Willett: Who was trying to say that?

Q: The people from Palau.

Willett: Oh, very much.

Q: Yes, to exhibit how welcoming the event to the United States, they are doing a favor to the United States.

Willett: And by the way, can we talk about that U.S. aid, which is coming up to be renewed in December?

Q: Yes, the *Wall Street Journal* in particular was kind of vicious about the two hundred million dollars going to Palau.

Willett: Well, we always said it would be a lot cheaper to come to Virginia but the government has its own ways.

Over that summer of 2009 several things were happening. You had this Palau negotiation percolating, you had a series of evermore xenophobic riders that were attached to appropriations bills filed in the Congress. Nobody at Gitmo can ever come to the U.S. for any reason, forever and ever, amen. You had meanwhile—and ironically—a debate about where to try people like Khalid Sheikh Mohammed, a debate that hasn't ended today. So the administration was backing away from bringing anyone here who has actually been cleared of any wrongdoing, but was pressing the case for bringing the most vicious criminals here to be tried. A certain irony in that, I thought. Meanwhile, spending God knows what to arrange these relocations to places no one had ever heard of.

I don't mean any disrespect to Palau but, you know, there was no relationship that made sense, at an immigration level, for these people in Palau. It was just that Palau needed something from the U.S. and the U.S. needed something. But what is interesting is that Palau was one of the few nations left which is openly an ally of Taiwan as opposed to Communist China, but that may be changing, and that is worrisome. The Chinese are negotiating an offshore-drilling deal, of all things, with Palau now. The Chinese have figured out that commerce is the way to bring people into your orbit.

The other thing of interest that happened in Palau, late last week, which is one of the six men got married. He married a Uighur woman who had been living in Australia. She's on the island now.

I guess people meet over Skype these days. It raises a question about whether, in fact, that will be his ticket out of Palau and into Australia. So, stay tuned.

Q: There was some newspaper reportage that they actually wanted to go to Australia and this was a step toward getting to Australia.

Willett: Well, it was a strange arrangement in Palau. It was referred to as temporary relocation, but indefinitely temporary, whatever that means. They could never get citizenship in Palau, they could never be fully regularized there and the State Department vowed to keep trying. I think the president's view was Guantánamo was just a radioactive word. Nobody on earth wants to take someone from Guantánamo. But if you are taking somebody from Palau, who has been there a couple of years knocking around on the fishing docks or whatever, it might be easier. The idea was to have this stepping stone. The State Department has told us they are going to continue trying to make it happen. Once the burning focus is off, though, they still have people they've got to get out of Guantánamo. Who knows what will happen.

Q: Do you have any way of knowing if it was an American initiative or an initiative that came from Palau?

Willett: I don't. I don't know. President [Johnson] Toribiong has some U.S. affiliation, I think. He went to college here or something; I'm not sure.

Q: Yes. To the University of Washington

Willett: Okay. You know, Bermuda, I think, was a Bermudian idea and everybody was reading this in the newspapers. It may have been a Palauan idea. I don't know, myself. We had six men in Gitmo and six men in Palau, but we still had a thirteenth man who had never been offered any other place.

Q: Now, is he mentally damaged?

Willett: You know, I'm not a doctor. He has fits sometimes, where he starts like a Tourette's thing, where he shouts out. This got worse over the course of his solitary confinement. Camp 6 was really bad for this. But the avowed reason that he did not get an offer was that they did not have the right medical facilities for him. I've sat and chatted with him just as we're chatting today, and he just seems normal. But the guys would say he would fly off, not in a physically violent way but start screaming epithets and stuff.

So he was left. The Supreme Court took cert of the case.

Q: Yes, while this was going on.

Willett: Right. We were still waiting—

Q: You're still going to court.

Willett: Usually the Supreme Court resolves all of its cert petitions by the end of June, and they didn't. They carried this one over, which is pretty unusual. So over the fall the Supreme Court case gets briefed and the Solicitor General [SG] plays all of her delay cards, at every stage, so that their brief isn't due until February 3. This is now almost exactly a year from when the D.C. ruled.

On February 3—two days before February 5—they got the rabbit-out-of-the-hat offer from Switzerland for the last guy and for his brother, which of course he instantly accepted. It was funny, there was always this undercurrent in our opponents that we were trying to leverage U. S. asylum. But in fact, the guys just wanted a sensible place to get to. It took months for that to actually happen. But the SG instantly wrote the Court and said the case has changed—everybody has either been removed or had an offer to be removed. The Supreme Court said “brief that.” We did, in letter briefs. Then on March 1 or 2, the Court remanded it to the D. C. Circuit, in the process of vacating the earlier decision, so that the earlier case is no longer binding authority.

Then just last week we were before the D.C. Circuit addressing what they should do. We had asked them to remand to the District Court so we could make a factual record about why people rejected Palau and what Palau really means. The oral argument on Thursday, March 22, was as grim an oral argument as I've been in and I think it likely we will be crushed into some form of powder in an order that reinstates their earlier decision, I think. Although, it's interesting—Judge [Judith Ann Wilson] Rogers was pursuing a kind of elegant third way, which was to say, “Well, at some point a person is no longer detained.” If he rejects enough offers he is a volunteer. And if he is a volunteer, he is not detained and if he is not detained, we never get to remedy because

habeas is about relieving detention.

Q: Yes.

Willett: So it will be interesting to see whether that narrower view controls here. So the beat goes on in Court.

Q: Right. Did you want a habeas judgment from the Court?

Willett: Did we want one?

Q: Yes.

Willett: How do you mean?

Q: Well, in the sense that Elena Kagan argued that it was no longer moot. But did you want a decision from the Court?

Willett: Well, we have a couple of legal views on this. The first is that even if these offers might be material, we are entitled to create a factual record of exactly what the offer was and to litigate the facts. Maybe it is not material and then we are entitled to the same review. We, second, argued what I think the Court found a more provocative argument, which I think is a more correct reading of the law. That is, it does not matter how many offers you have, if you are

detained in a prison as they are, there is only one remedy and the remedy is release from the courthouse. Now, that remedy might become moot because of the party's consent to go somewhere where everybody would rather go. Or it might be that ten seconds after he walks out into the sunshine on Constitution Avenue, a guy is removed under the immigration laws to some other place. That could happen. But all of this talk of offers from Palau I argued was irrelevant, that you needed a traditional remedy, and the remedy was release from the courthouse. Judge [A. Raymond] Randolph was unimpressed with that argument, I think we can say. I think that is a fairly safe prediction.

Q: Along the way you argued that habeas courts are not travel agencies. It is a wonderful quote.

Willett: Yes. I mean, we meant that both ways. We are not entitled to be prima donnas and use a habeas court. We cannot say, "Well, we don't like Spain, we would prefer France." But on the other hand, it is not the business of the Court at all to get into where people end up. That is the business of the immigration authorities. What is the business of the Court is to say that the detention is over and the only way we can order it to be over, which is here. I think that's right.

If you look back at what the habeas writ was at the time of the suspension clause coming into the Constitution, it's invariably the same thing. They bring the prisoner into the physical, literal courthouse and if he loses he goes back with the jailer, to wherever his jail was, and if he wins, he walks out the door. That is what we said the remedy is. Of course, we have all this xenophobia in the country now with both the immigration law and these appropriations bills, and overcoming that political stuff is—the president has no will to fight that. That has become

obvious.

Q: Yes. I was trying to ask because when we last met it was clear that President Obama was not moving very fast on any of this. The administration was actually hostile to a lot of your arguments. How do you position yourself vis-à-vis the hopes one had with the reality that is now?

Willett: I'll put it this way. I was never optimistic that in court any president was going to stand up and do the right thing. I just do not think that they operate that way. They are politicians. They count heads and votes.

What I did think would happen—and was wrong—was that the president would have more stuffing, politically. Bermuda was a consequence of the failure of a deal that we worked out with the White House, in writing, to bring the first two Uighurs to Virginia.

Q: Was that with Greg Craig?

Willett: Well, I won't say who the—but I cannot believe the president was not personally aware of this. It is inconceivable that anyone working in that administration would say, "I'll take it on my watch to bring Gitmo detainees to the U.S." I just don't believe it. He knew—he authorized. We had a whole process that involved, you know, people running out of the room and across town to talk to other people, to come back to say, "No we can't do this, yes we can do that?" So, they knew, and they committed and they agreed. And I went to Gitmo and the clients asked if

this was another game of some kind and I said, "No, this is ink on the page. This is the formal commitment of the Obama administration. This will happen."

Well, I was wrong. He caved to political pressure. I sat in the physical White House and argued with a guy for a whole afternoon. I said, "You bring these guys to Virginia, you're going to have a month of hysterics, of Fox News trucks surrounding wherever their garden apartment is and people running to the floor of the Senate denouncing the president," and all of that stuff. I told him, "You know how the press is, they will lose interest and off they will go banging their drum about some other thing. And then six months from now the stories will be how the guy is in community college and the guy is digging a garden, this kind of stuff. Six months from now, when you need that kind of story because you are still trying to fix the rest of the mess, you're going to have a good story. You've just got to stand up and take it now. And you've got to trust me on who the best first candidates are because I had thought a lot about which of my clients can stand having angry press people yell at him, shine lights in his eye, try to bait him, and which cannot." And they had said, well, I think the first two guys should be this. And I said, "No, no, no, no. These guys should be the first two guys." Can they speak any English, for example? That kind of thing.

Q: I am a little hard of hearing.

Willett: You know, can people speak English, can they communicate in some way that doesn't seem so alien and foreign? So, anyway, they reneged. I remember threatening that I was going to go to court. This is when Greg Craig was in the picture and he said, "What are you going to go to

court for? What do you think you're going to accomplish there? You know you're not going to accomplish anything there."

And I said, "Yes, I know. But there will be a big, loud noise about it and it will force the president to say in a press conference that these people are not dangerous." That is why he agreed to it.

And Craig said, "I've got a better idea. Let's do Bermuda." That's when I said, "Are you kidding?" But Bermuda was infinitely better for the clients than this mess that the Fox News fishbowl would have been here. That worked out well for those four.

Q: Do you think that any of them will ever get citizenship some place and eventually travel to the United States?

Willett: Well, it was a condition of their deal that they never come to the U.S, and I have a feeling they really prefer not to come here. There is just such hostility. But I do have a sort of pipedream that ten years from now, when things have calmed down, there will be some [unclear]. The guys will come through and visit. Bermuda is so easy to get to. I mean, you can have lunch in Bermuda. You jump on a plane now and you have lunch there. My wife and I went in the fall, went sailing with the guys on a big catamaran. They looked a little green, actually, except for one of them. We look forward to going back and things are sort of normalizing.

Q: Where did the six who did not want to go to Palau end up?

Willett: They're still on the base. We are now down to five.

Q: Yes, down to five.

Willett: Two went to Switzerland. We have the five guys who are left at the base.

Q: And what for them?

Willett: For one thing, our relations with them have really soured. They mistrust us. Part of what has happened is under Obama they started treating the men a little more decently in the prison. They get family phone calls. So a client will call a family member and the family member will say, "I heard from so-and-so, who heard from so-and-so, who heard from so-and-so that Turkey stands ready to take you," while Turkey doesn't stand ready to take them. Believe me, for years we have begged Turkey to think about this and it is never going to happen. But the rumor mill feeds their hopes and then they think that somehow we are holding out on them.

I'm pretty fearful now that what's going to happen is that the courts will say, "We are done with these guys. There is no habeas remedy." And then once the heat is off them—the State Department is busy with lots of other people. I once said, half in jest, that Uighurs would turn out the lights at Guantánamo and I think it may still be true.

Q: Unbelievable.

Willett: Yes. It is a great testament to the xenophobia in this country that this has happened.

Q: But after the courts have ruled again, and again, and again, and again, they are still there.

Willett: I wonder how history will view this whole episode. Because if habeas is not remedy, if it does not mean, “We are going to force you against your will to release the prisoner, even if it is release into a place you're unhappy with,” then habeas doesn't mean very much.

Q: Right.

Willett: An order that says, “Use your best efforts to engage in diplomacy”—how do you enforce that? So it is interesting. We'll see where it takes us historically. I mean, as we go on in the future.

Q: Talk about historically, Andy Worthington in the *Huffington Post* said that the *Parhat* decision was on the same level of the case of *Rasul* and *Boumediene*.

Willett: It was pretty important to me. I don't know.

Q: Yes. That was a kind of nice perspective on it, three major cases coming out of that.

Willett: Yes, it was. God, there are so many different and conflicting thoughts about *Parhat*.

Parhat was, to some extent, a vindication of the judicial branch, that they could be handed this loaded-dice statute, which was written with a view to make sure that the detainee would lose, whatever the hell the facts might be. And we won. It was such a pleasure to argue that case because it was clear the judges had acted like judges. They were all over the record. I mean, a lot of the record is classified but if we were looking at it you would see discussion about what appears at Paragraph 17B on page 42 of the appendix and the cross reference there to page 37, and which came before which. It was a real minute examination of the record, which is what judges are supposed to do. So that was exciting.

It was also a strange interlude for the habeas bar whose contention had always been that the Detainee Treatment Act was a farce, and yet if the detainee could win the first case that ever came up, how much of a farce could it be—right? It really was a farce, we just had this extreme case that you could win. And thank God, through some miracle, we had a panel that did not actually contain Judge Randolph. Every Gitmo panel seems to contain Judge Randolph. There's a story there. What's the [Samuel] Beckett play where they flip a coin a hundred times and it keeps coming out heads? *Waiting for Godot*? That is how I feel about the D. C. Circuit—they keep flipping the coin on Gitmo appeals and it always comes out Judge Randolph. It was exciting to be a part of that.

Q: Now, do you still represent the last five?

Willett: Yes.

Q: Despite the fact that there this tension?

Willett: Tension?

Q: Between you and them.

Willett: Oh, yes. Yes. We haven't been fired. We always take it as a victory when our clients don't fire us at this stage.

Q: I saw in one news release that Gita [S. Gutierrez] from the Center [Center for Constitutional Rights] is one of the lawyers. How does that work? She is on the team now?

Willett: The CCR was co-counsel, I think, from the beginning on a number of cases. Gita has been involved from time to time. [J.] Wells Dixon has been more involved in the Uighur cases. But they are so overworked there that they have not had the time to dig in as much.

Q: That brings us up to date, more or less.

Willett: Yes.

Q: This now doubles back to build on what we had already done, last year.

And the first question I have is can we get a copy of the next friend document that you

mentioned? To include in the transcript?

Willett: Well, that's it there.

Q: Can we get a copy of that to include in the transcript?

Willett: Yes.

Q: Because I thought it was kind of interesting. It would be interesting for people to have.

Willett: That's where it started. I'll make sure.

Q: Okay. We can figure it out.

Willett: Yes, for sure.

Q: Terrific. And while you are in this pensive mood talking about what history is going to say, I wonder if we can capture some of your views. First of all, about the courts and the idea of justice and how has this whole experience affected the ways in which you look at the courts?

Willett: Well, I have been mainly disappointed at the proclivity of the courts for a susceptibility to endless procedural delays. That one of the glories of the federal courts is bound up in what we call the final judgment rule, of which the starting premise is you cannot appeal things until it's

over. Right? And people say, "Oh, my goodness. That's inefficient. What if a trial judge makes an error that's going to infect the whole course of the trial?" And the policy determination has been the other way, which is that if you permit endless piecemeal appeals of discrete issues, you never get to a final judgment.

Q: Right.

Willett: That is what has happened with Gitmo. We had these repeated appeals of denials of motions to dismiss and then of grants of motions to dismiss, which is a final order. We had all kinds of temporary injunctions going all the way up, with the result that cases just didn't move along. I used to say that Judge [Joyce Hens] Green dealt maybe the greatest disservice of all to the whole process back in 2005 when she denied a government motion to dismiss, with a careful and thoughtful decision showing that there were some real concerns. And then she stayed her own hand so that that decision would go up on appeal for years. If she had done what a trial judge should do, which is to say, "Have a habeas hearing. There are some disputes here, bring them into court. We'll sort it out," then all this palaver that was happening in the courts of appeals could have been on the basis of a record.

I think in that respect—and this is now purely my speculation but I've been down in that D. C. Circuit now for a couple of years and this is an informed speculation—but they are all creatures of a "law review" culture. They were all on a law review, all those judges, and they clerked for somebody famous. They are in this kind of scholarly world where it is not about deciding cases and controversies, it is about the development of the law—"so let's incrementally proceed with

fine-tuned analyses of points of law.” Well, that loses the whole point of the federal judiciary. So that is a disappointment.

It is really too bad that in *Kiyemba* we fell one vote short—just one vote short—of the right answer. Judge Rogers had it right about the law. She wanted to remand us back to the trial judge to give one more chance at immigration detention, which I think was technically wrong. But the bigger picture, she was right on, which is that you have got to have a judicial remedy in habeas.

Now maybe it was a mistake not to go en banc at that point. We went to the Supreme Court for reasons of speed but that did not turn out to work, with all the delay that happened. We would have gotten an en banc review in the summer. I don't know if the votes are there. But this proposition that the judicial remedy is to receive the representations of the jailer that he is engaging in diplomacy, that's pretty shocking, I think. That's pretty amazing.

I'm kind of disappointed, as every advocate can be, that I lost a big round. But more broadly disappointed that it took—I've been in this five years. Why did it take five years to ram this case through? And we rammed it as hard as you could ram. We were constantly filing emergency motions and jumping ahead of the required deadlines and trying to move things along. I mean, it was like moving icebergs.

Q: Is that something new with the courts? I'm not enough of a historian of the courts to be able to put that into any kind of perspective.

Willett: You know, it depends. My own perspective on the courts is pretty unusual because most of my practice now is in the federal bankruptcy court.

Q: I saw the *New York Times* article yesterday—

Willett: Oh, did you see that? I disavow any knowledge of that. But, you know, you file something in the bankruptcy court on a Monday, you might get heard the following Monday. And the judge has read everything and is going to know. Things happen. There is a response. It was always this disappointing counterpoint to me because it is only about money in the bankruptcy court, you know. Sometimes it's not only about money. I'll give you an example. We had a case, down in Delaware where the debtor was going to shut off a pre-bankruptcy, contractual arrangement it had with its employees that was extremely generous on medical benefits. And it was particularly useful to employees caught in the Medicare gap, where they are, like, fifty-eight and they haven't hit Medicare yet, but the spouse has leukemia or some dreadful thing. As a matter of bankruptcy law, the debtor had a bulletproof right—indeed probably an obligation—to do this because it's all about the creditors, right? Well, the union did an effective job of trying to play on the heartstrings and they brought in a bunch of poignant witnesses to tell their story. This was all done in a week. The bankruptcy judge sat up until eight o'clock at night listening to these accounts from the witnesses, and then kept everybody in his courtroom for an hour while he retired to prepare the initial order. At nine o'clock at night, he sort of regretfully denied their motion. It was a powerfully and intensely human thing, a sort of no possible winner.

But the judge dealt with it promptly. Heard the evidence. We actually objected. We had a

technical objection that might have been right, our client to admitting the evidence. He didn't want to hear any of that and I'm going to hear the evidence. But that is how a court should operate. And so, to think that that happens in a bankruptcy court and the fundamental question of liberty can't get an airing in the federal court is disappointing.

Q: The next one is kind of loaded, but your experiences with the political system from time to time have been direct.

Willett: Yes.

Q: Congressman [William D.] Delahunt, right?

Willett: Yes. Bill Delahunt.

Q: At one time we sat hearings, and other times more indirect, through the courts and through the Solicitor General.

Willett: What little respect I may have had for Congress as a body, I don't think I have anymore. The willingness to fly to the floor because a pollster tells you something and say, "Me too. I want to jump on the backs of the Uighurs. Me too." That's sort of cowardice. It was really disappointing.

I can't, I suppose, tar the whole institution with a dozen people who did that, but taking every

issue and turning it into “who's up and who's down” politically is a great disappointment of our system. I think we're about to see that in this oil spill. It's all going to turn into, “It's Obama's fault,” or, “It's not Obama's fault” and people will be falling all over themselves to stake out a position, while all this oil dreadfully laps against the marsh grass. So, you know, to Congress, they're too much. I was very disappointed in Obama, who had the judgment at the beginning to do the right thing but then lost heart. I would have thought he was made of sterner stuff.

Bill was great. Bill Delahunt was great but unable to command any kind of following. You go to one of these hearings, you could sort of tell. The people in the room would be, you could almost read their minds, like, "Is it going to get me in trouble with the voters back home if I somehow support these people?" A lot of what united people who were in our camp was simply antipathy for Bush. Even our side was about, “who's up, who's down, get Bush,” as opposed to, "Do we have some human beings who are caught up in the middle of a process and who are being treated unjustly?" No one cared very much about that.

I always said to my habeas colleagues, people care passionately about innocence. They care less about torture, frankly. To the average Joe in the street, it's kind of all right to torture bad people. This is what you see on television. We could win a public discourse about innocence but in the end we could never win the other one very effectively. And yet, we didn't win the one about innocence. The country is too xenophobic, I think. That was the experience of politics, disappointing.

Q: Within the firm, how supportive was the firm?

Willett: Very. There are people in the firm who are Republicans. I have partners who are far-right Republicans who did not like this work, who did not like the fact that it was long and expensive and the firm was supporting the enemy. I kept saying that they were not the enemy, but going against the president. But mainly, I would say that group was the minority. Mainly the firm was very supportive. What was great was that you would run into someone in the lunch room, who would pull me aside, you know, and say, "I send my mother the clippings about that case. I'm so proud to work at a law firm that's doing it." I would have word processing folks who would come up and hug me because they were so proud. So it was really good for the institution, I think.

Q: I have among my notes, but I can't figure out where I got it, that the firm's involvement was second only to WilmerHale in terms of the number of lawyers and the number of hours.

Willett: I don't know.

Q: I have that note but I can't find where I ever got it.

Willett: I wouldn't know. I know that we had a massive deployment of people and expense and I know they did, too. So I think they may have had more—they were in for longer. They had extensive diplomatic work because their guys were caught in the same wringer. They won their case but they couldn't get ordered released, and frankly I think their clients wanted no part of ever being in this country. They were fearful. The Wilmer guys had to engage in a lot of kind of

private diplomacy that resulted in this France deal for two of them, and so on. I don't doubt that was pretty expensive. There are lots of other firms. I mean, I can't say that we were second.

Q: Has it changed you personally?

Willett: Has it changed me? I think it has changed me. I think it took a toll on my sense of humor. There would be moments when I was pretty bleak. I guess it has made me think that you can be a volunteer, you can be basically ignorant of any of the relevant facts, detail, law, history, and just muck in and educate yourself and have an impact. Have some little, tiny impact on moving the stone.

Q: I ask the question because in talking to Tom Wilner—he has written about this—it affected him at cocktail parties. He would just blow up at people who were in opposition to what he was doing and he found it very difficult sometimes to deal with people that he had dealt with all his life.

Willett: Yes. Tom has a fighter's personality, and it is his personality to confront back. I have a little of that but I now duck the subject at a cocktail party. Just because I don't want to go down that long, endless road that doesn't have a happy ending. That's going to now take up an hour and a half of this cocktail party, me trying to tell the story. So I generally do not talk about it as much as I used to. I used to think that we had to win our case everywhere. We had to win it. They would not let us try it in court so we had to try it in the press and we had to try it in the court of public opinion and I needed to teach people what was going on. I think now everyone has either

been taught or does not want to be taught about what happened. And until the whole thing cools and becomes a subject of historical inquiry, becomes a sort of next *Korematsu* [*v. United States*, 1944]. I think we've exhausted the process.

Q: It's going to be a long time?

Willett: Yes, it is going to be a long time.

Q: In the meantime, you conducted your regular business in bankruptcy court.

Willett: Yes. Tried to, tried to. Plenty of work.

Q: How did you work that out?

Willett: Luckily, at a firm like this with all of our resources, we have good associates to do everything. It is part of a trial lawyer's job that you pick up one file one day and one file the next, so I would shift in and out. The Guantánamo stuff was a little harder to put down but we just sort of learned to cope as we went along.

Q: Off the topic, but I couldn't help but read yesterday's business section of the *New York Times* about bankruptcy court. You've had a lot of business lately?

Willett: We have. That story was mainly about Weil Gotshal [Weil, Gotshal & Manges LLP] and

Lehman Brothers, which is a pretty extraordinary case. I am always amazed when people put in—it's basically laziness. They run up a big bill, they get reimbursed by their firm for their dry cleaning and then they put it through. And why do they do that? They don't need to do that. But it's when somebody did not take the time to go through the bill and take out all the personal stuff, so it looks awful.

And then it is a problem that there is no discipline in the system around efficiency, so why do you need three lawyers at a deposition when it's all being instantaneously, electronically recorded? In fact, you could get the transcript emailed to you that night. You go to these depositions now, you think you're in a TV studio. You've got wires everywhere. I think people are a little bit wasteful and there isn't enough muscle in the system to force them not to be. It's a problem.

Q: And you used to write? Are you still writing?

Willett: I used to write a lot that was not connected with Gitmo. But I have not written a novel in a while. I think it's time to maybe think about that. I always say that I have got to finish this case. We've got to get them out and then we'll think about the next thing. So we've only five left—the hardest five.

Q: I've come to the end of what I've wanted to fill in and what I wanted. Unless your general perspective on what has happened in the past eight years—

Willett: Yes, I am disappointed in my country. Somewhere I read a statistic that only eighteen percent of adult Americans own a passport, which tells you a lot about how insular we've become as a people.

It was a great privilege, for a lawyer, to be a part of these cases. To get to know a guy like Wilner and fifty other people that you may have interviewed or may interview, who are a part of this. Huge privilege. I may have told you this before, but I remember once I had an email bouncing back and forth between me and the guy in the Department of Justice on some procedural thing. And in one of his emails to me he neglected to shave the tail off the email, which betrayed the fact that our conversation was being shared with this many people in the Pentagon.

Q: A list at least ten inches long!

Willett: Yes. And I thought, God—including the names you read in the newspaper, you know? And I thought, God, all these people care about my little pro bono case. Isn't that amazing? The Pentagon. I mean, no one in the Pentagon ever talked to me before.

I would go down to Gitmo and there would be some guy from the Staff Judge Advocate's office. A lawyer down there would come out to meet me because he had heard about me or he had read some brief we had written or something. I became like this minor celebrity in this little world, as did Wilner, as did Rob Kirsch and Steve Oleskey and a bunch of other people. It was kind of fun to engage with brass in the military in that way. I actually gained a fair amount of respect for the

military through this process. Through what I once heard described as the real military, which are the manual guys, the “rules-and-reg” guys, the “turn-square-corners” guys. Not the Cheney-ite political leadership that came in and perverted them, but the real military culture is a good one. So that was a privilege.

A lot of this I was very privileged to be a part of.

Q: Did you work with the military lawyers?

Willett: Yes. They would interact with us when we were at the base. Now, I never had a criminal case, which is where you really get enmeshed with them. But I got to know a bunch of them.

Q: We want to interview a couple of them.

Willett: You should. Yes. Because you've got to interview [Charles D.] Swift.

Q: Pardon me?

Willett: You've got to interview Charlie Swift just for the sheer fun of it. Dan [M. Dante] Mori. Some of the prosecutors, too, it would make sense to interview.

Q: I'm about to interview Clive Stafford Smith.

Willett: Well, Clive is one of the great characters of this whole thing and it was great, enormous fun to meet and work with Clive. Yes. Brilliant guy. He was the master of finding some other court to try his case in, other than the actual court, and to exert the right leverage and pressure to get his guy out. Brilliant guy.

Q: Generally, it sounds like a pretty exciting bunch, the whole bunch of pro bono lawyers—six hundred or so. And the way you talk about it is in this kind of friendly, respectful way.

Willett: Yes, I think so. I mean, there were a few I would call true believers within the Justice Department who were just impossible to deal with and dreary. But mainly the experience of lawyers with whom one interacted was pretty good. I thought it was a great bunch of federal defenders. Some of the big-firm lawyers, some of the solo practitioners, the academics. It was just great being exposed to them.

Q: Well, thank you.

Willett: All right. Thanks for coming up.

[END OF INTERVIEW]

Abbas, Rushan	32
Al-Hakim, Adel Abdu	9, 10, 11, 28, 29, 30, 31, 43
Ayub, Hajji Mohammed	47
Bezri, Felice	8
bin Laden, Osama	13
Brown, Ewart F., Jr.	44
Bush, George W.	1, 2, 19, 27, 39, 73
Craig, Gregory B.	45, 46, 61, 62, 63
Curtin, John J., Jr.	4
de Geer, Sten	31
Delahunt, William D.	72, 73
Dixon, J. Wells	67
Doumar, Robert G.	21
Falkoff, Marc D.	7
Foster, Tina Monshipour	2
Freedman, Eric M.	18

Garland, Merrick B.	39
Green, Joyce Hens	69
Gutierrez, Gitanjali S.	67
Hafetz, John	18
Hakamjan, Kavser	29, 30
Hamdi, Yaser Esam	21
Kagan, Elena	59
Kirsch, Robert C.	18, 78
Kiyemba, Jamal Abdullah	7
Loeb, Robert M.	24, 26
Mamut, Khalil	29, 31, 32, 33, 48
Manning, Susan Baker	11, 42
Mohammed, Khalid Sheikh	55
Mori, M. Dante	79
Obama, Barack H.	39, 61, 64, 73
Oleskey, Stephen H.	18, 78
Olshansky, Barbara	2

Parhat, Hozaifa	34
Qassim, Abu Bakker	8, 9, 13
Randolph, A. Raymond	60, 66
Ratner, Michael	2
Roberts, John G., Jr.	20
Robertson, James	6, 10, 11, 22, 23
Rogers, Judith Ann Wilson	58, 70
Rumsfeld, Donald H.	11
Sessions, Jefferson B., III	47
Smith, Clive Stafford	36, 79, 80
Stokes, James C.	1
Swift, Charles D.	79
Toribiong, Johnson	56
Urbina, Ricardo M.	39
Veliaj, Erion	26, 27
Wilner, Thomas B.	18, 75, 78
Worthington, Andy	65